Chapter 14: Responsibilities of Church Financial Officers

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14.100: Introduction

Churches and religious organizations can conduct their temporal and spiritual affairs only through individuals. State laws require that church corporations appoint an initial board of directors. The Model Nonprofit Corporation Act specifies that a corporation shall have a president, one or more vice presidents, a secretary, a treasurer, and such other officers or assistant officers as the corporation deems necessary.

Officers and members of boards of church organizations regularly exercise their judgment on matters concerning the organization.

"It is a fundamental principle of corporate law that officers and directors lawfully acting on behalf of their corporation should do so at no risk of personal expense or liability. Nevertheless, a corporate officer is individually liable for the wrongs he personally commits and cannot shield himself behind a corporation when he is the perpetrator. The fact that an officer or director is acting for the corporation may also make the corporation secondarily liable, but this does not relieve the individual of his personal responsibility."
(Richard Hammar, Pastor, Church & Law [Springfield, Mo.: Gospel Publishing House, 1983], p. 168.)

14.200: Conflict Of Interest

The legal responsibility mentioned in the preceding paragraph usually arises from a loss resulting from a decision which, although unwise, was made in good faith. There is, in addition, responsibility for a loss when an individual participates in a decision that was not innocent. One important example of this involves "conflict of interest" and "self-dealing," as when a member of an organization's board helps make a decision that will personally benefit him or her, such as one involving his or her own employment or the purchase by the organization of goods and services from him or her. Such situations should be avoided, not only to prevent personal legal liability but also to eliminate the appearance of impropriety, which is especially obvious when it involves church organizations. To make known any of these situations that an officer may be involved in, all officers should be asked at least annually to complete and submit a Conflict of Interest Statement.

14.300: Job Descriptions

In the job descriptions that follow many of the responsibilities also include suggested functions for internal control. The financial secretary and treasurer should be familiar with suggested financial review questions in Chapter 25. Separation of duties is very important in these two jobs.

14.305: Treasurer

Qualifications: The treasurer shall be a voting member of the congregation. The individual should have experience in bookkeeping and accounting.

Responsibilities:
The treasurer shall serve as the financial officer for the congregation. He/she shall be responsible for the following:

1. Disbursing funds of the congregation in accordance with its resolutions, approved budgets, and as directed by the church council.
2. Filing all the tax forms (federal, state, and city) by the appropriate due dates.
3. Investing all funds as directed by the congregation or church council.
4. Monitoring the cash flow of the operational budget and make prudent decisions in disbursing funds in periods of low receipts.
5. Maintaining the cash journals, general ledger, and all subsidiary ledgers.
6. Giving complete financial reports at each church council or voters assembly.
7. Providing other financial information as requested by the church body.
8. Keeping informed as changes occur in requirements for reporting of tax and financial information.
9. Maintaining the treasurer's manual with updates provided by the district office.
10. Maintaining all records for the various designated funds and trusts and administering such monies as set forth by the church council, voters assembly and the desires of the donors.

Checks should be prepared by the church's bookkeeper who is often the treasurer. All bills should be approved with signatures of the persons responsible for initiating the bills. Records should be kept. To deter theft, a minimum of two signatures should be required for checks—those of the treasurer and president of the congregation.

No one should handle funds alone. Investments, purchases beyond the budget, etc., should be approved by the Church Council. The Voters Assembly should approve large expenditures. A financial review committee (see Chapter 25) should annually review all receipts and expenditures for approval by the church council. Pastors should be excluded from handling contributions and church funds.

The treasurer often also serves as an advisory member of the finance board and the board of stewardship.

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14.310:
Financial Secretary

Qualifications: The financial secretary shall be a voting member of the congregation. He/she should have experience in the handling of receipts and the maintenance of orderly records.

Responsibilities:

1. Oversee the counting of all service offerings and deposits to the bank account.
2. Report to the treasurer via the weekly offering form the total breakdown of contributions for the week.
3. Oversee the posting of all contributions to individual member's contribution records and to resolve disputes in posting errors.
4. Report to the church council and congregation monthly and year-to-date total contributions received for various purposes.
5. Notify the pastor of any special contributions that might require a special acknowledgment to the donor.
6. Make sure donors receive proper substantiation for all gifts as noted in 10.515.

The financial secretary oversees the activities of the church's money counters. As a safeguard against church member theft, no one should handle contributions alone. Rather, two or more people should count worship offerings. Loose cash should be tallied twice by different counters. Offering envelopes should be opened in the presence of all and counted twice by different people. Amounts written on envelopes should be checked to see if they correspond with the contributions within the envelopes. Cash and check totals should be recorded on an Offering Report Form and a copy given to both the church treasurer and the financial secretary.

All cash and checks should be given to the financial secretary for immediate bank deposit. His or her tallied totals should match those on the Offering Report Form prepared by the team of money counters. Individual contributions are recorded and then reported to each member at least once a year, preferably in January when taxpayers are collecting information in preparation for their tax returns. Members should report discrepancies to the financial secretary.

14.400:
Fiduciary Responsibilities

14.405:
Introduction

All officers and managers having the responsibility and will be held responsible by law to ensure that the financial activities of the church are carried out correctly. As an example, by willfully not forwarding income and employment tax withholdings on a timely basis, serious penalties and interest charges are incurred. Also, those who knowingly participate in "excessive benefit transactions" are at risk of penalties (see paragraph 8.100). The government can collect (and has done so) the monies due from the appropriate officers own resources.

14.410:
Restricted Funds

Use of restricted funds for purposes other than those designated by the donor should never be allowed.

14.415:
Secretary

The secretary should record all minutes in a clear and concise manner. The minutes could be a resource for defending a lawsuit at some future time. In addition, the minutes could be the basis or authority for some action by an individual or group. Every official meeting of the church should have official minutes taken. Properly constructed minutes should include the following:

"Record of Minutes"

Minutes of a *(regular) (special)* meeting of *(name of organization)* held at city, state on date at time pursuant to the *(constitution) (bylaws)*:

The meeting was called to order by the *(title)*. A quorum being present, the *(title)* declared that the meeting was ready to proceed with business.

NOTE: In the event of legal challenge to the action of the organization, the minutes should always state the presence of a quorum.

Minutes of the previous meeting are approved. Approval does not require a vote and may be declared approved by the chairperson provided opportunity for correction is granted.

If a financial report is presented by a treasurer it should be approved by vote.

Motions

The body of the minutes should contain a separate paragraph for each subject matter, giving, in the case of all important motions, the name of the mover and should show:

a. The wording in which each motion was ad-

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opted or otherwise disposed of (with the facts as to whether the motion may have been debated or amended before disposition being mentioned only parenthetically); or

b. Very briefly, if necessary, the information to explain the motion or thought behind the motion.

Actions pertaining to acquisition or disposition of real or highly valued property must always include a legal or detailed description of the property and, unless specified in the constitution or bylaws, the officers authorized to execute documents.

NOTE: Approvals of budgets, actions amending budgets, and major actions such as borrowing and acquisition or disposition of property are of critical importance to the treasurer for maintenance of financial records and, when necessary, for defense of actions in the event of litigation.

The name of the seconder of a motion should not be entered in the minutes unless ordered by the organization.

The action of the board is primary, the debate or discussion is secondary. The minutes are the official voice of the collective actions taken by board members in a meeting.

When a count has been ordered or the vote is by ballot, the number of votes on each side should be entered; and, when the voting is by roll call, the names of those voting on each side and those answering "present" should be entered. *("Present," while listed, is not tabulated in the outcome of the vote.)*

Minutes should ordinarily show the time of adjournment.

Minutes should be signed by the secretary and can also be signed, if the board wishes, by the chairperson.

14.420 Sample Resolution Limiting Personal Liability

As a congregation, it may be advantageous to possibly reduce the potential liability by inserting a similar resolution as shown below. This sample of a bylaw could limit the liability of the directors and officers of the congregation in the performance of their volunteer work.

CAUTION: Ensure that this resolution receives adequate legal review by a lawyer who is familiar with your state laws.

SAMPLE RESOLUTION LIMITING PERSONAL LIABILITY

(To be inserted in the appropriate place within the bylaws of the congregation.)

1.0 Those directors *(officers)* duly elected or appointed to the board of directors *(church council)* who do not receive anything of value from this corporation for serving as a director *(officer)* other than reasonable per diem compensation and/or reimbursement for actual, reasonable and necessary expenses incurred by such director *(officer)* in service of the capacity as a director *(officer)* shall be deemed a "volunteer director" *("officer")* for all purposes hereunder.

1.1 A volunteer director *(officer)* shall not be personally liable to the corporation or its membership and/or members for monetary damages for any breach of the director's *("officer")* fiduciary duty except for liability arising from or relating to:

a. a breach of director's *("officer")* duty of loyalty to the corporation or its members;
b. actual omissions not in good faith or the involvement of intentional misconduct or a knowing violation of law;
c. an act in violation of the provisions of state laws;
d. any transactions from which a director *(officer)* derives improper personal benefit;
e. any act or omission resulting in liability occurring before *(appropriate date)*;
f. any act or omission that is grossly negligent.

1.2 The corporation shall assume all liability to any person or entity other than the corporation or its members for all acts or omissions of a volunteer director *(officer)* occurring on or after *(appropriate date).*

1.3 The corporation, by adoption of a resolution in accordance with its articles of incorporation and bylaws, and pursuant to the provisions of Public Act (your state), shall have the power to indemnify those persons serving in the position of, or at the request of the corporation as director, officer, trustee, employee or agent against expenses, including attorney fees, judgements, penalties, fines, and amounts paid in settlement actually and reasonably incurred by a person in connection with any actions, suits or proceedings, formal or informal, relating to the service of said individual on behalf of the corporation if such person acted in good faith and in a manner that the person reasonably believed to be in or not opposed to the best interest of the corporation or its members, or with respect to any criminal action or proceeding if the person had no reasonable cause to believe that the conduct engaged in was unlawful. The corporation, through its board of directors *(or other governing group)* shall have such further or other authority to indemnify directors, officers, employees or agents consistent with the provisions of Public Act *(your state)*.

CAUTION: The above is not to be construed to be an acceptable legal document without proper legal review.

As laws vary from state to state, it is critical that this sample resolution is reviewed and, if necessary, modified

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by your attorney prior to its adoption. Even after the resolution's initial adoption, it would be prudent for you to consider requesting your attorney to periodically review this matter for any subsequent changes in state law that may require further modification of this resolution. In this way, you would be better able to ensure its continued effectiveness in indemnifying your officers and directors.

14.425: Employment Tax Liability

The following outlines the potential penalties to the church or responsible person for willful failure to withhold, collect or pay taxes. For more information, see IRS Tax Tip 2012-74 (April 17, 2012) at irs.gov.

Could You Be Personally Liable for Certain Unpaid Federal Taxes?

As an employer, you may be required to withhold Federal income tax and social security tax from the wages or salaries of your employees. These taxes, called trust fund taxes, must be paid over to the Internal Revenue Service through tax deposits or payments made with applicable returns.

When trust fund taxes are "willfully" not collected, or not truthfully accounted for and paid over, or are evaded or defeated in any way, then a 100-percent penalty may be due. "Willfully" in this case means voluntarily, consciously, and intentionally. The 100-percent penalty may be imposed on any person responsible for collecting, accounting for, and paying over the taxes. If this person knows that these required actions are not taking place for whatever reason, then the person is considered to be acting willfully. Paying other expenses of the business instead of paying the trust fund taxes is considered willful behavior.

What is the 100-Percent Penalty?

This penalty, imposed under Internal Revenue Code section 6672, is an amount equal to the total amount (or 100 percent) of the trust fund taxes evaded, not collected, not accounted for, or not paid over to the IRS. Interest is also charged on this penalty.

On Whom May the 100-Percent Penalty Be Imposed?

The 100-percent penalty may be imposed on a person who is determined by the IRS to be responsible for collecting, or accounting for and paying over these taxes, and who have acted willfully in not doing so. If the taxes cannot be immediately collected from the employer or business, the IRS will determine which person or persons are responsible, and who have acted willfully.

A responsible person could be an officer or employee of a corporation, or a partner or employee of a partnership. Any other person who had responsibility for certain aspects of the business and financial affairs of the employer (or business) may also be a responsible person. This may include accountants, trustees in bankruptcy, a member of a board, banks, insurance companies, or sureties. The responsible person could even be another corporation.

Responsible persons may include those who sign checks for the business or otherwise have authority to cause the spending of business funds. If the employer is a corporation and the responsible person or persons cannot be determined, the IRS will look to the president, secretary and treasurer as the most likely responsible persons.

Once the penalty has been imposed and assessed, any assets (except exempt assets) of any of the responsible persons may be taken to collect the liability.

How Can the 100-Percent Penalty Be Avoided?

The 100-percent penalty can be avoided by ensuring that all the taxes are collected, accounted for, and paid over to the IRS when required. Do this by making timely tax deposits and payments. IRS employees are available to assist persons who need information on tax deposits and payments. You may telephone the IRS tax information number for your area for help. *Publication 583, Taxpayers Starting a Business*, will also be helpful. It is available from the IRS.

14.430:
Copyrighted Materials

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