

Often-Seen Legal and Risk Issues with PC(USA) Councils

The Office of Legal & Risk Management Presbyterian Church (U.S.A.), A Corporation

The Office of Legal & Risk Management Services does not represent congregations, presbyteries, or synods, but gets questions from them and interacts with them in various ways. Our office repeatedly sees some of the same issues arise annually and has compiled a list of issues that we thought worth sharing so that councils might add them to their annual “to do” list. This information is not legal advice, it is merely information and guidance. To get legal advice on any of the issues, please contact your local attorney.

1. Councils forget to offer leaders and members annual training. For example, a congregation is required by the *Book of Order* to have a sexual misconduct policy and a child and youth protection policy (*Book of Order* G-3.0106). Not only should those policies exist (and be regularly reviewed and updated as needed), but church employees and those responsible for childcare, Sunday School, youth group, and other programs and mission for minors should be given annual training on those policies.
2. All councils should consider drafting employee handbooks or manuals. Church leadership (ex. a personnel committee) should calendar an annual meeting to go through the handbook and review its contents to determine if it should be updated or amended.
3. Councils forget to renew leases or covenants with third parties who use space on or in church property. These documents govern the relationship between the parties and set out the terms and conditions of how the third party is allowed to use space as well as risk management and indemnity and insurance matters. Congregation and council leadership should calendar a reminder before a lease or covenant expires to have it reviewed and timely renewed. In some cases, the agreement specifies issues such as automatic renewal and leaders should be aware of that, too.
4. Councils who lease or rent space on or in church property to a third party should use a written lease agreement in which the third party is required to provide a certificate of insurance to the council. The council should be listed as an additional insured under the liability coverage. Councils should retain those certificates of insurance for decades as liability arising out of incident involving the third party can be brought years after the incident. Maintaining an electronic filing system for certificates of insurance is a helpful record retention system.
5. All councils should maintain and update their files on insurance coverage. While it is important to have a current file with your insurance policies and information, it is as important to locate, store, and protect insurance policies as far back as councils can find them. Sometimes lawsuits are filed years after the events about which a plaintiff seeks damages. For example, minors who are injured are often allowed to file suit when they reach the age of majority plus one or more years later. So, if a 5-year-old is injured, that minor may be able to file suit thirteen or more years later. Further, as was recently seen in New York and other states, state legislatures pass laws to extend the statute of limitations so that victims of abuse can file lawsuits decades after they were abused. It is important

to keep insurance records for decades, not just years. NOTE: this suggestion assumes that the session annually gets a report on insurance coverage and ensures that appropriate coverage is in place. The council's corporate board should also get such a report.

6. Councils shall, where permitted by civil law, form corporations (see *Book of Order* G-G-4.0101) and those corporations should have bylaws that address how and when the corporation and its board should/must meet. Also, state law often requires corporations to meet at least once per year. Council leaders should plan to hold at least one corporate board meeting each year, which can coincide with, for example, a session meeting or congregational meeting. Councils should check their bylaws to determine what business must and can be put on the board's agenda. At minimum, corporate boards should address issues such as insurance coverage, risk issues, contracts with vendors and church property users, and finances. NOTE: Although the *Book of Order* permits church and corporation business to be conducted the same meeting ("Whenever permitted by civil law, both ecclesiastical and corporate business may be conducted at the same congregational meeting." (G-1.0503)), a meeting of the session or a meeting of the congregation IS NOT the same as a meeting of the council's corporate board. In order for the corporate board to meet, it must send out notice as provided for in its bylaws, which notice may be different than that required to call a congregational or session meeting.
7. Councils have corporate records such as articles of incorporation and bylaws and should keep past and present copies of those records. In addition, as those corporate records are amended make sure to file them with the Secretary of State or the county clerk (ex. articles of incorporation or other organizational documents).
8. Councils forget to file their annual report with their Secretary of State. The annual report typically lists the council's corporate name, address, agent, and seeks updated information on officers and directors. Failure to timely file an annual report can result in the council's corporation being identified as inactive, which means it exists in the eyes of the law but has no business. Or worse, the corporation could be listed as inactive, which can be based upon issues such as failure to pay corporate or payroll taxes. Council leadership should calendar a reminder at least 30 days before the annual report is due so that the report can be timely filed.
9. Even though councils of the PC(USA) and their *Book of Order* mandated corporations are included in the Presbyterian Church (U.S.A.)'s group ruling with the IRS, councils often fail to apply for their own Employer Identification Number (EIN). The EIN for the Presbyterian Church (U.S.A.) which is included in the group ruling documentation provided by our office is **not** to be used by councils as their own. Any official notification from the IRS (such as EIN notice) or from any federal, state, or local government authority should be retained in council office files and kept for at least 10 years. When councils apply for items like grants, often one of the forms it must produce with the application is a form proving tax exempt status and perhaps the EIN number. So having the original to copy and provide is important.
10. Care should be taken to timely and accurately file documents and remit payroll taxes to the IRS. Penalties can accrue and individual liability for noncompliance is a possibility. Again, the corporation of congregations and other councils should have its own EIN.

11. If a congregation is to be dissolved, care should be taken with the timing as the existence (or not) of the ecclesial body can have ramifications on the secular issues.
12. Acknowledge all contributions (ex. pledge receipts, stock gifts, gifts from IRA accounts, wills, and trusts, etc.) in an appropriate and timely manner. If you have questions, see IRS publication 1828, Tax Guide for Churches and Religious Organizations. Publication 1828 (Rev. 8-2015) (irs.gov).

Councils can find more information on these issues in the Legal Resource Manual which can be found on the A Corporation's webpage at this link:

https://www.pcusa.org/site_media/static/assets/Legal%20Resource%20Manual%20-%202020%20Version.pdf