

## Incorporation, Trustees, and Corporate Officers

There exists considerable confusion in the Presbytery regarding the secular corporation of a church versus the church's polity under the Presbyterian Church (USA).

The Book of Order contains the following provisions:

- At G-4.0101: “Where permitted by civil law, each congregation shall cause a corporation to be formed and maintained. If incorporation is not permitted, individual trustees shall be elected by the congregation. Any such individual trustees shall be elected from the congregation's members in the same manner as those elected to the ordered ministries of deacon and ruling elder. Terms of service shall be governed by the provisions of G-2.0404....”
- At G-4.0101: “The corporation so formed, or the individual trustees, shall have the following powers: to receive, hold, encumber, manage, and transfer property, real or personal, for the congregation, provided that in buying, selling, and mortgaging real property, the trustees shall act only after the approval of the congregation, granted in a duly constituted meeting; to accept and execute deeds of title to such property; to hold and defend title to such property; to manage any permanent special funds for the furtherance of the purposes of the congregation, all subject to the authority of the session and under the provisions of the Constitution of the Presbyterian Church (U.S.A.).”
- And at G-4.0102: “Only persons eligible for membership in the congregation or council shall be eligible to be members of the corporation and to be elected as trustees. The ruling elders on the session of a congregation, who are eligible under the civil law, shall be the trustees of the corporation, unless the corporation shall determine another method for electing its trustees.”
- Finally, G-3.0201 states among the responsibilities of Session, “directing the ministry of deacons, trustees, and all organizations of the congregation...”

Therefore, unless the congregation selects another method, the Session members are also automatically trustees; under Michigan corporate law, these are called corporate “officers and directors.” Congregations should consult bylaws to see if there is another provision regarding election of corporate officers and directors, and if there is, they should follow that

provision. If not, and barring another source of authority for a different method of electing corporate trustees, the default position is that the Session also composes the corporate trustees.

There are some challenges here regarding the term “trustees.” In some congregations, a group called the trustees functions as caretakers of the church property, or in some other role other than corporate directors. In these cases, the congregation should look it its bylaws and other documents to determine whether these trustees are also corporate directors, or whether the Session fills that role.

Regardless of how corporate trustees/officers/directors are elected, what is important here is that the Session continues to direct the Trustees, which are subject to the Book of Order. Under the Book of Order, Trustees are “directed by” the Session, even if they are “elected by” the congregation. Generally, “directing” a body is a different function from “electing” a body in the Book of Order. Directing a body might involve reviewing or correcting its work. See, e.g., G-3.0201 (c). A Presbytery may direct a Session, but ultimately, the congregation elects the Session. ***Similarly, even if the congregation elects the Trustees, the Session has the power to direct the Trustees in their work, which would include reviewing and directing the work of the Trustees. In other words, the Session may direct the Trustees to a certain action.***

An important point to be made here is that, by the terms of our Book of Order, ***the corporation organized under Michigan law is not a separate entity from the congregation governed by the PCUSA. Therefore, meetings of the corporation need not ever take place separately from meetings of the congregation:*** G-1.0503 states “Whenever permitted by civil law, both ecclesiastical and corporate business may be conducted at the same congregational meeting.”

Further, ***the Trustees or other corporate directors have no power to make decisions except consistently with the church’s polity.*** The 2020 decision, PJC (2020, 224-04, Aquino v. Newark Pby) is particularly important on this point:

The corporate status of every incorporated congregation in the denomination arises out of a civil source, as the Book of Order recognizes (G-4.0101). This does not mean that the board of trustees of a church is a separate and distinct entity apart from the

church itself. The fact that a church has a legal existence pursuant to a source outside of the PC(USA) does not mean that each and every matter involving the corporation and its trustees is determined outside the Book of Order. By virtue of being a congregation of the PC(USA), the congregation is governed by the Constitution of the PC(USA) and the members of the congregation subject themselves to the leadership of the session and higher councils (G-1.0203). The trustees of the corporation of the church are subject both to the requirements of the source of origin AND the provisions of the Constitution, including the Book of Order, and as such, those rules are read together, giving full effect to both, to the extent possible. The history and tradition of an individual congregation cannot supplant the Constitution applicable to all congregations in the denomination, particularly on topics specifically addressed in the Constitution (PC(USA) by Presbytery of Newark v. Aquino, et al., SNE 2017-06, p. 5).

In other words, if a congregation has a board of corporate directors, or trustees, or a corporate president, any of these must perform its work subject to the Book of Order. This means that decisions left to the Session, congregation, or Presbytery cannot be disturbed by the corporate form, and must be carried out by those corporate bodies at the direction of the appropriate church governing bodies and not in any other manner.

In Michigan, church corporations fall under the provisions for ecclesiastical corporations under MCL 450.178 and the Nonprofit Corporation Act, MCL 450.2101. These provisions require a congregation to submit Articles of Incorporation and to revise these articles when called for; for example, when the name of the congregation changes. Articles of Incorporation forms are easily found at the Licensing and Regulatory Affairs (LARA) website, and most congregations have their current Articles and other important documents published in the searchable businesses directory. In drafting Articles of Incorporation, one thing to keep in mind is that the purpose of the congregation should ordinarily be stated very broadly; even if the church has a mission statement, this is not necessarily the place for it, because the church could potentially be legally accountable for activities falling outside

that statement. A very broad statement of purpose, such as “to glorify God and enjoy God forever,” may work better for a legal document.

The Michigan Nonprofit Corporation Act has some additional requirements congregations should be aware of, including:

- Meetings at which corporate officers/directors are elected must have ten days notice; MCL 450.2404
- The bylaws or articles of incorporation state the method of electing corporate officers/directors and provide for vacancies; MCL 450.2505
- The corporation must file an annual report with the state by October 1 of each year, or a report certifying that there is no change to the required information; MCL 450.2911.

I remain open to further questions and inquiries in this matter, in whatever way I may be of assistance,

Grace and peace,

Marianne