

Speaking Volumes

*The recent political season had some churches challenging the IRS about taking a stance on issues and candidates. “Even if a statement does not expressly tell the congregation to vote a certain way, the church is at risk of violating the prohibition against intervening in politics if there is any message favoring or opposing a specific candidate,” says David O. Middlebrook, who with Bruce R. Hopkins, has authored **Nonprofit Law for Religious Organizations: Essential Questions & Answers** (Wiley, 2008). Middlebrook is a senior partner in the firm of Anthony & Middlebrook, PC, Grapevine, TX, which also provides the Legal Advice column for Church Executive:*

What are the most common questions of law you receive from congregations?

Our firm receives questions on many different topics; however, the questions we most commonly receive are usually regarding the following topics:

- Child abuse or financial impropriety
- Pastoral compensation
- Letters received from the IRS or other governmental agency
- Employment issues
- Real estate matters

Are there areas of procedure or law that church boards do the least well in following?

Many churches have adopted bylaws, but do not adhere to them. For liability purposes, it is better for a church not to have bylaws and procedures than to have them and simply not abide by them.

Secular organizations have conflict of interest policies; is it an equally important area for churches?

Although conflict of interest policies are not mandated by law, it has become increasingly popular for churches to adopt such a policy simply because the IRS strongly encourages organizations applying for tax — exempt status to do so. A conflict of interest policy can be beneficial when a church is considering entering into a transaction that might financially benefit an individual connected with the church because the policy will require the disclosure of the transaction to the board of directors who will then have the opportunity to determine whether the transaction should be allowed to proceed.

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Should a church board have an attorney as one of its members in order to give the board legal advice?

Having an attorney serve on the board of a church is not necessary. As a practical matter, when an individual is a member of a board, they bring their knowledge and background with them – they cannot leave it at the door. For instance, an accountant would bring their financial knowledge, and a contractor would bring their building knowledge.

Thus, while it may be beneficial to have an attorney sit on the church board, it should be noted that simply because an attorney serves on the board does not necessarily mean the attorney has the knowledge pertinent to governance of the church. Law has quickly developed into a very specialized field; therefore, a church probably should not have an individual on the board merely because the individual is an attorney.

Municipalities no longer are likely to give a church a pass on zoning, noise, traffic and other ordinances. What should a church do in order to be a good citizen?

Churches should seek to abide by the law and local city ordinances at all times. It is our experience that many jurisdictions have exemptions that apply to churches. For example, some jurisdictions have determined that churches are exempt from noise requirements and will not be violating local nuisance laws even if the noise related to church services runs far into the night and is so loud as to annoy neighbors.

However, churches should be aware that local enforcement officers are often unaware of these exemptions and, therefore, will attempt to make churches conform to general retail restrictions. So before choosing the site for the church building, churches should have an attorney review the zoning and compliance ordinances to determine how those ordinances might affect their operations.

What activities of a church flag IRS interest?

The IRS is always on the alert for churches that may be passing along benefits or profits to insiders of the church who control the profits. Employee compensation is currently under intense scrutiny by the IRS; therefore, high levels of compensation and benefits to church employees are likely to attract the attention of the IRS.

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