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Biblical Principles

Since a primary evidence that Christians are Christ-followers is their love for one another (By this shall all men know that ye are my disciples, if you love one another. John 13:35), one hopes there is little need for a lawyer to talk about the legal rules governing business organizations and how secular courts apply those rules to church governance. Similarly, if church members and leaders followed the teaching of 1 Corinthians 6 to have respected believers resolve disputes, disputes involving religious organizations would never reach the secular courts. However, because Christ-followers are imperfect sinners who do not always follow Scripture, the legal rules of church governance and how secular courts (hereafter courts) apply those rules do matter.

Important Times to Think About Church Governance

Land Acquisition, Building Projects and Major Donations

When a local church is about to embark on a building project or to receive a significant donation, both the local church leadership and donors should focus on church governance issues. A prime example in Hawaii occurs when a church moves from renting a meeting place, to buying property and building a new church home. At these times, the energy, enthusiasm, and motivation for sacrificial giving usually derive from the ministry of the local church, and the character, skill and devotion of the local church leadership. Depending on church affiliation and structure, however, real control of the buildings under construction or the monies donated does not reside with the local church and the local leadership, but instead with leaders in the denominational hierarchy—people with whom the local donors have no contact. Denominational control is fine (and can protect against rogue local leadership) if the denominational leaders are people of integrity whose basic values (and theology) are consistent with those the donors intend to support, but denominational control of monies and buildings can be a surprise to the local congregation and donors. So, before a building project or significant donor drive begins, both donors and church leaders should have clearly in focus who ultimately controls the local church's assets.

Church Mergers and Denominational Affiliations

Governance issues are also important when two congregations combine in a church merger, or when a block of members joins an existing church. If the church is ultimately governed by a majority vote of the local body (as opposed to denominational leadership), then the local membership and leadership should be aware that the financial resources of the church will be controlled by the current majority, even though the resources of the church may have been donated over previous years by a smaller minority.

A church also should give careful attention to governance impacts when a local church is considering affiliation with a larger group or denomination. In such affiliation, the local church should be aware of how much local sovereignty it is giving up.

Forms of Church Governance

Local Governance

Some independent churches, or churches affiliated with a network of churches, have no real hierarchical structure and are governed solely by the local congregation and leadership.

This local control can take different forms. One form occurs when a self-perpetuating board of elders governs the church's financial, religious, and theological affairs. This board elects its own

replacements. In another form of local governance, the congregation periodically elects a group of elders or deacons who then control the church finances and property. A third form of local governance is full congregational control where all decisions are put to a church vote.

Many churches have a hybrid form of governance. For example, a church may elect a group of deacons with control of most financial and operational matters, but reserve significant financial decisions (such as the purchase and sale of real property) and significant organizational changes (such as the appointment or removal of a senior pastor) to the congregation for a majority or supermajority vote.

Hierarchical Governance

Under the hierarchical form of governance, some level of control over money and property rests with the highest church authority. The Catholic Church, for example, reserves certain autonomy to local parishes and orders, but certain expenditures and sales of real property require the approval of a local bishop (who is appointed by the Vatican) or the Vatican itself.

Blended Local and Hierarchical Control

Under a blended governance structure, local churches have the authority to run and control their own finances and property except upon the occurrence of certain events which will trigger hierarchical control. Examples of such events include a dispute between the pastor and the congregation or a determination of serious doctrinal deviation from the denominational position.

Role of the Courts

The First Amendment to the United States Constitution, which provides Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof..., limits the role of courts in deciding disputes involving churches. From the principles reflected in the First Amendment, courts have developed the ecclesiastical abstention doctrine and the neutral principles of law rule.

Church documents may provide that members must adhere to certain Biblical doctrines in order to be members in good standing and so have their votes count in church governance. If a court were to decide whether a member's particular beliefs conformed with Biblical doctrines, the State would be interpreting what the Bible meant and whether people were true believers. Based on First Amendment principles that the government should not interfere with or evaluate religious beliefs, courts have developed the ecclesiastical abstention doctrine. Under the ecclesiastical abstention doctrine a court will defer to the highest ecclesiastical authority in a denomination on such issues. A court will not decide issues of biblical doctrine, and to a certain extent, internal church policies and procedures.

However, a court can apply secular principles of contract or corporate law and not interfere with the free exercise of religious beliefs. For example, a court could decide whether a majority vote of a church congregation had been taken to authorize a property transfer. This could involve simply computing the number of members and votes with reference to existing membership rolls and the terms of the church's governing documents regarding how a majority is computed. Courts who decide such issues describe their decisions as being based on neutral principles of law – principles of law which do not involve religious questions.

The difference between (i) situations involving religious doctrine and internal church policies and procedures, and (ii) disputes which can be resolved by the application of neutral principles of property and corporate law with no admixture of doctrinal concerns is not always clear. Two cases, both involving Assemblies of God churches, show how courts have struggled with these issues.

In the first case, *Clay v. Illinois District Council of the Assemblies of God Church, et al.*, 657 N.E.2d 688 (Ill. App. 4th Dist., 1995), an Illinois Appellate Court addressed a dispute between the local

church and the church hierarchy about whether property could be sold by the church hierarchy. The governing church documents provided that once the local church body ceases to function as an Assemblies of God church, the local church's property went to the church hierarchy. The court held that whether the local church body was functioning as an Assemblies of God church involved a religious or ecclesiastical question which could not be decided by neutral principles of contract or property law. Consequently, the decision by the church hierarchy that the local church was not functioning as an Assemblies of God church was final and binding, and could not be addressed by the court pursuant to the ecclesiastical abstention doctrine. With this established, the church hierarchy had the power to sell the local church property.

In contrast, in *Georgia District Council of the Assemblies of God, Inc. v. Atlanta Faith Memorial Church, Inc., et al.*, 472 S.E.2d 66 (Ga. 1996), the Georgia Supreme Court relied on neutral principles of law to find that a local church body could transfer all its property to a non-profit trust organization notwithstanding the subsequent objections of the church hierarchy. At the time of the transfer by the local church body, it had the power of self governance. Even though there were provisions in the governing documents that provided for the local church property to go to the denominational hierarchy if the church disaffiliated from the Assemblies of God, this did not prevent the local church from donating its property to a religious trust, and thereafter voting to disaffiliate from the Assemblies of God.

Conclusion

In a world where all believers fully and perfectly implemented Biblical conflict resolution, believers would not worry about how secular courts decide disputes about church property and governance. Unfortunately, believers follow Christ imperfectly and we live in a society impacted by misunderstanding and selfishness. The result is conflict that remains unresolved in the body of Christ and may be transferred to courts for resolution. In the world we live, a prudent person should give careful thought to church governance issues, particularly when significant fundraising, a church merger, or denominational affiliation are contemplated. (A prudent man foreseeth the evil, and hideth himself, but the simple pass on, and are punished. Proverbs 22:3)