

Legal Counsel *for Churches*

Corporate Governance
for Churches & Their Leaders

M SMITH | LAW_{PLLC}

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How To Recruit Church Directors

Finding qualified candidates for a Church Board is an important responsibility. A church should be intentional when it seeks to add or replace board members. Church leaders have a duty to create a process for director recruitment.

For churches that operate with a board of directors, the authority for certain decisions may be delegated to the body. Usually, the board is charged with setting policy, reviewing financial decisions and creating strategies. The board is often composed of persons with relevant skills and experience.

Decision-making authority varies with the specific bylaws outlined for each church. Some churches reserve all powers to make decisions with the congregation. As church operations become more complex, boards have been constituted to make governance more efficient.

For churches that operate under a Board of Directors Model, a body of individuals is empowered to make critical decisions. The board could be a particular ministry, such as the deacons, trustees or team of ministers. However the decision-makers are situated, the directors may be elected or appointed to their posts.

Building an effective church board can be advantageous to fulfilling the mission of the ministry. An effective church board has directors who understand their fiduciary duties to the church. The directors should be engaged, committed and supportive of the ministry. A board of effective directors

provides valuable input and critical review of key decisions.

Part of creating an effective board is recruiting the right mix of directors. The right mix will include a balance of key aptitudes, knowledge and credentials. When the board undertakes deliberation on topics such as finances, legal, property rights and religious doctrines, the board will have participants who can help the group make informed decisions.

It is important for church directors to get along with one another. Having a friendly rapport with fellow directors can help make for an effective working relationship. That said, recruiting new directors should include more than the selection of individuals based solely on personal networks. This practice could lead to a list of candidates who may not have the talents or qualifications that will make the board better at decision-making.

Here are a few pointers for recruiting candidates for church boards.

Structured Interview: New directors should be subjected to an interview process to learn as much about what contributions may be available. Sometimes, just knowing someone's occupation is not enough to fully understand their background. The interview helps reinforce with a candidate the weight of the responsibility of being a director.

Review Other Services: Directors operate at the highest level of church governance. To get a sense of how effective a candidate will be, look to his/her work in other ministries and church positions. If a candidate was reliable and supportive in other aspects of the ministry, you might expect the same diligence on the board.

Look at the Skills Mix: A church should determine what competencies it needs for its board. Competencies may include fundraising experience, accounting knowledge and community service contacts. Finally, the church should take an inventory of the skills each director brings to the table. This exercise will reveal what gaps exist between what the church needs and what current directors offer.

Consider Non-Church Members: Churches may consider directors who are not members of their church. If after looking at the skills mix, the church identifies a gap, a non-member could fill the need for critical decision-making. A church should review its bylaws to make sure it is permissible to include independent directors on the board.

Church leaders should think ahead to the next time they will have to fill vacant board seats. This is not a question of if, but when. Churches that apply purposeful tools for recruiting directors improve the prospects of building an effective board. ■



COVID-19 Prompts Governance Duties

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Legal Tips for Church Leaders During a Pandemic



Church governing boards and their management teams should determine to what degree their operations continue to be disrupted by the coronavirus outbreak. In this special feature of Legal Counsel for Churches, we explore some legal issues churches should consider as they address the threat of COVID-19 on their congregations, ministries and operations.

Like many discussions about corporate governance, we begin with a reminder about the fiduciary duties leaders have to the church and congregation. Essentially, leaders have a duty of care to act in a reasonable manner as any other corporate director under the circumstances. Secondly, church leaders have a duty of loyalty to put the needs of the church first. Framed like bookends, these two duties are imposed on church leaders to ensure they focus on making the best decisions for the church.

In the face of a health epidemic like such as we have with this Pandemic, it is important for church leaders to make prudent decisions that will help the church rebound from the social and economic disruptions.

Take an Assessment

One of the first responses leadership should consider in these circumstances is

making a clear assessment of where things stand with the church. In North Carolina, Governor Cooper has issued a series of Executive Orders for churches to refrain from assemblies of certain sizes. For many churches, this has meant closing the church facilities to services, meetings and activities.

Churches often rely on gatherings to serve the needs of their members. The inability to have the congregation come together is an unprecedented disruption. This interruption may have impacted financial stewardship, social connectivity among members and ministry work. Church leaders may wonder what should be done until they can return to normal. To answer this question, leaders should ask themselves what a reasonable leadership team would do.

I inquired from some of my clients what they are doing during times like this. I polled several companies for responses to this question as well. Most return with the answer they are taking an assessment of where things stand. They are monitoring news reports on the latest developments. They are checking in with stakeholders and constituents on their conditions. They are reviewing the impact business stoppage is having on their congregations.

It seems reasonable that church leadership should start and continue an assessment of evolving conditions. The church board should pay heightened attention to the

impact on employment with companies that employ church members in your community. Layoffs and hiring freezes could signal an impending demand for future philanthropic support from the church. Economic stress could lead to pressure on the wellbeing of families as well.

Some authorities opine that the recession will continue for months. From anecdotal observations, church leaders may expect their members' households will experience financial stress. Churches often rely on the wherewithal and willingness of members for charitable gifts. A downward trend in the economy can have an impact on giving.

Vendor Management

Churches do business with vendors for many types of services. Churches rely on suppliers for equipment maintenance and office operations. An interruption in a critical vendor's operation could have an unfortunate impact on the church. For this reason, church leaderships should survey the health of its vendors.

Organizations often scrutinize a vendor before doing business for the first time. Vendor due diligence usually calls for checking a company's financial strength, management's experience and service reliability. After the contract is signed, churches may not be so diligent about

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The Moment

You realized you had not thought of all the risks.

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checking back with the vendor on its health.

Church leaders should know if critical vendors have the strength to weather tough economic times. The way to get to this assurance is through asking questions.

If the vendor is a publicly-traded company, its financial statements may be online for the church's review. A search of public records may reveal if a company is having a spate of lawsuits, liens or government actions taken against it. Frequent changes in management may also signal trouble times could be ahead for the company.

Financial Management

When it comes to finance, leaders should consider all stakeholders who have an interest in the financial performance of the church. These parties may be concerned about the church's abilities to fulfill its obligations under the agreements.

Stakeholder contracts may include promissory notes, lines of credit and letters of credit. These instruments may include covenants and terms that restrict the church to certain conditions. Usual covenants include debt service coverage ratios, minimum liquidity levels and reserve requirements. If the church has accepted grants from foundations or other funders, there could be buried in the agreement performance requirements.

Church leaders should play close attention to the church's finances to watch for conditions that trigger negative treatment

by stakeholders. If the church believes it will breach contract terms, it should consider having a dialog with the other party. This negotiation may prove preferable to having a creditor invoke a default provision.

Contract Review

This may be a good time for churches to review its outstanding contracts. A typical church has dozens of contracts at any given time. These agreements specify what a company is expected to deliver for the church and what responsibilities the church have towards the company.

After an event like a pandemic, the church's normal may have changed. With a new set of circumstances, some deals with other organizations may need to be modified.

This could include leases, labor agreements and vendor services.

There are a few issues to pay close attention to when reviewing contracts. First, determine the length of the agreement. If the contract is due to expire soon, look for automatic renewal terms that could lock the church into a new period without any negotiations. If the church needs to rework the deal, a scheduled term extension is a good opening for having that conversation.

Next, church leaders should review the termination clauses in agreements for unneeded services. Termination sections often invoke penalties and notice provisions. Churches should weigh the cost of forcing a modification to a contract with the benefits of a revised deal. ■



Legal Counsel for Churches is a service provided by M Smith Law, PLLC for members of the religious community. This periodical is intended to help churches and their officials become better prepared to address important legal and governance issues. We hope you find *Legal Counsel for Churches* a valuable resource. For each issue, we try to raise relevant issues and offer some practical alternatives. We welcome your comments and input.

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