

# Legal Counsel for Churches

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Corporate Governance for Churches & Their Leaders

M SMITH | LAW PLLC



## Permission to Photograph People

Many churches use various methods to publicize their ministries. It is not unusual to see photographs of people on the church web site, social media, or newsletter. The question that often arises is the need to get permission from the people featured.

This area of the North Carolina law involves what is called privacy rights. These rights prevent the unauthorized commercial use of an individual's name, likeness, or other recognizable aspects of one's persona. It gives an individual the exclusive right to license the use of their own identity for profitable promotion.

Moreover, the right of privacy does not allow another to reveal personal facts about an individual to the public without permission. Questions about what details are personal may be debatable.

The issue for church leaders is who has a right to privacy when it comes to church media. The answer often depends on the circumstances and the subject.

Privacy protections do not normally apply to persons who were photographed in an open setting. Individuals in the public do not have a reasonable expectation of privacy. So may be the case for guests at a public church event.

Photographing a gathering during a church worship service is likely acceptable without the permission of each attendee. If the members of the congregation see photographers walking about taking candid images, they are given notice that their image could be captured.

The facts get a little more worrying if a photographer were to zoom in on a particular person, showcase that individual in a church advertisement, and imply the person endorses the church. In this case, one could become offend his/her likeness was used for commercial purposes without permission.

The situation becomes more defined if the subject of a video or photograph is a guest speaker at a church event. Privacy laws prevent the appropriation of a person's image for unilateral benefit. Some speakers, performers, and celebrities trade on their image. Many often includes in their appearance agreements the prohibition of photography and filming.

Not to go too far down a rabbit hole, the introduction of legal protections for professional speakers and singers brings in other considerations. Entertainment law addresses a whole new avenue that includes intellectual property, media, and trademarks.

The church should consult with their lawyer for issues related to professional performers.

When negotiating a speaker's or singer's agreement, be sure to include a clause for the right of privacy or licensing their image. If the appearance agreement does not explicitly permit recording, church leaders may be safe to assume it is not allowed. Extra due diligence is advised rather than having a court interpret party rights in a lawsuit.

Churches often wrestle with how much information to share on their members. Some churches publish a membership directory. The directory often includes photographs, names, and contact information. One should not guess that each participant in the directory agrees to have his/her image shared.

Church directory participation should include a written agreement that openly grants the church permission to publicize the photographs. The acknowledgment should be signed, dated, and preserved in the church records. Each adult should give written consent. Parents may sign for their minor children.

Obedying the rights of people who may have a privacy interest is important for church's to heed. Leaders should know every party's rights in order to protect the church. ■

# Good Governance Essential for Churches



Every church wants to be successful. Board directors want the best for their institution. Staff aims to fulfill corporate goals. Congregations need a ministry that provides value. A key to accomplishing all objectives is effective corporate governance.

Efficient corporate governance can be a mark of excellence for any organization. Governance is how a church manages risk, shows accountability, make prudent decisions, and achieve its plans.

As a law firm, we are often involved in cases where churches face internal and external disruptions. We read court cases that illustrate how situations have been hurtful to other organizations. We have concluded that good governance is imperative to a church's effectiveness. Gone unchecked, governance weaknesses can lead to perils that damage the entire ministry and harm its officials.

When our phones ring, it occasionally means something has gone wrong at a church. Some controversies involve external stakeholders over a contract dispute. Other matters include an internal breakdown that impairs the church. When we analyze the facts, we often realize that good governance could have prevented the situation in the first place.

There are a few tell-tale signs that suggest an independent corporate governance review may be needed. First, look at the state of the church's bylaws and policies. If these documents have not been reviewed in years,

this implies governance discipline could be lacking. Stagnation with these documents over time make the policies increasingly irrelevant and unreliable.

Second, ask when was the last time your governing officials underwent continuing education. Governance skillsets can be a perishable ability. Laws, practices, and community norms constantly change. Churches that neglect to keep their rules current risk having their policies invalidated by a court.

Finally, ask yourself if you are satisfied with the overall performance of your ministry. Effective corporate governance can help a church accomplish its global ambitions. This is because strategies need a stable foundation from which to build upon. Ineffective governance often erodes initiatives to grow the ministry in the community.

We believe most church troubles are avoidable. It is the responsibility of the leadership to recognize governance weaknesses and take proactive steps to improve. This exercise takes discipline and focus. In some instances, church officials seek help from a professional skilled and experienced in corporate governance.

Occasionally, church boards and management seek an independent perspective on the way they operate. This can be a prudent course of action. Some of the most well-run organizations understand the value of exploring fresh approaches and methodologies.

Successful ministries often bring in consultants to show the church potential ways to make its ministries more productive. Consultants who advise on governance matters can help church leadership identify risks and uncover opportunities.

When boards and management consider who to hire for governance consulting, there are choices to be made. A consultant should exhibit an independent point of view. Conflicts of interests and competing loyalties can destroy the consultant's integrity. The independent advisor should recognize the church entity as its client.

An independent governance advisor should promise confidentiality to the church and its officials. In some instances, consultants are privy to internal documents, trade secrets, and sensitive materials. It could be damaging to the church to have this information exposed to the public without consent.

Perhaps one of the most important yardsticks is shared values. A governance consultant should be one whose core standards are consistent with the church's. This is more than a likability test. Don't be distracted by sales gifts. The right consultant is one who fits in with your team's culture.

Take time to consider your church's governance status and practices. If you discover weaknesses, have a frank conversation with your governing officials. Learn how you can improve your ministry, reduce business risks, and reach your strategic visions. ■





# The Moment

You realized your legal problems are over.

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## How to Negotiate Church Contracts

A role of some church officers is securing business deals for the ministries. These transactions may include supplier orders, construction agreements, vendor contracts, or equipment leases. In each of these cases and others, church leaders are expected to be prudent managers.

The difference between a good deal and regrets for a bad decision is often how the transaction was negotiated from the beginning.

We have learned in our practice that many secular businesses do not make a distinction in their course of dealings just because a customer is a church. The saying “let the buyer beware” applies here. Therefore, it is up to church leaders to make the best decisions for their institutions.

Occasionally, clients call us to help remedy a contract arrangement that has gone awry. In most instances, the counterparty failed to perform as they had promised. When we retrace the steps between the church and the other party, we often identify telltale warning signs that unreasonable risks existed from the outset.

Here are some tips you may consider when negotiating the next business deal.

### ***Know the Other Party***

Counterparty risks may occur when a church does not know the reputation and financial standings of the vendor. This can lead to predictable disappointments when the other party fails to perform. Church leaders can offset this risk by asking some probing questions up front. For instance, a company wanting to provide substantial services to the church should be willing to share their financial statements. A prospective vendor’s references and social media posts should also be inspected for reputation risks.

### ***Read the Fine Print***

Most contracts have legal terms. Church leaders should expect the other party’s lawyer wrote the agreement. Consequently, the language was likely written to give his client the benefit. Church managers should be wary of all terms in the agreement. Your church lawyer can help you parse the real meaning of what appears to be just legal verbiage.

### ***Insist on a Balanced Deal***

Some agreements give unequal rights and privileges to one party. This is an unbalanced trade. Church officials should weigh the advantages to ensure both sides have equivalent protections and benefits.

### ***Imagine all the Risks***

Every business deal comes with risks. Some of the perils are not immediately obvious. With this mindset, church leaders should carefully consider what could go wrong with the transaction. This exercise could begin by looking at the substantive terms of the bargain. Imagine the other side failing on each provision. If the church would be harmed, think of what remedies could be built into the agreement for protection.

### ***Weigh the Financial Tradeoffs***

At the heart of every transaction is a financial component. Each agreement costs the church something. In some instances, the expense can be expressed in financial terms. In other cases, the cost may be in a loss opportunity to do something better. Church leaders who evaluate the pros and cons of a deal structure are more prepared to make a wise business decision.

### ***Get Expert Help in the Trade***

Some transactions involve highly specialized matters. Church leaders should enlist the assistance of colleagues who understand the trade. For instance, a church member who is a commercial banker can help negotiate a bank loan. An associate who is experienced with real estate deals can assist with an acquisition.

Leaders should know how to negotiate a contract. Officials should approach each transaction with care. The difference between success and disappointment can be determined in the negotiations. ■

**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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