

Legal Counsel

for Churches

January | 2026

Corporate Governance for Churches & Their Leaders

M SMITH | LAW PLLC



What is a Church Member?



The definition of a “church member” may seem straightforward. A member is generally considered someone who belongs to a local congregation. In reality, this question is layered with practical and legal complexities.

Churches often rely on memberships as the foundation for fellowship, community identity, participation in governance, and spiritual accountability.

At the same time, courts and legislatures have shaped what membership means in a legal sense, especially when disputes arise over property, discipline, or governance. Understanding the legal dimensions of church membership is critical for pastors, boards, and congregants alike.

In many faith traditions, membership is a declaration of belief and commitment to a local body of believers. Membership is also a form of covenant—members agree to support the mission of the church, attend regularly, contribute financially, and uphold community standards.

Organizationally, membership often determines the rights and privileges one has in a church. For instance, membership determines who may vote in congregational meetings. Membership decides who is eligible to hold office or serve in ministries. Membership also prescribes who may participate in ordinances or sacraments.

While churches may view membership in spiritual terms, civil law intersects with

membership in several ways. For instance, some churches’ articles of incorporation exclude the recognition of members. As such, the congregation does not have some privileges provided in the North Carolina Nonprofit Act.

Church governing documents, such as constitutions, bylaws, or charters, must clearly define what it means to be a member. Ambiguity can cause conflicts over who has the right to vote or make decisions about property, leadership, or doctrine. Courts generally defer to a church’s own definition of membership, but require that the definition be written and consistently applied.

Members often exercise legal rights in congregational meetings, including voting on pastors, budgets, mergers, or property sales. When disputes arise, courts may become involved to determine whether votes were properly conducted under the governing documents. Procedural errors, unclear membership rolls, or inconsistent application of rules can lead to costly litigation.

Churches may discipline or remove members for misconduct, non-attendance, or doctrinal disagreements. Courts generally avoid reviewing theological debates, but they may examine whether the church followed its own procedures.

In congregationally-governed churches, members may have collective rights over church property. Questions often arise when a

faction breaks away or when denominational bodies assert control. Courts have ruled differently depending on whether the property is held in trust for a denomination, by trustees, or directly by the congregation.

Maintaining accurate membership rolls is both an organizational necessity and a legal safeguard. Inaccurate records can complicate voting or property matters.

If a question of church membership is litigated, a court will likely look to written bylaws and membership rolls to resolve disputes. Churches should ensure membership criteria and voting rights are clear in governing documents. Procedures for removal of persons from the membership rolls or discipline should be spelled out and evenly applied to reduce litigation risk.

Some courts have treated church membership as a contractual relationship. Under this view, members agree to abide by the church’s governing documents and disciplinary procedures. This contractual lens has implications for disagreements, since courts may enforce the procedural terms of membership covenants while avoiding theological questions.

At its core, church membership is a covenantal relationship rooted in faith and community. But when the need for major decisions arise, membership rules can have profound legal consequences. Churches should carefully inspect their rules. ■



FEATURE ARTICLE

Clergy Confidentiality Risks Increases with Artificial Intelligence

As artificial intelligence becomes more accessible, pastors and faith leaders are increasingly using these tools to draft sermons, analyze ministry data, and support administrative work. AI can enhance ministry efficiency and even provide creative inspiration. However, when clergy use AI without understanding the risks, it can unintentionally threaten one of the most sacred foundations of pastoral care: the confidentiality of the people we serve.

Clergy hold a unique ethical and spiritual duty. Congregants often reveal deeply personal struggles, sins, family issues, financial worries, and emotional burdens. The trust placed in clergy is comparable to that of therapists, attorneys, or physicians.

Whether they express it or not, most individuals who seek ministerial counseling expect to receive the legal protections of the clergy-penitent privilege. This is a moral obligation that says whatever is shared in counsel or confession stays confidential.

Some AI tools, however, were not built to manage this level of spiritual confidentiality unless used with extreme care.

Popular AI tools—especially free or public versions—often store, log, or use user-provided information to improve their models. Even when an AI provider claims your data is protected, you may not know who inside the organization can view your inputs. You may be blind to whether the data could be used for training. You may not be

aware how long information will be stored. To make matters worse, you can't always be certain whether third-party systems have access to your inputs. In some instances, your congregation member may be identified by context clues you unknowingly provide.

Here is an example of the kinds of breadcrumbs an AI model may use to identify someone. If a church leader describes uncommon facts (“a 32-year-old choir director who just moved here from Burundi”); your congregation is small or a close-knit community; you provide financial details, health information, or unique family situations, the AI model may put the pieces together from other sources to recognize the individual.

AI should not be used to process raw pastoral counseling notes, draft feedback specifically tailored to a congregant's confession, generate guidance based on a person's private disclosures, or store sensitive ministry files.

Violations of confidentiality can damage trust and even expose churches to legal liability for data mishandling, even if the platform claims encryption.

Sensitive church files—including prayer request forms, benevolence applications, counseling summaries, volunteer background checks, or disciplinary letters—should never

be uploaded into AI tools. The church must maintain custody of its data, especially under privacy laws relating to minors, finances, volunteer safety, and personal welfare.

It may be useful for your church to have an AI policy. Every church should establish internal guidance that addresses what clergy/staff may or may not input into AI, whether the church uses enterprise-grade systems with privacy protections, training for staff and volunteers, and confidential records storage and access protocols. Bringing clarity to these situations protects both the ministry and its members.

A good rule of thumb is to consider a few guidelines. Use privacy-protected AI accounts when possible. Avoid entering identifiable details into an AI program. Treat

all data as if it were potentially reviewable by unintended parties. Train all church leaders on internal procedures regarding

acceptable AI use. Maintain human oversight and spiritual discernment.

Technology will continue evolving, and AI can be a powerful ministry tool. However, clergy must never allow convenience to eclipse the sacred and legal trust placed in them. To be absolutely safe, clergy should assume that anything typed into a public AI system is no longer fully private. Confidentiality must be safeguarded. ■

The trust placed in clergy is comparable to that of therapists, attorneys, or physicians.



I Didn't See That Coming!

Legal Services for Uncertain Moments.



When Churches Acquire For-Profit Businesses

Churches traditionally rely on tithes, offerings, and donations to fund their operations. However, declining attendance, economic instability, and shifting cultural attitudes toward religion have prompted many congregations to look for alternative revenue streams.

Acquiring for-profit businesses offers a pathway to financial sustainability that isn't solely dependent on congregational giving. These businesses may range from coffee shops and fitness centers to real estate ventures and janitorial services. Business acquisitions represent a new frontier where faith and finance intersect.

There are potential benefits for churches that seek to diversify their revenue stream. A successful business can provide a steady income to support church ministries, facilities, community programs, and staff salaries. Churches can use business ownership to create jobs, offer community services, and serve as a positive presence in their neighborhoods.

If managed with intention, businesses owned and influenced by churches can reflect religious values. Business management

can use their special lens to promote ethical employment, provide compassionate service, and promote social justice.

There are legal issues church management should consider. If a for-profit business becomes too entangled with the church's operations, or if its activities overshadow the church's religious mission, the IRS may challenge the church's 501(c)(3) status. The consequence of this is the potential loss of tax-exempt status, subjecting all of the church's income to taxation and make donations non-deductible for contributors.

One option is to create a separate legal entity (e.g., LLC or corporation) for the for-profit venture, with distinct governance and financial records. The separation of the church from the business unit provides limitations on liability and risks.

Church leaders should be aware of the rule against Private Inurement and Private Benefit. This IRS rule prohibits church assets or earnings from benefiting individuals ("insiders") such as pastors, board members, or their families. The consequences can result in penalties, excise taxes on individuals, or revocation of the church's tax-exempt status.

Church management should be careful to avoid conflicts of interests. Blurred lines between church leadership and business management can lead to divergences, breaches of fiduciary duty, or mismanagement claims.

It is important for church leaders who venture into for-profits businesses to avoid conflicts with their own internal policies and bylaws. Church leaders may need to amend their rules to make room for venture investments.

Church leaders should consider zoning and land use restrictions. If a business is operated on church-owned property, zoning laws may not permit commercial activities in areas designated for religious or residential use.

Churches enjoy greater employment freedoms than most businesses. For profit businesses must follow all applicable employment laws, which are different and often stricter than those governing religious institutions.

Churches should consider insurance coverage gaps. Liability insurance may not cover for-profit business operations. This could lead to significant financial exposure in the event of accidents, injuries, or lawsuits.

Acquiring for-profit businesses is not merely a financial strategy — it can be a transformative step that requires spiritual discernment, legal care, and ethical foresight. Done right, it can be a testimony of stewardship, innovation, and community service. But without clarity of mission and disciplined governance, it risks becoming a tale of good intentions gone awry. ■

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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