

Advisory Opinions: Note 11

Church Property

Church Property Topics

- A. Overriding Principles, G-1.0200, G-4.0103, G-4.0104, G-7.0401, G-8.0201
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A. ***OVERRIDING PRINCIPLES, G-1.0200, G-4.0103, G-4.0104, G-7.0401, G-8.0201***

1. Church Property is at Service for Mission (G-1.0200 - Great Ends)

“The great ends of the church are the proclamation of the gospel for the salvation of humankind; the shelter, nurture, and spiritual fellowship of the children of God; the maintenance of divine worship; the preservation of the truth; the promotion of social righteousness; and the exhibition of the Kingdom of Heaven to the world.” (G-1.0200)

a. A “particular church” and its corporation are not one and the same (G-4.0103).

“A particular church consists of those persons in a particular place, along with their children, who profess faith in Jesus Christ as Lord and Savior and who have been gathered for the service of God as set forth in Scripture, subject to a particular form of church government.” (G-4.0103)

A particular Presbyterian Church is an unincorporated association (of believers) created by or received into the PCUSA (G-4.0104).

“Each particular church of the Presbyterian Church (U.S.A.) shall be governed by this Constitution. Its officers are ministers of the Word and Sacrament, elders, and deacons. Its government and guidance are the responsibility of the session. It shall fulfill its responsibilities as the local unit of mission for the service of all people, for the upbuilding of the whole church, and for the glory of God.” (G-4.0104)

b. The corporation of a particular church is a civil body created by the state (G 7.0401).

“Whenever permitted by civil law, each particular church shall cause a corporation to be formed and maintained. Only members on the active roll of the particular church shall be members of the corporation and eligible for election as trustees. The elders in active service in a church who are eligible under the civil law shall, by reason of their office, be the trustees of such corporation, unless the corporation shall determine another method for electing its trustees. Any such alternate method shall provide for a nominating committee elected by the corporation, and for terms for trustees the same as are provided for elders. Any particular church which is not incorporated may select trustees from the members on the active roll of the church. The power and duties of such trustees shall not infringe upon the powers and duties of the session or of the board of deacons. (G 10.0102, G 6.0402)” (G-7.0401)

2. The purpose of the Trust Clause (G-8.0201) is to support the purposes and mission of the particular church as a part of the Presbyterian Church (U.S.A.) operating under the Constitution of the Church.

“All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)” (G-8.0201)

B. MORTGAGES AND ENCUMBRANCES, G-8.0501

The present rule in G-8.0501 on selling, encumbering and leasing church property was adopted in stages in 1936, 1942 and 1947 in the former Presbyterian Church in the U.S.A. The requirement for presbytery approval of a church mortgage was proposed in an overture from the Presbytery of Cincinnati in 1934. The problems it was intended to solve are those resulting from overbuilding and the financial crises of the Great Depression. The intention was to provide the presbytery an opportunity to help the congregations in their property and financial planning, and to protect the credit of the whole denomination.

An encumbrance to real property, in addition to a mortgage, may be a lease, an easement, or a condition in the deed which limits the right to use the property. If a church accepts a donation of land on which there is an unpaid tax obligation, or a hazardous waste condition which must be corrected, the land is encumbered until these conditions are satisfied. The property may also become encumbered if a creditor such as a contractor files a lien to secure an unpaid account. Session may not encumber the property or accept property subject to an encumbrance, without a vote of the congregation and approval of presbytery.

When the session seeks presbytery approval for a mortgage, easement or other encumbrance the presbytery must evaluate each application on its own merits. What is sound financial planning and affordable varies from place to place and over time. The rule is not an invitation to the presbytery to go into the property management business or to use its permission giving powers to decide whether the congregation should build a children's day-care center instead of buying an organ. The presbytery is intended to consult with the session representatives to ensure the church has sound architectural, engineering and legal advice, and has been made aware of the Church Financial Campaign Service and the services available from the office of Evangelism and Church Growth. The presbytery may assist a congregation in finding alternatives (such as the Presbyterian Investment and Loan Corporation) that reduce costs, increase funds available up front, or divide a project into more affordable parts.

The presbytery's interest is in the financial soundness of the project and the protection of the congregation from unwisely giving up more than it intended in its haste to get income by leasing part of the building. If what is proposed is basically reasonable and the congregation can afford it, they should be granted permission without difficulty. Congregations which have voted to be exempt from this requirement may nevertheless be willing to accept helpful consultation if they are approached pastorally by representatives of the presbytery.

In the event of default, the presbytery is liable for whatever it has legally contracted for. For instance, the presbytery is required to guarantee loans to congregations from the General Assembly Coordinated Loan Program. Commercial lenders vary in their requirements and in their assessment of the borrower's financial strength. In reviewing applications to mortgage real property, the presbytery should recognize a moral obligation to lenders and to the reputation for creditworthiness of all of its churches. This might mean that even if the presbytery is not legally liable to a lender it would repay a portion of a loan or take the initiative to renegotiate the terms with the lender.

C. LEASES, G-7.0304a, G-7.0401, G-8.0502, G-10.0102o.

When a congregation wishes to rent or lease the use of its building or land, there are a variety of legal, tax, zoning and practical issues that should be considered. Time, space, purpose and other local circumstances will, of course, determine what kind of lease or written agreement is appropriate and which of the matters listed here will apply.

Church Polity:

Among the responsibilities and powers of a session is “to provide for the management of the property of the church, including determination of the appropriate use of church buildings and facilities” (G-10.0102o). The business to be transacted at a congregational meeting includes “matters related to buying, mortgaging, or selling real property” (G-7.0304a).

If the real property being leased is that used for purposes of worship, or if any real property is to be leased for more than five years, the session must secure written permission of the presbytery, G-8.0502. “Used for worship” means the sanctuary and nearby rooms that are closely related to the congregation’s own needs. It would not apply to a separate building or, in a large building, to space that has a separate entrance which a tenant could use without interfering with the owner congregation's needs.

The session may permit others to use the facilities of the congregation without vote of the congregation, and without needing permission of the presbytery for uses and purposes that will not greatly interfere with the congregation’s worship and programs. Somewhere on a range between weekly evening use of the church hall by an Alcoholics Anonymous group and exclusive use of half of the education wing for a daytime elder-care center is a “tipping point” beyond which the wise session will want to lay its plans before the congregation for information or approval. The session should consider whether the tenant's uses will require the congregation to “move over” - how far?

The point at which presbytery approval is required is also related to prudent judgment rather than precise definition. The rule was introduced in 1947, added to sections on selling and mortgaging real property adopted during the Depression. The idea was to ensure that the presbytery would have an opportunity to help sessions facing financial difficulties and changing neighborhoods.

The presbytery’s approval should be sought when the use proposed might significantly curtail the congregation’s normal uses and opportunity for ministry. The session and the presbytery ought to consider physical interference with the congregation’s needs, whether theological doctrine and liturgical practices would be problems and whether the tenant’s use poses any significant risk of liabilities for the safety and security of the church members or the tenant’s clients. The lease should ordinarily be for a non-profit use consistent with the purposes of the church.

Where there is a board of trustees separate from the session, with responsibilities for determining use of property, the same procedures and practices should be observed, keeping in mind that trustees hold and manage property for the worship and mission purposes of the congregation as determined by the session (G-7.0401).

Tax, Building Codes and Zoning Laws:

Presbyterian congregations are exempt from federal income tax under the denomination’s group exemption under Internal Revenue Code 501(c)(3). Rental uses not related to the religious purposes normally do not affect this exemption unless they become “substantial.” This means that holding a sale of goods offered by SERVV is not a problem. If the proposal is to permit a retail outlet to be operated full time, the session should consult a tax attorney. The session should also check with current IRS regulations regarding unrelated business income.

Property tax exemptions, building codes, land use and zoning laws, and historic district designations are state and municipal laws which may limit the church’s use of its property. In some states a church is permitted to rent space to any non-profit user. Others mandate “exclusive religious use.” A church that opens a school or rents to a school, or a meal service, may find it is now subject to different building code and zoning requirements for a new or changed use. Sessions should be cautioned to check local

regulations for restrictions and required variances or permits. Think carefully about the benefits and the restrictions involved in seeking or accepting the honor of being a “Historic Site.”

Lease or Written Agreement:

The rights and responsibilities of the session and the tenant organization should be spelled out in writing. The following are points to be considered:

1. An indemnification and “hold harmless” agreement in favor of the church for activities of the tenant.
2. A certificate of insurance from the tenant’s insurer, naming the church as an additional insured. Check with the church’s and the tenant’s insurer to determine that coverages are adequate and there are no problems of coverage being created by the lease.
3. Duration of the agreement: How long? Conditions of renegotiation and renewal? How will disputes be resolved? Termination provisions.
4. Spaces and equipment: What rooms? Exclusive use or shared use? Additional storage space? Furniture and equipment to be used, or not used. What hours? What days?
5. Alterations to the building or equipment. At whose expense? Permission of the church required. Specify that attached improvements become the property of the church.
6. Responsibilities for: Set-up and take-down? Opening and closing the building? General cleaning? Regulate heating and cooling? General security during activities? Repair of damage?
7. Policy for requests for special additional uses now and then? Who speaks for the session and for the tenants? Dispute resolution?
8. Agreements regarding symbols and displays that may be put up or must be taken down.
9. Rent? Direct cost repayment? Services in exchange for use?
10. If the tenant is a service program in which the church is also a sponsor or participant, what is the linkage? Is there to be a session appointed person on the tenant’s board or committee?
11. In neighborhoods where there is plenty of space, sharing the parking lot with a neighbor may pose no problems. In a city neighborhood the number of parking spaces available, responsibility for opening and closing the gate, cost of snow removal, and assurances about high use times of the week may call for a written agreement.

D. EXCEPTION or EXCUSE from CERTAIN PROVISIONS, G-8.0701

Article 13 of the Articles of Agreement that implemented the Reunion of the PCUS and the UPCUSA provided a window of years whereby PCUS congregations could vote to leave the new PCUSA. The eight year period for a congregation to vote to be exempt from a provision of Chapter VIII, The Church And Its Property, to which it was not subject prior to the 1983 reunion, expired on June 10, 1991. That provision is no longer an option available to such congregations.

Some congregations continue to be apprehensive about the effect of reunion on their ownership and use of real estate. The practical effect of the exemption is to excuse the congregation from the requirements of section G-8.0500 Selling, Encumbering, or Leasing Church Property.

It is important for each presbytery having exempt congregations to make adequate records for future use as personnel change and memory fades. The stated clerk should preserve a list of the names of the exempt congregations with the date of the action and a copy of Book of Church Order, Presbyterian Church in the United States, Chapter 6 Church Property, as amended June 15, 1982.

The entire chapter 6 should be incorporated into the certificate or referred to in it and then attached to it. The presbytery should avoid adopting or certifying any paraphrase or restatement of the property rights. The presbytery cannot act in violation of the *Book of Order*. There is no reason for presbytery not to give reassurance that it will respect the property rights of the congregation, but it should be expressed in words that avoid even the suspicion that the Presbytery is promising more than the *Book of Order* permits.

Other questions asked from time to time are whether a church that has registered its exception from the sales, mortgage and leases paragraph loses the exception if it merges with a congregation that does not have an exception, or relocates to another property. The General Assembly, when asked these questions replied that the exception survives both merger and relocation to a different property. (*Minutes*, 1991 p. 392, and 1998 p. 164).

E. GOVERNMENT REGULATIONS

Like any other organization, group, or business, churches are subject to land restrictions that can greatly limit the ways in which property can be used. These restrictions can come in many different forms, the most common of which are listed here.

1. *Easements*

Some churches use roads or driveways across adjoining property to access the church property. At times, a church may only have an oral agreement with the adjoining property owner to use the land or a recorded easement with a set expiration date that is never extended or renewed, but the church is still allowed to use the road or driveway. Consequently, when the adjoining property owner sells the property, the new owner may not wish to honor the arrangement. This results in many churches having to sue in order to have the easement preserved. Whether or not the church prevails often hinges on whether the church has any other means of access to its grounds.

2. *Restrictive Covenants/Deed Restrictions*

Many churches find that they are limited in the use of their land because the land is subject to a restrictive covenant or a deed restriction. These restrictive covenants or deed restrictions generally prevent land from being used for anything other than a private residence or a commercial retail business. These restrictions can come from neighborhood associations, the property deed itself, or from the conditions imposed on bequeathed property, among other places.

3. *Landmarks/Historical Districts*

Churches may be prevented from demolishing or modifying a structure on their property because the structure is either landmarked or because the structure is part of a historical district.

4. *Zoning Restrictions*

As property is generally subject to zoning laws, churches must be certain that their use of land conforms to the existing zoning laws. For example, churches are often not allowed in zones labeled residential.

5. *Special Use Permit*

Whenever a church seeks to use its grounds for means beyond that which would ordinarily be expected of a church, when a church's desired use of land is prohibited by ordinance, statute, zoning law, etc., and in other varying situations such as church expansion, a church must often obtain a special use permit in order to use or modify the property in the way so desired.

6. *Changes in Use of Existing Facilities*

When a church decides to expand the use of its facilities for new programs, conflicts often arise in conforming with the additional property requirements that must be met in order to participate in the new program. Examples include adding a daily child care center in that additional safety requirements must be met, starting a soup kitchen as health codes must be met, and operating a thrift store since additional business laws will then apply.

The limitations placed on the use of church property are subjects of growing concern. Unfortunately, churches, particularly those located in suburban areas, are often no longer viewed as enhancements or even draws to the surrounding community. Instead, they are becoming viewed with increasing contempt for such reasons as the added traffic they bring and because fewer community members attend the churches as church membership rolls continue to decline. Consequently, land use laws are being applied more stringently to churches than ever before, and in some instances, laws have been passed that specifically target churches. As a result, churches are not only faced with the added cost and/or inconvenience associated with the increasing applicability of property laws, but churches are also faced with the restrictions on religious liberty that can occur when a church is either unable or unwilling to conform to the existing property requirements. Although this may be a trend that reverses itself in the near future, church property problems will never completely disappear. Consequently, churches must be aware of the potential property issues they face and must do everything within their power to minimize the burdens these property laws will impose.

The 211th General Assembly (1999) approved a policy that encourages the Stated Clerk to assist presbyteries with the legal expenses that may be faced in relation to the ownership, control and uses of church property in the free exercise of religion without excessive government regulation. The policy says, in part:

3. Authorize and direct Stated Clerk to provide financial and technical support, including advice and counsel, and appearance in legal proceedings to:

- assist any presbytery which determines to resist efforts by a local congregation attempting to withdraw from the Presbyterian Church (U.S.A.) and to take church owned or controlled property with it;

- assist in protecting the property rights of congregations, institutions, or organizations to use their property in conformity with the Constitution of the Presbyterian Church (U.S.A.).

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