

Chapter 14: Responsibilities of Church Financial Officers

INTRODUCTION	100
CONFLICT OF INTEREST	200
JOB DESCRIPTIONS	300
Treasurer	305
Financial Secretary	310
FIDUCIARY RESPONSIBILITIES	400
Introduction	405
Restricted Funds.....	410
Secretary.....	415
Sample Resolution Limiting	
Personal Liability.....	420
Employment Tax Liability	425
Copyrighted Materials	430

14.100: Introduction

Churches and religious organizations can conduct their temporal and spiritual affairs only through individuals. State laws require that church corporations appoint an initial board of directors. The Model Nonprofit Corporation Act specifies that a corporation shall have a president, one or more vice presidents, a secretary, a treasurer, and such other officers or assistant officers as the corporation deems necessary.

Officers and members of boards of church organizations regularly exercise their judgement on matters concerning the organization. Officers and directors must be legally authorized to act on behalf of their organization. Legal authority can be expressed, implied, inherent or apparent. In addition, a church can ratify the unauthorized actions of its officers and directors, but this is not required.

“Traditionally, the officers and directors of nonprofit corporations performed their duties with little if any risk of personal legal liability. In recent years, a number of lawsuits have attempted to impose personal liability on such officers and directors. In some cases, directors are sued because of statutes that provide limited legal immunity to churches.

As a general rule, directors are not responsible for actions taken by the board prior to their election to the board (unless they vote to ratify a previous action). Similarly, directors ordinarily are not liable for actions taken by the board after their resignation. Again, they will continue to be liable for actions that they took prior to their resignation.

A number of state laws permit nonprofit corporations to amend their bylaws to indemnify directors for any costs incurred in connection with the defense of any lawsuit arising out of their status as directors.” *churchlawandtax.com/library/pastor-church-law/chapter-6-organization-and-administration/officers-directors-and-trusteespersonal-liability/* (checked 7/2024) or (Richard Hammar, Pastor, Church & Law Fifth Edition [Matthews, NC: CMR Press, 2000].

This is a “members only” content on the web page.

14.200: Conflict Of Interest

There is potential for “conflict of interest” when a person who is responsible for promoting the best interests of the church has a competing personal interest. In other words, individuals in positions of influence at a church, such as board members and key leaders who are responsible for conducting and overseeing the church’s business affairs, may occasionally find their personal interests competing with their duty to make decisions in the best interest of the church. Such situations should be avoided, not only

to prevent personal legal liability but also to eliminate the appearance of impropriety, which is especially obvious when it involves church organizations. A conflict-of-interest policy is an official document that outlines the procedures for team members when a conflict occurs between their personal interests and the interests of the organization. The policy sets boundaries around potential employee and board member conflicts that may arise to prevent legal liabilities and discord between a company and its workers. All officers should complete a conflict-of-interest statement annually.

14.300: Job Descriptions

In the job descriptions that follow many of the responsibilities also include suggested functions for internal control. The financial secretary and treasurer should be familiar with suggested financial review questions in Chapter 25. Separation of duties is very important in these two jobs.

14.305: Treasurer

Qualifications: The treasurer shall be a voting member of the congregation. The individual should have experience in bookkeeping and accounting.

Responsibilities:

The treasurer shall serve as the financial officer for the congregation. He/she shall be responsible for the following:

1. Disbursing funds of the congregation in accordance with its resolutions, approved budgets, restricted purposes and as directed by the church council.
2. Filing all the tax forms (federal, state, and city) by the appropriate due dates.
3. Investing all funds as directed by the congregation or church council.
4. Monitoring the cash flow of the operational budget and make prudent decisions in disbursing funds in periods of low receipts.
5. Maintaining the cash journals, general ledger and all subsidiary ledgers.
6. Giving complete financial reports at each church council or voters assembly.
7. Providing other financial information as requested by the church body.
8. Keeping informed as changes occur in requirements for reporting of tax and financial information.
9. Maintaining the treasurer’s manual with updates provided by the district office.
10. Maintaining all records for the various designated funds and trusts and administering such monies as set forth by the church council, voters assembly and the desires of the donors.

Checks and other forms of payment should be prepared by the church's bookkeeper who is often the treasurer. All bills should be approved with signatures of the persons responsible for initiating the bills. Records should be kept. To deter theft, proper internal controls should be in place. For example, a minimum of two signatures should be required for checks—those of the treasurer and president of the congregation.

No one should handle funds alone. Investments, purchases beyond the budget, etc., should be approved by the church council. The Voters Assembly should approve large expenditures. A financial review committee (see Chapter 25) should annually review all receipts and expenditures for approval by the church council. Pastors should be excluded from handling contributions and church funds.

The treasurer often also serves as an advisory member of the finance board and the board of stewardship. If required by the Board of Directors, the Treasurer shall be bonded for the faithful discharge of his/her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

14.310:

Financial Secretary

Qualifications: The financial secretary shall be a voting member of the congregation. He/she should have experience in the handling of receipts and the maintenance of orderly records.

Responsibilities:

1. Oversee the counting of all service offerings and deposits to the bank account.
2. Report to the treasurer via the weekly offering form the total breakdown of contributions for the week.
3. Oversee the posting of all contributions to individual member's contribution records and to resolve disputes in posting errors.
4. Report to the church council and congregation monthly and year-to-date total contributions received for various purposes.
5. Notify the pastor of any special contributions that might require a special acknowledgment to the donor.
6. Make sure donors receive proper substantiation for all gifts as noted in 10.515.

The financial secretary oversees the activities of the church's money counters. As a safeguard against church member theft, no one should handle contributions alone. Rather, two or more people who are not closely related (such as family members) should count worship offerings together. Loose cash should be tallied twice by different counters. Offering envelopes should be opened in the presence of all and counted twice by different people. Amounts written on envelopes should be checked to see if they correspond with the contributions within the envelopes. Stamp the back of each check with deposit endorsement. Cash

and check totals should be recorded on an Offering Report Form and a copy given to both the church treasurer and the financial secretary.

All cash and checks should be given to the financial secretary for immediate bank deposit. His or her tallied totals should match those on the Offering Report Form prepared by the team of money counters. Individual contributions including those electronically given (credit card, text-to-give, ACH, online bill pay, etc.) should be recorded and then reported to each member at least once a year, preferably in January when taxpayers are collecting information in preparation for their tax returns. Members should report discrepancies to the financial secretary.

14.400: Fiduciary Responsibilities

14.405:

One is acting in a "fiduciary capacity" when the business which he/she transacts, or the money or property which he/she handles, is not his/her own or for his/her benefit, but for the benefit of another person, as to whom he/she stands in a relation implying or necessitating great confidence and trust on the one part and a high degree of good faith on the other part. One is acting in a "fiduciary capacity" when the business which he/she transacts, or the money or property which he/she handles, is not his/her own or for his/her benefit, but for the benefit of another person, as to whom he/she stands in a relation implying or necessitating great confidence and trust on the one part and a high degree of good faith on the other part.

Board Directors are called fiduciaries because they are legally responsible for managing an entity's assets. All officers and managers having the responsibility may be held responsible by law to ensure that the financial activities of the church are carried out correctly. As an example, by willfully not forwarding income and employment tax withholdings on a timely basis, serious penalties and interest charges are incurred. Also, those who knowingly participate in "excessive benefit transactions" are at risk of penalties (see paragraph 8.100). The government can collect (and has done so) the monies due from the appropriate officers' own resources.

14.410:

Restricted Funds

Use of restricted funds for purposes other than those designated by the donor should never be allowed. At the same time, it is just as important to release the restricted funds in a timely manner when the designated purpose has been fulfilled.

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) is a law that governs institutional donations to charitable organizations and nonprofits. UPMIFA is there to see that the interests of donors are protected and to give guidance to boards as to how donor restricted funds can be

received, how they can be managed and invested, how they can be spent, and what the long-term assumptions should be with respect to those funds in the absence of specific donor instructions. Even in the case of unrestricted funds or quasi-endowment-in other words, operating surpluses or other funds that are voted on by a board.

14.415: Secretary

The secretary should record all minutes in a clear and concise manner. The minutes could be a resource for defending a lawsuit at some future time. In addition, the minutes could be the basis or authority for some action by an individual or group. Every official meeting of the church should have official minutes taken. Properly constructed minutes should include the following:

“Record of Minutes”

Minutes of a *(regular) (special)* meeting of *(name of organization)* held at city, state on date at time pursuant to the *(constitution) (bylaws)*:

The meeting was called to order by the *(title)*. A quorum being present, the *(title)* declared that the meeting was ready to proceed with business.

NOTE: In the event of legal challenge to the action of the organization, the minutes should always state the presence of a quorum.

Minutes of the previous meeting are approved. Approval does not require a vote and may be declared approved by the chairperson provided opportunity for correction is granted. If a financial report is presented by a treasurer, it should be approved by vote.

Motions

The body of the minutes should contain a separate paragraph for each subject matter, giving, in the case of all important motions, the name of the mover and should show:

- a. The wording in which each motion was adopted or otherwise disposed of (with the facts as to whether the motion may have been debated or amended before disposition being mentioned only parenthetically); or
- b. Very briefly, if necessary, the information to explain the motion or thought behind the motion.

Actions pertaining to acquisition or disposition of real or highly valued property must always include a legal or detailed description of the property and, unless specified in the constitution or bylaws, the officers authorized to execute documents.

NOTE: Approvals of budgets, actions amending budget and major actions such as borrowing and acquisition or disposition of property are of critical importance to the treasurer for maintenance of financial records and, when necessary, for defense of actions in the event of litigation.

The name of the seconder of a motion should not

be entered in the minutes unless ordered by the organization.

The action of the board is primary, the debate or discussion is secondary. The minutes are the official voice of the collective actions taken by board members in a meeting.

When a count has been ordered or the vote is by ballot, the number of votes on each side should be entered; when the voting is by roll call, the names of those voting on each side and those answering “present” should be entered. (*“Present,” while listed, is not tabulated in the outcome of the vote.*)

Minutes should ordinarily show the time of adjournment.

Minutes should be signed by the secretary and can also be signed, if the board wishes, by the chairperson.

14.420 Sample Resolution Limiting Personal Liability

As a congregation, it may be advantageous to possibly reduce the potential liability by inserting a similar resolution as shown below. This sample of a bylaw could limit the liability of the directors and officers of the congregation in the performance of their volunteer work.

CAUTION: Ensure that this resolution receives adequate legal review by a lawyer who is familiar with your state laws.

SAMPLE RESOLUTION LIMITING PERSONAL LIABILITY

(To be inserted in the appropriate place within the bylaws of the congregation.)

- 1.1 Those directors *(officers)* duly elected or appointed to the board of directors (church council) who do not receive anything of value from this corporation for serving as a director *(officer)* other than reasonable per diem compensation and/or reimbursement for actual, reasonable and necessary expenses incurred by such director *(officer)* in service of the capacity as a director *(officer)* shall be deemed a “volunteer director” *(“officer”)* for all purposes hereunder.
- 1.2 A volunteer director *(officer)* shall not be personally liable to the corporation or its membership and/or members for monetary damages for any breach of the director’s *(“officer”)* fiduciary duty except for liability arising from or relating to:
 - a. a breach of director’s *(“officer”)* duty of loyalty to the corporation or its members;
 - b. actual omissions not in good faith or the involvement of intentional misconduct or a knowing violation of law;
 - c. an act in violation of the provisions of state laws;
 - d. any transactions from which a director *(officer)* derives improper personal benefit;
 - e. any act or omission resulting in liability occurring before *(appropriate date)*;
 - f. any act or omission that is grossly negligent.

- 1.3 The corporation shall assume all liability to any person or entity other than the corporation or its members for all acts or omissions of a volunteer director (officer) occurring on or after (appropriate date).
- 1.4 The corporation, by adoption of a resolution in accordance with its articles of incorporation and bylaws, and pursuant to the provisions of Public Act (your state), shall have the power to indemnify those persons serving in the position of, or at the request of the corporation as director, officer, trustee, employee or agent against expenses, including attorney fees, judgements, penalties, fines, and amounts paid in settlement actually and reasonably incurred by a person in connection with any actions, suits or proceedings, formal or informal, relating to the service of said individual on behalf of the corporation if such person acted in good faith and in a manner that the person reasonably believed to be in or not opposed to the best interest of the corporation or its members, or with respect to any criminal action or proceeding if the person had no reasonable cause to believe that the conduct engaged in was unlawful. The corporation, through its board of directors (*or other governing group*) shall have such further or other authority to indemnify directors, officers, employees or agents consistent with the provisions of Public Act (*your state*).

CAUTION: The above is not to be construed to be an acceptable legal document without proper legal review.

As laws vary from state to state, it is critical that this sample resolution is reviewed and, if necessary, modified by your attorney prior to its adoption. Even after the resolution's initial adoption, it would be prudent for you to consider requesting your attorney to periodically review this matter for any subsequent changes in state law that may require further modification of this resolution. In this way, you would be better able to ensure its continued effectiveness in indemnifying your officers and directors.

Could You be Personally Liable for Certain Unpaid Federal Taxes?

If you are an employer, you must withhold federal income, social security (or railroad retirement) and Medicare taxes from your employees' wages or salaries. If you provide communication or air transportation services, you also may have to collect certain excise taxes from people who paid you for the services. (Get Publication 510 for more information on excise taxes.) These taxes are called trust fund taxes and must be paid to the Internal Revenue Service through electronic funds transfer or tax deposits or as payments made with the applicable returns.

The Trust Fund Recovery Penalty (IRS Code Section 6672)

If trust fund taxes are not collected, or not truthfully accounted for, or not paid, or are evaded or defeated in any way, we may impose a trust fund recovery penalty. This penalty is equal to the amount of the trust fund taxes evaded, not collected, not accounted for, or not paid to IRS. We also charge interest on the penalty.

Who Has to pay the penalty?

Any person responsible for collecting; accounting for; and paying trust fund taxes, and who acted willfully in not performing one or more of those responsibilities, can be liable for the trust fund recovery penalty. The IRS can collect the penalty from any responsible person or persons who acted willfully if the IRS can't immediately collect from the employer or business.

"Willfully" means voluntarily, consciously, and intentionally. A responsible person acts "willfully" if this person knows that the required actions are not taking place for any reason. Paying other business expenses instead of trust fund taxes, including the payment of net payroll, is considered willful behavior.

Any person who had responsibility for certain aspects of the business and financial affairs of the employer (or business) may be a responsible person. A responsible person may be an officer or employee of a corporation, or a partner or employee of a partnership. This category may include accountants, trustees in bankruptcy, members of a board, banks, insurance companies, or sureties. The responsible person can even be another corporation, a volunteer director/trustee, or employee of a sole proprietorship. Responsible persons may include those who direct or have authority to direct the spending of business funds.

If the IRS charges you this penalty, they may take your assets (except exempt assets) to collect the amount owed.

Many employers outsource some or all payroll duties to third-party payroll service providers (PSP). These providers help ensure compliance with the IRS filing and deposit requirements. In the event of default by a third party, the employer remains responsible for the deposit of the federal tax liabilities and timely filing of returns. Depending on the facts and circumstances, and the type of third-party arrangement, an employer who uses a third party to perform Federal employment tax functions on its behalf may remain solely liable for Federal employment taxes or may become jointly and severally liable for such taxes.

Avoid the Penalty

You can avoid the trust fund recovery penalty by making sure that all taxes are collected, accounted for, and paid to IRS when required. Make your tax deposits and payments on time. IRS employees are available to assist you if you need information on tax deposits and

payments. You may contact the IRS by phone toll-free at 800-829-4933 Monday through Friday during your local hours of 7 a.m. to 7 p.m. (Alaska and Hawaii follow Pacific Time.) More information is available online at IRS.GOV searching under keywords “Trust fund” or searching under the “Forms & Pubs” tab for **Notice 931**, *Deposit Requirements for Employment Taxes*, **Publication 15**, *Employer’s Tax Guide*, **Publication 3151**, *The ABCS of Federal Tax Deposits*, and **Form 941**, *Employer’s Quarterly Federal Tax Return*.

14.425:

Employment Tax Liability

The above outlines the potential penalties to the church or responsible person for willful failure to withhold, collect or pay taxes. For more information about deposit penalties, see IRS Publication 15 and IRS Notice 784.

14.430:

Copyrighted Materials

A copyright is a type of intellectual property that protects original works of authorship as soon as an author fixes the work in a tangible form of expression. Making copies of copyrighted material should not be done without permission. Serious penalties can be assessed on the church or school or on the personal assets of officers involved.

To help you learn more on the subject and obey copyright laws, visit Concordia Publishing House at its website at cph.org/t-copyrights.aspx.

You may also mail your inquiries concerning copyright laws to the U.S. Copyright Office, a part of the Library of Congress, at 101 Independence Ave. S.E., Washington, DC 20559-6000; request information by telephone, calling (202) 707-3000; or download publications from the Web site at copyright.gov.