

# **TAX & LEGAL ISSUES IN THE CHURCH**

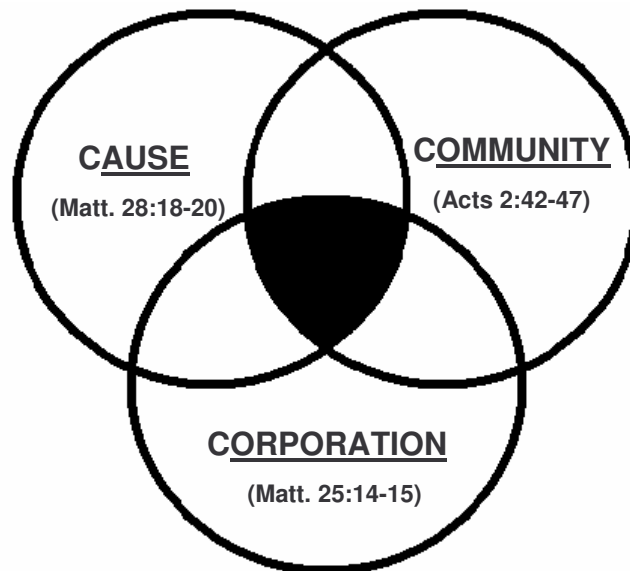
*. . . Things You Can Do Now to Keep Your Church Out of Court Later. . .*

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## **I. INTRODUCTION**

- We live in a litigious society and the local church is not exempt.
- God has placed us in positions of responsibility and called us to be faithful stewards.
- Therefore, it's reasonable to conclude that we should give proper attention to the Corporate side of the church.

## **II. UNDERSTANDING THE CORPORATE ROLE IN THE CHURCH**



### **Examples:**

Budget/Expense Approval Process:

15 Passenger Van to Pick-Up Local Kids:

Removing/Replacing someone in a leadership position (staff or volunteer):

### III. MAJOR RISK CATEGORIES

1. Employment Issues
2. Sexual Misconduct
3. Personal Injury
4. Property/Zoning

### IV. LEGAL ISSUES

#### 1. Employment Law

##### *Fair Labor Standards Act (FLSA)*

- Major changes effective August 2004
- Exempt vs. Non-Exempt
  - Exempt: Any employee who is exempt from the minimum wage and overtime provisions of the FLSA. Exempt employees can only be paid on a **salaried** basis.
  - Non-Exempt: Any employee who is not exempt from the minimum wage and overtime provisions of the FLSA. Non-exempt employees may be paid on a **salaried** or an **hourly** basis.
- Two Major Determining Criteria for Exempt Status
  - Minimum Compensation: \$455 per week (\$23,660/yr)
  - Duties Test: Executive, Administrative, Professional
  - **Both** criteria must be satisfied to qualify as Exempt
  - Some exemptions apply

**KEY POINT:** Paying an employee on a Salary Basis **does not** automatically classify them as Exempt.

- Some Considerations/Recommendations
  - Non-Exempt employees cannot “**Volunteer**” to perform same duties for which they are paid.
  - All Non-Exempt employees should document hours worked on a daily basis.
  - Employee Classification Record

### **Case Examples:**

- (1) You have a Worship Leader who receives an annual salary of \$20,000/yr. They regularly work 45-50 hrs/wk. Are they entitled to overtime pay for hours worked over 40/wk?
- (2) You have a full-time secretary who earns \$12.00/hr. You periodically ask her to work more than 40 hrs/wk. In order to avoid paying overtime, you decide to convert her status to salaried at a rate of \$27,040/yr. Is this ok?
- (3) You have a part-time custodian who you pay a “fixed stipend” of \$100/wk to clean the church as necessary. This employee generally needs to work 15-20 hrs/wk to complete the task. Are there any problems with this arrangement and if so, what remedies would you suggest?

## **2. Sexual Abuse**

### **Reducing the Risk: A 5-Step Plan**

- Application
- Interview
- Reference Checks (Institutional are the most beneficial)
- 6 Month Rule
- 2 Adult Rule

## **3. 15 Passenger Vans**

### **Reducing the Risk (2 options)**

- Don't buy one OR sell it if you own one
- Comply with all 10 NHTSA Safety recommendations
  - Number one on the list is fewer than 10 occupants

#### 4. The Concept of Gross Negligence

- Liability of Board Members – Cannot be sued for “normal” negligence, but they are **liable** for gross negligence.
- Punitive Damages – Not covered by **liability policies**.

### V. TAX ISSUES

#### 1. Pastor’s Compensation

##### Classification

- Generally considered an “Employee,” always “Self-Employed” for Social Security. Pastor responsible for self-employment tax per schedule SE.
- Housing Allowance is **tax exempt** for ordained, commissioned, or licensed ministers.

##### Housing Allowance

- Must be recorded in official board minutes – **not retroactive**
- Lessor of: (1) amount designated, (2) actual expenditures, or (3) fair rental value.
- Not part of includable compensation for 401(K) or 403(b).

#### 2. Employee vs. Independent Contractor

##### Independent Contractor

- A worker who contracts to do work according to his or her own methods and who is subject to the employer’s control only as to the **end product** or final result of the work.
- Advantages: No payroll taxes, workers’ compensation premiums, insurance benefits, etc.

##### Evaluation Tests

- IRS “20 Factor” Test
- The Tax Courts “7 Factor” Test
- The Supreme Courts “12 Factor” Test

### 3. Contributions

#### Answering the Question of Tax-Deductibility

1. Must be a Gift of Cash or Property
  - The value of personal services is **never deductible**.
2. Contribution must be **Unconditional** and without personal benefit to the donor.
  - **Charitable Contribution** is synonymous with a **Gift**.
3. Contribution must be made "**to** OR **for the use of**" a qualified charitable organization.
  - Contributions given directly to an individual are almost always not tax-deductible
  - Designated Gifts (***This is a Biggy!***)
    - To a Program or Ministry
    - To an Individual

Missionaries: Generally tax-deductible as long as the missions board or church exercises full administration and accounting control over the funds. Satisfies the "for the use of" requirement.

Benevolence: Contributions designated to a specific individual are generally never deductible, regardless of need.

#### **KEY PHRASE: Full administrative and accounting control.**

- What about the question of honoring donor's requests and preferences?

#### **Examples:** (How should you handle these situations?)

- Mark, a member of your church, would like to help his Youth Pastor buy a new car. He contributes \$1,000 to his church with that stipulation.
- Your church establishes a fund to purchase new chairs for the sanctuary. Bob & Renee donate \$500 to the church for the project.
- A member of your church donates \$1,000 to fund the start-up of a half-way house for unwed mothers.

