

REGARDING LEGAL ISSUES

THE RELATIONSHIP BETWEEN PRESBYTERY AND CONGREGATIONS WHEN CONTRACTS AND OTHER LEGAL CONCERNS ARISE

For November 2011 Presbytery

It is now common for congregations to be confronted with myriad issues requiring legal or accounting advice and counsel: leases, property, cell towers, by-laws, lawsuits, zoning, severance agreements, tax exemptions, media, etc. Because many overlap with the fiduciary responsibilities of the presbytery, the question of legal representation and expense has become a concern that the presbytery wishes to address below.

1. The Presbytery of Los Ranchos maintains an ongoing relationship with specific attorneys and accountants with expertise in legal and accounting areas in which the presbytery is most often involved: property, personnel, taxes, employment, and litigation. In addition, we carry insurance that will provide legal services for the presbytery in a number of contexts—and expect congregations to have similar coverage. These professionals are employed on an hourly, as needed basis, for specific purposes and situations, and we are billed accordingly.
2. Many congregations also have attorneys and CPA's who are members—or have relationships with attorneys and/or CPA's who will provide services at reduced rates or have served them capably in the past and thus the session is comfortable employing them as needed.
3. The Presbytery staff are not licensed attorneys or CPA's and thus are not permitted to provide legal or accounting opinions or advice. They can provide general understanding of legal and accounting issues and share from experience and training, but will always present a disclaimer that they cannot provide professional advice or opinions and will indicate if and when the congregation/individual should seek professional advice and counsel.

In the course of business, the presbytery and congregations will often find their concerns and issues overlapping. Presbytery is required to approve leases—meaning congregations must have leases with outside groups using their facilities. If the property is to be encumbered, presbytery must approve. If a church is facing a potential lawsuit, issues of insurance and presbytery as a named party emerge. A church confronts a personnel issue that may involve the presbytery. A matter comes up regarding IRS regulations of not-for-profit corporations. Rewriting By-Laws may result in the need for clarification on matters governed by state not for profit laws.

In these situations, the question of who “benefits” becomes important in determining the selection of legal/accounting professionals and the responsibility for payment. To this end, the Presbytery of Los Ranchos adopts the following guidelines:

- 1) The presbytery will enter into contracts with attorneys/CPA's on an as needed basis and will pay for such services when the contracting is clearly initiated by presbytery and the counsel sought is clearly to protect the fiduciary

responsibilities of the Trustees and the corporate officers and the assets of the presbytery.

- 2) A congregation/session is always an independent agent in matters of securing legal/accounting services. It should always secure a contract for services before initiating consultation and/or production of product by an attorney or CPA. It must clearly understand that it is responsible for payment of services provided.
- 3) In many cases, the presbytery's attorney/CPA will have to approve a work product before the Trustees will approve the document/agreement. Presbytery will pay for that service. If presbytery's attorney/CPA requires additional work by the congregation's attorney/CPA before recommending Trustee approval, the cost of the additional work will be borne by the congregation.
 - a. This gives rise to the potential situation where it will be advantageous (less expensive) to have the presbytery's usual attorney/CPA providing the legal/accounting services needed by the church¹. If the church chooses to utilize the presbytery's usual attorney/CPA, **the cost for any and all services provided will be borne by the church**. If this is not an acceptable arrangement, the church is always free to engage the services of their own attorney/CPA.
 - b. The same is true in contracting with attorney/CPA for acting as negotiating agent in legal matters. The presbytery's only issue is that the final agreement meet the fiduciary requirements for presbytery approval. Any expenses generated in producing such an agreement are the **sole responsibility of the congregation**. **[This will include any revisions to a negotiated contract/settlement which are necessary before the Trustees will approve the contract/settlement.]**
 - c. With one exception, the presbytery will not recommend or require that a congregation use the same attorneys/accountants used by the presbytery². But if asked, the presbytery will provide the names of its attorneys/CPA's with skills/expertise in a specific area of concern.

There will be situations in which the presbytery, in order to protect its "interests" will intervene to secure legal/accounting advice and counsel. In such cases, it will do so without expectation of reimbursement by the church involved. **The presbytery will be clear with the congregation and attorney when the presbytery is to be billed directly. Without presbytery's written direction that it is covering the costs of professional services, the costs will be borne by the congregation.**

¹ Often, presbytery's attorney will have boilerplate contracts or other legal documents that can be customized for a particular situation—producing significant savings and accelerating the process. An accountant may have software and other recommendations what reduce time and outsourcing costs. The presbytery's attorney may have years of experience dealing with a specific situation that is "first time" to the church—and thus able to provide more effective representation at lower costs. The presbytery's attorneys/CPA's will sometimes provide reduced rates to churches for personal or professional reasons.

² The one exception is for severance agreements with pastors. The presbytery will provide the severance agreement at its own expense.