

## **Section II**

**NEW YORK STATE RELIGIOUS**

**CORPORATIONS LAW**

# **Religious Corporations Law**

## **Sections 5, 12 and 17**

### **General Powers and Duties of Trustees of Religious Corporations**

The trustees of every religious corporation shall have the custody and control of all the temporalities and property, real and personal, belonging to the corporation and of the revenues there from, and shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject, and with provisions of law relating thereto, for the support and maintenance of the corporation, or, providing the members of the corporation at a meeting thereof shall so authorize, members of the corporation at a meeting thereof shall so authorize, of some religious, charitable, benevolent or educational object conducted by said corporation or in connection with it, or with it, or with the denomination, if any, with which it is connected; and they shall not use such property for any other purpose or divert the same from such uses.

### **Interpretation of Trustees Duties**

For decades the General Assembly of the Presbyterian Church has sponsored efforts to provide the local church with books, manuals, etc., to assist in the training of the various boards and to provide answers to questions that arise about policy.

Until 1985, when the Southern and United branches of the denomination merged, the United Presbyterian Church in the USA provided a book called *Presbyterian Law for the Local Church*. The replacement is called *Companion to the Constitution; Polity for the Local Church*. The following pages are Chapter VI, *The Duties and Rights of the Board of Trustees* taken from the pre-1985 issue of the former book. The current replacement is organized in a much different manner where relevant information is spread throughout the book in small bits. It appears that the substance of the two issues is not significantly different.

### **The Duties and Rights of the Board of Trustees**

Although most Presbyterian churches carry on harmoniously in spite of a rather hazy understanding of the distinction between the rights and duties of the session on the one hand, and the rights and duties of the board of trustees on the other, nevertheless it is the relation between these two bodies that produces a very high percentage of the misunderstandings that occur in the particular Presbyterian church.

The beginning of the difficulty goes back very early in American church history when, because in colonial days the Presbyterian Church belonged to the unrecognized and dissenting religious groups, it was necessary for it to hold its property by the legal device of establishing a corporation with private individuals as trustees who were only indirectly responsible to the governing body of the Church. If that had not been so, doubtless our Church would have followed the Scottish practice of having the management of its financial and business affairs vested in the deacons, who are clearly under the direction and control of the session in any Presbyterian church.

But whatever the historical reasons for it, the fact is that particular Presbyterian churches are troubled by the present situation in which clearly the session is the responsible body under church law for all that goes

on in them, while there is a board of trustees which under civil law appears to have quite independent power and control over all the church's property and financial affairs.

The very prevalent idea that the session is limited to spiritual leadership, while the trustees control the temporal affairs of the church (see G, XI, 6 and also G. XXXII, 6), is not a completely satisfactory answer. When a close point is at issue, who is to decide what is spiritual and what is temporal? The Constitution makes clear that trustees' duties are essentially corporate duties and not temporal.

**New York State Religious Corporations Law**  
**ARTICLE 4**

**PRESBYTERIAN CHURCHES**

**Section**

- 60. Application of this article.
- 61. Creation and termination of pastoral relation.
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- 63. Incorporation of unincorporated Presbyterian churches and decision as to system of incorporation and government
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**§ 60. Application of this article.**

This article applies only to a Presbyterian church in connection with the General Assembly of the Presbyterian Church (U.S.A.).

**§ 61. Creation and termination of pastoral relation.**

The election, calling, settlement, installation, dismissal, removal, translation, constituting or dissolving of the pastoral relation, or fixing or changing of the salary of a minister or pastor of a Presbyterian church in connection with the General Assembly of the Presbyterian Church (U.S.A.), or taking any action for or toward any such purpose, and the calling and conduct of a meeting of any such church for any such purpose, and the qualification of voters at any such meeting, are not authorized or regulated or controlled by any provision of this chapter, but the same shall be in all respects, done, and regulated, and any meeting therefor called, conducted, and controlled, only in accordance with the constitution of the Presbyterian Church (U.S.A.).

**§ 63. Incorporation of unincorporated Presbyterian churches and decision as to system of incorporation and government.**

A meeting for the purpose of incorporation of an unincorporated Presbyterian church in connection with the Presbyterian Church (U.S.A.), must be called and held in pursuance of the provisions of this article.

1. The notice and call of such meeting shall be in writing, and shall state in substance, that a meeting of such unincorporated church will be held at its usual place of worship at a specified day and hour for the purpose of incorporating such church and designating the trustees thereof. The notice must be signed by at least six persons of full age who are then members in good and regular standing of such church by admission into full communion or membership therewith, in accordance with the constitution of the Presbyterian Church (U.S.A.). Such notice shall be publicly read at each of the two next preceding regular meetings of such unincorporated church for public worship, at least one week apart, at morning service, if such service be held on Sunday, by the first named of the following persons who is present thereat, to wit: The pastor of such church or the officiating minister thereof.

2. At the meeting for incorporation held in pursuance of such notice, the following persons, and no others, shall be qualified voters, to wit: All persons of full age, who are then members, in good and

regular standing of such church by admission into full communion or membership therewith, in accordance with the constitution of the Presbyterian Church (U.S.A.). The presence of twenty per cent of such qualified voters, at least six in number, shall be necessary to constitute a quorum of such meeting. The action of the meeting upon any matter or question shall be decided by a majority of the qualified voters present.

3. The pastor of the church or the officiating minister thereof shall preside at the meeting for incorporation. The presiding officer of the meeting shall receive the votes, be the judge of the qualifications of voters, and declare the result of the votes cast on any matter. Nothing contained in this section, or in this chapter, shall prevent the qualified voters at any such meeting, from choosing another person, a qualified voter, to preside at such meeting, other than the person or officer above designated.

4. The first business of such meeting after its organization, shall be to determine whether such church shall be incorporated, and if so, the name of such church, and whether its temporalities shall be managed by the spiritual officers of such church as the trustees thereof, or whether its temporalities shall be managed by trustees to be elected by the church.

5. If such meeting shall determine that such church shall be incorporated and its temporalities managed by the spiritual officers of such church as the trustees thereof, then the meeting shall also determine whether by virtue of their office, the board of deacons only of such church, or the session with the board of deacons of such church, or the session only of such church shall manage its temporalities, and be the trustees of such corporation.

6. If such meeting shall determine that such church shall be incorporated and its temporalities managed by trustees to be elected by the church, it shall further determine the number of trustees of such church, which shall not be less than three nor more than twenty-four, and shall further determine the date not more than fifteen months thereafter on which the first annual election of the trustees thereof after such meeting shall be held, and such meeting shall elect from the persons qualified to vote at such meeting, one-third of the number of trustees so decided on who shall hold office until the first annual election of trustees thereafter, one-third of such number of trustees to hold office until the second annual election of trustees thereafter, and one-third of such number of trustees to hold office until the third annual election of trustees thereafter. The nomination and election of trustees shall be conducted as provided in the constitution of the Presbyterian Church (U.S.A.).

7. If any such meeting shall determine that such church shall incorporate in pursuance of this article, the presiding officer and at least two other persons present at such meeting, shall execute, acknowledge and cause to be filed and recorded, as provided in this chapter, a certificate of incorporation. Such certificate of incorporation shall state the name of the proposed corporation; the county and town, city or village, where its principal place of worship is or is intended to be located; the fact that a meeting of such church duly called decided that such church be incorporated, also the determination of such meeting of all the matters required in this article to be determined by such meeting, and, as the case shall be, the names of the persons elected as trustees, and the term for which each was elected, or the names of the spiritual officers and their offices, who, by the determination of such meeting, are by virtue of their office to be trustees of such corporation. On filing such certificate such church shall be a corporation by the name stated therein, and the officers determined upon by the meeting for incorporation and their successors in office, by virtue of their offices, if they be spiritual officers of such church, shall be the trustees of such corporation, or if by said meeting it was determined that the trustees should be elected as such, then such as were so elected by said meeting as trustees, and their successors in office shall be the trustees of such corporation.

#### **§ 64. Changing system of trustees.**

1. If the trustees of an incorporated Presbyterian church in connection with the Presbyterian Church (U.S.A.) shall at any time be elective as trustees and not trustees by virtue of being spiritual

officers, the church may, at an annual corporate meeting if notice thereof be given with the notice of such meeting, determine that the board of deacons thereof, or the session with the board of deacons thereof, or the session thereof shall thereafter constitute the trustees thereof, and thereupon the presiding officer of such meeting and at least two other persons present thereat shall sign, acknowledge and cause to be filed and recorded a certificate stating the fact of such determination, the names of the officers determined upon to be the ex officio trustees thereof and thereon the terms of office of such elective trustees shall cease, and the officers determined upon by such corporate meeting and their successors in office shall, by virtue of their respective offices, be the trustees of such church.

2. If, at any time, the spiritual officers of an incorporated Presbyterian church in connection with the Presbyterian Church (U.S.A.), which officers by virtue of their offices constitute the trustees thereof, shall determine to submit to a meeting of such church corporation the question whether the trustees of such church shall be thereafter elective as such trustees, they shall cause a special corporate meeting of such church to be called and held in the manner provided in section sixty-five of this chapter, and such corporate meeting shall determine whether the trustees of such church shall thereafter be elective in pursuance of this article and also whether the number of such trustees shall be three, six, nine, twelve, fifteen, eighteen, twenty-one, or twenty-four and the date of the annual corporate meeting of the church. If such meeting shall determine that such trustees shall thereafter be elective as such trustees, the number of such trustees and the date of the first annual corporate meeting of the church, the presiding officer thereof and at least two other persons present and voting thereat shall sign, acknowledge and cause to be filed and recorded in the office of the clerk of the county in which the certificate of incorporation of such church is filed a certificate of such determination of such meeting; thereafter the trustees of such church shall be elective in pursuance of this article. At the next annual corporate meeting after the filing of such certificate, one-third of the number of trustees so determined on shall be elected to hold office for one year, one-third for two years and one-third for three years, the officers of such church who by virtue of their offices have been trustees of such church shall then cease to be such trustees and thereafter the trustees of such church and their successors shall be elective as such trustees as in this article provided. At each subsequent annual corporate meeting of such church, one-third of the number of trustees so determined on shall be elected to hold office for three years. The nomination and election of trustees shall be conducted as provided in the constitution of the Presbyterian Church (U.S.A.).

#### **§ 66. Organization and conduct of corporate meetings; qualifications of voters thereat.**

1. At a corporate meeting of an incorporated church to which this article is applicable the following persons and no others shall be qualified voters, to wit: All persons who are then members in good and regular standing of such church by admission into full communion and membership therewith, in accordance with the constitution of the Presbyterian Church (U.S.A.).

2. The presence at any corporate meeting of an incorporated church of at least six communicant members of full age shall be necessary to constitute a quorum. The action of the meeting upon any matter or question shall be decided by a majority of the qualified voters present.

3. At any corporate meeting of an incorporated church to which this article is applicable, the pastor of such church, the officiating minister thereof, or the president of the board of trustees shall preside thereat.

4. Nothing contained in this article shall prevent the qualified voters at any meeting held pursuant to this article from choosing a person to preside at any corporate meeting of any incorporated church, other than the person or officer designated in this article to preside thereat, and when such other person shall be chosen he shall exercise all the powers in this article conferred upon the presiding officer of such meeting.

5. The presiding officer of a corporate meeting shall receive the votes, be the judge of the qualifications of voters, and declare the result of the votes cast on any matter. The polls of an annual

corporate meeting shall continue open until all qualified voters present shall have had a full opportunity to vote.

6. At each annual corporate meeting successors to those trustees whose terms of office then expire shall be elected from the qualified voters by ballot for a term of three years thereafter. The nomination and election of trustees shall be conducted as provided in the constitution of the Presbyterian Church (U.S.A.).

**§ 69. Trustees, their meetings, vacancies and filling thereof, their powers.**

1. Two trustees of an incorporated church, to which this article is applicable, may call a meeting of such trustees by giving at least twenty-four hours' notice thereof personally or by mail to the other trustees. A majority of the trustees lawfully convened shall constitute a quorum for the transaction of business. In case of a tie vote at a meeting of the trustees, the presiding officer of such meeting shall, notwithstanding he has voted once, have an additional casting vote.

2. If any trustee of an incorporated church to which this article is applicable, declines to act, resigns or dies, or ceases to be such member, his office shall be vacant. Such vacancy may be filled at a duly called special meeting of the corporation.

3. Subject to the authority of the session, the trustees of an incorporated church to which this article is applicable shall have the custody and control of all the temporalities and property belonging to the corporation and of the revenues from such property and shall administer the same in accordance with the constitution of the Presbyterian Church (U.S.A.), and with the provisions of law relating thereto, for the support and maintenance of the church corporation or, providing the members thereof at a corporate meeting thereof shall so authorize, of some religious, charitable, benevolent or educational object conducted by such church or connected with it or with the denomination with which it is connected, and they shall not use such property or revenue for any other purpose or divert the same from such uses.

4. The words "temporalities," "property," "revenue" and "revenues," as used in this section, or elsewhere in this article, shall not be construed to include the contributions in such church or elsewhere for benevolent or other purposes, which shall be contributed and paid to the pastor or pastors, ruling elders, the church session, or the deacons of any such church, either in the church services or otherwise, to be distributed, or used, or administered, by them, or any, or either of them, nor to any funds or property devised, bequeathed or contributed, to be administered or expended by such pastor or pastors, ruling elders, church session, deacons or other spiritual officers of such church.

5. The trustees of any such church shall have no power, without the consent of a corporate meeting, to incur debts beyond what is necessary for the care of the property of the corporation.

**§ 70. Definitions**

The words "spiritual officers," as used in this article, include the pastor or pastors, the ruling elders, and the deacons, of any church to which this article is applicable.