

**Presbytery of Detroit
Office of the Stated Clerk**

From: Ed Koster
To: The Presbytery of Detroit
Re: The New Form of Government and State Law
Date: August 3, 2011

Last month I suggested it would be prudent to amend your congregational bylaws to ensure at least that it includes a quorum for congregational meetings. I promised this memorandum with recommendations to ensure that you can continue to operate in the manner you are accustomed.

Every Presbyterian Church is required to incorporate, a wise and long-standing provision of the Form of Government. This means that every church in the Presbytery is governed by two of three statutes:

Incorporating Statutes:

Act 265 of 1909: An Act to provide for the incorporation or reincorporation of Presbyterian churches; and to impose certain duties upon the Department of Commerce. MCL (Michigan Compiled Laws) 458.201-458.213

or

The Michigan General Corporation Act, Act 327 of 1931: AN ACT to provide for the organization, regulation and classification of corporations; to provide their rights, powers and immunities; to prescribe the conditions on which corporations may exercise their powers; to provide for the inclusion of certain existing corporations within the provisions of this act; to prescribe the terms and conditions upon which foreign corporations may be admitted to do business within this state; to require certain annual reports to be filed by corporations; to prescribe penalties for the violations of the provisions of this act; and to repeal certain acts and parts of acts relating to corporations. MCL 450.98-450.192.

The specific provisions that allow for incorporation of churches are MCL 450.178-450.184.

Some churches have incorporated under Act 265, while others are incorporated under Act 327. In either case, there is an additional statute that applies:

The Non-Profit Corporation Act, Act 162 of 1882: AN ACT to revise, consolidate, and classify the laws relating to the organization and regulation of certain nonprofit corporations; to prescribe their duties, rights, powers, immunities, and liabilities; to provide for the authorization of foreign nonprofit corporations within this state; to impose certain duties on certain state departments; to prescribe fees; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts. MCL 450.2101-450.3192.

The Nonprofit Corporation Act applies to churches incorporated under either the General Corporation Act or the Presbyterian Incorporation Act because of the following provisions:

Non-Profit Corporation Act:

450.2123 Applicability to corporation organized under other act not repealed by this act; organizations to which act inapplicable.

Sec. 123. (1) Unless otherwise provided in, and to the extent not inconsistent with, the act under which a corporation is or has been formed, this act applies to a corporation that is or has been organized under an act other than this act and not repealed by this act.

(2) A corporation covered by subsection (1) includes, but is not limited to, all of the following:

....

(f) An ecclesiastical corporation.

....

The General Corporation Act contains the following provision:

450.178. “Every such corporation shall be a non-profit corporation and subject to the provisions of this act relating to non-profit corporations generally except as specifically otherwise provided.”

The various acts governing church corporations contain what I call *default* provisions. For instance, a provision of the Non-Profit Corporation Act involves the quorum of a meeting of the corporation:

450.2415

Sec. 415. (1) Unless a greater or lesser quorum is provided in the articles of incorporation, in a bylaw adopted by the shareholders or members, or in this act, shares or members entitled to cast a majority of the votes at a meeting constitute a quorum at the meeting. . . .

The statement beginning “unless” is a default provision: A majority of the members of a church constitute the quorum for a meeting unless the bylaws say otherwise.

There are many such default provisions in the statutes that govern churches. In general, the oFoG had over the years included them, so that there were few such provisions that affected Presbyterian churches. One of the specific strategies of the Task Force writing the nFoG was to remove as many mandatory provisions as they could. Some of these mandatory provisions covered default provisions in state law. Since they are no longer in the Form of Government, they need to be put in your bylaws.

So, why is it important that you take care that your bylaws comply with state law? It is for two reasons:

1. KOSTER’S SECOND LAW OF CHURCH:

Nobody reads the Book of Order much. Until there's trouble--and then they read the fine print.

First Corollary: The Second Law also applies to Robert's Rules of Order.

Second Corollary: The Second Law also applies to bylaws and policies

2. State law trumps church laws.

Unless you are persuaded there will never be any trouble in your church, you should take care to ensure that you are in compliance. Because if something happens that a single member takes exception to, then he or she could appeal to state law to override any act or decision made.

I have reviewed the statutes and the nFoG to try to discover what needs to be in bylaws. I cannot be sure that I have found every necessary provision, but I think I found the obvious and most important ones. What follows is a list of recommendations that are designed to ensure that the decisions and actions of your church are not reversed or impeded by state law.

Parliamentary procedure.

State Law gives no guidance on the kind of procedure to be used in corporation matters. The nFoG states that Councils shall be governed by the most recent edition of Robert's Rules of Order Newly Revised, which was the standard in the oFoG. While Robert's Rules of Order Newly Revised was the default under the oFoG for congregational meetings—congregations could select another authority—the nFoG says nothing.

I suggest a provision in your bylaws that the most recent edition of Robert's Rules of Order Newly Revised will be the parliamentary authority for meetings of the congregation. Not specifying anything could lead to trouble. Specifying some other published authority (there are several) could be done, but you would be ill advised to do so unless there are lots of folks around who are familiar with that authority. Robert's Rules of Order Newly Revised is effective because it is so commonly used and accepted. You will also find that adopting Robert's Rules of Order Newly Revised will clarify a lot of different matters the rules are not clear.

Quorum of Congregational meetings.

As noted above, **MCL 450.2415** states the quorum will be 50% of the membership. The oFoG gave the quorum as 10%, the nFoG G-1.0501 allows a congregation to set its own quorum.

I suggest setting a quorum of congregational meetings at 10%. Less would be problematic, but it could be set at less or more.

Time of the Annual Meeting

MCL 450.2402 requires that the time of the annual meeting be in the bylaws. Neither the oFoG nor the nFoG specified this.

I suggest including a time span for holding the annual meeting be put in the bylaws. In my experience, a provision that limits the date of the meeting too severely can cause problems. (One has to be careful about Super Bowl Sunday.)

The Congregational Nominating Committee

G-2.0401 says that elders and deacons must be nominated by a congregational nominating committee, but does not declare how it should be constituted. It does require that the committee be representative of the congregation, shall consist of at least three active members of

the congregation, and shall include at least one ruling elder who is currently serving on the session. The pastor shall serve *ex officio* and without vote.

I suggest including a provision for the formation of a congregational nominating committee that would be representative of the congregation, would include at least 3 active members of the congregation and at least one ruling elder serving on the session, and with the pastor as a *ex officio* member without vote. The provision could include directions on who is to make nominations for the nominating committee, realizing that nominations are always open from the floor. The oFoG had a requirement that the at-large membership must be larger than those appointed by the Session, deacons or other organizations, and you may wish to include something of that nature.

Notice of congregational meetings.

MCL 450.2404 calls for notice of meetings at least 10 days but less than 60 days before the meeting. It allows for written notice or publication or publication of notice. The oFoG says that notice shall be given from the pulpit on 2 successive Sundays, and that the meeting can be held after the second announcement.

I suggest a provision that would include notice written in the Sunday bulletin and perhaps in the newsletter and by email. You can include announcement from the pulpit. The two successive Sundays won't work because of the 10-day requirement, so it would be appropriate to ensure that 10 days notice are given. The rule should give reasonable assurance that all members will get timely notice of the meeting.

Presence at Meetings

Various sections of the law provide for attendance at meetings in a variety of ways. The oFoG only allows for participation if present. It is possible under the oFoG for meetings to be held by telephone or video conference (but not by email) if it is written in the bylaws. The Nonprofit Corporation act also prefers proxy voting, but it is a default provision.

I suggest that you may wish to consider allowing presence and participation in session and committee meetings by conference call or video conference, ensuring that all participants can hear everyone else and participate in real time. I note that if there are conference call meetings, all the formalities of a meeting must be followed. The current state of technology is such that it would be difficult to allow video conference or telephone participation for congregational meetings, but it is starting to happen in some places. If you decide to make that possible, you will need to specify the parliamentary processes and rules that will be used, and ensure there is provision for full contemporaneous participation.

Size of the Session

MCL 450.2505(1) merely says a board must be at least 3 members.

I suggest that the bylaws have a provision setting the number of elders.

Removal from the Session

MCL 450.2511 allows an elder to be removed from session with or without cause by a majority vote of the congregation. Traditionally, an elder cannot be removed from session against her will unless he had moved her residency, or by disciplinary procedure. Robert's Rules of Order Newly Revised requires some kind of disciplinary procedure for removal, but it does not give the protections afforded by our Rules of Discipline. The nFoG allows for removal of an elder if they become inactive or unable to serve, or have changed residency. G-2.0405

I suggest a provision that states an elder may be removed from the Session only under the provisions of the Book of Order and the Rules of Discipline. Otherwise, elders could be vulnerable to recall campaigns.

Quorum of Session meetings

MCL 450.2523 states that a quorum of a session shall be set by the *congregation*, and it shall 1/2 of the members. If there are more than 7 members, a bylaw provision could allow a lesser quorum, but no fewer than 1/3 of the members. The oFoG allowed for the pastor and 1/3 of the elders, and three for the purposes of receiving new members. The nFoG says the *session* can set its quorum, which must include the pastor and some percentage or number. A larger quorum could be declared. State law requires that the quorum be set by the members of the corporation.

I suggest a provision giving the quorum of session. If there is no provision, it will be 50%. You might consider a quorum of the pastor plus 1/3 of the session, which is the oFoG level. It must be in the bylaws because state law does not allow the session to set its own quorum.