

Parish Corporate Board and Trustees

In the Diocese of Bismarck, the individual parishes are separate nonprofit corporations. Under the laws of the State of North Dakota, corporations are governed by a board of directors or board of trustees, the terms are interchangeable.

The church also has certain canons which govern this structure.

Under Canon Law a parish Finance Council is required and in the Diocese of Bismarck a Pastoral Council is also required, the ND Century Code governs the corporate status, and the IRS governs its tax exempt status.

THE ROLE OF TRUSTEES

The law tells us that the board of trustees of a nonprofit corporation is responsible for the governance of the corporation. In general terms, this means that the board is responsible for providing strategic planning to the corporation, developing and implementing corporate policy and that trustees must govern the corporation's efforts in carrying out its mission. Trustees must be (or at least must become) knowledgeable about the business and financial affairs of the corporation

In the Diocese of Bismarck, a typical statement of a parish corporation's purposes is:
The general purpose of this corporation shall be to take charge of and manage all the temporal affairs of the Catholic Church in the said parish; to promote the spiritual, educational, and other interests of the said Catholic Church in said parish, including all the charitable, benevolent and eleemosynary work of said Church in said parish; to take charge of, hold, and manage all property, personal and real, that may at any time or in any manner come to or vest in this corporation, for any purpose whatever, whether by purchase, gift, grant, devise, or otherwise, and to mortgage the same, sell, and otherwise dispose of it, as the interest of the said corporation may require.

THE DUTIES OF TRUSTEES

The law tells us that Trustees owe what is called a "fiduciary duty" to the corporation. The duty is a "fiduciary" duty because the obligation to act in the best interests of the corporation, at its core, is an obligation of loyalty, honesty and good faith. Trustees' fiduciary duties can be divided into two main branches:

- a) The duty of care;
- b) The duty of loyalty.

Concerning exercising your DUTY OF CARE certain things must be in place

1. Active Participation. A trustee must actively participate in the management of the organization including attending meetings of the board, evaluating reports, reading minutes, and so on.

2. Committees. Trustees may establish committees having the authority of the board and may rely on information, opinions or reports of these committees.

3. Board Actions. A trustee who is present at a meeting when an action is approved by the entire board is presumed to have agreed to the action unless the trustee objects to the meeting because it was not lawfully called or convened and doesn't participate in the meeting, or unless the trustee votes against the action or the trustee is prohibited from voting on the action because of a conflict of interest.

4. Minutes of Meetings. Written minutes should be taken at every board meeting. The minutes should accurately reflect board discussions as well as actions taken at meetings. Each corporation is required under civil law to have recorded minutes of its annual meeting.

5. Books and Records. A trustee should have general knowledge of the books and records of the organization as well as its general operation.

6. Accurate Record Keeping. A trustee should not only be familiar with the content of the books and records, but should also assure that the parish's records and accounts are accurate. The trustee should be aware of what the financial records disclose and take appropriate action to make sure there are proper internal controls.

7. Property. A trustee has the duty to protect, preserve, invest and manage the corporation's property. Again instituting proper internal controls will aid in the protection of assets.

8. Resources. A trustee must assist the organization in obtaining adequate resources to enable it to further its mission.

9. Investigations. A trustee has a duty to investigate warnings or reports of mismanagement. In some situations a trustee may have to report misconduct to the appropriate parties.

In addition to the fiduciary duty of care is the THE DUTY OF LOYALTY

The duty of loyalty requires that a trustee act honestly and in good faith in the best interests of the parish/corporation. Among other implications, it means that a trustee should avoid all situations in which their duty to the corporation conflicts with their own interests (the "no-conflict rule").

Concerning

1. Conflicts of Interest. Under certain circumstances, a transaction or contract between a nonprofit corporation/your parish is acceptable. However, there must be full disclosure - if the transaction is challenged, the trustee will have the burden of establishing that the transaction was fair and reasonable, that there was full disclosure of the conflict and that the transaction was approved by other trustees in good faith.

2. Written Policy. Boards should establish a written policy on avoiding conflicts of interest. We have as a handout a template for parishes to use. Small parishes with involvement of core parishioners there are bound to be situations with the potential for COI – fully disclose.

WHAT A TRUSTEE DOES/DOES NOT DO.

Trustees are charged with responsibility for planning and directing the management of the parish's business and affairs. Trustees have no individual power to bind the parish. Instead trustees, in their capacity as such, take action as a body and those decisions are documented by Board resolutions. - the Board acts as a unit.

Nevertheless, each trustee is individually accountable to the parish's members and certainly, in the case of trustees of non-profit organizations, to the state and federal regulatory authorities (primarily the IRS, the North Dakota State Tax Department and the Attorney General) who seek to protect the public's interests.

It is essential to the parish's tax exempt status that it abide by its stated purposes; one of the principal duties of a trustee is to be aware of the nature and extent of the corporation's exempt purposes and to assure that those purposes are properly pursued. In no event should a trustee initiate or knowingly support or condone actions that will either exceed or defeat the parish's tax exempt stated purposes.