Goals Board Member Training

•Educate CHURCH Leaders and boards' on their responsibilities and the law.

•Identify & Avoid Common Mistakes of Boards

•Identify Best Practices for Church Leaders and Board members.

•Insure that Church Leaders and Boards operate effectively in the best interest of their organizations.

10 Common Mistakes of Boards

1. Failing to Understand Fiduciary Duties.

2. Failing to Provide Effective Oversight.

3 Avoiding The Hard Questions

4. Lack of Awareness of Laws Governing Tax-Exempts.

5. Operating with Outdated or Inconsistent Governing Documents

6. Recruiting and Selecting Board Members Without Due Care

7. Failure to Cultivate Board Diversity

8. Airing Disagreements Outside the Boardroom

9. Failing to Document Actions Appropriately

10. Failing to Review Program Effectiveness and Take Appropriate Follow-Up Actions

Board Members Obligations

- Fiduciary Duty
- A duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. (e.g. trustee, guardian)
- It is the highest standard of duty implied by law
    - Black's Law Dictionary…

"Fantastic Four"

Board Members Obligations

• Duty of care

•Duty of loyalty

•Duty of compliance

•Duty to properly oversee & manage accounts

Duty of Care

•Read and understand and implement mission, vision, and governing documents.

•Regular attendance at board and committee meetings.

•Be informed and prepared to participate in decision-making and oversight.

•Exercise same care as a reasonable prudent person.

•Maintain Confidentiality.

Duty of Loyalty

•Must place Church or Organization’s interest above self-interest.

•Establish & follow written policies concerning potential conflict of interests.

•Must disclose any potential conflicts of interest. (recuse from voting)

- Romans 14:16(KJV) Let not then your good be evil spoken of:

•Avoid entering business relationships between board members and the organization.

Duty of Compliance

•Understand and comply with governing documents, including bylaws and code of conduct.

•Know and comply with state and federal laws governing non-profit organizations, including registration and reporting requirements.

Duty to Properly Oversee & Manage Accounts

•Must keep accurate and complete records of income, expenses, investments, and minutes.

•Must have policies in place that assure the financial responsibility of the church.

•Develop budget as a blueprint for program plans and all organizational spending.

•No comingling of personal funds.

The Law

Board Governance Authority

Pursuant to R.C. 1702.30(A), all of the authority of a corporation shall be exercised by or under the direction of its directors.

Board Member Protections

1st Amendment of US Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…

Ecclesiastical Abstention Doctrine

Civil courts lack jurisdiction to hear or determine purely ecclesiastical or spiritual disputes of a church or religious organization." Tibbs v. Kendrick, 93 Ohio App.3d 35, 41, 637 N.E.2d 397 (8th Dist.1994).

Business Judgment Rule

O.R.C 1701.641 of the Ohio Revised Code ... To overcome the presumption of the business judgment rule, a plaintiff must prove a violation of these duties by clear and convincing

evidence.

1. in good faith;

2. with care that an ordinary prudent person in a like position would exercise under similar circumstances; and

3. in a manner the board members reasonably believe to be in the best interests of the organization.

What is not protected by the Business Judgment Rule?

•Failure to Meet Fiduciary Duties

Illegal Acts

•Acts that are considered gross negligence.

•Self-Interest Transactions/Conflicts of Interest

•Insolvency(i.e. non-disclosure/acts against interest)

7 Common Practices of Effective Church Boards

Clarify Direction and Purpose of Church

2. Have developed Plan to achieve it's mission
3. Ensure Accountability
4. Provide Financial Oversight
5. Drive Continuous Improvement
6. Maintain Integrity
7. Support its Leadership

Board Member Best Practices

•Detailed Agenda of Board Meetings

•Regular Review & Evaluation of the following:

•Organization foundational document & policies

Mt. Pilgrim Baptist Church, Inc. v. Bishop, 2015-Ohio-5161 (Ohio App. 6 Dist. 2015)

•Advocacy on behalf of Church or Organization's interest

•Financial Health & Sustainability

•Budgeting and oversight

•Fundraising

•Rotation of Board Members

•Establish Staggered terms with

•Orientation for New Board Members

•Organization foundational document & policies

•Self-Assessment of Board

•External Legal Counsel and Accounting

•Board Member Insurance

Case Studies

CASE STUDY ONE

New Church, Inc. is a nonprofit corporate congregational church located in Somewhere, Ohio. Bishop has been the pastor of the church since 1995. The church's operations were governed by its Articles of Incorporation and a document entitled " Preamble," Further, the Preamble establishes several offices within the church including, among others, a pastor, deacons, and trustees. Under the Preamble, the board of trustees (board) are charged with carrying out the "directions of the pastor and the church that have been voted and adopted by the majority membership." The Preamble was expressly provides for within the document, which permitted amendments, additions, or repeal of the Preamble by a vote of "at least two-thirds of the members present at the annual business meetings."

At the time of Bishop's hiring, the church's business and financial affairs were managed by the board trustees. According to the Preamble, the trustees were responsible for holding title to the church's property in trust. However, the Preamble is careful to note that the trustees have no power to buy, sell, mortgage, lease or transfer any property without a specific vote of the Church authorizing each action."

In 2005, the Board of Trustee approved the purchase of a Volvo automobile for Bishop's personal use. Three years later, Bishop, acting on behalf of the church, purchased a $58,000 Mercedes-Benz E Class automobile for his personal use. Bishop did not inform the Board of his intent to purchase the Mercedes-Benz automobile, nor did he obtain the Board's consent prior to completing the purchase. Likewise, in 2009, Bishop obligated the church to pay for a $48,000 Lexus GS 300 that he purchased without the knowledge and consent of the Board.

Meanwhile, the church obtained a credit card for Bishop and certain members of the Board to use for church business. The Board was notified that Bishop purchased $4,000 in furniture for his son using the church's credit card.

In addition to his alleged misuse of the church's credit card, Bishop also transferred title to the 2000 Volvo and 2003 Mercedes-Benz to himself. Bishop allegedly failed to seek the Board’s permission to transfer the vehicles.

Once his conduct was discovered, Bishop transferred the vehicles back to the church.

Questions:

What issues of concern should be raised?

As board members does the board have any fiduciary obligations in this case?

Please identify each obligation and provide facts that support the underlying obligation.

What actions should the board take?

CASE STUDY TWO

Church has annual budget exceeding $1 million. Several years ago, the church and its board came under scrutiny because of a series of transactions. One of the board members disclosed some of the transactions to one of the church's major donors who then questioned a number of those transactions in a letter to the board.

1. The purchase of an $80,000 luxury beach house. The church rented the house for outings by the board, as well as ministry retreats.

2. A $5,400 lunch for 5 board members.

3. A $100,000 no-bid contract for insurance services with a company owned by a board member's sister in law, brother.

4. The rental of beach house space to a company owned by a board member.

QUESTIONS:

Was there a breach of any duties by the board?

Should all transactions involving conflicts of interest be prohibited?

Are there any potential conflict of interest? If so, how should this be handled?

Is there a threshold (percentage or dollar amount) that should trigger a mandatory review by the board?

CASE STUDY THREE

Dr. Deacon, and her late husband, Pastor Deacon, started New You Church in 1990 in their home. Several years later the Deacons purchased property then incorporated New You Church in the state of Goshen, and moved the Church services to their new property.

They incorporated Church but they have no Constitution or By-laws. The Three Trustees listed in the original Articles of Incorporation are no longer members or Trustees of the Church.

In 2000, Pastor Take O. Ver was hired to pastor the New You Church after the death of Pastor Deacon. Pastor Take O. Ver is not a Trustee.

On March 4, 2002, Dr. Deacon and church member Mr. Lee were the sole Trustees of the Church. The same day, Pastor Take O. Ver called a financial meeting and the general membership removed Dr. Deacon and Mr. Lee as Trustees, replacing them with two other people.

QUESTIONS:

What issues of concern should be raised?

Is there a board in place?

Who are the board members?

In the present case, does the Pastor Take O. Ver have the authority to select new board members?