

Iowa Conference Legal Questions and Answers

New to the Iowa Conference? Not sure about how the law impacts your ministry in Iowa? You are not alone. From time to time, the staff of the Iowa Conference receives requests for information about the many ways in which the law impacts ministry. Here are a few tips we have compiled to help out.

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REPORTING SUSPECTED ABUSE OF CHILDREN

Q: What are the responsibilities of clergy to report suspected child abuse?

A: Chapter 232 of the Iowa Code establishes two classifications for reporting suspected child abuse. There are **mandatory** reporters and **permissive** reporters.

Mandatory reporters include:

1. Health practitioners
2. Social workers
3. Certified psychologists
4. Certain people affiliated with educational institutions, including licensed school employees, certified para-educators, holders of a coaching authorization issued under Iowa Code § 272.31 and instructors employed by community colleges
5. Operators of the following facilities or programs and their employees:
 - A. Licensed child care centers
 - B. Head start programs
 - C. Health care facilities
 - D. Registered child development homes
 - E. Family development and self-sufficiency grant programs
 - F. Healthy opportunities for parents to experience success – healthy families Iowa programs
 - G. Substance abuse programs or facilities
 - H. Department of human services institutions
 - I. Juvenile detention and shelter care facilities
 - J. Foster care facilities
 - K. Mental health centers
 - L. Providers of services to children funded under federally approved medical assistance home and community-based services waivers
6. Peace officers
7. Counselors and mental health professionals.

Everyone else is a permissive reporter.

- Clergy are permissive reporters unless they qualify as mandatory reporters because they come within one of the classifications listed above. Permissive reporters *may* but are not required to report instances of suspected child abuse.

- Permissive reporters may make reports by telephone “or otherwise” to the Iowa Department of Human Services. There is a state-wide toll-free number for making telephonic reports:
1-800-362-2178

If you report:

- If you do make a report and have reason to believe that immediate protection for the child is advisable, you must also make an oral report to an appropriate law enforcement agency. **This is a requirement, *NOT AN OPTION*, and applies even if you are a permissive reporter.**
- A person who makes a good faith report of suspected child abuse is immune from civil or criminal liability on account of making the report or participating in good faith in any judicial proceeding resulting from the report or relating to the subject matter of the report.

REPORTING SUSPECTED ABUSE OF DEPENDENT ADULTS

Q: What are the responsibilities of clergy to report suspected dependent adult abuse?

A: Iowa has laws governing the reporting of **suspected abuse of dependent adults**. Generally, a dependent adult is any adult who is unable to protect his or her own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition. The statutory scheme for reporting suspected dependent adult abuse mirrors that of child-abuse reporting. There are **mandatory** reporters and **permissive** reporters.

Mandatory reporters include:

1. Members of the staff of community mental health centers
2. Peace officers
3. In-home homemaker-home health aides
4. Individuals employed as outreach persons
5. Health practitioners
6. Members of the staff or employees of supported community living services, sheltered workshops, or work activity centers
7. Social workers
8. Certified psychologists

Everyone else is a permissive reporter.

- All other persons, including clergy who are not otherwise classified as “mandatory” reporters, are “permissive” reporters and *may* but are not required to report suspected instances of dependent adult abuse.
- Persons reporting suspected dependent adult abuse have the same immunity as persons reporting suspected child abuse.

WEDDINGS

Q: Who may perform weddings?

A: In Iowa, marriages are treated as matters of contract and the methods in which these contracts may be solemnized are regulated by civil law. Only judges of the Iowa state courts and persons “ordained or designated as leaders of their religious faith” may perform marriage ceremonies. All UCC authorized ministers are considered “leaders of their religious faith” for purposes of this requirement. No special license, permit or registration is required.

Q: Who may get married?

A: Iowa law allows anyone 18 or older to get married. Persons who are 16 or 17 may be married with parental consent and judicial approval.

- The Iowa Code provides that only marriages between a man and a woman are valid [Iowa Code § 595.2(1)]; but this requirement has been ruled unconstitutional by the Iowa Supreme Court.

Q: What are the steps that must be followed for a valid wedding?

A:

Step One: Get the license.

This is the responsibility of the couple wanting to get married. If they do not get a license, an official marriage ceremony cannot be performed. To get a license, the couple must file an application with the County Registrar. In most, if not all, Iowa counties, the Registrar is the County Recorder. If the application is sufficient, the Registrar will issue a marriage license. Except in certain emergencies, the license does not become effective until three days after it is issued. At the time the license is issued, the Registrar also issues a blank “return” for the wedding. This return is called the certificate of marriage.

Step Two: Perform the ceremony.

There are no particular words or forms that must be followed for the ceremony itself. Iowa law is concerned only with ensuring that the ceremony is properly documented and recorded.

Step Three: Complete and file the paperwork.

After the ceremony has been performed, the certificate of marriage must be filled out and it must be signed by the minister performing the ceremony and by the witnesses. This certificate must be filed with the Registrar who issued the license within 15 days after the wedding is performed. It may be filed by anyone, but it is the responsibility of the minister who performed the wedding to see that the filing takes place in a timely manner.

Q: What happens if the proper forms and procedures are not followed?

A: Iowa has a quirky “savings” statute that apparently validates marriages even if all the formal requirements are not followed—as long as the couple consents and all concerned pay the required fines. Iowa Code §595.11 says:

Marriages solemnized, with the consent of parties, in any manner other than that prescribed in this chapter, are valid; but the parties, and all persons aiding or abetting them, shall pay to the treasurer of state for deposit in the general fund of the state the sum of fifty dollars each; but this shall not apply to the person conducting the marriage ceremony, if within fifteen days after the ceremony is conducted, the person makes the required return to the county registrar.

UNRELATED BUSINESS INCOME

Q: Why should I be concerned about unrelated business income?

A: Even though the churches of the Iowa Conference are exempt organizations under the Internal Revenue Code, they are required to report and pay taxes on their unrelated business income.

Q: What is unrelated business income?

A: This is complicated. The place to start, at least for non-tax practitioners, is with a close review of IRS Publication 1828, *“Tax Guide for Churches and Religious Organizations”*. According to that publication, if a church or other religious organization earns income from activities unrelated to its tax-exempt purpose, the income may be considered unrelated business income and subject to income taxation:

Net Income Subject to the UBIT

Churches and religious organizations, like other tax exempt organizations, may engage in income-producing activities unrelated to their tax-exempt purposes, as long as the unrelated activities are not a substantial part of the organization’s activities. However, the net income from such activities will be subject to the UBIT [Unrelated Business Income Tax] if the following three conditions are met:

- the activity constitutes a trade or business,
- the trade or business is regularly carried on, and
- the trade or business is not substantially related to the organization’s exempt purpose. (The fact that the organization uses the income to further its charitable or religious purposes does not make the activity substantially related to its exempt purposes.)

Exceptions to UBIT

Even if an activity meets the above three criteria, the income may not be subject to tax if it meets one of the following exceptions: (a) substantially all of the work in operating the trade or business is performed by volunteers; (b) the activity is conducted by the organization primarily for the convenience of its members; or (c) the trade or business involves the selling of merchandise substantially all of which was donated.

In general, rents from real property, royalties, capital gains, and interest and dividends are not subject to the unrelated business income tax unless financed with borrowed money.

Q: If my church rents the parsonage is this rental income taxable?

A: A parsonage is real property. Because a church is an “exempt” organization, it does not pay income tax on the money it receives from the rental of the parsonage unless the parsonage is subject to a mortgage. You may also wish to consult IRS Publication 598 “*Tax on Unrelated Business Income of Exempt Organizations*”. Both Publication 598 and Publication 1828 are available on line at www.irs.gov. At the end of the day, however, if you have serious questions about whether funds received by your church are “unrelated business income” there is no substitute for the advice of a qualified tax advisor.

OTHER TAX ISSUES

Q: Does my church have to pay sales tax on all of its purchases?

A: Not all, but most. In Iowa, churches are NOT exempt from sales tax. They are required to pay sales tax on all purchases that are not otherwise exempt for everyone. Supplies, equipment, books, utilities, etc., are all subject to sales tax. Purchasing food to give to the needy is not because food is exempt. Purchasing bibles for resale is not because inventory for resale is exempt. The rule of thumb is that if others have to pay sales tax on a purchase, so does the church.

Q: Is my church raffle subject to sales tax?

A: Yes. All gaming proceeds are subject to sales tax. You are also required to obtain a charitable gambling license from the Iowa Department of Inspections and Appeals and a sales tax permit from the Iowa Department of Revenue. If you anticipate raffle or gaming winnings to any one person may be substantial no prescription pharmac (perhaps over \$600 although the rules vary) visit with a tax advisor in advance to determine your obligation to issue a W-2G to the winner and perhaps even withhold income taxes.

Q: Is my church bake sale subject to sales tax?

A: Usually not. Fundraisers by churches that (1) do not involve gambling and (2) spend the net proceeds for religious purposes are not subject to sales tax. The same rule would apply to the sale of any goods or services by the church (except gambling).

Q: Does my church have to pay real estate taxes?

A: Real property devoted solely to charitable purposes, such as the church and grounds or a home used as a parsonage, is exempt from property taxes. However, real property rented by the church for profit is not exempt. Examples include farmland rented by the church to others or a former parsonage that is now rented to others. Such property is subject to real property taxation. Some church property may be “mixed use”. For example, a church may have an educational center, a portion of which is rented to a private daycare center. A portion of such mixed-use property is subject to property taxation. The proportion of the property that is taxable is determined initially by the County Assessor, but the Assessor’s determination is usually subject to negotiation or appeal. These are technical matters with detailed procedures and strict time limitations. If they arise, the church should consult an attorney.

INSURANCE COVERAGE

Q: Who do I contact to find answers to insurance-coverage questions?

A: If you have questions about your church's insurance coverage or you need to file a claim, contact your insurance agent. If your church is insured by the Insurance Board, your agent in Iowa is currently:

Jeremy Butler
Brock-Karns Insurance
327 Chestnut Street
Atlantic, IA 50022
Phone: 712.243.6777 office OR 712.254.0072 cell
Fax: (712) 243-6784

CONFIDENTIALITY OF INFORMATION

Q: Are things told to me in confidence in my capacity as a pastor confidential?

A: Yes. Iowa law recognizes a "testimonial" privilege for certain clergy communications. Iowa Code §522.10(a) says:

[A] member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline.

This privilege does not belong to the clergy member. It belongs to the person who made the disclosure and may be waived by that person.

COPYRIGHT LAWS

Q: Do copyright laws apply to my church?

A: Yes, they do. This is serious stuff. So pay **close** attention. **A copyright is the *exclusive* right** to do the following five things with respect to a copyrighted work:

1. Reproduce the work
2. Prepare derivatives of it
3. Distribute copies or recordings of it
4. Perform it publicly
5. Display it publicly

Q: What is a copy?

A: Any reproduction of a work is a copy. It does not matter if the reproduction is a photocopy or a free-hand rendering. It does not matter if the copy is in a different medium than the original. This means that a slide, a transparency or Power Point™ depiction of a hymn, for example, is a copy.

Q: What if I make an unauthorized copy or other use of a work?

A: The consequences of a copyright infringement can be severe, even ruinous, to the infringer. Although courts have the discretion to award damages in a smaller amount, a person who willfully violates a copyright may be liable for damages of up to \$150,000 and costs and attorneys' fees, even if the infringement was not done for commercial purposes and even if the copyright holder cannot prove he or she suffered actual damages. In addition, copyright infringement is a federal crime that subjects the infringer to possible imprisonment and the imposition of criminal fines.

Q: Our church has purchased a set of hymnals. What rights do we have with respect to the music in these books?

A: Generally speaking, when a church purchases a set of hymnals, it is also purchasing a license to perform the music and use the other materials in those hymnals. This license, however, is subject to whatever restrictions the publisher imposes. These restrictions are usually set out somewhere in the hymnals, themselves. While these restrictions may vary from publisher to publisher, the restrictions imposed by the United Church of Christ with respect to The New Century Hymnal (and which may be found on the copyright page of the hymnal) are typical:

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Q: Sometimes we sing hymns and use worship materials that we obtain from sources other than our hymnals. How do I ensure that I’m not infringing a copyright when we do this?

A: If you are going to copy or perform copyrighted hymns or copy or use other copyrighted materials that come from sources other than your hymnal, you must have a license to do so. Licenses can be obtained from several sources. Two of the licensing companies most commonly used by churches are Christian Copyright Licensing, Inc. (“CCLI”) and OneLicense.net, L.L.C. Information about both companies may be found on their websites, www.ccli.com and www.onelicense.net, respectively. Each licensing company is authorized to grant you a license to use the music and other works in its inventory. In exchange, you pay a royalty, the amount of which is commonly based upon the number of persons who attend worship at your church. Typically, the licensing company requires that you display certain information concerning your license on all licensed copies you make.

Q: Who owns the rights to sermons, newsletter articles, blogs and other such things that the pastor prepares?

A: Such things are referred to in a general sense as “intellectual property”. As a general rule, any intellectual property that an employee prepares during the course of his or her employment is the property of the employer and it is the employer which has the sole right to use such intellectual property. This raises questions about whether a pastor is considered an “employee” for purposes of this rule and what constitutes the “course of employment”. It is best not to have to deal with these questions and it is the recommendation of the Iowa Conference that the right to intellectual property be dealt with in the letter of call. Here is how we deal with it in our recommended letter:

INTELLECTUAL PROPERTY (Initial one)

_____ In further consideration of your services, the Church hereby waives all claim it may have to any intellectual property created by you while you serve as its pastor and teacher.

_____ You hereby waive all claim you may have to any intellectual property created by you while you serve as the pastor and teacher of the Church.

CEMETERIES

Q: Some of our churches operate cemeteries, columbaria, and other facilities for the interment of human remains. Are there any special legal requirements for churches that do so?

A: Yes. The regulation of such facilities, however, is a complex matter beyond the scope of any advice the Iowa Conference can give. If your church operates such a facility, you are strongly encouraged to seek legal advice about the requirements for its operation.

CHARITABLE FOUNDATIONS

Q: We just received a large gift. Should our church establish a separate endowment fund?

A: Unless it is a condition of the gift, there is no legal requirement that a separate endowment be established to manage such a gift. However, there are often a number of advantages to establishing such an endowment as a separate entity. Large gifts often come with a restriction from the donor (e.g., “spend income only”, “permanent endowment”). These terms can be ambiguous and often require a legal interpretation which you should get ASAP. We believe if material funds are significantly restricted, they should probably be in a separate entity to better assure compliance with the donor’s wishes. The attention of the governing board of the church may be focused on short-term cash flow while an endowment board should be focused upon long-term investment for both church support and fund growth. The endowment board may also require more investment expertise than is present on many church governing boards. Further, general church financial reports which include as assets materially restricted funds can be very misleading to the membership and understate ongoing support needs. Getting restricted funds “off the books” may more accurately reflect needs and available funds.

There is some time and cost involved in legally establishing a separate entity for an endowment, so you should visit with your attorney about that to evaluate the cost versus the benefit.

WEAPONS IN CHURCH

Q: If a parishioner – or anyone else – has a concealed weapons permit, are we obligated to permit that person to bring a weapon into our church building?

A: Probably not, but you’ll need to take official action to enforce that prohibition. The owners of a building can decide to prohibit weapons from being brought into that building. In this case, the owners of the building would be the membership. For a prohibition on weapons to be official and binding, the church is advised to adopt a formal resolution banning weapons from the church building and then post a sign to that effect.