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WHEN A CHURCH LEAVES THE UCC

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On behalf of the Association of Conference Attorneys, I am grateful for the opportunity to speak to you this morning on the topic of *When a Church Leaves the Denomination*. Because we also want to have a conversation about this and any related issues, I will try to keep my comments as brief as possible.

Theoretically, there are four ways a church can leave the UCC: voluntary withdrawal, voluntary closure and the involuntary corollaries of each. Such an event, in whatever form and in both the life of the congregation and in the life of the denomination, occasions the need for a dual but interrelated analysis of pastoral and legal concerns. Although my remarks will be principally directed to the latter, it is critically important that the pastoral concerns dictate any legal response on behalf of the Association or Conference. There are likely to be a number of legal issues involved in any situation where a church leaves the denomination; however, it may not always be appropriate to raise those issues or, if raised by others, to engage them. Given our congregational polity, we have intentionally abandoned, as a denomination, any *legal* right to direct the life or ministry of a local church. Thus, no matter how unfair, uninformed, or simply bewildering is the decision of a congregation, our polity forces us, as a denomination, to ultimately say to the departing church, “Godspeed and Peace Be With You!” However, if one once abandons the frustration inherent in attempting to control a congregation’s decisions and destiny, our polity does make it possible for the denomination to bring more light than heat to bear upon a people in distress so that they may have the dignity of making a free and informed decision. Thus, our communications with distressed congregations will be more productive if they are not laden with “you should, you ought, you must” but rather with “did you know that. . .”

Having said as much, let me turn to three places where the law principally touches a congregation leaving the denomination, namely: Corporate, Tax and Contractual.

When considering the corporate legal issues that may be relevant when a congregation severs its association with the denomination it is necessary to keep in mind that all such issues are state law sensitive. Congregations, in their organizational structure, are creatures of the laws of the state in which they are located and those laws vary considerably from one state to the next. It is even possible for a single state to provide for more than one method of incorporation for religious societies. In the “Show Me State” for example, it is likely that a congregation organized prior to 1953 was created as a “pro forma” corporation by application to and order of the circuit court in the

jurisdiction in which it is located. Congregations created after 1953, on the other hand, were likely incorporated as “general not-for-profit” corporations with an application to the secretary of state. The specific state laws which describe the boundaries in which each type of corporation may operate vary significantly even though the legal boundary markers themselves are likely to be very similar in each state.

Let me try to describe some of those legal boundary markers for you using a hypothetical example of a congregation which is considering a voluntary withdrawal from the denomination. In such a situation, there is typically a cadre of members who oppose leaving the UCC and who turn to the Conference or Association for help. Eventually, someone shows up at your desk asking you “what can we do to save this church?” To which your standard response should be: pray, and call the Conference attorney. Hopefully, your Conference attorney will share your conviction that one must strive to shed more light than heat on the situation and realize that the true goal is not to prevent the congregation from leaving the UCC, but to help it make not only a theologically, but also a legally, informed decision.

And, right at the outset, consideration should be given to the role to be played by the Conference and its attorney. A congregation considering whether or not it should withdraw from the UCC is likely to “tune out” or “harden its heart” to any advice it perceives coming from the Conference. In this and many conflicted situations, it is very helpful to be able to refer the faithful cadre to another attorney who will not be perceived by the congregation as the voice of the Conference. Your Conference attorney probably has several colleagues who would be able to fulfill this important role. Thus, if independent legal counsel is able to gain a voice with church leadership or the congregation itself, it may raise a number of important corporate issues relevant to the final decision to leave the denomination, such as:

1. Exactly what type of legal organization is your congregation? (There are some congregations, for example, which are operating without any legal charter, in which case they may be treated by the courts as a common law partnership and subject to a whole separate set of rules.)
2. Is your corporation in good standing with the state authorities? (This can usually be easily verified with the secretary of state.)
3. Have your bylaws been legally adopted by the congregation? (I would estimate that 75% of the churches in the Missouri Mid-South Conference are not operating with bylaws that have been legally adopted by the congregation because, as pro forma corporations, they failed to obtain approval for subsequent changes from the circuit court.)
4. Do your bylaws comply with state law requirements?
5. Has your leadership been legally elected?
6. Has notice of all meetings been given as required by law?
7. Have all votes been legally taken with the requisite legal quorum?

Obviously, raising such issues is not likely to change the hearts and minds of folks who are determined to leave the UCC; however, it may stop them from taking the

rest of the congregation and its assets with them. The faithful cadre has the right, if not the duty, to ensure that the corporate game is played according to Hoyle.

Similar corporate issues may be involved when a congregation considers closure, particularly, what happens to the congregation's assets. Compliance with state laws governing the dissolution of a corporation can become a considerable burden to the dying congregation. In the case where the congregation has already decided through its bylaws that all or a significant portion of its assets are to pass to the Conference upon dissolution, it may be appropriate for the Conference to offer its attorney to the congregation in order to ensure that the closure is legally accomplished and that the Conference will not inherit any unwanted liabilities. The Conference may or may not desire to accept the church building and land in kind and it should carefully consider any continuing liabilities associated with owning such real estate, particularly any environment problems. We had such a concern in Missouri with the closure of a church adjacent to a filling station and had the congregation sell the property before it formally dissolved so that the Conference would not be in the chain of title. Again, legal closure and dissolution of a religious corporation is strictly a state law issue but it will typically require some sort of accounting to the state attorney general who is charged with ensuring distribution of assets to qualified successor organizations. In Missouri, in the case of a pro forma corporation, it also requires an order from the circuit court.

Dissolution of a religious corporation is a topic that is treated specifically by state law which will require, usually in spite of a bylaw provision to the contrary, a certain percentage of its members (as opposed to a simple quorum) to affirm the decision to dissolve. This then raises the questions of who, exactly, are the members of the congregation, how must we notify them and how can they cast their vote? In other words, must they be present at the meeting or can they vote by proxy? These requirements may differ from state to state. Many congregations are very lax in keeping an accurate list of their members, or in defining who is a member. Frequently, purging the rolls is the first thing a congregation must do before it begins the process of formal dissolution.

A strategy similar to that which I previously described in the case of a faithful cadre resisting withdrawal from the denomination may be pursued with the asset rich congregation that desires to dissolve and leave all of its property to the Boy Scouts simply because they have been meeting in the church basement for 50 years. An attorney other than the Conference attorney may be more helpful in ensuring compliance with corporate legal requirements in such a situation and in getting the congregation to reconsider its decision on distribution of its assets.

To summarize my comments on corporate law issues, I would say: (1) our polity dictates that our primary objective is to educate, not litigate; (2) that corporate legal issues are state law specific—so make sure your attorney is familiar with the state laws in question; (3) the Conference attorney may not be the most effective person to introduce legal issues into a conflicted congregation although he or she should be very helpful in

analyzing relevant issues for the Conference or Association and in finding appropriate legal help for a conflicted congregation.

Turning briefly to some tax considerations, I frequently hear the statement that if a church leaves the denomination it loses its tax exempt status. This is simply not true. What does happen is that the church is no longer listed in the Yearbook and it loses its coverage under the annually renewed blanket tax exemption of the UCC. However, as long as the congregation continues to operate as a church, Internal Revenue Code Section 508 (c)(1)(A) specifically exempts “churches, their integrated auxiliaries, and conventions or associations of churches” from having to file form 1023 in order to secure a formal determination that their income is not subject to tax and that contributions to them are tax deductible. It should also be pointed out that the frequently quoted Internal Revenue Code Section 501(c)(3) only describes organizations whose income is not subject to tax while Internal Revenue Code Section 170 describes organizations to which contributions are income tax deductible and the limitations on those deductions. The two sections provide for separate requirements, which is to say that not all organizations whose income is tax exempt will support a deductible contribution and vice versa. Also, deductibility for estate tax purposes is determined by yet another code section.

Thus, it does not behoove us to suggest to the congregation planning to leave the denomination that it will lose its tax exempt status or that future contributions to it will not be tax deductible. It does behoove us, however, to clarify for the departing church that it will no longer be able to justify its tax exempt status by reference to the United Church of Christ. (It is interesting to note, however, that the Internal Revenue Code refers to “corporations” organized exclusively for religious purposes, which may mean that an unincorporated church might in fact lose its tax exempt status if it is no longer listed in the Yearbook.)

Employment taxes, sale tax exemptions and real property taxes for property owned by a church but not used for its charitable purposes are all tied to the existence of the church as a separate corporate entity and should not be affected by whether or not a particular church is affiliated with the denomination. In the event of a church closure, of course, such taxes also cease to be relevant.

By way of introduction to my last topic relating to contractual concerns, one might say that corporate issues involve promises the congregation has made to the state to operate responsibly and fairly in exchange for the benefit of limiting the liability of its individual members; and one might say that tax issues involve the even more nebulous promises which underlie the social contract we have made with those who accept the responsibility for protecting society from itself; but contractual issues involve the specific promises a particular congregation has made with third parties and other covenantal partners affiliated with the United Church of Christ in order to further its own mission. Many of you are very familiar with such promises, but it may be helpful to run through an illustrative list. And, certainly, if you can think of others, please share them during our panel discussion.

When a church leaves the denomination, its employees lose the right to participate in UCC employee benefit programs, although its minister will only lose those rights if he or she forfeits standing, which is certainly likely if they supported the church's withdrawal from the denomination. The church may not participate in the UCC placement process or circulate its profile and neither may a minister who has lost standing. The church will forfeit the ability to obtain the considerable insurance benefits of the Conference's insurance program. Loans from the denomination may become in default and property may become subject to foreclosure. Denominational funds available for loans will no longer be available. Conference camping facilities may no longer be available. Conference staff and resources will no longer be available. And here is one worth taking a hard look at: future bequests and endowed funds may not necessarily follow the departing church. A church that wants to leave the denomination will almost certainly want to shed the United Church of Christ name and will usually take the legal steps necessary to do so; however, it is also in the interest of the Conference or Association to see that it in fact does so. A future bequest, for example, to St. Paul's United Church of Christ, which is no longer a United Church of Christ, may well pass to the Conference and the legal name change of the departing congregation will be helpful in establishing the fact that the charitable recipient intended by the donor no longer exists, thereby giving the Conference a claim as a successor organization.

At the outset, I mentioned that there were theoretically four ways in which a church could leave the denomination and I have not addressed the situations of involuntary expulsion or involuntary closure. Obviously, these would involve cases of extreme malfeasance. Although I am not aware of any instances in the UCC, it is theoretically possible for a church to be dissolved involuntarily by the state attorney general as a result of financial or other corporate legal improprieties. We actually have a situation in the Missouri Mid-South Conference where we have attempted, so far unsuccessfully, to get the attorney general to investigate a particular church because of probable financial mismanagement. In terms of the involuntary expulsion of a church from membership in an Association, I am also not aware of any such instance in the UCC. However, I have observed that, as a denomination, we place considerable obligations upon our clergy for the competent practice of ministry but no really enforceable obligations upon our congregations to do likewise. This, I think, is an area that requires further study and reflection even in our congregational system.

While many of these contractual issues can and should be raised for the leadership of any church considering withdrawal from the denomination, it is important, in my opinion, that they be presented as benefits to be lost rather than as penalties to be suffered. Although I eschew any attempt to make a legal distinction between the terms "contract" and "covenant" I do recognize that there is a linguistic difference which may suggest that the term "contract" implies mutual obligations whereas the term "covenant" implies mutual benefits. Certainly in the struggle to hold our UCC ship together there must be some rules and some discipline, hard to find as they are; however, motivation, which is essential to the long term success of any mission, depends, in my opinion, more upon perceived benefits from participation than it depends upon perceived obligations for membership. Given the fact that the denomination may have relatively little influence

upon corporate and tax policy, the challenge before you, I submit, is how to strengthen the contractual or covenantal bonds that keep a church in the denomination. Although it got off to a little bit of a rocky start, primarily, I think, because of the lack of experience with such a model for ministry, the UCC Insurance Board is a significant and highly successful Conference Program that emphasizes benefits over burdens. While I have your ear, I simply want to suggest that you might explore similar models for providing our churches with other benefits of mutual association.

It has been a pleasure to address you this morning. Thank you for your patience.