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Inspection of Church Records

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Know when to say "yes" to a request to view confidential information.

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Pastors should know how to answer a person's request to inspect church records. Generally, there is no inherent right to inspect church records. However, such a right can be granted in some legal document such as a church's bylaws or state nonprofit corporation law.

Here four possible justifications for a right of inspection.

1. Nonprofit Corporation Law

Some state nonprofit corporation laws give members of an incorporated church the right to inspect corporate records for any proper purpose at any reasonable time. Other state nonprofit corporation laws give members broad authority to inspect corporate records, but specify that "the articles or bylaws of a religious corporation may limit or abolish the right of a member . . . to inspect and copy any corporate records."

A right of inspection, however, generally applies only to *members*. Persons who are not members of a church generally have no right to demand inspection of church records under nonprofit corporation law.

2. Church Charter or Bylaws

A right of inspection may be given by the bylaws or charter of a church corporation or association.

3. State Securities Law

Churches that raise funds by issuing securities (*i.e.*, bonds or promissory notes) may be required by state securities laws to allow investors—whether members or not—to inspect the financial statements of the church.

4. Subpoena

Members and nonmembers alike may compel the production (*i.e.*, disclosure) or inspection of church records as part of a lawsuit against a church if the materials to be produced or inspected are relevant and not privileged. For example, Rule 34 of the Federal Rules of Civil Procedure, adopted by several states and used in all federal courts, specifies that any party to a lawsuit

may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents . . . which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection.

Similarly, Rule 45(b) of the Federal Rules of Civil Procedure states that a subpoena may command the person to whom it is directed “to produce the books, papers, documents, or tangible things designated therein. . . .”

Rule 45 also stipulates that a subpoena may be quashed or modified if it is “unreasonable and oppressive.” Federal, state, and local government agencies are also invested with extensive investigative powers, including the right to subpoena and inspect documents. However, this authority generally may not extend to privileged or irrelevant matters.

Since church records are not inherently privileged, they are not immune from production or inspection. Although most states consider confidential communications to be privileged when they are made to clergy acting in their professional capacity as a spiritual adviser, several courts have held that the privilege does not apply to church records.

Case Studies

The following summaries of court cases offer pertinent insights for this issue.

- The Alabama Supreme Court ruled that a dismissed church member no longer had a legal right to inspect church records. *Lott v. Eastern Shore Christian Center*, 908 So.2d 922 (Ala. 2005). Accord *Ex parte Board of Trustees*, 2007 WL 1519867 (Ala. 2007).
- A Colorado court ruled that a church member's legal authority to inspect church records pursuant to state nonprofit corporation law ended when his membership was revoked by the church board. *Levitt v. Calvary Temple*, 2001 WL 423040 (Colo. App. 2001).
- A Louisiana court ruled that an incorporated church had to allow members to inspect church records. Four members asked for permission to inspect the following records of their church: (1) bank statements; (2) the check register and cancelled checks for all the church's bank accounts; (3) the cash receipts journal; and (4) monthly financial reports.

The pastor denied the members' request. The members then sought a court order compelling the church to permit them to inspect the records. The pastor insisted that such an order would interfere with "internal church governance" in violation of the First Amendment.

A state appeals court ruled that allowing the members to inspect records, pursuant to state nonprofit corporation law, would not violate the First Amendment. The court quoted from an earlier Louisiana Supreme Court ruling:

A voting member of a nonprofit corporation has a right to examine the records of the corporation without stating reasons for his inspection. Since the judicial enforcement of this right does not entangle civil courts in questions of religious doctrine, polity, or practice, the First Amendment does not bar a suit to implement the statutory right. First Amendment values are plainly not jeopardized by a civil court's enforcement of a voting member's right to examine these records. No dispute arising in the course of this litigation

requires the court to resolve an underlying controversy over religious doctrine.

Jefferson v. Franklin, 692 So.2d 602 (La. App. 1997). The court quoted from the Louisiana Supreme Court's decision in *Burgeois v. Landrum*, 396 So.2d 1275 (La. 1981).

- A New York court ruled that a church member had the legal authority to inspect church records despite the pastor's refusal to allow him to do so. The court acknowledged that only members had a legal right to inspect records, but it concluded that the member had not lost his status as a member of the church. It concluded:

The member is simply trying to enforce his secular rights as a member, using the church's own criteria of membership and the pastor's own admission that he has not been expelled as a member. Nor are the church's First Amendment rights violated by the inspection of the records, as the questions involved here are not concerned with internal ecclesiastical or religious issues, but purely secular ones.

Watson v. The Manhattan Holy Bible Tabernacle, 732 N.Y.S.2d 405 (2001). Accord *Smith v. Calvary Baptist Church*, (N.Y.A.D. 2006).

- The Texas Supreme Court ruled that a state nonprofit corporation law that granted a limited right to inspect corporate records did not mandate the disclosure of donor records. The Texas Nonprofit Corporation Act specifies that nonprofit corporations "shall maintain current true and accurate financial records with full and correct entries made with respect to all financial transactions of the corporation." It further specifies that "all records, books, and annual reports of the financial activity of the corporation shall be kept at the registered office or principal office of the corporation . . . and shall be available to the public for inspection and copying there during normal business hours."

Based on these provisions, a group of persons demanded that a charity turn over documents revealing the identities of all donors and the amounts of donors' annual contributions. The charity resisted this request, claiming that the inspection right provided under the nonprofit corporation law did not refer to inspection or disclosure of donor lists, and that even if it did, such a provision would violate the First Amendment freedom of association.

The state supreme court ruled that the right of inspection did not extend to donor lists. It noted that "the statute does not expressly require that contributors' identities be made available to the public." And, it found that the intent of the legislature in enacting the inspection right "was not to force nonprofit corporations to identify the exact sources of their income; rather, it was to expose the nature of the expenditures of that money once received from the public and to make nonprofit organizations accountable to their contributors for those expenditures." As a result, the statute "can be upheld as constitutional when interpreted as not requiring disclosure of contributors' names." *In re Bacala*, 982 S.W.2d 371 (Tex. 1998).

Additional Reading

For more on inspection of church records, see the following:

- [*Pastor, Church & Law*](#) (on this [website](#) or [in book format](#))
- [*Church Governance: What Leaders Must Know to Conduct Legally Sound Church Business*](#) ("Church Documents and Records" chapter)
- ["Members' Right to Inspect Church Records"](#)
- ["When Can Members Inspect Church Records?"](#)
- ["Membership and Reviewing Church Records"](#)
- ["Government Inspection of Church Records"](#)

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