

Rationale for Revising Bylaws and Developing Separate Policy and Procedures.

THERE ARE FOUR BASIC TYPES OF EMPLOYEES IN THE CHURCH

- **SENIOR PASTOR**
 - **OTHER MINISTERIAL STAFF**
 - **ASSOCIATE PASTORS, YOUTH MINISTERS ETC.**
 - **NON-MINISTERIAL STAFF**
 - **CUSTODIANS, SECRETARIES ETC.**
 - **VOLUNTEERS**
 - The focus is not simply on the person's employment status, but on his or her responsibilities.
 - From a legal perspective, a church must establish the same duty of care in the selection of volunteers to work with children and youth as it does in the selection of paid staff members.
 - A church can be found negligent in the selection of a volunteer worker just as it can be found negligent in the selection of a paid employee
-
- 94% of the world's lawsuits are in the United States.
 - 40 million new civil lawsuits are filed each year.
 - **The A.B.A. has hosted three conferences on “how to sue churches.”**
 - ❖ Awards Given By Juries are unpredictable
 - ❖ Churches are not prepared for litigation

INCORPORATION

- **DOES NOT ELIMINATE THE LIABILITY OF THE CHURCH ITSELF.**
- **DOES NOT ELIMINATE THE LIABILITY OF THE PERSON/S WHO MAY BE DIRECTLY AT FAULT, SUCH AS A VAN OR BUS DRIVER**
- **POLICY DOES Reduce The Likelihood of Liability**

THE NEED FOR POLICY

IS DEMONSTRATED BY HOW IT’S DONE NOW.

- **SQUEAKY WHEEL GETS THE GREASE**
 - Rules are developed on ad hoc situations rather than a carefully developed process. Policy is developed in a response to an issue rather than to prevent and issue. Also policy is developed by the few people that show up to a business meeting on that particular night, rather than through a carefully planed process.
- **INACCESSIBLE**
 - Policy decisions are contained in old minutes of past business meetings, or deacon’s meetings and are rarely heard from again.

THE BENEFITS OF POLICY

- CLARIFIES THE DECISION-MAKING PROCESS
- AVOIDS ARBITRARINESS
- DRAWS ON THE WISDOM OF MANY
- IMPROVES EFFICIENCY
- INCORPORATES CORE BELIEFS
- MINIMIZES LEGAL RISKS

SPECIFIC AREAS FOR POLICY

- PERSONNEL
- PROPERTY (USE; WHO AND FOR WHAT)
- FOOD SERVICE
- COUNSELING
- SPECIAL EVENTS (WEDDINGS FUNERALS ETC.)
- CHILDREN/YOUTH: ACTIVITIES/SUPERVISION OF AND SELECTION PROCEDURES OF WORKERS.
- SEXUAL HARASSMENT
- CEMETERIES
- FINANCIAL AFFAIRS (internal controls, receipts, special offerings etc.)
- VEHICLES: USE OF / DRIVER SELECTION/ MAINTENANCE
- CONFLICT RESOLUTION: MEDIATION/ARBITRATION, INSTEAD OF LITIGATION
- MANAGING CRISIS (Injuries, allegations, lawsuits)

RELATIONSHIP OF POLICY AND BYLAWS WITH OFFICERS AND DIRECTORS OF THE CHURCH.

A number of state laws permit nonprofit corporations to amend their bylaws to indemnify directors for any costs incurred in connection with the defense of any lawsuit arising out of their status as directors for the more common theories of liability are summarized below

- § 55A-8-50. Policy statement and definitions.
- (a) It is the public policy of this State to enable corporations organized under this Chapter to attract and maintain responsible, qualified directors, officers,

- employees, and agents, and, to that end, to permit corporations organized under this Chapter to allocate the risk of personal liability of directors, officers, employees, and agents through indemnification and insurance.
- knowingly permit an unsafe condition to exist on church property that results in death or injury
 - cause injury as a result of the negligent operation of a vehicle in the course of church business
 - negligently fail to adequately screen a worker (whether a paid employee or a volunteer) who assaults, molests, or seduces a child or an adult on church premises or in the course of a church activity or program
 - negligently retain a worker after learning of information indicating that the worker is unfit and may pose a risk to others.
 - negligently fail to provide adequate supervision for church activities that results in death or injury.
 - terminate an employee for an impermissible or insufficient reason
 - utter a defamatory remark about another individual
 - utter a defamatory remark about another individual
 - engage in fraudulent acts
 - knowingly draw checks against insufficient funds
 - knowingly make false representations as to the financial condition of the church to third parties who, in reliance on such representations, extend credit to the church and suffer a loss.
 - In all such cases, the director must personally commit, direct, or participate in the tort.
 - Therefore, a director ordinarily will not be liable for the torts committed by other board members without his or her knowledge or consent.
 - Obviously, board members having any question regarding the propriety of a particular action being discussed at a board meeting should be sure to have their dissent to the proposed action registered in the minutes of the meeting.