

Understanding Corporate Structure in the Seventh-day Adventist Church

Karnik Doukmetzian
General Counsel

North American Division of the
General Conference of Seventh-day Adventists



The Legal Structure of the Church

- Much of the denomination's activity is accomplished through status as an unincorporated entity.
- However, the Church also exists in an environment of that obligates the Church to have 'legal personality' along with its privileges and responsibilities.
- Corporation is the most common form of legal personality.
- These kinds of organizations do not come into being of themselves each must be specifically authorized by the executive committee of a church organization (conference/mission, union, division, or by the board of an institution).



Corporation-Definition

- A legal entity created through the laws of its state of incorporation.
- A company or group of people authorized to act as a single entity (legally a person) and recognized as such in law
 - Unlike unincorporated Associations, partnerships or sole proprietorships



Corporation

- In Law, treated like person
- Perpetual life
- Empowered to enter contracts, leases, borrow money buy property, goods and services without imposing personal liability on individuals who carry out those activities
- Can sue or be sued
- Recourse only against legal entity not individuals
- Liability limited to assets



For Profit

- Owned by Shareholders
- Can sell shares to raise funds
- ◆ Entitled to make profits
 - Owners
 - Shareholders
- Profit driven and taxable
- Distribution of assets to owners
- Can be sold
- Directors can be compensated for serving on Boards



Non-Profit/Charity

- Purposes other than generating a profit
- Profits reinvested to promote charitable mission
- No part of the income is distributed to members, directors or officers
- Usually started by a group or individual for particular purpose
- Members not shareholders
- Mission driven
- Can't be sold, can only be dissolved
- Public Benefit Purpose (religious, educational, scientific, recreational or charitable purposes)
- Religious –to promote religious purposes



Non-Profit/Charity

- Directors cannot be compensated for serving on Board
- On dissolution assets turned over to another charity
- In some instances greater scrutiny/oversight, rigorous reporting requirements
- Tax Exemption



What are the legal entities in the SDA Church

- Conference Corporations
 - Associations/Corporations for gifts, wills, legacies, property holding
 - Schools
 - Community Services
- Union Conference Corporations
- North American Division Corporation
- General Conference Corporation
- Institutional Corporations
- **Who Owns The Above Corporate bodies?**
 - Constituent Members & Stockholders



How Corporations Are Formed in the SDA Church

- Corporations to serve General Conference must be authorized by the GC Executive Committee
- **NAD WP BA 25 10 Authorization—All organizations planning to form legal corporations, limited liability companies, or similar legal entities registered with the government, shall first secure approval from their union executive committee, if applicable, and the North American Division Committee (NADCOM), which shall also determine if the new entity qualifies for denominational status under NAD Working Policy C 47.**



Organizational Structure of Corporations

BA 25 30

- Defined membership or constituency drawn from or appointed by the sponsoring organization
- Majority of membership is selected by the executive committee or board of sponsoring denominational entity
- Constituency is entrusted with the ownership rights and obligations
- Membership meeting held at least once every 5 years
- Board shall be comprised of Seventh-day Adventists
- Board elects chairperson who ordinarily shall be an officer of the sponsoring entity
- Board accountable to the membership-not self-perpetuating
- On dissolution all funds used for charitable purposes as directed by sponsoring organization



Relationship to Denomination

- Activity is intended to support the overall identity and mission of the Church
- Corporate conduct must demonstrate Adventist teachings, values, ethics and lifestyle
- Must maintain alignment with denominational policies, objectives and purposes



NAD Working Policy C 47 10 Structure

- Governing documents
 - Relationship-Affiliated to and or be an integral part of of the SDA Church and primary purpose shall be in harmony with and supportive of mission
 - Corporate Membership-all corporate members must be church members, majority shall be directors, officers, employees or members of executive committee of entity listed in Yearbook
 - Function in accordance with SDA beliefs, standards and working policies through its bylaws, policies, administration and financial practices



C 47 10 Continued

- Board appointed by constituency
- No self-perpetuating boards allowed
- Follow applicable NAD denominational wage scale
- Majority of board shall be church members
- On dissolution assets to be transferred to another organization holding denominational status
- Any subsequent changes to governing documents (name, address, purpose, structure or articles and bylaws) must be reviewed by NAD



Denominational Status-C 47

- What is the purpose of being recognized or granted organizational/denominational status?
 - Listed in *Yearbook*
 - Participation in Retirement Plan (NAD)
 - IRS Group Exemption in USA
 - Use of Trademarks
 - Master Insurance Policies



NAD WP C 47.30

- **Tax Exemption Status—1. Organizations that operate** under the 501(c)(3) group exemption held and administered by the General Conference shall obtain the approval of the North American Division before applying for their own 501(c)(3) tax exemption.
- 2. Denominational organizations that do not operate under the 501(c)(3) group exemption held and administered by the General Conference shall be listed in the *Seventh-day Adventist Yearbook* with a notation explaining the tax status of the organization or institution.



Historical Structure

- **CONFERENCE**
 - Unincorporated nonprofit association
 - All operational aspects of the Conference including employees
 - Ecclesiastical organization
- **ASSOCIATION-CORPORATION**
 - Nonprofit religious corporation
 - All legal aspects of property ownership, trusts
 - Legal organization
 - Bank accounts



Dual Structure Organizations

- Some conferences have merged the Corporation and the Unincorporated Conference Association into one
- Reasons
 - Reduce liability
 - Local legal requirements
 - Confusion between dual structure
 - Better record keeping



Board v. Executive Committee

- What is the difference between Executive Committee and Board of Directors
 - Board of Directors generally refers to a Corporate Entity, some conferences and unions have merged the unincorporated and incorporated entities into one. Some merged entities still refer to Board as Executive Committee.
- Institutions have governing boards



Best Distinction

- Corporate
 - Bound by local corporate law
 - Constitution and Bylaws
 - Board has fiduciary responsibility to members
- Ecclesiastical
 - Held together by Working Policy and Church Manual
 - Unincorporated Association
 - Executive Committee fiduciary responsibility to Constituency
 - Perhaps different set of laws depending on jurisdiction dealing with unincorporated associations



SDA Governance System

Governing Board

- Institution
 - Stand alone entity
 - One employee member
 - External chairperson
 - President/CEO accountable to Board
 - Limited hiring decisions by Board
 - Incorporated Status

Executive Committee

- Ecclesiastical Structure
 - Part of Network (Conference, Union, Division)
 - Internal Chairman
 - More employees as Board Members
 - Multiple hiring decisions
 - Unincorporated status



Local church/school boards

- The local conference is the lowest level of legal identity recognized by the church
- The local congregation/school has representative delegated authority to conduct the local activities as part of the conference
- Local church/school boards are not legal entities
- Local board members/employees and volunteers are agents of the conference
- Local actions can and do have a direct legal impact on the conference
- Operational boards



Incorporating Local Entities

- Corporate Entity (NAD WP Requirements)
- Is there a need for organization to incorporate?
- Liability of local board members
- Process that needs to be followed
- “The Entity Was Forfeited For Failure To File Property Return”.
- “Entity is not in Good Standing”



Not in Good Standing

“**Not in Good Standing**” means the business entity is not in compliance with one or more State laws that apply to businesses and their responsibilities in this State. Only business entities that are active can have a good standing status, so a business that has been voluntarily terminated will also show “not in good standing” because it is no longer active.

The status can be returned to Good Standing by addressing the manner in which the business is out of compliance. If a business was voluntarily terminated, it cannot return to good standing because a voluntary termination is permanent.

The most common reasons that a business is not in good standing are

- A missing Annual Report and Business Personal Property Return, also called a Form
- A monetary penalty resulting from the late filing of a Form 1
- Not having an active resident agent
- An issue with the [Office of the Comptroller](#) -
- A check or other form of payment that was dishonored
- An issue with the [Department of Labor](#)
- **So What does this mean?**



Recent Claim-June 2021

- West End Family Life and Community Center
 - Day Camp operated by Church member/Elder in our Church
 - Allegation that 8 YO abused at least 36 times in 8 week period
 - Allegation that he was employee of church
 - Allegation that Church operated the Day Camp
 - No documentation to show otherwise
 - Allegation that Church Employees knew
- Suit against local congregation, Conference and GC



Why is this type of situation of concern?

- No distinction/separation between Church and Center or Day Camp
- No protections (lease, insurance, hold harmless, indemnification)
- Separate Insurance for operations?
- Corporate Body but not part of the conference?
- Is it a supporting ministry or a subsidiary ministry?
- What information did Church/Conference/Employees have



Supporting Ministry Legal Relationship

- Legal Affiliation—Supporting ministries and their personnel shall clearly and explicitly state in their legal documents, public statements, websites, social media and in their dealings with third parties that they support the spiritual mission of the Church but are independent supporting ministries not controlled by or legally affiliated with the Church. Permission to use any trademarked names or marks of the Seventh-day Adventist Church shall be obtained from the General Conference Corporation of Seventh-day Adventists prior to any use. NAD WP K 05 05 4.



Serving on Boards

- **NAD WP E 85 05 Individuals, who by virtue of their position or based on their place of employment are invited to serve as members on boards/committees of entities/organizations that are not listed in the *Seventh-day Adventist Yearbook*, must secure approval from their relevant governing body/administrative committee and disclose their membership on such boards/committees.**



Directors Authority

Except where the law, the Articles & Bylaws, or the regulations require that the action be otherwise authorized or taken, **all of the authority of a corporation shall be exercised under the direction of its directors.**



Fiduciary Relationship

- **Fiduciary:** A person in a position of authority who is obligated to act on behalf of another in good faith and with care, candor, and loyalty in fulfilling the obligation.
- **Directors are fiduciaries of their corporate entities.**



Fiduciary Duty

A duty to act with loyalty, honesty, and **in the best interests** of the beneficiary of the fiduciary relationship—



We are not Above the LAW

- Follow Governing Documents, courts will enforce
- Comply with all reporting and filing requirement
- Must comply with local laws
- Employment Law Issues
- Do what is morally and legally right



Questions

