LET'S GET PRACTICAL...

CRUCIAL LEGAL AND ADMINSTRATION ISSUES RE:

CHURCH GOVERNANCE, OPERATION, HR, ETC.

Why should I listen to this guy?

- Served as the first director and co-developer of the Calvary Chapel Conference Center and Bible College at Murrieta Hot Springs for 7 years and co-led the effort to acquire, finance, gain entitlements, get plan approval and build Calvary Chapel church buildings for South Bay, Menifee and Chino Hills.

- Legal background - graduated from Pepperdine and awarded onto Law Review. Brought and succeeded in the federal lawsuit in DC) and lobbying campaign against Dept. of Agriculture/US Forest Service to allow KWVE to broadcast atop Santiago Peak in the Cleveland National Forest, thereby making KWVE programming available to 5 million new potential listeners

- General Manager of KWVE for four years

- Served as a senior administrative director, overview of accounting, created HR policies (first time for CCCM) and legal counsel for Calvary Chapel Costa Mesa under Pastor Chuck and for Pastor Chuck, himself.

- Part Owner, Vice President and Chief Legal Counsel for PayPros, a leading payments technology company, which was sold 10 years ago for $ 0.5 BIL.

- Currently serves in a volunteer capacity as the CFO and a Board member for Calvary Chapel South Bay under Jeff Gill, and now Chet Lowe. Served on many CC boards, including for Eric Collom.

GOVERNANCE DOCUMENTS

- Articles of Incorporation:

  Should my church organization have members, and related issues:

  A. annual meeting of members required

  B. standing to sue

- Bylaws:
  1. Board Issues/Considerations:
     A. Advisory vs. empowered board:
        - Board exists to ensure the bylaws are being followed
        - Board exists to observe, relate to and insure the accountability of the President/senior pastor as a pastor, brother in Christ, husband and father
        - members of body vs. “friends”/other pastors from outside church
        - conflict of interest agreement executed annually
        - employees as board members – conflict of interest issues
     B. Co-equal responsibility to care for the senior pastor
        - rabbi trust
        - sufficient time for family and vacation time and monetary provision

C. Removal of board member – related issues:

- grounds for termination
  - % of board members to call for removal
  - % of board members to remove
  - right to nominate replacement
  - % of elect replacement board member

D. Removal of senior pastor issues:

  - grounds for termination
  - vote - % to remove
  - no shenanigans – the church is not the “family business”

2. Successor Pastor provisions and plan:

A. When to consider, and length of transition

B. Who nominates successor – sr. pastor/president vs. Board
   - nepotism v. evidence of calling and leading of HS

C. Trial period for Successor Pastor
   - employment agreement and right to terminate for cause (or no cause)
   - term of trial period

D. Successor pastor voting rights – voting vs. non-voting during trial period

E. Succeeded senior pastor considerations/needs:
   - retirement provisions – rabbi trust
   - automatically serve on board post termination for 2 years

F. When does Successor pastor obtain right to nominate new board members?

G. Mandatory existing board members for period of time – transition consideration for leadership and sheep

ANTI-DISCRIMINATION LAWS / HOMOSEXUALITY – GOVERNMENT ENTANGLEMENT

1. Board resolution re: marriages (handout)
2. Insurance Policies – DEI terms incorporated (e.g. Church Mutual)
3. Legal; exemption – “ministerial exception/exemption

PRACTICAL ISSUES TO CONSIDER REGARDLESS OF CHURCH SIZE

1. PEO – what is it?
   - A. Does using a PEO mean you give away your autonomy or ability to make decisions under biblical considerations re: employees?
     - depends on PEO.
   - B. Benefits:
     - generally, **<u>significantly</u>** lower cost health insurance costs as you are part of buying power of an organization that brings 100,000 plus to health carriers (vs. taking, say, 10 employee group to market). e.g. CC South Bay with 56 f/t employees saved over $12,500 a year per employee for exact same health plan,
     - also, savings on work comp premiums
     - affordable payroll lessens burden on accounting staff
     - HR overview and case-by-case in person availability. Updates issued for new state laws and federal employee laws - 24/7 assistance with re: issues
     - 401 retirement plan availability and management by independent 3rd party organization
   - C. Why Insperity?
     - understands religious non-profit space, including parsonage allowance vis-à-vis payroll, how parsonages are treated to be in compliance with state minimum wage and salary laws.
     - 30-day right to terminate at any time if dissatisfied
     - Insperity – “We advise…you decide.” Insures that PEO will not usurp church leadership’s scriptural prerogatives

Property, Liability and Other Insurance:

A. Your deductible – low amount ($1,000 or $2,500) vs. savings with $10K, $25K or $50K?

B. Do not get married to a broker - Shop rates at least every two years as with all vendors – keep them honest.

C. Threshold need is having adequate coverage, NOT cheapest rates

RABBI TRUSTS

A. What is it?
B. Benefit – unlimited tax deferred contributions on an annual basis
- cost to establish?
- investment profile – “wealth preservation”

ELECTRONIC GIVING SOLUTIONS

A. PushPay vs. Subsplash and other providers

B. Merchant agreements:

- term required v. termination at will (if term, then rolling rates based upon transaction volume
- unilateral termination rights?
- cheap rates, but undisclosed or fine print add-on’s (e.g. mo. statement fee, PCI compliance costs, etc.)

C. Giving portal functionality

RELYING ON SECTION 508(C)(1)(A) VS. FILING AS A 501(C)(1)3) TAX EXEMPT ORGANIZATION

(handout)

EMPLOYEE RETENTION CREDIT ("ERC")

- Passed by Congress a a part of the financial assistance mechanisms (CARES Act) offered to businesses to help them through the pandemic
- Offers to churches the opportunity to apply for and receive a tax refund check representing a % of the payroll taxes paid during given payroll periods during Covid. For businesses and non-profits that continued to pay employees during a period of time they were shut down due to Covid OR had a decline in revenue.

- 2020 FY window is (finally) now open
- Takes less than 30 minutes to complete and file a request
- Can be as much as $5,000 to $10,000 refund per full-time employee

QUESTIONS AND ANSWERS

Resolution of the Board of Trustees/Directors
Of
Calvary Chapel __________________

WHEREAS, this board is aware of the need to define the conditions whereby this body performs marriage ceremonies in light the US Supreme Court ruling on Friday June 24, 2015 in a 5 to 4 decision that "same-sex marriage" is a constitutional right on the basis of the Court's majority's interpretation of the Fourteenth Amendment, and potential that decision has to ultimately force Churches to perform weddings contrary to our Constitutional First Amendment freedoms of religion, assembly and association, as well as the Biblical definition to which we hold, be it,

RESOLVED, That Calvary Chapel ____________________ does hereby act by a unanimous vote of the Board of Trustees/Directors on, 2015, that Calvary Chapel ___________________ shall not perform marriages between parties other than those who meet the Biblical criteria for marriage as defined by Scripture as we understand it. The words "Biblical and Scripture" are hereby defined and understood to mean the entire Old and New Testament, New King James Bible 2nd edition, Thomas Nelson Publishers, be it further,

RESOLVED, That All weddings performed here at Calvary Chapel ______________ are considered a worship service and are to be conducted as such with attention to the Biblical definition of marriage at the center of said services, be it further,

RESOLVED, That all church facilities, furniture and equipment are to be considered implements for worship services and are not to be rented, loaned or otherwise used for any purpose that does not meet the published mission statement of the church, be it further,

RESOLVED, That couples Seeking to be married at Calvary Chapel _____________ must complete six weeks of biblical premarital counseling, using "Gods Design for Marriage", written by Pastor Jeff Gill, and be in fellowship at Calvary Chapel ____________. Both parties must be believers in Jesus Christ as defined by scripture, so as to not be unequally yoked together, as well as believe all the basic tenants of the Christian faith according to our published "Statement of Faith" which is on the back of the church bulletin and our web site. They must meet the criteria for God's definition of a married couple as define in Genesis Chapter 2, which is clearly only between one man and one woman, for life, be it further,

RESOLVED, That Calvary Chapel _______________ reserves the right to exercise its discretion, to perform marriages based solely on our understanding of Biblical knowledge, and thereby the limitations and definitions that the Scriptures place upon the marriage relationship, and thereby shall not for any reason be forced to perform marriage ceremonies that fall outside of that understanding, Included in, but not limited to, excluding, performing marriages between couples that are deemed, to be living in open sin as defined by the Holy Scriptures, at a minimum, specifically referring to the following passages of Scripture, 1 Corinthians 6:7-11, Romans 1:18-32 and Galatians 5:19-21 be it further,

RESOLVED, That the Senior Pastor shall be granted full and final authority, at his discretion, to approve or disapprove of all inquiries as to the suitability of any and all couples, seeking marriage ceremonies to be performed by all pastors within this ministry, be it further,

RESOLVED, That Couples failing to meet the above criteria shall not be considered for marriage by any pastoral staff of Calvary Chapel of South Bay effective the date of this resolution additionally be it understood that this written resolution has been our unwritten practice and principle since the founding of this ministry.

THEREFORE, This Resolution stands in full force and effect until revoked by and action according to the bylaws of Calvary Chapel South Bay.

WITNESSED BY,

(insert Board members names here)

The Board of Trustees/Directors
Calvary Chapel of South Bay, Inc.

Date: 6.29.15

Certificate of the Secretary

I, ________________________, do hereby certify that I am the duly elected and qualified secretary and keeper of the corporate seal of Calvary Chapel ___________________, a non-profit corporation organized and existing under the laws of the State of Colorado and that the foregoing is a true and accurate copy of a resolution duly adopted at a meeting of the members thereof, convened and held in accordance with the bylaws of said church on the 29th day of June, the year 2015, and entered into the minutes and that such resolution is now in full force and effect.

IN WITNESS WHEREOF, I have affixed my name as secretary of the corporation and thereby have caused the corporate seal of said church, Calvary Chapel of South Bay to be affixed hereunto this 29th day of June, the year 2015.

By: ____

____
Secretary of the Corporation
Calvary Chapel ________________________

Choosing whether to file as an IRS 501(c)(3) versus a IRS Section 508(c)(1)

Controlling Law:

Jack Lane Taylor v. Commissioner holds that Section 508(c)(1) simply relieves churches from applying for a favorable determination letter regarding their exempt status as required by section 508(a). **Nothing in section 508(c)(1) relieves a church from having to meet the requirements of section 501(c)(3).**

Implication:

Section 508 does not define a church, nor does it grant a church special government-free tax-exempt status. There is, in fact, no such thing as a 508 church. However, there is a difference for a church that claims its exempt status under 508(c)(1). The Internal Revenue Code does not define what happens when a church doesn't receive official recognition (i.e., the church did not file for tax exempt status under 501(c)(3). *Jack Lane* Taylor holds that **if the church relies on section 508(c) and the church does not file for recognition under Section 501(c)(3) through the IRS issuance of a tax determination letter, the church is actually handing that burden to each and every one of your donors** in order for that donor to claim/write off their donation. If one of the church's donors is audited, that donor must establish or prove that the church meets all the requirements and qualifications of a section 501(c)(3) organization, which would already be determined were it to file as a 501(c)(3) tax exempt organization. See *Branch Ministries vs. Rossotti*, which states "because the church has not previously been determined by the IRS to have met the Section 501(c)(3) criteria, there is no presumption that the church is tax-exempt under Section 501(c)(3)." So, the burden of proving tax exemption and deductibility of the contribution is shifted to the donor.

Conclusion:

The better practice is to file as a IRS Section 501(c)(3) organization and receive a tax determination letter than do a quicker, simpler filing under Section 508(c) due to the "donor issue." **Apart from donors who are individuals, most any organization, trust, foundation or otherwise that larger church donors use to donate WILL NOT undertake this burden of proof and will almost certainly not fund the donation absent the church producing a tax determination letter than can only be obtained by applying for as a 50(c)(3) organization.**