

## Incorporating Cumberland Presbyterian Churches

### **What is a corporation?**

A corporation is a legal entity which is regarded as having an existence separate from that of its members. Most Cumberland Presbyterian churches are "associations." In most states, associations are not legally recognized, but are simply considered to be a group of individuals acting together in a type of "partnership." Unlike an association, a corporation is legally separate from its members, and has its own rights and obligations under state corporation laws.

Corporations are of two basic types: business corporations are normally operated for trade or commerce (General Motors or Proctor & Gamble, for example). Nonprofit corporations are typically organized for religious, charitable, educational, or scientific purposes. A church corporation would be a nonprofit, religious corporation, and would not have shares of stock nor pay dividends or profits to any person.

### **Why should a church incorporate?**

There are several advantages to operating an organization as a corporation. The principal advantage concerns the liability of members for the debts and legal obligations of an organization. In most states, the members of an unincorporated association can be held personally responsible for the legal obligations of the association or even its other members. For example, if an unincorporated church incurs a debt, the creditor may be able to collect the debt from the members of the church. Likewise, if a pastor or church member negligently injures a third party while on church business, the injured party may be able to collect damages from any or all of the members of the church.

Individual members of a corporation are generally not liable for the debts and other legal obligations of the corporation. Creditors of a corporation and those who hold judgments against a corporation must collect from the assets of the corporation, and not from its members. By conducting the church's activities in a corporate form, church members can protect their homes and other property from liabilities which the church or other members might incur. Individual church members would not be liable for the debts of the church nor for judgments rendered against the church or against other church members for accidents which happen in the course of performing the work of the church.

Incorporation also makes the church a legal entity recognized by law. The church can own

property in its own name rather than in the name of trustees. A church corporation can execute deeds, mortgages, easements, and other legal documents. The church can sign contracts, borrow money, and transact other business in its own name.

The pastor, elders, and other people who serve in the church may be better protected from personal liability if the church is incorporated. In many states, the laws provide for a church to "indemnify" its officers and directors for any personal liability they may incur because of actions they take in the course of their work for the church. For example, if a former church employee sues the individual members of the session for firing him, the corporation may be required to pay any judgment awarded against the members of the session, as well as their legal expenses. Knowing the church will have to "stand behind them" may make individuals more willing to serve on the church's governing body.

Incorporating the church can help to clarify the tax exempt status of the church. Although churches are exempt from federal income tax without having to file exemption applications, the Internal Revenue Service requires tax-exempt organizations to include certain provisions in their organizing documents. Most unincorporated churches do not have the kind of organizing instruments which would permit the organization to be recognized by IRS as tax-exempt.

Finally, having a corporate structure may provide clarity for your church regarding its structure and the correct process for conducting its operations. The church will be guided by the state nonprofit corporation laws and its adopted bylaws.

#### **Are there disadvantages to incorporating?**

There are some minor disadvantages. Your state will charge a small fee for incorporating, and there may be legal expenses involved in drafting and filing the corporation's instruments. Some states require corporations to make annual reports and charge small administrative fees or taxes. (For example, in Tennessee a corporation typically pays a one-time fee of \$50 to file its charter, plus another \$5 to record the charter with the local county register. Each year the corporation pays an annual report fee of \$10 and a privilege tax of \$10.)

Corporations are "creatures of law." By choosing to conduct its affairs as a corporation, the church is agreeing to abide by the applicable state laws. Most advocates of religious freedom do not consider it a problem for churches to operate in a corporate form. However, laws do impose requirements about such matters as annual meetings, the duty of officers and directors to the corporation, and giving proper notices before taking important actions. The church corporation must be prepared to observe these legal requirements.

#### **Is incorporation more advantageous for some churches?**

Even small churches can recognize a benefit from incorporating and protecting their members from being personally liable for church obligations. However, some church ministries naturally

involve more potential liability than others. If your church operates a child care program, a "mother's day out," a church school, or has a large youth program or a bus ministry, the church may want to give serious consideration to incorporating.

### **Has the General Assembly addressed the incorporation of churches?**

Yes, the General Assembly has recognized that it is appropriate for Cumberland Presbyterian churches to operate using a corporate form. In 1997, the General Assembly adopted the following recommendations:

That the General Assembly affirm that incorporation of particular churches, presbyteries, and/or synods is not inconsistent with the organization or polity of the Cumberland Presbyterian Church if the governing document of the corporation recognize the authority of the *Confession of Faith*, the *Constitution*, *Rules of Discipline*, and *Rules of Order* of the Cumberland Presbyterian Church.

That the General Assembly encourage local congregations to study whether incorporation provides a structure which helps the congregation to accomplish its mission and ministry in the present legal and business environment.