

4/3/2020

Constitutional Musing

Loans for a Congregation or Session

There have been a lot of questions regarding the powers of a congregation to apply for unsecured loans this week since the federal government has made available the possibility that religious entities may apply for loans from federal agencies or loans that are backed by federal funds. This constitutional musing does not address the wisdom of a session entering into an unsecured loan from a federal agency but merely who has the power within the Presbyterian Church (U.S.A.) polity to make the decision whether or not to apply for a loan.

Unsecured Loan:

A session may make the decision to apply for an unsecured loan on behalf of the congregation as the council that is responsible for setting the budget (G-3.0205ⁱ). The decision whether or not to apply for an unsecured loan is not one that is required or approved as congregational business in G-1.0503.ⁱⁱ It is also not required that the session receive presbytery approval for the application for an unsecured loan (G-4.0206aⁱⁱⁱ).

If the session functions as the trustees of the congregation, G-4.0102^{iv}, the session may make the actual application for the unsecured loan. If the congregation has elected individual trustees separate from the members of the session, then the session may direct the trustees to make the application for the unsecured loan (G-4.0102 and G-4.0101^v).

Loan Secured by Real Property:

If the loan is secured by real property then it is required that the congregation make this decision at a congregational business meeting under G-1.0503 d.^{vi} It is also required that the congregation get presbytery approval for a loan secured by real property under G-4.0206a.^{vii}

The trustees are empowered to make application for a loan secured by real property at the direction of the congregation and the session (G-1.0503, G-3.0205, G-4.0101).

Loan Secured by Non-Real Property:

The place that is not clear is when a congregation wants to apply for a loan secured by non-real property. There is no authoritative interpretation regarding this. However, we do not read G-1.0503d or G-4.0206a to require that a congregation must approve and must seek presbytery approval for a loan secured by non-real property.

It may be that a presbytery does want oversight over this particular type of loan, however, if there is a concern that the congregation is not able to sustain its budget and may need a decision by the presbytery regarding merging two or more congregations, dismissal to another reformed denomination, or dissolution of the particular congregation. The presbytery may be concerned that a loan which is secured by non-real property may end up encumbering real property if there are not sufficient non-real assets to fulfill the loan. The presbytery could certainly review the loans secured by non-real property under its power of administrative review, either general or special (G-3.0108^{viii}).

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Presbytery Cosignatory:

A presbytery could always make the discretionary decision to cosign any loan with a congregation or a session and assume liabilities if the congregation defaults on the loan. It is not required that a presbytery agree to cosign a loan whether it is secured or unsecured.

ⁱ G-3.0205 *Finances*

In addition to those responsibilities described in G-3.0113, the session shall prepare and adopt a budget and determine the distribution of the congregation's benevolences. It shall authorize offerings for Christian purposes and shall account for the proceeds of such offerings and their disbursement. It shall provide full information to the congregation concerning its decisions in such matters.

The session shall elect a treasurer for such term as the session shall decide and shall supervise his or her work or delegate that supervision to a board of deacons or trustees. Those in charge of various congregational funds shall report at least annually to the session and more often as requested. Sessions may provide by rule for standard financial practices of the congregation, but shall in no case fail to observe the following procedures:

- a. All offerings shall be counted and recorded by at least two duly appointed persons, or by one fidelity bonded person;
- b. Financial books and records adequate to reflect all financial transactions shall be kept and shall be open to inspection by authorized church officers at reasonable times;
- c. Periodic, and in no case less than annual, reports of all financial activities shall be made to the session or entity vested with financial oversight.

ⁱⁱ G-1.0503 *Business Proper to Congregational Meetings*

Business to be transacted at meetings of the congregation shall be limited to matters related to the following:

- a. electing ruling elders, deacons, and trustees;
GA (2006, 38, 40, 439, Item 05-25): A congregation may adopt a policy prohibiting election of the congregation's paid staff for nomination and election as an officer or trustee of that congregation.
PJC (2002, 214-01, 332, Hair and McCallum v. First Stamford, CT): Installation of new officers effectively dissolves the former positions and renders claims to those positions moot.
PJC (1996, 208-1, 167, 12.044, Gallman v. Oak Grove PC): Congregation can dissolve boards and elect whole new slate if can't establish who the officers are.
- b. calling a pastor, co-pastor, or associate pastor;
- c. changing existing pastoral relationships, by such means as reviewing the adequacy of and approving changes to the terms of call of the pastor or pastors, or requesting, consenting to, or declining to consent to dissolution;
- d. buying, mortgaging, or selling real property;
- e. requesting the presbytery to grant an exemption as permitted in this Constitution (G-2.0404).

f. approving a plan for the creation of a joint congregational witness, or amending or dissolving the joint congregational witness (G-5.05).

Whenever permitted by civil law, both ecclesiastical and corporate business may be conducted at the same congregational meeting.

iii G-4.0206 a. *Selling or Encumbering Congregational Property*

A congregation shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the congregation.

G-4.01 *Incorporation and Trustees*

G-4.0101 *Incorporation and Power*

Where permitted by civil law, each congregation shall cause a corporation to be formed and maintained. If incorporation is not permitted, individual trustees shall be elected by the congregation. Any such individual trustees shall be elected from the congregation's members in the same manner as those elected to the ordered ministries of deacon and ruling elder. Terms of service shall be governed by the provisions of G-2.0404.

The corporation so formed, or the individual trustees, shall have the following powers: to receive, hold, encumber, manage, and transfer property, real or personal, for the congregation, provided that in buying, selling, and mortgaging real property, the trustees shall act only after the approval of the congregation, granted in a duly constituted meeting; to accept and execute deeds of title to such property; to hold and defend title to such property; to manage any permanent special funds for the furtherance of the purposes of the congregation, all subject to the authority of the session and under the provisions of the Constitution of the Presbyterian Church (U.S.A.). The powers and duties of the trustees shall not infringe upon the powers and duties of the session or the board of deacons.

Where permitted by civil law, each presbytery, synod, and the General Assembly shall cause a corporation to be formed and maintained and shall determine a method to constitute the board of trustees by its own rule. The corporation so formed, or individual trustees, shall have the following powers: to receive, hold, encumber, manage, and transfer property, real or personal, for and at the direction of the council.

G-4.0102 *Members of the Corporation*

Only persons eligible for membership in the congregation or council shall be eligible to be members of the corporation and to be elected as trustees. **The ruling elders on the session of a congregation, who are eligible under the civil law, shall be the trustees of the corporation, unless the corporation shall determine another method for electing its trustees.** Presbyteries, synods, and the General Assembly shall provide by rule for the election of trustees from among persons eligible for membership in the council.

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^{vi} G-1.0503d

- d. buying, mortgaging, or selling real property;

^{vii} G-4.0206 a. *Selling or Encumbering Congregational Property*

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^{viii} G-3.0108 *Administrative Review*

Higher councils shall review the work of lower councils in the following ways:

- a. *General Administrative Review*

Each council shall review annually or biennially, based on the body's meeting frequency, the proceedings and actions of all entities related to the body, all officers able to act on behalf of the body, and lower councils within its jurisdiction. In reviewing the procedures of the lower council, the higher body shall determine whether the proceedings have been correctly recorded, have been in accordance with this Constitution b, have been prudent and equitable, and have been faithful to the mission of the whole church. It shall also determine whether lawful injunctions of a higher body have been obeyed.

- b. *Special Administrative Review*

If a higher council learns at any time of an alleged irregularity or delinquency of a lower council, it may require the lower body to produce any records and to take appropriate action.
