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BOOK V: TEMPORALITIES UNDER THE REVISED CODE OF CANON LAW

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INTRODUCTION

My topic is Book V of the Code of Canon Law, which concerns the temporal goods of the Church. My perspective is that of a Church administrator with nine years of experience involving both the canonical and the civil legal systems. My task is to present an overview of Book V with special reference to those canons which would be of particular interest to diocesan attorneys. This presentation is divided into three sections: after a brief summary of Book V, I will address those canons which receive or "canonize" certain provisions of civil legislation, and then review the canons which provide for the use of civil legislation in order to achieve the purposes given in the canons.

SUMMARY OF BOOK V.

Book V of the Code contains fifty-seven canons divided into four sections. After five canons which give general norms governing the subject matter, there are fourteen canons which deal with the acquisition of goods, seventeen canons which govern the administration of goods, nine canons concerning contracts, and twelve canons which concern bequests and foundations. In the outline of this presentation can be found a summary of these norms. Although no substitute for the wording of the law itself, the summary can provide a general overview of Book V and note those matters which are of greater importance or which suggest changes in current practice.

The Church recognizes the right of each public juridic person, independent of civil powers, to hold and administer property for the purposes acknowledged in the Church since the first centuries of its existence, namely, divine worship, support of the clergy and other ministers, and the works of the apostolate and charity. All church property is owned by

public juridic persons and never by physical persons, a fact which can be obscured because of the civil modes of property tenure used by most dioceses in this country. The canonical understanding of ownership, or *dominium*, does not admit of fragmentation or division between legal and equitable estates and owners. *Dominium* is indivisible and, in the original understanding, also absolute. With the exception of the Apostolic See, however, *dominium* is not absolute in any strict sense, as we shall see later, because of the rights and duties given in law to the Roman Pontiff and ordinaries for acts of extraordinary administration.

The Revised Code introduces the concept of a private juridic person which also is capable of acquiring temporal goods. These goods, however, are not designated as "Church goods" and, therefore, are not subject to the canons but are regulated by the statutes of the juridic person.

The fact that private juridic persons do not own Church property raises the question of their tax exempt status. Some private juridic persons, such as private associations of the faithful, are listed in the Catholic Directory. Canons 298 through 329 provide for both public and private associations of differing relationships to Church authority. Some of these associations, or private juridic persons, may not meet the IRS requirement that the organization be operated, supervised, or controlled by or in connection with the Roman Catholic Church. It would be helpful, I suggest, to study the various levels of Church supervision provided by the Code in relation to these IRS requirements.

Each public juridic person may acquire goods by any legitimate method. Although free will offerings are the usual way in which the Church is supported, the Code affirms the right of the Church to request support. The Episcopal Conference may also issue norms concerning requests for support and all forms of fund raising. Such norms were issued on November 16, 1977, and are entitled "Principals and Guidelines for Fund Raising in the United States by Arch-Dioceses, Arch-Diocesan Agencies and Religious Institutes." These norms remain in effect. Private persons, physical and juridic, are forbidden to solicit funds without written permission of their own Ordinary and the Ordinary of the place. The Ordinary may also require a special collection to be taken up in all places of worship in the diocese for any Church purpose.

The bishops of a province, with the approval of the Apostolic See, may determine fees to be imposed for acts of executive governance. The Code also gives the diocesan bishop broad powers of taxation. He may impose a moderate and proportionate tax on all subsidiary public juridic persons after consulting with the financial council and the Council of Priests. Other juridic persons and even physical persons may be taxed in case of grave necessity or if the bishop has this right by a particular law or custom.

Contributions made to superiors or administrators of any juridic per-

son, public or private, are presumed to be made to the juridic person unless the contrary is evident. It is not clear what kind of evidence is required to prove that the contribution was intended for the administrator rather than for the juridic person. Moreover, such contributions may not be refused by the administrator except for a just cause and, when significant amounts are involved, with permission of the Ordinary.

The revised Code changes the provision for the support of the clergy. The older law presupposed a system of benefices. A benefice is a juridic person established as an endowment for an ecclesiastical office. The person appointed to that office has the right to receive revenues of the endowment. In 1922, Rome clarified the status of American parishes by declaring them to be benefices. In practice this has come to mean that the clergy are supported from the revenues of the parish. The Code of Canon Law now provides for a special diocesan institute which would centralize the support of the clergy by collecting offerings for this purpose and distributing them equitably to all priests in the diocese. This institute would be mandatory only if no other suitable provision is made in diocesan practice. The traditional American practice will, I suppose, continue in most dioceses. The Code also requires a fund to provide retirement and social welfare benefits for the clergy.

Administrators must observe with exactness the civil laws governing employment and should pay employees a wage adequate for the support of themselves and their families.

Local Ordinaries have three general responsibilities in financial administration: first, they should issue special instructions within the limits of canon law governing financial administration in the diocese; second, they should appoint administrators for each juridic person; and, third, they should carefully supervise the administration of goods belonging to all subsidiary public juridic persons in the diocese. The bishop may delegate the financial officer with responsibility for the last two duties, namely the appointment of administrators and the supervision of administration. Neither the Ordinary nor the financial officer should intervene in ordinary administration except in cases of negligence or abuse. It is the right of the bishop to define the limits and procedures of ordinary administration for the public juridic persons subject to him. This generally includes whatever is necessary for the preservation of Church property, whatever actions are required to collect income, pay bills, make ordinary repairs, keep records, and transact customary business. Whatever exceeds the limits and procedures of ordinary administration is termed extraordinary. Administrators who act in any extraordinary matter without written permission of the Ordinary do so invalidly.

The Episcopal Conference may define which acts constitute extraordinary administration of the diocese as a juridic person. The bishop may not issue an act of extraordinary administration on behalf of the dio-

cese without the consent of the financial council and the College of Consultors. In addition to the diocesan financial council, the Code also requires that each juridic person must have an advisory financial council of at least two persons. Parishes are, of course, included. The civil laws of the territory concerning contracts are recognized as binding in Canon Law with the exceptions noted in the canons. The most important of these exceptions concerns transactions involving alienation or conveyance. Father Adam Maida dealt with this complex issue at the 17th meeting of diocesan attorneys. The basic norm is contained in Canon 1291: permission of the competent authority is required to alienate validly stable patrimony the value of which exceeds the limit given in law. Stable patrimony consists of any type of assets designated or stabilized by the competent authority to secure the financial status of the juridic person. Assets are typically stabilized by investments in real property, but they may also be stabilized by the creation of special funds which are securely invested. Once capital has been stabilized in this fashion, it cannot be destabilized in any way without permission of competent authority. Any act which conveys or invades stable capital would be subject to the laws governing alienation. Furthermore, by virtue of Canon 1295, any act which encumbers or endangers stable capital or endangers the financial status of the juridic person is also subject to the laws on alienation.

A special case of alienation may occur through civil incorporation or reincorporation of a public juridic person. If this results in a loss of Church control, with the rights and duties of the ordinary not protected in the instruments of civil incorporation, it can be argued that alienation is involved. Diocesan attorneys and canon lawyers should work closely together in establishing new diocesan corporations or reincorporating existing ones.

There is a hierarchy of authorities competent to grant permission for alienation. Up to a certain amount, the administrator or governing board of the juridic person is competent. The Episcopal Conference has the right to establish that amount. Between this amount, referred to as the minimum, and a higher amount also established by the Episcopal Conference and referred to as the maximum, the competent authority is the local Ordinary who, however, needs the consent of the financial council, College of Consultors, and of those with vested interest before he can grant permission. These groups should examine the financial statements of the juridic person before granting consent. At present, the maximum amount established by the Episcopal Conference is \$1,000,000. Transactions involving values in excess of that amount require the additional permission of the Apostolic See. For any act of alienation there is also required, but not for validity, a just cause and written estimates of values.

The last section of Book V deals with bequests and foundations. The Ordinary is the executor of all donations and bequests to the Church and

therefore has the right and duty to supervise the fulfillment of all pious wills and to receive an accounting from the executors named in all pious wills or other documents. Stipulations added to final bequests contrary to this right are considered non-existent. Persons who accept the role of fiduciary or trustee for donations or bequests to the Church must inform the Ordinary, listing the assets of the trust; if the donor forbids this, the trust should not be accepted. It should be noted, however, that the fiduciary in Canon Law does not have legal title to the estate. *Fiducia* in Church law is an obligation accepted to fulfill the will of a testator or donor. Ownership or *dominium* of the estate is vested solely in the public juridic person which acquires it. The fiduciary is not a trustee as understood in the context of American law. Accordingly, it is not likely that anyone will be named a fiduciary in this country in the canonical sense, and the duties of those named trustees would be governed by requirements of civil law.

There are two types of foundations. Autonomous foundations are established as separate juridic persons to pursue purposes congruent with the mission of the Church. The 1917 Code did not provide for this type of foundation. The other type of foundation is non-autonomous, similar to term endowments given to a juridic person for a restricted purpose. When the term or period of time expires, the goods pertaining to the non-autonomous foundation should be used for the support of the clergy or be added to the unrestricted funds of the juridic person, unless the intention of the donor was otherwise expressly stated. The period of time for which non-autonomous foundations can be established is to be determined in particular law. Foundations may not be validly accepted by juridic persons without written permission of the Ordinary to be granted only if the juridic person is able to assume the new obligations.

In the years to come bishops may choose to promote the idea of non-autonomous foundations and establish norms for them. I suspect, however, that most diocesan bishops would prefer the faithful to remember the Church in their wills without naming a restricted purpose. This practice would certainly cause less problems in Chancery Offices. Some of the problems are foreseen in the rest of the canons of this section which deal with adjustments in restrictions attached to donations and bequests. When the income from a foundation is insufficient to fund the obligations accepted with the bequest or donation, the Ordinary, in consultation with the financial council and those with vested interest, has the right to make necessary adjustments, observing, however, special prescriptions for the reduction of Mass obligations. Such rights, of course, may not be recognized in civil law.

CANONICAL RECEPTION OF CIVIL LEGISLATION

In the second part of this Article, I will note three areas of civil legislation which have been received or "canonized" by the Code of Canon Law. The first deals with prescription or adverse possession, the second with employment and labor laws, and the third with contracts.

In Canon 1268 the Church accepts prescription as it is described in Canons 197-199 as a means for the acquisition and the disposal of temporal goods. Canon 197 contains the basic norm: "The church receives prescription as it exists in the civil legislation of the respective nations, as a means of acquiring or losing a subjective right as well as of freeing oneself of obligations, with the exceptions that are established in the canons of the code." Canon 198 requires good faith. Canon 199 restricts certain things from prescription such as rights and duties of divine or positive law, the certain boundaries of ecclesiastical territories, and the stipends and obligations of Masses. Canon 1269 provides special norms for the prescription of sacred objects. Canon 1270 requires 100 years for the prescription of objects and rites belonging to the Apostolic See, and 30 years for those which belong to other public juridic persons.

These provisions may seem of little practical importance, but I do know cases where canonical ownership of property passed from one public juridic person to another within the same diocese by virtue of prescription. Certain civil modes of property tenure, such as corporations sole or titles naming the bishops as trustee of all church property, may make it easier for this situation to occur.

The second example of the canonical reception of civil legislation will undoubtedly have much more practical importance. Canon 1286 requires administrators to observe with exactness the civil laws which concern labor and social life according to the principles handed down by the Church and to pay those who work by contract an equitable and decent wage or salary so that they may provide appropriately for their needs and those of their families. This canon will undoubtedly occasion much discussion and study among both canon and civil lawyers. It raises many interesting questions. I would suggest that the canons should be understood with reference to the relevant papal teaching on social justice and especially in the context of articles 67 and 68 of the Pastoral Constitution on the Church in the Modern World of the Second Vatican Council. It does not seem to me that the Church is to give up its exemption from state control, certainly not with reference to NLRB jurisdiction; but perhaps we should raise once again the question of unemployment compensation through diocesan institutes if not through cooperation with state offices. Furthermore, cooperation with the social security system would seem to be consistent with the intention of this canon.

The third instance of the canonical reception of civil legislation is

repeated from the 1917 code. Canon 1290 provides that "the same general and specific regulations concerning contracts and payment which civil law has established for a territory should be observed in Canon Law concerning an issue which is subject to the governing power of the church and should have the same effects in Canon Law. This general norm should be observed unless such civil regulations are contrary to divine law or unless Canon Law makes some other provision." By way of exceptions, the Code establishes invalidating limits on ordinary administration and requirements for valid alienation and permits proof by witnesses in canonical actions which concern contractual disputes even if the civil law does not so permit. Otherwise, the proper form for all contracts is the form prescribed by civil law for that territory, even between two persons of the same diocese, and even if the contract is not intended to have civil effect. Diocesan attorneys should certainly be consulted when administrators are entering into major contractual agreements in the name of public juridic persons.

THE USE OF CIVIL LEGISLATION

In the last part of this Article I would like to call attention to six canons which indicate that civil legislation or legal procedures should be used to pursue values promoted by the Code.

Canon 1274 urges that institutes for the support and social benefits provided for clerics and other persons who serve the church should be established so that they are also recognized as operative in civil law. Many dioceses have established retirement funds for clergy which are recognized by civil law and have received qualification from the IRS. This canon, however, envisions a different type of institute which would collect and administer funds for the general support of the clergy. These may even be established on an inter-diocesan basis. It is doubtful that such institutes will be common, but where established, they should be recognized and effective in civil law.

Canon 1281 paragraph 3 states that a juridic person is not held responsible for the acts invalidly issued by its administrators unless and to the extent that those acts have resulted in some benefit to the juridic person. A juridic person is responsible for the acts unlawfully but validly issued by its administrators, but it retains the right to sue or have recourse against administrators who have caused damage. Theoretically, actions against such administrators may be initiated in Church courts. Where this is not feasible, and as an alternative preferable to judicial action, diocesan procedures for conciliation and arbitration may be used to settle the issue. However, the juridic person may have to use the civil courts in order to obtain satisfaction.

Canon 1284 paragraph 2 provides that administrators must "take

care that the ownership of ecclesiastical goods is safeguarded through civilly valid methods." This raises once again the questions of the mode of property tenure and civil incorporation. The methods chosen must safeguard the ownership of ecclesiastical goods, but must also safeguard the rights of Ordinaries given in the Code.

Canon 1288 forbids administrators to initiate or respond to a lawsuit on behalf of a public juridic person in a civil court without written permission of the Ordinary. Diocesan attorneys should be aware of this norm, and insist on written permission from the Ordinary before acting on behalf of a parish or other public juridic person.

Canon 1296 deals with recourse against administrators who have alienated property in a manner that is civilly valid but canonically invalid. Competent authority is to decide by whom and against whom an action can be initiated. These deliberations will, of course, involve diocesan attorneys who must decide if a civil action is possible.

Finally, Canon 1299 paragraph 2 provides that the solemnities of the civil law should be observed in the dispositions made for the good of the Church on the occasion of death. Diocesan attorneys are frequently called upon to assist the faithful in preparing their last wills and testaments, and this practice should be encouraged. However, to avoid a possible charge of undue influence if the church is the sole beneficiary, independent counsel should be recommended.