The Official Catholic Directory: Civil and Canon Law Requirements

J. Michael Fitzgerald

Follow this and additional works at: https://scholarship.law.stjohns.edu/tcl

Part of the Religion Law Commons

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.
On March 25, 1946, the Department of Treasury issued a Group Revenue Ruling ("Group Ruling") to the United States Catholic Conference ("USCC"). That ruling determined that the agencies and instrumentalities of all educational, charitable and religious institutions operated, supervised, or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions, appearing in the Official Catholic Directory ("OCD") were exempt from federal income tax under the Internal Revenue Code. In addition to exemption from federal income tax, such entities are entitled to receive contributions which taxpayers may deduct for purposes of federal income, estate and gift taxes. Each year the Group Ruling is updated to reflect organizations added to or deleted from the OCD. The USCC has delegated to each diocesan bishop the responsibility of insuring that applicants for inclusion in the OCD meet all legal requirements established by the Code and the Internal Revenue Service ("IRS"). Recent events give credence to the claim that many dioceses do not adequately or effectively screen applicants and that once an entity is listed, it remains listed forever despite any changes in its status. Those events include the sale of a Catholic hospital to a proprietary chain and a federal court decision that a Jesuit sponsored university is not owned or controlled by the Church.


† The USCC is a nonprofit membership corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, whose members include the bishops of the Catholic Church in the United States. It is the central organization holding a group tax exemption covering all organizations listed in the Official Catholic Directory. This group ruling established the tax exempt status of thousands of Catholic organizations nationwide. The National Conference of Catholic Bishops ("NCCB") is a separate, unincorporated ca-
A brief summary of each event will provide insight to the problem:

Saint Joseph's Hospital is a 539 bed tertiary care hospital located in Omaha, Nebraska. It was founded many years ago by the Sisters of St. Francis of Colorado Springs. It is the primary teaching and research facility for Creighton University Health Sciences Schools of Medicine, Dentistry, Nursing, Pharmacy, and Allied Health. Creighton University is a Jesuit institution. In 1973, the Sisters turned over control of the hospital to a nonprofit corporation with a self-perpetuating board of trustees. That board continued to operate the hospital as a Catholic institution. The hospital remained a member of the Catholic Health Association and it continued to be listed in the OCD. Recently, American Medical International, Inc., an investor-owned multihospital chain, announced that it would purchase the hospital for one hundred million dollars ($100,000,000.00) and that it would continue to operate the hospital in the Catholic tradition.

Loyola University of Chicago was alleged to have violated the civil rights of Jerrold S. Pime, a former part-time lecturer in philosophy, by its refusal to consider him for a full-time, tenure-track, teaching position because he was a Jew, while hiring three Catholics, all of them Jesuits. Loyola raised two affirmative defenses. The first was that it was exempt from the employment discrimination act because it "is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society . . . " Loyola conceded that it was an employer under that act but contended that the amount of money the Jesuits donated to the university from their salaries, the number of Jesuits on the Board of Trustees, and the role the Jesuits play in the administration of the university, established that Loyola is supported, controlled, and managed by the Society of Jesus, a religious order of the Catholic Church. Loyola raised as a second affirmative defense the exemption found in section 703(e)(1) of Title VII which states that:

Notwithstanding any other provision of this title . . . it shall not be an unlawful employment practice for an employer to hire and employ employees . . . on the basis of their religion . . . in those certain instances where religion . . . is a bona fide occupational qualification reasonably necessary for the employment in question.

---

* See N.Y. Times, June 6, 1984, at D5, col. 6.
* Civil Rights Act of 1964 § 703(e)(2).
* Civil Rights Act of 1964 § 703(e)(1).
* Pime, 585 F. Supp. at 440.
CIVIL AND CANON LAW REQUIREMENTS

... to the normal operation of that particular business or enterprise... 

The Court denied the first affirmative defense because Loyola failed to prove that it is in whole or in substantive part supported, controlled, or managed by the Society of Jesus. In fact, after examining the corporate charter, bylaws, and operating philosophy of the University, the Court found just the opposite to be true. The University is a nonprofit corporation. Its bylaws require that the president be a Jesuit and that one more than one-third of the Board of Trustees must be Jesuits. Any amendments to the bylaws must be approved by two-thirds of the trustees, a majority of whom are men and women from various walks of life and of various religious faiths. The principal source of Loyola's financial support is tuition fees paid by students. The Loyola Jesuit Community of Chicago contributes 0.3 percent of Loyola's total annual revenue. That contribution was a return of approximately twenty-five percent of salaries which were paid by the University to its Jesuit faculty. The impact of the Society of Jesus on the management of the University was negligible: seven percent of administrators and nine percent of full-time faculty. 

Even though Loyola failed to prevail on the issue of religious ownership/control, it did prevail on the issue of religion as a bona fide qualification. The University had decided that it needed an adequate Jesuit presence in its philosophy department because it is a university with a Jesuit tradition. Since the University holds itself out to the public as a Jesuit and a Catholic University, having a Jesuit presence is important. The Court agreed that the University had the legal right to maintain such a presence.

If the Board of Trustees can sell St. Joseph's Hospital, is it a Catholic hospital? Is control in or by the Society of Jesus necessary for Loyola of Chicago to be Catholic? In order to address these questions, it is necessary to review the civil law pertaining to the Group Ruling as well as the canon law pertaining to ownership and control of temporal property.

---

8 Civil Rights Act of 1964 § 703(e)(1).
9 Prime, 585 F. Supp. at 440-41.
10 Id. at 437.
11 Id.
12 Id.
13 Id. at 440.
14 Id. at 441. Apparently Loyola and St. Joseph's relinquished control to lay boards in the aftermath of Vatican II and in response to the McGrath thesis. McGrath proposed that once an apostolate had been incorporated as a civil law corporation, it was no longer Church property and was no longer subject to the canon law pertaining to administration and alienation. See J. McGrath, Catholic Institutions in the United States 32-38 (1968). The McGrath thesis has been soundly rebuked by the Holy See. See 9 J. O'Connor, Canon Law Digest 367-71 (1983); cf. A. Maida & N. Cafardi, Church Property, Church Finances, and Church Related Corporations 75-77 (1984).
Such a review should enable us to determine whether or not those institutions belong in the OCD. Since the inclusion in the OCD of an organization that does not qualify poses a risk to all organizations included in the Group Ruling, improper supervision and control of the process could have disastrous consequences for the Church in America.

In order to qualify for inclusion in the Group Ruling, an organization must be both organized and operated exclusively for religious, charitable, scientific, ... literary, or educational purposes, ... no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, ... and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office. In order for an organization to be tax exempt, the organization must be both organized and operated exclusively for one or more of the purposes specified in Section 501(c)(3). Those requirements are known as the organizational test and the operational test. If an organization fails to meet either test, it is not exempt under Section 501(c)(3).

The organizational test provides that any organization included in the Group Ruling, with the exception of those recognized as exempt prior to July 27, 1959, must be a legal entity with an organizational document that meets certain specific requirements. The term "organizing document" refers to an organization's articles of incorporation, its trust instrument, corporate charter, articles of association, or any other written document by which the organization is created. The organizational test must be met by reference to the organizing document and a defect in the organizing document may not be remedied in the bylaws.

The specific requirements that must be included in the organizing document relate to the purposes of the organization and the dissolution of the organization. The organization's purpose must be limited to one or more of the purposes recognized under Section 501(c)(3), and it must not be expressly empowered to engage in, except as an insubstantial part of its activities, activities which are themselves not in furtherance of an ex-

---

14 Id. The term "charitable" is interpreted in its generally accepted legal sense, and includes relief of the poor, distressed or underprivileged; promotion of health; advancement of religion, education or science; erection or maintenance of public buildings, monuments or works; lessening the burdens of government; promotion of social welfare by organizations designed to accomplish any of the above purposes or to lessen neighborhood tension; elimination of prejudice and discrimination; defense of human and civil rights secured by law; and combating community deterioration and juvenile delinquency. Treas. Reg. § 1.501 (c) (3)-1(d) (2) (1959). The term "religious" is not so defined but has been broadly interpreted by the courts. See United States v. Seeger, 380 U.S. 163 (1965).
empt purpose. Further, the organization's assets must be permanently dedicated to exempt purposes. The organizing document must provide that upon the dissolution or termination of the organization, its assets will be distributed to another organization which is exempt within the meaning of section 501(c)(3).\(^\text{18}\)

An organization included in the Group Ruling must also meet an operational test. In order to meet that test, the organization must be operated exclusively for exempt purposes. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes. However, if more than an insubstantial part of its activities are not in furtherance of exempt purposes, it will not meet the operational test.\(^\text{19}\)

An organization may meet the requirements of the operational test and qualify for inclusion in the Group Ruling even though a substantial part of its activities is the operation of a trade or business, provided that the trade or business is directly related to the accomplishment of its exempt purposes.\(^\text{20}\)

In order to satisfy the operational test, an organization must be engaged in activities that further public purposes rather than private interests. The organization must not be operated for the benefit of designated individuals, its creators or their families, or shareholders.\(^\text{21}\) In addition, both the Code and regulations expressly prohibit inurement of an organization's net earnings to the benefit of private shareholders or individuals.\(^\text{22}\) Stated simply, an organization's trustees, officers, members, founders, contributors or other interested individuals may not receive the benefit of its funds except in the form of reasonable compensation. Inurement may take many forms including excessive compensation, favorable loans, rent or other financial arrangements, and provision of goods and services.\(^\text{23}\)

An organization will not meet the requirements of the operational test if more than an insubstantial part of its activities consists of attempts to influence legislation. Such attempts include contacting, or urging the public to contact, members of a legislative body for purposes of proposing, supporting, or opposing legislation.\(^\text{24}\) The term "legislation" includes action by the Congress, any state legislature, any local governing


\(^{19}\) Treas. Reg. § 1.501(c)(3)-1(c)(1) (1959).


\(^{22}\) Treas. Reg. § 1.501(c)(3)-1(c)(2) (1959).


body, or by the public in a referendum or initiative. Attempts to influence legislation include both direct lobbying of legislators and attempts to influence public opinion on legislative issues. However, testimony in response to a written invitation by congressional committees and distribution to the public of results of nonpartisan analysis, study and research are not considered attempts to influence legislation. There is little clarity as to what constitutes more than insubstantial legislative activity. One case held that less than five percent of the organization's time and effort was not insubstantial; whereas another held that about seventeen percent was substantial. One court rejected a percentage test formula to determine "substantiality" and applied a test requiring a balancing of the organization's activities in relation to its objectives and circumstances in order to determine whether a "substantial" part of its activities was intended to influence legislation.

In order to meet the operational test, an organization may not intervene or participate in political campaigns on behalf of candidates for public office. Such participation is not limited to publishing or distributing statements or making oral statements supporting or opposing candidates for public office. In addition, exempt organizations may not participate in or support, financially or otherwise, political action committees or engage in biased voter education polls or questionnaires.

Occasionally an organization operated for the primary purpose of carrying on a trade or business for profit seeks to qualify as an exempt organization on the basis that it pays all its income to one or more exempt organizations ("feeder organizations"). The Code does not allow tax exemption status to such feeder organizations except in narrowly specified instances.

Subsidiaries of exempt organizations are not exempt from tax if they

---

12 Seasongood v. Commissioner, 227 F.2d 907, 912 (6th Cir. 1955).
16 I.R.C. § 502 (1985); Treas. Reg. 1.502-1 (1958). In order to obtain tax exempt status the feeder organization must: (1) have substantially all of its work performed by unpaid workers or volunteers, (2) sell mostly contributed merchandise (e.g., thrift shop), or (3) derive its income in the form of rent, provided the rent is not subject to unrelated trade or business. I.R.C. § 502 (1985).
carry on businesses that would be unrelated trade or business if carried on by the parent organization. Similarly, exemption is also not allowed to an organization owned by several unrelated exempt organizations which provides services to the parent organizations, since such services would typically constitute an unrelated trade or business if regularly carried on by any one of the tax-exempt organizations.

Organizations described in Section 501(c)(3) of the Code are divided into two subcategories—those that are private foundations and those that are public charities. A private foundation may not be included in the OCD. Every organization described in Section 501(c)(3) is considered to be a private foundation except organizations which are described in subdivisions 1, 2, 3, and 4 of Section 509(a) of the Code. Only the first three subdivisions are relevant to this topic. Set forth below is a brief summary of the chief methods by which an organization may avoid classification as a private foundation, including qualification for church, school, or hospital status, and under various support tests:

I. Organizations described in Section 509(a)(1) of the Code are public charities. Section 509(a)(1) operates by reference to six subdivisions of Section 170(b)(1)(A) and provides that organizations described therein are not private foundations. Only four of those subdivisions are relevant here. They are churches and conventions of churches, educational organizations, hospitals and medical research organizations, and publicly-supported organizations. We shall review each one in order:

1. Churches and Conventions of Churches. Neither the Code nor the regulations specifically define the term "church." Further, Congress and the courts have provided little guidance in this respect. In one case, the court stated "[t]o exempt churches, one must know what a church is. Congress must either define 'church' or leave the definition to the common meaning and usage of the word; otherwise, Congress would be unable to exempt churches." The IRS generally applies a fourteen-point test in determining an organization's status as a church. An organization not

---

86 I.R.C. § 509(a) (1) and 170(b) (1) (A) (i); Treas. Reg. § 1.170A-9(a); See also Whelan, "Church" in the Internal Revenue Code: The Definitional Problems, 45 FORDHAM L. REV. 885 (1977).
88 (CCH) Internal Revenue Manual Vol. 4 § 7(10)69-321.3(3). The fourteen point test is as follows: (1) a distinct legal existence; (2) a recognized creed and form of worship; (3) a definite and distinct ecclesiastical government; (4) a formal code of doctrine and discipline; (5) a distinct religious history; (6) a membership not associated with any other church or denomination; (7) ordained ministers ministering to the congregation; (8) ordained ministers selected after completing the prescribed studies; (9) a literature of its own; (10) established
satisfying all fourteen criteria would not necessarily be denied status as a church. However, an organization satisfying only one or two of these criteria may have a difficult time establishing its claim to church status. At a minimum, a church must include a body of believers who assemble regularly for worship and must be reasonably available to the public in its conduct of worship, educational instruction, and promulgation of doctrine. An organization can qualify as a religious organization under Section 501(c)(3) but nonetheless fail to qualify as a church under Section 170(b)(1)(A)(i). The term "convention or association of churches" generally refers to the central convention of a group of churches or to an association of churches of different denominations. Thus, an organization whose membership consists of churches of various denominations would qualify as an association of churches.

2. Educational Organizations. An educational organization is defined as one whose primary function is the presentation of formal instruction and which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. Included in this category are private and public elementary, secondary, and preparatory or high schools, colleges, universities and various other instructional institutions. It does not include organizations engaged in both educational and noneducational activities unless the latter are merely incidental to the educational activities. For example, an organization that primarily engages in medical research and also offers limited instruction to doctors would not be considered an educational organization. Likewise, the IRS has ruled that a correspondence school which

does not include organizations engaged in both educational and noneducational activities unless the latter are merely incidental to the educational activities. For example, an organization that primarily engages in medical research and also offers limited instruction to doctors would not be considered an educational organization. Likewise, the IRS has ruled that a correspondence school which


Cf. Rev. Rul. 58-443, 1958-2 C.B. 102 (numismatic society which primarily collects and preserves coins, and secondarily provides facilities for study, not an educational
also offers a five-to-ten-day seminar is not an educational organization.\(^4\)

It is important to note that an organization may qualify as educational under Section 501(c)(3) but not under the more restrictive standards of Section 170(b)(1)(A)(ii).\(^4\)

3. **Hospitals and Medical Research Organizations.** To be classified as a hospital, an organization’s principal function must be the provision of medical care.\(^4\) The term “medical care” is defined as “the treatment of any physical or mental disability or condition, whether on an inpatient or outpatient basis.”\(^4\) A rehabilitation institute, mental health facility, drug treatment center, or extended-care facility may qualify as a hospital if its principal function is the provision of medical care. The term “hospital” does not include homes for children, the aged\(^9\) or convalescents, vocational training facilities for the handicapped, or organizations providing health care services to patients in their own homes.\(^9\)

To qualify as a medical research organization, an organization’s principal function must be medical research, and it must be directly engaged in the continuous active conduct of medical research in conjunction with a hospital.\(^9\) Such an organization must either devote a substantial part of its assets to medical research, or spend a significant percentage of its endowment for that purpose. An organization that merely disburses funds to other organizations in support of their research, or makes grants or scholarships to individuals, is not a medical research organization.\(^5\)

---


\(^9\) HUD housing programs for the elderly do not automatically qualify for exemption. A home for the aged will qualify for tax exempt status if it is operated in a manner designed to satisfy some combination of the special needs of the elderly recognized by the IRS: housing, health care, and financial security. The need for housing is met if the home provides facilities designed to meet the physical, emotional, recreational, social, and religious or similar needs of the elderly. The need for health care is met if the home directly provides a form of health care or maintains a continuing agreement with other organizations to meet the physical or mental health needs of the residents. The need for financial security is met if the home is committed to an established policy of maintaining in residence those who become unable to pay and if it provides services to the elderly at the lowest possible cost. Rev. Rul. 72-124, 1972-1 C.B. 145; Rev. Rul. 79-19, 1979-1 C.B. 195; Rev. Rul. 79-18, 1979-1 C.B. 194.
There need not be any formal affiliation between the medical research organization and the hospital. It is sufficient that there be a joint effort and continued close cooperation between the two organizations.4

4. Publicly-Supported Organizations. Organizations that are publicly supported normally must receive at least one-third of their total support from governmental units or from direct or indirect contributions from the general public. "Support" does not include amounts derived from capital gains or the performance of exempt functions. The term "normally" generally refers to a four-year computation period.5

II. Organizations described in section 509(a)(2) are public charities. Such an organization must normally receive more than one-third of its support from any combination of 1) gifts, grants, contributions or membership fees; and 2) gross receipts from its admissions, sales or merchandise, performance of services, or furnishing facilities in the performance of its exempt functions. In addition, it normally must not receive more than one-third of its support from gross investment income, and the amount of taxable unrelated business income in excess of taxes imposed by Section 511.6

---

5 I.R.C. § 509(a)(1), 170(b)(1)(A)(vii) (1986); Treas. Reg. § 1.170A-9(e); Rev. Rul. 83-153, 1983-1 C.B. 48; Rev. Rul. 78-95, 1978-1 C.B. 71; Rev. Rul. 77-255, 1977-2 C.B. 74. To determine whether an organization is publicly supported under this section, it is necessary to compute its public support fraction. The denominator of the public support fraction includes the organization's total support from any combination of gifts, grants, contributions, and membership fees from the general public and from governmental units. However, to the extent a single donor's contribution exceeds two percent of the organization's total support, it must be excluded from the numerator of the public support fraction. Rev. Rul. 78-95, 1978-1 C.B. 71. The entire amount of such contribution is included in the denominator of the fraction. Id. The two percent limitation does not apply to contributions from section 170(b)(1)(A) (vi) organizations, governmental units, and other organizations that normally receive a substantial part of their support from public contributions. Id. It does apply, however, to support received from business leagues exempt from tax under section 501(c)(6) of the code.
6 I.R.C. § 509(a)(2); Treas. Reg. § 1.509(a)-3. The denominator of an organization's support fraction is its total support for the year. Support from disqualified persons may not be included in the numerator of the support fraction. In addition, gross receipts from exempt activities may be included in the numerator only to the extent that the amount received from a single source, other than organizations described in section 509(a)(1), does not exceed the greater of five thousand dollars ($5,000.00) or one percent of the organization's total support in the taxable year. Treas. Reg. § 1.509(a)-3(b)(1), 1.509(a)-3(j). If an organization is described both in sections 509(a)(1) and 509(a)(2), it will be treated under section 509(a)(1). I.R.C. § 509(a)(2); Treas. Reg. § 1.509(a)-3. Disqualified persons are defined in section 4946(a)(1) of the Code and include substantial contributors (any person who contributes more than $5,000.00, if such amount is more than two percent of the total contributions of the organization for the year of the contribution) and foundation managers. In addition, government officials, certain family members, corporations, partnerships, trusts,
III. Organizations described in section 509(a)(3) are public charities. Unlike the provisions of section 509(a)(1) and (2) discussed above, which except organizations from private foundation status based upon their institutional nature or sources of support, section 509(a)(3) excepts organizations on the basis of their relationship to other organizations which are themselves described in sections 509(a)(1) or (2). They are thus known as supporting organizations. A supporting organization is not treated as a private foundation on the theory that it is indirectly responsible to the public by reason of its relationship to a publicly-supported organization. Examples would include an organization operated for the benefit of and controlled by a religious order, a trust operated for the benefit of and controlled by a school, or a university press.

To qualify as an organization described in Section 509(a)(3), an organization must be:

A. Organized and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraphs (1) or (2) [of section 509]; B. . . . operated, supervised or controlled by or in connection with one or more organizations described in paragraphs (1) or (2); and C. . . . not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2).

I.R.C. § 509(a)(3).

To qualify as an organization described in Section 509(a)(3), an organization must be:

A. Organized and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraphs (1) or (2) [of section 509]; B. . . . operated, supervised or controlled by or in connection with one or more organizations described in paragraphs (1) or (2); and C. . . . not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2).

I.R.C. § 509(a)(3).

To qualify as an organization described in Section 509(a)(3), an organization must be:

A. [O]rganized and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraphs (1) or (2) [of section 509]; B. . . . operated, supervised or controlled by or in connection with one or more organizations described in paragraphs (1) or (2); and C. . . . not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2).

I.R.C. § 509(a)(3).

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.
The Group Ruling covers the agencies, instrumentalities, and all educational, "charitable and religious institutions operated, supervised, or controlled by or in connection with the Roman Catholic Church" in the United States. This defines the relationship with the Church necessary for inclusion in the OCD. This relationship has never been defined by the IRS nor has the USCC ever sought such a definition. The language "operated, supervised, or controlled by or in connection with" mirrors the language of section 509(a)(3)(B) of the Code and is strikingly similar to the language of the Employment Discrimination Act. Clearly an organization meeting the requirements of section 509(a)(3) with respect to another church entity (for example a diocese, parish, or religious order) is eligible for inclusion in the OCD. However, what about the university or hospital that is sponsored by a religious community but is operated by a lay board? A review of church law pertaining to ownership and control will provide some light on the subject.

Various ecclesiologies define what is "church." It has been styled at various times as a Perfect Society, the Mystical Body of Christ, the People in the supporting organization's policies. (This may be accomplished in one of three ways; namely: one or more of the officers, directors, or trustees of the supporting organization is elected or appointed by the supported organization; one or more members of the governing body of the supported organization serves as a principal officer of the supporting organization; or the officers, directors, or trustees of the supporting organization otherwise maintain a close and continuing relationship with their counterparts in the supported organization.) The significant voice must apply to all aspects of the supporting organization's policies and activities, including investment policies, timing and manner of making grants, selection of recipients, and directing the use of income or assets. The IRS has ruled that representation on the supporting organization's grant selection committee does not establish significant voice if an independent trustee has sole and complete authority over all other aspects of the supporting organization's administration. Treas. Reg. § 1.509(a)-4(i)(2)(ii).

Organizations that are charitable trusts under state law are excepted from the significant voice requirements. If the supported organization has the power to enforce the trust and to compel an accounting, the supporting organization will meet the responsiveness test. Treas. Reg. § 1.509(a)-4(i)(2)(ii); Rev. Rul. 75-437, 1975-2 C.B. 218.

The integral part test has as its underlying objective to insure that the supporting organization maintains significant involvement in the operation of the supported organization and that the supported organization is dependent upon the supporting organization for the type of support it provides. This test may be met in one of two ways. The first requires the supporting organization to conduct activities that carry out the purposes of or that perform the functions of the supported organization. These activities must be of the type that would normally be carried on by the supported organization. The second requires the supporting organization to pay substantially all (generally at least eighty five percent) of its income to or for the use of the supported organization. This must be sufficient to insure the supported organization's attentiveness to the operations of the supporting organization. Sufficiency of support is a matter determined on the basis of all relevant facts and circumstances. Treas. Reg. § 1.509(a)-4(i)(3); Rev. Rul. 76-208, 1976-1 C.B. 161.
CIVIL AND CANON LAW REQUIREMENTS

Thus, under some ecclesiologies, Catholic lay organizations are "supervised or controlled in connection with" or "operated in connection with the Roman Catholic Church." However, as a theology, ecclesiology is not accepted by the courts of the United States because to do so would violate the Constitution. However, the canon law does set forth when an organization is "supervised or controlled in connection with the church." Since the civil courts may apply the canon law without violating the Constitution, a review of canonical principles is in order.

Unlike American civil law, which is a compendium of duties and obligations with appropriate sanctions for violations, canon law contains proclamations of Christian faith, doctrinal statements, theological opinions, statements concerning moral values, philosophical theories, concepts as well as rules of conduct. Canon law finds its inspiration in the doctrine of the Church and not the contrary, which was sometimes the impression given in earlier centuries when doctrine at times appeared to be derived from, rather than serving as the basis for, legislative enactments. Thus, to understand Canon law, one must first examine Church doctrine. The basic teaching underlying the law is that it is written for the people of God who are gathered together in ecclesial communion. Their union arises from baptism, from a desire to give witness to Christ, and from unity in faith, sacraments and discipline. Those members of the Church who are in full communion with it are called on to share in the threefold mission of Christ himself: to teach, to sanctify and to govern. It is, thus, the Church and its members that are regulated by canon law.

Canon law is necessary for the proper functioning of the Church. Since the Church is established as a social and visible structure, it must have norms. The reasons for the necessity of such norms are many and diverse: so that its hierarchical and organic structure will be visible; so that the exercise of the functions divinely entrusted to it, especially that of sacred power and of the administration of the sacraments, may be adequately organized; so that the mutual relations of the faithful may be regulated according to justice based on charity, with the rights of the individuals guaranteed and well-defined; and finally, so that the common initiatives undertaken to live a Christian life even more perfectly may be sustained, strengthened, and fostered.

---

62 See Gonzalez v. Roman Catholic Bishop of Manila, 280 U.S. 1, 15-17 (1929).
63 1983 CODE c. 205.
64 Id. at c. 204.
65 THE POPE SPEAKS, Vol. 29 No. 4 (1984), 343
The canon law includes rules relating to the structure and purpose of church organizations. A juridic person in canon law is akin to a corporation in American civil law. A corporation is an artificial being, created by civil law and endowed with certain rights and powers. A corporation exists in the eyes of the civil law as separate from the physical persons who own, control and/or operate it. A juridic person is also an artificial being, but is created by canon law and endowed with certain rights and responsibilities of its own. It is an aggregate of persons or things and has a mission or work of the Church as its purpose.

The concept of juridic persons includes both private juridic persons, such as the St. Vincent de Paul Society, and public juridic persons such as dioceses, parishes and religious institutes. A public juridic person can be an aggregate of natural physical persons or an aggregate of things. If it is an aggregate of persons, it can be collegial or noncollegial. A diocese or parish is a noncollegial public juridic person since its members do not elect the bishop or pastor or guide its affairs as directly as members of a religious institute. A religious institute, however, is a collegial public juridic person since its members participate in the institute by means of electing superiors, chapter delegates and council members to direct the affairs of the institute. This paper concerns only the activities of public juridic persons. Therefore, all reference to juridic persons should be understood to apply to public juridic persons.

A public juridic person may be brought into existence by operation of the law itself or by a decree of the competent Church authority. Most public juridic persons are created by operation of the law itself, such as a diocese, a parish or a religious institute. Upon the creation of the diocese or parish, the public juridic person is automatically brought into existence by operation of law. However, there are also other public juridic persons which are brought into existence by special decree. An example of such special creation would be the Catholic University of America, which was established by a decree of the Holy See. The creation of public juridic persons under canon law is analogous to the creation of corporations under American civil law.

All property which belongs to the Universal Church, the Apostolic See, or other public juridic persons within the Church is Church property

---

67 A private juridic person is a rare and little used entity in the American Church. It can only be created by ecclesiastical decree and can not act in the name of the Church. The St. Vincent de Paul Society is an example of a private juridic person. Id.
68 1983 Code cc. 146-185.
69 Id. at cc. 164-179.
70 Id.
71 Id. at c. 1257, § 1.
and is regulated by the canon law.\textsuperscript{72} Property might be generally classified as spiritual or temporal. This paper concerns the temporal property, and all references to property herein should be so understood. Historically, Church property has been divided into three types 1) corporeal or incorporeal; 2) movable or immovable; and 3) stable or free. The new Code of Canon Law uses such terms without definition. However, many of such terms were defined in the 1917 Code\textsuperscript{73} and such definitions are helpful in today's understanding.\textsuperscript{74}

Corporeal property is tangible property; property which can be seen or touched such as land and buildings. Incorporeal property is intangible property; property which can not be perceived by the senses such as contract rights, copyrights, stocks and bonds. Movable property is that which can be moved from place to place such as furniture and supplies. Immovable property is that which cannot be moved from place to place such as land, buildings and permanent fixtures. Stable property is property that has been assigned to a specific purpose by its donor or by competent ecclesiastical authority. Property not so assigned is considered free.

The Church has the legal right to own property under both civil law and canon law. The legal right to own property under canon law is tempered by the teachings of Vatican II concerning the general purpose of Church property. The conciliar orientation can be summarized this way:

The property of this world has a goodness that derives from the Creator and is a necessary means for the realization of a person's vocation. However, property is viewed with a certain suspicion because of the dangers it contains, dangers from which the property can and must be freed by putting it at the service of society and communion.\textsuperscript{75} Private property is legitimate and makes room for the exercise of the individual's freedom. But private property must not be transformed into a cause of greed, and one must not forget that its primary social function is support for the clergy, charity, and the exercise of works of the apostolate.

The Church asserts its right to acquire, to hold and to administer property for the attainment of the purposes for which the Church was founded. Those purposes are 1) the organization of divine worship; 2) the provision of decent support for the clergy; 3) the exercise of works of the apostolate; and 4) for general charity, especially for the benefit of those in need.\textsuperscript{76} The right to and the purpose of ownership of property was recog-

\textsuperscript{72} 1917 Code c. 1497.
\textsuperscript{73} 1983 Code c. 21.
\textsuperscript{74} Gaudium et Spes, n. 69. [hereinafter G.S.].
\textsuperscript{75} Council of Antioch, can. 25: Mansi 2, 1327; Decree of Gratian, c. 23, C. 12, q. 1 (ed. Friedberg, I, pp. 684-685).
\textsuperscript{76} Presbyterorum Ordinis, n. 17 [hereinafter P.O.].
nized in the early Church was reaffirmed by Vatican II" and has been codified in canon law. Further, those purposes of property ownership have been further reaffirmed and specified as the right to exercise the works of mercy or charity, as a right flowing from religious liberty, as the right to set up schools and the right to use the means of communication. Finally, the Church recognizes a wide spectrum of works that pertain to the apostolate: promoting the perfection of Christian life, works of divine worship, evangelization, teaching, spiritual works of mercy including health care, and efforts to make the world better.

Church property may only be owned by the Universal Church, the Apostolic See or another public juridic person within the Church. All such entities are capable of acquiring, retaining, administering and alienating Church property. Thus, a religious institute, as a public juridic person may own Church property. A private juridic person may not own church property.

Canon law does not prescribe what form of entity must be used for the ownership of Church property. Nor does canon law restrict the type of entity that may be used for the ownership of Church property. Rather canon law simply provides that the civil law of the jurisdiction where the property is located must be observed unless it is contrary to divine law or unless canon law makes some more specific provision. Since canon law does not make any specific provision for the manner in which title to Church property is to be held or administered, other than requiring that it be safeguarded by civilly valid means, the administrators of Church property in the United States may choose from among a wide variety of civilly valid methods and are directed to choose the particular methods or entity type deemed best suited to the particular business enterprise under consideration.

The Code contains many norms relating to the administration of Church property, but the overall guiding principle rests on the purpose for which the Church may own property. One does not find in the Code a single doctrinal enunciation on the meaning of property in general or of the Church’s property in particular. However, it is not hard to identify the various norms that have inserted the directives of Vatican II into the

77 1983 Code cc. 1254, § 2; 222, § 1; 114, § 2.
78 G.S., n. 42; P.O., n. 17.
79 Dignitatis Humanae, n. 4 [hereinafter D.H.].
80 Gravissimum Educationes, n. 8 [hereinafter G.E.].
81 Inter Mirifica, n. 3 [hereinafter I.M.].
83 Id. at cc. 1256-1259.
84 Id. at c. 1255.
85 Id. at c. 1284.
86 Id. at c. 1254.
fabric of the law. Thus from the very first canon of Book V, the Code strongly underscores the purpose of Church property,\(^8\) that the right to possess property by persons in the Church derives from their sharing in the Church's mission\(^8\) and that the administration of Church property must be consistent therewith. Since public juridic persons have the right to possess Church property because they share in the Church's mission, they must abide by the Church's laws and act in her spirit, in communion with and under the supervision of the hierarchy, especially the Holy See. In this light, we can sense the spirit underlying the administration of Church property, a spirit which is not so much to accumulate property as to present the image of a poor Church, a spirit that uses Church property for the purposes of the Church and in the spirit of the gospel.\(^8\)

The basic teaching underlying the law is that it is written for the people of God, who are gathered together in ecclesial communion; their union arises from baptism, from a desire to give witness to Christ, and from unity in faith, sacraments, and discipline.\(^9\) Those members of the Church who are in full communion with it are called on to share in the threefold mission of Christ himself: to teach, to sanctify, and to govern.\(^9\) The property of the Church is at the service of this triple mission. It is justified by it and finds its source in ecclesial communion. Anything that disturbs or jeopardizes ecclesial communion must be avoided.

Church property is to be applied always to the purposes for which the Church is allowed to own property: the organization of divine worship, the provision of decent support for the clergy, and the exercise of works of the apostolate and of charity, especially for the benefit of those in need.\(^9\)

God destined the earth and all it contains for all people, and all created things are to be shared fairly by all mankind under the guidance of justice, tempered by charity. The Church recognizes that the structure of property will be different according to changing custom and changing circumstances. However, such structures will not alter the universal destination of earthly property.\(^9\)

Every public juridic person has a canonically recognized administrator who is charged with overseeing that public juridic person's affairs and

---

\(^8\) Id. at cc. 1255-1257.
\(^8\) Id. at cc. 222, § 1; 1254.
\(^8\) Id. at c. 205.
\(^9\) Id. at c. 204.
\(^9\) P.O., n. 17.
\(^9\) G.S., n. 69.
\(^9\) 1983 Code c. 118. For example, a bishop is the administrator of a diocese, a pastor is that for a parish, superior generals and councils for religious institutes, provincial superiors and councils for provinces of religious institutes.
managing its property.\textsuperscript{84} Since the property of the public juridic person is Church property, the administrator acts in the name of the Church. The administrator must manage the property for the benefit of the Church and its mission. The administrator is accountable to the Church for that administration. The law on administration of Church property is designed to implement that notion of accountability by establishing certain minimum requirements which, if maintained, will insure that Church property is used only for Church purposes. When any public juridic person sponsors an apostolate such as a college, nursing home, or hospital, the proper canonical administrator of the sponsored institution is the same as that for the sponsoring public juridic person.\textsuperscript{85}

The relationship of the canonical administrator to the public juridic person has been described as one of stewardship. The notion of stewardship contains three important and pertinent concepts. First, it connotes the fiduciary relationship that the administrator has toward the public juridic person. The steward is in a position of trust. The second concept is the idea of beneficial ownership. Property held by the steward is not his own. The steward must hold, manage and make the best of the property for the true owner. Finally, stewardship connotes that the steward has been charged by a higher authority to look after the affairs of someone who can not do so for himself.

Administration of property may also be compared to the government of persons. Just as the proper function of government is the preservation of the well-being of persons in order to help them to their proper end in life, so the administration of property consists in preserving all things which have been acquired and using them for their destined end. This function comprises three things:

1. The preservation and improvement of property which has been acquired;
2. The natural or artificial production of fruits or income (i.e., profits) from such property; and
3. The useful application of such profits to proper purposes.

The right of administration flows from the right to own property. The right of ownership includes the right to use, enjoy, and dispose of property, all of which imply acts of administration. All Church property is held “in trust” by public juridic persons, who are represented by physical persons, the administrators of such property.

The word “steward” used in the English translations of the Code has a special sense today as “responsible stewardship.” Moreover, as persons, the administrators are not beneficial owners, but are entrusted with a

\textsuperscript{84} A. Maida & N.P. Cafardi, Church Property, Church Finances, and Church Related Corporations 41 (1984).
\textsuperscript{85} Luke 12:42; Matt. 24:45.
special responsibility on behalf of the Church community.

Canon 1284 refers indirectly to the notion of "steward" when it uses the word "householder." All administrators are to perform their duties with the diligence of a good householder. The Code establishes very clear duties for canonical administrators regarding their administration of property.\(^*\)

\(^*\) The duties for canonical administrators are:

1. The administrator, before taking office, must take an oath before the diocesan bishop or other religious superior, that he will act efficiently and faithfully in his management of the public juridic person's possessions.

2. The administrator, before taking office, must make an accurate and detailed inventory listing the possessions of the public juridic person, including both real and personal property, precious items and items of cultural or historic value.

3. The administrator must take care that none of the property owned by the public juridic person is in any way irrevocably lost or damaged. Thus, proper insurance contracts should be arranged. Such insurance policies should, if possible, cover the replacement value of Church property when buildings, etc., are under consideration. The Code does not prescribe any particular type of insurance, it merely outlines the principle.

4. The administrator must insure that the ownership of the property of the public juridic person is protected through civilly valid methods. The civil ownership is considered as a means of protecting canonical ownership. Among such items are verification of land titles, incorporation and registration of certain funds.

5. The administrator must observe the requirements of the canon law and the civil law and those requirements imposed by the founder or donor of Church property. In particular, administrators are to take special care that damage will not be suffered by the Church through the nonobservance of the civil law. The Code does not refer to the type of damage. It could be material or it could be otherwise, such as reputation. The requirements include, but are not limited to, the observation of labor laws, payment of the required taxes, not giving false tax donation receipts, etc.

6. The administrator must collect accurately any income generated by the property of the public juridic person as such income is due. This could be accomplished by investing funds in accounts that produce a reasonable rate of return while avoiding excess profits, e.g., the avoidance of usury.

7. The administrator must pay on time all loans or mortgages taken out by a public juridic person. That includes both principal and interest. Usually 20-25 years is considered a long time to maintain a debt.

8. The administrator must invest profitably excess funds beyond those required to meet the public juridic person's current expenses.

9. The administrator must keep well-ordered books of receipts and expenditures of the public juridic person. This would mean keeping honest and accurate accounts and certainly not having duplicitous sets of books.

10. The administrator must prepare annual reports on the administration of the public juridic person's property and affairs.

11. The administrator must arrange and keep in a safe place all legal documents that confer property rights on the public juridic person. The requirement is to keep suitable archives but not necessarily or exclusively in the place of business. In the United States, every county has a public registry of deeds for real property or interest in real property and the duty may be met by proper public recording, at least concerning interest in real estate. Where intangible property rights are created by contract, the contractual documents are to
In addition, administrators are to be very careful to observe the principles of social justice in carrying out their administration in matters of contract (observing civil laws relating to labor and social life) and in matters of equitable wages. Further, the administrator is required to comply with the canon law pertaining to alienation of property. Even though the canon law treats the administration of property and the alienation of property in separate sections of the Code, the obligations imposed on an administrator include the requirement to comply with the law on alienation.

The canon law regulating the administration of Church property is applicable to all property which belongs to any public juridic person. The law attaches to the property itself.

The concept of alienation is generally thought of as involving a conveyance of Church property to another party. However, in addition to

be kept safely.

The last nine of the foregoing eleven requirements are little different than the requirements imposed by law on the directors of an American civil law corporation. The canonical administrator of the property of a public juridic person is similarly accountable for his administration. This view of an administrator's accountability was developed as part of the Vatican II ecclesiology and has now been codified.

97 1983 Codex c. 1257.

** A number of acts are considered to be alienation for canon law purposes:

1. Any act by which title to the Church's real property, which is part of the stable patrimony of a public juridic person, is transferred to another party.
2. Any spending of all or a part of Church property which is part of the stable patrimony of a public juridic person, other than for the purpose for which such property was dedicated (i.e., the spending of immobilized funds for some purpose other than that for which they were immobilized) such as:
   (a) the spending of funds of a public juridic person beyond the amount approved for each region if the funds have become a part of the stable patrimony of the public juridic person,
   (b) the withdrawal of funds from the stable patrimony of the public juridic person beyond the amount approved for each region,
   (c) the disbursement of money or its equivalent (e.g., stocks, bonds, bank notes, certificates of deposit, and the like) beyond the amount approved for each region which was received from the sale of property belonging to the stable patrimony of a public juridic person,
   (d) the conveyance of money or its equivalent beyond the amount approved for each region, accruing from pious foundations, Mass foundations, burses, endowments, annuities, and the like, particularly if the obligations have not been acquitted,
   (e) the conveyance of money or its equivalent, beyond the amount approved for each region, which would be a diversion of stable patrimony from specific purposes for which it was originally acquired.
3. Any act, beyond the amount approved for each region, with respect to Church property which is part of the stable patrimony of a public juridic person and which is a preparation for or anticipation of a potential conveyance, such as giving security, a mortgage, an option, compromise, settlement.
4. In general, any act, beyond the amount approved for each region, with respect to Church property which is part of the stable patrimony of a public juridic person by which such
an actual conveyance of the fee interest in Church property, an alienation

Church property is subjected to burdens either in perpetuity or for a long time, such as granting a use, or easement is of various kinds.

5. Any sale of precious works or notable relics.

There are quite a number of generic categories or actions which are not considered to be acts of alienation for canon law purposes:

1. The spending of free capital. Under “free capital” we generally include ordinary income and unrestricted movable gifts for operating expenses or capital improvements.

2. The transfer of property from one public juridic person to another public juridic person, if both are part of the same general juridic person such as from a religious house to a province or from a parish to a diocese.

3. The registering of assets under a new title such as separate incorporation of a school, hospital, etc., but with the same canonical ownership. Only when the control of the assets on the part of the public juridic person is transferred, diminished or endangered does the question of alienation enter.

4. The assumption of a mortgage. If a benefactor gives to a public juridic person property to which he held title, but which is heavily mortgaged, the acceptance of such property does not come under the concept of alienation of Church property, since no Church funds were invested in it.

5. The transfer of title in exchange for similar title. The exchange of securities for other securities is generally not governed by the prescriptions on alienation. If title to real estate is transferred, this is generally an alienation in the strict sense, unless the transfer were to be for another piece of real estate of the same value. In such a case Church property would not in most cases be considered to have been jeopardized.

6. The conversion of capital assets. The Sacred Congregation for Religion has often held that the sale of real estate which is part of the stable patrimony of the institute and the application of the proceeds to another capital purpose such as capital construction or reduction or liquidation of a mortgage on buildings or to a plant fund, does not constitute a conveyance to which the canonical restrictions on alienation apply, but, rather, may be regarded simply as a conversion of capital assets from one form to another.

7. The use of Church property which is part of a public juridic person’s free capital as collateral for loans. Just as free capital may be expended without regard to the requirements applicable to alienation, free capital may similarly be used as collateral. Likewise, if a juridic person borrows or sells bonds to construct a new edifice, putting up only the title of the edifice under construction as collateral, this is not the kind of encumbrance governed by canonical restriction on alienation. Although the general issuing of bonds is frequently subject to the requirements applicable to alienation, some canonists also hold that when money is borrowed merely on the general credit of the ecclesiastical corporation, without offering a mortgage as security, this does not constitute alienation.

8. The making of a loan. Lending money is frequently a way of investing it. Lending may be an act of extraordinary administration, but not be an alienation.

9. The sale of furniture. The sale of nonprecious furniture to replace it with furniture of greater value or of equal value, is not generally considered an alienation.

10. An action in furtherance of the intent of those who have donated property to the Church. Assets given for a specific purpose must be used for that purpose. The spending of money, liquidating of securities or disposal of real estate for the purpose for which it was given by the donors is not an act of alienation restricted by canon law. Thus, if a benefactor willed or gave his home and grounds to further apostolic activities of a religious community without a requirement that the specific assets be retained, such assets may be sold and the money used for the apostolic activities of these bodies.
may exist when Church property is encumbered by a mortgage or other security interest or through any transaction which places in jeopardy of loss any interest in a public juridic person's property. However, the special requirements for a legal alienation under canon law apply only to Church property which is part of the stable patrimony of a public juridic person. Therefore, even though many people use the term conveyance and alienation interchangeably, the term alienation is both more encompassing and more narrow than the term conveyance.

While the law on administration is applicable to all Church property, the restrictions with respect to alienation are applicable only to the stable patrimony of the public juridic person. The concept of stable patrimony is a relatively new concept introduced to answer the needs of our modern economy which no longer rests prevalently on classes of property once defined as immovable.\textsuperscript{9} The Code presupposes that every public juridic person has a stable patrimony that can be made up of either movable or immovable property. However, the Code does not specifically define "stable patrimony," but relies on continuing jurisprudence to refine the concept. Without defining it, the law does provide that before property is to be considered a part of the stable patrimony, it must be clear from a legitimate ascription of the property to it. Even though undefined in the Code, canonists generally agree that it would include property heretofore classified as fixed capital. Stable patrimony would also include property which has been donated to the Church through a vow or property which is especially valuable due to its artistic or historical merit.

Without turning this paper into a discourse on the historical development of property rights, in order to understand the concept of stable patrimony, a view of history is essential. Canon law traces its roots to Roman law and the Roman law developed from a pagan culture. In pagan Rome, land was considered to be sacred, as it was a gift from the gods and had been consecrated to the gods. Therefore, to sell real property was a serious and significant act. The pagans were fearful of challenging the gods. As a result, Roman society developed strict rules pertaining to the sale of

\textsuperscript{9} Velasio de Paolis, C.S., \textit{Temporal Goods of the Church in the New Code with Particular Reference to Institutes of Consecrated Life}, \textit{43 The Jurist} 343 (1983). The patrimony of an institute includes more than its property. It is comprised of the intentions of the founders, of all that the competent ecclesiastical authority has approved concerning the nature, purpose, spirit and character of the institute, and of its sound traditions.
real property. The Church adopted and reformed those cultural rules. Church property was considered to be sacred as belonging to God. Rules were developed to protect the Church by regulating the sale of Church property. The concept of sacredness of property evolved throughout agrarian Europe as the Church became the official religion of Europe. The doctrine of primogeniture is but one example—the family estate was not to be sold but was to be preserved for future generations. In fact, it was not to be divided among heirs, but was to pass intact to the eldest son. Land became the symbol of power and wealth. This strict historic cultural respect for real property accounts in a measure for the strict requirement in canon law with respect to the alienation of real estate.

The economy of the world has changed. No longer is real property the exclusive or even primary base of wealth, power or permanence, nor is it viewed with the same reverence. There are many other ways that wealth can be measured and be made productive. Because cultures and traditions have changed, the law of the Church has also changed. No longer is real property automatically considered to be part of the stable patrimony. Church law may recognize that land is merely a business investment of the public juridic person.

Canon law sets forth three conditions that must be met for a varied alienation. The first is that there must be a written estimate of the value of the property being alienated from at least two experts. The second is that the alienation must be for a just cause such as urgent necessity, evident practicality, piety, charity, or some other serious pastoral reason. The just cause requirement would include aid to reallocate resources from one apostolic activity to another or a need to borrow money to enlarge a currently operating apostolate. The third is that the permission of the competent authority is necessary. The administrator must not give permission to alienate unless he or she is thoroughly informed about the financial condition of the alienating entity, including information on its previous alienations. Thus, for a religious institute, the superior general must consult with his or her council members and/or with the institute’s finance council, in accordance with the institute’s constitutions.

What constitutes competent authority will vary according to the circumstances. The National Conference of Bishops is required by the Code to set a property value above which the permission of the Holy See would be necessary for alienation. Alienations at or below that value are considered minor alienations for which the permission of the Holy See is not required but for which permission of other competent authority would still be necessary. In the United States, the value is currently at $1,000,000.00. Alienation of Church property (other than property under a vow or of particular merit) worth $1,000,000.00 or less does not require approval of the Holy See. For such lesser valued property, the competent authority will be determined by the nature of the public juridic person.
seeking to alienate the property. If the property to be alienated is divisible, the value of any previously alienated parts must be added to that of the part currently being alienated in order to determine the threshold of permission required. Thus, approval of the Holy See cannot be avoided on the sale of stable patrimony worth more than $1,000,000.00 by intentionally selling it in parcels. Alienation permissions obtained piecemeal are held to be invalid.

For a diocese or public juridic person subject to the diocesan bishop, such as a parish, the competent authority is the diocesan bishop with the consent of the finance council, the college of consulters, and the parties concerned. For public juridic persons who are not subject to the diocesan bishop, such as a pontifical religious institute, the competent authority is determined in the institute’s own statutes. The law requires that for such persons, competent authority shall at least include the appropriate superior with the consent of his/her council.

It should be noted that the Holy See’s authority is also needed to alienate vowed property, or property which has historic or artistic value. Since the latter class of property would be rare in the United States, such requirement has little practical application irrespective of the dollar value thereof.

The law regulating the alienation of property is applicable to all property which constitutes the stable patrimony of a public juridic person. However, such law is only applicable to property which constitutes the stable patrimony, not to all Church property. Property may become part of the stable patrimony of a public juridic person through a specific act of dedication by a competent authority of such juridic person, by donation to such public juridic person under a vow or by simply being property which is especially valuable due to its artistic or historical merit. The restrictions applicable to alienation are not applicable to the free capital of a public juridic person such as its business investments.

As we have seen, the real test of ownership or control under canon law is accountability. That notion of accountability comes from the Roman law concept of ownership. Under Roman law, title and use were indivisible. The property could only be accountable to one person, not to a title owner and to a beneficial owner. Therefore, in order to determine ownership/control under church law, the question that must be answered is: is the entity accountable to a public juridic person? Is that accountability perfected by valid civil law methods? If there is no accountability, it is not owned, supported, operated, controlled, or managed by the Church. If there is no accountability, an organization might be “Catholic” but not eligible for inclusion in the OCD.

But what does that mean to the diocesan bishop in his role as the determiner of what entities get listed in the OCD? Does it mean that hospitals, universities, etc., should not be included in the OCD? Does the
Civil and Canon Law Requirements

Bishop now have to abandon those religious institutes that took Vatican II seriously and involved there laity in the apostolates? What about charitable and social action organizations that were founded by Catholic laity in response to Apostolicam Actuositatem? Are not laity just as full members of the Church as are clergy and religious? Does the bishop have to abandon the laity who responded to the gospel call, the teaching of the Church, and the movement of the spirit?

There is no doubt that the Church must recognize civil law and render unto Caesar those things that are Caesar's; but in so doing must the Church compromise its teaching or turn its back on the People of God? Of course not. The bishops have an obligation to support the faithful who are trying to live the gospel. That support can include the recognition of the Catholic identity of organizations which are owned, operated, and controlled by Catholic laity without fear of government reprisal if certain safeguards are met. We know from the language of the Pime case that the Society of Jesus, a public juridic person, appoints one-third of the members of the board. We know from Canon law that a public juridic person acts in the name of the Church. We also know that the university exists to provide education which, coincidentally, is also a function of the Church. Because of that mutuality of function and because of the role of the Church in appointing certain trustees, the civil law would recognize and accept that Loyola is "supervised or controlled in connection with" the Church. By meeting that test, Loyola is eligible for inclusion in the group revenue ruling and thus would be eligible for inclusion in the OCD—even though the laity constitute a majority of the trustees.

But what of a hospital, university, or similar organization that was originally founded by a diocese or religious order but which has been turned over to a completely lay board as was the case with St. Joseph's Hospital? That too could still be eligible as being "operated in connection with" the Church if there is a close and continuous working relationship between the organization and the public juridic person. That relationship could be established by a sponsorship agreement between the public juridic person and the institution. That agreement would necessarily incorporate the mission statement of both the public juridic person and the entity and those mission statements would necessarily be mutual. It would require a method of monitoring so as to assure that the institution continues to be faithful to its mission statement and it would require that the mission statement not be altered without the approval of the public juridic person. The agreement would set forth the role of the Church that the institution is meeting and it would set forth how the public juridic person will influence the institution—either by providing board members, members of administration, members of staff, etc.

With such an agreement the church can be faithful to its ecclesiology
and to the pastoral theology of Vatican II and can still fulfill the requirements imposed by the Group Revenue Ruling issued by the United States Treasury Department.

There is yet another way that the desired effect, inclusion in the OCD, can be met when dealing with an apostolate which is owned, operated, and controlled by the laity but which still professes to be Catholic. The canons embodied in Book II, Title V, Association of the Christian Faithful, can be invoked. Such Associations are units which are distinct from institutes of consecrated life and societies of apostolic life. They may be composed entirely of laity. The purposes of such an association include the exercise of apostolic works, the exercise of works of piety, and the infusion of the temporal order with the Christian Spirit. Such an association is either public or private. The difference is that a public association is erected by competent ecclesiastical authority, while a private one is erected by its members but which is recognized by the Church. Such associations, even if private, can maintain the necessary link with Church authority to be recognized as Catholic. The property of such an association would be used for charitable purposes because the property must be administered in accordance with the by laws of the association (which were approved by Church authority) subject to the vigilance of Church authority.

Thus, the canon law does provide that an association of laity may own, operate, and control a hospital or university which is an integral part of the mission and ministry of the Catholic Church and which is just as eligible for inclusion in the OCD as one which is owned, operated, and controlled by a diocese or a religious institute. Such entities need only be appropriately structured with civil law documents which also conform to the requirements of canon law and be operated in the name of the Church.

It is evident, then, that canon law exists as a tool to enable the diocesan bishop to foster and promote lay involvement in the apostolate in

---

100 It is not incongruous to call a hospital which is owned, operated and controlled by the laity as an apostolate. Canon 225 provides that “[S]ince lay people, like all the Christian faithful, are deputed to the Apostolate by baptism and confirmation, they are therefore bound [emphasis added] by the general obligations. . . so that the divine message of salvation maybe known and accepted by all people throughout the world.” 1983 Code c. 225.

101 1983 Code c. 298.

102 Id. at c. 299.

103 Id. at c. 301.

104 Id. at § 3; Canon 312, section 2 provides that competent authority could be the diocesan bishop.

105 Id. at c. 299.

106 Id. at cc. 215, 216, 299.

107 Id. at c. 305.
keeping with ecclesiology and still conform to the requirements of civil law with respect to tax exemption. While there is a tension between the two legal disciplines, they do not exist in opposition to each other but rather can be utilized together to protect the Church.\textsuperscript{108}

\textsuperscript{108} The bishop should not approve an entity for inclusion and then assume that its by laws and purposes remain the same forever. He should periodically review those entities for it could be eligible for inclusion in one year but lose its qualification because of an amendment to its corporate charter, to its operating philosophy, or by withdrawal of sponsorship. At a minimum, the diocesan bishop should require an initial review by of the diocesan curia before approving inclusion in the OCD. Thereafter, each listed entity should be required to certify annually that there has been no change in status. Every three to five years there should be an independent review by the curia. A proper application form which, if completed by the entity seeking to be listed, will help to expedite the review process. A copy of a suggested form is attached. The diocesan bishop should also be aware that there is a school of thought emanating from the USCC that the primary purpose of the OCD is to serve as a vehicle for tax exemption rather than a reference book. That school would exclude any entity which maintains its own § 501(c)(3) exempt status. Recently, the office of the General Council of the USCC agreed with this author that such entities can be included in the OCD if it is made clear that they are not included in the Group Revenue Ruling that can be easily done with an asterisk.