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## Canon Law Issues of Sponsorship, Governance Control and Alienation as They Relate to Catholic Church Entities in the United States: A Diocesan Attorney's Perspective

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**CANON LAW ISSUES OF  
SPONSORSHIP, GOVERNANCE  
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ENTITIES  
IN THE UNITED STATES: A  
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PERSPECTIVE**

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INTRODUCTION

The Canon Law issues of sponsorship, governance control and alienation have significance to diocesan attorneys in that these issues have civil law implications for Catholic Church entities in the United States at this time. The civil law implications relate to: structuring the civil law corporations of Catholic Church entities; determining whether an entity is, in fact, a Catholic Church entity entitled to designate itself as such and be listed in *The Official Catholic Directory* and reaching a conclusion as to whether the action of the diocesan bishop and the permission of the Holy See are required for the alienation of property of the entity.

I. SPONSORING OF CATHOLIC CHURCH ENTITIES

It is common for Catholic institutions to be controlled or “sponsored” by one or more public juridic persons within the

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Church. Among these public juridic persons which sponsor institutions are a parish, a diocese, a religious institute and a public association of the Christian faithful. Each Catholic institution which is sponsored by a public juridic person within the Church is a part of the sponsoring juridic person on which it depends.

Canon Law provides that religious institutes, parishes, dioceses and public associations of the Christian faithful functioning as juridic persons within the Church have as one of their attributes the right to own property. Canon Law further provides the processes required for public juridic persons, including religious institutes, to transfer or alienate their property. The process for religious institutes requires the governance of the sponsoring religious institute to approve an alienation of property and, if the value exceeds a prescribed level of value, currently \$3,000,000 for entities in the United States, the voturn of the diocesan bishop and the permission of the Holy See must be obtained.

In order for the governance of a religious institute which sponsors an institution to exercise its responsibility with respect to that institution, including its ability to seek the permission of the Holy See to alienate property, the sponsoring religious institute must have sufficient control over the sponsored entity so that it can exercise its responsibilities as prescribed by Canon Law.

## II. A RECENT EXAMPLE OF THESE ISSUES AS THEY PERTAIN TO THE STATUS OF SAINT LOUIS UNIVERSITY

The question of control by the sponsoring religious institute arose with respect to the proposed sale of the Saint Louis University Hospital to Tenet Health System Hospitals, Inc. in late 1997. The case is worth reviewing because the governance structure of Saint Louis University is very similar to the governance structure of not only many Catholic colleges and universities in this country, but other Catholic institutions as well.

Generally, Saint Louis University is a Missouri nonprofit corporation which, until 1967, had a board of trustees composed entirely of members of the Missouri Province of the Society of Jesus. At that time, and with no change in the governing

documents, the composition of the board was changed so that only one-third or less of the trustees were members of the sponsoring Missouri Province and two-thirds or more of the trustees were other individuals. The board of trustees is and has been self-perpetuating and the Missouri Province has no authority with respect to the appointment or removal of trustees and no other reserved powers over the governance of the University corporation. Prior to the change in the composition of the board of trustees in 1967, the Jesuits had *de facto* control over the corporation without the need for any specific reserved powers because each trustee was a Jesuit.

With the change in board composition, the Missouri Province lost its ability to control the board of trustees and, thus, its ability to require that the board of trustees comply with Church law and teachings in its governance of the university.

This issue became apparent in late 1997 when the university proposed to sell its teaching hospital. The Archbishop of St. Louis notified the president of the university that the sale of the hospital would require the permission of the Holy See. The university president responded that the university was not an entity subject to Church control and that it had been alienated in 1967, after which, it was a university operated in the Catholic tradition, but not subject to control by either the Jesuits or the Holy See.

This issue was presented by the leadership of the Society of Jesus to the Holy See for clarification. The Holy See, through the Prefect of the Congregation for Catholic Education and the Prefect for the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life, in early 1998, stated that the authorization of the Holy See was necessary for the sale of Saint Louis University Hospital. This was because the Province had not alienated the university which remained subject to the requirements of Canon Law and the authority of the Jesuits.

The Congregations further stated that because Saint Louis University remained an institution of the Missouri Province, the Province was required to put in place a mechanism whereby it could exercise control over the president and the board of trustees of the university to assure that the requirements of Canon Law, as they pertain to the university, be followed.

Subsequent to this, the general governance of the Jesuits on behalf of Saint Louis University, which was acknowledged to be a

Missouri Province institution, requested permission for Saint Louis University to sell its hospital to Tenet HealthSystem Hospitals, Inc. The rationale for the sale included economic considerations and the agreement by the purchaser to meet four specified conditions with respect to its operation of the hospital, including following the *Ethical and Religious Directives for Catholic Health Care Services* and continuing to provide services for those unable to pay.

After reviewing the request and rationale for the sale, and the agreement to meet the specified conditions, the Archbishop of St. Louis reluctantly gave his agreement to the sale which was then approved by the Holy See. The approval of the Holy See was given with the specific proviso that it was understood that Saint Louis University was to remain a Catholic University, bound by the requirements of Canon Law, regulated by the Apostolic Constitution *Ex Corde Ecclesiae* and belonging to the Society of Jesus. The Holy See went on to say that it was the responsibility of the Society of Jesus to put in place, in a timely fashion, a mechanism through which the Society is able to exercise appropriate controls with respect to the president and board of trustees of Saint Louis University in order to ensure that the requirements of the above referenced ecclesiastical dispositions, as they pertain to the university, are followed.

For purposes of our discussion, the significance of this matter is that the leadership of Saint Louis University took the position that, because a majority of the trustees were not members of the Missouri Province, the Province had alienated the university to the board of trustees at the time the composition of the board was changed. This position was maintained even though there existed no documentation of the request for alienation or the granting of permission to alienate the university.

To the contrary, the Holy See, through the two Congregations, made an unequivocal determination that there had been no alienation and that the university remained an institution of the Society of Jesus. The Holy See, further, placed responsibility on the Jesuits to put in place a mechanism through which they could exercise control to assure that Canon Law would be followed by the university in the future. At the subsequent request of the General of the Society of Jesus, for more specific direction with respect to the control mechanism,

the Dicastries suggested that there be implemented a corporate structure through which fundamental powers of governance over the university corporation would be reserved to the Province leadership, with the remaining powers of governance being exercised by the board of trustees. These points were, in subsequent correspondence, further clarified to the Jesuit General.

The suggested method through which governance responsibilities could be divided between the Province and the board of trustees was to create a class of members of the university corporation which would consist of the leadership of the Province. Those members would hold certain fundamental reserved governance powers with the balance being the responsibility of the board of trustees. At this time it is the responsibility of the Jesuits to work with the board of trustees and president of the university to implement the requirements of the Holy See through a change in the governance structure of the University corporation. While suggesting a mechanism for appropriate control by the Jesuits, the Holy See recognized that there may be other possible ways in which this control could be structured.

This mechanism of control presents important questions to the Church at its various levels, including the university, the Province, the diocesan bishop and the Holy See. Under civil law, the addition of members with reserved powers to the corporate governance structure of the University would require the affirmative vote of the board of trustees, the majority of whom are not Jesuits of the Missouri Province. Any other optional method through which sufficient governance control would be established in the Province and would also require actions by the board of trustees and the Province. However, the implementation of a mechanism of control was a condition of the approval of the sale of the Saint Louis University Hospital which, in my opinion, was implicitly accepted by both Saint Louis University and the Jesuits when they accepted the approval of the sale of the hospital, which was granted on this condition and which was subsequently effectuated through a closing of the hospital sale transaction.

### III. IMPLICATIONS FOR OTHER CATHOLIC CHURCH ENTITIES

The decision of the Holy See in this matter has significance beyond the institution involved because it addresses an important question which has long gone unanswered in the Church. What is the juridic status under Canon Law of Catholic institutions over which the sponsoring religious institutes have, *de facto*, lost control through the appointment of a self-perpetuating board of directors of the civil corporation which owns the institution, a majority of whom are not members of the sponsoring religious institute? The Holy See has said that, unless the proper canonical procedures for alienation have been observed and approval received, there has been no alienation of the institutions in these cases and that they remain a part of the sponsoring religious institutes. At this time the condition imposed by the Holy See and implicitly accepted by the Jesuits and Saint Louis University that a mechanism be put in place through which the Missouri Province can exercise control over the governance of the university has yet to be implemented. When this will be done and what will be the exact form of the mechanism for control remains to be seen.

Irrespective of when and in what form the control mechanism for Saint Louis University is implemented, the definitive position stated by the Holy See for Saint Louis University would appear to be applicable to other similarly situated institutions of this country which are not under the civil legal control of their sponsoring entity. The Holy See has said that the appointment of a self-perpetuating board not controlled by the sponsoring religious institute does not constitute an alienation of the institution and that it is the responsibility of the sponsoring religious institute to put in place a mechanism through which the institution can be required by the sponsoring religious institute to comply with Canon Law.

Up to this time, neither the National Conference of Catholic Bishops nor the Holy See has widely distributed the decision that was made in the Saint Louis University Hospital sale matter. However, the fact that this decision was made in a particular case means that it does have applicability to other similarly structured institutions. As diocesan attorneys, the issue of corporate governance controls over Catholic institutions arises, amongst other contexts, in connection with approving entities for

inclusion in *The Official Catholic Directory*. As stated earlier, for an institution to be included in *The Official Catholic Directory*, it must be found to be a Catholic institution. The most common structure through which it is recognized that an institution is Catholic is by it being a part of a juridic person of the Church. For those institutions which are a part of a juridic person, such as a religious institute, but over which the juridic person has no ability to exercise control, there is the question of whether their listing in *The Official Catholic Directory* should be conditioned upon the leadership of the sponsoring juridic person putting in place a mechanism through which it can exercise control of the entity to assure that it follows Church law.

Another juncture at which the question of the canonical status of Catholic institutions will present itself is at any time at which an institution structured similarly to Saint Louis University intends to enter into a transaction requiring the votum of the diocesan bishop and the permission of the Holy See. Prior to entering into any such transaction, the sponsoring entity of such an institution is required by Canon Law to seek appropriate Church approvals. If this is not done, then the Canon Law requirements for approval of the alienation of the property will not have been met. This could cause significant difficulties for attorneys who are requested to give opinions in these instances which include statements that all requirements of Canon Law pertaining to the transaction have been met by the client organization.

#### CONCLUSION

In summary, the very significant issue of what is the canonical status of institutions which are sponsored by religious institutes but which have their governance exercised by a board of directors which is not subject to control by the sponsoring entity has now been definitively answered. The unequivocal answer provided by the Holy See for institutions so structured is that the institutions remain a part of their sponsoring religious institute and are subject to the requirements of Canon Law. The issues remaining are what mechanisms will be implemented to give the sponsoring religious institutes the control they need to assure that their sponsored institutions will follow Canon Law and when those mechanisms will be implemented. The

alternative questions are, first, if religious institutes and their sponsored Catholic institutions, which are structured like Saint Louis University, do not implement this required change what will be the consequences, and, second, if the religious institutes do not wish to regain control of their sponsored institutions, what other structures of ownership are available to satisfy both the Canon law requirements with respect to ownership and control of the institution and the desired relationship of the religious institute to the institution? Although there is a broad range of approaches to respond to these important questions, those options have not as of this date been adequately addressed.