Baptist Church Incorporation in North Carolina

Issues and Guidelines

Prepared by:
Church-State Resource Center
Campbell University School of Law

for and in cooperation with the
Baptist State Convention of North Carolina
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Note from Author:

We sincerely wish to urge the readers of this guide to incorporation to assist us in providing the very best product possible. Our desire is to make available resources to churches which are both accurate and "user-friendly." To that end, we need your responses and suggestions. If you have comments, suggestions or questions please do not hesitate to call or write us. We anticipate revisions of this volume as warranted by your helpful criticisms and by new developments in the law.

We have tried to be thorough without being ponderous; precise without being picky. Perhaps at times we have failed, and your input will help us improve our capacity to serve effectively.

I also wish to express my gratitude to those who helped make this volume possible. The staff of the Baptist State Convention, and especially Dr. Roy Smith, were always available and supportive resources. Over a dozen pastors and attorneys, representing diverse perspectives and traditions, helpfully reviewed this product as it was being developed, and their constructive suggestions have shaped the final resource. My research assistant for this project, Diane Wall, provided the groundwork and evidenced tenacity in tracking down materials and resources essential in this effort. And of course the entire basis for this project has been the encouragement and support of the Campbell University and Law School administrations. Dr. Norman O. Wiggins, President of Campbell University, was instrumental in the very development of this research effort, and the support, personally and institutionally, of founding Dean Leary Davis and current Dean Patrick Hetrick have been crucial in our commitments to serve our Baptist community here in North Carolina.

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The Church-State Resource Center is a service of the Campbell University School of Law, Buies Creek, N.C. The Law School is an integral part of the University which is in turn affiliated with the Baptist State Convention of North Carolina. The Law School is committed to professional legal education in the context of high ethical standards and the values which are our Judeo-Christian heritage. The Church-State Resource Center is an expression of that orientation to service. The Center's purpose is to be a resource to churches and religious leadership throughout the southeast, providing timely and accurate information regarding emerging issues of the impact of law on ministry and religious life.

The Author

Lynn R. Buzzard is Associate Professor of Law at Campbell University School of Law with specialities in Constitutional, Church-State and International Public Law. He is the Executive Director of the Church-State Resource Center. He has had extensive involvement with first amendment issues of free exercise and establishment of religion, and with broader questions of the scope of governmental activities affecting religious communities. He is the author of eight books including a recent volume on Church Discipline and Courts (Tyndale House), served for fifteen years as the Executive Director of the Christian Legal Society, serves as an officer or Board member of numerous church-state and international professional and advocacy societies, and was the founder and executive editor of the Religious Freedom Reporter, a professional legal reporter which monitored church state litigation and legislation.
Enclosed with this edition of **Baptist Church Incorporation in N.C.** is a very important **Update/Supplement**.

These materials provide new information and guidelines that reflect
A. Some changes in the law and procedures for incorporation
B. Further specific guidance for churches on how to proceed
C. How to avoid problems.

**WHY THIS UPDATE?**

When the first edition of this Manual was prepared in cooperation with the Baptist State Convention, incorporation of churches in N.C. was relatively uncommon. However, with the frequency of lawsuits against churches, and increased exposure to liability, many church leaders and attorneys familiar with legal issues facing churches were encouraging churches to consider incorporation.

Now, nearly a decade later, we at the Church-State Resource Center have had substantial experience in speaking with churches and associations and in assisting local churches with the details of incorporation.

- Hundreds of churches have now successfully completed incorporation.
- We have also had occasion to see some of the pitfalls and problems that churches have encountered in properly completing the process.
- Frankly, we have also seen some instances where churches have received inadequate or even incorrect advice or counsel about incorporation procedures.
- There have been some changes in the statutes governing nonprofit corporations.

This Update/Supplement is intended to draw on this experience and provide some further specific guidance for churches which are considering incorporation. While some of the materials here reflect some changes in the law, these are relatively minor. More importantly, the new information here seeks to provide practical guidance for churches on how to proceed.

Since a proper incorporation process involves adopting appropriate Bylaws, and post-incorporation actions, we have also provided more extensive information on church bylaws and optional clauses to address various issues or problems, and necessary resolutions for church adoption.

**WHAT'S INCLUDED?**

- Additional Bylaw clause suggestions - on finances, policies, terminations, meetings
- Model Bylaws as a framework for Bylaw review, p.27ff
- Checklist to assess if your prior incorporation has been thorough and complete, p. 25
- More details on the required Organizational Meeting of a new corporation, including resolutions for adoption
- Notations of changed statutes, regulations and fees
How to Use This Update/Supplement

All the supplemental material is provided on the Update/Supplement (blue pages) at the end of the volume. This supplemental material is keyed by chapter and page to the Main Text (white pages) material. After reviewing the primary main volume material, check the blue pages for that chapter and the pages you are reviewing to see if there is any further information on that topic. For example, the Main Text advises you to record your Articles of Incorporation with the Register of Deeds in the county where you are located, but the Update/Supplement advises you that is no longer required.

If you have already incorporated and are concerned about the thoroughness of the process you went through, check the Update/Supplement, page 26, "If you did it, did you do it right?" for a checklist.

For Further Assistance

If you have further questions or wish clarification on any of these matters, or need assistance, please contact Professor Lynn R. Buzzard, Director of the Church-State Resource Center at the Norman Adrian Wiggins School of Law at Campbell University. Phone 910-893-1804.
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Should your church incorporate?

Increasingly, churches are considering whether they should incorporate. While some churches have become so large and complex that modern corporate structures may seem natural, even churches that hardly seem to resemble "big business" need to review their legal status and carefully consider whether incorporation would be an appropriate step.

Would it help protect themselves against lawsuits?
Would it assist churches to develop effective structures and systems that enable them to carry out their mission with spiritual effectiveness?
Would incorporation be a waste of time?
Would it divert churches from spiritual priorities?
Would it expose them to inappropriate government regulation?
Is it simply an unnecessary hassle?

Need for guidelines

Because of the increasing need to consider incorporation by churches, the Church-State Resource Center of Campbell University's School of Law in cooperation with the Baptist State Convention of North Carolina, has created this guide to assist Baptist Churches in North Carolina in considering all the factors relevant to incorporation, and providing a basic framework should they decide to proceed.
This guide has three basic purposes:

1. To assist church leadership in assessing whether formal legal incorporation is appropriate for them. What should we do?

2. To assist churches that choose to incorporate in understanding the legal procedures and significance of incorporation. How would it be done?

3. To assist churches, whether they incorporate or not, to understand the importance of their own articles and bylaws in developing a structure for their church life which serves their needs and ministries. How do we develop the formal structures of our common life?

Our intent is not to make decisions for churches, but to stimulate careful and deliberate planning. One of the major advantages of a church’s careful consideration of these materials is the stimulation of strategic thinking about their mission and the structures that will assist them in reaching their goals. The purpose here is not to disrupt the church’s appropriate sense of its own traditions and customs, but, rather, to focus on the statutory requirements for incorporation, and the considerations which are appropriate for a church in assessing such a possibility.

Because this Guide is intended as a resource and not as a formula, and because of the diversity among Baptist churches in North Carolina, this Guide should not be taken as specific legal advice, but as a resource to assist churches. It would be a mistake uncritically to adopt the suggested Articles or By-laws in this Guide. Your own careful thought, advice from your attorney and careful consideration of alternatives must be a part of the process. It may be there are better alternatives for your church’s particular traditions, ministry and common life. We Baptists have much in common, but our strength also rests in our diversity, and this Guide is in no way intended to constrain the development of divergent patterns of church life.
I. Why consider incorporation?

Few choices are without cost. Lawyers are often noted for saying things like: "on the one hand .... but, on the other hand ...." In weighing the desirability of incorporation, it is important to consider all the factors. There are advantages and disadvantages to incorporation and churches should be aware of them.

A. ADVANTAGES

1. Tax exemption advantages?

No. Churches are automatically granted tax exempt status whether they are incorporated or not, and without a requirement that they file for such status. [See discussion in chapter IX.] Incorporation is a separate issue from tax exemption. Incorporation as a non-profit organization and separately obtaining a determination from the Internal Revenue Service that the organization is tax exempt is a powerful reason for many non-church religious organizations to incorporate.

Tax exemption for nonprofit groups, whether incorporated or not, consists of two separate aspects: first, exemption from taxation of the organization itself which means that churches do not have to file income tax returns nor pay income taxes; second, where the organization qualifies, donors who make charitable gifts to certain tax exempt entities may deduct those gifts from their income in filing their own tax returns. The charitable deduction applies to income, gift and estate taxes. In both instances, churches now automatically are granted the exemptions at both the state and federal level.
A church, unlike most other nonprofit organizations, does not necessarily gain anything in regard to exemption by incorporating.

2. Incorporation Limits Liability

a. What is limited liability?

One of the most basic purposes of incorporation, both for profit-making businesses and for nonprofit organizations, is to limit the financial liability of the owners or members. Without a corporation, all the members of an association or the owner(s) or partners in a business are personally liable for all the debts of the enterprise. Business debts, judgments against the business, fines, etc., are liabilities of individuals involved, and not simply liabilities of the business. In fact, in some ways, unless incorporated, the organization or business does not legally exist.

Incorporation significantly changes that. Incorporation (literally it means "making a body") creates a new legal person - the organization or business. This new person is "personally" liable for debts and judgments, but the owners or directors or members are generally not liable. Thus, by incorporating, owners of businesses and members of associations can protect or insulate themselves from personal liability for the business' or association's debts and liabilities. [There are some exceptions to this which are noted in the chapter on Liabilities.]

Limited liability means that the corporate directors, trustees, officers, employees and members are not personally liable for corporate debts. Creditors may only go after the corporation's assets, such as real property, or funds in bank accounts to satisfy debts, and not the homes, cars and personal funds of individuals such as the deacons, trustees or pastors.

In a day when law suits are increasingly common, and even churches are becoming targets in some areas, and with expanded liability of organizations for injuries to persons caused by the negligence of the organization, incorporation becomes more attractive.

b. Is it ethical to limit liability?

Yes. In the incorporation context, the limitation of liability is an appropriate recognition that members of a group, in this case a church, should not be personally liable for the act of the group. Rather, the group itself ought to be liable. Individuals should not be held liable for the acts of others over which they had no control.
c. What liabilities remain?

While incorporation does have the advantage of limiting liability as above, not all liability is removed. This is discussed more fully in Chapter VIII, but we should note here that some liability remains. What liabilities are not avoided by incorporation?

(1) The corporation remains liable

The corporation's liability is not limited, but the liability of other persons active in the corporation is. Indeed with the increased "exposure" of enterprises to lawsuits today, the exposure of churches may be increasing.2

Churches, as we will note later, can protect themselves from potential financial consequences of this liability both through careful management and through insurance coverage.

(2) Directors, officers and others in a corporation may be liable in some special circumstances, but NOT simply because of their involvement with the corporation.

(a) Individuals are liable personally if they individually are responsible for some crime or injury.

(b) Individuals would be responsible for financial liabilities of the corporation if they had personally guaranteed the payment of some debt, such as by guaranteeing a loan. The liability is not through the corporation, but directly because they had accepted that liability by being a guarantor.

(c) Corporate employees, such as the treasurer, with specific duties under law may be personally responsible for any failure to pay taxes that are due, such as withholding taxes from employee's wages and salaries.

(d) Directors and officers of a corporation must exercise reasonable care in managing, and if they are negligent in carrying out their duties, they may be liable for financial losses to the corporation or for injuries directly attributable to their negligent acts.3 See chapter VIII.

(e) Where individuals fail to make clear to others with whom they do business that they are acting as corporate officials, so that the other party mistakenly, but reasonably, believes that the individuals are personally liable, they may be held so.

(f) If directors of a corporation knowingly incur financial liabilities where it is clear there are insufficient financial resources to cover those liabilities, the individuals may be held personally liable.
3. Incorporation may facilitate relationships with agencies and businesses

Other businesses, particularly lenders such as banks, may require that associations of churches or individual churches be incorporated. This gives other organizations more assurance about the nature of the organization and how to deal with it.

4. Incorporation may provide further name protection

While the name of a church could probably be protected under other legal principles, the incorporation process assures the protection of the corporate name since the statute bars the use of a name which would not be unique.

5. Incorporation can assure perpetual legal existence

While churches and associations have certainly continued to exist through many generations, the corporate form provides for more clear legal continuity. Since the corporation itself is a "legal" person, it does not get old and die or have to transfer its assets to a successor. It simply persists even though the individuals who are involved are constantly changing. In an unincorporated association, the actual legal identity of the entity is constantly changing as persons join or leave.

6. Incorporation may aid in clarifying a church's structure

While the purpose of this Guide is not to explore, much less resolve, theological and biblical issues about church governance, we would be remiss if we did not note the importance of such considerations in church planning. We believe there is a biblical mandate to exercise careful stewardship of resources, and utilize the best gifts God gives us in planning and organizing to enable our mission.

We believe biblical teachings about the church as a "body" of believers, biblical principles of stewardship, and the scriptural mandates of wisdom and prudence all invite the church to carefully and spiritually develop its common life and witness.

Our conviction that spirituality touches not only aspects of prayer and worship, but all that we do, requires that our administration and structure are also part of our spiritual life, and subject to the demands of the Gospel. We must draw on all resources to develop our ministry and effectuate our mission.

Surely in that process, the chief and controlling resources will be the Scriptures, and then the witness of the Spirit in our lives, and our common experience. But even the law may assist us in thinking carefully and planning strategically. Government, including law, is part of
God's economy. While the law must not dictate our mission, it may enable us to effectively structure our life.

Therefore, we believe that a process of reviewing your church's structure ought not to be merely "defensive" in the sense of avoiding liabilities or other troubles, but "offensive" in the sense of an opportunity to think anew about how your church can effectively be the body of Christ: serving, worshipping, witnessing and being.

B. DISADVANTAGES OF INCORPORATION?

1. Generally

There seem to be very few fundamental disadvantages to incorporation. It is not irreversible. It is not complex. It is flexible in the sense that the statutes permit wide freedom for the nonprofit corporation to develop its own particular administrative structures. On the other hand, incorporation is a serious step which assumes a careful review by the church of not only the appropriateness of incorporation, but the particular structures and approaches which are most appropriate for the particular ministry of that church.

2. State approval of purposes and structure

While the requirements under the present State statute are minimal in regard to nonprofit corporations, and do not seem to conflict with traditional Baptist church government, some have been concerned that the very existence of any governmental limits may pose a problem. Some believe it would be an unwise or an unbiblical subordination of the church to the state to formally exist under a corporate status granted by the state.

Of course, any church with property or vehicles or employees is in some respects under state law. We believe the law is not an institution contrary to God's will for his creation. Further, the corporation merely creates an artificial legal entity that is quite distinct from the church's spiritual character. Only this artificial entity is in any sense subordinate to the state, not the members or the church in any spiritual sense. Moreover, the incorporation may be dissolved at any time, and the church as a body of people, would continue to exist.

3. Potential for government regulation

It is true that states are increasingly inclined to regulate corporations including, to a more limited extent, nonprofit corporations. However, churches in almost all states are largely free in their basic operations from intrusive regulations and court decisions have created significant barriers to government intrusion into the internal affairs of churches.
While incorporation does provide the government with a type of formal notice of your existence, it is by no means clear that corporate status increases any government regulatory activity. Certainly the government, both state and federal, is not blind to the existence of churches whether they are incorporated or not, and if the legislature chooses to regulate churches in some respects, it probably will not make any difference if the church is incorporated.

4. Costs

The actual direct costs of incorporation in terms of government fees is rather minimal, currently a total of $40 in fees and taxes. It is possible that other costs will be incurred such as attorney's fees should the church chose to hire legal counsel to assist them in the process.

5. The "hassle" factor

Perhaps one factor that many consider is "how much trouble is it?" Is it worth the time?

In a legal sense, incorporation in North Carolina is "painless" and relatively easy. It is neither a complex nor costly process. But, it is not an automatic process. There are papers to complete and file, and some additions to church bylaws may be appropriate. And certainly, if the church takes this opportunity to think carefully about it's structure, it may lead to a more intensive evaluation and even some significant changes in church documents.

6. Changes in our basic structure and practices?

Incorporation does not require any significant deviation from the patterns of government with which Baptist churches are familiar. It is unlikely that any substantive changes would be required in the governing documents (Charter or Bylaws) of the church. Incorporation does not require any fundamental changes in the way deacons or trustees or members function.

Don't decide yet!

These are only some basic factors. Consider what follows: What are you if you're not a corporation? and, What does incorporation entail?
NOTES

2 While North Carolina has produced relatively few lawsuits against churches or pastors, in other states, churches have been frequently sued for their negligence, even for clergy malpractice.
3 In some states, the negligence must be "gross" for liability to accrue where the directors are unpaid in a charitable or nonprofit corporation.
4 See Hammar, op. cit.
5 While there has been very little attempt to regulate the traditional functions of churches such as worship, preaching, etc., there have been serious problems in some jurisdictions with governmental attempts to regulate other aspects of church ministry such as schools, day care programs, employment relations, etc. These have raised serious questions not only of policy but of constitutional law. These matters are of concern to the Church State Resource Center, but beyond the scope of this particular Guide.
6 For Supreme Court decisions enunciating as rule of civil deference to church decisions, see Watson v. Jones, 13 Wall 679 (1872), Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952), Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969), and Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).