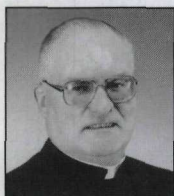


# Ownership Defined Differently in Civil, Canon Law



**BY FR. FRANK MORRISEY, OMI, Ph.D., J.C.D.**

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**C**anon 1256 of the *Code of Canon Law* states that the ownership of goods belongs to that juridic person who has acquired them legitimately and that such rights of ownership are subject to the supreme authority of the Roman Pontiff.

This is an important canon because it stipulates a certain number of canonical rights in relation to ownership of property. But these canonical rights do not exist in a vacuum; they are often complemented by provisions of the civil law in effect in the territory. For this reason, one difficulty that immediately arises is that the civil law system of “ownership” applicable to these goods does not always correspond to the canonical norms. Thus, for instance, it often happens that in the case of not-for-profit entities, no recognized individual civil owner exists. Rather, “members” act as trustees on behalf of the entity. Likewise, the civil entities and the canonical ones are not the same, because one civil structure (such as a corporation) can encompass a number of canonical entities (the religious houses and works in a province), and a canonical entity can function through a number of civil entities (with, for example, its various works incorporated separately).

So, to understand the consequences of Canon 1256, keep in mind that canon law, in many places, clearly distinguishes between physical, moral and juridic persons. Juridic persons derive their status either from the law itself, or from the competent legislator, and are distinct from the physical persons who act on their behalf.

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The canon speaks of goods legitimately acquired by a juridic person; goods acquired by physical persons or individuals are not considered to be church property. The converse is also true: ecclesiastical goods administered by individuals do not become the property of the individuals in question; these persons are not free to dispose of the goods as they will.

It follows, then, that the temporal goods belonging to a parish, which by law is a public juridic person (Canon 515.3), do not belong to the diocese (also a public juridic person). Likewise, goods belonging to a province of a religious institute (Canon 634.1), or to one of its canonically established houses, do not belong to the institute itself. But, as is often the case, and as noted above, the parallel civil law structures do not correspond to the canonical ones. For example, a diocese is often recognized as a corporation sole, and all the assets (including those of the parishes) are included under this entity. Administrators who are not familiar with the applicable distinctions often tend to consider all goods as belonging to the same entity, whether it be the diocese, or the institute itself. But for one juridic person to claim ownership of the goods belonging to another one is contrary to the law, and can also be morally wrong.

The matter has taken on more importance in recent years when health care institutions were undergoing a change of sponsorship. The institution itself was often incorporated separately, and title to the lands and buildings is vested in the civil corporation.

In recent times, serious and important efforts were made to make certain that when property was incorporated separately, the canonical stewards would still be able to exercise their church responsibilities over the work and its assets. This led to what is now commonly known as the system of “reserved powers,” which has served the church well in instances when it was carefully applied. An “official” list of these reserved powers has never been in place because situations vary

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somewhat from place to place. However, they generally focus on three dimensions, all identified by a "P": the "paper," that is, the articles of incorporation and the bylaws, as well as the mission statement; the "persons," such as the members or directors, the chief executive officer and other major officers; and the "property," which is the temporal goods involved. In this latter case, it is usually matters relating to alienation and encumbrance of the property that are considered. If the appropriate reserved powers are in place and are observed, the rights pertaining to canonical ownership are considered to remain intact.

"Ownership" is not the same thing as "sponsorship," although the two are not mutually exclusive. Frequently, however, a hospital or another health care institution is sponsored canonically by a religious institute, while, civilly, its property rights have been transferred to a system, which is often inter-congregational with a number of canonical sponsors.

Inevitably, this leads to confusion in certain areas, and a movement is underway to give the health system (or some of its component parts) canonical recognition, distinct from that of the original sponsors. Most frequently, the form used in the past few years is to have canonical juridical personality conferred on the system itself, or on one or more of its parts. When this happens, the canonical ownership of the property is usually

transferred to the new juridic person, thus unifying the civil and the canonical responsibilities. In the case of pontifical juridic persons, the Holy See has been granting the permission to transfer canonical ownership to the new entity without the necessity of making a separate application for the alienation of the properties in question. This has been a most helpful innovation, and it has simplified the process of transferring sponsorship.

When a religious institute is requesting the establishment of a new juridic person to sponsor its ministerial and apostolic activities, it must have a clear idea of the properties being transferred, and of the canonical ownership rights that would be affected by the change. At times, the original donors specified certain conditions affecting any eventual transfer of ownership rights, and these must be respected.

Canon 1256 speaks of the supreme authority of the Roman Pontiff, but it does not state that the ownership of the goods in question belongs to him. Instead, this means the Roman Pontiff can exercise certain supervisory roles over the property in question and its eventual use. This is usually done through the establishment of limits within which a juridic person can function for certain acts that exceed these limits and for which the permission of the Apostolic See is also required.

Clear lines of canonical and civil ownership can also be helpful when it comes to certain liability issues. Good fences make good neighbors. ■



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