

What are Acquired Rights in Canon Law?

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Consider the following case. A Catholic health care facility in a small city enters into an agreement with a nearby community hospital in regard to shared services in several departments. The diocesan bishop is advised and concurs with the affiliation. He issues a singular decree, a letter approving the arrangement, and the legal civil protocols are carried out between the two entities. Several years later, that bishop is transferred to another diocese and a new bishop is appointed to head the diocese.

Has the Catholic hospital acquired a right that continues even with the appointment of the new bishop? Could the succeeding bishop reverse his predecessor's decision? Could he require that the Catholic hospital terminate or renegotiate its agreement? Does the new bishop have this authority in light of the fact that such an action could cause serious financial, ecumenical, or other repercussions? Before addressing these questions, it will be helpful to consider the concept of acquired rights in canon law.

THE CONCEPT OF ACQUIRED RIGHTS

The term acquired rights is rooted in Roman law that appears in both the 1917 and 1983 Codes of Canon Law. Canon 4 of the latter states that "acquired rights . . . granted to physical or juridic persons . . . by the Apostolic See remain intact" unless they are expressly revoked by the code itself. This canon applies to rights acquired before the code was revised that might conflict with new laws embodied in the code. Such rights, even if not in accord with the new law, are not affected unless the code contains a specific revocation.

Acquired rights are distinguished from innate (natural) rights and legal rights. Natural rights are ingrained in one's very nature, such as the rights to life, personal integrity, freedom, etc. Legal rights are those granted by the law. Book II of the code, "The People of God," contains a sec-

tion on the obligations and rights of the lay Christian faithful. These legal rights can change by the enactment of new laws. Acquired rights are attained by various kinds of juridic acts (privileges, permissions, dispensations, appointment and election to office, grant of faculties, etc.). Rights recognized in canon law may also arise from rights acquired by applicable civil law (as by contract or prescription). The right pertains to a specific individual or juridic person and endures until it is lost by revocation.

Canon law has a great respect for acquired rights. Since the canonical legislator cannot be aware of all the rights acquired by his subjects, he does not want his law to extinguish them unless, with respect to a specific right, he expressly states in a law that rights contrary to this law are abrogated. This respect for acquired rights also applies to those who execute the laws. Diocesan bishops or other ordinaries should not revoke acquired rights unless the public good of the church demands it.

THE CASE AT HAND

How does this information apply to the case above? Two separate juridic acts brought about the collaborative agreement between the health care facilities. The first was the bishop's approval for the Catholic hospital to enter into the agreement, which was fitting since all apostolates in the diocese are subject to the oversight of the diocesan bishop. It is his responsibility to ensure that ministers and juridic persons act in accord with their Catholic identity. Once the bishop's consent was given, a second juridic act followed in the legalization of the agreement between the two hospitals. This agreement, made according to the applicable civil law, is also recognized as valid in canon law (canon 1290), including all rights acquired by it that are not in conflict with canon law or the divine law.



It could happen that, in time, a new bishop has difficulties with the agreement. For example, he could be concerned that the distinction between the two facilities is blurred and the Catholic identity of the one is in jeopardy, or other reasons might militate against the common good. It would be important that the representatives of the juridic person dialogue with the bishop regarding the origins and purpose of the acquired right and its importance for the ministry. Some bishops will not have had previous experience with the health care apostolate and may be unaware of certain issues and difficulties. Representatives of the juridic person and their advisers can be key in educating the bishop to understand why a certain acquired right is necessary and should be maintained.

If dialogue with the bishop is not possible or does not bring about the desired results, it is important to realize that the bishop does not have the power unilaterally to revoke the civilly valid agreement. The rights acquired by the agreement continue, even if the new bishop disapproves.

In an extreme situation, the succeeding bishop might use his power to threaten withdrawal of the institution's Catholic identity unless the agreement is renegotiated. Then, the institution would need to decide whether to comply with the bishop's demand or take recourse to the Holy See. The advice of a competent canon lawyer, and perhaps a Catholic moral theologian, would be most valuable in deciding how to pursue such a case. ■

A Shared Statement of Identity For the Catholic Health Ministry

We are the people of Catholic health care, a ministry of the church continuing Jesus' mission of love and healing today. As provider, employer, advocate, citizen—bringing together people of diverse faiths and backgrounds—our ministry is an enduring sign of health care rooted in our belief that every person is a treasure, every life a sacred gift, every human being a unity of body, mind, and spirit.

We work to bring alive the Gospel vision of justice and peace. We answer God's call to foster healing, act with compassion, and promote wellness for all persons and communities, with special attention to our neighbors who are poor, underserved, and most vulnerable. By our service, we strive to transform hurt into hope. ■

As the church's ministry of health care, we commit to:

- Promote and Defend Human Dignity
- Attend to the Whole Person
- Care for Poor and Vulnerable Persons
- Promote the Common Good
- Act on Behalf of Justice
- Steward Resources
- Act in Communion with the Church

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