

LOSS OF AN ECCLESIASTICAL OFFICE

The previous Canon Law column described the various ways in which a person can acquire an ecclesiastical office and act on behalf of the church. This time round, it might be helpful to see how such offices can be lost.



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Canons 194 and following spell out the circumstances that can lead to an eventual loss of office and, of course, the incumbent's death is the first way. Others include expiry of a pre-determined time; the incumbent reaches the age limit determined by law; the incumbent resigns, retires, is transferred or is removed. Rarely, the office is lost through deprivation.

However, an office is not lost because of the expiry of the term of office of the authority who conferred it, unless other provisions have been made (as for instance, in the case of the vicar general of a diocese who loses his office when the see becomes vacant).

It often happens today that persons are assigned to an office for a determined period of time. For instance, parish priests may be appointed for a six-year term. Major superiors in religious communities are designated for a specified term, depending on the provisions of the constitutions of the institute. As for age limits, some office holders lose their position at age 75 or 80 (as is the case for the voting rights of cardinals). A person who formerly held an office and lost it by reason of age or through a resignation that was accepted, often receives the title "*emeritus*" in recognition of past services.

Until formally notified, the person remains in office, with all the rights and responsibilities attached to it.

There is, however, a very interesting provision in canon 186. Although a person had been designated to an ecclesial office for a specific time period, or until reaching a certain age, the loss of office takes effect only when the competent authority formally communicates it, in writing.

Therefore, there is no room for scruples if, as for example in a religious institute, a person were elected to office for six years, and it is now two months after the scheduled expiry date and the chapter has not yet been held. Until formally notified, that person remains in office, with all the rights and responsibilities attached to it. The same applies to a general chapter: for various reasons, the office might be held a little later than the five or six years originally planned. The incumbents remain in office until their successors are elected or designated.

If a person were found to have lost the use of reason, the office is automatically vacated (see canon 99).

A person of sound mind may voluntarily resign an office, for a just reason. The *Code of Canon Law* does not require a "grave" or even a "most grave" reason for doing so. A "just" reason suffices. Among the more common reasons for resignation, we find loss of health; a call to another form of service; disagreements with the policies of the authority who conferred the office; physical or psychological incapacity to carry out the responsibilities attached to the office; and so forth.

In some circumstances, a person would prefer to resign from an office rather than be removed from it, because removal is somewhat similar to a dishonorable discharge. A resignation must be freely made, usually in writing, or at least spoken before two witnesses. Although in most cases a resignation must be accepted before it becomes effective, there is no such requirement if the pope

wished to resign his office. In that case, he simply has to make his intention clearly known (see canon 332.2). This was the situation in 2013 when Pope Benedict XVI resigned.

If a resignation has not been accepted within three months of its being tendered, it loses its effect. Sometimes, when a diocesan bishop presents his resignation to the pope, at the age of 75, the resignation is accepted “*nunc pro tunc*”, which means that the resignation is accepted now (“*nunc*”), but it will take effect only at a later date (“*tunc*”), when, for instance, a suitable successor has been chosen.

A person who submits a letter of resignation may withdraw it before the resignation is accepted. Once it has been accepted, though, it takes effect (see canon 189.4).

A more common reason for loss of office is transfer to another office. For instance, a parish priest is moved to a new parish, or a local superior in a religious community is transferred to another position. For a transfer to take place against a person’s will, there must be serious reasons, and, generally, there is a procedure spelled out in the internal documents of the diocese or institute.

The same applies to removal from office. Oftentimes, removal carries an element of punishment, but also it could happen that a person is no longer capable, through no personal fault, of carrying out the responsibilities, yet refuses to resign or feels unable to do so.

The *Code* provides for three automatic causes for removal: (1) a cleric who has lost the clerical state, either by dispensation or by dismissal; (2) a person who has publicly defected from the Catholic faith or from communion with the church; (3) a cleric who has attempted marriage, even a civil one.

Sometimes, it is difficult to determine whether or not a person has indeed defected from the Catholic faith. There even have been court cases brought by persons who were terminated from their employment in the church or in its institutions, such as Catholic schools, because of their public stands against church teaching, or because of a new state in life. A prudential judgment is required in all such cases, for it is not appropriate for the church to find itself continually before the secular courts. In situations like this, it might be good if the church had well-established and fully

operating internal “due process” or conciliation procedures so that issues such as these could be addressed internally before the situation festers.

Recent popes have, on occasion, removed some diocesan bishops from office. The reasons can be many. But it is the pope’s prerogative to do so. We also have seen a few examples of instances

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where the superiors of religious institutes were deposed, sometimes for financial issues, sometimes for doctrinal or moral issues.

The final form of loss of office foreseen in the *Code* is known as “deprivation.” This is the result of an ecclesiastical penal procedure, in which a person has been found guilty of one or more canonical delicts or crimes. Fortunately, this method is quite rare, because before it comes to this point, the other remedies could have been used.

We can see from this that church legislation is quite precise when it comes to officeholders. These persons, in one way or another, represent the church and speak for it. Obviously, we would not want someone who is manifestly unfit for a task to continue in an office for a prolonged period of time, to the obvious detriment of all concerned. In some instances, however, when there are only a few months left before the expiry of the term of office, it is considered preferable to let the matter play itself out, without invoking time-consuming procedures which often leave a bitter taste.

No matter what the situation, before resorting to drastic means, those involved must be certain of the facts. They cannot act simply on rumors or anonymous tips when it comes to what could be a serious challenge to a person’s rights — especially the right to one’s good name.

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