

WORKING WITH A COUNCIL

Canon 627 of the *Code of Canon Law* provides that all religious superiors are to have their council, in accordance with the constitutions of the institute, and that the council is to intervene in certain aspects of the exercise of leadership. Although we do not find a similarly explicit norm in regard to our various ministerial public juridic persons (PJPs), we can note, however, that they all function with a number of members. In this regard, canon 115 provides that some PJPs are collegial, in the sense that the members decide its conduct by participating in making its decisions, whether by equal right or not, depending on the approved statutes. Otherwise, the entity is noncollegial.



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I am unaware of any of the new PJPs that are designated as collegial in nature, but this does not prevent them from being so. In most instances, the president of the members of the PJP has discretionary power whether to act or not in a given situation.

It is clear from the *Code of Canon Law* that religious institutes are not collegial decision-making bodies, though some have called for them to be so. Certain activities, however, within a religious institute, such as elections in a general chapter, can be collegial, but not the ordinary governance functions. If religious institutes were to adopt an entirely collegial form of government, it would imply that all information would have to be shared with every person involved in decision-making. This could easily destroy confidence in the leadership when it comes to very personal matters. In canon law, respect for the rights of the individual, particularly in regard to privacy and reputation, is primordial.

What, then, are the implications of this distinction? In a college — such as an electoral college — all are equal, and the superior or president has no more say than any other member over a decision. Even if the superior voted against a decision, the result is binding. In other words, when dealing with a collegial body, the majority rules.

In religious institutes, it is very rare today for a superior to be a member of the general or provincial council. He or she is not a councillor and usually does not vote when the councillors are

invited to give their opinion. Only the councillors vote, unless the approved constitutions provide otherwise. However, it is the superior who makes the decision, not the council.

Canon 127 distinguishes three types of actions where a council intervenes.

COUNCIL'S CONSENT

First of all, in some specified instances, the consent of the council is required before the superior can make a valid decision. Canon 127.1 notes that for the validity of a given act, the consent must be obtained by an absolute majority (that is, more than half) of those present. Thus it follows that if there were four councillors, and two voted in favor of a proposal (such as admission to vows), one was opposed, and the fourth abstained, the required majority was not obtained. The superior would be unable to proceed.

But a key point to keep in mind is that, even if the councillors were unanimous in their support of a proposal, the superior nevertheless is not obliged to act. This is where a “consent” instance is so different from one where a collegial vote is to be taken. As noted in a previous column,¹ it is sometimes difficult to obtain a quorum, particularly in international institutes when visa requirements prevent a councillor from attending the meeting in person. In addition to the provisions of the *Code of Canon Law*, the constitutions of each institute determine when consent is required for a given act.

It is relatively easy to see that, in some instances, superiors could be blocked by certain members of the council who refuse to give consent and,

consequently, prevent the superior from acting. If such opposition were to be systematic and consistent, the councillor or councillors involved should probably resign from the council for the good of the institute. Otherwise, the superior might have to do so.

ADVICE OR CONSULTATION

A second form of intervention of the council is known as advice or consultation. In these instances, the dynamic is quite different. Before acting, the superior must consult the members of the council, preferably together, but otherwise, depending on the provisions of the governing statutes, the members may also be consulted individually. When advice is required, superiors cannot act before consulting the councillors; however, they are not bound by the consultation's outcome.

Nevertheless, there is a provision in canon 1272.2 that reads as follows: "The Superior is not in any way bound to accept their vote, even if it is unanimous; nevertheless, without what is, in his or her judgment, an overriding reason, the Superior is not to act against their vote, especially if it is a unanimous one."

There could be a tendency on the part of a superior to disregard the advice or opinions of the councillors. This too is most dangerous when it comes to sound government. Just as bishops are bound to seek the consent of the consultors and the finance council in certain matters, and the same with the parish priest, so too in our other church organizations it would be unrealistic to expect that one person has all the required knowledge and expertise in order to govern alone. Even the pope, who has full legal authority to do otherwise, calls for the intervention of the appropriate offices of the Roman Curia before making decisions in major matters.

The councillors, too, for their part, must assume their responsibilities. It's not a question for them of simply repeating what we find in the Book of Revelation, 5:14: "The four living creatures answered, 'Amen.'"

Canon 127.3 reminds councillors of their obligations: "All whose consent or advice is required are obliged to give their opinions sincerely. If the seriousness of the matter requires it, they are obliged carefully to maintain secrecy, and the Superior can insist on this obligation."

There is a further provision in canon 1292.4,

in reference to decisions concerning financial matters: "Those who must give advice about or consent to the alienation of goods are not to give this advice or consent until they have first been informed precisely on the economic situation of the juridical person... and about alienations which have already taken place." This principle could be extended to all matters that come before the council: If the councillors are not given the proper information, their consent or advice risks becoming defective, with resulting negative effects for the community, and, indeed, in many instances, for the church as a whole.

COLLEGIAL VOTE

The third form of intervention is known as participation in a collegial vote, when, as explained above, the superior votes with the councillors, and the result is binding on all. We see this in elections, which are collegial acts, and also in certain dismissal cases, particularly concerning religious.

There is a very interesting observation found in canon 119.3, when speaking of collegial votes: "That which affects all as individuals must be approved by all." When considered in its canonical tradition, this principle, which finds its origins in the Roman law of old, does not necessarily mean that a unanimous vote is required for a motion to pass (for instance, in a general chapter). Rather, the interpretation has been that everyone who is directly involved by the decision must have been given an opportunity to express an opinion, either directly, or through delegated representatives. A correct application of this important principle helps avoid what could be called backroom deals.

The institution of a council to assist superiors is part of a general checks-and-balance approach that we find in many parts of the canonical legislation. It is a security for everyone, especially those responsible for making a decision and who can feel supported by others who were legitimately designated to assist in decision-making.

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NOTE

1. Francis G. Morrisey, "Ecclesiastical Offices," *Health Progress* 95, no. 6 (2014): 87-89.

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