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SPECIAL SECTION

PUBLIC JURIDIC PERSON OFFERS FLEXIBILITY

Structuring And Writing Statutes for This Model Is Simple in Theory, Complex in Practice

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Catholics who want to preserve Catholic healthcare have become increasingly interested in the concept of the public juridic person, an alternative sponsorship arrangement useful in a time of dwindling numbers of women religious and dwindling diocesan resources. Through this canonical vehicle, various Church entities can share resources. Rather than face the stormy marketplace alone, a single Catholic hospital or a weak Catholic healthcare system can combine with others to stay competitive, thus maintaining the Church's presence in the healing ministry.

A familiar example of this type of arrangement is Catholic Health Corporation (CHC), Omaha, a network of Catholic healthcare facilities incorporated under civil law, and its canonical counterpart, the Catholic Health Care Federation (CHCF), which is a public juridic person. Indeed, the public juridic person was created to sponsor and manage Catholic hospitals—like those which make up the CHCF—from which religious institutes have withdrawn. (Also see Judy Cassidy, "A Vision of Collaboration," *Health Progress*, June 1991, pp. 20-21.)

CREATING A PUBLIC JURIDIC PERSON

Creating a public juridic person is relatively simple in theory but can become complicated in practice (as discussed later). The 1983 Code of Canon Law, the manual of order for all official Church organization, offers some definitions and directions:

> Public juridic persons are aggregates of persons or things which are so constituted by the competent ecclesiastical authority that, within the limits set for them in the name of

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Summary Public juridic person is an alternative sponsorship arrangement that allows various Church entities to share resources, thus strengthening their competitive position. Creating a public juridic person is simple in theory but can be complicated in practice.

The 1983 Code of Canon Law states that public juridic persons are "aggregates of persons or things" consituted by the "competent ecclesiastical authority" to "fulfill a proper function given them in view of the common good." The canon law further indicates that public juridic persons require statutes. The code provides a list of items to be included in the statutes, such as a purpose, constitution, governance, operations, and conditions of membership. Writing these items can be complex, depending on the makeup of the public juridic person.

After writing the statutes, the entities' leaders take them to the competent ecclesiastical authority, who approves them and thereby founds the public juridic person. But it is not always easy to determine who the competent authority is.

Statutes can be tricky to formulate and therefore should contain provisions for modifications. They should be written as simply as possible. Bylaws should be used as much as possible for detailed provisions. Still, the most important safeguards of Catholic identity will be the makeup of the board, provisions for monitoring its activities, and the implementation of ethical directives issued by Church authority.

the Church, they fulfill a proper function given them in view of the common good, in accord with the prescriptions of the law. (c. 116.1)

Aggregates of persons must have three physical persons as members. These aggregates are either collegial or noncollegial. The members of a collegial juridic person "determine its actions through participation in making its decisions, whether by equal right or not, according to the norm of its own statutes" (c. 115.1); the members of noncollegial juridic persons do not.

The code further defines the basics necessary for the public juridic person's creation:

> An aggregate of things or an autonomous foundation consists of goods or things, whether spiritual or material, and is directed by one or several physical persons according to the norm of law and its statutes. (c. 115.2)
>
> Public juridic persons are given this personality either through the law or by a special decree of the competent authority expressly granting it. (c. 116.2)
>
> No aggregate of persons or things, intending to obtain juridic personality, can achieve it unless its statutes have been approved by the competent authority. (c. 117)

From this reading of the law, two points are now clear. First, public juridic persons require statutes. Second, these statues need the approval of an ecclesiastical authority, or "the competent authority," as it is called in the law.

Statutes Statutes, according to the code, are "ordinances which are established in aggregates of persons or things according to the norm of law and by which their purpose, constitution, government and operation are defined" (c. 94.1). They bind only the legitimate members of an aggregate of persons or those who govern an aggregate of things (c. 95.2).

Statutes are like canon law for juridic persons. They are more particular manuals of order. Their formulation (discussed later in this article) is one of the major practical tasks in creating this canonical entity.

Competent Authority There are many competent authorities in the Church—for example, the pope, diocesan bishops, and heads of religious communities. Deciding which competent authority should grant approval and issue the decree erecting the public juridic person will depend on the scope of the eventual juridic person, that is, whether it is international, national, or diocesan. In theory, international public juridic persons are the province of the Holy See, national public juridic persons are handled by the conference of bishops, and diocesan public juridic persons are the responsibility of the diocesan bishop. In practice, however, other arrangements may have to be made.

The public juridic person was created to sponsor and manage Catholic hospitals from which religious institutes have withdrawn.

WHAT GOES IN THE STATUTES

The statutes of a public juridic person should contain:

- The public juridic person's name
- Its location
- Its purpose
- The competent ecclesiastical authority with jurisdiction over it
- A description of the competent ecclesiastical authority's rights vis-à-vis the public juridic person
- A description of the method by which the public juridic person is to be governed
- A description of the manner in which its governors gain and lose office
- A list of rules for conducting meetings and elections
- A list of regulations for the management of temporal goods
- A description of the steps by which physical persons obtain and lose membership
- A provision for the disposal of temporal goods on dissolution of the public juridic person

WRITING THE STATUTES

The first paragraph of canon 94 provides a list of items to be included in the statutes of a public juridic person, namely, definitions of the organization's "purpose, constitution, government and operation" (see **Box**). This list might be expanded to include some items required for the statutes of associations of the Christian faithful, another canonical vehicle for ministerial cooperation among physical persons. These include the headquarters (i.e., its location) and the conditions of membership (see c. 304).

Some of these items often can be copied from statutes of civil incorporation. The purpose of a juridic person can be handled by including in the statutes a brief description of the proposed organization and its mission. Other items—such as the constitution, governance, operation, and the conditions of membership—will require more detailed commentary.

THE CONSTITUTION

It is relatively easy to write a constitution for a new public juridic person. One can begin by simply naming the persons or things making up the new entity. However, constitutional questions arise if the entity includes personnel and material re-

sources that have come from the merger of two other public juridic persons (e.g., two Catholic hospitals). "This new juridic person obtains the goods and patrimonial rights proper to the prior ones, and it also takes upon itself the obligations with which they have been burdened; however the intention of the founders and donors and acquired rights must be respected" (c. 121).

Similar constitutional issues arise "if an aggregate which has public juridic personality is to be so divided that a part of it is to be united to another public juridic person" (c. 122). An example would be one Catholic hospital merging with another whose capital includes part of the patrimony of a religious institute never legally separated from the motherhouse.

Like a civil corporation, "a public juridic person is of its nature perpetual," but it can cease to exist through suppression by competent authority or inactivity for 100 years (c. 120.1). "Upon the extinction of a public juridic person, the allocation of its goods, patrimonial rights and obligations is ruled by law and by statutes" (c. 123). Cessation thus provides the first clue regarding possible subject matter proper for statutes. Otherwise the public juridic person surrenders its right to determine heirs, so to speak. "If [the statutes] give no indication, [the goods, patrimonial rights, and obligations] go to the juridic person immediately superior, with due regard for the will of the founder or donors and for acquired rights" (c. 123).

GOVERNANCE

In general, governance of public juridic persons is carried out in the same manner as governance of other Church entities enjoying the same legal status—for example, dioceses, parishes, and religious institutes. Statutes are to be interpreted in the same manner as well. "Those prescriptions of statutes which were issued and promulgated in virtue of legislative power are governed by the prescriptions of the canons on laws," that is, canons 7-22 (c. 94.3).

Governance of public juridic persons—like governance of associations of the Christian faithful (which also may or may not be public or private juridic persons)—should be carried out in an ecclesiastical context. That means that all public juridic persons "are subject to the vigilance of competent ecclesiastical authority, whose duty it is to take care that integrity of faith and morals is preserved in them and to watch lest abuse creep into ecclesiastical discipline; therefore that authority has the right to visit them in accord with the norm of law and the statutes" (c. 305.1).

It may be politically astute to include recognition of such a right in the public juridic person's statutes. Adding a reference to the ethical directions of the episcopal conference is one way of handling this issue.

All public juridic persons "are subject to the vigilance of competent ecclesiastical authority."

In writing statutes, one should precisely determine the rights of a "visiting ecclesiastical authority." These rights can be quite extensive, as can be seen by taking recourse to parallel places, as canon 17 recommends.[1] A public association can, for example, be commandeered by ecclesiastical authority during an emergency, and its moderator can be removed (c. 318). The leaders of a public juridic person are subject to the "higher direction" of ecclesiastical authority, to whom they "must render an account of the administration each year"; the leaders "must also render to the same ecclesiastical authority a faithful account of the dispositions of offerings and alms which it collects" (c. 319).

Various methods of governing public juridic persons are possible. The code specifies nothing more than that noted already in canon 115. Collegial juridic persons are governed by their members; noncollegial juridic persons and aggregates of things are governed by other physical persons. Thus a public juridic person can by governed either by a single individual or by a board.

There are several methods for designating these leaders. They may, for example, be elected by the membership of collegial juridic persons or appointed by ecclesiastical authorities, such as a bishop or superior. Canons 158-163 and 180-183 provide for two other methods: "presentation" and "postulation." Under presentation, new leaders are designated by a body (a board, for instance) to an ecclesiastical authority with the right to install these leaders in office. Under postulation, some canonical impediment (e.g., a prohibition against serving successive terms) must be relaxed before the selected candidate can assume office.

Leaders of public juridic persons can lose their offices in five ways: lapse of term, resignation, transfer, removal, and privation. The key difference between removal and privation is that, in the latter case, the leader loses his or her office as the result of being found guilty of committing a canonical offense (e.g., apostasy, heresy, schism, procurement of an abortion). No such stigma is attached to removal; only a just cause is required to deprive the leader of his or her office (e.g., failure to meet certain agreed upon goals or deadlines).

The type of governance chosen for a public juridic person must be spelled out in its statutes. So must the methods through which leaders obtain and lose the offices of governance. The statutes should also describe the manner of conducting elections, if applicable. Most public juridic persons pick their leaders according to the canonical method, spelled out in canons 119 and 164-

179. The statutes, however, can be written to provide other methods—say, *Robert's Rules of Order.* In some instances, for example, it may be inappropriate for the "one who is senior in age" to be "considered elected" after a tie on the third ballot, as is provided by the canonical method (c. 119). For that reason, the statute writers may want to examine other methods for choosing leaders.

Operations

Financial matters constitute a major portion of the daily operations of a public juridic person. The organization's lines of accountability need to be spelled out in the statutes, whether or not they are as extensive as those for public associations of the Christian faithful.

Book V of the Code of Canon Law, as indicated by canons 1257-1258, contains other regulations relevant to the writing of statutes. The general principle is contained in canon 1276:

> It is the responsibility of the ordinary to supervise carefully the administration of all the goods which belong to the public juridic persons subject to him with due regard for legitimate titles attributing even more significant rights to the same ordinary.
>
> Ordinaries are to see to the organization of the entire administration of ecclesiastical goods by issuing special instructions within the limits of universal and particular law, with due regard for rights, legitimate customs and circumstances.

Particular requirements appear in other canons of Book V. Canon 1280 requires all juridic persons to have a finance council consisting of at least two advisers. "The acts which go beyond the limits and procedures of ordinary administration are to be defined in the statutes" (c. 1281.2).

"Ordinary administration" is the regular transaction of business, such as receiving rent or interest income, accepting normal gifts, paying bills, and making routine sales and purchases. Acts that go beyond the limits and procedures of ordinary administration include "acts of major importance" and "acts of extraordinary administration." Acts of major importance are determined in light of the financial situation of the public juridic person and of bodies to which it is subject (such as a diocese or religious institute). Acts of extraordinary administration are nonrecurring acts of special significance, including capital construction, accepting or making major gifts, and making expenditures over a certain amount.

Statutes should name the authority competent for granting permission to make expenditures "between the minimum and maximum amounts . . . determined by the conference of bishops for its region . . . when it is a question of juridic persons who are not subject to the diocesan bishop" (c. 1292.1). The maximum expenditure permitted to a public juridic person in the United States is $3 million. For the sake of good order, the statutes could spell out the required procedures for other large expenditures, although these are adequately covered by the Code of Canon Law:

> Otherwise, the competent authority is the diocesan bishop with the consent of the [diocesan] finance council, the college of consultors and the parties concerned. (c. 1292)
>
> The permission of the Holy See is also required for valid alienation [transfer or significant encumbrance of Church property] when it is a case of goods whose value exceeds the maximum amount, goods donated to the Church through a vow or goods which are especially valuable due to their artistic or historical value. (c. 1292.2)
>
> [These same requirements,] with which the statutes of juridic persons must be in conformity, must be observed not only in an alienation but also in any transaction through which the patrimonial condition of a juridic person can be worsened. (c. 1295)

Except on financial matters, the Church gives the leaders of a public juridic person wide latitude in determining its operations.

Except on financial matters, the Church gives the leaders of a public juridic person wide latitude in determining its operations. Canon 95 does not specify which rules of order must be observed in assemblies of persons. As noted above, *Robert's Rules of Order* may be utilized. Those leaders of a public juridic person who are not subject to the laws governing religious are free to operate by consensus.

Conditions of Membership

In general, conditions of membership refer to any requirements for valid admission—requirements for candidates, ceremonies of inscription, and so on. Canon 306 says that, "in order for a person to enjoy the rights and privileges, indulgences and other spiritual favors granted to the associations, it is necessary and suffices that the person has been validly received into it and not legitimately dismissed from it, in accord with the prescriptions of the law and the proper statutes of the association." Although canon 306 deals specifically with membership in associations of the Christian faithful, it would appear (from canon 17's reference to "parallel passages") to apply to membership in collegial juridic persons as well.

Those who draft the public juridic person's statutes will need to ask themselves: What constitutes "valid reception"? Must some sort of ceremony be performed, or does the candidate simply attend an initial board meeting, sign a letter of intent, and so on? How is a board member legitimately dismissed? Is there an appeal process?

Conditions of membership apply especially to those public juridic persons also known as public associations of the Christian faithful. Canon 316.1 says: "One who has publicly rejected the Catholic faith or abandoned ecclesiastical communion or been punished with an imposed or declared excommunication cannot be validly received into public associations." Moreover, "those legitimately enrolled who fall into [these same] situations . . . are, after a warning, to be dismissed from the association, observing the association's statutes and reserving the right of recourse to . . . ecclesiastical authority" (c. 316.2). It is worth asking whether, in view of canon 17, these provisions apply also to collegial juridic persons that are not associations.

It should be noted here that canon law neither forbids nor invalidates the membership of non-Catholics in public associations of the Christian faithful. A provision to this effect was removed just before promulgation of the code. Healthcare facilities with dedicated non-Catholics on the board need not worry on this account!

Proper Ecclesiastical Authorities

Assuming that statutes have been prepared for the creation of a public juridic person, to whom does one take them? And for what?

The second question is easier to answer than the first. The statutes should be taken to the competent ecclesiastical authority, who approves them and thereby constitutes or founds the public juridic person. The constitution is accomplished through "a special decree of the competent authority expressly granting it" (c. 116.2). Approval of the statutes may appear in this or in a separate decree.

But who is the competent authority? As noted previously, the theory is clear. International entities are handled by the Holy See, national entities by the episcopal conference, and diocesan entities by the diocesan bishop.

But this has not always worked in practice. In the United States, for example, the National Conference of Catholic Bishops (NCCB) apparently does not yet have an office equipped to monitor the operation of public juridic persons. Until now, the NCCB did not seem to need such an office. The idea of creating public juridic persons by which laity may carry on in an organized, professional fashion the apostolic work begun by religious and clergy, although an ancient one, has become practical only in recent years.

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Until the Church has more experience in creating public juridic persons by decree, other practical questions are likely to arise. For instance, who among the bishops of several dioceses should act as the competent authority for granting juridic personality to an entity that has combined healthcare ventures from their dioceses? Should the NCCB itself take this role? Or would such a matter be handled better at a local level, especially if the facilities involved are not truly national in scope?

At least one other situation can arise in which it is unclear who is the competent authority. Granted that the Holy See (through the Congregation for Institutes of Consecrated Life) is the competent authority for founding public juridic persons related to religious institutes, to whom does one turn when the public juridic person includes entities sponsored by both religious institutes and dioceses? Would it be the Council for the Laity? Or the Council for Healthcare? Do several congregations share jurisdiction? Might they be delegated to have jurisdiction in particular cases? No precedents have been set for such situations.

Statutes Should Be Simply Written

Formulating statutes is tricky. Mistakes will be made. The statutes should, therefore, contain provisions for modification. Statutes should also be written as simply as possible, containing only that which is basic and necessary. Bylaws should be used as much as possible for detailed provisions, since they can be modified more easily than the more fundamental document. In this sense, the statutes and bylaws of public juridic persons are like the constitutions and directories of the legislation that creates religious communities. Changes in statutes and constitutions both require the approval of a competent outside authority. But just as a religious community can modify its own directory, a public juridic person can modify its own bylaws.

But statutes and bylaws, however flexible and well formulated, are not the most important safeguards of Catholic identity. The most important safeguards are the makeup of the board, provisions for monitoring its activities, and the integral implementation of ethical directives issued by Church authority. □

NOTE

1. Canon 17: "Ecclesiastical laws are to be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse is to be taken to parallel passages, if such exist, to the purpose and the circumstances of the law, and to the mind of the legislator." (*Code of Canon Law: Latin-English Edition*, Canon Law Society of America, Washington, DC, 1983, p. 7.)