

COVID Advisory – Legal Issues

Executive Committee Assemblies of God, Northern California and Nevada District Council ^{1 2}

Pastors and Churches that are thinking about violating a public health order need to study several key issues before making that decision:

1. The theology of faithful disobedience.
2. The constitutional issues arising from or affecting the decision.
3. The effect on the church's witness in the community.
4. The legal issues and liabilities that the church and its leaders may incur.

This advisory is to answer the last of these questions.

What is the legal liability that may arise if a church violates a public health order and someone is harmed by that decision? This is a pragmatic question. As such, it should not override more principled issues. Nevertheless, the consequences could be very real, and so it ought to be considered carefully.

There are significant liabilities that the church as a corporation and each individual board member incurs by ignoring the public health order. Defying a legal order will provide the basis for a lawsuit to allege "criminal negligence" or "gross negligence." This will have several consequences:

- 1) It will nullify the church's insurance coverage. Church insurance policies does not cover malicious, illegal, or grossly negligent behavior. Consequently, the church's insurance

¹ This opinion is an advisory from the Executive Committee. It is not mandatory that AG ministers and churches agree with this opinion, the Assemblies of God does not dictate a particular stance on this subject. It is understood that self-governing churches are authorized to form their own opinion and make their own decisions on this subject. The Executive Presbytery also hopes that holding an opinion on this subject does not become a cause for division within the Assemblies of God.

² This advisory is consistent with legal opinions that the Executive Presbytery has received from various attorneys. Nevertheless, legal opinions are always subject to a variety of different circumstances and jurisdictions. A General Council Affiliated church should consult its own attorney before making significant decisions.

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policy will not pay the legal fees associated with (that portion) of a suit, and will not pay for any damages that result.

- 2) It will expose the fiduciary board members to personal liability. Gross or Criminal negligence is one of a few circumstances where the “corporate shield” does not apply, and the governing individuals will become personally liable. Each board member is likely to be a named defendant and identified as “jointly and severally” liable. That means that the damages might not be apportioned among them but any individual board member may be held responsible for all of the damages. For example, if the judgment is \$100,000 and Board Members A and B have no assets, but Board Member C has assets, then C will be responsible for the entire amount.
- 3) It will give rise to punitive damages in addition to consequential damages. Punitive damages are intended to “punish” bad behavior and will significantly add to damages. Punitive damages are often based on the wealth of the defendant, and so churches and board members that have significant assets will have higher exposure.
- 4) It could give rise to criminal charges. Let’s not forget that these orders can have legal consequences. Some churches are already being fined. A few pastors have been jailed. Admittedly, those situations are rare. It is also possible that criminal charges may arise if the church defies the order and someone is harmed as a result. For example, if a church defies the order and someone gets sick and dies, the leadership could be charged with “involuntary manslaughter” or “misdemeanor manslaughter.” This may seem surprising, but unlawful or negligent behavior that results in a death is the very definition of involuntary manslaughter. This is the same law that applies when a reckless driver kills someone in a car crash.

We admit that some of these scenarios are unlikely to happen. But the consequences of a failure could be extremely high: to individual families, to the church’s position of trust in the community, and to the assets of the church and/or board members. Church leaders need to weigh those risks carefully.