RELIGION, CULTS AND THE LAW

Revised Second Edition

by Abraham Burstein

Legal Almanac Series No. 23

RELIGION, CULTS AND THE LAW

REVISED SECOND EDITION

by Abraham Burstein

This Legal Almanac has been
by the Oceana Editorial

Irving J. Sloan
General Editor

1980
OCEANA PUBLICATIONS, INC.
Dobbs Ferry, New York

Library of Congress Cataloging in Publication Data

Burstein, Abraham
Religion, cults and the law
(Legal almanac series; no. 23)

ISBN: 0-379-11133-0

Manufactured in the United States of America

TABLE OF CONTENTS

Chapter 1

LAWS CONCERNING RELIGION

The Religious Society

With very few exceptions, every state welcomes the *incorporation* of organizations with religious aims. No mere individuals, however, may claim such rom the state. A Society or church property must be a group affair. As a group it obtains property, is accorded tax and other exemptions, and carries on the many activities, social, charitable, and educational, which have always supplemented its activities of public worship.

There is no legal objection to any householder conducting worship in his own home or other location not specifically assigned for religious services, provided there is no infringement upon the rights and comfort of other individuals or the public.

Most states prohibit location of liquor stores or other businesses not in complete public favor, within a specified distance from a church or synagogue.

Like any other corporation, a religious society does not necessarily have perpetual existence. It is possible for a religious society, whose authorities so provide, to *dissolve* by mere agreement of its members. Or where it has limited its incorporation for a fixed period, it will automatically cease at expiration of that time.

It is always possible that a religious society will abandon the aims for which it came into being, and cease exercising the functions regularly pacticed by it; it can then be regarded as dissolved without further legal act. Disposition of property, if any, must be entrusted to the judgment of the courts.

From a variety of decisions accepted by all state courts, certain principles affecting *consolidations* of church groups become evident. As corporations generally obtain the power to

consolidate only through consent and authority of the legislatures, the same procedure is imposed upon religious corporations. By extension, even the *merger* of unincorporated religious societies generally requires that legislative sanction.

But there are certain obstacles to merger even where both bodies at first appear altogether willing to affect them. If there is anytthing in the fundamental law of either institution expressly or implicitly forbidding such action, it will not be sanctioned. Likewise, if there are differences in faith, there must be express provisions for altering the confession. And if the original endowment restricts the group to a particular faith, it cannot be allowed to renounce that the faith or join with another organization not professing its own religious principles.

Most of the state codes contain no specific statutes for church mergers and dissolutions; some mention only the matter of consolidation, and some only that of dissolving religious corporations. There are sufficient provisions for these changes in the general statutes. In any event, such projects demand the intervention of lawyers and courts of law, hence exact details need wait upon the event.

Ordinarily those persons who qualify to be *members* of a religious society do so according to the constitution or by-laws of the society. Submission to constituted authority and profession of faith are ordinarily treated by the law as inherent in membership.

Any *constitution* adopted by the members of such a group will be given legal recognition unless its provisions are unreasonable or in conflict with the law. The same applies to by-laws adopted pursuant to such constitution. Ordinarily, the constitution may be changed in regard to fundamental matters of faith only by unanimous consent of the membership.

The law will recognize any procedure for *meetings* or *elections* which the rules of the society provide or which is established by its customs, but will give relief from instances of gross irregularilty. In the absence of any rule or custom, parliamentary procedure will be assumed as a standard.

Since a religious corporation, theortically and in accord with the common law, has unrestricted control over its

possessions and can *dispose* of them in the same manner as other corporations, it would seem that this privilege should not be abridged in actual practice. But everywhere in this country there are statutes which require sanction of the appropriate court before a church property may be transferred or encumbered. When the court so orders, there are generally added directions concerning disposition of proceeds of a sale or other change in form of ownership.

Often the court order requires that a church that is sold be conveyed to a group professing the same creed, or of the same denomination; but there are numerous cases of a church being sold to a synagogue group, or vice versa.

Under most statutes covering such transfers, a majority vote among members or pewholders is not considered sufficient authorization for the religious corporation to complete the sale, nor to impel the court to sanction it.

It has generally been held that a church site and structure may be sold to pay the salary of the pastor, although in one state this method of satisfying a judgment against the church was held to be unlawful.

An incorporated religious society is permitted to carry on a variety of secular activities. It may not derive income from any worldly business, but may do so from the property it owns and which is employed for religious purposes. Otherwise, it must rely upon voluntary dues and contributions.

The rule applies in all cases, no matter how urgent be the immediate needs of the group. The religious society is forbidden to rent a farm, in order to grow a profitable crop thereon; to lease a store, for the purpose of renting out horses and carriages; or to hire a vessel for paid water transportation of passengers.

If the society contracts for a steamboat excursion to raise money for itws maintenance, it does so without a legal right - although this and similar methods of church fund-raising are common, as everyone knows.

Only to the extent that secular activities are part of its doctrine and mode of religious observance may they be carried on by incorporated religious societies. Such societies have been

forbidden to build structures for rental purposes, or purchase real estate for speculation.

Other prohibitions have been against conducting a commercial printery, transporting passengers for hire, conducting a savings bank business.

In no case can the society go beyond the purposes set out in its chapter. A case in point is a corporation proposing to supply preachers with literature, which tried to branch out into establishing an orphans' home.

Where specific occupations are prohibited under court decisions the prohibitions holds even though every dollar gained in profit is devoted to the purposes of the religious corporation.

Unless a member acts to incur or ratify a debt of the society, or is bound by the laws of the society to anwer for its *liabilities*, he has no obligation in respect to such matters. But he is liable for assessments by the society upon its members in accordance with the rules of the society.

The religious society is the group attending devine services. The *corporation* is the owner and manager of the properties, with a theoretical permanent existence. A member of one is not necessarily a part of the other.

Two religious corporations may not *merge* and yet continue separate activities. Consolidation must be complete, and there must be collective unity of property and external relations.

A religious body may sue to prevent use of a misleading name by a newly formed religious group. If the first body is in any way harmed or confused because of such action, it can request legal relief like any legal corporation.

The Clergy

Courts will adjudicate issues involving the rights of clergymen to their positions. If contractual or property rights are at issue, the courts will take jurisdiction. if, however, questions involving exercise of ecclesiastical authority are at issue, the courts will not ordinarily intervene.

In a number of states clergymen suffer disabilities because of their official position. In a number of states they are

excluded from election to the legislature or other high state offices. While this was once the norm in southern states, only Maryland and Tennessee still forbid public office to clergymen. Some states do not permit clergymen to draw and witness wills on the ground of possible undue influence.

Ministers are as a rule exempt from jury and other local civic duties and obligations. Some states in the east exempt retired ministers from taxation. The federal income tax exempts the rental value of a home provided for the minister by his congregation. No minister or theological student need accept drafting into the armed forces.

Religious workers may not interfere in the work of social agencies handling public charges.

Generally, statements of the clergy in church or synagogue are privileged in regard to slander or other suits. A pastor is not liable if he merely carries out a policy of church discipline, and from his pulpit reads a valid excommunication promulgated by a church tribunal. Only if he goes on to make personal charges, to advise his congregation to avoid the excommunicate and have no personal or business dealings with him, may the clergyman be held for defamation of character.

Except that he need not divulge religiously received confessions, no minister is ever above the law. He may be punished for any crime as the law prescribes. He may be sued for damages in such cases as assult, libel, alienation of affection, or other acts in which a tort is committed. Nor is a clergyman privileged to employ slander or obsence language in rebuking sin, or use undue force in ejecting a person lawfully in the room of worship with him.

The Family

The law wishes to assure the validity of marriages, since that relationship is fraught with so many important consequences for both individual and state.

Complications at the best disturbing, and at worst socially disrupting, may arise from solemnization of marriages by persons not legally recognized as qualified to do so. Hence the law requires that every clergyman of every faith, and every

public official so privileged, must receive official sanction before being permitted to perform a marriage ceremony.

Most generally, the clergyman must submit a public registration and then be formally licensed to serve as officiating minister. He must identify himself before the proper official, and furnish proof of his qualifications and of his status in his religious denomination.

Although all states provide that clergymen are empowered to perform nuptials, they must have some proof of ordination. Nevertheless, in New York and elsewhere the statutes are so worded that a person who can prove that he is conducting the spiritual activities of a functioning house of worship is held to be a full-fledged clergyman and can preside at a marriage. A number of states require that the celebrant be "settled" in the work of the ministry.

Efforts have been made by legislatures to limit the clergyman qualified to solemnize marriages to those affiliated with a religion listed in the most recent federal census of religious bodies. But such laws have been held invalid. The status of a clergyman is not dependent upon any official listing, but upon his bona fide religious service to a religious institution, and as a rule with proof of actual ordination.

Where the ceremony is performed by one not authorized to do so it is ordinarily considered void. Decisions in a number of jurisdictions have proclaimed that if either party believes the celebrant to be so authorized, the marriage remains valid.

Where a religious ceremony is required to validate a marriage, it has been held that where it is solemnized by one apparently an ordained minister even though he be actually unqualified, the marriage is to be considered legal.

In those states permitting common law marriage, obviously a ceremony solemnized by an unauthorized person will achieve validity through the very fact of the consorting of the parties.

Licenses are everywhere prescribed before a marriage may be solemnized. In California, West Virginia, and Wyoming, decisions have held that the license is always mandatory, and that a marriage performed without it is void. But the general rule is that statutes prescribing licenses are merely directory, and do not destroy the validity of a marriage contracted

without fulfillment of these statutory provisions, but a clergyman renders himself liable to criminal prosecution for failure to require production of the prescribed marriage license.

In common law marriage, it seems that almost every violation of law, including that of serological tests, can be condoned, and the marriage be considered legal. But generally it is required that a third party has heard the joint profession of the man and woman.

It is a general rule that if a wedding has been solemnized by a clerk or judge so empowered, and the parties later wish to go through a religious ceremony, no additional license is required. This generally applies even when the second ceremony is held in another state.

State statutes do not ordinarily prescribe an exact form of ceremony. Any form of ceremony set up by the law and custom of various denominations and religious societies is authorized and accepted by the law. Either a religious or civil ceremony is sufficient except that in Delaware, Maryland and West Virginia a religious ceremony is required by statute.

At common law, differences in race or faith have no bearing on the right to be married. There is no statute anywhere in the United States forbidding marriage of persons of different religions. Of course such statutes would be clearly unconstitutional.

A visiting performer of a marriage may or may not have to be registered in the state where he performs the marriage. Custom rather than law governs this question. Thus, while New Jersey requires no registration of any kind for a clergyman from another state who wishes to perform a ceremony in that state, every visiting clergyman on a similar task in New York City is expected to sign a registration book. There is no case, however, of a marriage performed by a visiting clergyman fully licensed in his own state, being legally invalidated.

The law sanctions all forms of marriage solemnization in accord with the laws and customs of existing sects and societies.

Indians have never been forbidden marriage in keeping with their tribunal customs. Quakers, Mormons, Christian Scientists, and others who have no clergymen in the accepted sense of the term, but leaders, readers, and others thus

differently designated, may still perform ceremonies that will not be adjudged illegal.

The Amish, who object to giving oath, need not answer questions on license applications under oath, but their bishop may attest the truth of their statements. In short, the states offer every opportunity for legitimate sects to carry on their customs and traditions in the matter of marriage performance.

An *ante-nuptial agreement* concerning *religious training of children* is not inviolable. Quite to the contrary, No father can divest himself of custody of his children in any respect, and he need not follow any agreement made with his wife before her death concerning their religious training. He has the right to change their forms of religious instruction. The same applies to the mother.

In cases where relatives insist upon guardians of orphans who will train them in the agreed religion, the religious considerations do not prevail, but only the well-being of the children.

In all cases *divorce* is a matter of civil law, therefore a state court will not adjudge validity of marriage and adjudge divorce on the basis of the religious law of the parties. A Mormon divorce by mutual consent was adjudged invalid. Rabbinical divorces have no validity without normal judicial proceedings under state law.

As indicated earlier, each party to a marriage has full right to his or her unique and religious practices.

Where religious differences are not mere ideas, but are conducive to actions harmful or oppressive to the spouse, there may possibly be valid grounds for seeking a divorce. Thus, serpent worshipers who wind poisonous snakes about their necks, or practitioners of the bizarre arts of voodoo, or members of some sects that inflict bodily harm on their devotees in the frenzies of worship, can cause actual physical injury to their spouses--and from such contingencies they undoubtedly can obtain legal redress. Even ridiculing the other's church is not sufficient reason for legally enforced separation.

But when one party compels the other to comply with his religion, despite the other's utter aversion thereto, relief may be

granted. This is also the case where one party develops a great and sudden interest in propagating another religion, and to this end neglects his family. In one case the husband of a religious healer was granted a divorce on the ground that his wife's conduct had seriously injured his health and reason.

In some states refusal to cohabitat on religious grounds is not considered legal cruelty and thus grounds for divorce. This applies to wives who proclaim that they have formed mystical other-worldly marriages.

But California, Michigan, New Hampshire, Oregon, and Washington consider such refusal valid grounds for divorce, no matter what reasons be given. In New Hampshire six months' connection with a religious society forbidding cohabitation is sufficient to warrant relief by divorce; in Kentucky, the membership must last five years.

As opposed to old English law, which gives the father prior rights, American courts have posited the doctrine of equality in determining the form of *religious instruction for children* when both are living, and exclusive rights thereto for the survivor.

The courts will not intervene in a domestic quarrel as religious training of a couple's children, but the conflict must not raise actual questions of the welfare of the offspring must remain within the home.

Religion is not the primary consideration in awarding *custody of a child.* The welfare of the child is primary, although for many reasons every effort is made to assure conformity of faith between guardian and ward. Natural ties are to be considered as well as character and feelings of the contending parties. Age, health, sex, surroundings and physical and cultural needs all coupled with pecuniary advantages, are other criteria. However, even a father may be deprived of the guardianship of his child if he professes a belief in a sect adjudged obnoxious to society.

Ordinarily, courts attempt to place young wards in institutions providing for instruction in their parental faith. This is of course possible where the faiths have established institutions for children of their own persuasion. But the fundamental rule is that when children become public charges the state assumes the role of parents and may - theoretically - direct the kind of

religious instruction to be given. This means that the state can arbitrarily determine the religion of children of unknown parentage. It is the general pattern for the state and local jurisdictions to divide foundlings in regular order into Protestants and Catholics, and they are so reared by the institutions established by these churches for that purpose. However, this procedure is bound to be challenged in the foreseeable future, and just what alternatives will arise can hardly be predicted.

The question not infrequently is raised as to whether a parent may refuse to call a physician for an ailing child, on the ground of his belief in faith healing. Any parent who refuses to employ proper medical attention for a sick child can be prosecuted criminally if the child dies as the result of such neglect. No claim of religious belief may stand in the way of the welfare and life of a minor. Prayer is not in itself a remedy, and recourse to prayer alone in an emergency of this sort is inconsistent with the peace and security of the state.

Liabilities, Immunities, Privileges, and Protections

Legal limitations may be placed upon the use or ownership of property by religious societies. But any such limitation, whether by constitution of statute, may be imposed in the public interest; it cannot be imposed to hinder the free exercise of religion. The provisions of a will or trust with regard to such matters will be given effect by the law.

Although some state constitutions are silent concerning the matter of exemption from *taxation* for church property, and others delegate such powers to the legislature as the case may arise, in the main such property pays no assessments.

It is made clear, however, that land not actually occupied by the church society, nor necessary for its purposes within reason, nor actually employed for church purpose, will not be exempted.

There are few variations in the wording of the statutes. The Florida constitution specifies that the property must be in fact "owned" by the society; Idaho uses the phrase, "belonging to"; in Nebraska it must be "owned and used"." Iowa limits the size of the land exempted- it may not exceed 320 acres.

A number of state decisions have stated that taxes are not to be confused with special assessments, as a general thing. The latter are not taxes within constitutional provisions of exemption. On the other hand, several states including Arkansas, Georgia, Illinois, Indiana, Maryland, Michigan, Missouri, Ohio, and Pennsylvania have established that tax exemptions of property religiously used do not include special assessments.

Many states have no constitutional or statutory provisions specifically covering the question of taxing church-owned cemeteries. On the whole, taxation of burial grounds belonging to religious societies is not probable.

In the matter of *church-leased property* most state codes have no provisions. Judicial construction remains vague and, on the basis of any study of constitution and statutes, can only be decided as to probability or lack of probability of such taxation.

Definite prohibition of such tax exemption is found in the laws of Arizona, California, and Ohio. But similar prohibitions may be derived from the wording of some state laws. Thus, Indiana, Nevada, North Carolina, Oregon, South Carolina, Tennessee, and Vermont all which employ the word "owned," implying that mere leasing to a church organization is not sufficient to warrant exemption. In New Jersey the word is "owns," in South Dakota, "belonging to." In Pennsylvania "legal or equitable title" is required.

In most cases the probabilities are that such church-leased lands will be exempted from taxation by the authorities. In this regard many states stress the "use" of the land as the determining factor. Among such states are Arkansas, Florida, Georgia, Illinois, Kentucky, Maryland, Montana, New Hampshire, New Mexico, North Dakota, Rhode Island, Utah, Washington, West Virginia, and Wyoming.

States in which exemption is unlikely are, in addition to those requiring actual church ownership as indicated earlier, are Iowa, Maine, Massachusets, and Mississippi.

Although some state codes carry no provisions concerning *taxation of a residence* owned by a church but used as the home of its minister or rabbi, the general trend has been not to exempt such structures from taxation. Where such exemption

is provided by statute, the use of the house must be immediate and continued. Incidental use, or mere ownership by a church or closeness to the church, is not sufficient. There is no exemption in the states of Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Montana, Missouri, Ohio, Pennsylvania, and Texas. Definite exemptions has been established in Michigan, Rhode Island, South Carolina, Washington, West Virginia, and Wisconsin.

Colorado and New York grant *exemption* if the value is not over $3,000; Massachusetts and New Jersey when not over $5,000; and Maine, when not over $6,000.

While specific laws are absent from the codes, generally a lot on which church property is being erected is at once exempted. Arkansas specifies that a vacant lot owned by a religious society is taxable. Florida, Maine Maryland, and New Jersey insist upon actual use.

In any case of an unincorporated religious society, members of the organization instrumental in incurring *liabilities* for it are themselves liable therefore. Any person who authorizes or ratifies transactions of the society or those made in its name is responsible unless it is agreed between the parties to the contract that such person shall not be individually liable on the contract. On the other hand, those who in no manner participate in such transactions are relieved of all liability.

The principle here involved is that of one acting as agent for a society without legal status of existence. The individual, committee, or board involved can, if conditions warrant, be held responsible for all contracts entered into. However, the same principle has been invoked on occasion against boards of trustees of incorporated religious societies, who are charged with individual liability on contracts executed by them as trustees.

Where no such express provision exists, a church officer cannot be held liable for the contracts entered into by his predecessor.

The *remedy* of a member who is improperly excluded from the use of church facilities is to take legal action in court to vindicate his rights. If he acts by way of self-help involving