



PRESBYTERIAN CHURCH IN AMERICA

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TO: Clerk of Session

FROM: L. Roy Taylor

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SUBJECT: Merger of Church A and Church B

BCO 13-9 f. gives Presbytery the authority to “unite churches.” There are no specific procedures for doing so delineated in the BCO, however.

The merger of churches is both an ecclesiastical transaction and a legal or civil transaction, since there are corporate, financial and property issues involved. I believe *it is imperative that both churches secure legal counsel to help them deal with legal and corporate matters.* Each church is an ecclesiastical entity recognized by the Presbytery and a civil entity recognized by the State as an unincorporated religious society or as an incorporated church. I hope both churches are incorporated.

The simplest process would be for the Church A members to join Church B. But, before doing so you would need to have congregational action to deal with the sale of the Church A building and the distribution of the proceeds of the sale, the distribution or sale of the real and personal property of the church, and the continuance, succession, or eventual termination of the church corporation.

As I understand it, however, you all are planning a merger rather than the Church A members joining Church B *en masse*.

In answer to your questions, whether or not you have to apply for a new charter with the Secretary of State's Office is a legal matter. You should contact an attorney for advice on that matter.

I do not know if you will need a new Federal Tax ID number or not. I assume you could use the Church B number and just inform the IRS of a change in church name. An attorney or the IRS could give a more definitive answer.

BCO 16-2 states, “The government of the Church is by officers gifted to represent Christ, and the right of God's people to recognize by election to office those so gifted is inalienable. Therefore no man can be placed over a church in any office without the election, or *at least the consent of that church*” [emphasis added]. BCO Preliminary Principle 6 states, “. . . the power to elect persons to the exercise of authority in any particular society resides in that society.” That principle applies to the pastors, associate

pastors, ruling elders and deacons. If the intention is that all the officers of both churches become officers in the united church there are two ways to accomplish that.

1. If the Church A members join Church B *en masse*, the Church A officers could be elected as officers at Church B following the usual process (BCO 24), or
2. If you were taking the merger route, both congregations would need to vote on a resolution (prior to the merger) to accept the ruling elders and deacons as officers of the united church.

If the churches are incorporated, again there are two possibilities on the matter of Trustees.

1. If the Church A members join Church B *en masse*, the Church A trustees could be elected as trustees at Church B following the usual process (BCO 25-7), or
2. If you were taking the merger route, both congregations would need to vote on a resolution (prior to the merger) to accept the trustees of both churches as trustees of the united church.

The matter of trustees is a legal matter that requires the advice of an attorney.

On the membership matter, again there are two possibilities.

1. If the Church A members join Church B *en masse*, then both the communicant and non-communicant members would become members of Church B. The communicant members would need to appear personally before the Church B session and request to be received by transfer. They would *not* join merely by sending a list of members from the Church A session to Church B session. (We had an instance last year in which a session received about one hundred members as a group by transfer, and the presbytery ruled that such a procedure was improper, on the ground that persons transferring membership must appear individually before the session). Church A members, who did not want to join Church B could transfer to other churches.
2. If you were taking the merger route, both congregations and both sessions would need to vote on a resolution (prior to the merger) to accept the members of both churches as members of the united church. Church A members, who did not want to become members of the united church, could transfer to other churches.

How to handle the proceeds of the sale of the Church A building would be a matter for the congregation to decide. I think it would be wise to have a resolution passed by the congregation that would either

1. Stipulate in detail how the proceeds are dispersed (for example, \$x as a retirement gift to the sexton, \$y to Mrs. B. I. Anderson as a retirement stipend, \$z to MTW for the support of specified missionaries and, if you are so inclined, the remainder to the newly merged church), or
2. Stipulate that the session be authorized by the congregation to disperse the proceeds as the session deems appropriate.

With regard to the other property of the church (furniture, furnishings, etc.) BCO 9-2 states regarding the deacons of a church,

They shall have the care of the property of the congregation, both real and personal, and shall keep in proper repair the church edifice and other buildings belonging to the congregation. *In matters of special importance affecting the property of the church, they cannot take final action without the approval of the Session and consent of the congregation* [emphasis added]. In the discharge of their duties the deacons are under the supervision and authority of the Session.

I believe it would be wise to have the congregation approve a resolution to authorize the session to approve the diaconate's distribution or sale of the furniture, furnishings, equipment, real and personal property of the church. In that way some of items may be given away to members with sentimental attachment to certain items, some things could be sold, and others given away to appropriate recipients.

If someone has contributed tax-deductible funds to the church for a specified item (furniture for the ladies parlor or a \$10,000 piano for the sanctuary, for example) or contributed a tax-deductible specified item (such as a \$10,000 piano), those items are the property of the church, not the donor. If the church decided to return tax-deductible funds or items, the church should issue a 1099 Miscellaneous Income Form to the recipient, who would then have to declare that as income for income tax purposes. People should be aware that the IRS discourages the return of tax-deductible funds and items, and that such return may trigger an audit. This is another item on which legal counsel is advisable.

With regard to the role of the ministers of the two churches, I assume that one minister would become the pastor of the united church and one would become an assistant or associate pastor of the united church. I see four possible ways of handling it.

1. If the Church A members join Church B *en masse*, the pastor of Church A could resign (following the specified procedures in the BCO) and the session of Church B could call him as an assistant pastor.
2. If the Church A members join Church B *en masse*, the pastor of Church A could resign (following the specified procedures in the BCO) and the congregation of Church B could call him as an associate pastor.
3. If you were taking the merger route, both congregations would need to vote on a resolution (prior to the merger) to accept the ruling elders and deacons as officers of the united church and the session of the united church could call the pastor of Church A as an assistant pastor at the united church.
4. If you were taking the merger route, both congregations would need to vote on a resolution (prior to the merger) to accept the ruling elders and deacons as officers of the united church and both congregations could vote on a resolution accepting Pastor B as the pastor and Pastor A as the associate pastor of the united church.

If the merger does not go through, and the congregation votes to sell the Church A property, the session could make the decision on renting facilities for worship. In the event the purchase of another facility for worship presents itself, the congregation would vote on the purchase of new property.

If the sale of the Church A property is approved and the members transfer to Church B, or the two churches are merged, I think it would be wise to continue the Church A Corporation for a time to receive any bequests, or to specify that the Church B or the united church be the successor corporation. This is another matter on which you will need legal counsel. This item should also be included in your final congregational meeting in the form of a resolution to be enacted.

In summary, whether or not the merger goes through and you sell the Church A building, you would have a congregational meeting for the congregation to vote on appropriately prepared resolutions (after securing legal counsel) to

1. Authorize the Trustees to sell the building.
2. Specify how the proceeds of the sale are to be distributed and who is to make the distribution (trustees or session).
3. Authorize the session to approve the diaconate's distribution or sale of the furniture, furnishings, equipment, real and personal property of the church.
4. Specify a plan for the continuance, succession, or eventual termination of the corporation.
5. Petition presbytery to dissolve the church, if that is the intention of the congregation. If you were going to continue as a church in another location, then you would not have a resolution requesting dissolution.

If the intention is for the two churches to merge, Church A would still have a congregational meeting to vote as stated above but, additionally, both Church A and Church B congregations would need to vote on appropriately prepared resolutions (after securing legal counsel) to

1. Accept the ruling elders and deacons as officers of the united church.
2. Accept the ministers of both churches as ministers of the united church, specifying who would be the pastor and who would be the associate pastor.
3. Accept the trustees of both churches as trustees of the united church.
4. Stipulate a procedure for the corporation of the united church to become the corporation in succession to the corporations of the two churches.

I note from the last annual report from Church A (2001) that you had 588 members listed. I note from your fax, that there were forty-three members present and voting at a recent congregational meeting. Therefore, I suggest that the session update the accuracy of the church membership roll, following BCO 38-4, before having your final congregational meeting. I note also that Church A has more officers than Church B, but Church B has a larger attendance. Merging the sessions with the former Church A elders becoming the instant majority would probably be unacceptable to Church B.

I trust this advice is helpful. *I emphasize again that you should secure legal counsel in order to proceed appropriately in accordance with Mississippi law.*

Interpretations of *The Book of Church Order*, *The Westminster Standards*, “The Rules of Assembly Operation,” “The Operating Manual of the Standing Judicial Commission,” and/or *Robert’s Rules of Order* by the Stated Clerk of the General Assembly of the PCA or staff members of the Office of the Stated Clerk are for information only and are not authoritative rulings that may only be made by the courts of the Church. Responses to inquiries are based on information supplied by the inquirer, which may not necessarily be comprehensive. The Office of the Stated Clerk does not represent parties in ecclesiastical judicial cases. Parties to potential cases or cases in process are responsible for their own constitutional and procedural knowledge and understanding. The Office of the Stated Clerk does not give legal advice. When legal advice is needed, professional legal counsel should be secured from one familiar with applicable laws and regulations.