West Ohio Conference
Legal Forum
Ohio Wesleyan University
October 27, 2017
Chancellor’s Year in Review
Presenter

- Christopher E. Hogan
  - Member, Riverside UMC
  - Married with 3 Children
  - Attorney, Private Practice
  - Conference Chancellor since June 2016
Today’s Program

• Concealed Carry—What Churches Need to Know

• Social Media—Policy Considerations

• Compensation Basics

• Case Law Update
Concealed Carry
Open Carry

v.

Concealed Carry
Open Carry
(Very Generally)
Open Carry

• Plainly Visible Handguns and Rifles

• Right to Open Carry Flows from Federal and State Constitutions

• No Detailed Rules but OC Generally Legal

  • Certain Limitations in connection with Vehicles, Private Property Prohibitions, Certain Gun-Free Zones, Federal Jurisdiction
Ohio Concealed Carry Law
(Very Generally)
Concealed Carry

- Need a CCL to Carry Handgun in a Concealed Fashion in Ohio
  - Exception for Certain Members of the Armed Forces
- CCL does not Authorize Concealed Carry Everywhere
Current Ohio Rules for Churches and Daycares
Churches

• Churches
  • The Law has not Changed
    • Concealed Carry in Houses of Worship Prohibited Unless, Governing Body Permits or Posts Otherwise
  • Note: Default is Prohibition
Daycares

• Churches
  • The Law has Changed
    • Concealed Carry in Certain Daycares is Permitted Unless Daycare Posts Otherwise
    • Note: Default is Permission
UMC/WOC Statements
UMC

• Book of Resolutions
  • UMC Churches Declared “Weapons Free Zones”
    • Statement of Sentiment
      • Non-Binding
• WOC Policy Statement
• Conference and District Property are Declared Weapons Free Zones
  • Policy does not Regulate Local Churches, Parsonages, or Use, Possession or Transport of Firearms by Clergy or their Families
  • Policy does not Apply to Authorized Security or Law Enforcement Personnel
• Local Churches Encouraged to Adopt Similar Policies
Risk Management Considerations
Risk Management

• Prevention, Proactive Action is Most Effective
  • Random Attacks on Churches are Rare
  • Often Attacks are Telegraphed
  • A “See Something, Say Something” Culture is an Effective Preventative Measure
Risk Management

• If There is a Need for Enhanced Security
  • Know Thy Insurance Coverage/Exclusions
  • Know Where Liability is Allocated
    • Who’s the Deep Pocket?
    • Ohio CCL Law has Clear Legal Protections for Colleges and Universities, Employers, Government Entities that Allow Concealed Carry
      • Law Unclear at Best as to Whether Churches are Similarly Protected
Risk Management

• Consider Using the Pros

• Law Enforcement or Contract Security can Create a Presence Outside the Church that may Deter the Threat
  
  • Attackers Like “Soft Targets”
    
    • Visible Marked Car/Uniformed Personnel Very Effective

• Contracting Out can Off Load Liability
Social Media Policy Considerations
Whom/What are You Trying to Regulate?
Whom/What are You Trying to Regulate?

• Use of Official Church Accounts?
• Use of Personal Accounts for Church Business?
• Use of Personal Accounts?
  • Be Careful Here
Tone and Content
Tone and Content

- Think Before You Post
  - Medical Information
  - Political Statements
  - Argumentative Responses
- Social Media Posts Are Easy to Take Out of Context
Tie In to Other Policies
Other Policies

• Does Your Policy Tie In to Your:
  • Safe Sanctuary Policy?
  • Employment Policies?
  • Ministry Policies?
Social Media Interaction with Vulnerable Populations
Vulnerable Populations

• Think Carefully About and Address in Your Policies How Direct Messaging, Friending, etc., will be Handled

• Can Result in a Loss of Professional Distance

• Could be Misinterpreted by Others
Compensation Basics for Churches
Employee v. Independent Contractor
Independent Contractor

• IC Paid via 1099 Income
  • No Salary; No OT; No Minimum Wage

• IC Responsible for All Taxes

• IC Not Eligible for Employer’s
  • Benefits
  • Workers’ Comp.
  • Unemployment Comp.

• IC May Own Intellectual Property Created
Employee

- Paid Via W-2 Income
- Potential for Salary; OT; Min. Wage
- Employer has Tax Withholding Obligations
- Employees Typically Eligible for
  - Benefits
  - Workers’ Comp. (unless non electing Minister)
  - Elective Unemployment Comp.
- Employer Owns IP
Misclassification Liability
Misclassification Liability

- Potential Liabilities Could Include:
  - Back Taxes
  - Benefits
  - Minimum Wage
  - Workers’ Comp. Premiums
Telling the Difference
Telling the Difference

• IRS Uses a 20-Factor Test

• The More Control Over the Individual, the More Likely the Individual is an Employee

• Auditors, Courts, Err on the Side of Finding an Employment Relationship
Key Indicators
Behavioral Control

- The Extent to Which the Individual can be Told
  - When to Work
  - What to Wear
  - What Tools/Equipment to Use
  - Where to Purchase Supplies
  - Whom to Hire
Independence

• Worker has Other “Clients”?  
• Worker Paid by the Job or via a Typical Payroll Cycle?  
• Worker Incurs Unreimbursed Expenses for Tools, etc.?  
• Worker Sends Bills?  
• Worker Structured as an Independent Business?
Nature of Engagement

• Discrete Projects or Long-Term Service?

• Worker Performs Ancillary Role or Key Role?
When in Doubt, Classify Folks as Employees
Unemployment Compensation
Unemployment Compensation

- ICs not covered
- Employees of Churches Typically Exempt
- Ministers Exempt
- May have to Register with ODJFS as an Exempt Entity
- Elective Coverage may be Available
Workers’ Compensation
Workers’ Compensation

• **Employer Benefits**
  • Substantial Protections from Liability arising out of Workplace Injuries
    • No Liability unless Employer Intended Injury
  • Pooled Risk

• **Employee Benefits**
  • Specialized and Predictable System for Providing Compensation for Workplace Injuries
Workers’ Compensation

- **Coverage**
  - ICs Not Covered
  - Ministers Exempt
  - Elective Coverage Available
  - Other Employees Typically Covered
Recommendation #15
Workers’ Comp. in the WOC
Recommendation #15

• Establishes a Conference-Wide Workers’ Compensation Group
  • Elective Coverage for Pastors
  • Contact Conference CFO for Details
Case Law Update
Personal Injury on Church Property

Parker

v.

Cincinnati Primitive Baptist Church
Parker v. L.T.

• Basic Facts
  • 80 Yr. Old Congregant Goes to Church Parking Lot During Break in Service
  • Church Play Area Wet and Muddy
  • 10 Kids Playing Football in Church Parking Lot
Parker v. L.T.

• Basic Facts

  • While Walking in Parking Lot, Congregant hears what Sounds like a “Heard of Cattle” Heading Toward Her

  • Congregant Knocked Down and Injured
Parker v. L.T.

• Congregant Sues
  • 15 yr. Old Kid that Hit Her
    • Litigation Pending
  • Father of Child Who was also a Church Deacon
    • Claim Abandoned

• Church
  • Claim Settled
Lessons
Lessons

• Understand and Monitor How Church Property is being Used

• When Injuries Occur, There’s a Tendency to Sue Everyone

• Continually Monitor Insurance, including Exclusions and Deductible

• See GCFA Recommendations
Slip and Fall Liability

Reeves v. St. Leonard, Et. Al
Basic Facts

• Wet Floor at Rec Center
• Member Slips and Falls
• Everyone Sued
• No Church Liability
  • Prominent “Wet Floor” Signage
  • Proper Mopping Technique
Lessons
Lessons

• Are Your Custodians Properly Trained?
  • Appropriate Placement of Signs
  • Appropriate Mopping Technique
  • Dry Path or Restrict Access
Incorporated v. Unincorporated Churches

Church at Warren v. Warzala
Basic Facts

• Contractors Allegedly Botch Repair of Church’s Leaky Roof

• Church Sues

• Contractors Contend that Church has no Legal Standing to Sue
Basic Facts

• Legal Standing
  • The Legal Authority to Sue
    • Church was Incorporated but did not Stay Current with Sec. State
    • Incorporated Status Cancelled by Sec. State
    • Church could not Establish Unincorporated Association Status. Ergo, no Standing to Prosecute Law Suit
Lessons
Lessons

• Whether to Incorporate is an Important Decision—Consult Qualified Counsel

• Choosing an Entity Status is the Beginning, not the End, of the Journey

• Formalities must be Observed
How’d We Miss This?

Beard
v.
Religious Denominations and Churches
(Tennessee Case)
Basic Facts

- Beard sues all Religious Denominations, for Among Other Things, Using the Name of Jesus Christ without Permission without His or the Apostles’ Permission

- Case Dismissed
Lessons
Lessons

• Anyone with a Few Hundred Dollars Can File a Lawsuit
• Some Don’t Even Have to Pay that
• Winning is Expensive
• Avoid Litigation when you Can
Questions?