

edward vitale <edwjb@optimum.net>

Wed, May 17,
2017, 1:07
PM

to Nick, me, Vestry

Dear Vestry, Attached please find the first pages of the NY consolidated Laws covering religious organizations that the Episcopal church falls under. Paragraph 1a clearly states that any provision in the NYS Not for profit laws where there is a conflict are subject to the NYS religious laws. So don't be govern by Not for profit where it is in conflict with the NYS religious laws.
Ed Vitale

From:Chris Haring <haringjc@gmail.com>

To: edwjb@optimum.net

Subject: conflict of laws?

Date sent: Wed, 17 May 2017 14:37:26 -0400

Copies to: naama29@optonline.net

Hi Ed

Thanks for your thoughts on this, but I don't see that there is a conflict between the RCL and the NPL. If there is no conflict, the NPL provision is applicable.

I looked over Section 2-b of the RCL. First line:

1. The not-for-profit corporation law applies to every corporation to which this chapter applies, provided that: . . .

So the not for profit law does apply to religious corporations, but with many exceptions listed below that line.

Next line:

(a) If any provision of the not-for-profit corporation law conflicts with any provision of this chapter, the provision of this chapter shall prevail and the conflicting provision of the not-for-profit corporation law shall not apply in such case.

So **IF** there was a conflict, the RCL would override the NPL. Is there a conflicting law in the RCL? I don't see one. If the RCL allowed the Vestry to move restricted use funds without court approval, then the Vestry's action last year would be legal. I don't see such a provision in the RCL. Did you see one?

Last point: Paragraph C lists all the sections of the NPL that do not apply to the RCL. I went through the entire list and found none that apply to our situation. But I did find one that comes close. NPL section 555 applies to releasing restrictions on use of funds. That does seem to apply to what happened.

But releasing use restrictions requires court approval as I stated in my email. What is excluded by paragraph C of the law you have cited is a NPL requirement that, **when the applicant files a court**

petition to remove a restriction, the donor and the AG's office must be given notice and an opportunity to be heard. So that notice is required in the NPL, but not in the RCL. So if the church ever does file such an action, donor and AG need not be noticed. An interesting fact, but since the Vestry made these transfers without asking the court for approval, the point does not apply. In fact it supports the position that court permission is required (just with slightly different procedures).

Thanks for looking this over.

Chris

edward vitale <edwjb@optimum.net>

Wed, May
17, 2017,
2:47 PM

to me

Chris, I don't believe that the RCL is as restrictive as the NPL. The standard is different to allow religious organizations some latitude. Most religious organizations do not have 6 different accounts. Melding them into one may not be what one likes but it doesn't make it illegal. Maybe it isn't the best practice but is permissible.

From: Chris Haring <haringjc@gmail.com>
To: edward vitale <edwjb@optimum.net>
Subject: Re: conflict of laws?
Date sent: Wed, 17 May 2017 15:24:14 -0400
Copies to: naama29@optonline.net

I respect your point of view but have to (generally) disagree. The fact that the AG and donor don't have to be given notice of a petition to remove a restriction on a gift under the RCL does support your view that the RCL is less restrictive. But how much less remains a question. Do you think a petition to remove a restriction is not required under the RCL? That would make a use restriction on a gift pointless.

Neither of us does this sort of law o a daily basis. **I think we need the opinion of someone who does.**

Mark LaSorsa <lasorsam@optimum.net>

Thu, May 18,
2017, 4:50
PM

to me, Vestry, edward

Hi Chris,
Thank you for your diligence in bringing this mater to attention. The vestry has reviewed and discussed your letter regarding the consolidation of the funds. Given this new information, we have asked our Chancellor Ed Vitale to review and clarify the legal position for us. We will be in contact with you after a vestry review with Ed.

Thanks again,

Regards
Mark

- Note that after these exchanges, Ed Vitale was instructed to seek outside expert advice on the matter. One month later, he reported that he had done so and all was fine. But he would not identify the party he dealt with, or that person's background/qualifications.