

Dear Vestry

Your meeting Wednesday marks the one-year anniversary of the decision to “consolidate” funds. I continue to maintain that the action was unwise, violated the Vestry By-laws, and in some cases violated the laws of New York State. In the last several months I have found that the By-Laws themselves are inconsistent with New York law, specifically with how we have defined “designated” and “restricted” funds. Below you will find links to two documents available at the New York State Attorney General’s web site. I urge you to download those documents and study them carefully.

The first document, “A GUIDE FOR NEW YORK NOT-FOR-PROFIT CORPORATIONS CONSIDERING EXPENDITURE OF ENDOWMENT OR OTHER RESTRICTED FUNDS” is the most authoritative and on point document. Find it here: <https://www.charitiesnys.com/pdfs/Endowment%20Guide.pdf>. Read it carefully, especially the section beginning on the bottom of page three. The Charities Bureau oversees not-for-profits, religious organizations and other who solicit for charitable purposes. While much of the document pertains to endowments, the rule applies equally to non-endowment funds where the money was given for a specific purpose:

*Restrictions on use are distinct from spending restrictions, and may apply to both endowments and non-endowment gifts. Funds restricted as to use also include funds that the charity solicited for a particular purpose – for example, a capital campaign or a scholarship fund – with the express or implied representation that any funds received would be used only for the stated purpose. Any change to such restrictions on use also requires cy pres relief --see pages 3-4*

We have for years solicited donations for our multiple funds in the weekly bulletin and other publications, representing that those donations will be used for those stated purposes. So our by-laws allowing for transferring principal/interest under certain circumstances is in conflict with the state law. Those funds are in fact restricted use funds. Any language to the contrary in the By-laws is trumped by the above. Labeling grape jelly as strawberry jam does not make it strawberry. The only way to move those funds is with the permission of the donor and/or permission of the courts.

The exception to this is when the money was put into an account by direction of the managing board, not at the direction of the donor.

*If the spending restriction was imposed solely by the charity’s board of directors, and not by the donor of the fund – a so-called “board-designated endowment” – the restriction may be removed or modified by the board of directors. See page 2, first full paragraph*

An example of this would be the Estate of Olga Weinert. She left the money to the church without specifying a fund. The Vestry put the money into the Building Fund, later moving

about half to the Remembrance Fund. This was proper: the Vestry designated the place to put the fund, thus it could redesignate/transfer those funds. I am unaware of any other situation like this. As far as I know, all other deposits to Remembrance, Organ, Building or Churchyard Funds were put there at the direction of the donors. Thus, those donations are Restricted Use donations and cannot be moved with the consent of the donor or the court.

This research has uncovered another improper transfer several years back. Georgia Beck's will left a bequest of a significant sum to the Organ Fund. We deposited the monies to that fund, then immediately transferred the entire amount to the Remembrance Fund. This was done in accordance with our By-laws, but was a violation of state law. A reading from the bottom of page two to the top of page four makes this indisputable. That money must be returned to the Organ Fund and remain there unless and until a court grants Cy Pres relief.

The second document, "A PRACTICAL GUIDE TO THE NEW YORK PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT" provides guidance to boards for managing funds. Find it here: <https://www.charitiesnys.com/pdfs/NYPMIFA-Guidance-March-2011.pdf>. We all know that we are invading principal. That may well be a breach of the Vestry's fiduciary duties. The document gives guidelines for remaining in compliance with the New York Prudent Management of Institutional Funds Act. It's an eye-opener and should be read at your earliest convenience. This is a newer document, but does not replace the older one (as evidenced by the fact that both remain downloadable from the AG's website). They overlap and complement each other.

What must the Vestry do?

It is my hope that the Vestry will discuss this carefully at the May meeting and act at the June meeting. First, the action taken last May needs to be reversed. Second, the Beck bequest must then be transferred back to the Organ Fund. If the Vestry feels that restricted use donations must be re-designated, they should petition the courts as required by law. Third, the By-Laws must be brought into conformity with the laws of New York. Fourth, funds that are "board designated" should be held separately from funds that were given by a donor for a particular use. Co-mingling Olga Weinert's funds with restricted use funds makes it nearly impossible to identify what funds can and cannot be transferred.

Finally, language placed on the 2017 envelope boxes and quarterly statements are an effort to get around the donor-restricted concept. It comes from a questionable source that, on its main page, promises that:

*In just 30 days you will receive everything you need to: Become Incorporated \* Open a Church Bank Account \* Have Customized, Ironclad Bylaws \* Establish and Protect Your Board \* Obtain Preliminary 501(c)(3) Status \* Become Ordained \* Be Able to Receive Tithes & Offerings.*

Even if effective prospectively, it does not apply to past donations. Consider the ethics of placing this language on donation documents and the impact on the credibility of Caroline Church.

I urge you to do the right thing. If the Attorney General's Charities Bureau is brought in they will make you do the right thing. They also have the power to impose fines and sanctions. Defending an investigation by the AG's office will be costly and divisive.

Chris Haring