602 Questions And Answers Guiding Use Or Rental Of Church Facilities By Individuals Or Outside Groups

602 QUESTIONS AND ANSWERS GUIDING USE OR RENTAL OF CHURCH FACILITIES BY INDIVIDUALS OR OUTSIDE GROUPS.

Q: Does this policy address long-term leasing or licensing of property owned by a parish or school?

A: No. Questions regarding leasing or licensing should be directed to the Archdiocese's Division of Facilities and Real Estate Management.

Q: *Who can rent or temporarily use our parish/school facilities?*

A: In addition to the parish or school itself, facilities can be used by individual parishioners or school families or by nonprofit or community organizations to assist with the Church's mission. Facilities should not be rented to commercial, for-profit entities. For example, a parish hall can be rented to a parishioner for a reception after a wedding or to the alumni group of a local Catholic high school for a reunion, but not to a for-profit dance studio for paid classes.

Q: How does our parish/school determine if a particular request to use our facilities is from an outside organization rather than from the parish/school itself?

A: If the group requesting to use the facilities is separately incorporated or has its own nonprofit designation, it should be considered to be coming

from an outside organization. If the request is coming from a group and the event is not solely for the benefit of the parish/school and is not controlled by your parish/school, it should be considered to be coming from an outside organization. If there is a particular request for the use of your facilities and you are unable to determine the status of the requestor, please contact the Chancellor.

Q: For what purpose can our parish/school allow an individual or outside organization to use facilities?

A: Any proposed use must be consistent with the mission of the Catholic Church and of your parish/school and, at least, must not conflict with the teachings of the Catholic Church. If you have concerns about whether the proposed activities are consistent with Church teachings, please contact the Chancellor.

Q: Is a written agreement required for use of parish/school facilities by an individual or outside organization?

A: Yes. A written agreement, in a form approved by the Archdiocese, is to be completed every time an individual or outside organization uses your facilities. A standard facility use agreement is available from the Archdiocese's Office of Risk Management (410-547-5424).

Q: Are there any restrictions or limitations as to the duration for which we make our facilities availability to a particular individual or outside organization?

A: Yes. These guidelines pertain to individuals and outside organizations that use your facilities for a single event. A single event is defined as not exceeding 72 hours straight in duration or for no more than 12 single day events within a 12 month period. If the frequency or term of use will exceed these parameters, you need to have a lease or licensing agreement in place with the individual and/or outside organization and should consult with the Archdiocese's Division of Facilities and Real Estate Management.

Q: Are there any insurance requirements related to use by an individual or outside organization?

A: Yes. In accordance with the Archdiocese's Facility Use Agreement noted above, a certificate of insurance demonstrating the individual or outside organization carries a minimum of $1,000,000 in general liability coverage must be provided. The certificate must also name your parish/school (using your location's legal name) and the Archbishop of Baltimore, a Corporation Sole, as additional insureds under the insurance policy for purposes of use of the facilities.

Q: Can anything be done for an individual or outside organization that does not have the required insurance coverage?

A: You should contact the Archdiocese's Office of Risk Management (410-547-5424). Through the Office of Risk Management, the individual or outside organization can arrange for a one day special event policy or a recurring events policy that fulfills the obligation to provide $1,000,000 in general liability coverage.

Q: Can an outside organization and/or individual have alcohol available while using our facilities?

A: Under no circumstances can a parish/school permit a "bring your own bottle" (BYOB) style event. It is within your discretion to allow individuals or outside organizations to serve alcohol responsibly and in a manner permitted by law, if proper insurance, supervision, permits, and security is in place. As part of allowing the consumption of alcohol, it is extremely important that the individual or outside organization be reminded that they must obtain any necessary permits from the local liquor board. Evidence of proper licensing and liquor liability coverage must be provided to you prior to the event.

Q: Can an individual or outside organization have gambling activities while using our facilities?

A: It is within your discretion to allow an individual or outside organization to engage in lawful gambling activities as part of their use of your facilities. As part of allowing the lawful gambling activities, it is extremely important that the individual or outside organization be reminded that they must obtain all necessary permits from the local licensing department. Evidence of proper licensing must be provided to you prior to the event.

Q: Can an individual or outside organization use our facilities for their own business purpose?

A: No. Use of parish/school facilities by or for outside businesses raises numerous problems including possible loss of tax exemptions, exposure for licensing and permitting violations, creation of unrelated business tax liability, and creation of a public accommodation. For example, a parish/school should not allow an individual to utilize its commercial kitchen facilities to operate a catering business nor should a parish/school rent its facilities to a for-profit company.

Q: Can an individual or outside organization use our facilities for partisan political purposes?

A: No. A parish or church may not make its facilities available to an individual or outside organization for partisan political activities nor to candidates, political parties, or any political organizations that support or oppose political candidates. This does not restrict approved church-sponsored events which are not partisan and do not support or oppose a candidate—such as Maryland Catholic Conference events or parish events supporting/opposing referenda.

Q: Can the Archdiocese help develop a standard policy that addresses detailed issues related to allowing individuals and outside organizations to use our facilities?

A: Yes. The Archdiocese encourages parishes and schools to develop a policy document that addresses the range of practical issues that arise in the rental and use of facilities. Having a documented policy in place helps

ensure consistency and best practices, and the Archdiocese Office of Risk Management has an outline of issues for such a policy and can consult with you in developing such a policy.

Q: Can our facilities be used by an individual or outside organization for making a motion picture or television production?

A: Not without consultation and written approval from the Archdiocese's Director of Communications.

Q: What are the restrictions on a parish or school advertising its facilities for rent?

A: Parishes and schools should not advertise the use or rental of their facilities to the general public, for example through general circulation advertising. Internal communications, such as parish bulletins and school newsletters, can be used to inform parishioners and school families regarding available facilities.

Q: Are there any restrictions on the individual or outside organization when advertising or marketing their event?

A: Individuals and outside groups should be informed that any advertising or publicity material in which your location's name or images are used in the advertising must have your prior approval.

Q: What are the Archdiocese's child and youth protection policy requirements for individuals or outside organizations who use our facilities?

A: According to the Archdiocese of Baltimore's Statement of Policy for the Protection of Children and Youth, when parishes or schools rent or allow the use of their facilities for programs in which adults will have "substantial contact" with children, the parishes or schools must obtain written verification from the individuals and/or organizations that their staffs/volunteers have had a background check screening for a history of child abuse or criminal convictions. The insurance policy of the individuals or organizations (naming the location and the corporation sole as

additional insureds) must include coverage for sexual abuse of minors. These expectations must be written into the contract as well. "Substantial contact" is defined as contact with children in which the duration and scope in both time and exposure to children is neither rare nor limited and may occur on a routine and/or ongoing basis. This includes all overnight activities with children. Events such as wedding receptions, parties, etc. would not be considered as having substantial contact with children. However, events such Girl Scout meetings, Home School functions, etc. are considered programs/services where adults may have substantial contact with children and youth.

Q: What is a public accommodation?

A: Under Maryland law, the definition of public accommodation includes hotels, restaurants, places of exhibition or entertainment (including movie theaters and concert halls), retail establishments (offering goods, services, entertainment, recreation, or transportation), and similar facilities.

Q: Are rented parish and school facilities considered public accommodations?

A: Generally not, but the determination of whether a facility is a public accommodation is made on a case-by-case basis. Restricting the use and advertising of parish/school facilities as indicated in these questions and answers reduces the chance that your facilities will be considered public accommodations.

Q: Why does it matter if a parish facility is considered a public accommodation?

A: Public accommodations can be subject to additional legal claims from the government or individuals based on allegations of discrimination on the basis of race, sex, age, color, creed, national origin, marital status, sexual orientation, or disability. Further, if a parish/school facility is a public accommodation, it might be required to make additional structural modifications necessary to make the facility suitable for access and use by

an individual with a disability such as accessible entrances, restrooms, parking spaces, seating locations, and walkways.

Q: Can a church facility refuse to rent to a same-sex couple in connection with their wedding or wedding reception?

A: Yes, Maryland law is clear that an Archdiocesan parish/school may refuse to rent its facilities in connection with a same-sex wedding or wedding reception.

Q: Does the parish have to pay income tax on the revenue from the rental of its facilities?

A: Generally not. Most rental income from real property (i.e. renting the building) is excluded from the application of the unrelated business income tax. However, to qualify for the exclusion, the rent must not be calculated by reference to the net income or profits of the tenant. In addition, the parish/school may not provide substantial services to the tenant (e.g., food and beverage service, set-up/clean-up), unless such services are rendered by non-employee volunteers. The parish/school can also rent personal property (e.g., tables and chairs) in connection with the rental of facilities as long as the rental of personal property is 10% or less of the total rent paid. The parish/school may provide utilities, janitorial and security services.

Q: Are there special tax rules for rental income if there is debt owed on the particular facility being rented (e.g. by a loan from the IPLF)?

A: Yes. If the rented property is "debt-financed," meaning the parish has unpaid debt incurred to acquire or improve the property, the rent will be taxable if less than 85% of the property is devoted to its tax-exempt (charitable/religious) purposes. This determination is based upon all of the facts and circumstances, including the amount of time and portion of the property that is used for exempt (religious and charitable) purposes as compared to all purposes.

Q: Are there special income tax rules for rental income from infrequent activities?

A: Yes. If the rental activity is very infrequent (i.e., not more than a few times per year), it will likely be deemed not to be "regularly carried on," and the revenue, regardless of the application of the above-described rules, would be exempt from unrelated business income tax.

Q: Can the rental of parish/school facilities jeopardize our federal 501(c)(3) tax-exempt status?

A: Renting parish/school facilities should not jeopardize the parish/school's tax-exempt status as long as the revenue, together with all other revenue from activities not related to the parish's charitable purposes, does not represent a substantial portion of the parish's total income. The IRS and the courts have not quantified what amount of unrelated business taxable income would endanger an organization's exempt status, but where the rental of facilities is a small part of the overall parish/school activities and revenue, it is unlikely that the rental of parish facilities would cause a parish to lose its 501(c)(3) tax-exempt status.

Q: Can the rental of facilities affect our real property tax exemption under Maryland law?

A: Yes. The exemption from real property taxes under Maryland law generally requires the property of nonprofits to be "actually" and "exclusively" used for the nonprofits' charitable and/or religious purposes. Use or rental of facilities by commercial entities or individuals unconnected to the parish/school creates undue risk that your real property tax exemption could be affected.

Q: Whom should I call with questions about the use of facilities?

A: Central services of the Archdiocese would welcome the opportunity to discuss these issues with you in further detail and we encourage you to call any of us with any questions you have:

Contracts and Insurance: Tom Alban, Director of Risk Management, 410-547-5424

Child Protection: Jerri L. Burkhardt, Director of Child and Youth Protection, 410-547-5555

Consistency with Church Teachings: Diane Barr, Chancellor, 410-547-5303

Facilities Use: Nolan McCoy, Director of Facilities, 410-547-5335

Legal: Dave Kinkopf, Gallagher Evelius & Jones, 410-727-7702