

Law and Ministry: FAQ'S for Pastors in Iowa Conference

New to the Iowa Conference? Not sure about how the law impacts your ministry in Iowa? You are not alone. From time to time, the staff of the Iowa Conference receives requests for information about the many ways in which the law impacts ministry. Here are a few tips we have compiled to help out. Just click on the subjects below and read more...

- Reporting suspected abuse of children
- Reporting suspected abuse of dependent adults
- Weddings
- Unrelated business income
- Insurance coverage
- Confidentiality of information
- Copyright laws
- Cemeteries

REPORTING SUSPECTED ABUSE OF CHILDREN

Q: What are the responsibilities of clergy to report **suspected child abuse**?

A: Chapter 232 of the Iowa Code establishes two classifications for reporting suspected child abuse. There are **mandatory** reporters and **permissive** reporters.

Mandatory reporters include:

1. Health practitioners
2. Social workers
3. Certified psychologists
4. Certain people affiliated with educational institutions, including licensed school employees, certified para-educators, holders of a coaching authorization issued under Iowa Code § 272.31 and instructors employed by community colleges
5. Operators of the following facilities or programs and their employees:
 - a. licensed child care centers
 - b. head start programs
 - c. health care facilities
 - d. registered child development homes
 - e. family development and self-sufficiency grant programs
 - f. healthy opportunities for parents to experience success – healthy families Iowa programs
 - g. substance abuse programs or facilities
 - h. department of human services institutions
 - i. juvenile detention and shelter care facilities
 - j. foster care facilities
 - k. mental health centers
 - l. providers of services to children funded under federally approved medical assistance home and community-based services waivers
6. Peace officers
7. Counselors and mental health professionals.

Everyone else is a permissive reporter.

- Clergy are permissive reporters unless they qualify as mandatory reporters because they come within one of the classifications listed above. Permissive reporters *may* but are not required to report instances of suspected child abuse.
- Permissive reporters may make reports by telephone “or otherwise” to the Iowa Department of Human Services. There is a state-wide toll-free number for making telephonic reports:
1-800-362-2178

If you report:

- If you do make a report and have reason to believe that immediate protection for the child is advisable, you must also make an oral report to an appropriate law enforcement agency. **This is a requirement, NOT AN OPTION, and applies even if you are a permissive reporter.**
- A person who makes a good faith report of suspected child abuse is immune from civil or criminal liability on account of making the report or participating in good faith in any judicial proceeding resulting from the report or relating to the subject matter of the report.

REPORTING SUSPECTED ABUSE OF DEPENDENT ADULTS

Q: What are the responsibilities of clergy to report **suspected dependent adult abuse**?

A: Iowa has laws governing the reporting of **suspected abuse of dependent adults**. Generally, a dependent adult is any adult who is unable to protect his or her own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition. The statutory scheme for reporting suspected dependent adult abuse mirrors that of child-abuse reporting. There are **mandatory** reporters and **permissive** reporters.

Mandatory reporters include:

1. Members of the staff of community mental health centers
2. Peace officers
3. In-home homemaker-home health aides
4. Individuals employed as outreach persons
5. Health practitioners
6. Members of the staff or employees of supported community living services, sheltered workshops, or work activity centers
7. Social workers
8. Certified psychologists

Everyone else is a permissive reporter.

- All other persons, including clergy who are not otherwise classified as “mandatory” reporters, are “permissive” reporters and *may* but are not required to report suspected instances of dependent adult abuse.
- Persons reporting suspected dependent adult abuse have the same immunity as persons reporting suspected child abuse.

WEDDINGS

Q: Who may perform weddings?

A: In Iowa, marriages are treated as matters of contract and the methods in which these contracts may be solemnized are regulated by civil law. Only judges of the Iowa state courts and persons “ordained or designated as leaders of their religious faith” may perform marriage ceremonies. All UCC authorized ministers are considered “leaders of their religious faith” for purposes of this requirement. No special license, permit or registration is required.

Q: Who may get married?

A: Iowa law allows anyone 18 or older to get married. Persons who are 16 or 17 may be married with parental consent and judicial approval.

- The Iowa Code provides that only marriages between a man and a woman are valid [Iowa Code § 595.2(1)]; but this requirement has been ruled unconstitutional by the Iowa Supreme Court.

Q: What are the steps that must be followed for a valid wedding?

A: **Step One: Get the license.** This is the responsibility of the couple wanting to get married. If they do not get a license, an official marriage ceremony cannot be performed. To get a license, the couple must file an application with the County Registrar. In most, if not all, Iowa counties, the Registrar is the County Recorder. If the application is sufficient, the Registrar will issue a marriage license. Except in certain emergencies, the license does not become effective until three days after it is issued. At the time the license is issued, the Registrar also issues a blank “return” for the wedding. This return is called the certificate of marriage.

Step Two: Perform the ceremony. There are no particular words or forms that must be followed for the ceremony itself. Iowa law is concerned only with ensuring that the ceremony is properly documented and recorded.

Step Three: Complete and file the paperwork. After the ceremony has been performed, the certificate of marriage must be filled out and it must be signed by the minister performing the ceremony and by the witnesses. This certificate must be filed with the Registrar who issued the license within 15 days after the wedding is performed. It may be filed by anyone, but it is the responsibility of the minister who performed the wedding to see that the filing takes place in a timely manner.

Q: What happens if the proper forms and procedures are not followed?

A: Iowa has a quirky “savings” statute that apparently validates marriages even if all the formal requirements are not followed—as long as the couple consents and all concerned pay the required fines. Iowa Code §595.11 says:

Marriages solemnized, with the consent of parties, in any manner other than that prescribed in this chapter, are valid; but the parties, and all persons aiding or abetting them, shall pay to the treasurer of state for deposit in the general fund of the state the sum of fifty dollars each; but this shall not apply to the person conducting the marriage ceremony, if within fifteen days after the ceremony is conducted, the person makes the required return to the county registrar.

UNRELATED BUSINESS INCOME

Q: Why should I be concerned about unrelated business income?

A: Even though the churches of the Iowa Conference are exempt organizations under the Internal Revenue Code, they are required to report and pay taxes on their unrelated business income.

Q: What is unrelated business income?

A: This is complicated. The place to start, at least for non-tax practitioners, is with a close review of IRS Publication 1828, *“Tax Guide for Churches and Religious Organizations”*. According to that publication, if a church or other religious organization earns income from activities unrelated to its tax-exempt purpose, the income may be considered unrelated business income and subject to income taxation:

Net Income Subject to the UBIT

Churches and religious organizations, like other tax exempt organizations, may engage in income-producing activities unrelated to their tax-exempt purposes, as long as the unrelated activities are not a substantial part of the organization’s activities. However, the net income from such activities will be subject to the UBIT [Unrelated Business Income Tax] if the following three conditions are met:

- *the activity constitutes a trade or business,*
- *the trade or business is regularly carried on, and*
- *the trade or business is not substantially related to the organization’s exempt purpose. (The fact that the organization uses the income to further its charitable or religious purposes does not make the activity substantially related to its exempt purposes.)*

Exceptions to UBIT

Even if an activity meets the above three criteria, the income may not be subject to tax if it meets one of the following exceptions: (a) substantially all of the work in operating the trade or business is performed by volunteers; (b) the activity is conducted by the organization primarily for the convenience of its members; or (c) the trade or business involves the selling of merchandise substantially all of which was donated.

In general, rents from real property, royalties, capital gains, and interest and dividends are not subject to the unrelated business income tax unless financed with borrowed money.

Q: If my church rents the parsonage is this rental income taxable?

A: A parsonage is real property. Because a church is an “exempt” organization, it does not pay income tax on the money it receives from the rental of the parsonage unless the parsonage is subject to a mortgage.

You may also wish to consult IRS Publication 598 *“Tax on Unrelated Business Income of Exempt Organizations”*. Both Publication 598 and Publication 1828 are available on line at www.irs.gov. At the end of the day, however, if you have serious questions about whether funds received by your church are “unrelated business income” there is no substitute for the advice of a qualified tax advisor.

INSURANCE COVERAGE

Q: Who do I contact to find answers to insurance-coverage questions?

A: If you have questions about your church’s insurance coverage or you need to file a claim, contact your insurance agent. If your church is insured by the Insurance Board, your agent in Iowa is currently

Marlene Hummel ([please link to Contact Us/Insurance page](#))
Brocker-Karns Insurance
327 Chestnut Street
Atlantic, IA 50022
Phone: 712.243.6777 office OR 712.249.0401 cell
Fax: (712) 243-6784

CONFIDENTIALITY OF INFORMATION

Q: Are things told to me in confidence in my capacity as a pastor confidential?

A: Yes. Iowa law recognizes a “testimonial” privilege for certain clergy communications. Iowa Code §522.10(a) says:

[A] member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person’s professional capacity, and necessary and proper to enable the person to discharge the functions of the person’s office according to the usual course of practice or discipline.

This privilege does not belong to the clergy member. It belongs to the person who made the disclosure and may be waived by that person.

COPYRIGHT LAWS

Q: Do copyright laws apply to my church?

A: Yes, they do. This is serious stuff. So pay **close** attention.

A copyright is the *exclusive right* to do the following five things with respect to a copyrighted work:

1. Reproduce the work
2. Prepare derivatives of it
3. Distribute copies or recordings of it
4. Perform it publically
5. Display it publically

Q: What is a copy?

A: Any reproduction of a work is a copy. It does not matter if the reproduction is a photocopy or a free-hand rendering. It does not matter if the copy is in a different medium than the original. This means that a slide, a transparency or Power Point™ depiction of a hymn, for example, is a copy.

Q: What if I make an unauthorized copy or other use of a work?

A: The consequences of a copyright infringement can be severe, even ruinous, to the infringer. Although courts have the discretion to award damages in a smaller amount, a person who willfully violates a copyright may be liable for damages of up to \$150,000 and costs and attorneys’ fees, even if the infringement was not done for commercial purposes and even if the copyright holder cannot prove he or she suffered actual damages. In addition, copyright infringement is a federal crime that subjects the infringer to possible imprisonment and the imposition of criminal fines.

Q: Our church has purchased a set of hymnals. What rights do we have with respect to the music in these books?

A: Generally speaking, when a church purchases a set of hymnals, it is also purchasing a license to perform the music and use the other materials in those hymnals. This license, however, is subject to whatever restrictions the publisher imposes. These restrictions are usually set out somewhere in the hymnals, themselves. While these restrictions may vary from publisher to publisher, the restrictions imposed by the United Church of Christ with respect to THE NEW CENTURY HYMNAL (and which may be found on the copyright page of the hymnal) are typical:

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Q: Sometimes we sing hymns and use worship materials that we obtain from sources other than our hymnals. How do I make sure that I am not infringing a copyright when we do this?

A: If you are going to copy or perform copyrighted hymns or copy or use other copyrighted materials that come from sources other than your hymnal, you must have a license to do so. Licenses can be obtained from several sources. Two of the licensing companies most commonly used by churches are Christian Copyright Licensing, Inc. (“CCLI”) and OneLicense.net, L.L.C. Information about both companies may be found on their websites, www.ccli.com and www.onelicense.net, respectively. Each licensing company is authorized to grant you a license to use the music and other works in its inventory. In exchange, you pay a royalty, the amount of which is commonly based upon the number of persons who attend worship at your church. Typically, the licensing company requires that you display certain information concerning your license on all licensed copies you make.

CEMETERIES

Q: Some of our churches operate cemeteries, columbaria and other facilities for the interment of human remains. Are there any special legal requirements for churches that do so?

A: Yes. The regulation of such facilities, however, is a complex matter beyond the scope of any advice the Iowa Conference can give. If your church operates such a facility, you are strongly encouraged to seek legal advice about the requirements for its operation.