

Section 3 – Incorporation and Boards of Trustees

This Section covers two major issues. The first section focuses on the *Book of Order* requirements related to incorporation for congregations as well as presbyteries, synods, and the General Assembly. The second section focuses on the duties of trustees in a more general way.

Remember: Almost all corporate and trustee matters are governed by state law. An attorney familiar with your state's laws in these areas should be engaged to help you in this work. They should also review all sample forms to ensure that the forms comply with controlling state law.

I. Requirements of the Presbyterian Church (U.S.A.) Constitution

The *Book of Order* directs that whenever permitted by civil law, each congregation shall cause a corporation to be formed, G-4.0101. This is also true for the mid councils and the General Assembly, G-4.0101.

The church itself does not incorporate; instead, it causes a corporation to be formed.¹ This is a recognition of the difference between ecclesiastical jurisdiction (reserved to church courts) and civil jurisdiction (in civil courts). See **Section 1: Basic Organization of the Presbyterian Church (U.S.A.)**, for a discussion of this topic.

Corporate statutes generally refer to a board of directors. The *Book of Order* uses the term trustees instead of directors. This discussion will use trustees.

Chapter Four: The Church and Civil Authority sets out various directives regarding incorporation at the particular church level. These provisions are set out at G-4.0101 and G-1.0503:

1. Only congregation members shall be members of the corporation and eligible for election as trustees, G-4.0102.
2. Trustees shall be elected in the same manner as ruling elders and deacons, G-4.0101.
3. Where permitted by civil law, both ecclesiastical (church council) and corporate matters (as the corporate board of trustees) may be conducted at the same congregational meeting. It is the preferred model, G-1.0503. [NOTE: the minutes of such a meeting should reflect which body is taking certain actions recorded in the minutes: the council, or the corporate board.]
4. Some states, however, prohibit this dual capacity. Also, some churches choose to have a board of trustees different from the session. If either of these is the case, another method of electing trustees may be established. Any such alternate method shall provide for a nominating committee

¹ Before forming a new church corporation, church leaders should determine if a church corporation already exists for that congregation. Church leaders should consult the website for their state's Secretary of State under corporation, corporation names, to determine if a corporation exists for their congregation. In addition, if a church has been in existence for some time, it may have been incorporated at the county level, so it is important to also check with the County Recorder's Office to determine if such a corporation exists at that level (this is particularly so in New York State). Whether at the state or county level, it is possible that the congregation incorporated under a different name than that by which the church is currently known.

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