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ENTERING INTO SPONSORSHIP AGREEMENTS. PERSPECTIVES FOR CHARITABLE WORKS OF THE CHURCH IN POLAND¹

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Introduction

The Catholic Church has the innate right to pursue its mission through involvement in works of the apostolate and charity (cf. can. 1254 § 1-2). Over the centuries, the Church responds to the commandment of the Lord “to heal the sick” with its numerous apostolic activities. One of the most visible forms of these works of charity is the establishment of Catholic healthcare facilities. These include hospitals, clinics, hospices, and nursing homes. There are also numerous educational and social welfare institutions.

Significant changes in the delivery of care for the sick and illness prevention, have led leaders of worldwide Catholic healthcare facilities to search for new forms of governance and in particular for funding.

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One of these is the establishment of “sponsorship”. Faced with business changes and the need to comply with civil legislation, religious congregations found it appropriate to enter into new sponsorship agreements so as to assure the Catholic identity and charism of their works². The purpose of this article is to show how a sponsorship agreement could be drawn up in order to enable a church entity to carry out its charitable works effectively.

This study is addressed to canonists and leaders of sponsorship organizations who are dealing with the governance and financing of charitable works. Its purpose is to provide practical guidance when entering into sponsorship agreements in Poland. The various recommendations are based on new legal arrangements developed in the USA and in Canada.

1. Term of sponsorship

Sponsorship still remains unknown in the civil legal order. There is also no legal definition in canon law³. The dictionary definition of sponsorship refers to special responsibility. An example of this is the responsibility undertaken by a baptismal sponsor to support another person’s journey of faith. In his explanation, Cardinal Maida provides the example of a godparent who makes baptismal promises as the sponsor of an infant being baptized who is legally and physically incapable to act⁴. Thus this person becomes a sponsor.

² Cf. D.J. NYGREN, *Effective Governance In Complex Systems*, Health Progress 82 (2001), no. 4, p. 41.

³ It is not possible to point canons that give us an answer about sponsorship. We can find the answer in the life of the Church itself and in the responses given to new situations being faced by church leaders. F.G. MORRISSEY, *Does Canon Law Speak of Sponsorship of Catholic Works?* Health Progress (2007), no. 1, p. 29.

⁴ A.J. MAIDA, N.P. CAFARDI, *Church Property, Church Finances, and Church-related Corporations: A Canon Law Handbook*, St. Louis, 1984, p. 213. D.C. CONLIN pointed out that the term “sponsor” does not transfer well by analogy to Book V of the 1983 *Code of Canon Law*, which covers the temporal goods of the Church. To accept sponsorship responsibility for a person entering the Catholic faith is not the same reality as to claim ownership or sponsorship of a Catholic health care facility, in *Sponsorship at the Crossroads*, Health Progress 82 (2001), no. 4, p. 20.

The incorporated apostolate requires persons to act on its behalf, i.e. for financial and operational purposes. Civil law defines it as a person who intervenes for another voluntarily and without being requested⁵. In practice, it refers to the unique relationship between legally formed systems or entities; such as hospitals, clinics, nursing homes and religious institutes or diocese that has founded them. A sponsoring organization can be a religious institute, a diocese or some other canonical entity with juridic personality. By analogy, this term can also refer to the role of a group persons who unite for the purpose of exercising an apostolate within the Catholic Church⁶.

Catholic healthcare entities which are founded and sponsored by religious congregations and dioceses usually undertake such action in their sponsor's name⁷. Canonical sponsorship, regardless of the way in which it is understood in the context of canon law⁸, entails the usage of the Church's name, the exercise of certain ecclesial and internal responsibilities and some form of accountability to Church authorities⁹. For this reason, it often requires certain elements of "quality control". To a certain extent, sponsorship could be considered somewhat parallel to a franchise¹⁰. It was originally given wide circulation as part of a threefold approach to Catholic health care works: ownership, sponsorship and control. Ownership referred to holding a property title¹¹; whilst sponsorship usually referred to

⁵ H.C. BLACK, *Black's Law Dictionary: Definition of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, St. Paul 1990, p. 1402.

⁶ On the other hand the term "sponsor" implies that one has accepted responsibility for another entity.

⁷ D.J. NYGREN, *Effective Governance In Complex Systems...*, op. cit., p. 41.

⁸ It is advantageous for us that canon law does not define "sponsorship," because we are not bound by any special legal parameters. Through the course of time, various forms of sponsorship in the Church have been tried and tested. No one form has proven to be the only correct one; the forms are different, and nothing more.

⁹ F.G. MORRISEY, *Our Sponsors*, Health Progress 94 (2013), no. 4, p. 57.

¹⁰ Idem, *Does Canon Law Speak of Sponsorship of Catholic Works...*, op. cit., p. 29

¹¹ The question often occurs in regard to an incorporated apostolate: who is owner of the corporation? In response to this question we should point that corporation itself is its legal owner e.g. religious institute or diocese that founded corporation.

the body under whose name it operated and control referred to the internal governance¹². Over time however, distinctions among these three dimensions became more and more blurred. For instance, sponsorship can take place with or without ownership and with or without control. It can also take place with very little control. There is also control with various forms of sponsorship.

Traditionally, sponsorship emphasized a position of corporate strength and independence through ownership and control via reserved powers. Today, as new relations are established with other providers, there is a need to rely on a presence with the ability to influence¹³.

In the past, the most common form of sponsorship developed from direct ownership of property and the active presence of persons associated with the sponsor. The name of the sponsoring institute was often included in the institution's business name. In a way, sponsored work operated in the sense of being a family business. The sponsors i.e. the religious sisters or brothers, were directly involved in the actual delivery of health care¹⁴. The work in question was simply sponsored by religious institutes¹⁵. With time, due to the decline and decreasing members of religious institutions, sponsorship was undertaken by lay persons.

The apostolic work carried out by religious institutes did not initially have separate canonical recognition. It was conducted within

It has no owner other than itself, much the same way a natural person owns himself or herself. Members of charitable corporations are not the owners; nor are they shareholders. They may have reserved the right to have the final say in the certain enumerated corporate affairs. Such reserved powers of the members should be clearly stated in the corporate articles and bylaws of the incorporated apostolate. A.J. MAIDA, N.P. CAFARDI, *Church Property, Church Finances, and Church-related Corporations...*, op. cit., p. 213

¹² F.G. MORRISEY, *Our Sponsors*, Health Progress 94 (2013), no. 4, p. 63.

¹³ M.D. PLACE, *Towards a Theology of Catholic Health Care Sponsorship – A Work in Progress*, Health Progress 85 (2004), no. 1, p. 9.

¹⁴ F.G. MORRISEY, *Our Sponsors*, Health Progress 94 (2013), no. 4, p. 57.

¹⁵ In general, religious institutes have been identified among the principal sponsors of apostolic works.

the frame of the religious institute. On many occasions, it was very difficult to determine priority i.e. apostolic work or the operational community. All current health care activity carried out by religious institutes and dioceses must be associated with juridic persons that are recognized either by the bishop or the Holy See. Health care entities are in this way, identified as Catholic.

Health care facilities acquired civil recognition in the civil legal order as being distinct from those of the sponsoring religious community. This led to the distinction between “members” of the corporation and “directors” and the establishment of separate boards of directors with “membership” often being identified with the leadership of the sponsoring religious community. A further separation came about as a two-tiered structure was put in place making a clear distinction between the members of the corporation and the board of directors. Relations between the members and the board were governed by the use of reserved powers, meaning that certain board decisions were reserved to the members or to some canonical authority for confirmation before the board could put the decision into effect¹⁶.

In the context of ongoing study it is necessary to state that there is no equivalent of sponsorship in the Polish legal order. Sponsorship agreement could be classified as an unnamed agreement that includes elements of various contracts. The legal relationships governed by an unnamed contract are created by the parties in an arbitrary manner that suits all.

2. Establishment Catholic healthcare institution

Apart from ecclesiastical juridic persons, such as parishes, dioceses, seminaries, religious houses and provinces, the Church can also pursue its mission through other entities that can also carry out its ministry. These entities are generally called “public juridic

¹⁶ A.J. MAIDA, N.P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations...*, op. cit., pp. 167-69.

persons¹⁷ because their ministry (e.g. health care facility) is formally sanctioned by church authority and is carried out publicly under its auspices¹⁸. These are constituted by the special grant of competent authority given by decree (can. 114 § 1). They operate in accordance with their approved statutes (can. 117). The establishment of public juridic persons for healthcare ministry is not a new religious institute or a part thereof. It remains a separate church entity which guarantees the continuation of the Catholic mission¹⁹. It also promotes Catholic characteristics in the health care system as it is officially able to act in the name of the Church (can. 116). Ecclesiastical juridic persons hold the canonical equivalent of a corporation in civil law.

The petition for an approval²⁰ of juridic personality in health care ministry sponsored by a pontifical religious institute, should be addressed to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. A diocesan bishop has the authority to establish a diocesan institution as a public juridic person within his own diocese. A petition would require to be addressed to the Congregation for the Clergy, should he wish to establish a juridic

¹⁷ Public juridic persons are creation of canon law they enable people to come together to perform a work or carry out a mission. They would be unable to do on their own. Religious congregations and dioceses, among other entities, are juridic persons by virtue of the canon law itself. Other juridic persons are established by a decree of the Holy See or a diocesan bishop and governed by statutes that are approved at the time juridic personality is conferred. F.G. MORRISEY, *Towards Juridic Personality*, Health Progress 82 (2001), no. 4, p. 29.

¹⁸ IDEM, *Temporal Goods at the Service of the Mission of Ministerial Juridic Persons*, Catholic Health Association of the United States 2017, p. 5.

¹⁹ Some religious institutes merged with another institute in order to continue apostolic work, but this method has not always worked out as expected. At times, it almost had the characteristics of a forced marriage. Not every community has been ready and willing to give up its heritage and the practical expressions of its charism.

²⁰ The recognition of a sponsored institution concerned, entails defined powers and accountabilities.

person of pontifical right²¹. This means that a public juridic person of pontifical right is constituted by the Apostolic See and is accountable to it²². On the other hand, a public juridic person of diocesan right is constituted by the diocesan bishop and is accountable to him²³. This mechanism however, has been used particularly in the United States, Canada, Ireland and Australia. In other countries, it is more common for the Church to establish foundations and trusts to look after the temporal goods involved²⁴.

All Catholic healthcare entities founded by religious institutes or dioceses must be recognized civilly in order to gain effectiveness in the civil order. Public juridic persons erected by competent ecclesiastical authorities in both the USA and Canada have the option to be incorporated under civil law²⁵. These institutions being civil

²¹ P.M. DUGAN, *The Sponsorship Relationship: Incorporation and Dissolution, Civil and Canon Law Perspectives*, in: *Sponsorship in the United States context: Theory and Praxis*, Alexandria 2006, p. 80. J. Hite is not sure if any decisions in this regard having been made to date. J. HITE, *A Primer on Public and Juridic Persons: Applications to Health Care Ministry*, St. Louis 2000, p. 37.

²² E.g. Catholic Health Ministry in 2000 was established by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. See M. KELLY, M. MOLLISON, *Journey into Sponsorships' Future*, *Health Progress* 86 (2005), no. 2, p. 50.

²³ Unlike the United States, Canada applies to the Holy See for juridic personality. These are sometimes made jointly by sponsoring religious congregations and the bishops of the territories involved. For instance the public juridic person in *Catholic Health Sponsors of Ontario* was established in a way that allows the *Catholic Health Association of Ontario* (which is jointly sponsored by the bishops and the owners of health care institutions) to assume the seat of any congregation wishing to withdraw from sponsorship of the juridic person. *Catholic Health Sponsors of New Brunswick* is a joint effort between bishops and religious institutes. Similar arrangements are found with *Catholic Health Sponsors of Manitoba* where the bishops involved are members of the board of the juridic person.

²⁴ F.G. MORRISEY, *New PJP Model »A Leap of Faith«*, *Health Progress* 92 (2011), no. 2, p. 68.

²⁵ A public juridic person has no recognized right or legal capacity to incorporate in the United States. Rather, an individual natural person (e.g., an administrator of a public juridic person) can file certificates of incorporation, articles of

corporations, are afforded the same legal rights and protection that other corporations have under civil law.

Civil corporation is State created. It provides the ecclesiastical entity with legal person status in civil law, with its corresponding rights and obligations. Its purpose is to afford a capacity for action which is greater than that of its individual members. It is perpetual in nature and does not cease to exist, except by the act of the same power that created it. It has been defined as: “An artificial person or legal entity created by or under the authority of the laws of a state or nation, composed in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals. Such entity subsists as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law”²⁶.

It is essential to bear in mind that civilly recognized Catholic healthcare organizations are non-profit corporations that do not have stockholders and do not pay dividends. The objectives of such corporations have significant character e.g. religious, philanthropic, charitable, scientific, artistic, social, professional or sporting²⁷.

incorporation, and bylaws which create the civil corporation that corresponds to the public juridic person. Furthermore, even after an administrator civilly incorporates a public juridic person, it is the civil corporation that is recognized under civil law of the United States, not the juridic person as such (which continues to be recognized under canon law). For the purpose of this work, a public juridic person which has been civilly incorporated in the United States will be referred to as a “civilly incorporated public juridic person”. B.V. PHAM, *Public Juridic Persons and Chapter 11 Reorganization Bankruptcy*, Studia Canonica 51 (2017), p. 552.

²⁶ H.C. BLACK, *Black's Law Dictionary*..., op. cit., p. 340.

²⁷ Cf. Ibidem, p. 342.

3. The requirements of Catholic healthcare agreements

A sponsorship agreement is a significant document which specifies the responsibilities of sponsors and trustees who undertake to finance Catholic healthcare organizations. It is of particular importance when non non-Catholic parties get involved in sponsorship agreements. The document should reflect the concerns and principles of the sponsoring body and the limits of its responsibilities. It should also be protected by provisions for Catholic identity and reserved powers. Such an agreement, as previously mentioned, should be entered into account with non-profit healthcare²⁸. This is due to Catholic institutions being an integral part of the larger framework of non-profit organizations²⁹. Sponsorship ceases with the termination of the sponsor's contract with the organization sponsored.

Catholic healthcare organizations that have been recognized by civil law, as a part of the apostolate's corporate structure, should determine their own requirements³⁰. This includes the following elements: 1) Catholic mission; 2) Catholic identity; 3) compliance with canon law; 4) ownership; and 5) reserved powers.

3.1. Catholic mission

The Catholic mission is a benchmark enabling one to evaluate the organization's authenticity and effectiveness. It is also the driving force by which decisions are made and structure and systems are developed³¹. The mission should affirm the corporation's purpose, i.e. to perform works of charity in accordance with tradition of the Roman Catholic Church and canon law. The Catholic mission statement should provide respect for the dignity of all people and provision of

²⁸ Catholic healthcare is a service and never simply a commodity exchanged for-profit corporation.

²⁹ Cf. C.E. COCHRAN, K.R. WHITE, *Does Catholic Sponsorship Matters?* Health Progress 83 (2002), no. 1, p. 14.

³⁰ Cf. A.J. MAIDA, N.P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations...*, op. cit., p. 227.

³¹ F.G. MORRISEY, *Catholic Identity in a Challenging environment*, Health Progress 80 (1999), no. 6, p. 40.

compassionate care³². It should also identify the special charism of the religious sponsor, affirming that all works of the incorporated apostolate will faithfully be exercised by the duties in the spirit of the given charism³³. With reference to sponsored health care facilities, it is crucial that the religious mission statement also specifies that the institution will function in a manner consistent with the *Ethical and Religious Directives for Catholic Health Care Services* approved by the National Conference of Catholic Bishops.

The development of a clear mission statement is necessary so that in the event of the incorporated apostolate's activity being challenged, the institution's mission is always assured³⁴. The drafting of such a statement requires the expertise of both canon and civil lawyers who can draw upon the knowledge of the religious sponsor regarding the mission that the incorporated apostolate endeavors to undertake.

Reference to the Catholic mission of healthcare entities in the agreements is the principal method by which the canonical administrators of the incorporated apostolate can assess whether or not they are fulfilling their canonical obligations with respect to the values that the institution claims to espouse. If the activities of the institution do not conform to authentic Church teaching in matters of faith and morals, then the canonical steward is obliged to correct the matter in keeping with faith obligations³⁵. It is important to add

³² In 1993 K.R. White conducted a study comparing privat, metropolitan hospitals across the nation in terms of stewardship of resources, social justice, and compassionate care." According to this study. Catholic hospitals provided more compassionate care services (e.g., care for people with HIV/AIDS, addictions, or other problems) than either investor-owned or other not-for-profit organizations. K. R. WHITE, J. W. BEGUN. *How Does Catholic Hospital Sponsorship Affect Services Provided?* Inquiry (1998/1999), no. 35, pp. 398-407.

³³ Ibidem, p. 227.

³⁴ Cf. C.E. COCHRAN, K.R. WHITE, *Does Catholic Sponsorship Matters...*, op. cit., p. 14.

³⁵ J.K. MURPHY, *The Governance of Church Institutions and Protection of Catholic Identity with Particular Reference to Ontario, Canada*, Roma 1995, p. 182.

that sponsorship leaders formation should also cover the mission of Catholic healthcare organizations³⁶.

This statement of Catholic mission should be periodically reconsidered by the sponsors and updated where necessary. Corporate activity should be examined at the annual meeting, to determine whether the standards of the mission statement are met.

Mission statements should not be documents alone but should be the driving force which influences daily activity. Rather they should bring on a new refinement of sponsorship's mission.

According to cardinal A. Cafardi, Catholic mission in the sponsorship agreements has a threefold importance. Firstly, it is the major way in which the canonical stewards of the sponsoring public juridic person can guarantee that they are meeting their faith obligations in regard to the activity of the incorporated apostolate. Such a statement affirms the Catholic identity of health care entities. Secondly, a statement of Catholic mission in sponsorship agreement and bylaws provides notice to all concerned. It gives those on the corporate sponsorship board a clear operational philosophy to guide their oversight of corporate activity and system of values. A statement of corporate values in hospitals, provides guidance to nurses and physicians on the values expected in manifesting healthcare within the given institution. Thirdly, by stating that matters of conscience are covered by the mission statement, the corporation and its members are provided with clear information that the statement is the corporate "conscience" of the apostolate³⁷.

³⁶ P. BOYLE, *Institutionalizing Catholic Identity*, Health Progress 96 (2015), no. 6, p. 35.

³⁷ A.J. MAIDA, N.P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations...*, op. cit., p. 229.

3.2. Catholic identity and ethical directives

Catholic identity implies that the undertaken activity will be related to Gospel values, Catholic ethics³⁸ and social tradition incorporated with business practice. This is of particular importance when other parties of the agreement do not share Catholic values in the area of medical techniques and business practices³⁹.

One of the ways of assuring “Catholic identity” in health care ministry is to include *Ethical and Religious Directives for Catholic Health Care Services* [hereinafter: ERDs]. It establishes clear lines of responsibility. The document should provide for Catholic health care organizations to refuse certain medical services that violate human dignity;⁴⁰ it may also apply to solidarity and social justice in employer employee relations; and will insist on serving the health care needs of the community. The document should be approved by the Conference of Catholic Bishops⁴¹ and the proper law of the sponsoring institute. It can also provide guidance for arrangements between Catholic and non-Catholic institutions. A further document, this time from the Holy See, is also applicable and spells out significant principles: *New Charter for Health Care Workers*⁴². The agreement is to assure that ethical and religious directives will be observed in each activity of the healthcare facilities and any deviation from them would violate essential undertakings of the agreement.

³⁸ Ethics means living in accordance with Gospel values. Catholic identity requires ongoing ethical analysis to ensure that the values at the heart of Catholic tradition are expressed in each of the organization’s daily operations.

³⁹ F.G. MORRISEY, *Catholic Identity in a Challenging environment...*, op. cit., p. 38.

⁴⁰ For instance, at the present time, there is great pressure not to recognize a „conscience clause” for Catholic hospitals, so that they would be obliged to offer abortion and sterilization procedures. See R. MAHONY, *Statement on Proposition 22, Same-Sex Marriage Initiative*, *Origins* 29 (1999-2000), pp. 465-467.

⁴¹ These directives and a commentary on them can be found in O.N. GRIESE, *Catholic Identity in Health Care: Principles and Practice*, Boston 1987, p. 537.

⁴² See PONTIFICAL COUNCIL FOR PASTORAL ASSISTANCE TO HEALTH CARE WORKERS, *New Charter for Health Care Workers*, English edition, Philadelphia, The National Catholic Bioethics Center, 2017.

Each sponsorship agreement should include a statement that the Catholic health care organization will be guided by Church authorities (particularly by the diocesan bishop). With new models of sponsorship, the diocesan bishop has a crucial role in promoting and maintaining the Catholic identity of the healthcare organization. He should undertake, amongst other responsibilities, the duty of vigilance over it by reviewing the annual report of the juridic person (can. 1276) (in respect of juridic persons of diocesan right). He will also involve himself in a number of transactions relating to the alienation of stable patrimony (can. 1291). Furthermore, he will determine the Catholicity of works or institution and will remain watchful to see that temporal goods are being used for intended purposes supervising the execution of wills and bequests made to the public juridic persons. He may even sit on the board of directors of a health care facility or system.

3.3. Compliance with canon law

The sponsorship agreement is to assure that Catholic healthcare is governed under canon law and is also subject to applicable civil law and corporation statutes. A clear statement within the agreement is essential in determining which law is applicable in a given situation. Otherwise, there stands the risk of taking something that is appropriate in one set of circumstances and applying it literally to another on the mistaken presumption that canon law requires it⁴³.

The Catholic health care provider should become familiar with the appropriate general prescriptions of canon law which determine the parameters allowing institutions to enter into certain types of agreements with other providers. All Catholic sponsorship agreements, including those made with religious institutes and

⁴³ For instance, see *St. Vincent Infirmary Medical Center v. Director of Labor*, Court of Appeals of Arkansas, October 31, 1990 (797 S.W.2d 460. 32 Ark. App. 156, 32 Ark. App. 71): "Evidence indicated that although hospital provided health care, it operated primarily to carry out religious mission and would not have continued to operate but for religious motivation and purpose".

non-Catholic parties, must ensure that Catholic health and social care issues are dealt with in accordance with provision of the 1983 Code of Canon Law⁴⁴. In order to avoid any misunderstandings along the way, all parties should clearly determine the purpose of the activity, structures of governance as well as the rights and obligations of all parties. This requires precision of language and terms in order not to confuse acts of extraordinary administration with acts of alienation⁴⁵. It must be clear enough to reflect the religious body's values and goals, and broad enough for future changes in policy or purpose.

When cooperative arrangements which are made between parties, consideration needs to be given a number of elements of Church law, if the work is to remain Catholic. These include correct administrative procedures for property administration in accordance with canon law and the observance of moral teachings in medical procedures. Some decisions should thus be reserved to the major superior and council bearing in mind the occasional need to seek out the opinion of the diocesan bishop. When non-Catholic parties are involved, the standard practice is to ensure that the healthcare facility will continue to be operated as a non-profit corporation⁴⁶.

3.4. Ownership

In the past, the concepts of sponsorship and ownership were intertwined. Catholic congregations, for instance, were understood to be the full owners of the health care institutions which they sponsored. Today however, many congregations prefer to sponsor a health care apostolate without owning it⁴⁷. Owning such an organization necessitates a huge investment of economic resources

⁴⁴ Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus, Acta Apostolicae Sedis 75 (1983), II, pp. 1-317.

⁴⁵ Cf. P.M. DUGAN, *Sponsorship Relationship: Incorporation and Dissolution*, p. 78.

⁴⁶ The Congregation for the Doctrine of the Faith, on February 17, 2014 (Prot. No. 180/95 – 45730), issued a document entitled: “Some principles for collaboration with non-Catholic entities in the provision of healthcare services”. This document governs many of these shared operating agreements.

⁴⁷ F.G. MORRISEY, *Towards Juridic Personality...*, op. cit., p. 27.

including trained, experienced, and highly motivated personnel as well as a large long-term commitment of the institute's time and energy to a single ministry⁴⁸.

If a religious institute wishes to have its ownership rights it should enter into a sponsorship agreement protected by canon and civil law. A clear distinction between ownership and sponsorship is that of the organization's administration. Owners may not necessarily be involved in administration. On the other hand sponsors are usually involved as it implies control for the implementation of sponsorship.

The legal usage of ownership belonging to the corporation must be carefully formulated in every sponsorship agreement and fully documented for the benefit of both parties. Lack of clarification would permit performing medical procedures inconsistent with applicable ethical and religious directives (often referred to as "ERDs"). If such facilities are to survive in the future and the prospect of mergers, and joint ventures appear to be imminent, church lawyers must analyze which structures are most conducive to maintaining the Catholic Church's teaching with respect to both property and more fundamental mission issues⁴⁹. Should assurance prove impossible, Catholic health facilities must refuse to perform certain medical procedures. In this respect, the diocesan bishop is to exercise vigilance in order to prevent abuses from creeping into ecclesiastical discipline; especially regarding the administration of goods (can. 392 § 2). An administrator must be ready to show the proper ecclesiastical authorities, that the temporal goods are being prudently and carefully administered and that the work's policies conform with Catholic teaching.

In the United States, ownership of Catholic health care institutions has frequently been reduced to sponsorship of those institutions. As a result, sponsorship itself has been institutionalized as the

⁴⁸ D.C. CONLIN, *Sponsorship at the Crossroads*, Health Progress 82 (2001), no. 4, p. 21.

⁴⁹ M. MCGOWAN, *Sponsorship of Catholic Health Care Organizations*, The document is available in PDF format on the CHAC website at www.chac.ca.

preferred way of speaking about the church's presence in the health care marketplace⁵⁰.

3.5. Reserved powers

The term "reserved powers" means protection of church ownership and its canonical control⁵¹. This relates to members of congregation who do not want to relinquish control of their health care organization. It does not mean that religious women or men must serve in the sponsored organization's administration or become a member of staff. Rather, it means that the institute (or any other public juridic person) carries out its governance responsibilities through "reserved powers" that give the sponsor exclusive canonical control over ownership⁵². A. Maida considers that "reserved powers" is the right of members to control a sponsorship institution⁵³. This means that they have the right to speak out before certain corporate decisions are taken. Furthermore, he adds that canonical sponsorship is effective when canon law is observed. Where this canonical reality is ignored in the civil law, there is no canonical sponsorship. For this reason the reserved powers must be determined in sponsorship documents⁵⁴.

Reserved powers must be clear and well-defined in any sponsorship agreement. Under this agreement, a public juridic person – usually represented by a board – exercises a sponsored organization's reserved powers, while another board – the board of trustees – exercises the organization's ordinary administrative powers. Such a structure may sound unwieldy. In fact, the same people usually occupy seats on both the public juridic person's board and the board of trustees.

Although the *Code* makes little reference to what is known as "reserved powers", reference may be made to the following examples:

⁵⁰ D.C. CONLIN, *Sponsorship at the Crossroads...*, op. cit., p. 22.

⁵¹ The term of control could best be defined as the reserved right to have the final say in certain enumerated corporate affairs.

⁵² *Ibidem*, p. 22.

⁵³ Cf. A.J. MAIDA, N.P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations...*, op. cit., p. 213.

⁵⁴ *Ibidem*, p. 223.

approval of the operating budgets, the ratification of appointments to various offices (not only the appointment of the CEO and of board members), approval of the auditor, etc.⁵⁵ Over the years, the sponsors of Catholic health care facilities and educational institutions have essentially honed their reserved powers down to five. According to a Catholic Healthcare Association, sponsors typically reserve for themselves the right to 1) establish the philosophy according to which the corporation operates, 2) amend the corporate charter and bylaws, 3) appoint or approve the appointment of the board of trustees, 4) lease, sell, or encumber corporate real estate in excess of the approved sum, and 5) merge or dissolve the corporation⁵⁶.

Sponsorship indicates ownership when it refers to canonical control as such control is expressed in certain reserved powers. Sponsors must undertake to comply with the provisions of canon law, even though technically the civil corporation could operate independently of such control⁵⁷.

In this way, they can meet canonical obligations in the activity of the incorporated apostolate. These obligations can be described as both faith and administrative obligations. The faith obligations mentioned, refer to the requirements imposed by the canon law to protect the Catholic identity of sponsored apostolates. These should be publicly identified as Catholic and should act as corporations in conformity with the moral teachings of the Church.

There is a need to focus on other factors, when entering into cooperative agreements. Firstly, the works should have some type of canonical juridic personality, distinct if possible, from that of the sponsoring institute(s) thus allowing for separate accounts. Provisions

⁵⁵ Ibidem, pp. 167-69.

⁵⁶ Catholic Health Association of the United States, *The Search for Identity: Canonical Sponsorship of Catholic Health Care*, St. Louis, CHA 1994, pp. 20-21.

⁵⁷ The sponsoring religious institute must have sufficient control over the sponsored entity so that it can exercise its responsibilities as prescribed by Canon law. B.C. HUGER, *Canon Law Issues of Sponsorship, Governance Control and Alienation as They Relate to Catholic Church Entities in the United States: A Diocesan Attorney Perspective*, *The Catholic Lawyer* 41 (2001), no. 1, pp. 19-26.

should be in place to ensure that the intentions of donors are protected and respected (can. 1267 § 3). If these intentions cannot be respected in a new cooperative venture, the goods must then be returned to the donors or their successors unless other appropriate arrangements are made. The temporal goods belonging to the sponsoring institute and those belonging to distinct juridic persons must be clearly distinguished. It must also be determined within these agreements, if the work is to remain “Catholic” and whether certain decisions are to be reserved to one or both of the sponsoring authorities (special reserved powers). In other words, outline any “non-negotiable” items before considering new arrangements. Among such are the observance of the principles of Catholic doctrine and moral practice, respecting the rights of others, establishing some form of communion with the diocesan bishop and providing for quality control relating to the use of the title “Catholic”.

In respect of other interested parties, it should be determined whether civil law prescriptions will be observed (e.g., antitrust statutes, zoning regulations). Appropriate arrangements with funding agencies should be in place in order to determine whether they can continue funding under the new arrangements.

Another important provision in any sponsorship agreement with non-Catholic parties is the specific affirmation that the facility will continue to be operated as a non-profit corporation regardless of the governmental body’s property interest therein. This is particularly important if the governing body is found to be operating the facility as its actions would be governed by standards applicable to public institutions rather than by those relating to private corporations. For instance, a country cannot deny a citizen’s constitutional rights; yet at times it recognizes abortion as having some form of constitutional protection. Thus, a state-run health care facility might not be able to prohibit abortion whereas a private non-profit corporation acting on its own religious principles and those of its members could legally refuse to carry out such procedures⁵⁸. The ultimate protection of

⁵⁸ Doe v. CHARLESTON, *Area Medical Center*, 529 F.2d 638 (4th Cir. 1975).

a nonprofit corporation's Catholic identity in the structuring of agreements is the reservation of the right to terminate participation if the facility is required to act contrary to its Catholic conscience. Such an option belongs and should be placed in every agreement⁵⁹.

4. Sponsorship agreement in Polish civil law

Sponsorship agreements have not been regulated either in the Polish Civil Code [hereinafter: PCC] or in other Polish civil acts. This institution, as previously mentioned, has been used particularly in the North America. The institution of sponsorship – from a theoretical point of view does not belong to donations. In accordance with art. 888 § 1 of the Polish Civil Code⁶⁰ donation is an agreement between donor and a donee. The donor commits to make a free-of-charge performance to the donee at the cost of his property. The lack of economic equivalent is the essence of every donation. For this reason we cannot classify a sponsorship agreement as a donation agreement in Polish legal order. Rather, sponsorship agreement is the mutual obligations of the sponsor and the sponsee. The sponsor agrees to pay for the sponsee amount of money over a period of time in order the sponsee could carry out its statutory goals. It means that we are dealing with another type of agreement. We could classify it as innominate agreement. Both parts of agreement arrange themselves the subject of the contract according to your own wishes (*contractus innominatus*) which are within the limits of the law that is in accordance with art. 58 of the Polish Civil Code and respects equity. What is crucial, sponsor is not limited merely to one-way legal action. He is also a part of the governing board, and he or she has the right to speak out before certain corporate decisions are undertaken and he can influence in decision-making. Sponsor can also undertake action in their sponsor's name. The creation of such legal relations

⁵⁹ A.J. MAIDA, N.P. CAFARDI, *Church Property, Church Finances, and Church-related Corporations...*, op. cit., p. 255.

⁶⁰ Act of 23 April 1964, The Civil Code, Journal of Laws 2019 item 1145.

is an example of new economic practices, which state law does not determine in detail.

In an economic and social environment, a sponsorship agreement might be seen as a new means of financing charitable works. This type of agreement pertains to both to physical and juridic persons (religious congregation, diocese) who intend to finance charitable works carried out by the Church. The parties should explicitly define the type of commitment and the time of its implementation. In the Polish legal order, Catholic hospitals and other charitable works carried out by ecclesiastical juridic person (e.g. religious institute) may use sponsorship agreements only when they acquire civil juridic personality following registration with the National Court Register. In accordance with art. 4 section 3 of Concordat between the Holy See and the Polish Republic concluded on 28.07.1993 "At the request of the Church authorities, other ecclesiastical institutions may also acquire legal status, in accordance with Polish law"⁶¹. Other institutions should be understood to be organizational units that acquired juridic personality on the basis of canon law and wish to participate in legal transactions independently, using the provisions of Polish law. The applicant in this matter is to be the competent management of the given organizational unit⁶².

Conclusion

When speaking of sponsorship agreements, it seems fairly obvious that one is dealing with a rather complicated area of canon law. Lack of standardized sponsorship agreements may lead to complications. These types of agreements are of particular importance when dealing with non-Catholic parties which is why each sponsorship agreement must be undertaken in accordance with the mission, vision and

⁶¹ Journal of Laws of the Republic of Poland 1998, No. 51, poz. 318; Sollemnis conventio inter Apostolicam Sedem et Poloniae Rem Publicam (28.07.1993), AAS 90 (1998), pp. 310-329.

⁶² J. Krukowski, *Polskie prawo wyznaniowe*, Warszawa 2008, p. 116.

identity of Catholic apostolate. The agreement should also reflect the principles of the sponsoring body and the limits of its responsibilities.

The analysis of sponsorship agreements, based on arrangements developed in the USA and Canada, allows to show the practical elements which should be followed in each agreement. These include the following elements: 1) Catholic mission; 2) Catholic identity; 3) compliance with canon law; 4) ownership; and 5) reserved powers. The elements listed above should not be considered exhaustive but crucial. Each situation must be evaluated individually and care should be taken to ensure that the requirements of both canon and civil law are met.

There is no counterpart to sponsorship agreements in the Polish legal order. This mechanism however, has been used particularly in the United States as well as in Canada, Ireland and Australia. In other countries, it is more common for the Church to establish foundations and trusts to manage temporal goods involved in sponsorship. Whilst dealing with sponsorship agreements, it is important to note that such agreements appertain to unnamed agreements in Polish Civil Code. This means that the interested parties specify respective rights and obligations. The general provision of the Polish Civil Code should be applied with particular provisions for liabilities.

Entering into sponsorship agreements. Perspectives for charitable works of the Church in Poland

This study explores the usage of sponsorship agreements as new forms of governance and funding in the delivery of educational and social welfare services which are struggling to support themselves. Sponsorship agreements were developed by religious institutes in the North America which founded charity entities. Significant changes affecting healthcare delivery, led leaders and managers of Catholic healthcare institutions to draw up appropriate sponsorship agreements so as to assure their Catholic identity and the charism of their works. This article aims to show the ways in which a sponsorship agreement may be drawn up in order to enable a church entity to carry out its charitable works effectively. The author commences with great focus on canon law and the legal definition of “sponsorship” in order to further determine the necessary requirements to establish public juridic

persons for healthcare ministry. The requirements of Catholic healthcare agreements provide the crucial part of the text. This includes the following elements: 1) Catholic mission; 2) Catholic identity; 3) compliance with canon law; 4) ownership; and 5) reserved powers. These elements should be taken into account especially when sponsorship agreements involve non-Catholic parties. The analysis of sponsorship agreements is based on the new legal arrangements developed in the USA and in Canada. Its purpose is to provide practical guidance for sponsorship agreements in Poland, which is yet unknown both in civil and canon law. This article provides practical guidance for sponsorship agreements that are constantly affected by numerous social and economic changes.

KEYWORDS: Financing of charity works in the Church; sponsorship agreements; preservation of Catholic identity; ethics directives

SŁOWA KLUCZOWE: Finansowanie dzieł charytatywnych Kościoła; umowy sponsorship; zachowanie katolickiej tożsamości; etyczne dyrektywy

NOTA O AUTORZE:

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