

Masonic Jurisprudence *versus* Corporate Law
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DISCLAIMER

The following lecture is presented for informational purposes only and is intended to be used as a guide prior to consultation with an attorney familiar with your specific legal situation. This presentation is not a substitute for the advice of an attorney. If you require legal advice, you should seek the services of an attorney.

Using the principle of Masonic sovereignty, grand lodges declare that they are governed only by the landmarks of the Order of Freemasonry and by such other limitations as they might impose upon themselves. Subjecting themselves to the landmarks puts limits on true sovereignty, but this limit is necessary if a grand lodge wishes to be accepted as a legitimate Masonic body. It is obedience to the landmarks that distinguishes a Masonic body from the Elks, the VFW, or a party club.

Masonic law has become more complicated than it was when Mackey wrote his influential book, *Masonic Jurisprudence*. The reason for this new complexity is the popular, nearly universal inclination for grand lodges to incorporate, and incorporation places an organization soundly under the laws of the civil body in which corporate status is granted. Masons have always been committed to obey the civil law, but incorporation imposes a new set of laws that are not imposed upon unincorporated organizations. Since I am not a lawyer, I would like to explore this matter from a lay person's position. Because the Phylaxis Society is an incorporated body, I have had to take some interest in the laws of the State of Kansas as they apply to nonprofit corporations like us, and I would like to share with you some of the observations I have made in this regard.

Before Incorporation

Before a Masonic body incorporates, it is a voluntary association in which members agree to comply with laws they have imposed upon themselves. Provided that such laws are consistent with civil law, courts will generally stay out of internal disputes arising in such associations. Suppose the constitution of a voluntary association has an arbitrary, frivolous rule that an elected officer can be removed from office for wearing white after Labor Day. Anyone removed for violating this condition is unlikely to have any recourse in civil court if he forgets to turn his calendar or because he does not know the rule and was removed for violating it. This is why law suits from disgruntled Masons who have been suspended or expelled from the Order are likely to be dismissed, especially if no civil law has been violated. Civil courts tend not to meddle in disputes in which people take issue with rules they have agreed to comply with.

After Incorporation

In the course of our Masonic initiation, each of us has agreed to obey a series of codes: (1) the moral and civil law, (2) the landmarks of the Order, and (3) the constitution, bylaws and codes of the lodge or grand lodge. By incorporating, a grand lodge subjects itself to a whole new layer of legislation and this legislation changes the way the grand lodge can operate in some very fundamental ways. The details will vary depending on the state in question so it is impossible to give universal rules, but there are aspects of corporate law that complicate activity within a

voluntary association. For example, it might be difficult to remove an elected member of an incorporated board of directors for wearing white after Labor Day if this is his only offense, despite what might be stated in the bylaws of the association. Members of a corporate board are sometimes protected under state law and have to be removed in accordance with the laws of the state.

Another layer of codes that bind a corporation is the corporation's articles of incorporation. The corporation develops its own articles of incorporation, but it must be careful to disclose the pertinent details of its operation within those articles. If an organization has rules in its constitution or bylaws that differ from those in its articles of incorporation, a civil court will likely hold the association to its articles of incorporation. When an association incorporates, it should take care to make the principles stated its articles of incorporation consistent with the practices allowed in its bylaws, or it must make its bylaws consistent with principles stated in its articles of incorporation.

Grand Lodge *In Absentia*

There are jurisdictions in which the grand master assumes that he exercises the powers of the grand lodge when the grand lodge is not in session. This might not be the case in states like Kansas where the legal powers of an incorporated organization are exercised by the Board of Directors. In some cases, the legal powers of the grand lodge reside in a board, not the grand master, and these powers might reside in the board regardless of whether or not the grand lodge is in session. This is a fundamental challenge to the degree of sovereignty a grand lodge has before incorporation and is a fundamental change to the manner in which a grand lodge can operate. Even if members of boards have not bothered to learn their fiduciary responsibilities and their legal power under the laws of their state, there is a real danger that individual board members could be held responsible for gross blunders made by the supposedly sovereign body.

There is no ritualistic basis for understanding how the corporate board fits into the Masonic structure because at the building of King Solomon's Temple there was nothing that compares to the present-day Board of Directors. But there is litigation taking place in this country that is sure to help us understand how critical a role the board of directors plays in an incorporated grand lodge. Consider this: "The business affairs of every corporation shall be managed by or under the direction of a board of directors...." This is a direct quote from Kansas law [KSA 17-6301]. It does not give the authority of managing or directing the affairs of the Phylaxis Society to a president, a master, or a grand master, but to those members of the board who have been registered with the State. If these board members have not studied the law as it related to their responsibilities they might some day find themselves in an uncomfortable position. The act of incorporating changes not only *what* a grand lodge can do, but it changes *who* can do it.

An association has some latitude in its articles of incorporation and in its bylaws when it establishes itself as a corporation. The association can delegate much of the power of the board to other committees. Whether the board can delegate its fiduciary responsibilities is another matter. Grand Lodges might declare themselves as being subject only to the landmarks and the laws they impose upon themselves, but in Kansas, the articles of incorporation will prevail over the landmarks and so will various elements of Kansas legislation.

Tax laws

In addition to limitations imposed on corporations under state law, a Masonic body that obtains tax exempt status will inherit a layer of laws imposed by the tax codes of the Federal government. I don't claim to understand much about the United States tax code, but it is advisable that Masonic bodies who appoint legal advisors should seek out advisors who know something about all the layers of law the organization will be bound by: the landmarks, the articles and laws of the organization, the laws of the state in which the body is incorporated, and tax laws as they apply to tax exempt organizations.

Restrictions on fund-raising solicitation

Using donations for purposes other than those stated in an organization's articles of incorporation or stated in the solicitation is likely to be discussed in one of these layers of codes and laws. If we tell patrons that we are raising money for scholarships then put the proceeds into a general operating fund, we might be in violation of codified civil law. A few years ago the Phylaxis Society solicited donations to produce a documentary film, and money was donated specifically for that project. That money has been put into a protected account so that it is not used for general operating expenses. To do otherwise could violate Kansas law. Until such time as we begin work on a documentary, it is advisable that we not subvert use of these funds to any other use.

Also a while back, one of our members brought to our attention the importance of safeguarding our life-membership fund. The money we collect for life membership needs to be protected so that the interests of life members are not threatened. This is the reason we have our life membership fund in a separate account and we have limits on the ways the fund can be used.

Email polling

The Society has also used email messages to poll members of the Board of Directors for certain decisions. This practice is more expedient than physically convening the board, which has members dispersed in nine states. Although a board might be polled by email for a trivial matter such as whether or not donuts and coffee will be made available at a call meeting, an email poll might not be strictly legal on a matter requiring unanimous written consent. The issue is whether in the absence of a signature on an email constitutes written consent.

In our litigious world, grand lodges no longer have the luxury of conducting business as usual. As government protected corporations, they are now bound by laws that did not exist at the building of King Solomon's Temple. The codes and laws of a grand lodge can no longer be patterned exclusively on ritualistic examples and moral law, but must take into account those laws that apply to all corporations protected under state law and must take into account those laws that apply to associations protected under the tax codes of the United States. In Kansas, corporate duties and powers are conferred or imposed upon a Board of directors and not upon an executive officer. The powers and duties of the Society can be addressed in the articles of incorporation, but if they are not addressed, the final power, the final responsibility, and control over the general policies of the corporation rest with the board, not with the president or with the executive officer.

My advice to the Board of Directors of the Phylaxis Society is that they understand clearly what is required of them under the laws of Kansas and the under the laws of the United States. The same advice is offered to anyone who is officially registered with the Secretary of State of his state as a member of any board of directors. We cannot depend on what we learn from the Masonic ritual to guide us when it comes to corporate law or when it comes to the laws applicable to a body that has received nonprofit status.