

SUBJECT: UNLAWFUL VIOLATION OF TAX LAW REF 501(C)(3)

Rev. Donalson and Deacon Clemons, if the intent of the Business meeting scheduled for 13 July 2024 is to have the church pay the \$36K (+) Bill for Rev. Donalson's legal fees then the Trustees position(s) are the following:

- The payment of Rev. Donalson's legal fees is a violation of the MPBC Constitution Article XVIII Legal Requirements and subsection 501 (c) (3), Bylaws, and Fairfax County Injunction and Federal codes and law for 501 (c) (3). The \$10K must be reimbursed to the church by those who signed retainer agreement and the person who wired the funds.
- The MPBC does not pay Rev. Donalson \$36K (+) legal fees. The payment of the \$36K (+) would place the church in a position where it again violates Article XVIII Legal Requirements and subsection 501 (c) (3), Bylaws, and Fairfax County Injunction and Federal codes and law for 501 (c) (3), again.

**Background.** The pursuit to pay Rev. Donalson's legal fees is a violation of the MPBC Constitution Article XVIII Legal Requirements and subsection 501 (c) (3), Bylaws, and Fairfax County Injunction and Federal codes and law for 501 (c) (3).

Violations are:

- a. **The MPBC's Constitution-XVIII. Legal Requirements and Subsection 501 (c) (3).**

The Mount Pleasant Baptist (the church) is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501 (c) (3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

No part of the net earnings of the church shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the church shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof.

- b. **Pursuant to Rule 3.2 (G) of the Church Bylaws, the Board of Trustees has the following specific obligations:**

"Shall be the legal custodian of church property and its assets. This includes maintaining legal titles to all church properties and assuring that the church is in compliance with federal, state, and local statutes. The Trustee Ministry shall function on these matters where civil law specifically requires them to act on behalf of the church. This does not mean that the Trustee Ministry makes decisions about legal matters. It means that they meet the legal requirements/or carrying out church decisions in matters involving law, such as buying or selling real estate in accordance with the laws of the state of Virginia."

Notably, the above provision specifically empowers the Trustees, on behalf of the Church, to seek direction from the Court in the event of a legal dispute over both church property and governance. No other church officer has this authority in the Bylaws.

**Va. Code Section 57- 15.** Virginia law gives the same unique authority to Trustees. Under Va. Code Section 57- 15, Trustees (and only Trustees) are entitled to bring a legal action in Circuit Court to sell, convey or encumber church property.

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- c. **Fairfax County Court Order.** On 31 January, the Judge "ORDERED that until further order from the Court, DR. Kevin E. Donalson is hereby enjoined from: *Expending or "directing others" to expend any moneys not expressly allocated in the Mount Pleasant Baptist Church budget, as ratified in the Church's annual business meeting, or as such budget is amended in a congregational meeting properly held pursuant to the Church's Bylaws.*"
- d. **Fairfax County Court Order Transcript.** "The evidence yesterday was that on at least one or two occasions, the defendant *(Rev Donalson) did expend funds that were not in the -- approved in the budget and subsequently that was approved by the -- by the congregation. But I think it's --it -- it -- it's equitable to the plaintiffs (Trustees) that the -- that the congregation shouldn't have to be organized or -- or convened, I should say, every few months to -- to clean up what the defendant (Rev Donalson) has done that he's not authorized to do.* So, I am issuing the -- the preliminary – *preliminary injunction on that basis with regard to church funds.*"

**Discussion.**

- a. **Admission of Guilt.** On 22 June 2024, Rev. Donalson and Deacon Clemons admitted guilt for their violations of the church bylaws, processes, and procedures. Their actions led to the church's violations of its own Constitution and Bylaws, Virginia and 501 (c) (3) laws stated above. Their violations led to legal actions and the cost to execute the legal actions required by the Trustees IAW Bylaws, Article 3.2 G. The legal costs would not have been necessary with everyone complied with the Church Constitution and bylaws.
- b. **6 Dec 2023.** Rev. Donalson and Deacon Clemons convinced the participants in the emergency called business meeting to pay for a lawyer to represent Rev. Donalson. The amount the membership improperly authorized for retainer was \$10K. The conduct of the emotional business meeting and the vote was wrong and was a violation of MPBC Constitution Article XVIII Legal Requirements and subsection 501 (c) (3) (mentioned above), Bylaws (Article 14.3.), and 501 (c) (3). The church's vote was unlawful as outlined in 1.a.

The Pastor Donalson and Deacon Clemons motion and call for a vote to stop the Trustees from assuring that the church is in compliance with federal, state, and local statutes responsibilities (Outlined above, 1. b.) was also unlawful. The church cannot vote to violate its own laws, but it did and as a result the church's 501 (c) (3) may be in jeopardy.

- c. **Exceeded Membership Budget Authorization and Allocation.** The participants in the 6 Dec meeting only authorized Rev. Donalson \$10K for his lawyer fees. One of the participants in the meeting advised (from their expertise) to all present in the session that the legal services required would exceed \$10K and their advice was not heeded by Rev. Donalson and Deacon Clemons. Both individuals had a responsibility to seek the church membership's approval for additional funds if needed. That procedural requirement is in the Church's Bylaws and has been reinforced in the Fairfax County Temporary Injunction (1.c. and d.). The \$36K (+) was not brought forward to the Church for authorization as required in the Bylaws and the injunction.

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The payment of the \$36K (+) invoice will again place the church in a position where it violates its Constitution and its Bylaws and 501 (c) (3) IRS codes.

*The \$36K (+) is not Church obligation; it belongs to the person(s) who violated the "laws."*

d. **\$36K (+) Bill is a Violation of the Fairfax County Injunction (1.c. and d.).** The introduction of the \$36K (+) before the church membership for a vote on 13 July meeting without a formal budget introduction, review, ratification and or amendment as required in the Church's Bylaws and the Temporary Injunction is unlawful.

The judge's ruling clearing stated that "Rev. Donalson and all those he directed to expend any moneys not expressly allocated in the budget" will be violating the Fairfax County Court 8 Feb 2024 Injunction (read the injunction). I have not mentioned the act (s) of trying to get the church's insurance company to pay the bill, that, too, is a violation of the injunction.

e. **13 July 2024 Agenda and Robert Rules of Order for Unfinished Business.** The proposed agenda for the 13 July 2024 as presented is a violation of the Church's Bylaws, Section 14.5 Parliamentary Rules. There are several "Unfinished Business" issues from the 22 June Business Meeting and IAW with Robert Rules of Order those Unfinished Business issues must be addressed before any vote. Those Unfinished Business Items are necessary, and they provide legal clarity.

The Trustees proposed a modification to the agenda. For example, how can you vote on a \$36K (+) bill when you do not know if you can afford the expense?! The Church must go through a formal presentation of the budget review and ratification, as the Hon. Richard E. Gardiner Judge, Fairfax County Circuit Court outlines in his 31 January 2024, Ruling.

"as ratified in the Church's annual business meeting, or as such budget is amended in a congregational meeting properly held pursuant to the Church's Bylaws"

The issue of a 501 (c) (3) violation and its impacts must be a main topic in the budget ratification and or amendment process for the 13 July Business Meeting.

f. **Payment of \$36K (+) Bill is a Direct Violation of the 501 (c) (3) and along with the \$10K Payment Violates the IRS Codes and Will Lead to a Potential Federal Audit.** Any payments made by the Church must meet IRS requirements that a payment be commensurate to the services provided, must be properly authorized, and must be properly executed. Any Church "net earnings" (\$36K +) otherwise distributed or paid out jeopardizes the Church's tax-exempt status. If such status is not maintained, the IRS may require taxes to be paid on past donations made to the Church as a tax-exempt donation.

In a June 19 Legal Opinion, Christopher A. Byrne, Esq. MPBC and 501 (c) (3) Pay Legal Fees for Legal Order states, *"The consequences for donors and the Church can be severe if not*

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*debilitating. If the church is reported to the Department of Treasury and IRS, an IRS audit could impact 1000 (+) MPBC current and former members, and those same member(s) could launch a lawsuit against the Church for the improprieties of the few."*

**Recommendation (s).**

- a. Based upon the 22 June Admissions of Guilt and the facts, the \$10K must be reimbursed to the church by those who signed retainer agreement and the person (s) who wired the funds. The "laws" were violated.
- b. The church does not pay the \$36K (+). Unlike the 6 Dec meeting and the \$10K Payment to Rev. Donalson's Lawyer, the nonpayment of the \$36K (+) ensures the Church is not placed into a position where it will violate any "laws" (church, Fairfax, and federal), again.
- c. If the two actions are agreed upon by all partes, the church is protected. The membership is protected, the 501 (c) (3) can be maintained and the church's healing begins!
- d. The Trustees position will be disseminated to the entire church leadership and the congregation.

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