

From the *Ecclesiastical Review XLV* (1911), pp. 596-98

INCORPORATION OF CHURCH PROPERTY IN THE UNITED STATES

To make more intelligible the Decree of the S. Congregation of the Council (see above, pp. 585-6) on the incorporation of Church property we quote the following paragraphs from the Code of Civil Law for the State of New York:

“Incorporation of Roman Catholic and Greek Churches. An unincorporated Roman Catholic church, or an unincorporated Christian Orthodox Catholic church of the Eastern Confession, in this State may become incorporated as a church by executing, acknowledging, and filing a certificate of incorporation, stating the corporate name by which such church shall be known, and the county, town, city, or village where its principal place of worship is, or is intended to be located.

A certificate of incorporation of an unincorporated Roman Catholic church shall be executed and acknowledged by the Roman Catholic Archbishop or Bishop, and the Vicar-General of the diocese in which its place of worship is, and by the rector of the church, and by two laymen, members of such church, who shall be selected by such officials, or by a majority of such officials.

On filing such certificate, such church shall be a corporation by the name stated in the certificate.

Government of incorporated Roman Catholic and Greek Churches. The Archbishop or Bishop and the Vicar-General of the diocese to which any incorporated Roman Catholic church belongs, the rector of such church, and their successors in office, shall, by virtue of their offices, be trustees of such church. Two laymen, members of such incorporated church, selected by such officers or a majority of them, shall also be trustees of such incorporated church, and such officers and such laymen trustees shall together constitute the board of trustees thereof. The two laymen signing the certificate of incorporation of an incorporated Roman Catholic church shall be the two laymen trustees thereof during the first year of its corporate existence. The term of office of the two laymen trustees of an incorporated Roman Catholic church shall be one year. Whenever the office of any such layman trustee shall become vacant by expiration of term of office or otherwise, his successor shall be appointed from members of the church, by such officers or a majority of them. No act or proceeding of the trustees of any such incorporated church shall be valid without the sanction of the Archbishop or Bishop of the diocese to which such church belongs, or in case of their absence or inability to act, without the sanction of the Vicar-General or of the administrator of such diocese.”

In 1902 the following *Amendment* was added to the Statutes:

“Division of Roman Catholic Parish: Disposition of Property. Wherever a Roman Catholic parish has been heretofore or shall hereafter be duly divided by the Roman Catholic bishop

having jurisdiction over said parish, and the original Roman Catholic corporation is given one part of the old parish, and a new or second Roman Catholic church corporation is given the remaining part of the old parish, and it further appears that by reason of the said division the original Roman Catholic church corporation holds title to real property situate within the part of the old parish that was given to the new or second Roman Catholic church corporation, then the said Roman Catholic bishop or his successor shall have the right and power, of himself, independently of any action or consent on the part of the trustees of the original Roman Catholic church corporation, to transfer the title of the said real property, with or without valuable consideration, to the said new or second Roman Catholic church corporation. Said transfer shall be made by the said Roman Catholic bishop or his successor after having complied with the requirements of the code of civil procedure in the same manner as the trustees of any corporation are compelled to do before making a transfer of church property. If a valuable consideration is paid for the transfer the same shall be received by the said Roman Catholic bishop or his successor, and distributed between the said original Roman Catholic church corporation and the new or second Roman Catholic church corporation, in such proportions as in the discretion of the said bishop or his successor may seem proper. “

His Grace the Archbishop of New York in a Pastoral Instruction addressed to his diocesans in 1909 writes as follows:

The Church wisely makes provision for the guidance of those called to administer her temporal interests. By special legislation the Clergy are instructed that all property belonging to the Church in this diocese must be held by the corporation, and not in the name of the pastor. If, in any particular case, property is secured in the name of the pastor, that property must be legally transferred immediately to the corporation. The statutes of the diocese (Syn. V, Titulus XX, No. 249) make it suspension *ipso facto* to hold personally, i.e. in one's own name, for three months, the property of the Church, unless, for special reasons, permission to do so has been obtained from the Ordinary.

No property can be bought, or sold, for the church corporation, without the previous consent of the Archbishop. This consent is only obtained after the matter has been submitted to the consultors, and after a meeting of the trustees of the corporation has been legally called, at which, at least *four* of the members of the corporation being present, a resolution has been passed approving the proposed transaction.

As the board of trustees, in our church corporations, consists of *five* members; namely, the Archbishop, the senior vicar-general, the pastor of the church, and the two lay trustees - the law relating to business transactions by such board requires the presence of two-thirds of this body to form a quorum; two-thirds, therefore, of five calls for the presence of *four* members; so that a majority, which would be only three, does not constitute a quorum, as some have been led to believe.