

REFORMING THE STATE-CHURCH

SOLUTIONS FOR THE CHURCH INC./501C3 PROBLEM

by: Peter Kershaw, © 2000

More and more people are becoming acquainted with at least some of the perils associated with organizing a church or ministry as a “tax-exempt religious organization.” Not the least of these perils is the obvious answer to the question asked by Attorney Charles Crismier, “Have we become so dependent on the government and its perks that we have been seduced from God and His power?” (Lifegate 4/2000, p. 5). Most typically, this is done by incorporating and receiving an IRS 501c3 tax-exempt recognition letter. In Virginia, incorporation for churches has never been permitted, as the state constitution expressly prohibits it. Nevertheless, most churches in Virginia are still subordinated to the State, rather than Jesus Christ, because of the manner in which they have elected to be “legally” organized and established.

Other writers have also exposed certain problems, both legally and theologically, associated with organizing a church as a corporation and/or a 501c3. Understanding that these are indeed perilous decisions for churches is important. But is it always helpful? Not unless one is able to act on the information provided. As the old adage goes, “Knowing the problem is *half* the solution.” But as this author is only too keenly aware (having heard it from so many pastors and ministers), “It does no good to talk about problems, if you don’t have a remedy for them.” Agreed.

Is it viable and is it doable to organize a church as nothing more, and nothing less than, a *church*? The answer is: Yes! Absolutely! History shows us. Most of America’s churches were once called “free-churches,” and they were

established by common right of those Christian men who organized them, under the exclusive headship and sovereignty of Jesus Christ, autonomous from the State. The fact is that prior to the turn of the twentieth century, the vast majority of churches were not able to organize as corporations. Unlike today, where we can easily apply for “articles of incorporation” with our secretary of state’s office, a hundred years ago, one had to petition their state legislature for a corporate charter.

Although most states never went as far as Virginia in amending their state constitutions to prohibit the incorporation of churches, nevertheless, all state legislatures recognized that the incorporation of any church was a violation of the First Amendment’s prohibition of State establishment of religion. Therefore, the grant of corporate charters to churches was once quite rare. That all began to change in 1898 with the “liberalization of incorporation law” in New Jersey. Other northeastern states soon thereafter also “liberalized.”

It’s important to recognize that incorporation for churches in America is of relatively recent origin (although the corporation itself is quite ancient, originating in Rome by at least 250 B.C.). It’s also important to recognize that an incorporated church is a State-Church. Our forefathers recognized it. The Virginia legislature recognized it in 1802 when they amended their Constitution. President James Madison recognized it in 1811 when he vetoed a bill to incorporate the Protestant Episcopal Church. Tragically, many Christians today are gravely ignorant of not only God’s Word, they know little of law or history. As the philosopher,

George Santayana put it, “He who learns nothing from the past is condemned to repeat it.”

While many who will read this know that America’s settlers came to her shores to establish religious liberty, what many today fail to recognize is that religious liberty necessitates establishing churches separate and apart from the license and sanction of civil government. More than any other element of society, it was America’s colonial clergy who were responsible for leading the cause of independency, and this because of the king’s attempted imposition of licenses to preach and publish the tenants of the Christian faith. Yet today, the State routinely licenses churches. It would be fallacious to blame the State, asserting fraud or State coercion. Rather, it is the clergy which has voluntarily sought State permission to be that which is already lawful. They unwittingly organize that which our forefathers abominated, government licensed State-Churches.

Of even more recent origin is 501c3 status for churches. Churches did not all of a sudden become tax-exempt and tax deductible in 1954 when they were at that time granted that “privilege” by Congress, and added to IRC section 501c3. The fact is that churches have always been treated as non-taxable (a vastly superior status to tax-exempt) and tax-deductible, by virtue of a centuries-old portion of English Common Law known as “the Law of Charities.” The 501c3 is merely a reflection (or an admission) of the Law of Charities. The obvious question then is: Why do churches seek permission from the IRS for a status that even the IRS acknowledges they already have? It’s certainly not due to malicious intent on the part of the clergy. Clearly, it is rooted in ignorance. Ignorance (particularly of law) makes them easy prey for *Caesar’s emissaries*—the so-called “licensed professionals,” who have created a multi-billion dollar government compli-

ance industry, with the church as a lucrative clientele.

Tragically, some of the people who have thoroughly analyzed the church licensure issue, and who are the most disturbed by it, are often the very ones who have abandoned the organized church altogether. In all too many cases, rather than working to reform the church, they have deserted it and are no longer a part of any organized Christian fellowship, not even a well-organized home church. Our message must be reform, not escapism. This author regularly receives inquiries for information regarding unlicensed churches in various localities around the country. I have never held myself out as maintaining a contact database to network wayfaring Christians with unlicensed churches. To do so would be contrary to the very purpose of my calling. I want to encourage people to stay in their church and work to reform it, not to abandon their government-licensed church as soon as they become aware that there is an unlicensed church across town. If everyone who became troubled by this issue were to simply pack up and leave, who would remain to reform the church?

Leaving a church must be the last resort, and then reuniting in a new church fellowship should be of the highest priority. Seeking a church that is already unlicensed need not, and should not, be the highest priority. This author has seen some Christians forsake many weeks and months of regular assembling because of a stubborn refusal to darken the door of any licensed church. Is such conduct biblically (or even historically) supported? Hardly. Many of the Founding Fathers faithfully attended the Anglican Church, in spite of their personal disdain for any State sanction of religion. They would not have done so had their attendance violated the Law-Word or their own consciences.

These men understood the principles of the Reformed Faith: *ecclesia reformata, semper reformatum*: the church reformed, always reforming. It was because of their continued and committed reforming presence (and yes, they were communicant *members*) that a majority of Anglican churches, particularly those in the southern colonies, had shifted their position from Loyalist to Patriot, and actively supported American independency. Patriotic Americans today cannot ever hope to reclaim their liberties apart from first reclaiming America's churches. Only the work of reform can accomplish that, and one can only reform that which he actively participates in.

While some may have a legitimate legal cause for not becoming a "member" of a 501c3 church, there is no biblical support for a believer to refuse church attendance on the basis that he is unable to identify a non-501c3 church in his community. Sadly, many have done precisely that, and are thereby "forsaking the assembling of ourselves together, as the manner of some is" (Heb 10:25). It is a sin to terminate church membership over the 501c3 issue, in the same way that it is a sin to divorce one's wife over the State marriage license issue. God holds us accountable for the covenants we make, including the unrighteous ones made in ignorance (those in doubt, review Joshua 9, and Israel's covenant with the Gibeonites). Covenants may not be abrogated without incurring God's judgement (see 2 Samuel 21:1-3).

While pastors and ministers need to know that incorporation and 501c3 are a serious problem, and an affront to Christ's Sovereign rule over His church, they also need to know that there are workable solutions. The fact is that far too many people have done nothing more for the clergy than to point the accusatory finger, then leave them with nothing to remedy their problems. The reality is that there are numerous issues (property and assets, banking, polity, denominational affiliations, etc.) which could make unlicensing some churches a daunting process. For this, they will need competent assistance. That's what this ministry does—provide solutions to those pastors and ministers who sincerely desire Jesus Christ as Sovereign of their churches and ministries.

Editor's Note: Mr. Kershaw is a best-selling author, legal researcher, historian and founder of Heal Our Land Ministries.

To receive a copy of *In Caesar's Grip*, a clear and intelligible book on the legal and theological ramifications of church incorporation and 501c3, send \$20.00 to:

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Mr. Kershaw's video tape series from the *Unlicensed Church Conference* is especially helpful to those pastors and ministers seeking to unlicense incorporated 501c3's and establish free-churches and free-ministries.