

CAN THE CHURCH MAKE A LOAN TO THE SENIOR PASTOR?

*I*t is possible the answer is no. Open Bible Policies and Principles, Article IV, Section 3, Paragraph 1 makes the pastor an officer of the church. There is a statutory prohibition on loans to officers or directors of non-profit corporations in 27 states. In those states, if a board makes a loan to an officer or director, each board member who votes to approve the loan is personally, jointly and severally liable to the corporation for repayment of the loan.

If you live in a state where such loans are not prohibited, there are still three tax issues that should be considered. 1) Does the loan result in taxable income to the recipient? If the loan

is given at no or below-market interest, the answer may be yes. 2) Does the loan constitute private inurement of the assets of the corporation to a member of the non-profit corporation? If the loan is given with either the intent that it will be forgiven or the effect that it is forgiven, the answer could be yes. 3) What will happen if the loan is never repaid?

This is a question of fiduciary responsibility for the board members. If the loan was not a good fiduciary risk, the board members MIGHT be liable to repay the loan to the corporation. All loans given should reasonably be expected to benefit the corporation (not the recipient) and should be arm's length transactions.

CHURCH LAW

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