



LEGAL MEMORANDUM

FR: Pacific Justice Institute
TO: Pastors and Church Leaders
DT: March 25, 2020
RE: Updated Guidance on Church Responses to COVID-19 Restrictions in New Mexico

INTRODUCTION

The unprecedented crisis and response to COVID-19 (novel coronavirus) is prompting near-daily changes in the legal landscape and new parameters within which churches must operate. On March 23, 2020, Governor Michelle Lujan Grisham announced a “stay-at-home” order. These unprecedented restrictions have prompted many questions from church leaders as to their legal obligations and responsibilities. Pacific Justice Institute has been advising many church leaders navigating this crisis. In order to be as precise as possible under the circumstances, this resource will focus primarily on New Mexico law.

BACKGROUND

Before Governor Grisham’s March 23 order, New Mexico’s Department of Health issued enhanced public health advisory steps for the public and their families to protect themselves. These were only advisory and not mandatory recommendations perhaps because the State had only three confirmed cases at the time.

Although President Trump has also issued Executive Orders in coordination with the Centers for Disease Control, these have so far been a less direct factor in the bans of mass gatherings than have state and local orders.¹ As a practical matter, the bans affecting churches are most likely to be enforced locally, pursuant to state law. State law will therefore be the primary focus of this memo.

The various federal, state, and local social distancing and stay-at-home orders have some differences amongst themselves but also share commonalities. All tend to either strongly discourage or outright ban gatherings outside one’s home, with several categories of exceptions for “essential” workers and services. One of the leading federal lists, originally developed as a counter-terrorism measure by the Cybersecurity and Infrastructure Security Agency, includes no mention of religious entities or services.

¹ On a federal level, emergency declarations are governed by the Stafford Act, 42 U.S.C. § 5121 et seq. There appear to be no cases involving the Stafford Act and the First Amendment.

LEGAL DISCUSSION

As of the writing of this memo, the Governor's latest order has not affected the ability of churches to gather. Churches are still able to meet if observing "to the greatest extent possible, social distancing." The March 23 order specifies that the restrictions involving the term "mass gathering" does not include individuals congregated in a church, synagogue, mosque, or other places of worship. To be clear, it is still legal for any church in the Land of Enchantment to hold regular services or gatherings, until further notice. New Mexico Department of Health Order – 03-23-2020. Definitions (6).

Where could the Governor derive the authority to take drastic actions like banning core First Amendment activities (which New Mexico has not yet done) including church gatherings? New Mexico allows for a declaration of an emergency under the Public Health Emergency Act which the Governor issued under the authority given to her under the All Hazards Emergency Management Act (AHEMA). § 12-10-1, et seq. NMSA (1978).

The emergency powers of the Governor under the AHEMA is a sprawling statutory scheme. It gives the Governor extremely broad power to issue orders and suspend laws and regulations. Local officials have similar, derivative powers. New Mexico churches do not share the fate of others situated in states like California, Washington, or New York. This is an evolving situation, and PJI will also be closely monitoring in case anything changes. For the time being, churches can proceed as previously discussed.

With all that being said, this crisis could also present tremendous service opportunities such as delivering groceries to the elderly, becoming better acquainted with neighbors and their needs, sharing resources, and offering prayer for the sick and those in our immediate surroundings.

Aside from government restrictions, and for those not yet subject to a mass gathering ban, church leaders do have the authority to take steps such as directing elderly or high-risk congregants to avoid church gatherings. Many churches are also making hand sanitizer available, discouraging handshakes, and cleaning more often than usual. Churches may also wish to require masking or make masks available. While the benefits of mask-wearing have been debated by experts, many doctors continue to advocate mask-wearing. Lastly, churches not yet subject to bans may be well served to limit the size of gatherings and become more reliant on home-based fellowships and gatherings. In many ways, this would be a return to the church's New Testament roots.

CONCLUSION

There is reason to be concerned about governmental overreach during a state of emergency. As noted above, statute and precedent provide a basis for raising First Amendment arguments during this crisis. At the same time, it seems most likely that a court would uphold almost any shutdown order by the Governor during the present crisis as it relates to churches, at least in the short term.

PJI staff are taking appropriate precautions, but we are not giving in to fear. We remain here to serve the Body of Christ through every crisis. Due to all of the disruptions this crisis is creating in many different areas of our lives, our response times may be somewhat delayed as we prioritize the most urgent needs of churches, ministries, and clients.

In order to help empower churches, PJI will soon make videos available on our website, www.PJI.org, that will (1) train churches how to have church services via Facebook, and (2) show how churches may take advantage of the opportunity to initiate Church Homeschool Co-ops in their churches.

This general information does not constitute legal advice; instead, all information, content, and materials available in this resource are offered for general informational purposes only. The content may not constitute the most up-to-date legal or other information. Readers of this resource should contact PJI to obtain advice with respect to any particular legal matter. No reader should act or refrain from acting on the basis of information herein without first seeking legal advice from counsel in the relevant jurisdiction. Only an attorney can provide assurances that the information contained herein—and your interpretation of it—is applicable or appropriate to your particular situation. Use of, and access to, this resource does not create an attorney-client relationship between the reader and authors. The views expressed through this resource are those of Pacific Justice Institute as a whole. All liability with respect to actions taken or not taken based on the contents of this educational resource are hereby expressly disclaimed. The content in this resource is provided "as is"; no representations are made that the content is error-free. Contact Pacific Justice Institute via our website, www.PJI.org, if you believe your rights have been violated and you need representation.