

# Ensuring the Legality of UUCB's SPF Committee Structure<sup>1</sup>

Von Welch, Stuart Yoak and the SPF Committee

April 22nd, 2018

## Background: UUCB Bylaws and the SPF Committee

The Special Purposes Fund (SPF) Committee is defined by Section 7 of the bylaws of the UU Church of Bloomington Indiana<sup>2</sup> and is composed as follows:

The members of the SPF Committee shall be five in number; three elected by the Members of the Church, one member of the Board of Directors of the Church elected by the Board, and the Treasurer of the Church.

The bylaws give the SPF Committee broad powers in independently managing the SPF:

“The SPF shall be administered by a Committee chosen in the manner here specified, which shall serve without compensation. The Committee members shall receive all contributions to the Fund; provide for their safe-keeping, management, preservation and investment as required; collect all income from investments and make disbursements from the Fund for its expenses and for Church purposes determined in the manner specified below. In managing and investing the assets of the Fund, the Committee, which shall serve without bond, exercising the judgment and care which prudent persons exercise in the management of their own affairs, shall have the power to sell, assign, transfer, lease, pledge, mortgage, and convey property of the Fund, and to invest or reinvest the assets of the Fund, and to exercise all the powers of ownership of securities or any other assets held by it.”

## The Question of SPF Committee Legality under Indiana Code

The question has arisen if this arrangement of the SPF Committee managing UUCB assets independently of the Board is legal under Indiana Code (IC) 23-17<sup>3</sup>, covering Nonprofit Corporations. Specifically IC 23-17-2-4 defines a nonprofit's Board of directors as the “group of persons vested with overall management of the affairs of the domestic or foreign corporation.” Further, IC 23-17-12-1 goes on to state that “(1) corporate powers shall be exercised by or under the authority of; and (2) the business and affairs of the corporation managed under the direction of; the corporation's board of directors.”

IC 23-17-12-1 does provide for an organization's articles of incorporation to “authorize a person or a group of persons or the manner of designating a person or a group of persons to exercise

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<sup>1</sup> The first version of this report was entitled “On the Question of the Legality of UUCB's Current SPF Committee Structure” and dated February 3rd, 2018.

<sup>2</sup> <http://www.uubloomington.org/wp-content/uploads/2015/01/2016-06-BYLAWS-6-12-2016.pdf>

<sup>3</sup> <http://iga.in.gov/legislative/laws/2017/ic/titles/023#23-17>

some or all of the powers that would otherwise be exercised by a board of directors.” However, UUCB’s articles of incorporation do not mention the SPF or SPF Committee.

### **Need for D&O Insurance for the SPF Committee?**

One possible, unvetted interpretation is that the SPF Committee, being elected by the congregation, is acting as directors. This interpretation raised a second question: should UUCB have Directors & Officers liability insurance (D&O insurance) for the SPF Committee? Such insurance is standard practice for an organization to have in place for their board of directors

It has been established that our current D&O insurance<sup>4</sup> covers the SPF Committee members:

“[O]ur policy for Directors and Officers Liability covers the Board and all other elected or appointed members, so it covers the Board and SPF as well as the elected members of the Leadership Cultivation Committee. The limit of coverage is \$500,000 per occurrence, and \$500,000 aggregate for related incidents.”

### **Legal Opinion from Paige Freitag**

Von Welch, as President of the Board, requested and was granted funding from the SPF Committee for a legal opinion on this matter. On March 20th, 2018 Von emailed Paige Freitag<sup>5</sup>, presenting her with the first version of this report (basically the content up to this Section), and requested: “A question has arisen from within our organization if the structure of our Special Purposes Fund Committee is legal under Indiana Code regarding non-profits as that committee does not report to the Board of Directors. The document attached to this email has the details. If you are willing, we would like you to research the matter and provide us with your opinion.”

On March 26th Paige responded (underlining added for emphasis):

Dear Von,

I have reviewed the information you provided and the applicable Nonprofit corporation statutes. The questions posed was: Is the current arrangement of the UUCB SPF Committee operating independently of the Board of Directors legal under Indiana Code? My answer is: No.

The Bylaw description of the SPF suggests that the Committee receives and manages the SPF funds (I assume this is simply one of perhaps many sub-accounts under the UUCB accounting umbrella?) and determines distributions, all of which can and does occur without Board approval or oversight.

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<sup>4</sup> Per correspondence between Carol Marks, Church Administrator, and Amanda Hanzel, Account Manager, Church Mutual Insurance Company.

<sup>5</sup> <https://www.bloomingtonlaw.com/>

All of the actions performed by the SPF Committee generally must be exercised by the Board under IC 23-17-12-1, unless as you note, the Articles of incorporation authorize delegation of such powers of the Board to another person or group under IC 23-17-12-1(c). To comply with Indiana law, I believe the UUCB Articles should contain such a delegation of authority to the SPF Committee.

Doing this would protect both the Board and the SPF Committee. The Board would be in full compliance with applicable law, but IC 23-17-12-1(c)(3) would also treat the SPF Committee as directors for limited purposes, including requiring the SPF Committee members to comply with the standards of conduct which apply to directors. This protects the Board, in my view. The SPF Committee members would be protected in that they would be considered directors for purposes of indemnification under IC 23-17-16.

Alternatively, of course, the Bylaws and structure could be changed to require Board approval of the SPF Committee's actions, which would also bring the arrangement into full compliance with the code.

I hope this helps and please ask any necessary follow up questions. If you would like this opinion on letterhead for any reason, I'm happy to do that as well.

Thank you,

Paige

### **Proposed Next Step: Amend our Articles of Incorporation**

We propose pursuing changing the UUCB Articles of Incorporation as described by Paige Freitag in her email. Namely, modifying the UUCB Articles of Incorporation to authorize delegation of appropriate powers to the SPF Committee and ratify our current governance structure.

A concern raised about this path is that it encodes the current governance structure into our Articles of Incorporation, meaning changing that structure in the future (e.g., see subsequent section on a alternative next step) would have the added onus of changing those Articles.

The above proposal was endorsed by the Board of Directors at the April 18th, 2018 Board meeting.

### **Proposed Amendment to the Our Articles of Incorporation**

The UUCB Articles of Incorporation are available from the State of Indiana at:

<https://bsd.sos.in.gov/PublicBusinessSearch/BusinessInformation?businessId=162325>

(Click on "Filing History" in lower right.)

The relevant article is Article 12, most recently amended in 1995:

Article 12:

Meetings: Meetings of members may be held anywhere within Monroe County, Indiana.

Election of Officers: The members of the Corporation shall have power to elect the Officers in the manner provided in the Bylaws.

Adoption of Bylaws: The Bylaws of the Corporation shall be adopted and may be amended from time to time by members exclusively.

The proposal, arrived at in discussion with Paige Freitag, is to append the following clause to Article 12:

Special Purposes Fund Committee: A Special Purposes Fund Committee, elected by the members in the manner provided in the Bylaws, is authorized by the Board of Directors under I.C. 23-17-12-1(c), to manage a Special Purposes Fund as further described in the Bylaws.

As noted in IC 23-17-12-1(c)(3), this will make the Special Purposes Fund Committee directors and hence makes the D&O insurance for that committee, as discussed previously in this document, critical to maintain.

### **Process for Changing our Articles of Incorporation**

Per consultation with Paige Freitag, the process to amend our Articles of Incorporation is:

1. Indiana State Form 4161, available from <http://www.in.gov/sos/3573.htm>, is used to request the amendment.
2. The amendment will be approved by the Board of Directors at the April 18th, 2018 meeting.
3. The amendment will be approved by the Congregation at the June 10th, 2018 meeting<sup>6</sup>.
4. Steven Gilbert, as Secretary of the Board, submits the 4161 form to the State of Indiana as specified on the form.

### **Alternative next step: Restructure SPFC Governance**

Alternatively, as mentioned by Paige, we could change our governance structure so that the SPFC reports to the Board. This would require changes to the bylaws as well as discernment as to the congregation's feelings on the matter as well as the specifics of the new governance structure.

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<sup>6</sup> Per discussion with Paige Freitag, this seems to be required under IC 23-17-17-5. A congregational vote was done for prior amendments to our Articles of Incorporation.

## **Appendix: History of UUCB's Articles of Incorporation**

For reference, the history of UUCB's articles of Incorporation, obtained via inspection of what is available at the state's website, is summarized here.

- 1953: Original articles filed.
- 1966: Amendment to update our name to Church from Fellowship, purpose updated, Postal address updated.
- 1978: Article 12 updated to move specification of board and amendment of bylaws from the articles into the bylaws.
- 1988: Reinstatement after apparently failing to pay taxes.
- 1995: Seems to be a duplicate of the 1978 amendment to Article 12. The only copy we have is a scan of low quality. One theory is the amendment from 1978 had to be repeated due to the reinstatement in 1988.