



THE
EPISCOPAL DIOCESE
OF LONG ISLAND

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**A Summary of the New York Religious Corporations Law,
as it Applies to the Episcopal Diocese of Long Island**

Overview

Parish corporations of The Episcopal Church in the State of New York are governed by the Religious Corporations Law of the State of New York (herein sometimes referred to as the “NYRCL”).

The pertinent sections of the Religious Corporations Law set forth the legal requirements for annual elections, etc., in some detail. Unfortunately, the age and style of legislative drafting may be a bit confusing. The analysis which follows has been broken down into categories and subheadings which have no counterpart in the actual statutes. To the extent available, relevant court and New York Attorney General interpretations are included. Such an analysis may make these statutes easier to follow and interpret for those bearing corporate responsibility for annual elections, as well as other aspects of the day-to-day operations of a parish.

The following topics are covered below:

- Annual elections
 - Presiding officer responsibilities
 - Qualifications of voters
 - Qualifications of wardens and vestrypersons
 - Actions at annual meetings
 - Terms of office of wardens and vestrypersons
- Changing the date of the annual meeting
- Changing the number of vestry persons
- Powers and obligations of rector, wardens and vestrypersons
- Meetings of the vestry

I. Annual elections

The conduct of annual elections of an incorporated Episcopal Parish is governed by Section 43 of the Religious Corporations Law. Paragraphs I - 4 of Section 43 refer to the dates of such annual elections, special meetings, and the requisite notices. They are self-explanatory and, if properly followed, self-executing. As provided therein, annual elections must take place on the day designated in the certificate of incorporation (see below for the procedures to change the date).

A. Presiding Officer at the annual meeting:

Paragraph 5 of Section 43 of the NYRCL requires some attention and interpretation. It provides that the presiding officer is:

- (a) The rector;
- (b) If there be none, or if he be absent:
one or the wardens elected for that purpose by a majority of the duly qualified voters present, or if there be no warden present;
- (c) a vestryperson elected in like manner.

[Note: No distinction is made between "senior" or "junior" wardens. While local parish customs may designate such titles, the New York State statutes make no such distinction, with each warden holding equal status. The Church of England's tradition of a Senior Warden being the "Rector's Warden" with the Junior Warden being the "Peoples' Warden" has not been carried into the statutory codification of the civil law of the State of New York.]

COMMENT: In the absence of a rector, it is suggested that the best form would be for one of the wardens (and it is hoped that if there were then two in office, they could agree between themselves upon one charged with the responsibility of calling the meeting to order for the practical effect of getting the annual election underway), to call the meeting to order for the purposes of electing a Presiding Officer.

B. Presiding Officer Judge of Qualifications of Voters:

The presiding officer shall:

- (i) be the judge of the qualifications of voters;
- (ii) receive the votes cast;
- (iii) declare the results of the votes cast; and
- (iv) enter the proceedings of the meeting in the minutes of the vestry, sign his or her name thereto and offer the same to as many qualified voters present as he or she shall think fit, to be also signed by them.

COMMENT: The role of presiding officer is a very important one in the conduct of an annual election. As stated above, this role falls automatically to the rector, unless there be none or he be absent. The normative situation anticipated by the Legislature is that there would be a rector in office. Only during a vacancy in this office or the absence of the rector from the meeting would one other than the rector preside.

This statutory assignment is not one of mere convenience. Rather, the Legislature is acknowledging the pastoral nature of our corporate relationship. The rector should have greater knowledge as to the qualifications of voters, etc.

It is not the province of the wardens, vestry, or the treasurer to rule upon the qualifications of voters or to attempt to "prune" or "sanitize" the list of qualified voters. This obligation lies solely with the presiding officer. While the presiding officer may take counsel with such sources for information so as to assist in ruling on such qualifications, the presiding office is the sole judge of the qualifications of the voters. In the event of a challenge, the presiding officer would rule.

The presiding officer of the meeting (the rector) is the judge of the qualifications of voters and he should use his judgment and discretion

as to whether an individual is qualified to vote. Opinion of the Attorney General 1933, 48 State Department 583. (Emphasis added)

Where the rector, as presiding officer over the meeting for the election of church wardens and vestrymen, accepted the ballots cast, it was a judicial determination by such rector that the persons whose votes were actually cast and received by him were each a duly qualified voter, and such decision was final and the right to make the decision having thus been exercised and the vote received, the power of the rector to decide again at a later day, such as ten days after such election, that a voter was not qualified to vote, did not exist. Matter of Williams, 1908, 57 Misc. 327, 107 N.Y.S. 1105.

■ Items (ii) through (iv), describing the presiding officer’s responsibilities are self- explanatory.

C. Qualifications of Voters:

Paragraph 6 of Section 43 of the NYRCL establishes that:

- (a) persons of full age [18];
 - (b) belonging to the parish;
 - (c) who have been baptized;
 - (d) regular attendants at parish worship for at least twelve months prior to the meeting; and
 - (e) contributors to the support of the parish for at least twelve months prior to the meeting
- shall be qualified voters.

COMMENTS:

Age: The Episcopal Church (“TEC”) Canon Title 1.16, l.(b), provides that members sixteen years of age and over are to be considered adult members. However, as this is a regulatory and statistical canon and not a matter of doctrine, discipline or worship,

many commentators are of the opinion that state statute would supersede in this regard and that the minimum age for qualified voters would be the state statutory minimum of 18.

Belonging to the Parish: This phrase is not defined, nor has it been the subject of judicial determination. Using the strictest interpretation, one could say that one only "belongs" if baptized, confirmed, received in or formally transferred to the parish. Such an interpretation may have been valid in an earlier era where there was significantly less mobility in our society. In present day usage, many would argue that we should include not only persons who have formally been enrolled but, also, persons who are generally interested in the welfare of the parish, worship as members of the parish family, and are generally understood by reputation as "belonging to the parish". The additional limitations imposed by the statute ensure that there is sufficient involvement to warrant participation as a qualified voter.

On the other hand, if a person attending parish services exercises corporate rights or holds corporate office in another parish (or another denomination), this would be rather conclusive evidence that such a person does not "belong" to this parish.

Baptized: The Sacrament of Holy Baptism is generally understood to mean Baptism with water in the Name of the Father and of the Son, and of the Holy Spirit, whether in this Church or in another Christian Church. Evidence of Baptism is usually available through the form of parish records and/or baptismal certificates. Other credible evidence would be acceptable.

Regular in Attendance: Regularity in attendance should be determined based upon parish custom and practices. What may be regular to one worshiping congregation may be less than regular to another. In short, there is no hard and fast rule.

Title II of the TEC Canons exhorts:

"All persons within this Church shall celebrate and keep the Lord's Day, commonly called Sunday, by regular participation in the public worship of the Church, by hearing the Word of God read and taught, and by other

acts of devotion and works of charity, using all godly and sober conversation."

Further, Title I.16.2(a) of the TEC Canons provides:

"All members of this Church who have received Holy Communion in this Church at least three times during the preceding year are to be considered communicants of this Church. "

Unfortunately, what constitutes "regular attendance" is not made clear by Attorney General or court interpretation:

A person who is interested in the welfare of the parish, but who, on the other hand, may not be a regular attendant thereof due to illness, is not disqualified nor is the contributor of the "widow's mite" [i.e. one who makes a very small contribution]. Opinion of the Attorney General, 1933, 48 State Department 583.

To qualify as a voter to take part in elections it is necessary that he attend the church for one year prior to the election and contribute to its support, which was interpreted to mean the personal presence of the voter statedly at the religious meetings of the society, and not the regular attendance of the wife or other members or the family, and persons only attending occasionally but being regular contributors were not qualified. People v. Tuthill. 1864, 31 NY. 550.

In summary, Parish practice, best known to the rector as presiding officer, would be the best guide.

Regular in Support: Regular contribution to support would not receive the same construction based upon frequency as would the question of attendance. Few parishes would deem a prepayment of a year's pledge of \$10,000 every January not to be a regular contribution. The test would seem to be a contribution that was regular in light of the welfare of the parish and parish giving habits. Again, the determination is left to the rector as presiding officer as he or she would have information, often of a confidential nature, which would bear greatly upon the determination of regularity.

As noted above in the Opinion of the Attorney General, 1933, 48 State Department 583, the contributor of the "widow's mite" is not disqualified. However, it has been held that:

Where church members had admittedly reduced their weekly contributions in the year before the parish meeting from \$1.50 per week to ten cents per week, members had placed themselves in the position of giving a perfunctory, de minimus contribution which did not aid the church in performing its functions and, therefore, the church cannot be said to have acted arbitrarily and capriciously in ruling that the members were not eligible to vote at a parish meeting. Anthony v. Cardin, 1977, 91 Misc.2d 506, 398 NY.S.2d 215.

At Least Twelve Months Prior to Election: This provision sets the minimal time standard of support and attendance. Unless regular attendance and support commences prior to and continues during the twelve-month period, the voter would not be qualified.

D. Qualifications of Wardens and Vestrypersons:

Paragraph 7 of Section 43 of the NYRCL provides that:

“the church wardens and vestrymen shall be elected by ballot from persons qualified to vote at such election, and no persons shall be eligible for election as church-warden unless that person be also a confirmed communicant in the Protestant Episcopal church, nor be eligible for election as vestrymen, unless that person shall have been baptized.”

Accordingly, nominees for warden or vestrypersons must first be "qualified voters".

Wardens must also be confirmed communicants. Prior to January 1, 1986, the primary significance of this additional requirement was that a “communicant” was also confirmed. Under the TEC Canon Title I.16.2(a) set forth above, confirmation is not required in defining a communicant. Based upon a petition by The Chancellors and Bishops of the several dioceses in New York State, the Legislature amended this section by Chapter 424 of the Laws of 1986 to make provision for a church warden to be confirmed.

Inasmuch as qualified voters must also be baptized since 1957, the requirement that vestrypersons be baptized is surplusage from prior statutory enactments.

E. Actions at Annual Elections:

Paragraph 7 of Section 43 of the NYRCL requires any action at an annual election to be determined by “a majority of the qualified voters acting thereon.” Thus, if 100 qualified voters were present but only 90 voted on a question, 46 votes would be required to carry the question.

F. Elections of Wardens and Vestrypersons:

The procedures for balloting for the office’s wardens and vestrypersons vary widely throughout the parishes of the diocese based upon local custom. In some, offices are filled based upon descending order of plurality, and in others by contests for stated seats.

Paragraph 4 of Section 43 of the NYRCL requires notice of "number and terms of office of each church warden and the vestrymen whose terms of office shall expire, or whose office then be vacant for any cause, and the office for which each such officer is to be then elected." It is clear that nominees are not to the class to be elected for three years but should be to the office, especially when paragraph 4 of Section 43 is read with the statutory requirement in paragraph 7 of Section 43 that actions of an annual election be by majority vote. Thus, the best practice in a parish which has a class of vestrypersons to be elected for a three-year term would be to nominate persons for a specific designated seat within the class and ballots cast thereon.

G. Nominations at Annual Elections:

Again, nominating practices vary widely throughout the diocese. However, the Attorney General has ruled:

At an annual meeting of a Protestant Episcopal parish any qualified voter may nominate any qualified person, including himself, for the

office of warden or vestrypersons. Opinion of Attorney General, 1933, 48 State Department 583.

Paragraph 7 of Section 43 of the NYRCL provides that "The church wardens and vestrymen shall be elected by ballot from persons qualified to vote at such election..." No formal nominating procedure is required and a motion to close nominations is not really in order as the statute grants the right to any qualified voter to vote for any qualified person during the polling hours. It would then follow that "write in" ballots for qualified persons would also be in order.

H. Polling Hours:

Paragraph 7 of Section 43 requires that the "polls of an election shall continue open for one hour or longer in the discretion of the presiding officer, or if required by a vote of a majority of the qualified voters present and voting".

I. Voting by Proxy:

Voting by proxy is not permitted by statute for Episcopal parish corporations. There is no express authority granted in the Religious Corporations Law for proxy voting. Further, Section 2-b (c) of the Religious Corporations Law, which makes the Not-for-Profit Corporation Law applicable to religious corporations, expressly provides that Section 609, permitting voting by proxy under the Not-for-Profit Corporation Law shall not apply to religious corporations.

J. Terms of Office of Wardens and Vestrypersons

Section 43 of the NYRCL provides:

"At each annual election of an incorporated Protestant Episcopal parish hereafter incorporated, one church warden shall be elected to hold office for two years; and one-third of the total number of vestrypersons of the parish shall be elected to hold office for three years."

(Parenthetically, subsection (9) of NYRCL 43 allows parishes which were formed before the NYRCL went into effect to have a one-year stub period, after which the parish would then fall into place and have two-year warden terms and staggered three-year vestry terms).

II. Changing the date of the Annual election

Section 45 of the NYRCL describes in detail the process that must be followed. It states:

“If the vestry of a Protestant Episcopal parish, heretofore incorporated, shall by resolution, recommend that the date of the annual election be changed to another day, either a Sunday or a secular day . . . notice of such recommendation shall be included in the notice of the next annual election of such parish, or in the notice of a special meeting to be held not less than six months before the time fixed for holding the next annual election thereafter, and be submitted to such annual or special meeting. If such recommendation be ratified by such meeting, the presiding officer thereof and at least two qualified voters present thereat, shall execute and acknowledge a certificate setting forth such resolution of the vestry; the fact that notice thereof had been given with the notice of the annual election, or with the notice of the special meeting, as the case may be; that such meeting had ratified the same; the date determined upon for the annual election of the parish; Such certificate shall be filed in the office of the clerk of the county in which the original certificate of incorporation is filed and recorded. If the meeting determine to change the date of the annual election, the next annual election shall be held on the day determined on at such meeting”

Importantly, if a date change is approved at an annual meeting, the change goes into effect the following year.

III. Changing the number of vestrypersons

Section 45 of the NYRCL describes in detail the procedure for changing the total number of vestrypersons, either increasing or, as in most cases, decreasing the number. It states:

“If the vestry of a Protestant Episcopal parish, heretofore incorporated, shall by resolution, recommend that . . . the number of vestrymen be changed to three, six, nine, twelve, fifteen, eighteen, twenty-one or twenty-four, . . . notice of such recommendation shall be included in the notice of the next annual election of such parish, or in the notice of a special meeting to be held not less than six months before the time fixed for holding the next annual election

thereafter, and be submitted to such annual or special meeting. If such recommendation be ratified by such meeting, the presiding officer thereof and at least two qualified voters present thereat, shall execute and acknowledge a certificate setting forth such resolution of the vestry; the fact that notice thereof had been given with the notice of the annual election, or with the notice of the special meeting, as the case may be; that such meeting had ratified the same . . . ; the number of vestrypersons so decided on; . . . Such certificate shall be filed in the office of the clerk of the county in which the original certificate of incorporation is filed and recorded. . . . If the meeting determine to change the number of vestrymen and manner of electing wardens and vestrymen, there shall be elected at the first annual election thereafter, one-third of the number of vestrymen so determined on, to hold office for three years; one-third thereof to hold office for two years; and one-third thereof to hold office for one year; . . . and thereafter at the annual election there shall be elected one-third of the number of vestrymen determined on at such meeting Any Protestant Episcopal parish, heretofore incorporated, which has changed the number of its vestrymen and the manner of electing wardens and vestrypersons pursuant to the provisions of this section, may make further changes in the number of its vestrymen in the manner provided in section forty-four of this chapter.”

As in the case of a vote to change the date for the annual meeting, a vote to change the number of vestrypersons goes into effect the following year.

IV. Powers and obligations of the Rectors, Wardens and Vestrypersons

The Rectors, Wardens and Vestrypersons are responsible for all aspects of the operations of a parish. Importantly, they also stand in a fiduciary relationship with the church. Section 42a of the NYRCL provides:

“Notwithstanding and in addition to the provisions of section five of this chapter, and subject always to the trust in which all real and personal property is held for the Protestant Episcopal Church and the Diocese thereof in which the parish, mission or congregation is located, the vestry or trustees of any incorporated Protestant Episcopal parish or church, the trustees of every incorporated governing body of the Protestant Episcopal Church and each diocese are authorized to administer the temporalities and property, real and personal, belonging to the corporation, for the support and maintenance of the corporation and, provided it is in accordance with the discipline, rules

and usages of the Protestant Episcopal Church and with the provisions of law relating thereto, for the support and maintenance of other religious, charitable, benevolent or educational objects whether or not conducted by the corporation or in connection with it or with the Protestant Episcopal Church.”

Courts in New York applying the NYRCL, have specifically recognized that the vestry of a parish, comprising the rector, wardens and vestrypersons, is the entity entitled to act on behalf of the parish.

“The vestry of an Episcopal Church, namely the rector, wardens, and vestrypersons, are the trustees of the church property.” [Stanton v United States, 186 F. Supp. 393, 1960 U.S. Dist. LEXIS 4544 \(E.D.N.Y. 1960\)](#), aff’d, [287 F.2d 876, 1961 U.S. App. LEXIS 5024 \(2d Cir. N.Y. 1961\)](#); see also [Rector, Wardens, & Members of Vestry of St. Bartholomew’s Church v New York, 914 F.2d 348, 1990 U.S. App. LEXIS 16005 \(2d Cir. N.Y. 1990\)](#), cert. denied, [499 U.S. 905, 111 S. Ct. 1103, 113 L. Ed. 2d 214, 1991 U.S. LEXIS 1447 \(U.S. 1991\)](#) (“Rector, Wardens and Members of the Vestry” of a Protestant Episcopal Church is the corporate body placed in trusteeship of the church.).

V. Meetings of the Vestry

Section 42 of the NYRCL describes the notice requirements for vestry meetings and quorum requirements to conduct business. It states:

“No meeting of the vestry or trustees of any incorporated Protestant Episcopal parish or church shall be held unless either all the members thereof are present, or three days’ notice thereof shall be given to each member thereof, by the rector in writing either personally or by mail, or, if there be no rector or he be incapable of acting, by one of the churchwardens; except that twenty-four hours’ notice of the first meeting of the vestry or trustees after an annual election shall be sufficient, provided such meeting be held within three days after the election. In the event of the rector of a parish or church refusing or neglecting to call a meeting of the vestry or trustees of any incorporated Protestant Episcopal church, on the written request of two-thirds of all the wardens and vestrypersons of the parish, the clerk of the vestry shall call a meeting of the same by giving at least fifteen days’ written notice to be served on each member of the vestry personally; if personal service cannot be had, then upon such member by mailing the notice to his last known place of

residence. To constitute a quorum of the vestry or board of trustees, there must be present either:

1. The rector and at least a majority of the whole number of wardens and vestrypersons, or
2. One churchwarden and one more than a majority of the vestrypersons or both churchwardens and a majority of the vestrypersons, or
3. If the rector be absent from the diocese and shall have been so absent for over four calendar months, or if the meeting be called by the rector and he be absent therefrom or be incapable of acting, one churchwarden and a majority of the vestrypersons, or both churchwardens and one less than a majority of the vestrypersons. But if there be a rector of the parish, no measure shall be taken, in his absence, in any case, for effecting the sale or disposition of the real property of the corporation, nor for the sale or disposition of the capital or principal of the personal property of the corporation, nor shall any act be done which shall impair the rights of such rector. The presiding officer of the vestry or trustees shall be the rector, or if there be none, or he be absent, the churchwarden who shall be called to the chair by a majority of the votes, if both the churchwardens be present; or the churchwarden present, if but one be present. At each meeting of the vestry or trustees each member thereof shall be entitled to one vote. “