

ECCLESIASTICAL OFFICES

In recent columns we have been looking at issues relating to leadership, particularly in religious institutes. This time, I thought it would be helpful to examine in greater detail the notion of an ecclesiastical office.



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Canon 145 tells us that an ecclesiastical office is any post which, by divine or ecclesiastical disposition, is established in a stable manner to further a spiritual purpose. It follows that, among the various possibilities, the offices of pope, bishop, major superior, parish priest, diocesan director of Catholic education, director of a Catholic institution such as a hospital or a long-term care home, local superiors and the like, all fall under the provisions of the law in regard to who is designated for these positions.

The law does not limit office holders to clerics or religious. Lay persons also can hold and exercise an ecclesiastical office, functioning on behalf of the church.

Persons can acquire an ecclesiastical office through a canonical election, through free conferral, through an appointment after the intervention of others and through presentation. Thus, in some instances, a person receives a given office through election. For example, the Pope is elected by the cardinal electors; a congregational leader is elected by the members of a general chapter, and so forth.

By free conferral, we understand that a competent church authority can make the appointment that is seen fit. Thus, for example, in relation to

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parishes staffed by diocesan clergy, the bishop is free to appoint whomever he wishes to the office of parish priest, provided that the person selected has all the requirements foreseen by law.

In the form known as appointment, it often happens that a superior, before making an appointment to an office, needs the consent or advice of other persons, such as the members of a council. Canon 494 says that a diocesan bishop must consult certain bodies before appointing the diocesan finance officer. In religious institutes, the members of the congregational, provincial or local councils must be consulted or give their consent before certain appointments can be made.

It should be noted — in spite of what we often hear — that the council does not make the appointment; it is the competent superior who does so. Nor can the councillors force a superior to make such and such an appointment. However, by withholding consent, if it is called for, they can prevent a given person from being appointed to the office in question.

In regard to the intervention of the council in religious institutes, we sometimes find misunderstandings about its role. Only in very rare instances, and by exception, do the superior and council act collegially, with a binding outcome depending on the will of the majority. Dismissal cases would be among these. The superior is not a councillor, and so ordinarily he or she does not vote when matters are brought before the council. If the law or the constitutions of the community call for the consent of the council before making an appointment, and provided there is a quorum in attendance, the majority of the councillors present and voting must be in favor of the appointment (see canon 127). Otherwise, another candidate has to be presented. On the other hand, if the constitutions simply call for consultation, then the supe-

rior is free to make the appointment, having listened carefully to the advice of the councillors.

One point causing some problems today is what it means to be “physically present” at the council meeting. In secular legislation, attendance by Skype, telephone conferencing and the like often constitute physical presence. Canon law, however, has not yet made formal provision for such forms of presence, although, in some constitutions, there are certain possibilities foreseen. For example, when consent is required, provided a quorum of members is physically present, other councillors can participate by other means of communication. But, in certain cases, such as admission to religious profession, only those physically present actually vote.

It will become necessary before too long to adjust the legislation, because it often happens today, in international institutes, that persons are elected to the general leadership who reside in other countries, and they cannot always readily obtain the required visas to reside in the country where the generalate is located. This visa difficulty is becoming more and more significant today. In these cases, the people attend the meetings through Skype (or similar means) and participate as much as possible in the deliberations.

At times, though, it is difficult to determine whether the required majority has been obtained in cases requiring consent. Say, for instance, that there are four councillors present and voting. If two are in favor, and two against, the consent has not been received. Or, if two vote in favor of the appointment, one is against it, and the fourth abstains, again the required majority has not been obtained. More than half those present must give their consent for it to be effective. If, on the other hand, only three were physically present (leaving aside the disputed question of presence from a distance by means of communication), and the vote was two to one in favor, the required consent has been received.

The last form of designation to an ecclesiastical office is known as presentation. Thus, for instance, in a diocese, if a parish is entrusted to a religious institute, it is the competent superior of the institute who presents the name of the candidate to the diocesan bishop for appointment as

parish priest. The bishop can refuse to act upon the presentation and then another candidate must be presented, but the bishop is not free simply to appoint any religious to the office without the intervention of the major superior. In some religious institutes, the provincial chapter presents three names to the congregational leader for appointment as provincial leader. The choice is made from among the three.

We find a somewhat parallel provision in the Code of Canon Law in regard to religious who are being presented for offices in a diocese. Thus, for instance, if a religious is being presented for

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a position in a parish, the agreement is between the diocesan bishop and the major superior, not between the parish priest and the religious concerned (canon 681.2 specifically provides for this).

One specific instance where the church’s legislation is subject to various interpretations concerns the time when a person elected or appointed to an office assumes the responsibilities of that office. In the case of the Pope, upon his acceptance, he assumes the office immediately. However, for other elections or appointments, there is sometimes an extended period between the appointment itself and the taking up of office. Canon 153 determines that the provision of an office which in law is not vacant is, by that very fact, invalid, and it does not become valid by a subsequent vacancy. However, an important exception is then noted: if an office is conferred for a specific period of time (such as four, five or six years), provision can be made within six months before the expiry of this time, and it takes effect from the day the office falls vacant.

The most common example of this, besides clergy appointments that are to take effect on a given day, is the election of the new leadership in a religious institute. Given the fact that, in many

instances, the persons elected to office already have other responsibilities and must give due notice before leaving their present position, or arrangements must be made to obtain the appropriate visas, general chapters usually agree on a time when the formal transfer takes place. However, some authorities consider that the transfer takes place the moment the person elected accepts the office. Obviously, what is of primary importance is that there not be two congregational leaders in office at the same time. Such a situation would certainly not be beneficial to those concerned. So, it would be important at the time of transfer of responsibilities to make certain that the provisions of the approved constitutions are duly followed.

Today, questions also are raised as to which positions can be considered to constitute an ecclesiastical office. Canon 145 tells us that the function is to be established in a stable manner, and for a spiritual purpose. With all the new church entities now in existence, such as the various pontifical and diocesan public juridic persons, questions are being raised about the status of the members, and, at times, even the directors. This takes on importance, not only for assuming the office, but also for instances when the office is lost by various forms of termination. I intend to return to this in a subsequent column.

At the present time, and subject to correction, it seems to me that being one of the members (as distinct from the directors) of a PJP constitutes holding an ecclesiastical office.

One of the reasons why the canons are so meticulous on this matter is that it is important to know who legitimately occupies a position, who has the authority flowing from it, and who then can lead the faithful in an appropriate manner to pursue a spiritual purpose.

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