

HOW MUCH CAN A DIOCESAN ADMINISTRATOR DO?

OPINION

General Principles

When a diocesan see becomes vacant and the Apostolic See does not appoint an Apostolic Administrator, the consultors must elect a diocesan administrator within eight days of receiving notice of the vacancy (c. 422 §1). Once elected, “a diocesan administrator is bound by the obligations and possesses the power of a diocesan bishop, excluding those matters which are excepted by their nature or by the law itself” (c. 427 §1).

This canon enshrines the fundamental principle that the diocesan administrator governs with the power of a diocesan bishop. The following canons place some limitations on the exercise of that power, but the diocesan administrator has broad executive powers and can delegate responsibility and powers, as well as dispense from many disciplinary laws.

Drawing from the canonical wisdom over the centuries, Aaron Nord outlines four canonical principles to guide the diocesan administrator:

1. *Succour*: Continue the work of the bishop while he is absent
2. *Restraint*: Restrain your action because you are not the absent bishop
3. *Defence*: Defend the diocese from violations until the bishop is present
4. *Continuity*: Follow the tracks left by the last bishop¹

Some actions can be performed only by a bishop. For example, blessing the oil of chrism and ordinations would be excluded by their nature if the diocesan administrator is not a bishop.

When the see is vacant the ancient canonical principle *sede vacante nihil innovetur* applies. While the diocesan administrator has all the power of a diocesan bishop, canon 428 §1 states clearly the general principle that nothing is to be altered during the vacancy and there is to be no innovation. The diocesan administrator is holding power temporarily. He is to maintain the status quo

¹ Aaron Nord, *Sede Vacante Diocesan Administration*, Tesi Gregoriana, Serie Diritto Canonico 95, Unigre, 2014 (Rome) 18, 27.

of the diocese until a new diocesan bishop is appointed and takes possession of the diocese.² The diocese is to function as much as possible as it has been functioning under the previous diocesan bishop. The principle of *sede vacante nihil innovetur* encourages the diocesan administrator to refrain from making major decisions and to avoid starting new programmes or initiatives. Soler explains the application of this principle:

It seems that the diocesan administrator must, by virtue of this principle, seek to have everything function and continue to be decided *in the same way that it was usually done when the see was occupied*. That is, in all matters - be they pastoral, governmental, canonical etc. - the administrator must bear in mind that his function is to provisionally guarantee the continuity of the governance of the diocese, and that it is not appropriate for him to govern with an overly personal style.³

This restriction would apply to parish mergers, new buildings unless the project was already underway, alienation of property unless already in progress.⁴ E. Molano, J. Punderson and G. Read consider that actions that benefit the diocese are not prejudicial.⁵ Gordon Read, however, notes the requirement that there be no innovations:

From the broad general principle [canon 428 §1], the law derives a more particular norm: those in charge of the diocese are to do nothing which might harm or restrict the rights of the incoming bishop [canon 428 §2]. They are free to act for the benefit of the diocese provided that this does not offend the general principle of §1.⁶

Consequently, while beneficial acts are not prejudicial, they may be prohibited innovations.

² John Renken, *New Commentary on the Code on the Code of Canon Law* (NY/Mahwah: Paulist Press, 2000) 556.

³ Carlos Soler, *Exegetical Commentary* (Montreal: Wilson & Lafleur, 2004) vol. 2, no. 1, 918.

⁴ Barbara Cusack, “Navigating the Vacant See,” *Canon Law Society of America, Proceedings of the Seventy-Second Annual Convention 2010*, (Washington D.C.: Canon Law Society of America, 2010) 141.

⁵ Nord, 100.

⁶ Gordon Read, in G. Sheehy et al., *The Canon Law: Letter and Spirit* (Sydney: E.J. Dwyer, 1995) 240.S

Confidential Information

The diocesan administrator must ensure the integrity of the information held by the diocese.⁷ He is specifically forbidden to do anything which could be prejudicial to the diocese or episcopal rights. The diocesan administrator and all other persons are forbidden to remove, destroy, or modify any documents of the diocesan curia, either personally or by getting someone else to do it. It can be tempting for individuals to purge their personal files or other files to remove material that is damaging to them personally or to their friends. Sometimes individuals have sought to rewrite letters or reports, or to find out damaging information about others. The diocesan administrator must carefully ensure this behaviour does not happen.

Only the diocesan administrator is to have access to the secret archive or safe of the diocese. Also, he can access it only in a case of true necessity.⁸ The law provides a just penalty, according to the gravity of the crime, for those who violate this law.⁹ Information concerning sexual abuse or misconduct is especially sensitive during the vacancy of the see. The diocesan administrator cannot open the secret archive or safe during the vacancy of the see unless it is a case of real necessity.¹⁰ Practically speaking, however, he is going to need to share information with any delegate investigating complaints and the sexual abuse protocol committee as necessary. If the sexual abuse protocol committee is diocesan based, then the diocesan administrator should ensure continuity of personnel and procedures.

7 Canon 428 §2: "Those who temporarily care for the governance of the diocese are forbidden to do anything which can be prejudicial in some way to the diocese or episcopal rights. They, and consequently all others, are specifically prohibited, whether personally or through another, from removing or destroying any documents of the diocesan curia or from changing anything in them."

8 Canon 490 §2: "When a see is vacant, the secret archive or safe is not to be opened except in a case of true necessity by the diocesan administrator himself."

9 Canon 1391: "The following can be punished with a just penalty according to the gravity of the delict:

1° a person who produces a false public ecclesiastical document, who changes, destroys, or conceals an authentic one, or who uses a false or altered one;"

10 Canon 489 §1: "In the diocesan curia there is also to be a secret archive, or at least in the common archive there is to be a safe or cabinet, completely closed and locked, which cannot be removed; in it documents to be kept secret are to be protected most securely.

§2. Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained."

Canon 490 §1: "Only the bishop is to have the key to the secret archive.

§2. When a see is vacant, the secret archive or safe is not to be opened except in a case of true necessity by the diocesan administrator himself.

§3. Documents are not to be removed from the secret archive or safe."

Decision-making and Actions of the Diocesan Administrator

It is important that, as much as possible, the normal ecclesial life of the diocese continue and not collapse or shut down unnecessarily. For example, the diocesan administrator can judge briefer process marriage cases.¹¹

Sometimes there can be debate over whether a decision or an action is an innovation or not. Several diocesan administrators in the southern hemisphere have been admonished by the Holy See for replacing meetings of the deaneries or council of priests with meetings of priests under some other title. Such rather blatant attempts to circumvent the law will inevitably be stopped.

If a diocesan administrator attempts to entrust a parish to a religious institute or to amalgamate parishes, his decisions are invalid.¹² He simply does not have the power to do these things. If there is an unusual situation that the diocesan administrator lacks the power to deal with, he should apply to the Holy See through the nuncio for additional authority to act. For example, there could be a need to settle litigation or there may be a debt/scandal that needs resolving. The Apostolic Signatura has allowed a diocesan administrator to take recourse against the Congregation for the Clergy after the Congregation overturned a decision of the previous bishop.¹³ In civil courts, failure by the diocesan administrator to act may be extremely prejudicial to a future bishop; the diocesan administrator must uphold the rights of the diocese.

When a diocesan administrator is deciding whether a proposed decision or action is an innovation, it can be very helpful to consult the minutes of previous meetings of the Council of Priests, the consultors or the diocesan finance council meetings. These minutes may indicate the intentions of the previous bishop in a formal setting, enabling the diocesan administrator to make a decision.

11 Canon 1683: "The diocesan bishop himself is competent to judge the cases of the nullity of marriage with the briefer process whenever:

1° the petition is proposed by both spouses or by one of them, with the consent of the other;

2° circumstance of things and persons recur, with substantiating testimonies and records, which do not demand a more accurate inquiry or investigation, and which render the nullity manifest; canon 427."

12 Canon 520 (c.f. footnote 35); canon 525: "When a see is vacant or impeded, it belongs to the diocesan administrator or another who governs the diocese temporarily:

1° to install or confirm presbyters who have been legitimately presented or elected for a parish;

2° to appoint pastors if the see has been vacant or impeded for a year."

13 Supreme Tribunal Of The Apostolic Signatura, sentence, July 20, 2006, prot. N. 32108/01 CA, n.2., in Nord, *Sede Vacante Diocesan Administration*, 155.

If the previous bishop had been tolerating an unacceptable practice, it would not be an innovation for the diocesan administrator to stop the practice.¹⁴ An example could be the lifestyle of a cleric(s) which causes scandal.

Frequently there are debates about what qualifies as an “innovation.” Sometimes decisions are required for repairs after a fire, flood or earthquake. An insured parish church may need to be replaced. Ordinary business must continue in the diocese and generally these sorts of decisions are not innovations. If, however, repairing the cathedral after an earthquake is going to cost many millions, this is not ordinary administration. A decision of this magnitude must wait until a new bishop is installed.

In practice, unless the law specifically addresses an issue, an action of the diocesan administrator is not invalid even though it is an innovation.

Decisions concerning the diocese must still be made. John Renken identifies three categories of decisions:

- a) decisions which the diocesan administrator may never take
- b) decisions that may be made with the consent of the college of consultors
- c) decisions that may be taken after the see has been vacant for a full year with the consent of the consultors¹⁵

a. Actions that a diocesan administrator may never take

A diocesan administrator is never authorized to perform the following:

- Approve a diocesan association of the faithful (c. 312 §1, 3°).
- Remove, destroy or alter a document in the diocesan archives (c. 428 §2).
- Confer a canonry in places where canons exist in cathedral or collegial churches (c. 509 §1).
- Convene a diocesan synod (c. 462 §1). If the diocesan administrator takes office when a diocesan synod is in progress, then the synod is suspended by the law itself and can only resume with a future bishop (c. 468 §2).
- Entrust a parish to a clerical religious institute or clerical society of apostolic life (c. 520 §1).

14 Z. Grochowski, “Trasferimento e rimozione del parroco” in *La Parrocchia, Studi Giuridici* 43 (Città del Vaticano, 1997) 213, quoted in Nord, *Sede Vacante Diocesan Administration*, 184.

15 John Renken, *New Commentary on the Code of Canon Law*, 555.

- Allow a religious institute to come to the diocese when there is no house of the institute already present (c. 611).
- Issue dimissorial letters to a man refused ordination by a previous diocesan bishop (c. 1018 §2).
- Remove the judicial vicar and associate judicial vicars (c. 1420 §5); they also continue in office if the mandate for their appointment expires.
- Judge Briefer Process marriage cases (c. 1683).

A diocesan administrator is prohibited from making a decision that would prejudice the rights of the diocese or an incoming bishop. “Prejudice” has almost always meant legal prejudice in canonical tradition.¹⁶ This would include incurring a large debt, entering a long-term agreement, and other decisions of extra-ordinary administration.

In a particular case, many circumstances must be weighed to make this determination. The diocesan administrator must be prudent and wise, taking competent advice to facilitate good decisions. The decisions and actions taken by the diocesan administrator are always valid provided that he has the consent of the consultors and the diocesan finance council. Soler concludes that “the principle *sede vacante nihil innovetur* is effective not only principally as a prohibition, but as a sensible principle of governance.”¹⁷

James Provost argued that, since a deacon is incardinated in the diocese by ordination to the diaconate, deacons should not be ordained during the first year of the vacancy of the see.¹⁸ The diocesan administrator should not issue dimissorial letters during this time.

Although not specified in the canons, it could be argued that there are several types of incardination. Kaslyn thinks two adjectives, “initial” and “consequential change,” should be added to the law concerning incardination and excardination:

“Initial” serves to distinguish *first* incardination (which requires and derives from ordination to the diaconate) from a “consequential change” in incardination (which also requires

16 Cf. Nord, *Sede Vacante Diocesan Administration*, 69, cites several authors.

17 Soler, *Exegetical Commentary*, vol. 2, 918

18 James Provost, “Ordination to Diaconate by a Diocesan Administrator,” *Roman Replies and CLSA Advisory Opinions 1997*, edited F. Stephen Pedone and James Donlon, (Washington DC.: Canon Law Society of America, 1997) 83.

excardination from the canonical entity into which one entered through the diaconate).¹⁹

Kaslyn argues that granting dimissorial letters is significantly different from other acts of incardination. Canon 272 is focused on transfer of clerics already ordained, while Canon 1018 is concerned with initial incardination because of ordination:

[the] act of granting dimissorial letters for diaconal ordination differs from the act by which a cleric from elsewhere is granted incardination in the diocese; in the former case, the act of granting dimissorials is the result of an on-going process: the man has been a seminarian for the diocese and has undergone the required scrutinies...at the various stages of formation and the bishop has already judged him suitable to proceed on the way for formation towards ordination.²⁰

William Woestman also argues that the diocesan administrator can issue dimissorial letters during the first year of the vacancy of the see if he has the consent of the college of consultors. Woestman points out that canon 17 says that laws should be "understood in their text and context."²¹ He argues that canon 272 only applies to "the transfer of a cleric from one diocese to another and not the question of first incardination."²² His opinion is that this canon does not apply to first incardination.

b. Decisions that may be made with the consent of the college of consultors

Canon 427 §1 states that the diocesan administrator has the obligations and powers of a diocesan bishop-except for those which are excluded:

19 Robert Kaslyn, "The Canonical Institute of Incardination: Entrance into the Clerical State in the Code of Canon Law," *Institutiones Iuris Ecclesiae I: Essays in Honor of Sister Rose McDermott, SSJ*, ed. Robert Kaslyn, (Washington D.C.: Catholic University of America, 2010) 50; quoted in Jamin Scott David, *Something Old or Something New? The Diocesan Administrator's Authority: An Examination of Selected Functions in Canons 272 and 1018* (Washington D.C., Catholic University of America JCL thesis, 2011) 50.

20 *Ibid.* 68.

21 Canon 17: "Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator."

22 William Woestman, "The Diocesan Administrator and Dimissorial Letters for the Diaconate," *Roman Replies and CLSA Advisory Opinions 1998* (Washington D.C.: Canon Law Society of America, 1998) 50.

- 1) by the nature of the matter or
- 2) by the law itself.

The diocesan administrator has restricted power concerning some matters, but, with the consent of the college of consultors, he is authorized to:

- Remove the chancellor and other notaries (c. 485).
- Remove the diocesan financial administrator for a serious reason with the consent of the consultors and the diocesan finance council. This could be for financial malfeasance or sexual misconduct (c. 494 §2).
- Initiate the process for dismissal of a cleric for grave misconduct by petitioning the Congregation for the Evangelization of Peoples in a mission territory concerning a deacon's grave misconduct or the Congregation for the Doctrine of the Faith concerning a cleric committing a grave crime.
- Issue dimissorial letters for ordination (c. 1018 §1).
- Accept the resignation of a pastor of a parish.²³ If the previous diocesan bishop had stated when a certain parish priest could resign, the diocesan administrator should confirm that.
- Allow a religious institute already present in the diocese to open a new house (c. 611).

The diocesan administrator governs the diocese with the power of a diocesan bishop. For example, an insurance company might be bankrupt and it might be necessary to settle the claim of the diocese and parishes for earthquake damage before that takes place. Failing to act would clearly be wrong.

c. Decisions that may be made when the see has been vacant for a full year with the consent of the consultors

A diocesan administrator is authorized to make some major decisions only when the see has been vacant for one year. After that time, and then only with the consent of the college of consultors, the diocesan administrator is authorized to:

- 1) Grant excardination to a priest of the diocese.²⁴
- 2) Grant incardination of a priest from another diocese or religious

23 Cf. Thomas Paprocki, "Canons 412-430: Governance of the Diocese While the See is Impeded or Vacant," *Roman Replies and CLSA Advisory Opinions 1999*, ed. F. Stephen Pedone and James Donlon (Washington, D.C.: Canon Law Society of America, 1999) 60-62.

24 Canon 272: "A diocesan administrator cannot grant excardination or incardination or even permission to move to another particular church unless the episcopal see has been vacant for a year and he has the consent of the college of consultors."

institute (c. 272).

- 3) Grant permission to a priest to move to another particular church (c. 272).
- 4) Appoint pastors to parishes.²⁵

Conclusion

The diocesan administrator governs the diocese in ordinary circumstances as the previous diocesan bishop would have governed. He cannot make major innovative decisions or initiate new policies. Significant decisions and actions require the consent of the consultors and, in financial matters, the consent of the diocesan finance council as well. Some actions and decisions can only be made after the diocese has been vacant for a year.

It is important to avoid confusion, something that can happen when everyone knows a decision made by a diocesan administrator might be modified or reversed by the new bishop. Both Chiapetta and Mendonça state that the diocesan administrator must avoid making decisions that could cause difficulties for the new diocesan bishop.²⁶

Soler offers a well-balanced explanation:

Due to the infrequency of this type of situation in the life of those called to be diocesan administrators, it may occur that excessive difficulties arise regarding what an administrator can and cannot do. In view of this issue, it is worth knowing that it devolves upon him to govern the diocese with all the power of the diocesan bishop, that in principle he can do everything that is not expressly prohibited...However, a good approach to governance leads one to take into account these two elements: continuity with the previous bishop's mode of governing, taking into account the temporary nature of his office; and not making grave decisions,

²⁵ Canon 525, 2°: "to appoint pastors if the see has been vacant or impeded for a year."

²⁶ Chiapetta, *Il Codice di diritto canonico*, vol. 1, 554; quoted in Augustine Mendonça, "Ipsa iure Incardination of a Cleric *Sede Vacante*," *Studies in Church Law*, 9 (2013) 383: "The diocesan administrator should know that his function is temporary, because of which, they have the obligation to attach as far as possible, a provisional character to their decisions, thus abstaining from acts which would cause difficulties to the new bishop."

Augustine Mendonça, "Ipsa iure Incardination of a Cleric *Sede Vacante*," *Studies in Church Law*, 9 (2013) 383: "The ancient principle: *sede vacante nihil innovetur*. This implies that the office of a diocesan administrator and that of the apostolic administrator *sede vacante* are temporary in nature, therefore they are not to make decisions or place juridic acts of a permanent nature which might interfere with the power of the incoming bishop."

which should be left for the future bishop, except in the event of a real emergency.²⁷

The diocese cannot flourish without a diocesan bishop, but the life of the local Church must continue. Since the diocesan administrator is only temporary, his relationship to the diocese is very different from the relationship of a diocesan bishop to the diocese. Some actions may, perhaps, be good to take, but it may be advisable to delay them so that they can be done by the incoming diocesan bishop in a more effective and fruitful manner.

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²⁷ Soler, *Exegetical Commentary*, vol. 2, 919.

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FOREWORD

The Canon Law Society of America (CLSA) publishes annually *Roman Replies and CLSA Advisory Opinions* for canonists and those seeking a clearer understanding of the *praxis legis* of the Catholic Church. The combination of these two services, begun in 1984, continues to serve as useful resources for those involved in the application of canonical discipline.

The compilation of materials for *Roman Replies 2017* was guided by Sister Sharon A. Euart, RSM, Chair of the CLSA Publications Advisory Board. The collection of entries in this issue, when viewed in conjunction with previous volumes, assists the reader both in understanding recent developments in the law and in identifying current trends in the *praxis* of the Roman Curia.

The selection and assembly of opinions for *CLSA Advisory Opinions 2017* was provided by Monsignor John A. Alesandro and Monsignor Thomas J. Green, editors and members of the CLSA Publications Advisory Board. The topics addressed in the opinions reflect a variety of canonical issues and demonstrate the scope of canonical expertise and reflection by members of the Society. Editorial assistance was provided by the CLSA Administrative Office.

Roman Replies and CLSA Advisory Opinions that are out-of-print are available electronically on the CLSA website (www.clsa.org). As an additional resource, the CLSA Advisory Opinion Online Index includes all published opinions, grouped by canon number on the CLSA website.

The CLSA provides this series as a professional resource. Care should be taken in considering the relative weight of the materials found in this publication. The principles for canonical interpretation (CIC cc. 16-19 and CCEO cc. 1498-1501) serve as guides in considering the contents of this volume.

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