

# Law and the Church

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**Question #1: List nine (9) laws or as many as possible if less than nine, concerning clergy that you have found by searching your nearest municipality laws. By municipality, we mean on the village or town level. If there are none, then tell us how you found out.**

I spoke to the Tucson City Clerk's office at 520-791-4213, and after being transferred to a secretary named Delma, was put on hold for some time. Delma returned to tell me that the City of Tucson had no laws or ordinances concerning clergy.

**Question #2: If there is a body of laws between the municipality laws and the state/provincial laws where you live, list nine (9) laws, or as many as possible if less than nine, concerning clergy, that you have found by researching this area.**

I called the Pima County Clerk or the Board at 520-740-8449 and spoke to Robin, who informed me that the only laws or ordinances in Pima County concerning clergy would be those concerning the zoning of churches. She transferred me to Pima County Planning at 520-740-6800. The person I spoke to referred me to the county website where the code is laid out, and specifically indicated the definitions under Title 18, Chapter 18.03 at <http://www.co.pima.az.us/cob/code/c18a3.html#199> .

## Law #1 - Church Zoning

The definition for a church, for zoning purposes, is as follows:

4. Church:
  - a. A building or group of buildings used primarily as a place of communion or worship;
  - b. Includes convents, religious educational buildings and parish houses, but not parochial schools.

There is no separate definition for convent.

She then led me to Chapter 18.09, General Residential and Rural Zoning Provisions, 18.09.020, General requirements and exceptions at <http://www.co.pima.az.us/cob/code/c18a6.html#4787> . It reads as follows:

- A. Uses Permitted In All Rural and Residential Zones.
  1. The following uses shall be permitted in all rural and residential zones (except as noted in Section 18.09.020A2), subject to the requirements of the zone and any special conditions, as may be noted:
    - a. Single detached or one-family dwelling;
    - b. Accessory building or use;
    - c. Church, providing the minimum off-street parking requirements, as set forth in Chapter 18.75 (Off-street Parking and Loading Standards), are met;

These are listed at <http://www.co.pima.az.us/cob/code/c18b12.html> as:

9. Public assembly: Entertainment, sports, religious, recreation centers, and athletic fields:
  - a. Seated activities (including churches)

- 1) One parking space for each 4 employees
- 2) One parking space for each 4 seats in the main auditorium; or one for each 50 sq. ft. of floor area usable for seating if seating is not fixed
- b. Parking lot intensity - High
- c. Loading bay intensity - Low

In researching the other zoning categories, I could only find one that did not allow churches, and that was 18.11 TH – Trailer Homesite Zone, which is intended for trailer parks for temporary stays.

I also checked out the Pima County ordinances to see about noise regulations, since our rites are often held outdoors with the use of drums. I found the following ordinances from the county website at <http://www.pima.gov/cob/code/c098.html#1120> .

**Law #2 - Chapter 9.30 - REGULATION OF EXCESSIVE, UNNECESSARY AND ANNOYING NOISES**

**9.30.010 Applicability.**

This chapter shall not apply to any incorporated city, town or Indian reservation. It shall apply only within the unincorporated areas of the county.

**9.30.050 Loud radios, sound sets, etc.**

A. It shall be unlawful for any person, including the owner or manager of a restaurant, bar, inn, or resort of any kind, to operate or permit to be operated any radio receiving set, phonograph, **musical instrument**, or sound producing or sound reproducing mechanism, at any time in such a manner as to permit the same to be heard at a distance of more than one hundred twenty-five (125) feet from the property line or motor vehicle where such radio receiving set, phonograph, or sound producing or sound reproducing mechanism is located, when the sound of such radio receiving set, phonograph, musical instrument, or sound producing or sound reproducing mechanism is operated in such a manner as to create an excessive, unnecessary or offensive noise that a reasonable person of normal sensitivity residing in the area is caused discomfort or annoyance.

B. It shall be unlawful for any person, including the owner or manager of a restaurant, bar, inn, or resort of any kind, to operate or permit to be operated any radio receiving set, phonograph, **musical instrument**, or sound producing or sound reproducing mechanism, between the hours of 10:00 p.m. and 7:00 a.m. in such a manner that the sound from such radio set, phonograph, **musical instrument**, sound producing or sound reproducing mechanism may be heard beyond the property line from which it is operated or outside the motor vehicle in which it is operated in such a manner as to create an excessive, unnecessary or offensive noise that a reasonable person of normal sensitivity residing in the area is caused discomfort or annoyance. (Ord. 2001-127 § 1 (part), 2001; Ord. 1999-61 § 1 (part), 1999)

**9.30.080 Exemptions.**

The following uses and activities shall be exempt from the provisions contained in this article:

C. Nonamplified crowd noises resulting from activities such as those planned by school, governmental or community groups, or organized sports except for such noises generated at restaurants, bars, inns, or resorts of any kind;

H. Noises from church chimes;

(Ord. 2001-127 § 1 (part), 2001; Ord. 1999-61 § 1 (part), 1999)

**Question #3: List nine (9) laws concerning clergy that you have found by searching your state/provincial laws.**

I searched the Arizona State web site using the search terms, "clergy" and "religious services".

**Law #1:** I have bolded and italicized the sections of this law mentioning clergy. This law was found at <http://www.azleg.gov/ars/13/03620.htm> .

13-3620. Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions

A. Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant who is protected under section 36-2281 shall immediately report or cause reports to be made of this information to a peace officer or to child protective services in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only. ***A member of the clergy, christian science practitioner or priest who has received a confidential communication or a confession in that person's role as a member of the clergy, christian science practitioner or a priest in the course of the discipline enjoined by the church to which the member of the clergy, christian science practitioner or priest belongs may withhold reporting of the communication or confession if the member of the clergy, christian science practitioner or priest determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations the member of the clergy, christian science practitioner or priest may otherwise make of the minor.*** For the purposes of this subsection, "person" means:

1. Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.

2. Any peace officer, ***member of the clergy, priest or christian science practitioner.***

3. The parent, stepparent or guardian of the minor.

4. School personnel or domestic violence victim advocate who develop the reasonable belief in the course of their employment.

5. Any other person who has responsibility for the care or treatment of the minor.

B. A report is not required under this section for conduct prescribed by sections 13-1404 and 13-1405 if the conduct involves only minors who are fourteen, fifteen, sixteen or seventeen years of age and there is nothing to indicate that the conduct is other than consensual.

C. If a physician, psychologist or behavioral health professional receives a statement from a person other than a parent, stepparent, guardian or custodian of the minor during the course of providing sex offender treatment that is not court ordered or that does not occur while the offender is incarcerated in the state department of corrections or the department of juvenile corrections, the physician, psychologist or behavioral health professional may withhold the reporting of that statement

if the physician, psychologist or behavioral health professional determines it is reasonable and necessary to accomplish the purposes of the treatment.

D. Reports shall be made immediately by telephone or in person and shall be followed by a written report within seventy-two hours. The reports shall contain:

1. The names and addresses of the minor and the minor's parents or the person or persons having custody of the minor, if known.
2. The minor's age and the nature and extent of the minor's abuse, child abuse, physical injury or neglect, including any evidence of previous abuse, child abuse, physical injury or neglect.
3. Any other information that the person believes might be helpful in establishing the cause of the abuse, child abuse, physical injury or neglect.

E. A health care professional who is regulated pursuant to title 32 and who, after a routine newborn physical assessment of a newborn infant's health status or following notification of positive toxicology screens of a newborn infant, reasonably believes that the newborn infant may be affected by the presence of alcohol or a drug listed in section 13-3401 shall immediately report this information, or cause a report to be made, to child protective services in the department of economic security. For the purposes of this subsection, "newborn infant" means a newborn infant who is under thirty days of age.

F. Any person other than one required to report or cause reports to be made under subsection A of this section who reasonably believes that a minor is or has been a victim of abuse, child abuse, physical injury, a reportable offense or neglect may report the information to a peace officer or to child protective services in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only.

G. A person who has custody or control of medical records of a minor for whom a report is required or authorized under this section shall make the records, or a copy of the records, available to a peace officer or child protective services worker investigating the minor's neglect, child abuse, physical injury or abuse on written request for the records signed by the peace officer or child protective services worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.

H. When telephone or in-person reports are received by a peace officer, the officer shall immediately notify child protective services in the department of economic security and make the information available to them. Notwithstanding any other statute, when child protective services receives these reports by telephone or in person, it shall immediately notify a peace officer in the appropriate jurisdiction.

I. Any person who is required to receive reports pursuant to subsection A of this section may take or cause to be taken photographs of the minor and the vicinity involved. Medical examinations of the involved minor may be performed.

J. A person who furnishes a report, information or records required or authorized under this section, or a person who participates in a judicial or administrative proceeding or investigation resulting from a report, information or records required or authorized under this section, is immune from any civil or

criminal liability by reason of that action unless the person acted with malice or unless the person has been charged with or is suspected of abusing or neglecting the child or children in question.

K. Except for the attorney client privilege or the privilege under subsection L of this section, no privilege applies to any:

1. Civil or criminal litigation or administrative proceeding in which a minor's neglect, dependency, abuse, child abuse, physical injury or abandonment is an issue.
2. Judicial or administrative proceeding resulting from a report, information or records submitted pursuant to this section.
3. Investigation of a minor's child abuse, physical injury, neglect or abuse conducted by a peace officer or child protective services in the department of economic security.

L. In any civil or criminal litigation in which a child's neglect, dependency, physical injury, abuse, child abuse or abandonment is an issue, ***a member of the clergy, a christian science practitioner or a priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a member of the clergy, a christian science practitioner or a priest in the course of the discipline enjoined by the church to which he belongs. Nothing in this subsection discharges a member of the clergy, a christian science practitioner or a priest from the duty to report pursuant to subsection A of this section.***

M. If psychiatric records are requested pursuant to subsection G of this section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:

1. Personal information about individuals other than the patient.
2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.

N. If any portion of a psychiatric record is excised pursuant to subsection M of this section, a court, upon application of a peace officer or child protective services worker, may order that the entire record or any portion of the record that contains information relevant to the reported abuse, child abuse, physical injury or neglect be made available to the peace officer or child protective services worker investigating the abuse, child abuse, physical injury or neglect.

O. A person who violates this section is guilty of a class 1 misdemeanor, except if the failure to report involves a reportable offense, the person is guilty of a class 6 felony.

P. For the purposes of this section:

1. "Abuse" has the same meaning prescribed in section 8-201.
2. "Child abuse" means child abuse pursuant to section 13-3623.
3. "Neglect" has the same meaning prescribed in section 8-201.
4. "Reportable offense" means any of the following:

- (a) Any offense listed in chapters 14 and 35.1 of this title or section 13-3506.01.
- (b) Surreptitious photographing, videotaping, filming or digitally recording of a minor pursuant to section 13-3019.
- (c) Child prostitution pursuant to section 13-3212.
- (d) Incest pursuant to section 13-3608.

**Law #2:** Again, I have bolded and italicized the pertinent sections. This law was found at <http://www.azleg.gov/ars/25/00901.htm> .

25-901. Covenant marriage; declaration of intent; filing requirements

A. Persons who have the legal capacity to marry pursuant to this title may enter into a covenant marriage by declaring their intent to do so on their application for a license obtained pursuant to section 25-121 and by complying with the requirements of this chapter. The returned marriage license shall be recorded as provided by section 25-123 with an indication that the marriage is a covenant marriage, and the declaration shall be filed by the clerk.

B. A declaration of intent to enter into a covenant marriage shall contain all of the following:

1. The following written statement:

A Covenant Marriage

We solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for as long as they both live. We have chosen each other carefully and have received premarital counseling on the nature, purposes and responsibilities of marriage. We understand that a covenant marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling.

With full knowledge of what this commitment means, we do declare that our marriage will be bound by Arizona law on covenant marriages and we promise to love, honor and care for one another as husband and wife for the rest of our lives.

***2. An affidavit by the parties that they have received premarital counseling from a member of the clergy or from a marriage counselor. Premarital counseling shall include a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is a commitment for life, a discussion of the obligation to seek marital counseling in times of marital difficulties and a discussion of the exclusive grounds for legally terminating a covenant marriage by dissolution of marriage or legal separation.***

3. The signatures of both parties witnessed by a court clerk.

***C. A notarized attestation that is signed by the clergy or counselor must be submitted with the application for a license and shall confirm that the parties were counseled as to the nature and purpose of the marriage and the grounds for its termination and that the counselor provided to the parties the informational pamphlet developed by the supreme court pursuant to this chapter.*** The clerk shall document that the attestation was submitted.

**Law #3:** This law is about the state procuring the services of clergy. I found it at <http://www.azleg.gov/ars/41/02513.htm> .

41-2513. [Authority to contract for certain services](#)

A. **For the purpose of procuring the services of clergy**, certified public accountants, legal counsel pursuant to section 41-192, subsection E, physicians or dentists as defined by the laws of this state, any state governmental unit may act as a purchasing agency and contract on its own behalf for such services, subject to this chapter and rules adopted by the director.

B. In accordance with the provisions of section 41-192, subsection E and notwithstanding any contrary statute, no contract for the services of legal counsel may be awarded without the approval of the attorney general.

C. The auditor general shall approve state agency contracting for financial and compliance auditing services except if specific statutory authority is otherwise provided. The auditor general shall ensure that such contract audits are conducted in accordance with generally accepted governmental auditing standards. An audit shall not be accepted until it has been approved by the auditor general.

D. The government information technology agency established by section 41-3502 may approve all information technology purchases exceeding twenty-five thousand dollars for a budget unit as defined in section 41-3501. Purchases shall not be artificially divided to avoid review.

E. Payment for any services, including those services described in subsections A, B and C of this section, procured under this chapter shall not be made unless pursuant to a fully approved written contract.

**Law #4:** This law refers to the state's licensing requirements, and provides the exemption for clergy performing actions of a clerical quality. Found at <http://www.azleg.gov/ars/32/03271.htm> .

32-3271. [Exceptions to licensure; jurisdiction](#)

A. This chapter does not apply to:

1. A person who is currently licensed, certified or regulated pursuant to another chapter of this title and who provides services within the person's scope of practice if the person does not claim to be licensed pursuant to this chapter.

2. A person who is not a resident of this state if the person:

(a) Performs behavioral health services in this state for not more than ninety days in any one calendar year as prescribed by board rule.

(b) Is authorized to perform these services pursuant to the laws of the state or country in which the person resides or pursuant to the laws of a federally recognized tribe.

(c) Informs the client of the limited nature of these services and that the person is not licensed in this state.

3. A rabbi, priest, minister or member of the clergy of any religious denomination or sect if the activities and services that person performs are within the scope of the performance of the regular or specialized ministerial duties of an established and legally recognizable church, denomination or sect and the person performing the services remains accountable to the established authority of the church, denomination or sect.
  4. A member run self-help or self-growth group if no member of the group receives direct or indirect financial compensation.
  5. A behavioral health technician or behavioral health paraprofessional who is employed by an agency licensed by the department of health services.
  6. A person contracting with the supreme court or a person employed by or contracting with an agency under contract with the supreme court who is otherwise ineligible to be licensed or who is in the process of applying to be licensed under this chapter as long as that person is in compliance with the supreme court contract conditions regarding professional counseling services and practices only under supervision.
  7. A person who is employed by the department of economic security and who practices social work, marriage and family therapy, substance abuse counseling, counseling and case management within the scope of the person's job duties and under direct supervision by the department of economic security.
  8. A student, intern or trainee who is pursuing a course of study in social work, counseling, marriage and family therapy, substance abuse counseling or case management in a regionally accredited institution of higher education or training institution if the person's activities are performed under qualified supervision and are part of the person's supervised course of study.
  9. A person who is practicing social work, counseling and case management and who is employed by an agency licensed by the department of economic security.
  10. A paraprofessional employed by the department of economic security or by an agency licensed by the department of economic security.
  11. A christian science practitioner if all of the following are true:
    - (a) The person is not providing psychotherapy.
    - (b) The activities and services the person performs are within the scope of the performance of the regular or specialized duties of a christian science practitioner.
    - (c) The person remains accountable to the established authority of the practitioner's church.
  12. A person who is not providing psychotherapy.
- B. A person who provides services pursuant to subsection A, paragraph 2 is deemed to have agreed to the jurisdiction of the board and to be bound by the laws of this state.

**Law #5:** This law is about clear statements of costs for funeral services in the state, and includes the clergy honorarium as a cost to be included. The law is aimed at funeral directors.

32-1373. Statement of funeral goods and services

A. A licensee or registrant shall not enter into a contract to furnish funeral goods or services in connection with the burial or other disposition of a dead human body until the licensee or registrant has first delivered to the potential purchaser a written or printed statement of funeral goods and services that contains the following information, if this information is available at the time the contract is executed:

1. The total charge for the services of the licensee or registrant and the use of the funeral establishment, including the preparation of the body and other professional services, and the charge for the use of automotive and other necessary equipment.
2. An itemization of charges for the casket or alternative container and any outer burial container.
3. An itemization of fees or charges and the total amount of cash advances made by the licensee or registrant for transportation, flowers, cemetery or crematory charges, newspaper notices, **clergy honorarium**, transcripts, telegrams, long-distance telephone calls, music and any other advances authorized by the purchaser.
4. The method of payment and any interest charges.
5. An itemization of any fees or charges not included in paragraphs 1 through 4.
6. The total amount of charges itemized and included pursuant to this subsection.
7. The location where the deceased will be held, embalmed or cremated if the location is not the funeral establishment's premises.
8. A statement containing the name, address and phone number of any corporation, limited liability company, partnership or limited partnership that holds an ownership interest of ten per cent or more in the funeral establishment or crematory.

B. The statement of funeral goods and services delivered to the potential purchaser shall also contain a conspicuous statement informing the potential purchaser that a casket or outer burial container may be purchased and used, at the option of the purchaser, in connection with the funeral services and final disposition of human remains, but that, except as provided pursuant to section 36-136, the purchase or use of caskets or outer burial containers is not required by law.

C. A licensee or registrant shall not bill or cause to be billed any item that is referred to as a cash advanced item unless the net amount paid for the item or items by the funeral establishment is the same as the amount billed by the funeral establishment.

D. If the charge for any of the items prescribed in this section is not known at the time the contract is entered into, the licensee or registrant shall advise the purchaser of the charge for the item within a reasonable period after the information becomes available.

E. A funeral director shall certify a statement of funeral goods and services with the funeral director's license number and signature before conducting final services or within five days after the purchaser signs the statement, whichever is earlier.

**Law #6:** This statute is about the consumption of alcoholic beverages by minors at a religious service. Found at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/4/00249.htm&Title=4&DocType=ARS>

4-249. Consumption of liquor by underage person in religious service allowed

The dispensing to or possession or consumption by a person under the legal drinking age of spirituous liquor in the performance of a religious service or ceremony is not prohibited by this title.

**Law #7:** This law is about the provision of religious services for inmates of juvenile care facilities, found at <http://www.azleg.gov/search/oop/qfullhit.asp?CiWebHitsFile=/ars/41/02804-01.htm&CiRestriction=%22religious+services%22&CiBeginHilite=%3Cb%3E&CiEndHilite=%3C/b%3E&CiHiliteType=Full> .

41-2804.01. Religious services advisory committee; appointment; duties; religious programs

A. The director shall establish a **religious services** advisory committee to consist of nine members, no fewer than six of whom shall be representatives of the **religious** community:

1. The director shall appoint the committee members, who shall serve at the director's pleasure:

(a) The chaplains employed by the department and the members of the **religious services** advisory committee shall make recommendations regarding appointments to the committee.

(b) Committee members shall not receive compensation.

2. The **religious services** advisory committee shall meet at least quarterly and shall submit quarterly progress reports and recommendations to the director.

3. The **religious services** advisory committee shall advise the director regarding the provision of **religious** programs to all youth in secure care facilities who desire the **services**.

B. The department shall make available **religious** programs that accommodate the **religious** faiths held by youth in secure care facilities so long as the programs would not interfere with the safety or security of the facility, staff or youth:

1. Participation in **religious** programs shall be available to all juveniles in secure care facilities:

(a) Participation in **religious** programs by committed juveniles shall be strictly voluntary.

(b) No juvenile shall be coerced to participate in **religious** programs nor shall any effort be made to coerce any youth to adopt or change any **religious** affiliation or beliefs.

**Law #8:** This law exempts church-run daycare centers held during services from the licensing, certification and fingerprinting requirements of child care group homes, found at <http://www.azleg.gov/search/oop/qfullhit.asp?CiWebHitsFile=/ars/36/00897->

[04.htm&CiRestriction=%22religious+services%22&CiBeginHilite=%3Cb%3E&CiEndHilite=%3C/b%3E&CiHiliteType=Full](#) .

### 36-897.04. Exemptions

A. This article does not apply to the care given to children by or in:

1. The homes of their own parents.

**2. A religious institution conducting a nursery in conjunction with its religious services.**

3. A unit of the public school system.

4. A regularly organized private school engaged in an educational program which may be attended in substitution for public school pursuant to section 15-802.

5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion.

6. Any facility that provides only recreational or instructional activity to school age children who may come to and go from that facility at their own volition.

B. If regularly organized private schools exempt under subsection A, paragraph 4 of this section provide child care beyond public school hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school providing this care shall be considered a child care group home and is subject to this article.

**Law #9:** This law establishes the duties of prison chaplains and was found at <http://www.azleg.gov/search/oo/qfullhit.asp?CiWebHitsFile=/ars/31/00206.htm&CiRestriction=%22religious+services%22&CiBeginHilite=%3Cb%3E&CiEndHilite=%3C/b%3E&CiHiliteType=Full> .

### 31-206. Chaplains; duties; traditional Native American religious practitioners

A. The prison chaplains shall devote as much of their time as the condition and employment of the prisoners reasonably justifies in giving the prisoners moral and **religious** instruction. The chaplains shall at all times, under the authority of the director, have access to the prisoners for that purpose.

B. The chaplains shall hold **services** at the state prison at least twice each month.

C. Traditional Native American **religious** practitioners may perform prayers and **religious services** for Native American inmates under special arrangements made with the director.

**Question #4: List nine (9) laws concerning clergy that you have found by searching your national laws.**

IRS Tax Guide for Churches and Religious Organizations, found at <http://www.irs.gov/pub/irs-pdf/p1828.pdf> , lists a number of things worthy of note:

1. Churches, recognized as 501(c)(3) organizations, are automatically exempt from Federal income tax as long as they:
  - a. are organized and operated exclusively for religious, charitable purposes
  - b. Net earnings do not inure to the benefit of any private individual or shareholder
  - c. do not have substantial activity to attempt to influence legislation
  - d. do not intervene in political campaigns
  - e. do not have purposes and activities that are illegal or which violate public policy
2. Churches must pay income tax on business activities that are unrelated to the purpose of the church, such as renting out space for non-church activities or making money in other businesses (bingo may be eligible for a special tax exemption)
3. Churches do not need to pay Social Security, Medicare or Federal Unemployment taxes on the wages paid for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, or by a member of a religious order in the exercise of duties required by such order. However, the minister may have to pay these taxes themselves.
4. Churches do not need to pay withholding income tax on ministers, though the ministers may elect to pay them themselves. Of course, ministers pay income tax.
5. Ministers do not pay tax on housing allowances or the fair rental value of provided parsonages.

From the US Government web portal a search can bring up more rules about clergy:

**6. Title 42, Chapter 4, Part 411 - EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT, Subpart E, Sec. 411.104 (Current Employment Status) at <http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=61599819993+1+2+0&WAIAction=retrieve> lists the following:**

- (e) Special Rule: members of religious orders and members of clergy.
- (1) Members of religious orders who have not taken a vow of poverty. A member of a religious order who has not taken a vow of poverty is considered to have current employment status with the religious order if--
- (i) The religious order pays FICA taxes on behalf of that member; or
  - (ii) The individual is receiving cash remuneration from the religious order.

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(2) Members of religious orders who have taken a vow of poverty. A member of a religious order whose members are required to take a vow of poverty is not considered to be employed by the order if the services he or she performs as a member of the order are considered employment only because the order elects social security coverage under section 3121(r) of the IRC. This exemption applies retroactively to services performed as a member of the order, beginning with the effective dates of the MSP provisions for the aged and the disabled, respectively. The exemption does not apply to services performed for employers outside of the order.

(3) Members of the clergy. A member of the clergy is considered to have current employment status with a church or other religious organization if the individual is receiving cash remuneration from the church or other religious organization for services rendered.

(f) Special rule: Delayed compensation subject to FICA taxes. An individual who is not working is not considered an employee solely on the basis of receiving delayed compensation payments for previous periods of work even if those payments are subject to FICA taxes (or would be subject to FICA taxes if the employer were not exempt from paying those taxes). For example, an individual who is not working in 1993 and receives payments subject to FICA taxes for work performed in 1992 is not considered to be an employee in 1993 solely on the basis of receiving those payments.

**7. Spiritual Counseling for Hospice** - In the Dept. of Health and Social Services, Centers for Medicaid and Medicare Services – Hospice participation, there is a reference to spiritual services being provided for hospice patients by clergy, found at <http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=61660990387+1+0+0&WAIAction=retrieve> :

Sec. 418.70 Condition of Participation – Volunteers

(f) Standard: Availability of clergy. The **hospice** must make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to patients who request such visits and must advise patients of this opportunity.

**8. Visiting Clergy to Federal Prisons** – Title 28 Judicial Administration, Chapter V, Bureau of Prisons, Dept. of Justice, Part 540 – Contact with Persons in the Community, Sec. 540.45 Qualification as special visitor, found at <http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=62462825527+5+0+0&WAIAction=retrieve> :

Sec. 540.45 Qualification as special visitor.

Persons in the categories listed in this section may qualify as special visitors rather than as regular visitors. Visits by special visitors ordinarily are for a specific purpose and ordinarily are not of a recurring nature. Except as specified, the conditions of visiting for special visitors are the same as for regular visitors.

(d) **Clergy**, former or prospective employers, sponsors, and parole advisors. Visitors in this category ordinarily provide assistance in release planning, counseling, and discussion of family problems. The requirement for the existence of an established relationship prior to confinement for visitors does not apply to visitors in this category.

**Question #5: How do laws of your nations, state, or local area respond to Paganism and Neo-Pagan clergy? Are there laws that prohibit certain functions our clergy usually serve (such as divination, counseling, or conduction marriages or funerals)? Does your country implicitly or explicitly state that Neo-Pagans cannot have clergy, or that they cannot perform certain functions or receive similar rights as those from other religions?**

As far as Tucson, Pima County and Arizona go, the laws are quite neutral concerning religion, churches and clergy. There are no laws that discriminate against pagan as opposed to any other type of clergy that I could find. Divination, a problem in some areas back east, isn't addressed in the laws at all. I did Internet searches on the words, *divination, palm reading, palm readers, fortune telling, fortune tellers, and tarot* and found nothing. I do know that fortune tellers, palmists and tarot readers advertise their services openly with ads and signs outside their businesses here in Tucson.

While there may be a distinction between pastoral counseling and professional counseling, I couldn't find anything explicit. It seems, based on the laws I quoted earlier in this essay, that pastoral counseling is exempted from the licensure rules, but no other definitions could be found.

While I have never conducted a funeral in Arizona, I have conducted two weddings and have had no problems.

I have also not found any definition of who may be clergy, though I have noticed that Christian Science practitioners do get mentioned (included) in many of the laws concerning clergy, as though they are different somehow. I believe that Arizona and its municipalities are neutral as far as who clergy can be.

**Questions #6: Looking at those laws listed in questions 1-4 and how they affect you, are there any specific laws that seem out of place, unfair, or unjust? What is the avenue for change to these laws, and do you see change to these particular laws as necessary?**

Arizona has a long libertarian tradition that endorses the idea that folks can do what they like as long as they don't bother anyone else. This can work to our advantage here, since the state tends to have a hands-off approach to religion in general. None of the laws seem unfair to me, and the lack of laws I find comforting. Should laws need to be changed, however, it would be necessary to contact local legislators to get them changed, which could be a long and onerous process.

**Question #7: How do you see these laws affecting how you serve your Grove, ADF, or the community as a whole?**

Generally, I see the laws affecting us here as quite beneficial – very little stands in our way. The county noise ordinance isn't too clear, but experience has shown that the exception for "nonamplified crowd noises resulting from activities such as those planned by school, governmental or community groups" has covered our outdoor drumming activities, as long as we call the Sheriff's Department in advance to warn them (and by ending the noise by 8:30 pm, long before the 10pm absolute limit).

The various zoning ordinances are quite clear that a church may be located almost anywhere (as long as enough parking can be provided) and that 'convents' count as churches as far as zoning is concerned. All in all, this is a very positive situation here in Arizona.

**Question #8: What is the difference between pastoral counseling and other kinds of counseling, and does the law differentiate between these types? What sort of license do you require in your state in order to perform counseling of any type? Does divination fall into this sort of counseling?**

A search of the statutes of the State of Arizona brings up nothing regarding pastoral counseling. When just the word, 'counseling' is searched, however, there is a clear set of licensure requirements for professional counselors of any kind, which I will print out below. However there is also an exemption for clergy (which I will print out below the licensure requirements):

**Law #1:**

32-3301. [Licensed professional counselor; licensure; requirements](#)

A. A person who wishes to be licensed by the board to engage in the practice of professional **counseling** as a licensed professional counselor shall:

1. Meet the education requirements of subsection B and the work experience requirements of subsection C.

2. Pass an examination approved by the **counseling** credentialing committee.

B. An applicant for licensure shall furnish evidence satisfactory to the **counseling** credentialing committee that the person has received either of the following:

1. A master's degree or higher degree with a major emphasis in **counseling** from a regionally accredited college or university in a program of study that includes a minimum of forty-eight semester credit hours or the equivalent in a curriculum approved by the **counseling** credentialing committee. Beginning on January 1, 2008, the program of study must include a minimum of sixty semester credit hours or the equivalent in a curriculum approved by the **counseling** credentialing committee.

2. A master's degree or higher degree with a major emphasis in **counseling** from a program accredited by the council for the accreditation of **counseling** and related educational programs or the national council on rehabilitation education that includes a minimum of forty-eight credit hours or the equivalent. Beginning on January 1, 2008, the program must include a minimum of sixty semester credit hours.

C. An applicant for licensure shall furnish evidence satisfactory to the **counseling** credentialing committee that the applicant has received at least two years of full-time or the equivalent part-time post-master's degree work experience in the practice of professional **counseling** under supervision approved by the credentialing committee. An applicant may use a doctoral-clinical internship to satisfy the requirement for one year of work experience under supervision.

D. An applicant who is deficient in curricular areas or credit hours required pursuant to subsection B, paragraph 1 or 2 may satisfy the curriculum and credit hours requirements of those paragraphs by successfully completing post-master's degree course work.

E. An applicant who completed a degree before July 1, 1989 and whose course of study did not include a practicum may substitute a one year doctoral-clinical internship or an additional year of documented post-master's degree work experience in order to satisfy the requirements of subsection B, paragraph 1.

### **Law #2**

2-3271. [Exceptions to licensure: jurisdiction](#)

A. This chapter does not apply to:

3. A rabbi, priest, minister or member of the clergy of any religious denomination or sect if the activities and services that person performs are within the scope of the performance of the regular or specialized ministerial duties of an established and legally recognizable church, denomination or sect and the person performing the services remains accountable to the established authority of the church, denomination or sect.

## **OPTIONAL QUESTIONS**

**Question #1: If you live near a major military base: "What are the rules regarding outside worship for the branch of the military that runs this base, and what happens if a soldier on that base wants access to a priest who is not in the military or not a military chaplain?"**

I called the chaplain's office at Davis-Monthan Air Force Base here in Tucson at 520-228-5411 and asked him the question above. He was quite non-plussed and responded that, of course, anyone on

base could access any church or clergy on or off base, military or otherwise, as they saw fit. He said, "It's called freedom of religion!"

**Question #2: What are the regulations and options for prison ministry in your county and state?**

There's very little said about prison ministries in the Arizona state code. There is a reference to chaplains as prison employees, holding services at least twice per month:

31-206. Chaplains; duties; traditional Native American religious practitioners

A. The prison chaplains shall devote as much of their time as the condition and employment of the prisoners reasonably justifies in giving the prisoners moral and religious instruction. The chaplains shall at all times, under the authority of the director, have access to the prisoners for that purpose.

B. The chaplains shall hold services at the state prison at least twice each month.

C. Traditional Native American religious practitioners may perform prayers and religious services for Native American inmates under special arrangements made with the director.

And special allowance for Native American religious practitioners is mentioned. Pagan clergy must be included in this as policy, somehow, because Mother Earth Ministries, a Pagan prison ministry here in Arizona, has programs where Pagan priests visit inmates regularly and perform services. See <http://www.motheearthministries.org/info.html> .

There is a Religious Advisory Committee as part of the Arizona Department of Corrections that lists the occupations of its members (though not their names), and a Wiccan High Priestess and a Druid High Priest are mentioned (though I can't imagine who the latter might be). See <http://www.azcorrections.gov/adcd/divisions/advisory/religious.asp> for more details.