

# Orthodox News<sup>SM</sup>

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## November 9, 1999 letter from John Kozey to the OCA Metropolitan Council members

November 9, 1999

To: All Metropolitan Council Members  
Cc: Mr. Peter Junda, Audit Committee  
Mr. Frank Tkacz, Audit Committee  
Mr. Rob Taylor, Lambrides, Lamos, Moulthrop & Co., Certified Public Accountants

Dear Metropolitan Council Member:

I am contacting you regarding some of the events that have taken place since my letter of September 28, 1999. Since then a Memorandum from the Administrative Committee, dated October 29, 1999 was sent to me.

The Memorandum raises several points that I would like to address at this time. The Memorandum of October 29, 1999 states: "The Administrative Committee resolved to inform you of its disappointment at your unilateral action to distribute your own letter, copies of letters, memoranda and documents to the Metropolitan Council members."

- I sent you my letter of September 28th because it was evident - and it remains evident - that neither the external CPA audit firm, nor the internal Audit Committee will be present in order to report personally to you, the members of the Metropolitan Council. The Statute of the Orthodox Church in America states that the internal auditors make their report to the Metropolitan Council, as was previously pointed out in the September 28th packet.
- I have worked professionally since 1981 as a fiduciary and quasi-fiduciary. I believe it is my fiduciary duty to you, in accordance with the Statute, to report in the case of material information. In my opinion, the sum of \$250,000 or more is "material" to anyone and certainly to us in the OCA.
- No member of The Administrative Committee, apart from the Acting Treasurer, His Eminence, Archbishop HERMAN has called me to verify tile information that was given to them by members of the Church Administration. Also, no member of the Administrative Committee asked to hear from the internal and external auditors regarding the relevant facts of the 1998 Central Church Audit, or to have any other questions answered.

The Administrative Committee expressed displeasure of my September 28, 1999 report to

you. Their Memorandum dated October 29, 1999, states "After due reflection, consideration, and discussion the Administrative Committee endorsed the steps being taken to address the questions at issue." The Administrative Committee has not had, to my best knowledge, a personal report from either our external auditors or the Audit Committee, outside of materials that I have sent to them in my September 28th mailing. I am very concerned that good accounting practices be followed in our Church's finances and I question whether the Administrative Committee has been given sufficient information to make an informed decision as to the adequacy of "the steps taken to address the questions at issue," per the October 29th Memorandum.

The Administrative Committee's Memorandum further states that, "You failed to describe or even mention your participation in the process that was unanimously agreed on July 8, 1999, and is underway to address all relevant issues appropriately." The process agreed to was that the OCA's legal firm, represented by Mr. Jonathon Russin, of the law firm Russin & Vecchi L.L.P., as general Council to the OCA, would take certain actions. According to the Minutes of the Meeting of July 8, 1999:

*In order to assure that funds in the [Metropolitan's 's Discretionary] Account have been used for purposes consistent with federal and state requirements, Mr. Russin recommended that a special purpose CPA firm would issue its professional opinion that disbursements from the account have been made for purposes consistent with state and federal law. The special purpose accounting firm would be employed by Russin & Vecchi L.L.P., as Council to the OCA, in order to protect the confidentiality of the accounting firm's activities and report pursuant to the attorney-client privilege.*

*For each of the years the Auditing Committee would receive a statement from the special purpose accounting firm indicating (a) total deposits to the Account, (b) total reimbursements from the Account, (c) the account balance, and (d) the firm 's opinion to the effect that all disbursements have been made consistent with federal and state law.*

*There then occurred a further general discussion in which Mr. Kozey proposed that the Auditing Committee participate in the selection of the special purpose CPA firm, and Mr. Taylor proposed that, upon conclusion of time special purpose review the Lambrides firm, as OCA's principal auditors, would coordinate with the special purpose CPA firm with respect to incorporation of the results of the review of the Account into time regular annual audit reports of the Lambrides firm.*

*After further discussion it was unanimously agreed to proceed with the employment of the special purpose CPA firm as recommended by Mr. Russin and as supplemented by the proposals of Mr. Kozey and Mr. Taylor.*

*There being no further business to conduct, the meeting was adjourned.*

To the best of my knowledge, there is no indication that the procedures agreed to on July 8th have been accomplished. BDO Seidman, L.L.P., a CPA firm that engages in non-profit auditing, was selected and interviewed by Mr. Russin. The purpose of this method, according to Mr. Russin, was to protect the results by the attorney-client privilege (one would wonder why such a method is necessary). The decision, after the interview, was to not engage BDO Seidman, L.L.P. Four months after this July 8, 1999 Memorandum, we are told that this procedure remains "in progress". Presumably, no CPA firm has yet been engaged to conduct this audit.

Once again, you are encouraged to review "The Legal Duties of Nonprofit Directors," which was sent out in the September 28, 1999 packet. Specifically in this nine-page document you

should consider the questions asked below and their answers:

What are my legal responsibilities as a director?

What is the duty of care?

How do I practice due care?

What additional responsibilities are imposed by the duty of loyalty?

How do I avoid breaching the duty of loyalty?

*To determine whether the duty of loyalty has been breached in the case of benign conflicts of interest, six elements should be examined for each such transaction:*

*(1) Was there full disclosure to the rest of the board?*

*(2) Was there unbiased decision-making by the board?*

*(3) Was the transaction fair to the organization overall?*

*(4) Even though the transaction involves an apparent conflict of interest, when all the facts are known is there a demonstrable absence of self-dealing?*

*(5) Was personal appropriation of all corporate opportunities avoided?*

*(6) Was any interested director properly insulated from final discussion and voting?*

What policies should be adopted to assure we fulfill our duty of loyalty?

In summary, membership on the Metropolitan Council transcends honorary appointment. It involves certain obligations, including care and loyalty. Establishing and following sound accounting practices, procedures and policies are in the best interests of our Church. Toward this end, you are encouraged to ask questions and ask for clarification of points that are unclear.

- However noble our objectives, it is essential that we as the Orthodox Church be completely above-board in our financial dealings. Several members of the Metropolitan Council and other clergy who have spoken with me are in agreement on the need for an above-board policy.
- Your duties and obligations as directors of a non-profit organization will help shape our future. Do not hesitate to ask questions and ask for clarification of items that you do not understand. To be denied this information is a disservice to all of us.
- It is my hope that we shall be remembered as working toward solid financial procedures, a foundation in the best interests of the Orthodox Church in America.
- Finally, it is my sole personal interest as an Auditor and a member of the Orthodox Church in America, to establish and maintain financial practices that are both in accordance with state and federal law and in line with good business practice.

On Wednesday November 17th starting at 8PM, and Thursday evening November 18th , after the Metropolitan Council meeting at the Chancery adjourns, I invite any member of the Metropolitan Council to my home in Syosset for further clarification My home address is [*Address and directions deleted by editor*]. We can arrange transportation for you if needed. Cabs to the airports are two blocks away. I encourage those of you who have not yet contacted me to do so at any time.

I may be reached by phone at [*deleted by editor*].

Respectfully,