Disposition of Assets Policy

The council has arrived at an understanding of the legal and fair means of handling the assets (monetary and physical) of St. Mark. At the end of this message are listed the 3 sources used to arrive at the following policy.

- All church property of worth must be donated or sold to a non-profit charitable entity that aligns with St Mark's mission, sold (at fair market value) to non-charitable individuals or organizations with proceeds donated to charity, recycled, remain with the building, or destroyed.

- Any item previously donated to the church is legally now church property and may not, legally, be returned at no cost to the original donor or any other non-charitable person/organization.

- Church property that is deemed by the St. Mark council to have no monetary value may be dispensed to interested persons. This decision is solely at the discretion of council and is final.

- **All requests for property must be submitted in writing or email by Jan. 1, 2022 to the council to consider.** It is illegal to remove property from the church without council's prior approval.

Sources

From the **ELCA General Council** in response to St Mark's inquiry Oct. 2021

As a general rule, for the congregation to distribute property or assets to members of the congregation would be improper "private inurement," that is, the improper use of charitable assets for personal benefit. This is primarily an IRS tax issue, but also an issue of state non-profit and charitable law. Giving real estate, cash, or bank accounts to members of the congregation would obviously violate this rule. And this rule generally prohibits people who have made charitable donations of specific items from taking the items back just because the church closed. So the short answer is no, they cannot do that.

That said, this rule is subject to de minimis exceptions (or lack of enforcement) for items that truly have no or minimal value. For example, the picture on the wall of the former congregation president can probably be given to their family without issue. But it really has to have almost no value. They cannot just give back the lawn mower or the stand mixer or the massive freezer, etc. Those have value and are charitable assets. It would be improper for members of the congregation to take them, even (or especially) if the members donated them in the first place. They could buy them back from the congregation, but it would have to be at a fair price (considering age, wear and tear, etc.).

Best suggestion is that they have the equivalent of an estate sale or a garage sale at which the public, including members of the congregation, can buy what they want. The proceeds would then be distributed to charity with the rest of the congregation's assets (however they are being distributed).

Michigan State Attorney General

https://www.michigan.gov/ag/0,4534,7-359-82915_82919_80762-288903--,00.html

Generally, any organization that has received a tax-exemption from the IRS under section 501(c)(3) of the Internal Revenue Code is a charitable organization obligated to use its assets for charitable purposes. All assets, once donated to charities, remain charitable assets, even upon dissolution. Dissolution of Charitable Purpose Corporations Act (Dissolution Act), MCL 450.251 *et seq.*, which ensures that charitable assets are transferred to an organization with a like purpose if a charity dissolves.

Internal Revenue Service

Publication 1828 (revised 8-2015) www.IRS.gov/pub/irs-pdf/p1828.pdf

Inurement to Insiders

Churches and religious organizations, like all exempt organizations under IRC Section 501(c)(3), are prohibited from engaging in activities that result in inurement of the church's or organization's income or assets to insiders (such as persons having a personal and private interest in the activities of the organization). Insiders could include the minister, church board members, officers, and in certain circumstances, employees. Examples of prohibited inurement include the payment of dividends, the payment of unreasonable compensation to insiders and transferring property to insiders for less than fair market value. The prohibition against inurement to insiders is absolute; therefore, any amount of inurement is, potentially, grounds for loss of tax-exempt status. In addition, the insider involved may be subject to excise tax. See the following section on Excess benefit transactions. Note that prohibited inurement doesn't include reasonable payments for services rendered, payments that further tax-exempt purposes or payments made for the fair market value of real or personal property. Excess benefit transactions. In cases where an IRC Section 501(c)(3) organization provides an excess economic benefit to an insider, both the organization and the insider have engaged in an excess benefit transaction. The IRS may impose an excise tax on any insider who improperly benefits from an excess benefit transaction, as well as on organization managers who participate in the transaction knowing that it's improper. An insider who benefits from an excess benefit transaction must return the excess benefits to the organization. Detailed rules on excess benefit transactions are contained in the Code of Federal Regulations, Title 26, sections 53.4958-0 through 53.4958-8.

Private Benefit

An IRC Section 501(c)(3) organization's activities must be directed exclusively toward charitable, educational, religious or other exempt purposes. The organization's activities may not serve the private interests of any individual or organization. Rather, beneficiaries of an organization's activities must be recognized objects of charity (such as the poor or the distressed)

or the community at large (for example, through the conduct of religious services or the promotion of religion). Private benefit is different from inurement to insiders. Private benefit may occur even if the persons benefited are not insiders. Also, private benefit must be substantial to jeopardize tax-exempt status.