



Temporal Goods & Civil Laws

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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FIRST AMENDMENT OF THE
CONSTITUTION OF THE UNITED STATES

Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.

SECTION 1, ARTICLE 4

CONSTITUTION OF THE STATE OF CALIFORNIA

That said . . .

PHOTOGRAPH OF RELIGIOUS
SISTERS IN FRONT OF US SUPREME
COURT SUPPORTING THE LITTLE
SISTERS OF THE POOR

There's this.

SUPREME COURT OF THE UNITED STATES

Nos. 19–431 and 19–454

LITTLE SISTERS OF THE POOR SAINTS PETER
AND PAUL HOME, PETITIONER

19–431

v.

PENNSYLVANIA, ET AL.

DONALD J. TRUMP, PRESIDENT OF THE
UNITED STATES, ET AL., PETITIONERS

19–454

v.

PENNSYLVANIA, ET AL.

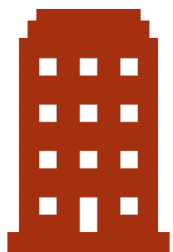
ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[July 8, 2020]

JUSTICE THOMAS delivered the opinion of the Court.

In these consolidated cases, we decide whether the Government created lawful exemptions from a regulatory requirement implementing the Patient Protection and Affordable Care Act of 2010 (ACA), 124 Stat. 119. The requirement at issue obligates certain employers to provide contraceptive coverage to their employees through their group health plans. Though contraceptive coverage is not

Temporal goods in civil law



Real Estate

Owned

Leased

Rented



Personal property

Tangible goods

Intellectual property (original creations)

Monetary assets

Membership in an unincorporated association

- California Corporations Code § 18100

FEATURES

**Inside Katy Perry's Real-Estate Soap Opera:
Why Nuns and the Catholic Church Are
Battling Over Her Dream L.A. Property**

Photograph
of Waverly Drive Convent

Photograph and
Caption from Los Angeles
Times about the
Monastery of the Angels
in the Hollywood
Foothills

Disputes over the administration of religious orders' temporal goods can end up in court

THE UNITED STATES ATTORNEY'S OFFICE

CENTRAL DISTRICT *of* CALIFORNIA

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FOR IMMEDIATE RELEASE

Monday, February 7, 2022

Nun Who Embezzled Tuition Money from Torrance Catholic Elementary School Sentenced to One Year in Federal Prison

LOS ANGELES – A nun who was the principal of a Catholic elementary school in Torrance was sentenced today to 12 months and one day in federal prison for stealing more than \$835,000 in school funds to pay for personal expenses, including gambling trips.

Mary Margaret Kreuper, 80, of the Arlington Heights neighborhood in Los Angeles, was sentenced by United States District Judge Otis D. Wright II, who also ordered her to pay \$825,338 in restitution.

Kreuper pleaded guilty in July 2021 to one count of wire fraud and one count of money laundering.

Questions
asked by civil
laws and
regulations
when dealing
with
“temporal
goods”

Who are you as a community/congregation?

What are your legal obligations?

Are you tax-exempt?

Who has administrative authority?

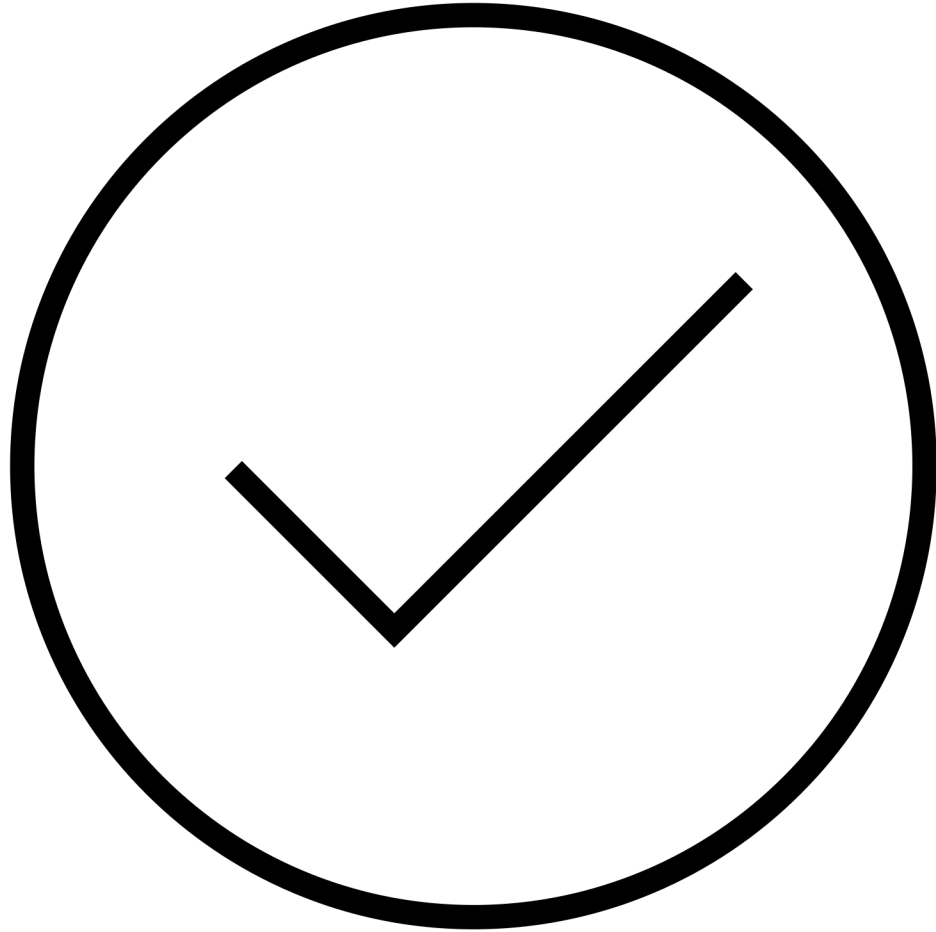
What if you have employees?

What happens with property you own but don't live in or use yourselves?

What are your internal financial controls?







Canonical entity has to be “translated” into a civil law entity

- Canon law structures mirror but are not the same as civil law structures
 - Charter?
 - Constitution?
 - Statutes?
- Are you the parent entity or a subordinate?
- Are you domestic or foreign-based?

California civil law structures

Unincorporated
association –
nonprofit,
religious?

Corporation –
nonprofit,
religious, sole, or
public benefit?

Other states may
have other
organizational
structures

California Unincorporated Associations

- *Definition*: “A group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not”
- Persons in charge of California unincorporated associations have most of the liability protections and most of the powers offered those running a California corporation
- Advantage over California corporations:
 - No bi-annual Secretary of State Statement of Information filings
 - Greater flexibility in internal management
 - No oversight by Attorney General except for fundraising, criminal acts

California unincorporated associations, continued

- To operate successfully, unincorporated associations must have organizing documents
 - **Articles** describe the unincorporated association's purposes and overall structure
 - Important to include rules on membership
 - **Bylaws** describe the organization's management
- Both are needed to apply for and obtain tax-exempt status
- Probably need to adjust canonical charter/constitution/articles to conform

Religious Corporation or Corporation Sole

- Provides maximum protection from liability to individual directors, officers and members of the corporation
- After initial approval by California Secretary of State, provides maximum exemption from government oversight
 - An unincorporated association may convert to a corporation

Some statutory requirements for Articles of Incorporation for religious corporations

- Must have a unique name
- Must include the information provided here: [Articles of Incorporation of a Religious Corporation \(Form ARTS-RE\) \(ca.gov\)](#)
- Important for religious orders:
 - Membership rights, privileges, preferences, restrictions and conditions attaching to each class of member (if more than one) must be described
 - E.g., vowed religious & postulants/novices & “third order” members
 - Parent officers (Superior General) & local officers (Superior)

California Secretary of State

- Approves and registers nonprofit corporations
 - Religious corporation
 - Corporation sole – possible, but unlikely for religious orders
 - Public Benefit corporation
- After initial filing, nonprofit corporate entity must file Online a **Statement of Information (SOI)** every 2 years within 60 days of its initial filing date
 - SOI filing important to maintain corporate status
 - Must provide current business address, officers (CEO, Secretary, Treasurer/CFO)
 - Agent for service of process
 - Filing fee \$20 + \$5 for copy of filing
- Accepts registration of unincorporated associations
 - Information for address and agent for service of process
 - Effective for 5 years

Assets of a religious corporation

- Contributions made to a religious corporation are meant for use according to the corporation's stated general purposes, except for:
 - Assets held **in trust**
 - Assets contributed for a **specific purpose**
- No assets of a religious corporation are considered to be held **in trust** unless:
 - (1) The assets were received by the corporation with an express commitment by resolution of its board of directors to hold the assets in trust.
 - (2) The articles or bylaws of the corporation, or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.
 - (3) The donor expressly imposed a trust, in writing, at the time of the gift or donation.

Contributions for a specific purpose

- A religious corporation may use property contributed for a specific purpose only for that specific purpose
 - If property is not used for the specific purpose, the corporation may be sued after being notified that an action will be brought unless the corporation takes immediate steps to correct any improper diversion of funds
- Religious corporation directors or members may, in good faith, approve or ratify **and record in writing** the use of property for the corporation's general purposes rather than the specific purpose for which it was contributed:
 - If it becomes impractical or impossible for the corporation to devote the property to the specific purpose. or
 - the stated purpose no longer accords with the policies or best interests of the corporation

- If a nonprofit religious corporation wants to dissolve and distribute its assets it must obtain from the Attorney General a letter waiving objections to the proposed dissolution and distribution.
- Without this letter from the Attorney General, the Secretary of State will not finalize the dissolution of the nonprofit corporation.
- Before transferring all or substantially all of its assets the religious corporation must provide a 20-day advance notice before it sells, transfers, or otherwise disposes of all or substantially all of its assets, unless the Attorney General has given the corporation a written waiver.

Disposing of all or substantially all assets of a **religious corporation** requires permission from the California Attorney General

Public Benefit Corporation

- Not primarily or exclusively religious
- Not exempted from government oversight
- Has various annual financial reporting requirements

Public benefit corporation requirements that don't apply to religious corporations

- Annual financial report to Internal Revenue Service -- Form 990
- RRF-1 – Annual Registration Renewal Fee Report to Attorney General
- Annual financial report to Franchise Tax Board -- Form 199
 - *Note:* a religious or apostolic corporation may have to file an informational Form 199
 - if it has a common treasury or community treasury even if it engages in business for the common benefit of the members, but only if the members include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the net income of the corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.



Being a nonprofit does not mean
you're automatically tax exempt!

... in this world nothing can be said to be certain, except death and taxes

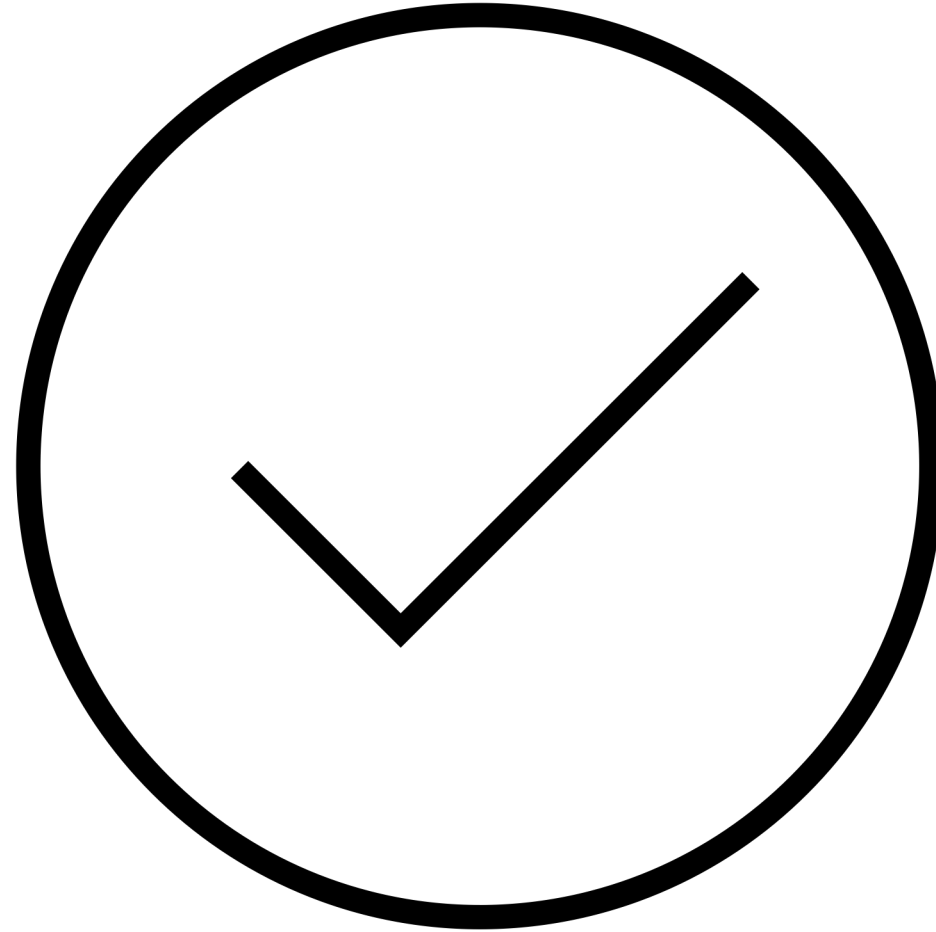
Benjamin Franklin

Taxation

- **Business Income taxes**
 - Exempt through USCCB Group Ruling
 - Exempt independently with the Internal Revenue Service
 - Exemption granted by California Franchise Tax Board
 - But beware of Unrelated Business Income Taxes (UBIT)
- **Property taxes**
 - Mainly local determination
 - Welfare exemption for nonprofit use
- **Sales taxes**
 - Depends on activities
- **Import taxes/customs duties**
 - Goods made in foreign countries







Administrative Authority

Foreign parent

Local superior and other officers

Board or council

Authorized signers

- Social Security numbers
- Bank accounts
- Other transactions

Members

Who's in charge?

- Depending on the Order, a California congregation/community may be subject to administrative authorities based outside the State
 - Check to make sure there's no conflict in laws
 - For Statement of Information purposes, you must have at least one California-based office
- Local Superior and/or other Officers
- Board or Council
 - Determined by the community's organizing documents
 - Often elected by the members
 - May be appointed by more senior authority or local leadership

Authorized signers

Designate one or more persons as authorized to sign legal documents on the religious community's behalf

- Can be by virtue of the position held in the community
- Can be an “attorney in fact” -- i.e., someone with the power of attorney

For guidance on information required to open bank accounts see:

<https://handbook.la-archdiocese.org/chapter-6/section-6-3/topic-6-3-3>

[Control person bank memo](#)

[Frequently Asked Questions Regarding New Banking Regulations](#)

Membership

Articles for both the unincorporated association and the religious corporation must state if the organization has members

If you have members, describe the “classes”

Set out the members’ rights – if limited to Canon Law the Articles must say so explicitly

Membership language for Articles and Bylaws

FOR EXAMPLE

A. Members with Administrative Authority

The sole member of the community with powers of administration over the community shall be the Superior. The Superior shall be elected by the Members by 3/5ths majority. The Superior shall watch over the community's activities and the application of directives imparted by the Order, its Council and/or Superior General. (Order's Constitution, Article 40.)

B. Members Without Administrative Authority

The members of the community without administrative authority shall be those women who are fully vowed. (Order's Constitution, Article 5.)

The members shall have no voting powers or any rights in the administration of the community except as may be set forth in these Articles, the community's Bylaws or in the Order's Constitution. The members do not have the rights provided to them by California Corporations Code Sections 18015 (definition of membership), 18310 (termination of membership), 18330 (voting), or 18340 (amendment of articles or other organizing documents of the unincorporated association).

Notwithstanding California Corporations Code Section 18100, **the interest of members in the unincorporated association shall not be personal property.** The interest of members in the community shall be as determined by Church Law.

Alienation of Temporal Goods

- Photograph of Waverly Drive Convent

- The community has lived in this property for 50 years
- It is the community's most valuable asset
- The community is a California religious corporation with members
- Only 5 elderly members are left
- The property is not disability accessible
- Two celebrities are interested in buying
 - Celebrity P offers \$15.5 million cash
 - Celebrity H offers \$100,000 'down payment' on a \$16.5 million loan

What do you need to know?

Which questions do you have to ask?

Fundraising

Not a simple process

Some useful guidance

- Tax-deductible donations -- acknowledge in writing
 - All donations over \$250
 - If goods or services are given in exchange for a single donation of \$75 (e.g., silent auctions)
- Bingo, raffles, casino nights
 - Rules in [6.2.4 - Development and Fundraising \(la-archdiocese.org\)](http://la-archdiocese.org)
- Sales, boutique vendors
 - Licensing, permits and tax issues
 - [6.2.7 - Boutique Sellers or Swap Meets \(la-archdiocese.org\)](http://la-archdiocese.org)

Selling tangible goods

- Nonprofit organizations need a seller's permit if they sell merchandise 3 or more times a year (includes online)
 - Not needed for sales of meals, services or event tickets
- Must file sales and/or use tax returns
 - Except for thrift shop-type operations
- Resale certificate required if organization did not pay sales tax on goods
- Useful guidance at:
 - [California Department of Tax and Fee Administration](#) (sales tax guide)
 - [Tax Guide for Nonprofit Organizations](#)

Unrelated Business Income Tax (UBIT)

Non-profit, tax-exempt entities must report and pay UBIT on regularly carried-on sales of products or services unrelated to their primary purpose, *e.g.*:

- Sales of items to the general public
- Advertisements
- On-line charity mall
- Merchant links (unclear if exempt royalty or taxable advertising income)
- Submit for legal review all contracts with companies that promise a percentage of the profits on sales as a “donation”

Using traditional techniques online

- Auctions & selling stuff
- Bingo – NOT ALLOWED
- Boutique/vendor sales – NOT ALLOWED
- Car Donations
- Fiestas, carnivals – Virtual?
- Galas and celebrations – Virtual?
- Monte Carlo/casino nights – NOT ALLOWED
- Raffles – STRICT RULES
- Scrip, service hours and “buy out” -- BEWARE
- Sponsoring participants in events (e.g., videogame contests, virtual walkathon, fun run)

Questions to ask before signing up with an online fundraising platform

- What fees will the website deduct from each contribution?
- Will you be provided with your donors' information?
- How will the website use your donors' information? Is a privacy policy in place?
- When will contributions be deposited into your bank account/mailed to you?
 - California Business & Professions Code § 12599(1)(7) – 5 business days
- What happens to contributions that don't meet a certain threshold amount?
- What steps are being taken by the website to prevent solicitation fraud?
 - What kind of accounting will the website provide you? If questions arise, what procedures are available for you to challenge the accounting?



Raising funds to pay off an individual's debt

- Although allowed, the donated funds are NOT tax deductible
 - Non-family gifts to individuals are not charitable donations
 - Gifts designated to benefit a specific person cannot be “laundered” through a non-profit to become tax deductible

LABOURÉ[®]

HELP RESCUE VOCATIONS[®]

Delivering Candidates Ready & Debt-Free!

“The Labouré Society [is not only a] much-needed solution to the challenge of student loan debt. It is a grace that helps the participants value their vocation, defend it, and at the same time, acquire human virtues that prepare them for a life of fidelity to their call to consecration to God.”

- Sr. Visitación de María, H.SMCJ, Daughters of Holy Mary of the Heart of Jesus

WWW.RESCUEVOCATIONS.ORG

“Prior to learning about Labouré, I had no choice but to turn away women who felt called to religious life but still had student loan debt. With Labouré, we can welcome more women.”

- Sr. Vickie Griner, OSC, Vocation Minister



JOIN US FOR OUR NEXT VIRTUAL “LABOURÉ COME & SEE”

Thursday, March 2, 2023; 1-2 PM CST followed by Q. & A.

**For more information, call 651-212-4878
or email admissions@labouresociety.org**

Sending funds to foreign countries

- Sisters may send funds they have earned to their motherhouse overseas
- Funds **donated** to the sisters in the U.S. for the motherhouse overseas are **not** tax deductible
- Tax-exempt entity may use funds **only** for purposes identified in their founding documents

Issues if you're an employer

- Wage and hour rules
 - Exempt/non-exempt/independent contractor
 - Minimum wage
- Benefits
- Workers compensation
- Title III (ADA); Title VII (non-discrimination)
- Stipends for Sisters
- Volunteers

Intellectual Property

- Employer owns all rights to all materials created by paid staff
 - “Work for hire” concept
 - Any other arrangement about ownership of intellectual property must be in writing
 - <http://handbook.la-archdiocese.org/chapter-5/section-5-2/topic-5-2-23>
- Copyrights must be respected
 - Liturgical music contract with OneLicense
 - Vigilance about materials posted online is important
 - Take “take down” notices seriously!
- Filming, videos
 - Use [video production agreement](#) as a sample if you hire a contractor to create a video

Internal financial controls

Develop written rules of accountability and oversight for:

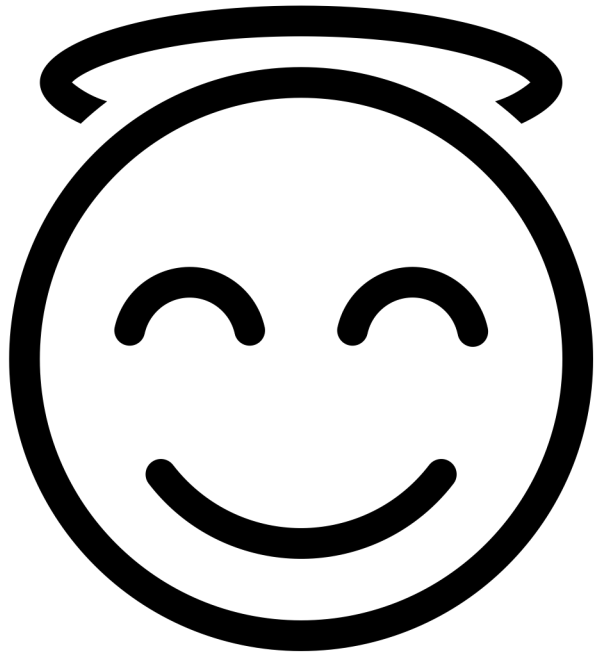
- Person in charge
- Finance council
- Treasurer/chief financial officer/economist
- Accountant/bookkeeper
- Independent auditor

Conflict of Interest

- **BASIC PRINCIPLE:** All community members should refrain from conduct where their own interests -- or the interests of those considered family -- **may** conflict with those of the community
- **Appearance of impropriety is as bad as impropriety itself**
- <http://handbook.la-archdiocese.org/chapter-5/section-5-2/topic-5-2-5>
 - **Financial** – funneling business to self, family, friends
 - Demanding or expecting a *quid pro quo*
 - Under the table of “off the books” transactions
 - Favoring people or entities that “scratch your back”
 - **Authority** – *quis custodiet ipsos custodes?*
 - Nepotism <http://handbook.la-archdiocese.org/chapter-5/section-5-2/topic-5-2-11>
 - Relatives supervising relatives
 - Require permission from disinterested authority if the person in charge wants to supervise own family

What would you do to prevent this situation?

- Jack Alexander wasn't terribly surprised he got cleaned out by a nun [at the Fr. Jim Saloon school fundraiser], or at least by that particular nun. A few of the parents, maybe a lot of them, had long suspected Sister Mary Margaret was a gambler, and probably a competent one. . . .
- Mostly, though, there was all the talk about trips to Las Vegas and Lake Tahoe. Sister Mary Margaret supposedly traveled to both with some frequency, usually with her housemate, Sister Lana Chang, who was also the eighth-grade teacher at St. James. If true, perhaps Sister Mary Margaret was simply visiting old friends, considering she used to teach at a school in Las Vegas. But that was more than 20 years ago. And why would Sister Lana go with her?
- "Still, no one much cared. The rumor was that Sister Lana had a rich uncle who paid for everything, so who's to judge what a sister does on her own time and an uncle's dime? If gambling was good enough for a fund-raiser, it was good enough for leisure time. The sisters took vows of poverty and chastity and obedience—why begrudge them a little poker on the side?
- So no one did. Until this past November, when the families of St. James students received a letter from Monsignor Michael Meyers, the pastor of St. James Church, which oversees the school. "It is with much sadness," he wrote, "that I am informing families of St. James School that an internal investigation has revealed that, over a period of years, Sister Mary Margaret Kreuper and Sister Lana Chang have been involved in the personal use of a substantial amount of School funds."



Thank you for your attention

If you have questions, feel free to call or
email

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