

## DECISION 1264

### ***IN RE: A Request from the General Council on Finance and Administration for a Declaratory Decision Regarding the Meaning, Application and Effect of the Use of General Agency Funds to Subsidize the Benefits Premiums for General Agency Employees and their Same-Gender Spouses in Light of ¶ 806.9***

#### DIGEST

The General Council on Finance and Administration has the authority to determine whether or not the use of general agency funds violates the prohibition against using church funds “to promote the acceptance of homosexuality.” (¶ 806.9) By its action on October 21, 2013, in fulfillment of its mandate found in ¶ 807.12, the General Council on Finance and Administration determined that the use of general agency funds to subsidize the premium costs for employees and their same-gendered spouses enrolled in the General Agencies Welfare Benefits Program does not violate ¶ 806.9 of the *2012 Discipline*.

#### STATEMENT OF FACTS

On October 21, 2013, the Board of Directors of the General Council on Finance and Administration (GCFA) adopted a change in its general agency benefits policy. The change stated that employees eligible to participate in the General Agencies Welfare Benefits Program (GAWBP) may now enroll same-gendered partners as “spouses” under GAWBP, provided their relationship is a marriage, civil union, or comprehensive domestic partnership recognized under the civil law of some state. The specific wording of the action taken from the minutes of the October 21, 2013, meeting follows:

The General Agencies Welfare Benefits Program’s definition of “spouse” shall include the following:

- Opposite-sex and same sex-spouses, recognized by a state as being legally married to the employee; and
- Civil partners, either through a civil union or a comprehensive domestic partnership, recognized by a state as being the legal partner of an employee.

At the same meeting, the Board of GCFA took a second action, requesting a declaratory decision from the Judicial Council on “whether general agency payments for the portions of the insurance premiums for same-sex spouses and civil partners of general agency employees violates the *2012 Book of Discipline*”.

The minutes of the November 20-21, 2013, meeting of the GCFA reflect the Council approval of the recommendation of the Committee on Legal Responsibilities and

Corporate Governance to submit the request for a declaratory decision from the Judicial Council.

Under ¶ 807.12 GCFA has responsibility for overseeing and providing the benefits packages for all the staff of the general agencies of The United Methodist Church. They have carried out this responsibility for several decades. In its current form, the benefits package is known as the General Agencies Welfare Benefits Program. It is a comprehensive benefit program including health, disability, life insurance, and other benefits. Paragraph 807.12 requires all general agencies to follow uniform policies and practices in the employment and remuneration of personnel. While general agency employees pay premiums for these benefits, in addition the general agencies contribute to these premiums. Thus, part of the funding for this expense is paid for with United Methodist apportioned funds.

The GCFA submission to the Judicial Council asks the Council “to make a ruling in the nature of a declaratory decision on the meaning, application, and effect of the 2012 Discipline with respect to the use of general agency funds to subsidize the benefit premiums for general agency employees and their same-gender partners.”

Several *amici curiae* submitted briefs on the matter.

### **JURISDICTION**

The Judicial Council has jurisdiction under ¶ 2610 of the *2012 Discipline*.

### **ANALYSIS AND RATIONALE**

Upon consideration of the request by GCFA, the Judicial Council has chosen to respond only to ¶ 806.9 of the *Discipline* through its jurisdiction as prescribed in ¶ 2610.1 of the *Discipline* requesting a declaratory decision as to the meaning, application or effect of any portion of the *Discipline*.

The Judicial Council has previously addressed the use of United Methodist funds in the context of providing benefits to same-gender partners. In Decision 1030, the Judicial Council ruled that:

The annual conference council on finance and administration is charged, under ¶ 612.19 of the *2004 Discipline*, with the responsibility of determining whether United Methodist funds are being used to supply domestic partner benefits under a conference health benefits plan, and, if so, whether such expenditure promotes the acceptance of homosexuality.

In Decision 1075, the Judicial Council stated that:

The Conference Council on Finance and Administration determined that no annual conference funds would be used to supply domestic partner benefits because the cost of the coverage would be paid by the lay employee. Having made the determination that no United Methodist funds would be used to provide domestic partner benefits, the Conference Council's inquiry did not have to go any further. They had discharged their responsibility under the provision. The Conference's Domestic Partners Benefit Plan does not violate ¶ 612.19.

In both of these decisions, the authority to make the decision about the use of funds rested with the Conference Council on Finance and Administration as indicated in ¶ 612.19 (*2004 Discipline*). In the instant case, the analogue to ¶ 612.19 of the *2004 Discipline* is ¶ 806.9 of the *2012 Discipline*. This paragraph states:

It [GCFA] shall be responsible for ensuring that no board, agency, committee, commission, or council shall give United Methodist funds to any gay caucus or group, or otherwise use such funds to promote the acceptance of homosexuality or violate the expressed commitment of The United Methodist Church "not to reject or condemn lesbian and gay members and friends. (¶ 161F) The council shall have the right to stop such expenditures. It shall not limit the Church's ministry in response to the HIV epidemic.

In applying this paragraph, the general agencies of the church are entities created by the General Conference and are not considered to be a gay caucus or group. Thus, the action taken by GCFA does not result in providing any funds to any gay caucus or group.

Further, as in the situation in Decision 1030, the authority for the implementation of ¶ 806.9 rests with the General Council on Finance and Administration. This decision-making authority is further supported in the precedent set by Memorandum 1081 and Decisions 1091 and 1253. Decision 1253 lifts up the clear precedent:

The Judicial Council has repeatedly recognized the responsibility of the annual conference council on finance and administration in applying Church law in this matter. As it now appears in ¶ 613.19, church law is clear. So are the previous decisions of the Judicial Council. Besides the aforementioned Memorandum 1081 and Decision 1091, there is another clear precedent—on a different question—in Decision 1030 regarding domestic partner benefits. Church law places in the hands of the conference council on finance and administration the task of determining a proper implementation of ¶ 613.19.

This request for a decision of law does not raise any new issues. It simply asks again the same question that has been asked—and answered—before.

Translating this precedent to the general church context means that the GCFA itself is charged with determining whether or not contributing to employee benefits constitutes “promoting the acceptance of homosexuality.”

As recorded in the minutes of the Board of GCFA on October 21, 2013, in compliance with ¶ 807.12(b), the Committee on Personnel, Policies and Practices recommended amending the GAWBP to offer an expanded definition of “spouse” to include:

Opposite-sex and same-sex spouses recognized by a state as being legally married to the employee; and

Civil partners, either through a civil union or a comprehensive domestic partnership, recognized by a state as being the legal partner of an employee.

The GCFA Board as required by ¶ 807.12 approved this action. By taking this action, the GCFA claimed their authority granted by ¶ 806.9 to determine that the use of general agency funds to subsidize the premium costs for employees and their same-gender “spouses” enrolled in the GAWBP does not violate ¶ 806.9 of the *2012 Discipline*.

### **DECISION**

The General Council on Finance and Administration has the authority to determine whether or not the use of general agency funds violates the prohibition against using church funds “to promote the acceptance of homosexuality.” (¶ 806.9) By its action on October 21, 2013, in fulfillment of its mandate found in ¶ 807.12, the General Council on Finance and Administration determined that the use of general agency funds to subsidize the premium costs for employees and their same-gendered spouses enrolled in the General Agencies Welfare Benefits Program does not violate ¶ 806.9 of the *2012 Discipline*.

Ruben Reyes was absent.

Beth Capen was absent.

Sandra Lutz, first lay alternate, participated in this decision.

Randall Miller, third lay alternate, participated in this decision.

William B. Lawrence, President

F. Belton Joyner, Jr., Secretary

April 26, 2014

### CONCURRING OPINION

We concur with the decision of the Judicial Council.

It is instructive to note that the Social Principles the *Discipline* articulate human rights and values that relate to providing equitable benefits to employees. In ¶ 162J the following is stated:

Certain basic human rights and civil liberties are due all persons. We are committed to supporting those rights and liberties for all persons, regardless of sexual orientation. We see a clear issue of simple justice in protecting the rightful claims when people have shared material resources, pensions, guardian relationships, mutual powers of attorney, and other such lawful claims typically attendant to contractual relationship that involved shared contributions, responsibilities, and liabilities, and equal protection before the law.

Further, in ¶ 162V, the Social Principles speak about the right to health care, saying in part:

Health is a condition of physical, mental, social, and spiritual well-being. John 10:10b says, “I came so that they could have life – indeed, so that they could live life to the fullest.” Stewardship of health is the responsibility of each person to whom health has been entrusted. Creating the personal, environmental, and social conditions in which health can thrive is a joint responsibility – public and private ... Healthcare is a basic human right. Providing the care needed to maintain health, prevent disease, and restore health after injury or illness is a responsibility each person owes others and government owes to all, a responsibility that government ignores at its peril.

By making these statements, the church acknowledges that it has a role in creating conditions that promote the health of agency staff. The applicability of the GAWBP benefits to legal partners/spouses is a critical component of creating a healthy working environment. Claiming health care as a basic human right encourages the Church to provide comprehensive benefits to all under its employ and by extension offering it to their legally recognized partners.

In Resolution 3201, “Health Care for All in the United States,” of the *2012 Book of Resolutions*, it is stated in part:

1. *Access for All*. In a just society, all people are entitled to basic maintenance and health-care services. We reject as contrary to

our understanding of the gospel, the notion of differing standards of health care for various segments of the population.

Taken together, these citings from the Social Principles and the *Book of Resolutions* form the moral and ethical framework for the action taken by the GCFA in amending the GAWBP to redefine the understanding of “spouse”/ partner benefits. It is a matter of simple justice to protect basic rights of all people, regardless of sexual orientation. (¶ 162J) This is not the same as “promoting the acceptance of homosexuality.”

Thus, in ¶ 807.12, it is acknowledged that these statements apply to general agency staff in the same way they do for any person. The amended policy follows the consistency required in ¶ 807.12(a): “(These policies and practices **shall** (emphasis added) be consistent with the Social Principles and the resolutions of The United Methodist Church.)”

Katherine Austin Mahle

Sandra Lutz

Angela Brown

Randall Miller

April 26, 2014

### CONCURRING OPINION

Although we agree with the decision related to the request of the General Council on Finance and Administration for a declaratory decision, we feel that the Judicial Council has failed to address fully the questions raised in the General Council on Finance and Administration documented request.

We understand that request to be:

Therefore, GCFA requests the Judicial Council for a declaratory decision that:

- (1) The use of general agency funds to subsidize the premium costs for employees and their same-gender spouses enrolled in the GAWBP (General Agencies Welfare

Benefits Program) does not violate ¶ 806.9 of the *2012 Discipline*, or in the alternative, that GCFA's determination that such premium subsidies do not violate ¶ 806.9 of the *2012 Discipline* is dispositive of this issue, and

(2) The use of general agency funds to subsidize the premium costs for employees and their same-gender spouses enrolled in the GAWBP does not violate any other provision of the *2012 Discipline*.

The Recording Secretary of the General Council on Finance and Administration certified that the Board of Directors "approved the foregoing request to the Judicial Council for a declaratory decision." The request is not in the form of a series of questions, but we understand that the statement represents the inquiry of the General Council on Finance and Administration.

There are three requests for Judicial Council deliberation: (1) Does the use of general agency funds for premiums for same-gender spouses of employees violate ¶ 806.9? (2) If the General Council on Finance and Administration determines that the policy does not violate ¶ 806.9, is that decision "dispositive of this issue"? (3) Does the policy violate any other portions of the *2012 Discipline*?

(1) The Judicial Council Decision 1264 indicates that the General Council on Finance and Administration has the authority to answer the first question. We agree. (2) Although this determination sets a precedent for future deliberations, it does not assure that the policy might not be questioned again or that disciplinary provisions might be changed. (3) The third question is overly broad and does not identify specific paragraphs of the Constitution or the *Book of Discipline* that might have been violated.

F. Belton Joyner, Jr.

Dennis Blackwell

N. Oswald Tweh, Jr.

April 26, 2014