

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1329

IN RE: Review of a Bishop's Decision of Law in the Northern Illinois Annual Conference concerning (a) if the Conference Board of Ordained Ministry is required to ascertain whether a candidate meets the qualifications for candidacy and ordained ministry, including whether or not she or he is exhibiting "fidelity in marriage and celibacy in singleness" or is a "self-avowed practicing homosexual," and (b) if the Conference Board of Ordained Ministry can legally recommend to the clergy session a candidate whom they believe to be in violation of the fidelity, celibacy, or definition of marriage standard.

DIGEST

A motion defeated by vote of the clergy executive session does not render a subsequent request for Decision of Law improper for ruling by a bishop. The bishop's decision is reversed. The matter is remanded to the bishop for ruling and report to be made by December 31, 2016. The Judicial Council retains jurisdiction.

STATEMENT OF FACTS

The Board of Ordained Ministry of the Northern Illinois Annual Conference adopted on May 23, 2016 a policy stating:

We publicly affirm that lesbian, gay, bisexual, transgender, queer, questioning, intersex, and straight candidates will be given equal consideration and protection in the candidacy process. Sexual orientation and gender identity are not and will not be considered in the evaluation of candidates by the Board of Ordained Ministry of the Northern Illinois Conference.

The BOOM policy was posted on the Conference website under the heading "Open Letter to The United Methodist Church" on May 23, 2016.

During the clergy executive session, on June 5, 2016, a clergy member of the Northern Illinois Annual Conference made the following motion, titled "Concerning Northern Illinois Conference Board of Ordained Ministry's 'Open Letter to the United Methodist Church'":

We direct the Northern Illinois Annual Conference Board of Ordained Ministry, as a body amenable to the annual conference, for the sake of the unity of the church and the integrity of our shared covenant as United Methodists, to maintain the minimum standard for licensed or ordained

ministry of “fidelity in marriage and celibacy in singleness,” with marriage as defined by The United Methodist Church, “the union of one man and one woman” (*Discipline*, ¶¶ 161B, 304.3, 330.5(c)3, 335(c)3).

We further direct the Northern Illinois Annual Conference Board of Ordained Ministry to ascertain in their interviews with candidates that such candidates meet this minimum standard, as set forth by our *Book of Discipline*.

There was a vote, and the motion was defeated. Subsequently, the same clergy member made a request for a Decision of Law that reads as follows:

- a) Is the Conference Board of Ordained Ministry required to ascertain whether a candidate meets the qualifications for candidacy and ordained ministry, including whether or not she or he is exhibiting “fidelity in marriage and celibacy in singleness” or is a self-avowed practicing homosexual?
- b) Can the Conference Board of Ordained Ministry legally recommend to the clergy session a candidate whom they believe to be in violation of the fidelity, celibacy, or definition of marriage standard?

Within thirty days, Bishop Sally Dyck, on July 5, 2016, issued her Decision of Law:

While it is proper to request a Decision of Law at a clergy session, this request for a Decision of Law is moot and hypothetical and therefore improper for me as the presiding bishop of the Northern Illinois Annual Conference to rule on for the following reasons:

- 1) There was no action taken because the motion to direct the Board of Ordained Ministry (BOOM) was defeated. “Requests for rulings by a Bishop in an Annual Conference...should be based upon some action taken or proposed to be taken, wherein under the specific facts in each case some doubt may have arisen as to the legality of the action taken or proposed (JCD 33).” Had the motion passed, BOOM could have been requested to add requirements to its examination of candidates, as was suggested in the failed motion, but that action wasn’t taken due to the defeat of the motion.
- 2) JCD #396 states that once legislation is defeated, it becomes a hypothetical question because no action has occurred to warrant a Question of Law. While the original motion made by Rev. Field was under discussion in the clergy session (although the BOOM’s recent and public statement on consideration of all candidates regardless of sexual identity was *not* discussed nor mentioned prior to his motion), it was defeated.

- 3) The request is moot and hypothetical because the two-part request is really asking for a Declaratory Decision:
- Is the Conference Board of Ordained Ministry required to ascertain whether a candidate meets the qualifications for candidacy and ordained ministry, including whether or not she or he is exhibiting ‘fidelity in marriage and celibacy in singleness’ or is a self-avowed practicing homosexual?
 - Can the Conference Board of Ordained Ministry legally recommend to the clergy session a candidate whom they believe to be in violation of the fidelity, celibacy, or definition of marriage standard?
 -

No one knows for sure if the BOOM has recommended candidates for commissioning or ordination who have a sexual identity, behavior, history or belief in violation of the stated disciplinary paragraphs. Therefore, these questions are hypothetical because “there is no legal question involved, since no action is cited in which it is alleged the law has been violated (JCD #33).”

Rev. Field’s request was for a Decision of Law, not a Declaratory Decision, so it was not handled as a request for a Declaratory Decision. A request for a Declaratory Decision requires two-thirds recommendation of the annual conference/clergy session and therefore it is not in the Judicial Council’s jurisdiction nor mine to rule on it.

Therefore, since a Question of Law is an attempt to appeal an action, and since there was no action under consideration due to a *failed* motion, since there was no proof, evidence, or experience to suggest that there has been illegal action, and since it is in actuality a request for a Declaratory Decision, it is moot and hypothetical and improper for me to give a ruling.

JURISDICTION

The Judicial Council has jurisdiction pursuant to ¶¶ 51 and 56.3 of the Constitution and ¶ 2609.6 of *The Book of Discipline 2012* [hereinafter *The Discipline*] as modified by Judicial Council Decision [hereinafter JCD] 1244.

ANALYSIS AND RATIONALE

This matter raises the issue of when a request for ruling of law is properly before a bishop. In JCD 33, the Judicial Council ruled that “[m]oot and hypothetical questions shall not be decided.” Without providing specifics, it applied this principle to rulings of law by bishops. In JCD 799, the Judicial Council established specific criteria for determining when a Question of Law is proper in the “Guidelines for Bishop’s Rulings on Questions of Law”:

1. Only a member of the Annual Conference shall be eligible to present in writing a request for ruling on a question of law in the regular business of a session.
2. Questions of law shall be germane to the regular business, consideration, or discussion of the Annual Conference and shall state the connection to a specific action taken, or the question must be raised during the deliberation of a specific issue of a matter upon which the conference takes action.
3. Question of law shall be entered in the Annual Conference journal record as an exact statement of the questions and the ruling of the bishop by the secretary of the Annual Conference and properly submitted to the Judicial Council (§ 2613).
4. Failure of the proper action of the conference secretary, in and of itself, does not negate the responsibility of the bishop to rule and the Judicial Council to review the ruling.
5. The bishop shall rule on all questions presented as questions of law under § 2613, which shall be submitted by a member of the Annual Conference in writing in the regular business of a session.
6. When the bishop determines that the question presented is not a properly presented "question of law", the bishop shall state the rationale in the ruling without further substantive commentary. [emphases added]

While guidelines 1, 3 to 6 concern questions of *who* and *how*, number 2 deals with the *what* and *when*, namely the proper content and time of a request. According to guideline number 2, we must determine if a Question of Law is (a) "germane to the regular business, consideration, or discussion of the Annual Conference" and (b) "state[s] the connection to a specific action taken," or (c) is "raised during the deliberation of a specific issue of a matter upon which the conference takes action."

A. GERMANE TO DISCUSSION

An issue is germane if it is "relevant, pertinent, (to a matter or subject)" (*The New Shorter Oxford English Dictionary*, Clarendon Press: Oxford, 1993, p. 1081). To be relevant or pertinent, the Question of Law "must relate to actual situations and must set forth the circumstances or acts upon which a specific ruling may be rendered" (JCD 799), thus exhibiting a substantive connection to the agenda or prior discussion of the Annual Conference in addition to the procedural requisites of being raised, submitted in writing, and recorded "in the regular business of a session" (§ 2609.6). It is important to stress this substantive requirement in light of our ruling in JCD 1244 giving virtually every clergy and lay member of the Annual Conference standing to make a request for Decision of Law. This is to prevent frivolous or purely academic requests that lack any relevancy and can be onerous on a bishop's scarce time.

Made in direct response to the "Open Letter" and BOOM policy, the motion sought to direct the Conference Board of Ordained Ministry "to maintain the minimum standard for licensed or ordained ministry" and "to ascertain in their interviews with candidates that such candidates meet this minimum standard, as set forth by our Book of Discipline." The request followed the vote immediately and is basically a restatement of the defeated

motion in the form of a Question of Law. Like the motion, the request inquires as to whether the Board of Ordained Ministry is legally required to maintain specific standards for candidates but goes further by adding the expression “self-avowed practicing homosexual” to the language of the first query. This verbal addition makes it clear that the Question of Law, though not textually identical, is germane to the motion and the underlying issues of sexual orientation and gender identity raised in the BOOM policy.

B. CONNECTED TO SPECIFIC ACTION TAKEN

In addition to being germane to the discussion, the Question of Law must also have a connection to a specific action taken by the Annual Conference. In the present circumstance, the specific action taken is the vote on the motion by the clergy executive session on June 5, 2016. Paragraph 605.7 states: “The actions of the clergy session shall be for and on behalf of the annual conference.” To qualify as “action” under this provision the vote need not result in the adoption of the motion. Even a vote rejecting the motion constitutes “action” attributable to the annual conference within the meaning of ¶ 605.7. An action to take no action is action nonetheless. It is obvious that the clergy member raised the Question of Law precisely because his motion did not pass. This is sufficient evidence of its connection to the specific action taken by the Annual Conference, namely the vote of the clergy executive session.

In declaring the Question of Law to be moot and hypothetical, Bishop Dyck reasoned that “[t]here was no action taken because the motion to direct the Board of Ordained Ministry (BOOM) was defeated” (Decision of Law, *supra*). Citing JCD 396 in support of this position, she wrote, “JCD #396 states that once legislation is defeated, it becomes a hypothetical question because no action has occurred to warrant a Question of Law” (*Id.*). We disagree with the bishop’s line of argument and reading of this decision. In JCD 396, the Judicial Council declined jurisdiction because the record showed that the legislation to be reviewed “had already been deleted by action of the Annual Conference” (JCD 396, emphasis added). What made the legislation moot and hypothetical and, therefore, improper for judicial review was the fact that the annual conference had taken action to repeal it prior to referral to the Judicial Council. The facts are different in the instant case. There is nothing in the record showing that the BOOM policy, the “Open Letter” or the entry of the motion had been repealed or deleted by annual conference action. A deletion might have occurred if the clergy member had withdrawn his motion prior to the vote. The record, however, indicates that the motion was voted on and defeated, not deleted. By definition, deletion is not the same as rejection of a motion. Consequently, JCD 396 must be distinguished from the present circumstance and cannot serve as authority to sustain the argument that a defeated motion renders a subsequent Question of Law moot and hypothetical.

Furthermore, the bishop’s assertion that the Question of Law is in actuality a Petition for Declaratory Decision “since there was no action under consideration due to a failed motion,” is incorrect (Decision of Law, *supra*). The main difference between Question of Law (¶ 2609.6) and Petition for Declaratory Decision (¶ 2610.1) is that the latter concerns the constitutionality, meaning, application, or effect of *The Discipline* or of any act or legislation of a General Conference and “is limited to situations where the act

under scrutiny relates to or affects such Annual Conference or Jurisdiction or ‘the work therein,’” not that it lacks action for consideration (JCD 301, quoting ¶ 1715 of *The Book of Discipline 1968*). See JCD 452 and 1114.

C. RAISED DURING DELIBERATION

Alternatively, the Question of Law must be raised during the deliberation of a specific issue of a matter upon which the conference takes action. The minutes of the clergy session clearly indicate that, after his motion had been defeated, the clergy member “requested the floor again and was recognized by the Bishop.” He then “requested a decision of law” (Daily Proceedings, Clergy Session, June 5, 2016). This happened within the same session. From the record it is manifest that the Question of Law was raised at the time the clergy session deliberated whether to mandate the Conference Board of Ordained Ministry to ascertain that candidates for ministry meet specific requirements of *The Discipline*. There is not only a substantive but also timely connection between the defeated motion and the request for ruling of law. It was immaterial to the timeliness of the request that the body voted against such a mandate.

Contrary to the bishop’s finding, we conclude that the Question of Law is germane to the discussion, raised during the deliberation of a specific issue of a matter, connected to a specific action taken by the Annual Conference, and, therefore, proper for a ruling by the bishop.

DECISION

A motion defeated by vote of the clergy executive session does not render a subsequent request for Decision of Law improper for ruling by a bishop. The bishop’s decision is reversed. The matter is remanded to the bishop for ruling and report to be made by December 31, 2016. The Judicial Council retains jurisdiction.