

THE PERMANENT JUDICIAL COMMISSION
of
THE SYNOD OF SOUTHERN CALIFORNIA AND HAWAII
THE PRESBYTERIAN CHURCH (U.S.A.)

DECISION & ORDER

STEPHEN LOCKE,)	
RUDOLPH J. KOSITS, RUTH)	Case Number: 2016-R-3
MACINNES SWEET,)	
Complainants)	Decision of the Permanent Judicial
)	Commission of the Synod of Southern
V.)	California and Hawaii after Trial
)	
PRESBYTERY OF SAN DIEGO,)	
Respondent)	

This is a remedial case which has come before this Permanent Judicial Commission as a result of a complaint filed by the above named complainants against the Presbytery of San Diego, respondent. It is a complaint against the Presbytery of San Diego for six alleged irregularities associated with a vote of the Presbytery on April 12, 2016, to transfer Trinity Presbyterian Church of Spring Valley to ECO The Covenant Order of Evangelical Presbyterians.

On April 28, 2015, the officers of the Permanent Judicial Commission found that the Commission has jurisdiction, that the complainant has standing to complain, that the complaint was properly and timely filed, and that the complaint states a claim upon which relief can be granted. The necessary members of the Commission also granted complainant's request for a stay of enforcement. The Permanent Judicial Commission met on August 12, 2016 at the Northminster Presbyterian Church in Diamond Bar, California, for a pre-trial conference in accordance with D-6.0310.

The remedial case proceeded to trial on December 2, 2016, at First Presbyterian Church, Orange, California. A quorum of the Permanent Judicial Commission was present, moderator teaching elder Michael D. Haggin, presiding. Complainants Stephen Locke, Ruth MacInnes Sweet, and Rudolph J. Kosits, were present. Respondent was represented by Committee of Counsel members Chris Lenocker, Whitney M. Skala, Esq., and the honorable R. Curtis McKee, Esq. Witnesses were heard, documents were accepted into evidence, and both parties made closing arguments. After deliberation, the Commission reached these findings:

FINDINGS

SPECIFICATION OF COMPLAINT #1: "The action [i.e., the Presbytery's vote to transfer] is the result of a process that as implemented fails to adequately consider the interests of the Presbytery of San Diego and the PC(USA) in continued ministry in the geographical area encompassed by the Presbytery of San Diego"

This specification of irregularity is sustained by a vote of 6 for and 0 against.

The interests of the Presbytery of San Diego and the PC(USA) include the possibilities of continuing divine worship or other ministry in the real property at Trinity Presbyterian Church, but they also include the possibility of transferring the ‘value’ stored in the real property to another ministry that might be more responsive to the needs of the Presbytery’s area. The Task Force that prepared the transfer recommendation for the Presbytery offered opinions about the usefulness of the real property as an active church, but its inquiry appears to have been perfunctory and does not appear to have engaged any of the standing committees of the Presbytery structure charged with forwarding either worship or community service ministries. No consideration seems to have been given to the possibility of transferring the value in the Property to another more promising work.

SPECIFICATION OF COMPLAINT #2: “That the action is irregular because of an inadequate process by the Task Force which did not apply due diligence in taking into consideration the fiduciary need and the interest of the Presbytery of San Diego and the PC(USA). ... In determining the monetary amount agreed upon the Task Force failed to do due diligence in determining the value of the property in agreement with the trust clause.”

This specification of irregularity is sustained by a vote of 6 for and 0 against.

The evidence at trial showed that the Task Force took a serious interest in comparisons with other congregational transfers across the country, but the inquiry into the value of the Trinity Presbyterian Church property was casual. Several estimates were collected from relevant sources, but the Presbytery and its Task Force did not get a professional appraisal. In setting a payment amount, the principal concern seemed to have been selecting a sum that would be convenient for the congregation, requiring (for example) no indebtedness or appeals to the congregation.

SPECIFICATION OF COMPLAINT #3: “The action also failed to consider the fiduciary responsibility of the Presbytery of San Diego in its intent and ability to continue ministry in that encompassed area of the Presbytery of San Diego.”

This specification of irregularity is sustained by a vote of 6 for and 0 against.

See rationales on #1 and #2, above.

SPECIFICATION OF COMPLAINT #4: “The action was based on an incomplete and inadequate Gracious Dismissal Policy of the Presbytery of San Diego (GDP) which does NOT state the responsibility for the Presbytery of San Diego’s fiduciary responsibility under the trust clause, nor the church’s fiduciary responsibility to the Presbytery on behalf of the PC(USA), but only asks the complaining church how its dismissal would ‘affect the mission and ministry of the congregation and of the Presbytery.’ This is not responsible, nor is it adequate to fulfill the duty of the Presbytery under the fiduciary responsibility of the trust clause (G-4.0203) nor the Great Ends of the Church.”

This specification of irregularity is sustained by a vote of 6 for and 0 against.

At trial, Respondent’s witnesses claimed that a presbytery Gracious Dismissal Policy (GDP) need not speak to any issue adequately addressed by the Book of Order. Since the trust clause is clear in the Form of Government, it is not addressed in the GDP. This is not a sufficient or responsible position. As has become manifest in the Tom and McGee cases, presbyteries across the country

have paid little heed to the provisions of the Book of Order in their attempts to effect 'gracious dismissals.' This is why the decisions in the Tom and McGee cases were necessary. Neither GA PJC decision directly stopped a congregation from transferring. Each was written to bring certain widely-disregarded provisions of the Book of Order to the fore. Respondent Presbytery had reason to assume that church and session members caught up in the struggle to leave the PC(USA) would rely on the Presbytery GDP as a roadmap to departure. It is not sufficient to excuse the GDP's silences by saying that they are covered by the Book of Order, properly used.

SPECIFICATION OF COMPLAINT #5: "The action was irregular based on an inadequate GDP of Presbytery of San Diego which fails to provide for a minority congregation of a church schism to retain its property or to allow the presbytery to even look at this scenario."

This specification of irregularity is sustained by a vote of 6 for and 0 against.

This allegation of irregularity is almost indistinguishable from an allegation of irregularity in the case of Presbytery of New York City, Appellant/Respondent, v. Mildred McGee, *et alia*, Appellees/Complainants (GA PJC remedial case 221-08, 2014). In that case, the GA PJC found that presbytery GDP to be wholly inadequate and unconstitutional, detailing::

The PNYC GDP ignores the constitutional requirement under G-4.0207 to "determine if one of the factions is entitled to the property because it is identified by the presbytery as the true church within the Presbyterian Church (U.S.A.)." The [inadequate] GDP process is initiated when the PNYC receives a written notice from the session. At that point, the PNYC automatically surrenders its constitutional obligation to determine whether a loyal faction exists and is entitled to the property. Under the [inadequate] GDP provisions, there is no attempt to identify the true church within the PC(U.S.A.).

It is clear what a presbytery must do when confronted with a property issue. Under G-4.0207, a presbytery is obligated to serve the interests and guard the rights of the "true church within the Presbyterian Church (U.S.A.)," regardless of who is in the majority of any session or congregational vote. The presbytery shall determine if one of the factions is entitled to the property because it is the "true church within the Presbyterian Church (U.S.A.)," majority notwithstanding. Any negotiation and decision about the disposition of the property must consider this interest of the true church. The GDP failed to comply with G-4.0207.

The inquiry required is not an easy one and cannot be done in the perfunctory manner used by the Task Force. Members of congregations can be expected to be very reluctant to identify themselves as differing from their pastors and their session members when their denominational councils and staffs –especially distant ones – are criticized, even vilified. In this respect, the natural bias of church-goers to seek harmony, rather than conflict, makes it challenging for a presbytery to sift the comparatively-satisfied worshipers from the promoters of dissent and dissatisfaction. The inherent difficulty of this task does not excuse the subject Task Force from declining to do it at all.

SPECIFICATION OF COMPLAINT #6: "The Presbytery of San Diego failed to allow the members of presbytery to engage in discerning a proper dismissal by prohibiting amendments to the motion to dismiss under the agreed terms."

This specification of irregularity is sustained by a vote of 6 for and 0 against.

At the time of the Presbytery vote on April 12, 2016, the presbyters were told that the consideration of the Task Force recommendation would be governed by a ‘rule,’ previously formulated, that would not permit any motions to amend. Respondent claimed at trial that the right of a presbytery meeting to exercise powers equal to that of previous and subsequent meetings was not fatally compromised: the presbyters on April 12, 2016, should have known that by voting down the un-amendable motion, they would have freed themselves to propose a new –effectively, substitute – motion. This is not satisfactory. It is the duty of the officers of a presbytery to organize its business to enable the presbyters to make the decisions they want, not in ways that confuse and ‘trap’ the presbyters into choosing between undesirable options.

Accordingly, this Commission would have respected the Presbytery’s right to make a ‘rule’ to govern the action on the Task Force recommendation if the ‘rule’ had been made at the same meeting by the same presbyters whose choices would have been constrained by it. Otherwise, the previous action of a Presbytery meeting or an executive committee or a Task Force cannot be permitted to forbid a subsequent Presbytery meeting from acting within its normal powers.

FURTHER RATIONALE AND CONCLUSIONS

In the course of addressing each specification of irregularity, the Commission identified some specific instances of deficiency in the Gracious Dismissal Policy of the Presbytery of San Diego. At the same time, the Commission recognized two broad ways in which the GDP is unconstitutional which were not central claims of the specifications of complaint.

First: The Gracious Dismissal Policy, although purporting to be a guide to constitutional action for the Presbytery, is founded on an idea of polity and ecclesiology that is fundamentally congregational or ‘free church’ and not at all Presbyterian. In the words of the Policy, “The congregations of the Presbytery of San Diego have covenanted together to live out the Faith, and to be a relational community Into this covenant each of the congregations have willingly come.” After that beginning, the Policy proceeds to explain the steps by which sessions and “Congregations who want to reexamine their membership in the covenant of the Presbytery of San Diego” move toward withdrawal from the ‘relational community into which they have willingly come.’ The required steps aim to ensure that the congregation and the session are acting with deliberation over time, rather than intemperately and hastily, and that they afford opportunities for people with different opinions to make their cases *to the congregation*. In the penultimate step, the congregation makes the decision for or against withdrawal from the covenant by a super-majority vote which then goes to the Presbytery for ratification. The process is shaped to prepare a case for the sincerity and intensity of the congregation’s desire (or need) to leave the PC(USA). The Policy does admit of the possibility that the Presbytery might vote against ratification/transfer, but the whole process of discernment with regard to the character of the congregation’s life, leadership, and culture and with regard to the congregation’s place in the mission, ministry, and witness of the Presbytery is conducted by a small set of people (in this case, five) whose meetings and explorations with the congregation and with its representatives occur in isolation from the more-broadly participatory councils and committees dealing with the Presbytery’s ‘real’ work.

In contrast, in Presbyterian polity each congregation is a local and temporal expression of the Church Universal that is simultaneously contextually relevant and spiritually united with the whole, as an organ of a physical body. As an instance of the whole Body of Christ in a particular time and

place, a PC(USA) congregation is neither self-constituted nor self-sufficient. As an organ of Christ's body, it does not withdraw itself or change its allegiance. It is called into being by an action of a presbytery. If necessary, it is dissolved by an action of a presbytery. The sole provision in the Book of Order authorizing its transfer to the jurisdiction of another Reformed council identifies that as an action of a presbytery taken "in consultation with its members." (G-3.0301a) The form of that consultation is not spelled out in the Form of Government, but (a) it is mentioned in connection with other presbytery actions traditionally done through or by a Committee on Ministry and (b) the list of Business proper to Congregational Meetings (G-1.0503) says nothing about voting to secede from the PC(USA).

Even in the process of 'discernment' and witness to conscience, the Policy betrays its congregational foundation. A conscience belongs to a person. Poetically we could personify a group of people by speaking of its 'conscience.' In Presbyterianism, the Church is the Body of Christ. Its conscience is a corporate property, well-discussed in chapter 2 of the Foundations of Presbyterian Polity. Ordained officers of the church, in the exercise of their offices, submit their private opinions to formation and education by the community (G-2.0105). Individuals, as persons, can have distinguishable consciences, and the Book of Order recognizes and protects the right of each person to hold and act upon his or her own conscience, even to the point of withdrawing peaceably from membership (F-1.0301). In assuming that a congregation has a theology or a conscience that is distinguishable from that of the Whole Church, however, the GDP breathes a spirit of congregationalism.

Second: The Policy assumes that the ordained officers of the Presbytery and its congregations will walk away from their responsibilities as 'trustees' and act as owners instead. The property of the Church has arisen largely through gifts of its adherents. The law is clear, once you give money away, it is not yours anymore. If you make a conditional gift – retaining the right to take it back in some future circumstances, you cannot take a tax deduction for it. So the property of the Church belongs to the Church and not to any one or set of us. Session members are trustees, pledged to exercise care to preserve and use the property for the benefit of the PC(USA) and its purposes. Those session members can become unhappy and leave the PC(USA), but even in concert they have no right to take the property of the PC(USA) with them when they go. And the members of the Presbytery have a responsibility to preserve the assets of the congregations for the benefit of the PC(USA) and its purposes. This is not especially restrictive. Through the passage of time, a particular building of a certain size and location may cease to be suitable for the direct uses for which it had been built, but it is still a store of value that can make a new mission or ministry possible. The Presbytery of San Diego has declared an intention to bring new worshiping communities into existence in its jurisdiction. In the face of the manifest need for capital for this purpose, the decision to alienate the property of Trinity Presbyterian Church for \$75,000 cannot be justified – except by assigning unjustified ownership rights to the people who want to leave the PC(USA).

Further, the "Trust Clause reflects our understanding of the church as a communion of saints across time, with responsibilities both to those who came before and those who will follow. When a congregation seeks to leave the PC(USA), it is breaking what is often a significant historic relationship; it is also departing from a fellowship in which its officers have participated, by whose polity they have pledged to be governed, and with which many members may feel bonds of affection." (GA PJC decision Wilber Tom, *et al.*, v. Presbytery of San Francisco, remedial case 221-03) Accordingly, the monetary gifts received by congregations are not regarded as given for

the benefit of a single congregation only but are held in trust for this generation and for future generations. The GDP in question, however, accords each particular fellowship in one local time and place and each set of session members at a single point in time a right to lift the life and mission of a church out of one channel and re-direct it to another as if all the work, commitment, and generosity of past Christian disciples were intended for the benefit of this one set of people alone. This is inconsistent with the Reformed tradition's ecclesiology, and it is inconsistent with civil society's notions of trustee responsibility.

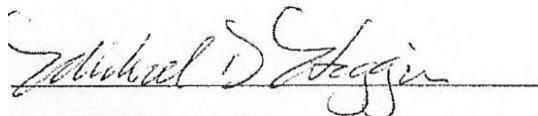
ORDER

The Permanent Judicial Commission of the Synod of Southern California and Hawaii sustains each and all of the alleged irregularities. Accordingly, the action of the Presbytery of San Diego on April 12, 2016, transferring Trinity Presbyterian Church of Spring Valley to ECO The Covenant Order of Evangelical Presbyterians is set aside and of no effect. The stay of enforcement is hereby vacated.

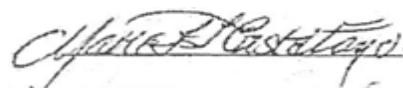
In addition, the Commission advises the Presbytery of San Diego that its Gracious Dismissal Policy, as used in its preparation for the action of April 12, 2016, is inconsistent with requirements of the PC(USA) *Book of Order* and should not be used as a guide for its response to any other particular church seeking to transfer to another denomination.

Ms. Geraldine Tayler took no part in the proceedings in accordance with D-5.0205. Rev. Mickie Choi and Rev. Shelby Larsen were not present and took no part in the proceedings. Mr. Izar Martinez and Mr. Peter Lee were present for and participated in the trial hearing, but they were called away by personal obligations which prevented their participation in the Commission's deliberations and in the determination of the decision.

Dated this 2nd day of December, 2016.



Rev Michael Douglas Haggin
Moderator, Permanent Judicial Commission



Marie Castellano
Clerk *pro tempore*, Permanent Judicial Commission