

THE PERMANENT JUDICIAL COMMISSION
Of
THE SYNOD OF SOUTHERN CALIFORNIA AND HAWAII
THE PRESBYTERIAN CHURCH (U.S.A.)
DECISION & ORDER

MICHAEL REGELE, STEVEN MARSH,)

R. WINSTON PRESNALL,)
LISSA SMITH, MICHAEL VAUGHN,)
KIRK WINSLOW, HOWARD PROL,)
PENELOPE PROL, FRANCES BUCKLIN))
Complainants)

Case Number: 2016-R-2
Decision of the Permanent Judicial
Commission of the Synod of Southern
California and Hawaii after Trial

V.)

PRESBYTERY OF LOS RANCHOS,)
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 Los Ranchos, respondent. It is a complaint against the Presbytery of Los Ranchos for four alleged irregularities associated with a vote of the Presbytery on March 12, 2016, to transfer La Habra Hills Presbyterian Church of La Habra, California to A Covenant Order of Evangelical Presbyterians (ECO) Presbytery of Southern California according to the terms presented in the Joint Solution pending acceptance by the congregation and the session. The initial complaint was received on April 10, 2016.

On April 18, 2016, the officers of the Permanent Judicial Commission found that the Complainants have standing to complain, that the complaint was properly and timely filed, and that the complaint states a claim upon which relief can be granted. On April 22, 2016, the necessary members of the Commission also granted a stay of enforcement.

Complainants filed an amended Complaint on May 13, 2016, alleging that the Presbytery of Los Ranchos failed to take into consideration that, at the time of the action, neither the Presbytery nor the congregation held title to the real property or improvements, and thus had no authority to grant dismissal with the property.

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.

Vice Moderator Shelby Larsen presided. Present for the Commission were: Shelby Larsen, Vice Moderator; Izar Martinez, Clerk; Mickie Choi; Larry Lindsay; and Gerry Tayler. A quorum of the full PJC was not constituted.

The parties present were Michael Regele, Steven Marsh, Lissa Smith, Kirk Winslow, Complainants, and Bruce Grubaugh, attorney, counsel for the Complainants.

Present for the Respondents was the Committee of Counsel, Merlin Eelkema, Marilyn Moore, John Holcomb and Forrest Claassen, Stated Clerk of Los Ranchos Presbytery.

With the consent of the participants, the parties stated their positions, in order to discover in this pre-trial proceeding if any grounds for settlement existed or if an action could be recommended, pending acceptance and approval by a quorum of the Permanent Judicial Commission.

In the presentations and questioning, neither party added any argument or claim of fact that did not appear in their filings.

The initial Complaint, received on April 10, 2016, did not include the fact that the property in question was titled to the Synod of Southern California and Hawaii.

At the pre-trial conference both parties claimed that they knew, at the time of the Presbytery action of March 12, 2016, that title to the real property and improvements lay in the Synod of Southern California and Hawaii.

Complainants, in their Amended Complaint, alleged that the Presbytery of Los Ranchos failed to take into consideration the fact that at the time of the action it did not hold title to the property or improvements, and thus had no authority to grant dismissal with property. The Respondent's Answer, dated May 25, 2016, in Section III (5) denies that it has failed to take into consideration the fact that at the time of the action it did not hold title to the La Habra Presbyterian Church property, and denies that it has no authority to grant dismissal with property.

The Synod of Southern California and Hawaii is not a party to this action, and its interests and fiduciary duty to the PC(USA) have therefore not been considered.

Respondents, citing D-4.0102, claim that the Permanent Judicial Commission of Southern California and Hawaii has a conflict of interest, and that this is a case for which "it is desirable or necessary that a higher council decide this case."

The members of the Permanent Judicial Commission of Southern California and Hawaii present at this pre-trial conference agreed.

Therefore, at the pre-trial conference of August 12, 2016, the Commission members informed the parties that they would recommend to the full Commission that the Commission issue a Request for Reference (D-4.0100) to the GAPJC in regards to Regele v. Presbytery of Los Ranchos, Case 2016-R-2.

The Permanent Judicial Commission of Southern California and Hawaii met by telephone conference on Friday, August 26, 2016.

Present were Vice-Moderator Shelby Larsen, Clerk Izar Martinez, members Mickie Choi, Marie Castellano, Peter Lee, and Larry Lindsay.

Also present was Doska Ross, Stated Clerk for the Synod of Southern California and Hawaii. A quorum was declared. A motion to refer the case to the GAPJC was made, and passed unanimously.

On October 5 2016, the Permanent Judicial Commission of the Synod of Southern California and Hawaii was notified that the GAPJC had, in meeting by telephone conference call on October 3, 2016, voted not to accept the reference of case.

A trial date was set for March 23, 2017 at 10:00 a.m. On that date, the Synod of Southern California and Hawaii Permanent Judicial Commission met in order to hear evidence in the trial.

Members of the Commission present were Vice Moderator Shelby Larsen, Clerk Izar Martinez, Marie Castellano, Mickie Choi, Geraldine Tayler, and Bob Wendel.

Present for the Complainants were Michael Regele, Steven Marsh, Lissa Smith, Kirk, Winslow.

Present for the Respondents were Merlin Eelkema, Marilyn Moore, John Holcomb and Forrest Classen, Stated Clerk of Los Ranchos Presbytery. Each party made their statements and presented their witnesses, and evidence submitted.

Upon questioning by the Commission, both parties stated that neither had taken any further action in relation to the legal title and ownership of the property, nor had either contacted, or attempted to contact, staff or officers of the Synod of Southern California and Hawaii. Furthermore, upon questioning by the Commission both parties agreed that the property is titled to the Synod of Southern California and Hawaii. The Los Ranchos Presbytery cannot, within the laws of the State of California, make a transfer of property it does not own. Therefore, all arguments in favor or against the transfer are moot.

In addition, neither party presented any evidence, testimonial or otherwise, to demonstrate that the interest(s) of the Synod of Southern California and Hawaii, including but not limited to its fiduciary responsibility and obligation to mission, have been taken into consideration. This Permanent Judicial Commission is part of the body of the Synod of Southern California and Hawaii, and taking into consideration a recent ruling in the case of *Llewellyn v. Presbytery of Los Ranchos* (concurring opinion), the Commission considers itself to have a conflict of interest that precludes resolution of the matter until an agreement with the Synod of Southern California and Hawaii regarding the transfer of legal title has been reached.

The Commission recognizes that this dispute has turned into a situation costly in both time and money to both parties. It may also be that the mission of the church, the Presbytery, and the PC(USA) has suffered as resources are absorbed by this case. Mindful of the case of *Llewellyn*, (above) and of *this* body's decision in *Locke v. the Presbytery of San Diego (December 2, 2016)*, the Permanent Judicial Commission by a unanimous vote of Commissioners present moved that the case be continued until such time as:

- I. the appropriate representatives of the Synod of Southern California and Hawaii have been consulted, and

- II. the issue of legal title to the land and real property has been adequately settled, and
- III. attention to fiduciary obligations and responsibilities of the presbytery and synod, and its mission is demonstrated.

The Permanent Judicial Commission ordered that trial be continued until such conditions are met and a decision can be reached. The Rev. Winston Presnall, member of the Commission, took no part in the proceedings in accordance with D-50205

Having been informed that conditions I – III noted above were met, the Permanent Judicial Commission met at the Norwalk Presbyterian Church Norwalk, CA on November 17th 2017 at 11:00AM.

Members of the Commission present were Moderator Shelby Larsen, Clerk Izar Martinez, Marie Castellano, Larry Lindsay, Geraldine Tayler, and Bob Wendel. A quorum of the Permanent Judicial Commission was present.

After deliberation, the Commission reached these findings:

FINDINGS:

SPECIFICATION OF COMPLAINT #1: The action is irregular because it is the result of a process that, as implemented, fails to adequately consider the interests of the Presbytery of Los Ranchos and PC(USA) in continued ministry in the geographical area encompassed by the Presbytery of Los Ranchos.

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

The interests of the Presbytery of Los Ranchos and the PC(USA) include the possibilities of continuing divine worship or other ministry in the real property at La Habra 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 limited. Little 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: The action is irregular because the terms presented in the Joint Solution fail to show a reasonable and fair relationship between the value of the property and the compensation La Habra Hills Presbyterian Church will pay upon dismissal. PJC (*Tom v. Presbytery of San Francisco, 2012*)

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

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 is irregular because the Presbytery of Los Ranchos has failed to take into consideration the PC(USA)’s use and benefit of the property. PJC (*Presbytery of New York City v. McGee, 2014*)”

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

The action failed to consider the fiduciary responsibility of the Presbytery of Los Ranchos in its intent and ability to continue ministry in that encompassed area of the Presbytery of Los Ranchos.

SPECIFICATION OF COMPLAINT #4: “The action is irregular because the Presbytery of Los Ranchos has failed to exercise due diligence in the valuation on the property it holds for the benefit of the PC(USA) under the Trust clause. PJC, (*Tom v. Presbytery of San Francisco, 2012*)

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

See comment in Complaint #1.

Further Rationale and conclusions:

In the course of addressing each specification of irregularity, the Permanent Judicial Commission of the synod of Southern California and Hawaii followed the practice of this Synod, as clearly enunciated in *Locke v Presbytery of San Diego*(December 2, 2016). That is not only the separate parts of the Gracious Dismissal Policy, but also the whole of the policy, be compared to Presbyterian ideals and principles. This practice is consonant with theology in relation to ecclesiology and the Constitution of the PC(USA). While the definitive answers to such a question is beyond the scope of the specific issues brought before the Commission in this case, it is nevertheless the SPJC’ obligation to note whether or not implementation of such a policy is in concert with the basics of the PC(USA). This is especially true when dealing with those policies and rules dealing with what is known as the Gracious Dismissal Policy (GDP). In *Locke*, the Commission identified two broad ways in which the GDP of the Presbytery of San Diego is unconstitutional, although these particular constitutional conflicts were not part of the central complaint. While there may be other considerations besides these two, at the very least *Locke* noted, first, the variance between concepts of ecclesiology and polity, and second, in the nature of the trust relationship and the fiduciary obligations entailed with a trust.

As we look at these allegations of irregularity involving the policy promulgated by the Presbytery of Los Ranchos for those situations where the question of leaving the denomination has arisen, they are similar in purpose if not in detail to those discussed in *Locke* and the SPJC is obligated to give them the same scrutiny.

To the first point, the Reformed Tradition, as honored and practiced by the PC(USA) recognizes that, as stated by the scriptures, we are all part of the Body of Christ. (1 Corinthians 4:27, Eph 4:12). Throughout our history, Presbyterians have voluntarily chosen to affirm that unity, and our place in the Church Universal by voluntarily, as individuals, and as officers and members in a particular congregation, or other body of the church, taken vows that bind us to that unity and communion of saints that exists through time and space, working in love of God, and in the mission of our Lord Jesus Christ.

It is upon these foundational principals that the denomination has promulgated all the varying rules, policies, practices, and requirements as it has felt necessary to allow it to interact with and pursue its mission and message in the world.

Locke explicates the differences between the “freechurch” or “congregational” model of ecclesiology. In that discussion, it is apparent that the trend towards individuality, and divisiveness based thereon, does not necessarily coincide with belonging to the body of Christ, membership in the Church Universal, or the fundamentals of Presbyterianism. When, as the culture around us currently affirms, the individual interpretation over the communal, the calls of Presbyterian polity to be one in the Body of Christ become conflicted: if I have a right to my interpretation of scripture and culture, what then happens to your interpretation? Must you agree with me, or must we separate and be two?

Does the hand of the Body separate itself from the rest, or the foot, and are they then still the Body of Christ, and are they part of the Church Universal, and can the mission be carried out without hand or foot, or either? These are difficult questions for Christians of good conscience, and in a situation contemplating the retraction of vows to God, to the denomination, and to the separation from brothers and sisters in Christ, past, present and future, they are questions not to be ignored or made light of. The PC(USA) and its Presbyteries are making good faith attempts at facing these issues by creating their individual Gracious Dismissal Policies, but that does not lighten the burden of ensuring that mission, the work of Christ, as it is needed in today’s culture, is not lost.

Locke directs our attention to a second point. Although not phrased in precisely this way, the subject of what mission is in current times cannot be avoided.

As part of their commitment to the work of Christ in God’s world, the saints past and present have made material contributions which are held in trust ultimately for the benefit of the PC(USA). A Trust, as its name implies, is something dedicated to a particular purpose. In the case of Presbyterians, all properties given to a particular congregation, or to the Presbytery, Synod, or denomination itself are held in trust, so that it will be used for the work for which it was given. Various officers act as trustees, that is, caretakers of such assets, dispersing them in ways that in their best judgment, fulfill the requirements of the trust, in this case the mission of the church.

Again, *Locke* makes a very clear explication of the difference between owners, who can do as they please with whatever property they own, and a trustee, who has a fiduciary duty to use it within the constraints of the trust, regardless of his or her personal opinion.

Thus, each GDP must require that the fiduciary obligations, both missional and financial, of the trust are met. These obligations are not only, or even primarily, financial, despite often being treated as such. The work of the mission of the church, in congregational, outreach, spiritual support, care for others as commanded by Christ and other manifestations of the spread of the Good News are the primary fiduciary obligations of the Presbyterian trustee. It is true, however, that the accomplishment of mission almost always requires some financial support, and so the fiduciary obligations of the trustees to administer the assets contributed to the trust by generations past as well as congregational members present becomes by necessity a management of money and property. All too often we consider a church to be a building wherein people of like mind meet to worship God in ways that are particularly pleasing to them. In many people’s minds, the definition of “church” and mission is accomplished by providing this place and programs that emanate from that model. As time, and culture, and neighborhoods and needs change, the viability of the “church” may change. As pointed out in *Locke*, though, even if that

original model becomes impractical, there is still “value” in the asset, whether real or personal property.

The PJC has in the past and continues to express concern that the fiduciary duty under the Trust Clause of the PC(USA) unfortunately has and continues to be breached. The PJC is of the opinion that existing GDPs as they relate to fiduciary guidelines need to be reviewed and strengthened in an effort to avoid the existing problems. The Presbyteries are the ones at risk when the fiduciary duty to the PC(USA) has been breached. Therefore, there are specific financial procedures that need to be followed during the dismissal process. All real property should be appraised by an independent professional third party, specifically, an experienced commercial property appraiser, with no relationship to the parties involved. The independent appraiser should determine the fair market value of all real property. If there is a dispute as to the fair market value, this should be resolved by each party obtaining an appraiser, and the two appraisers agree on a third appraiser, who will resolve the differences, and give the final fair market value. The Presbyteries may then dismiss a Church, after receiving the fair market value, for the property, or leasing the property to the Church being dismissed at the fair market value lease rate. The fair market value for a lease should be determined by an independent third party commercial Real Estate Company experienced in the area. The PJC recommends that each team tasked with negotiating a GDP should have as one of its members a financial professional.

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 Los Ranchos on March 12, 2016, transferring La Habra Hills Presbyterian Church of La Habra to A Covenant Order of Evangelical Presbyterians (ECO) Presbytery of Southern California is set aside and of no effect. The stay of enforcement is hereby vacated.

The Permanent Judicial Commission orders this decision and order be transmitted to all of the Presbyteries of the Synod of Southern California and Hawaii and that this decision be read at the next Presbytery meeting.

Rev. R. Winston Presnall and RE Pat Niles took no part in the proceedings in accordance with D-5.0205. Rev. Peter Hintzoglou and Mr. Peter Lee were not present and took no part in the proceedings.

Dated this 2nd day of December, 2017



Rev. Shelby Larsen
Moderator, Permanent Judicial Commission

Izar A. Martinez

Izar A. Martinez
Clerk, Permanent Judicial Commission

