

**THE PERMANENT JUDICIAL COMMISSION
OF HEARTLAND PRESBYTERY
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

Session,
Southminster Presbyterian Church,
Prairie Village, Kans.

and

Session,
First Presbyterian Church,
Lee's Summit, Mo.

and

Session,
Overland Park Presbyterian Church,
Overland Park, Kans.

Complainants

v.

Session,
Colonial Presbyterian Church,
Kansas City, Mo.

Respondent

DECISION

Remedial Case

Arrival Statement

This is a remedial case which has come before this Permanent Judicial Commission as a result of identical complaints filed by the Sessions of Southminster Presbyterian Church; First Presbyterian Church, Lee's Summit; and Overland Park Presbyterian Church ("Complainants") against the Session of Colonial Presbyterian Church ("Respondent"). In a pretrial order dated November 12, 2010, the cases were combined into a single complaint.

Jurisdiction Statement

The Permanent Judicial Commission finds that it has jurisdiction, 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.

Appearances and Absence of Respondent

The Rev. Chad Herring (associate pastor of Southminster Presbyterian Church), Elder Berna Jean Norman (elder at First Presbyterian Church, Lee's Summit), and the Rev. Jason Carle (pastor of Overland Park Presbyterian Church) appeared as committee of counsel for the Complainant.

The Respondent was not represented at the hearing. It was noted for the record that the respondent had been duly notified of the date and time of the proceedings. On the basis of an October 12, 2010 letter from the Clerk of Respondent Session, the Commission understands Brett Kilbourn and Ryan Terril to be the committee of counsel for Respondent. In a communication to the Stated Clerk of Heartland Presbytery on November 15, 2010, Mr. Kilbourn reiterated Respondent's claim that Respondent is not subject to the authority of the presbytery or this Commission.

In accordance with the pretrial order of November 12, 2010, the trial proceeded despite Respondent's absence.

History

The following facts are not in dispute:

- a. The Session of Colonial Presbyterian Church met in a called meeting on August 5, 2010. At that meeting, the Session of Colonial Presbyterian Church "voted unanimously to recommend to its members that the church terminate its voluntary association with the Presbyterian Church (USA) and voluntarily associate with the Evangelical Presbyterian Church."
- b. At the August 5, 2010, called meeting of the Session of Colonial Presbyterian Church, the Session issued a call for a congregational meeting and a meeting of the corporation to consider nine items of business: four for the meeting of the congregation and five for the corporation.
- c. The call for the congregational meeting at Colonial Presbyterian Church gives notice that the congregation will be asked to consider the following matters:
 - i. "To consider and decide whether Colonial should terminate its voluntary affiliation/association with the Presbyterian Church (U.S.A.).
 - ii. "To consider and decide whether Colonial should voluntarily affiliate/associate with the Evangelical Presbyterian Church.
 - iii. "To ratify all prior acts and decisions of Colonial's Session and to reaffirm and ratify the congregational members' prior elections of the active Elders and Deacons currently serving on the Session and the Board of Deacons.
 - iv. "To reaffirm and ratify the congregational members' previously approved terms of call for all ordained pastors and to make such changes or revisions as may be necessary to coordinate and comply with benefits that may be provided or required by the Evangelical Presbyterian Church."
- d. The call for the meeting of the corporation of Colonial Presbyterian Church gives notice that the corporation will be asked to consider the following matters:
 - i. "To consider and decide whether to amend and restate Colonial's Articles of Incorporation.
 - ii. "To consider and decide whether to amend and restate Colonial's Bylaws.

- iii. “To consider and decide whether Colonial should terminate its voluntary affiliation/association with the Presbyterian Church (U.S.A.).
 - iv. “To consider and decide whether Colonial should voluntarily affiliate/associate with the Evangelical Presbyterian Church.
 - v. “To ratify all prior acts of the corporation and to reaffirm and ratify the members’ previous elections of the currently serving Corporate Trustees and officers.”
- e. Attached to the letter to the congregation announcing the called congregational meeting and meeting of the corporation, the Session of Colonial Presbyterian Church included proposed Amended and Restated Articles of Incorporation and proposed Amended and Restated Bylaws for the church corporation. These proposed Articles of Incorporation and Bylaws remove all references to the corporation’s relationship to the Presbyterian Church (USA).
 - f. On May 6, 2010 the Presbytery, through its Committee on Ministry, assigned the responsibility of working pastorally with Colonial Presbyterian Church to its Administrative Commission for Churches Seeking Dismissal. This assignment was ratified by council at its stated meeting of May 17, 2010, and the Presbytery concurred at its stated meeting on June 15, 2010.
 - g. The Session of Colonial called the August 22, 2010, congregational meeting and meeting of the corporation without the consent or action of the Administrative Commission.
 - h. On August 19, 2010, this Commission issued a stay of enforcement, enjoining the holding of such a meeting.

Specifications of Error and Decision

Complainants alleged six specifications of error, which have been renumbered and slightly restated as follows:

Specification of Error #1:

In calling a congregational meeting “to consider and decide whether Colonial should terminate its voluntary affiliation/association with the Presbyterian Church (U.S.A.),” Respondent erred by calling a congregational meeting to act on matters not properly before the congregation but rather matters properly before the presbytery, in violation of G-7.0304 and G-11.0103i.

This specification of error is sustained. (Vote: 4-0)

Specification of Error #2:

In calling a congregational meeting “to consider and decide whether Colonial should voluntarily affiliate/associate with the Evangelical Presbyterian Church,” Respondent erred by calling a congregational meeting to act on matters not properly before the congregation but rather matters properly before the presbytery, in violation of G-7.0304 and G-11.0103i.

This specification of error is sustained. (Vote: 4-0)

Specification of Error #3:

In calling a congregational meeting “to reaffirm and ratify the congregational members’ previously approved terms of call for all ordained pastors and to make such changes or revisions as may be necessary to coordinate and comply with benefits that may be provided or required by the Evangelical Presbyterian Church,” Respondent erred by calling a congregational meeting to act on matters not properly before the congregation but rather matters properly before the presbytery, in violation of G-7.0304 and G-11.0103i.

This specification of error is sustained. (Vote: 4-0)

Specifications of Error #4 and #5:

Respondent erred by calling, as trustees of the corporation, a meeting of the corporation of Colonial Presbyterian Church to propose changes in corporate documents in such a way as to diminish Colonial Presbyterian Church’s relationship with the Presbyterian Church (U.S.A.), contrary to the Form of Government as interpreted by the General Assembly Permanent Judicial Commission in Remedial Case 219-03, *Sundquist et al. v. Heartland Presbytery*.

These specifications of error are sustained. (Vote: 4-0)

Specification of Error #6:

In calling, as trustees of the corporation, a meeting of the corporation of Colonial Presbyterian Church to “to consider and decide whether Colonial should terminate its voluntary affiliation/association with the Presbyterian Church (U.S.A.),” Respondent erred by calling a congregational meeting to act on matters not properly before the congregation but rather matters properly before the presbytery, in violation of G-7.0304 and G-11.0103i.

This specification of error is sustained. (Vote: 4-0)

Discussion

Sessions desiring to leave the Presbyterian Church (U.S.A.) may request dismissal according to certain processes and procedures that manifest the covenantal relationship between the presbytery and the congregation. Processes that do not manifest this covenantal relationship are irregular and have no force or effect.

To this end, the following excerpt from the decision of the General Assembly Permanent Judicial Commission in an earlier case is instructive:

Sundquist, et al. assert that a session has an “implicit” or “implied right” to call a congregational meeting to consider requesting dismissal to another denomination, but at oral argument to this Commission suggested that it was a “privilege,” not a “right.” Any such privilege exists only within a covenantal relationship between a church and

the presbytery. On the contrary, G-7.0302 and G-7.0304 limit the business of congregational meetings and do not include the topic of seeking dismissal. In 2008, the 218th General Assembly adopted Item 04-20 (Minutes, 2008, p. 48), which refers to G-7.0304 and states, **“Withdrawal from the Presbyterian Church (U.S.A.) is not a matter that can be considered at a congregational meeting.”**

This does not mean that a congregation is prohibited from requesting dismissal. However, **it is the presbytery (or its duly appointed administrative commission or its Committee on Ministry) that has the responsibility to consult with the members of a church about dismissal.** (G-11.0103i) The presbytery is required to afford all persons affected by a dismissal notice and an opportunity to be heard on the subject (G-9.0503b(2); Item 04-20). These consultations (which may be in the form of listening sessions, hearings or other consultations) are for the benefit of informing the presbytery as it considers a request for dismissal, but are not meetings at which any business of the congregation may be conducted...

Any privilege to seek dismissal is conditioned on the cooperation of the congregation, the session and the pastor(s) with the presbytery in a process that operates in the manner set forth in Item 04-28. **There shall not be any secret or secretive acts by sessions, pastors or congregations; bylaw changes or transfers of assets effectively negating the Book of Order or diminishing a church’s connection to the PC(USA); or curtailment of communications with the presbytery as a prelude to dismissal.** Congregational meetings called or conducted by sessions for the purpose of voting on dismissal without the involvement of the presbytery are improper and have no binding effect.

(Sundquist et al. v. Heartland Presbytery, GAPJC Remedial Case 219-03, emphasis added)

Specifications 1, 2, 3 and 6 identify items noted in the *Sundquist* decision as clearly belonging rightfully to the presbytery, not the congregation. To the degree that these items were part of the call of the meeting issued by the Respondent, this Commission finds that the action to call said meeting was irregular.

Specifications 4 and 5 likewise note that the session’s calling of a meeting to amend corporate documents in ways that would diminish the congregation’s relationship with the Presbyterian Church (U.S.A.) would be an explicit violation of the *Sundquist* decision. This Commission finds that the action to call said meeting was therefore irregular.

Order

IT IS THEREFORE ORDERED that the August 5, 2010, action of the Respondent to call a congregational meeting for August 22, 2010, is found to be irregular and has no force or effect, and that any actions taken at said meeting or any other such improperly called meeting of the congregation are held to have no binding effect.

IT IS FURTHER ORDERED that the Session be enjoined from calling meetings for the purpose of leaving the Presbyterian Church (U.S.A.), affiliating with another Reformed body, or considering changes to corporate documents diminishing the relationship of the corporation or the congregation with the Presbyterian Church (U.S.A.).

IT IS FURTHER ORDERED that the Clerk of the Session of Colonial Presbyterian Church report this Decision to the Session at its next stated meeting, that the Session enter the full Decision upon its minutes, and that an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the Presbytery.

IT IS FURTHER ORDERED that the Clerk of the Session of Southminster Presbyterian Church report this Decision to the Session at its next stated meeting, that the Session enter the full Decision upon its minutes, and that an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the Presbytery.

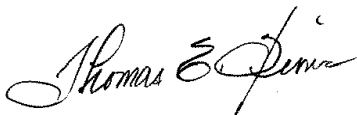
IT IS FURTHER ORDERED that the Clerk of the Session of First Presbyterian Church, Lee's Summit, report this Decision to the Session at its next stated meeting, that the Session enter the full Decision upon its minutes, and that an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the Presbytery.

IT IS FURTHER ORDERED that the Clerk of the Session of Overland Park Presbyterian Church report this Decision to the Session at its next stated meeting, that the Session enter the full Decision upon its minutes, and that an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the Presbytery.

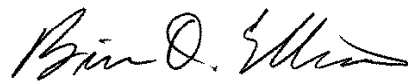
Absences

The Rev. Madeline Mercer, Elder Ed Rucker, and the Rev. Diane Quaintance, members of the Commission, are not present and have hence take no part in the proceedings.

Dated this 19th day of November, 2010.

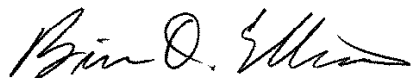


Thomas E. Sims, Moderator
Permanent Judicial Commission



Brian D. Ellison, Clerk
Permanent Judicial Commission

I certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of Heartland Presbytery in the case of Session, Southminster Presbyterian Church, et al., v. Session, Colonial Presbyterian Church is hereby delivered electronically to the Stated Clerk of Heartland Presbytery on November 19, 2010 for delivery to the parties in the case.



Brian D. Ellison, Clerk
Permanent Judicial Commission

I certify that I did transmit a full and correct copy of the foregoing decision to the following persons by certified mail, return receipt requested, depositing it in the United States mail at Kansas City, Mo., on November 19, 2010:

Clerk of Session,
Southminster Presbyterian Church

Clerk of Session
Overland Park Presbyterian Church

Clerk of Session
First Presbyterian Church, Lee's Summit

Clerk of Session
c/o Ryan Terril and Brett Milbourn
Colonial Presbyterian Church



The Rev. Maryann Farnsworth
Stated Clerk, Heartland Presbytery