

**Buonaiuto v. First Church, Greenlawn, NY,
Remedial Case No. 198-5,**

**FRANK BUONAIUTO,
Complainant-Appellant
vs.
THE FIRST PRESBYTERIAN CHURCH
Greenlawn, New York,
Respondent-Appellant.**

Decision

This is a remedial case originated by a complaint filed by Frank Buonaiuto with the Presbytery of Long Island on July 16, 1984. The Presbytery Permanent Judicial Commission rendered a decision on February 1, 1985, an interim order on February 21, 1985, and another decision on April 22, 1985. Complainant appealed to the Synod of the Northeast, and the Synod Permanent Judicial Commission entered a decision on this matter on October 4, 1985. The respondent appealed the decision of the Synod Permanent Judicial Commission to the Permanent Judicial Commission of the General Assembly, Presbyterian Church (U.S.A.).

The Commission has jurisdiction, the parties have standing, and the appeal has been brought to this Commission in timely fashion.

The fourth prerequisite to the initiation of a case is that the complaint state a claim upon which relief can be granted (D-6.1200a(4)). This aspect of the case is discussed below. The factual background of the case extracted from the decision of the Presbytery Permanent Judicial Commission follows.

Complainant-Appellee is a member of the First Presbyterian Church, Greenlawn, New York, and on April 6, 1981, he sent a letter to the clerk of Session stating, " I am formally advising you that I refuse to have any per capita tax paid on my behalf to the Presbytery of Long Island." The Session tabled the matter, and two members were assigned to research the subject of per capita apportionment. They reported their findings in writing to the Session without recommendation and were assigned to confer with Complainant regarding withholding a share of the yearly apportionment to the Presbytery. The July 14, 1981, Session minutes state: "He agreed to allow it to be paid this year as we are always working a year ahead, but it will not be paid in 1982." The record is silent as to what happened in 1982. At the annual meeting of January 1984, Mr. Buonaiuto repeated his request, and on February 8, 1984, the pastor wrote to the stated clerk of Presbytery forwarding a check for the first installment of the 1984 apportionment less the sum of \$20.15 with the statement that Mr. Frank Buonaiuto had requested that his apportionment be withheld and by oversight the treasurer had remitted the full amount of apportionment for 1983. Therefore, \$9.98 was deducted with respect to 1983 and 17 with respect to 1984.

At a later time, pursuant to a request by the Presbytery Board of Trustees, the Session remitted the \$20.15 in question. They notified Complainant of this fact, and he again stated that he did not wish to have his assessment paid on his behalf and demanded that the Session secure

the refund of \$20.15 from Presbytery.

On April 22, 1985, the Permanent Judicial Commission of the Presbytery of Long Island rendered a decision in the case denying the relief sought by Complainant in terms of a request to compel production of records, outlining the factual basis for the dispute, and granting a summary judgement upon the issues framed by the complaint. The Presbytery at that time stated the principles upon which the action was taken as being "(1) the funding of all judicatories is from the voluntary gifts of individuals, (2) active membership in a particular church is not conditioned upon giving any particular sum, whether or not related to per capita apportionment, (3) funds given for a specific designated purpose must be utilized for that purpose, (4) it is the responsibility of Session to apportion funds amongst the agencies of the church and other objects of Christian benevolence as may from time to time be determined, and (5) per capita apportionment is not a tax or assessment and it is not a financial obligation imposed upon an individual member."

Complainant appealed to Synod from the decision of Presbytery. On October 4, 1985, a decision was handed down by the Permanent Judicial Commission of the Synod of the Northeast reversing the Presbytery Permanent Judicial Commission upon the issue of discovery and production of papers, setting aside the judgement of Presbytery Permanent Judicial Commission on the motion for summary judgement, and remanding the case to Presbytery for trial on the merits.

Appeal was taken by Respondent from the decision of Synod, and the matter is presently before this Commission upon that appeal.

While the appeal before this Commission focuses upon the procedural questions dealt with by the opinion of Synod Permanent Judicial Commission, this Commission perceives a more fundamental problem. We believe that the complaint of the Appellee does not state a legitimate cause of action, i.e. it does not state a claim upon which relief can be granted (D-6.1200a(4)). It is our opinion that the cause should have been resolved on this basis by either the Presbytery Permanent Judicial Commission or the Synod Permanent Judicial Commission.

In order to understand the position of Appellee and in order to give fair purport to his claims in the matter, this Commission has considered the following: the original complaint, the pleading captioned an amended complaint (which we regard as a partially amended or supplemental complaint), the explanatory letter to the session of June 13, 1984, the letter to the session of April 6, 1981, the letter to the session of July 16, 1984, the response to Respondent's motion to dismiss, the appellate proceedings before Synod, Appellee's remarks at hearing before Synod, his brief on appeal to this Commission, and his oral argument before this Commission.

We have given careful consideration to all of the above items in the belief that Appellee would have been entitled to a hearing of his complaint if a justifiable cause could have been derived from any or all of his presentations.

What appears from these presentations is that Appellee seeks to force his views on a matter of conscience upon his session and to dictate the manner in which his session carries out its responsibilities to presbytery. This is not within his rights. The thrust of his position is encapsulated in the following statements:

"I am formally advising you that I refuse to have any per capita tax *paid on my behalf* to the Presbytery of Long Island." (Emphasis added, letter, 1981.)

"This is a decision not to support Presbytery." (Oral argument, May 1, 1986.)

The *Book of Order* makes it clear that freedom of conscience is to be preserved and that protest may be legitimate (G-1.0304, D-2.0000). However, preventing one governing body of

the church from carrying out its rightful responsibilities to another governing body lies outside the rights of an individual member.

We find that the complaint as amended does not state a claim upon which relief can be granted and that for this reason the complaint is invalid. Therefore, the specific allegations of error alleged by Appellant are not discussed in this opinion.

In view of the above, the judgment of the Synod Permanent Judicial Commission is reversed, the judgment of the Presbytery Permanent Judicial Commission is vacated, and the complaint is dismissed.

Commissioners Robert Oerter and Ward McKeithen were absent and did not participate in this decision.