

THE PERMANENT JUDICIAL COMMISSION
OF THE GENERAL ASSEMBLY
OF THE PRESBYTERIAN CHURCH (U.S.A.)

W. IVAN HOY)	
Complainant, Appellant)	
)	
and)	
)	
JOHN W. McGLAMERY, JR.)	
Complainant, Appellant)	
)	
<u>v.</u>)	Remedial Case 203-1
)	
THE PRESBYTERY OF TROPICAL FLORIDA)	
Respondent/Appellee)	

The above captioned matter came before the Permanent Judicial Commission of the General Assembly on October 4, 1990, pursuant to appeals filed by W. Ivan Hoy and John W. McGlamery, Jr. (Appellants), from a decision rendered by the Permanent Judicial Commission of the Synod of South Atlantic, Presbyterian Church (U.S.A.).

Pursuant to Book of Order, D-13.1200(a), this Commission finds it has jurisdiction, the Appellants have standing to appeal, the appeals were properly and timely filed, and the appeals state claims upon which relief can be granted.

This is a remedial case involving the Calusa Presbyterian Church of Miami, Florida, the disposition of its property and its dissolution by the Presbytery of Tropical Florida, and various irregularities alleged in connection with those actions.

HISTORY

Calusa Presbyterian Church, Miami, Florida, was formed by the Presbytery of Tropical Florida (then the Presbytery of Everglades) with financial aid from various denominational sources. Land was purchased in 1982 and a church facility built. The church was incorporated under the laws of the State of Florida, and a mortgage was given to an individual. Issues arose among the members of the church over a period of time resulting in a substantial loss of members.

At a meeting of the Presbytery of Tropical Florida, held September 29 and 30, 1987, five complaints against the Session of the Calusa Presbyterian Church by a member of the congregation were filed with the Stated Clerk of the Presbytery. At the same meeting, upon request of the Session of Calusa Presbyterian Church, Presbytery established an Administrative Commission with no powers specified. The Division of Community reported that the Calusa mortgage was in serious default, and that the mortgagor had initiated proceedings of foreclosure. The Presbytery voted to permit the sale of the property. The Administrative Commission was then given the power "to review any disposition of the funds of the sale of the property, and to report their findings to the Presbytery." The five complaints against the Calusa Presbyterian Church Session were referred by the Stated Clerk to the Administrative Commission.

On October 30, 1987, the church property was sold to the Freedom Baptist Church of Dade County, Inc. Certain personal property was stored.

On November 24, 1987, the Presbytery of Tropical Florida met. At this meeting, it was announced by the Stated Clerk that complaints had been filed against the Presbytery by Ivan Hoy regarding Calusa Presbyterian Church. A Committee of Counsel was appointed to represent the Presbytery. The Administrative Commission reported to the Presbytery that the Calusa property mortgage had been about to be foreclosed, and that the church was sold with

proceeds distributed as designated. It reported that the congregation should be dissolved, with certain funds to be paid to the minister and to certain persons to whom the church was indebted, with the residue to be returned to the New Church Development Fund consistent with the donation contract grant previously made from this fund. The Administrative Commission was directed by Presbytery to assume the powers and responsibilities of the Session of Calusa Presbyterian Church immediately.

At the same meeting, the Presbytery dissolved the pastoral relationship of the Rev. Robert Hess and the Calusa Presbyterian Church, effective November 30, 1987. At the January 26, 1988 meeting of the Presbytery of Tropical Florida, a motion passed dissolving the congregation effective that day. A complaint was filed by John W. McGlamery on January 28, 1988 against this action.

SPECIFICATIONS OF ERROR

The appellants have submitted the following specifications of error:

1. (McGlamery) That Synod's Permanent Judicial Commission, in dismissing Appellant's Complaint, erred in allowing Appellee to continue an acknowledged delinquency without curing or explaining that delinquency; and that this decision, if allowed to stand, would effectively prevent further judicial process even if the delinquency is never cured. Synod's PJC, as a minimum, should have ordered Presbytery to bring the Calusa complaints of September, 1987, to trial, or to promptly set a trial date within a specific period of time.

In receiving complaints from a member of the Calusa Presbyterian Church against the session of the church, the Stated Clerk of the Presbytery of Tropical Florida gave the complaints to the Administrative Commission appointed by Presbytery rather than to the Presbytery Permanent Judicial Commission. This irregularity effectively prevented the proper adjudication of the issues.

A stated clerk has no constitutional authority to refuse to transmit to a Permanent Judicial Commission a filing which on its face purports to be a

complaint. Each governing body should have an active and trained Permanent Judicial Commission ready at all times to accept such complaints.

This Commission finds that this charge is essentially correct. Specification No. 1 is sustained (13-0-0).

2. (McGlamery) That Synod's Permanent Judicial Commission, in dismissing Appellant's complaint, further erred in failing to require Presbytery to observe the injunctions of D-12.0300 and D-4.0200(c), and therefore to rescind actions it took in relation to the Calusa matter subsequent to its action in referring the Calusa Complaints to the Judicial Process.

The Book of Order references cited in this specification of error do not apply in this situation. Specification No. 2 is not sustained (8-4-1).

3. (McGlamery and Hoy) That Synod's Permanent Judicial Commission permitted irregularities in the trial . . . , which disadvantaged Appellant in the conduct of the trial.

No trial transcript or any other evidence on this issue was presented to support this allegation by either party at the hearing. Specification No. 3 is not sustained (13-0-0).

4. (Hoy) That Synod's Permanent Judicial Commission erred in dismissing the complaints against presbytery in its knowingly dealing with a session, congregation, and corporation which were illegally constituted and with that knowledge making requests and giving advice to them which perpetuated this illegality.

This Commission received no evidence that the session, congregation, or corporation were illegally constituted. Specification No. 4 is not sustained (13-0-0).

5. (Hoy) That Synod's Permanent Judicial Commission erred in dismissing the complaints against Presbytery in allowing the irregularities of Presbytery to stand as related to the Calusa Church in its guidance, advice, and execution of the sale of the real and other church property and its disposition of the proceeds.

This Commission finds that the record and the trial evidence do not support the charge. Specification No. 5 is not sustained (13-0-0).

6. (Hoy) That Synod's Permanent Judicial Commission erred in dismissing the complaints against presbytery relating to its Administrative Commission in exceeding its mandate in executing its duties, failing to conform to the Book of Order as a commission (G.9.0505), and in failing to carry out its responsibilities while it was assuming original jurisdiction as a Session.

The record shows that the Administrative Commission of the Presbytery of Tropical Florida was authorized in September, 1987 only to "review any disposition of the funds of the sale of the property and report their findings to the Presbytery." Contrary to the mandate of G-9.0502, the Administrative Commission engaged in a number of other activities in relation to the Calusa Presbyterian Church. When an Administrative Commission is established, the Book of Order requires that it exercise only those powers which are specifically granted to it.

Specification No. 6 is sustained (12-1-0).

ORDER

This Commission ORDERS that the proper disposition of this matter requires that the Presbytery of Tropical Florida take pastoral oversight to counsel with the former members of the Calusa Presbyterian Church. This Commission ORDERS expeditious action in reference to those persons on the roll, in accordance with G-10.0302(b)(2).

The Rev. William M. Kelly, Hon. Edward P. Snead Jr., Hon. Charles L. Weltner, and Mr. Marcos Feliciano, Esq. were not present and took no part in the proceedings. The Rev. Milton S. Carothers participated in the deliberations but did not vote on the specifications of error.

Signed and dated this 9th day of October, 1990.