

REMEDIAL CASE 205-15
Presbytery of WEST JERSEY v.
Synod of the NORTHEAST

This is a remedial case of original jurisdiction which has come before this commission upon the filing of two complaints by the Presbytery of West Jersey against alleged irregularities in decisions of the Synod of the Northeast.

Pursuant to *Book of Order*, D-6.1200a, this commission finds that the complaints were timely filed, this commission has jurisdiction, the complainant has standing to file, and the complaints state a claim upon which relief can be granted.

History

The Synod of the Northeast met in adjourned session at Newark, New Jersey on January 22-23, 1993. During the meeting on January 23, the Social Concerns Committee recommended that the synod adopt Commissioner Resolution 1-93 as follows:

The Synod of the Northeast declares itself to be a "More Light Synod," affirming the inclusiveness set forth in the *Book of Order*, encouraging all persons, regardless of sexual orientation, who seek to know Christ, to participate fully in the life of the church.

and Commissioner Resolution 2-93 as follows:

The Synod of the Northeast, meeting in adjournment of its 1992 Stated Meeting, at the Holiday Inn, Newark, New Jersey, on January 23, 1993, respectfully states its belief that the Presbyterian Church (U.S.A.)

1. should repent of its already identified sin of homophobia (see "The Church and Homosexuality," General Assembly, 1978),
2. should set aside the "definitive guidance" of 1978 regarding ordination, and
3. should reaffirm the power and responsibilities of sessions and presbyteries to ordain men and women to the offices of deacon, elder, and minister of the Word and Sacrament as stated in the *Book of Order*.

On February 16, 1993, the Presbytery of West Jersey filed two complaints, one for each of the two resolutions, requesting that the General Assembly order the Synod of the Northeast to rescind the two resolutions.

At a pretrial conference on April 17, 1993, attended by one member from each of the parties' Committee of Counsel, the parties agreed to join the complaints, and stipulated that the issue to be decided at trial is:

In adopting these resolutions, did the Synod of the Northeast, in effect, adopt a policy which is contrary to the current constitutional position of the denomination?

Decision

Based on the evidence presented, this commission finds that the presbytery did not demonstrate that the synod, in its resolutions, in effect had adopted what is "a policy contrary to the current constitutional position of the denomination." At trial, the presbytery asserted, as it did in its complaints, that the resolutions encouraged "openly and unrepentant, practicing gay

and lesbian persons to be officers in the Presbyterian Church (U.S.A.)" and "governing bodies to take erroneous action in ordaining unrepentant homosexuals as church officers." The burden of proof rested with the presbytery. The presbytery presented no evidence that the synod had taken any action or failed to take any action, remedial or otherwise, inconsistent with the denomination's ordination policy.

The evidence presented at trial reflected that the resolutions constituted an expression of opinion. Expression of an opinion by a synod or other governing body, without action, does not constitute the adoption of a policy contrary to an established and controlling constitutional policy of the denomination.

Each case must be decided on the facts presented. Here, the resolutions passed by the synod and challenged by the presbytery before this commission do not compel or direct any action (or inaction) and do not extend any rights (including the right to be ordained) which contravene any stated positions of this church.

In finding that the synod's resolutions constituted an expression of opinion, we nevertheless reject the synod's argument that the resolutions, as such, have "no inherent practical effect." The declaration of an opinion may generate discussion, dialogue and, as demonstrated by this very case, disagreement. The articulation of an opinion may well have consequence. A lower governing body, such as the synod here, may not, under the guise of "opinion," adopt a course of action in defiance of an established position of this church on a matter that has properly been submitted to, reviewed by, and determined by the General Assembly.

Finally, governing bodies are united by the nature of the church and share with one another certain responsibilities, rights and powers as provided in our *Constitution*. The synod's adoption of these resolutions, with no expressed intention to communicate them or follow up with additional steps, leaves its own constituency and the rest of the church confused about whether its intention is advocacy for change or for noncompliance. One responsibility and power shared by all lower governing bodies is the right to propose measures which, in the words of our *Book of Order*, "may be of common concern to the mission of the whole church" (G-10.0102o(6), G-11.0103t(3), G-12.0102o(2)). It would have been preferable, if the synod wished to suggest that denominational policy be reconsidered, to have done so by utilizing such procedures in the *Book of Order*. These procedures ensure that the entire church is able to consider, evaluate, address, and determine issues of "common concern."

On the evidence presented, the presbytery failed to demonstrate that the synod acted improperly.

Order

It is therefore ordered that the Complaints of the Presbytery of West Jersey are dismissed.

It is further ordered that the stated clerk of the Presbytery of West Jersey, and the stated clerk of the Synod of the Northeast report this decision to their respective governing bodies at their first meetings after receipt, that the governing bodies enter the full decision upon their minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly. (D-8.1900)

James M. MacKellar, member of the commission, was present, but participated only as a witness for the synod, and took no part in the deliberations or decision. Harold Densmore, member of the commission, was not present and took no part in the proceedings.

Dissenting Opinion of Nancy Harper, Jamie Bibee Pharr, and Joel Secrist

We respectfully dissent.

The Church is created, sustained, empowered and directed by God's Word. As a community of faith we use words to confess beliefs and to communicate convictions and commitments. These words and the beliefs they express, simply by their expression, have an impact on those to whom they are directed. Those who embrace the beliefs seek by their words to persuade others to embrace their beliefs. Actions are informed by beliefs.

"... there is an inseparable connection between faith and practice, truth and duty. Otherwise it would be of no consequence either to discover truth or to embrace it." (G-1.0304)

Respondent's claims at trial that synod's resolutions have no effect because they are only expressions of opinion is misleading and not believable. Although the resolutions cannot be convincingly shown to be "policy," they nevertheless have already had the effect of increasing division and disharmony within and beyond the synod.

As Presbyterians in the Reformed tradition, we are committed to being connected to one another through governing bodies. Synods as an intermediate governing body are connected both to presbyteries and to the General Assembly. Synod's adopted declarations undermine and are destructive of the connectional nature of our church. They address neither the presbyteries nor the General Assembly. Dialogue and debate are cut off with the resolutions' adoption.

The freedom of conscience provisions of our *Constitution* (G-1.0301, G-6.0108) apply to individuals' interpretations of Scripture. Our *Constitution* does not apply these provisions to governing bodies in their quarrels with the established policies of the church. This does not mean that the ability of governing bodies to dissent, protest, and work for change is cut off. There are appropriate ways to express corporate disagreement with the Church. These resolutions are not an appropriate expression.

Commissioner's Resolutions 1-93 and 2-93 of the Synod of the Northeast should be declared out of order.