

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

**SESSION OF MOUNT AUBURN CHURCH**

Complainant/Appellant

v.

**Remedial Case 207-8**

**PRESBYTERY OF CINCINNATI**

Respondent/Cross-Appellant

This is a remedial case which has come before this commission on appeals by the session of Mount Auburn Presbyterian Church (hereafter session) and by the Presbytery of Cincinnati (hereafter presbytery) from a decision by the Permanent Judicial Commission of the Synod of the Covenant.

The Permanent Judicial Commission finds that it has jurisdiction, that the appellants have standing to appeal, that the appeals were properly and timely filed, and that the appeal is in order (Book of Order, D-13.1200a).

**History**

The facts in this case are not in dispute. After years of careful study and deliberation on the question of homosexuality and the Church, the session developed a "Policy on the Inclusion of Gays and Lesbians" (hereafter "the policy"). The policy was adopted on December 19, 1991, and stated in part:

Acknowledging that the reality of prejudice in the church and society gives gay and lesbian persons reason for uncertainty as to their reception, we of the Mt. Auburn Presbyterian Church wish to make clear our real and genuine welcome of all persons. We affirm that gays and lesbians are part of God's good creation and that they, no less than heterosexuals, are meant to

enjoy God's gifts of love, joy, and intimacy. All who seek and receive God's love are welcomed as full participants in the life and worship of Christ's church without having to deny or hide their sexual orientation. Therefore we are gratefully open to the service and leadership of gays and lesbians including those called to ordained positions in our congregation.

The policy was sent by the session to the presbytery on December 20, 1991.

After reviewing the session's policy, the Ecclesiastical Affairs Committee of the presbytery recommended a meeting with the session to review and to determine whether the policy was consistent or reconcilable with the policy of the denomination. After meeting with representatives of the session, the ecclesiastical affairs committee determined that the session was "knowingly in defiance of the established `definitive guidance' and by its adoption of the policy on `Inclusion of Gays and Lesbians,' the Mt. Auburn Session had committed an `irregularity.'" The committee recommended that the session reconsider its policy statement.

In response, the session requested presbytery to establish a special administrative review committee to consider this question more thoroughly. The ecclesiastical affairs committee recommended that presbytery instead find that the session had committed an irregularity in its adoption of the policy and direct the session to reconsider its action. After extensive deliberation over the course of several meetings, the presbytery voted on November 10, 1992, to affirm the decision of the ecclesiastical affairs committee which was

(1) that the session of Mount Auburn Presbyterian Church did commit an irregularity by adopting on December 19, 1991 the "Policy on Inclusion of Gays and Lesbians" and

(2) " to direct the session to reconsider and correct its irregularity (Book of Order, D-3.0400)."

In response to this directive, the session on November 19, 1992, adopted the following:  
that the session, having thoughtfully and prayerfully considered the presbytery's direction to "reconsider and correct its irregularity," must in good conscience reaffirm its "Policy on the Inclusion of Gays and Lesbians", as adopted on December 19, 1991.

On January 10, 1993, the Mount Auburn Church ordained an elder who is a self-affirmed homosexual.

At the May 11, 1993, meeting of the presbytery, the ecclesiastical affairs committee recommended that an administrative commission be established to review the situation at Mount Auburn Church. Presbytery voted to accept the recommendation of the committee to form an administrative commission.

for the purpose of inquiring into and resolving the delinquency of the Mt. Auburn Session in response to the finding of the Presbytery that the Session's position on the ordination of practicing homosexuals is irregular.

The administrative commission shall have the power of the presbytery:  
for Administrative Review, [D-3.0200] and D-3.0300;  
to request meetings of Session, G-10.0201;  
to request meetings of the congregation, G-7.0303;  
to contact congregation members directly. . . .

Should the Commission deem it necessary to assume original jurisdiction from the Mt. Auburn Session, this request will be brought to Presbytery for a hearing and decision.

The Session filed a complaint in which the only irregularity alleged was the presbytery's action to appoint this administrative commission. The synod permanent judicial commission

held a trial of the case on November 19 and 20, 1993. On November 21, as recorded in its minutes, the synod permanent judicial commission decided by unanimous vote:

(1) that the complaint is not sustained.

(2) that the Presbytery of Cincinnati is directed to remove Rev. Pat Hartsock from the administrative commission appointed for the purpose of inquiring into and resolving the delinquency of the Mt. Auburn Session and replace him with someone else.

The moderator of the synod permanent judicial commission appointed one of its members to write the decision in the case. An unsigned and undated copy of the decision was sent to the parties, apparently on April 25, 1994. On June 6, 1994, a copy of the decision attested by the moderator of the synod permanent judicial commission was sent, accompanied by papers signed by the seven members who heard the case indicating their approval of the decision as written. These papers were dated from April 28 to May 11, 1994. There is nothing in the record that indicates that the synod permanent judicial commission ever held a meeting to consider the final text of its decision. Although this might be cause to remand the case to the synod for proper completion of its decision, this is not likely to alter the result significantly. Furthermore, it would delay a final decision in the case for several more months. Therefore this Permanent Judicial Commission has agreed to accept jurisdiction in this case. Both the session and the presbytery filed appeals of the synod permanent judicial commission's decision on May 25, 1994.

### **Discussion**

The synod permanent judicial commission's decision states that it rests on "narrow procedural grounds" which it identifies as "whether the Presbytery acted within its authority in appointing the administrative commission." The session urged the synod permanent judicial

commission, and this commission on appeal, to determine the constitutionality of its policy. The synod permanent judicial commission declined to do so, as do we. The issue was not raised in the session's complaint. The session had the opportunity to raise this issue when the presbytery declared its policy to be irregular and failed to do so.

The session argues that once the presbytery had directed the session to reconsider its irregularity, the presbytery had exhausted its possible administrative remedies under Book of Order, D-3.0400.

4. It is ordinarily sufficient for the higher governing body to record in its own proceedings, and in those under review, its approval, disapproval, or correction. If necessary, the higher governing body may direct the lower governing body to reconsider and correct an irregularity or cure a delinquency.

The session argues that the presbytery's only subsequent process would be to institute a judicial case under the terms of D-6.0000. However, according to D-6.0500, the presbytery cannot file a complaint against a session, a fact that the session belatedly admitted. Further, recourse to judicial process is unnecessary in view of the extensive powers granted to the presbytery by the Book of Order. The session's refusal to correct the irregularity as directed by the presbytery provides a further cause for the presbytery to take action in accordance with D-3.0400.

The presbytery's authority to establish an administrative commission and to delegate its authority to such a commission is provided in Book of Order, G-9.0503a. The use of the word ordinarily in that section indicates that the list provided is not exhaustive.

The session further questioned the composition of the membership of the presbytery's administrative commission, in particular the inclusion of Pat Hartsock, minister. Hartsock had

been vocal in support of the presbytery's action declaring the session's policy to be an irregularity. The session declared that to include him among the commission's membership would be to prejudice the working of the commission. The synod permanent judicial commission agreed, and ordered that Hartsock be removed from the administrative commission. The presbytery's appeal to the General Assembly's Permanent Judicial Commission is from that part of the synod permanent judicial commission's decision.

### **Specifications of Error**

The session alleges four specifications of error.

(1) The synod permanent judicial commission "erred by incorrectly deciding the . . . case on narrow procedural grounds."

This specification is not sustained.

The only irregularity alleged in the session's complaint is the establishment of the administrative commission. The constitutionality of the session's policy is not before us.

(2) The synod permanent judicial commission "erred in failing to recognize that the ability to request the sanction of original jurisdiction . . . means that the Presbytery has appointed the administrative commission to go beyond administrative review." The synod permanent judicial commission "erred in failing to see that only the judicial process can lie beyond administrative review." The synod permanent judicial commission "erred in ignoring the three levels of corrective action that are called for by the Constitution, and which would, in fact, give appellant the due process of Presbyterian law."

This specification is not sustained.

The Book of Order provides for both judicial and administrative review processes. These processes are not sequential, but alternatives. The presbytery in appointing the administrative

commission did not go beyond "administrative review" as the session alleged. It was a continuance of appropriate administrative review for the purpose of making inquiry so as to gather additional information and to explore the possibilities for reconciliation. The establishment of the administrative commission came on recommendation of the presbytery's committee on ecclesiastical affairs. This committee had only begun the process of administrative review.

In administrative review, the presbytery is to determine whether:

- (1) The proceedings have been correctly recorded;
- (2) The proceedings have been regular and in accordance with the Constitution;
- (3) The proceedings have been prudent and equitable;
- (4) The proceedings have been faithful to the mission of the whole church;
- (5) The lawful injunctions of a higher governing body have been obeyed. (Book of

Order, D-3.0300a)

There is no reason to assume that presbytery would not give session and the congregation the due process provided by Presbyterian law.

(3) The synod permanent judicial commission "erred in failing to recognize that the power given to presbyteries to take original jurisdiction from a session that cannot wisely govern its church cannot, without a violation of due process, be allowed to mute a session's claim that it has proceeded constitutionally." The synod permanent judicial commission "erred in failing to recognize that a presbytery cannot resolve a constitutional issue simply by finding a specific position on a constitutional issue to be unwise."

This specification is not sustained.

(4) The synod permanent judicial commission "erred by ignoring the fact that the 'hearing' provided for when the presbytery appointed the administrative commission could not conceivably provide complainant with due process." The synod permanent judicial commission "erred by failing to recognize that any request by the administrative commission that it be given original jurisdiction would emerge from a proceeding where appellant could not possibly, because of the most basic conflict of interests in the working of the administrative commission, have been given due process."

This specification is not sustained.

The issues presented in specifications 3 and 4 are not ripe for determination because they are based on possible future actions that cannot be known until the work of the administrative commission has been completed.

The presbytery alleges five specifications of error, all of which are included in its first specification, which is as follows:

The synod permanent judicial commission "erred in directing the presbytery . . . to remove the Rev. Patrick Hartsock from the administrative commission for the Mt. Auburn Presbyterian Church."

This specification is sustained.

The presbytery has broad discretion in appointing members of its administrative commissions.

Book of Order, G-9.0302, states "Meetings of governing bodies . . . shall be conducted in accordance with the most recent edition of Robert's Rules of Order, except in those cases where the Constitution provides otherwise."

Robert's Rules of Order Newly Revised, 1990 edition on pages 488-89 advises as follows:

When a special committee is appointed to implement an order of the assembly, it should consist . . . only of those in favor of the action to be carried out. . . .

When a special committee is appointed for deliberation or investigation, however, it should . . . represent, as far as possible, all points of view in the organization. . . ."

Under either of these options, the inclusion of Hartsock would be appropriate because he apparently represents a view adopted by the majority of the presbytery. It should be pointed out that all members of the administrative commission have an obligation to see that the session is treated fairly and that its due process rights are fully protected.

### **Order**

Therefore, it is ordered that the decision of the Synod of the Covenant be affirmed in its holding that the action of the Presbytery of Cincinnati appointing an administrative commission for the purpose of inquiring into and resolving the alleged irregularity of the Session of Mount Auburn was not irregular; and that the decision of the Synod of the Covenant directing the presbytery to remove Pat Hartsock from the administrative commission be reversed.

It is further ordered that the clerk of the Session of Mount Auburn Presbyterian Church report this decision to the session at its first meeting after receipt; that the session enter the full decision upon its minutes, and an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly; that the stated clerk of the Presbytery of Cincinnati report this decision to the presbytery at its first meeting after receipt; that the presbytery enter the full decision upon its minutes, and an excerpt from those minutes showing

entry of the decision be sent to the Stated Clerk of the General Assembly; that the stated clerk of the Synod of the Covenant report this decision to the synod at its first meeting after receipt, that the synod enter the full decision upon its minutes, and an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly (see Book of Order, D-8.1900).

Patricia K. Norris, member of the commission, was not present and took no part in the proceedings.