

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

Session of CENTRAL Presbyterian Church)
of Huntington, NY)
Complainant/Appellant)
)
v.)
)
Presbytery of LONG ISLAND)
Respondent/Appellee)

REMEDIAL CASE 208-4

This is a remedial case which has come before this Commission on appeal by the Session of Central Presbyterian Church of Huntington, New York (Session) from a decision by the Permanent Judicial Commission of the Synod of The Northeast (Synod PJC). The Presbytery of Long Island (Presbytery) is the Respondent-Appellee.

The Permanent Judicial Commission finds that it has jurisdiction, that the Appellant has standing to appeal, that the appeal was properly and timely filed, and that the appeal is in order.
D-13.1200a.

HISTORY

At a meeting of Presbytery on May 25, 1993, the Pastor of the First Presbyterian Church of Sag Harbor, New York, (Sag Harbor) allegedly stated that her church had recently ordained two homosexual members to the office of elder and deacon. Central's Session in a letter of February 14, 1994, to Presbytery alleged that these ordinations were made by Sag Harbor's Session with full knowledge. Central's Session stated its belief that the ordinations constituted irregularities which were subject to review and correction by Presbytery pursuant to D-3.0200,

D-3.0500a(1), D-3.0300a(5) and D-3.0400 of the *Book of Order*. Session requested that Presbytery take corrective action at its next meeting with respect to these two ordinations.

Presbytery's Council met several weeks later. Council directed its Stated Clerk to write the Sag Harbor Session and ask it to comment on the accuracy of the statement that ". . . the two persons who were ordained are self-affirming, unrepentant practicing homosexuals . . ." The Stated Clerk sent this letter on March 3, 1994, requesting further that a response be made to Presbytery's Council before its May, 1994, meeting.

Shortly thereafter, on March 15, 1994 Presbytery voted (1) not to concur in the action of its Council, (2) to direct its Council to take no further action in the matter, and (3) to direct the Sag Harbor Session to make no response to the Council's prior letter request. Presbytery further voted to send a statement explaining its actions to all of its sessions. In the statement sent to all of its sessions, Presbytery observed that "at this time" the request for corrective action "hampers the process of dialogue" regarding human sexuality, a dialogue called for by the 205th General Assembly (1993).

Session on June 18, 1994, filed a remedial complaint with the Synod and asserted that Presbytery's actions constituted an irregularity. The complaint requested Presbytery be directed (1) to investigate the ordinations, (2) to correct the irregularities if upon investigation the allegations were found to be truthful, rescind the ordinations and remove the individuals from office, and (3) to remain in compliance with the Constitution of the Presbyterian Church and direct the Sag Harbor Session to do likewise.

At pre-trial conference the Synod PJC found no grounds to sustain the complaint and dismissed it. This appeal followed.

THE ISSUE IN THE CASE

The sole issue addressed by the Synod PJC and by its decision is:

What is the responsibility of a Presbytery to respond to a request made to it from a session regarding allegations of an alleged irregularity by another session.

SPECIFICATIONS OF ERROR

Specification Number 1

The Synod PJC in this remedial case erred in holding that there are no grounds to sustain Appellant's Complaint.

This specification of error is not sustained.

It is alleged by the Session that the Presbytery was required to investigate and act upon Session's allegations. Session cites D-3.0200, which reads:

2. If a higher governing body learns at any time of any irregularity or delinquency by a lower governing body, it may require the governing body to produce any records and take appropriate action . . . (emphasis added)

This language is cast in permissive terms and, therefore, grants discretion to the governing body as to how, when, and whether it will respond to an alleged irregularity through an administrative review.

This constitutional grant of discretion does not sanction attempts of a lower governing body to nullify or disregard the law of the Church as constitutionally determined by a higher governing body. However, in the reasonable use of its discretion, a governing body may decline to respond to an inquiry such as that which Presbytery received from Session. Presbytery's stated reason for declining to investigate allegations made by Session was that such action would hamper the process of dialogue on issues of human sexuality that had been called for by the 205th General Assembly in 1993. The General Assembly's call for dialogue was not intended to (and, indeed, could not) suspend the provisions of the *Book of Order*.

We find here that Presbytery was within the parameters of its constitutional discretion in taking the position it did at this particular time while the three-year period of dialogue is in process. Presbytery could consider, as it apparently did here, that dialogue attempted in an atmosphere where one side or the other faces immediate potential remedial or disciplinary action is not likely to be productive. Presbytery could constitutionally find that unprotected dialogue leads inexorably to wholly unproductive monologue. While another presbytery might have reached a different conclusion, we are not disposed to hold that Presbytery abused its discretion in acting the way it did.

Specification Number 2

The PJC-Synod Decision is erroneous in holding that there was no evidence before the PJC-Synod to indicate that the Appellee had violated G-11.0103t(2) by failing to investigate an alleged violation of the orders of the General Assembly and the Permanent Judicial Commission of the General Assembly (“PJC-GA”) prohibiting the ordination of homosexuals to the offices of elder and deacon.

This specification is not sustained.

Our discussion in the text above disposes of this specification.

Specification Number 3

The PJC-Synod Decision is erroneous in holding that the Appellee acted appropriately in determining not to investigate an alleged irregularity (the ordination, by a session within the Presbytery, of homosexuals to the offices of elder and deacon), as requested by Appellant as part of the Appellee’s responsibility and authority to conduct administrative review of constitutional violations occurring within its jurisdiction.

This specification is not sustained.

Our discussion in the text above disposes of this specification.

Specification Number 4

The PJC-Synod is erroneous in holding that if a session requests a presbytery to conduct an investigation of an alleged irregularity by another session and provides the presbytery information supporting its allegation, then if such investigation has the potential outcome of censuring from ordained office, the disciplinary case provisions (D-7.0000) of the Rules of Discipline are the appropriate procedure to follow instead of the remedial case provisions of D-6.0000.

This specification is not sustained.

Our discussion in the text above disposes of this specification.

Specification Number 5

The PJC-Synod Decision is erroneous in its interpretation of D-3.0200 as permitting a presbytery to refuse to conduct an investigation (pursuant to its responsibility and authority for administrative review) in response to a request from a session within the presbytery alleging an irregularity by another session within that presbytery, where such request is accompanied and supported by credible evidence that an irregularity has occurred.

This specification is not sustained.

Our discussion in the text above disposes of this specification.

ORDER

IT IS THEREFORE ORDERED that the decision of the Synod PJC be affirmed.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Long Island report this decision to the Presbytery at its first meeting after receipt, that the Presbytery 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 General Assembly; and

that the Stated Clerk of the Synod of the Northeast report this decision to the Synod at its first meeting after receipt, that the Synod 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 General Assembly; and

that the Clerk of Session of the Central Presbyterian Church read this decision in its entirety to the session at its first meeting after receipt, 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 General Assembly. (D-8.1900)

Dated this 29th day of October, 1995.

CONCURRING OPINION

We concur with the majority in its decision and agree with the reasoning of its opinion. However, to the extent that the opinion assumes that there are circumstances in which a Presbytery may take action against a session for the ordination of officers solely because such officers are self-affirming, practicing, unrepentant homosexual persons, we believe that the opinion is erroneous.

We believe that the adoption of 1978 and 1979 General Assembly statements on the ordination of such persons (“the 1978 Statement”), and subsequent reaffirmations and judicial decisions, which have been treated as "authoritative interpretation" (G-13.0103r), were adopted in violation of the Constitution for the following reasons.

1. The Special Commission of 1925 enumerated principles of polity, including that the powers of the General Assembly are specific, delegated and limited and therefore must be enumerated and defined (*Minutes*, UPCUSA, 1927, 62). This principle has been followed in subsequent cases which have held that the General Assembly may not substitute its judgment for that of the ordaining body and ought not to abridge the powers of ordaining bodies except in the most extraordinary situations and for the most extraordinary reasons. (*Anderson et al. v. Synod of New Jersey* (*Minutes*, UPCUSA, 1962, 316-326), *Rankin, et al. v. National Capital Presbytery* (*Minutes*, UPCUSA, 1981, 113 ff).

2. Section G-6.0106 of the Book of Order sets forth standards for ordained office. Sessions have the responsibility to apply the constitutional standards in the examination, ordination and installation of elders and deacons. To the extent that the General Assembly,

through the 1978 Statement, attempts to usurp this authority and substitute its judgment for that of individual sessions, such action is unconstitutional.

3. By imposing an arbitrary standard, the 1978 Statement would preclude sessions from carrying out their responsibilities in applying constitutional standards for examination, ordination and installation of elders and deacons, including their responsibilities:

g. to lead the congregation in ministries of personal and social healing and reconciliation in the communities in which the church lives and bears witness

j. to lead the congregation continually to discover what God is doing in the world and to plan for change, renewal, and reformation under the Word of God. (G-10.0102)

4. Section 6.0108a. provides:

It is necessary to the integrity and health of the church that persons who serve in it as officers shall adhere to the essentials of the Reformed faith and polity as expressed in the Book of Confessions and the Form of Government. So far as may be possible without serious departure from these standards, without infringing on the rights and views of others, and without obstructing the constitutional governance of the church, freedom of conscience with respect to the interpretation of Scripture is to be maintained.

In that the conclusion reached in the 1978 Statement can in no way be considered to be an "essential" of the Reformed faith and polity but, rather, consists of a detail on which reasonable people within the Reformed tradition may have honest differences of opinion, the 1978 Statement, if it constitutes "authoritative interpretation", unconstitutionally hinders officers in legitimately exercising freedom of conscience in respect to the interpretation of Scripture.

5. Finally, the 1978 Statement was provided as a definitive guidance. That is quite different from a requirement established by or through an authoritative interpretation. The *Book of Order* cannot be amended by a "definitive guidance." Decisions by this court and statements

issued or actions taken by the General Assembly have erred in treating the 1978 statement as an authoritative interpretation or properly enacted amendment of the Constitution. See, for example, Union Presbyterian Church of Blasdell, New York, et al., (*Minutes*, 1985, 121), and more recently, the General Assembly's action on the Report of the Advisory Committee on the Constitution, *Minutes*, 1993, 322 ("the 1993 Advisory Committee Report"). Indeed, the 1993 Advisory Committee Report reflects that it was largely predicated upon this court's erroneous holding in Blasdell (and restated in subsequent decisions) that the 1978 Statement was an authoritative interpretation of the Constitution. Blasdell was wrongly decided and, like a house built on a foundation of sand, what has followed in reliance on Blasdell and its progeny is equally flawed and cannot stand. If the General Assembly wishes to change or amend the constitutional law of the Church, it must do so in accordance with the *Book of Order* through established process for amendments.

Ferdinand Pharr

Janet Schlenker

Stephen L. Taber

E. Cader Howard

Christine Levister

Laura S. Mendenhall

Patricia K. Norris

DISSENTING OPINION

The undersigned respectfully dissent from the majority opinion of the Permanent Judicial Commission of the General Assembly, which we believe has erred in not overturning the ruling of the Synod PJC, thereby failing to sustain the specifications of error of the Complainant/Appellant.

We concur that the central issue raised by this case has to do with the responsibility of a Presbytery to respond to a request made to it from a session regarding allegations of irregularity by another session. The majority chooses to base its opinion upon the argument that the word *may* as used in several citations in Chapter III of the Rules of Discipline (including D-3.0200) grant governing bodies "constitutional discretion" not just in this particular case, but with a latitude which we believe reaches beyond the limits provided by Scripture, the Confessions, the Form of Government, as well as the Rules of Discipline. As they argue, "This language is cast in permissive terms and, therefore, grants discretion to the governing body as to how, when, and whether it will respond to an alleged irregularity through an administrative review."

While we acknowledge that most cases within the *Book of Order* expect or require such a reading, such cannot always be assumed true. Directives must be read in the light of the larger context of the Form of Government and the fundamental issues intended by the whole. And, in this specific case having to do with Chapter III of the Rules of Discipline regarding Administrative Review, we find the traditional interpretation of *may* in the majority's argument tends to interpret a governing body's discretionary powers more broadly than provided by our *Constitution*. The following citations are but a sampling of the kinds of restrictive principles which we believe must be invoked as controlling principles in the exercise of government and

discipline within a Presbyterian Church, and which specifically "fence" the broader concerns of administrative review. Chapter III is soon to be removed from the Rules of Discipline and made part of the Form of Government).

Controlling Principles

#1 Chapter I, *Book of Order*, Preliminary Principles, especially

. . . a large part of the Church, or a representation of it, should govern a smaller, or determine matters of controversy which arise therein; . . . G-1.0400

#2 A higher governing body shall have the right of review and control over a lower one and shall have power to determine matters of controversy upon reference, complaint, or appeal. G-4.0301f

#3 (Sessions have) the responsibility and power . . . to maintain regular and continuing relationship to the higher governing bodies of the church, including . . . observing and carrying out the instructions of the higher governing bodies consistent with the Constitution of the Presbyterian Church (U.S.A.). G-10.0102p(4)

#4 The presbytery is responsible for the mission and government of the church throughout its geographical district. It therefore has the responsibility and power . . . to maintain regular and continuing relationship to higher governing bodies of the church, including (2) seeing that the orders of higher governing bodies are observed and carried out. G-11.0103t

Some implications are to be noted. Within this larger context we believe *may* is to be understood in a manner quite distinct from the usual way it is used, for example, in the Preface for the Directory for Worship. There, *may* is defined as to "signify practice that is permissible but not required," and *shall* to "signify practice that is mandated." However, this Directory for

Worship was adopted in 1988, and this strict use of *may* should not necessarily be read backwards into earlier sections of the *Book of Order*. If *may* in D-3.0200 is understood as “has the power to,” then D-3.0300 would logically flow from that recognition of such power to *require* governing bodies to produce pertinent records and take appropriate action. This understanding is demonstrated by the use of *shall* in D-3.0300.

Therefore, we believe that D-3.0300a(5) *requires* a Presbytery to determine whether the lawful injunctions of a higher governing body have been obeyed. This information may come to its attention from other sources than the official records of lower governing bodies. Upon learning that an irregularity may have occurred, the higher governing body has the power to inquire into the matter and if necessary take any action that it deems appropriate.

This minority opinion therefore finds that:

1. The majority opinion misapplies the provisions of Chapter III of the Rules of Discipline, focussing too narrowly upon D-3.0200 and missing the more important D-3.0300.
2. The majority opinion does not logically follow its own clear statement that the constitutional granting of discretionary power in D-3.0200 and D-3.0400 "does not sanction attempts of a lower governing body to nullify or disregard the law of the Church as constitutionally determined by a higher governing body".

David F. Bridgman

James Quillin

Ruby Rodriguez

