

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

<b>Edwin R. LING</b>	)	
<b>Complainant/Appellant</b>	)	
	)	
v.	)	<b>REMEDIAL CASE 208-8</b>
	)	
<b>SESSION, First Presbyterian Church of Bay St. Louis</b>	)	
<b>Respondent/Appellee</b>	)	

This is a remedial case which has come before this Commission on appeal by the Complainant/Appellant, Edwin R. Ling, a member of the First Presbyterian Church of Bay St. Louis, Mississippi, appealing from the Synod of Living Waters' dismissal of his prior appeal from the decision of the Presbytery of Mississippi.

Pursuant to the *Book of Order*, D-13.1200a, this 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.

**HISTORY**

The case arises from a complaint filed by the Appellant with the Presbytery of Mississippi on March 31, 1993, alleging irregularities and delinquencies on the part of the Session of the First Presbyterian Church of Bay St. Louis, Mississippi. The Appellant sets forth seven counts concerning matters alleged to have occurred at a congregational meeting on January 24, 1993 and/or arising from this meeting.

The matter was tried before the Presbytery Permanent Judicial Commission (Presbytery PJC) on April 8, 1995. The Presbytery PJC issued an order in favor of the Respondent on six of

the counts and sustained one count. This count has not been appealed by the Session.

The Appellant appealed the decision of the Presbytery PJC to the Synod of Living Waters on May 15, 1995. The Synod Permanent Judicial Commission (Synod PJC) issued a Judgment of Dismissal on October 3, 1995, stating:

By telephone and correspondence the (S)ynod Permanent Judicial Commission has considered and applied the pretrial provisions of D-6.1200 as provided for in D-13.1100. The Permanent Judicial Commission of the Synod of Living Waters hereby **finds, holds and orders** that the Appellant's complaint and appeal fails to state a claim upon which relief can be granted, and his appeal is hereby **denied and dismissed**.

On October 31, 1995, the Appellant filed the appeal with this Commission.

The record of this case is voluminous and it has been difficult to define a precise statement of the specifications of error. However, it is possible to derive the intended specifications from the argument set forth in the Appellant's Brief.

### **SPECIFICATIONS OF ERROR**

#### Specification Number 1

The Synod PJC erred in not finding that the Presbytery PJC denied the Appellant due process rights and procedural safeguards as set forth in the Constitution of the Church.

This specification is not sustained.

Although it is difficult to understand all that transpired at the trial because of the absence of a verbatim transcript as required by D-8.1800, we do have a sufficient record to conclude that, in general, the moderator of the Presbytery PJC should have exerted much greater control over the audience and stopped its wholly inappropriate participation in the trial as it proceeded. A trial before a judicial commission is not a town meeting and is not to be conducted as such (D-8.0200).

We note that pretrial conferences to discuss and settle questions arising out of D-6.1200a were conducted separately with the parties. Our *Book of Order* does not permit this (D-6.1200b). The correct practice is for pretrial conferences under D-6.1200b to be scheduled so as to involve all the parties simultaneously.

While we find that the foregoing, and possibly other regrettable procedural errors occurred in the Presbytery PJC's trial, we nevertheless find that the Appellant received a substantially fair and complete hearing, and, therefore, do not sustain the specification.

Specification Number 2

The findings or conclusions made by the Presbytery PJC in its decision are not factually accurate, sustainable or supportable.

This specification is not sustained.

The six counts not sustained by the Presbytery PJC concerned form of the budget, alleged misconduct of the pastor/moderator of the congregation, Session's culpability for the moderator's alleged misconduct, investment policy, the pastor's mischaracterization of phone calls, and alleged breaches of a settlement agreement. These were either dismissed, dismissed prior to trial, or dismissed on pretrial motion. In addition, one of those counts, concerning various violations of the *Book of Order*, was sustained.

We find that there is no basis for disturbing the findings of the Presbytery PJC as to any of these counts. As was noted in Hardwick v. PJC Synod of North Carolina (Minutes, PCUS, 1983, 44):

. . . the lowest court of jurisdiction, in this case, the Presbytery, is in the best position to determine the issues of fact, including the justification of those involved for their acts and/or omissions. Judgments of a lower court on factual issues are favored with a presumption of correctness and are not to be disturbed unless plainly or palpably wrong, without supporting evidence, or manifestly

unjust.

Accordingly, the judgment of the Presbytery PJC should be allowed to stand.

Specification Number 3

The Synod PJC did not follow the requirements of the *Book of Order*.

This specification is sustained.

D-13.1200 does not allow a Permanent Judicial Commission to dispose of an appeal without a hearing and without a review of the entire record. The Synod PJC rendered its opinion without complying with these requirements as is required (D-13.1200). These were egregious failures on the part of the Synod PJC.

We reverse the Synod PJC's decision because the Synod PJC's procedures were inexcusably defective. However, we have independently afforded the Appellant his rights under D-13.1200, and, based on our review of the record and a hearing of the Appellant's case, have determined that the Presbytery PJC's decision should be upheld for the reasons stated in our discussion of the immediately preceding specification of error.

**ORDER**

IT IS THEREFORE ORDERED that the decision of the Synod of Living Waters Permanent Judicial Commission is set aside, and that the decision of the Presbytery PJC is affirmed.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of Living Waters 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

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Mississippi 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 the entry of the decision be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Clerk of Session of the First Presbyterian Church of Bay St. Louis, Mississippi report this decision to the Session at its first meeting after receipt, and that the Session enter the full decision upon its minutes, and that an excerpt from those minutes showing the entry of the decision be sent the Stated Clerk of the General Assembly.

Laura S. Mendenhall and Frances Pitts, members of the Commission, were not present for the meeting of the Commission and accordingly took no part in the deliberations or decision of the case.

Dates this 19th day of May, 1996.