

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

Session of Westminster Presbyterian Church,)
Canton, Ohio,)
)
Complainant,)
)
v.)
)
Office of the Stated Clerk of the General)
Assembly, Office of the Moderator of the General)
Assembly, Committee on the General Assembly,)
Fahed Abu-Akel, as Moderator of the Presbyterian)
Church (U.S.A.), and Clifton Kirkpatrick, as Stated)
Clerk of the General Assembly of the Presbyterian)
Church (U.S.A.),)
)
Respondents.)

Headnotes

Remedial Case 215-12

Changing requests or concurrences for a special meeting: Commissioners may join or withdraw from a request for a special meeting until such time as the Moderator issues the call for that meeting.

Verification process for a special meeting: The Office of the Moderator has the right and responsibility on behalf of the General Assembly to verify the standing and signatures of commissioners requesting a special meeting, and to conduct other verification as needed to maintain order and justice.

The role of the Office of the Moderator: When presented with sufficient requests which, if valid, would require the call for a special meeting, the Moderator is obliged to cease advocacy of a particular position and act with impartiality in the exercise of the duties described in G-13.0104.

Business before a special meeting: The convening of a special meeting of an assembly is not a continuation of the previous assembly, but is a new meeting of the same assembly. Business requiring constitutional interpretation is subject to the 120-day requirement in G-13.0112c.

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 Clerk of the General Assembly of the Presbyterian)
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 Respondents.)

DECISION and ORDER

Remedial Case 215-12

Preliminary Matters and Jurisdiction

This remedial case came before this Commission on a complaint filed by the session of Westminster Presbyterian Church, Canton, Ohio, a constituent congregation of the Presbytery of Muskingum Valley in the Synod of the Covenant (Complainant), against the Office of the Stated Clerk of the General Assembly, Office of the Moderator of the General Assembly, Committee on the General Assembly, Fahed Abu-Akel, as Moderator of the Presbyterian Church (U.S.A.), and Clifton Kirkpatrick, as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) (Respondents).

This is a case of original jurisdiction before the General Assembly Permanent Judicial Commission under D-6.0202b(2). The Commission conducted trial on the issues set forth in its Preliminary Order dated March 3, 2003. In that Order, the Commission previously determined that the session has standing to file the complaint, that the complaint was timely filed, that the Commission has jurisdiction over the Office of the Moderator of the General Assembly insofar as the Moderator is exercising his duty in his representative capacity under G-13.0104, and that the complaint states a claim upon which relief can be granted only against the Office of the Moderator of the General Assembly.

History

On or about September 28, 2002, Alex Metherell (Metherell), a commissioner to the 214th General Assembly (2002) (Assembly) communicated to the other 553 commissioners of the Assembly an invitation to join him in requesting a special meeting of the Assembly in

accordance with G-13.0104. He invited the use of a reply card to be signed by the commissioners, stating:

**“URGENT AND CONFIDENTIAL – Please Sign and Return As Soon As Possible
REQUEST FOR SPECIAL CALLED MEETING OF THE 214TH GENERAL ASSEMBLY**

I, the undersigned Commissioner to the 214th General Assembly, exercising my right under G-13.0104 of the Book of Order hereby request the Moderator of the 214th General Assembly call a special meeting of the 214th General Assembly at the earliest possible time.

The Purpose of the meeting shall be to:

- Continue oversight of the GAPJC decision in Londonderry vs Presbytery of Northern New England in order to effect compliance with the Constitution of the Presbyterian Church (USA)
- Respond to the growing defiance of, delinquency, and enforcement of the Constitution of the Presbyterian Church (USA) by officers, agencies and governing bodies with respect to G-6.0106b and the GAPJC decision on holy unions (Benton vs Hudson River Presbytery)
- Exercise all necessary powers authorized to the General Assembly under the Constitution to propose and adopt directives to officers, agencies, and Governing bodies in order to deal with all matters relating to the issues detailed in items # 1 & 2 above.

Signed: _____ Print Name: _____
Elder/Minister* Commissioner, 214th General Assembly [(*) delete one]
Presbytery: _____ Synod: _____
Address: _____ City/State/ZIP _____
Phone: _____ E-mail: _____”

Metherell continued his efforts to obtain concurrences throughout the following months and retained these in his possession.

A chronology follows:

- November 11, 2002, the Moderator of the Assembly, Fahed Abu-Akel (Moderator), wrote the commissioners of the Assembly expressing his concerns regarding the wisdom of calling for a special meeting of the Assembly
- January 14, 2003, Metherell personally delivered to the Moderator a letter and written documents, consisting of signed letters and reply cards, which purported to be the written requests of 57 commissioners (Requesters) requesting that the Moderator call a special meeting in accordance with G-13.0104. (Thirty-one were from elder commissioners and 26 were from minister commissioners, representing at least 15 presbyteries and five synods.)
- January 14, 2003, Moderator issued a letter to the 57 Requesters, imploring them “not to sign” the request
- January 15, 2003, e-mail message from David Rodriguez to Stated Clerk asking for his name to be withdrawn from list of Requesters
- January 15, 2003, fax transmittal from Beatrice Thomas to Moderator requesting that her name be withdrawn from list of Requesters
- January 15, 2003, fax transmittal from Office of the General Assembly to stated clerks of presbyteries requesting verification of standing of Requesters, and asking the clerks to certify “whether that person is still a member of your

presbytery and still a commissioner of record from your presbytery to the 214th General Assembly (2002)”

- January 15, 2003, e-mail message from Metherell to Stated Clerk acknowledging a previously received request from Brian Janssen who “asked that his name be removed” from the list of Requesters, (but whose name had nevertheless been submitted)
- January 16, 2003, fax transmittal allegedly from Angela Davis requesting the withdrawal of her name
- January 16-17, 2003, the Stated Clerk issued a letter in the name of the Moderator to 56 of the Requesters asking them to verify that they: “(1) are the named commissioner to the 214th General Assembly from [NAME OF PREESBYTERY]; (2) wish to call for a special meeting of the 214th General Assembly for the three purposes stated above” with the return of response letter
- January 20, 2003, fax transmittal from Debra Huffmyer asking to be included as a Requester
- January 20, 2003, letter from Donald Hoagland asking to be included as a Requester
- January 21, 2003, session of Westminster Presbyterian Church, Canton, Ohio, initiated this remedial complaint
- January 24, 2003, e-mail from Kay Moore to Gradye Parsons that the verification process was complete
- January 24, 2003, Moderator determined that a total of only 22 ministers and 24 elders were in concurrence with the request for a special meeting of the Assembly and so informed the church and announced that he was not calling a special meeting of the Assembly
- January 31, 2003, Executive Committee of this Commission issued Preliminary Order dismissing this case on jurisdictional grounds
- February 13, 2003, Complainant appealed the Preliminary Order of the Executive Committee to the Commission
- February 28, 2003, Commission heard the appeal on the Preliminary Order
- March 3, 2003, Commission issued its Decision and Order that it had jurisdiction only over the Office of the Moderator as an entity of the General Assembly, dismissed the complaint against other named parties, and ordered that a trial be held
- March 17, 2003, trial was held at Kansas City, Missouri.

Discussion

The Commission asked the parties to address the following issues in their trial briefs:

1. Whether a commissioner may be added or removed from a petition to call a special meeting of the General Assembly and if so, when;
2. Whether it was appropriate for the signatures and the status of the requesting commissioners to be verified and if so, how;

3. Whether the Office of the Moderator may request commissioners to reconsider their request or concurrence to call a special meeting of the General Assembly;
4. Whether the matters identified in the petition presented to the Moderator required an interpretation of the Constitution and had to be communicated in writing to the Stated Clerk of the General Assembly no later than 120 days prior to the convening of the special meeting; and
5. Whether the Moderator was required to call a special meeting of the 214th General Assembly.

The Commission responds to these issues as follows:

1. Changing Requests or Concurrences: The Commission concludes that commissioners may join or withdraw from a request for a special meeting until such time as the Moderator issues the call for that meeting. A request is not a vote, but a statement of personal intent, which is subject to change until such time as it effects an action that cannot be undone, such as a call for a meeting. “In ... the government of the church, matters are to be ordered according to the Word by reason and sound judgment, under the guidance of the Holy Spirit” (G-1.0100c). Just as “the church, in obedience to Jesus Christ, is open to the reform of its standards of doctrine as well as of governance” (G-2.0200), individual commissioners should remain open to the guidance of the Holy Spirit and therefore retain the right to add or withdraw their concurrence in a request for a special meeting until such time as the Moderator issues a call.
2. Verification Process: The Office of the Moderator has the right and responsibility on behalf of the General Assembly to verify the standing of commissioners and their signatures in requests for a special meeting. G-13.0104 requires that those who request or concur in the request for such a meeting “must have been commissioners to the last preceding stated meeting of the General Assembly.” From this requirement flows the need for a verification process.

The standing of commissioners shall be verified with the stated clerks of the presbyteries of the Requesters. The signatures should ordinarily be verified by personal attestation of the Requester.

In addition to this verification process, in the instant case the Office of the Moderator conducted further inquiry to verify the intention of the Requesters. This was not improper for three reasons: (1) because of the receipt of independent, unsolicited communications from commissioners contradicting or withdrawing the alleged requests; (2) because the requests for a special meeting had been received over an extended period of time and kept by Metherell rather than the Requesters or an officer of the Assembly; and (3) because the right of commissioners to withdraw their requests was entitled to protection as discussed above. This verification process (as distinguished from the Moderator’s plea for reconsideration) was required for the maintenance of order and the just execution of the office.

3. The Role of the Office of the Moderator: The Moderator, as “an ambassador of this General Assembly to all parts of the Presbyterian Church (U.S.A.),” has the capacity to communicate with the church (Standing Rule F.2.c., *Manual of the General Assembly*, p. 39). The Moderator appropriately exercised this role when on November 11, 2002, he expressed his concerns regarding a special meeting. However, when presented with sufficient requests which, if valid, would require the call for a special meeting, the Moderator’s role as ambassador must give way to the constitutional duties of G-13.0104. The Moderator in this role is obliged to cease advocacy of a particular position and act with impartiality in the exercise of these constitutional duties.

In the instant case, the Moderator acted improperly in his letter of January 14, 2003, when he “implored [the Requesters] in the name of Christ and for the good of the Presbyterian Church (U.S.A.) to reconsider [their] decision” to call for a special Assembly. This had the appearance of seeking to undermine the rights of commissioners. The Moderator has an obligation to see that the concerns of all parties, especially those expressing a minority opinion, are given full opportunity to be heard. Any action that appears to abridge this right should be scrupulously avoided. Notwithstanding the improper advocacy contained in the letter of January 14, 2003, the Complainant failed at trial to meet the burden of proving by a preponderance of the evidence that the Moderator's actions changed the response of any of the Requesters (D-7.0402a).

4. Business Before a Special Meeting: The convening of a special meeting of an assembly is not a continuation of the previous assembly, but is a new meeting of the same assembly. (*Robert’s Rules of Order Newly Revised*, 10th ed., §9, p. 89, §22, p. 236). The Office of the Moderator properly concluded that business coming before this new meeting would be subject to the 120-day requirement in G-13.0112c because it would require constitutional interpretation.¹
5. Necessity of Calling a Special Meeting: Based on this Commission’s review of the verification process, this Commission concludes that the Office of the Moderator was not required to call a special meeting of the Assembly for the reasons stated above.

Additional Matters

In an exhibit introduced into evidence, Metherell stated that this Commission “had set up [the Complainant] for failure” because it had denied the Complainant “the right to call most of its key witnesses.”

Complainant was not, however, deprived of the right to call “key witnesses.” Before trial Complainant requested this Commission to issue citations for the attendance at trial of several

¹ At trial, the respondent presented evidence in which the Moderator of the Committee on Bills and Overtures for the 214th General Assembly advised Abu-Akel that, in his opinion, the request for a special meeting “does not propose business that legitimately could come to the Assembly.” Therefore, Abu-Akel might reasonably have concluded that the business specified in the request was so vaguely presented that the request for a special meeting itself was out of order (*Robert’s Rules of Order Newly Revised*, 10th ed., p. 89).

witnesses. In making this request, the Complainant's counsel argued only that these individuals would provide testimony relevant to whether they had interfered and conspired to prevent the Moderator from calling the Assembly into a special session. Because this Commission had dismissed the allegations of interference and conspiracy from this case, testimony relating to these dismissed allegations was irrelevant. Thus, this Commission properly denied the Complainant's request for issuance of trial citations. (*Benton v. Presbytery of Hudson River*, Minutes, 2000, page 586).

Further, a trial citation is issued only when necessary to compel a witness's attendance at trial (*Baker v. Presbytery of Middle Tennessee*, Minutes, 1995, page 130). No restrictions (other than relevancy) were placed on the voluntary witnesses the Complainant decided to present at trial.

Finally, during closing argument, Complainant's counsel emphasized the importance of trust in honoring and enforcing the constitutional duties imposed on this church's officers. Trust is eroded, however, where, as here, a person groundlessly asserts that a permanent judicial commission has "set up [a party] for failure."

Decision

The complaint, therefore, is not sustained and the case is dismissed.

Order

IT IS ORDERED that the complaint be dismissed.

IT IS FURTHER ORDERED that the Stated Clerk of the General Assembly report this decision to the General Assembly at its first meeting after receipt and that the General Assembly enter the full Decision and Order upon its minutes.

IT IS FURTHER ORDERED that the Clerk of Session of Westminster Presbyterian Church of Canton, Ohio, report this decision to the session at its first meeting after receipt, that the session enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

The following members of the Commission were not present and took no part in the deliberations or decision of the Commission on this case: Jesse Butler, William Carlough, John Dudley, and Mildred Morales.

Dated this 19th day of March, 2003.

Concurrence in Part and Dissent in Part

We respectfully concur in part and dissent in part.

When a valid petition is presented, the Moderator is required to call the General Assembly back into session. What is not clear is how quickly the Moderator must take action. It would be clearly unreasonable to expect the Moderator to call the meeting in the immediate hour following the presentation of the petition. At the same time, it would be equally unreasonable for the Moderator to wait so long to call the meeting that there would be only a one-day gap between the dismissal of the recalled General Assembly and the convening of the next regularly scheduled General Assembly. A reasonable sense of timing would be well taken from the advice given by the Church to parents regarding baptism of their children. W-2.3008a encourages parents to proceed without undue delay or undue haste.

However, prior to the Moderator calling for a special meeting, the validity of the petition has to be established. Verification should focus solely on the legality of the signatures. The process may take a variety of forms. In whatever form it takes, it ought to be sterile, neither for nor against the cause of the petition. While the form of the petition in question was largely self-verifiable, the admitted desire of a signer to withdraw prior to the beginning of the verification process did give license to the Moderator to ascertain that the other signers still wished to request a special meeting.

It is understandable why the Moderator did not want to call the General Assembly back into session. The business that the petition presents is decidedly ill-founded. While it has been highly publicized across the political and theological spectrum that there are governing bodies and ordained officers in bald defiance of the Constitution, the mechanisms that the Constitution provides for dealing with such allegations have not yet run their course. The fact that the judicial process and/or the administrative review process do not run as quickly as some would like is not a valid ground to declare that we are in a constitutional crisis.

Nevertheless, since the Church is a covenant community (C5.124-141), when one is elected to office, one is obligated to fulfill the constitutionally mandated duties of that office regardless of one's personal opinion (C6.108ff.). The fundamental reason is that the Church has discerned the guidance of the Holy Spirit through the establishment of the Constitution.

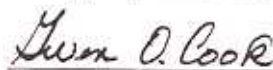
It is fundamental to Presbyterian polity and culture to afford great latitude to all minority positions lest the majority deem itself righteous enough to be able to declare that it no longer requires any correction (G-2.0500). To hold such is to say that the majority may operate with capricious tyranny as sole interpreter and arbiter of the movement of the Holy Spirit. This is a blatant violation of the central and fundamental doctrine of the Reformed faith that the Holy Spirit is God's gift to the entire Church, not just those currently in power (C6.064, 65, 71, 74-75, 95, 98). Thus, no matter how annoying, ill-advised or foolish a minority might be, the majority, in this case, represented by the Moderator, must never truncate or subvert the constitutional right of the minority (G-1.0305; 3.0401; 4.0403).

For the petitioners to be cajoled or implored to remove their names from the duly presented petition, especially based on a debatable projection of the cost of meeting or the required number of days necessary for meeting notification, was clearly improper. Furthermore, that the petitioners were singled out by the Moderator for such pressure shows that the process was fatally flawed.

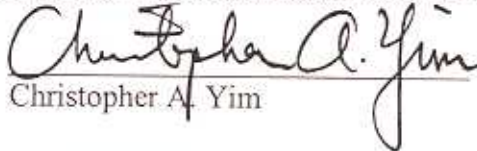
With the coming of biennial General Assemblies, the issue of special meetings of the General Assembly will likely reoccur. Therefore, the correction that this Commission gave to the process is proper and helpful.

Since some of the business to be conducted in the petition, while not particularly precise, could still be entertained within the 60-day notification period, an untainted verification process should have been ordered by this Commission. Were that process to have resulted in a special meeting of the General Assembly, the determination of the legitimacy of any business could have been ruled on by the Moderator and sustained or not sustained by the body.

Therefore, we respectfully concur with the Commission's conclusion that the Moderator improperly engaged in advocacy after the submission of the Metherell petition, but believe that the appropriate remedy should have been a directive to conduct an untainted verification process.



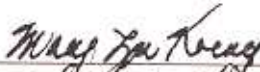
Gwen O. Cook



Christopher A. Yim

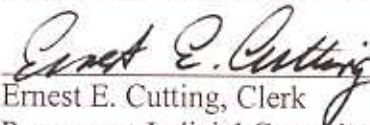
Certificate

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 215-12, Session, Westminster Presbyterian Church, Canton, Ohio, v. Office of the Stated Clerk of the General Assembly, et al. made and announced at Kansas City, MO, on March 19, 2003.



Mary Lou Koenig, Moderator

Permanent Judicial Commission of the General Assembly



Ernest E. Cutting, Clerk

Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by United States Mail, directing C. Laurie Griffith to deposit it in the mail at Kansas City, MO, on March 19, 2003:

Paul R. Jensen, Counsel for the Complainant
General Assembly Permanent Judicial Commission (regular mail)

I certify that I did transmit a certified copy of the foregoing to the following persons by UPS Next Day Air, directing C. Laurie Griffith to deposit it in the mail at Kansas City, MO, on March 19, 2003:

Clerk of Session, Westminster Presbyterian Church, Canton, Ohio
Judy Woods, Counsel for the Respondent

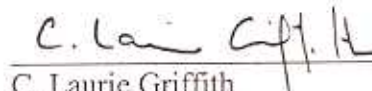
I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to C. Laurie Griffith, on March 19, 2003.


Ernest E. Cutting, Clerk

Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly Permanent Judicial Commission at Kansas City, MO, on March 19, 2003, in Remedial Case 215-12, Session, Westminster Presbyterian Church, Canton, Ohio, v. Office of the Stated Clerk of the General Assembly, et al. and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Kansas City, MO, on March 19, 2003.


C. Laurie Griffith

Manager of Judicial Process and Social Witness