

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

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John Minihan and J. Randall Richards, )  
Complainants/Appellants, )  
 )  
v. )  
 )  
The Presbytery of Scioto Valley, )  
Respondent/Appellee. )  
----- )

**HEADNOTES**

**Remedial Case 216-1**

1. The 1992 amendment to G-9.0404d did not grant a presbytery power to compel a session to transmit the per capita apportionment assigned to it. The decision in *Session, Central Presbyterian Church v. Presbytery of Long Island* (Minutes, 1992, page 179) is reaffirmed.
2. The term “benevolences” in G-10.0102i includes per capita funds.

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OF THE PRESBYTERIAN CHURCH (U.S.A.)**

John Minihan and J. Randall Richards,	)	
Complainants/Appellants,	)	
	)	<b>DECISION and ORDER</b>
v.	)	
	)	<b>Remedial Case 216-1</b>
The Presbytery of Scioto Valley,	)	
Respondent/Appellee.	)	

This remedial case comes before this Commission on appeal by John Minihan, minister, and J. Randall Richards (Appellants) from a decision by the Permanent Judicial Commission of the Synod of the Covenant (SPJC).

**Jurisdictional Statement**

This Commission finds that it has jurisdiction, that the Appellants have standing to appeal, that the appeal was properly and timely filed, and that the appeal states one or more of the grounds for appeal specified in D-8.0105.

**History**

The procedural history, as well as the recent legislative and permanent judicial commission case decision history regarding per capita, are relevant. Each of these histories is summarized below.

Procedural History

On February 5, 2002, the Presbytery of Scioto Valley (Presbytery) adopted the following Per Capita Statement:

To direct per capita apportionments to the sessions of the churches within its bounds, [G-9.0404d], the action of the Presbytery establishes a responsibility on the part of sessions, as governing bodies of the church, to raise and timely transmit per capita funds to the presbytery, unless the Presbytery excuses a session from doing so.

On May 1, 2002, the Appellants filed a complaint alleging that the Per Capita Statement was irregular in that it violated the *Constitution of the Presbyterian Church (U.S.A.)* by making the payment of per capita apportionments by sessions "mandatory." Appellants asked that the Presbytery be ordered to rescind the Statement.

The SPJC tried the matter on December 7, 2002. In its decision dated December 8, 2002, the SPJC found that the Per Capita Statement adopted by the Presbytery was constitutional and provided the following explanation as the basis for its determination:

This SPJC believes that describing per capita by the mutually exclusive terms of "mandatory" or "voluntary" fails to reflect the pattern of mutual relations among and between the various governing bodies of our church as established by the Book of Order (G-9.0103).

It is our opinion that part of a session's moral responsibility is to seek relief from presbytery if the session finds that it is unable to remit its per capita apportionment. In turn, part of the moral responsibility of the presbytery is to lovingly and caringly work with a session that finds itself in this situation.

Provision for excuses must be understood in terms of the covenantal relationship between sessions and presbytery. In this manner, the presbytery may be advised of the reasons for non-payment or late payment of per capita and be able to respond appropriately by either granting the request or by addressing the issues of concern in the relationship of session and presbytery.

The appeal, filed with this Commission on January 17, 2003, contends that the decision of the SPJC "creates an injustice pursuant to D-8.0105f and commits an error in constitutional interpretation pursuant to D-8.0105g."

#### Legislative and Permanent Judicial Commission Case Decision History

In 1991, G-9.0404d was added to the Form of Government:

Each governing body above the session shall prepare a budget annually for its operating expenses, including administrative personnel, and may fund it with a per capita apportionment among the particular churches within its bounds.

In 1992, G-9.0404d was amended by adding the following:

The presbyteries shall be responsible for raising their own per capita funds, and for raising and timely transmission of per capita funds to their respective synods and to the General Assembly. The presbyteries may direct per capita apportionments to the sessions of the churches within their bounds.

In 1993, G-9.0103 was amended as follows:

All governing bodies of the church are united by the nature of the church and share with one another responsibilities, rights, and powers as provided in this Constitution. The governing bodies are separate and independent, but have such mutual relations that the act of one of them is the act of the whole church performed by it through the appropriate governing body. The jurisdiction of each

governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries, and with the acts of each subject to review by the next higher governing body (amendatory clause underlined).

The 206<sup>th</sup> General Assembly (1994) adopted the following authoritative interpretation of G-11.0103f as to whether “guidance” constitutes a mandate in the *Book of Order*:

Within the list of responsibilities and powers of the presbytery are items that only the presbytery can effect, and items that require the concurrent action of the congregation(s) or other governing bodies, e.g., guidance regarding equitable compensation may be advisory for congregational employees, but mandatory for pastoral calls that require approval by the presbytery. The responsibilities of the session as listed in Book of Order, G-10.0102, may thus be limited by requirements established by the presbytery as it seeks to fulfill its responsibilities in G-11.0103. To the extent that guidance incorporates requirements established by the presbytery in the fulfillment of its unique responsibility, such advice is mandatory.

Presbytery overtured (Overture 01-01) the 213<sup>th</sup> General Assembly (2001) to approve an amendment which proposed to add the following sentences to G-9.0404d:

Unless excused by the presbytery, a session shall be responsible for raising and timely transmission of per capita funds to its presbytery. A presbytery may exercise care and oversight over congregations in its bounds that fail to raise or transmit such funds to the presbytery.

The Advisory Committee on the Constitution advised the General Assembly to disapprove the Overture, while the Committee on the Office of the General Assembly advised the General Assembly that presbyteries already had the powers proposed by the Overture. The 213<sup>th</sup> General Assembly (2001) disapproved the Overture.

In *Session, Central Presbyterian Church v. Presbytery of Long Island* (Minutes, 1992, p. 179), this Commission ruled that:

A governing body may adopt a per capita system for financing its operations, and may prepare and publish a list of churches which pay or do not pay according to that system.

A church may neither be compelled to pay nor punished for failure to pay any amounts pursuant to such plan.

As Presbyterians we have a unique relationship which obligates us morally to share in the mission enterprise of the Church and the processes and structure necessary to fulfill that to which we are called in the name of Christ.

In reaching its decision, the Commission stated, "This commission perceives that the presbytery's resolution, by using the word 'obligation,' presents the potential for the presbytery to take coercive action such as demanding payment, assessing interest, or otherwise penalizing a church which is behind in making payments."

In *Westminster United Presbyterian Church of Port Huron, Michigan v. The Presbytery of Detroit* (UPC, 1976, p. 228), the church session withheld payment of its per capita apportionment notwithstanding its admitted ability to pay. Presbytery "disapproved of the action of the pastor and session..., removed the pastor, and dismissed the session from the conduct of their offices until the per capita tax is paid, and appointed an administrative commission to assume the responsibilities of the session." The UPC General Assembly Permanent Judicial Commission held that presbytery's action was inappropriate because "it was based only upon refusal to pay per capita apportionment without other cause shown."

### **Specification of Error**

*That the SPJC erred in ruling that the per capita apportionment policy approved on February 5, 2002, by the Presbytery of Scioto Valley was not an irregularity and was, therefore, constitutional.*

This specification of error is sustained.

### **Decision**

In the instant case, the issue is whether the language added to G-9.0404d in the 1992 amendment ("presbyteries may direct per capita apportionments to the sessions") grants a presbytery power to compel a session to transmit the per capita apportionment assigned to it.

Although the Presbytery contended at oral argument that its resolution did not compel a session to remit per capita monies, our reading of the resolution leads to a different understanding. Specifically, the necessity of a session applying to the Presbytery for an "excuse" from its "responsibility" to pay per capita monies strongly suggests compulsion if an excuse is not given.

Even if one concludes that the phrase "may direct" in G-9.0404d is ambiguous (meaning "may require," as the Presbytery essentially argues, or "may ask," as the Appellants contend), we conclude that it was not the intent of the 1992 amendment to G-9.0404 to change the historic practice of voluntary giving of per capita monies. There was nothing in the overture that indicated that it was intended to change the historically voluntary nature of per capita giving. The presbyteries approved the amendment by an overwhelming majority.

Moreover, if the General Assembly had desired to compel rather than trust sessions to transmit per capita to the presbyteries, it would have used mandatory language to express the sessions' obligation regarding per capita parallel to the language used to express the presbyteries' obligation. Finally, Presbytery's own overture to General Assembly in 2001 proposing to add the language that "a session shall be responsible" for per capita payments

suggests that it did not regard the 1992 amendment as clearly imposing such a requirement. Therefore, this Commission finds that the 1992 amendment was intended simply to codify the historic practice of per capita giving.

Thus, notwithstanding the fact that the 1992 amendment was neither considered nor a part of the *Book of Order* at the time of this Commission's decision in the *Central* case, we hereby reaffirm this Commission's holding that "a church may neither be compelled to pay nor punished for failure to pay any amounts pursuant to such [per capita system] plan."

We are not persuaded by the argument of the Presbytery and the conclusion of the SPJC that the "reserved powers" clause of G-9.0103 and the 1994 Authoritative Interpretation confirm a power in the presbytery to compel payment by the session of per capita apportionment.

G-9.0103 provides that the jurisdiction of a governing body is limited by the express provisions of the *Book of Order* "with powers not mentioned being reserved to the presbyteries." This Commission is of the opinion that this provision does not apply in the present matter because G-10.0102i gives a session the power to determine the distribution of a church's "benevolences." This includes the power to raise and transmit per capita funds. In making this determination, the Commission interprets the word "benevolence" to include per capita funds. The Commission therefore concludes that the power of presbytery to act in this regard has been preempted. Similarly, the 1994 Authoritative Interpretation of G-11.0103f, indicating that a presbytery's guidance to sessions is "mandatory" to the extent that it incorporates requirements established by the presbytery, is also not applicable because G-9.0404d does not give the presbytery the power to require payment of per capita apportionment by sessions.

But, as both parties acknowledged, the theological heart of this case is the covenantal nature of the Church. Indeed, both parties refer to per capita as a high moral obligation and as one of the sinews that binds the covenant community together. This is consistent with the historic nature of Presbyterian order that we have shared power and responsibility (G-4.0302).

Therefore, while our *Constitution* does not technically permit presbyteries to make per capita mandatory, we are necessarily bound together as a covenant community through our union to God Almighty in Jesus through the Holy Spirit (A Brief Statement of Faith, C-10.4, lines 52-57). Thus, there is a high moral obligation based on the grace and call of God to participate fully in the covenant community. Full participation includes time, talent, and treasure (G-10.0102h; W-5.5004). Moreover, all officers are obligated, by virtue of ordination vows (G-14.0207i; G-14.0405b(9)), to participate fully in the life of the Church. To participate partially or not at all and yet claim to be within the covenant community represents a grievous misunderstanding of our reciprocal covenantal obligations under the singular Lordship of Jesus (The Second Helvetic Confession, C-5.124-141). In other words, we are called to turn from the sin of individualism run rampant and embrace the covenantal community in which our Lord Jesus has called us to live as those who love as we have been loved (John 13:34). Therefore, withholding per capita as a means of protest or dissent evidences a serious breach of the trust and love with which our Lord Jesus intends the covenant community to function together (G-7.0103).

## **Order**

IT IS ORDERED that the Decision and Order of the Permanent Judicial Commission of the Synod of the Covenant is reversed.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Covenant report this Decision and Order to the Synod at its first meeting after receipt, that the Synod 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.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Scioto Valley report this Decision and Order to the Presbytery at its first meeting after receipt, that the Presbytery 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: William Carlough, John Dudley, and June Lorenzo. As a representative from the Synod of the Covenant, Catherine Borchert recused herself and did not take part in the hearing, nor did she take part in the deliberations or the decision in this case.

Dated this 12<sup>th</sup> day of July, 2003.

## **Certificate**

We certify that the foregoing is a full and correct copy of the Decision and Order of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 216-1, John Minihan and J. Randall Richards v. Presbytery of Scioto Valley, made and announced at Louisville, KY, on July 12, 2003.

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Jane E. Fahey, Moderator  
Permanent Judicial Commission of the General Assembly

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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 UPS Next Day Air, directing C. Laurie Griffith to deposit it in the mail at Louisville, KY, on July 14, 2003.

John Minihan, Complainant/Appellant  
John J. Jones, Counsel for the Respondent/Appellee  
James Wilson, Stated Clerk, Presbytery of Scioto Valley  
George Baird, Stated Clerk, Synod of the Covenant  
General Assembly Permanent Judicial Commission (regular mail)

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 July 12, 2003.

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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 at Louisville, KY, on July 12, 2003, in Remedial Case 216-1, John Minihan and J. Randall Richards v. Presbytery of Scioto Valley, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, KY, on July 14, 2003.

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C. Laurie Griffith  
Manager of Judicial Process and Social Witness, for  
The Stated Clerk of the General Assembly