

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

.....
A. Kirk Johnston, Laurie Johnston, and)
Session of First United Presbyterian)
Church, Paola, Kansas,)
Complainants, Appellees,)
v.)
Heartland Presbytery of the Presbyterian)
Church (U.S.A.),)
Respondent, Appellant.)
.....

DECISION AND ORDER

Remedial Case 217-2

Headnotes

1. **Presbytery Budget Authority (G-11.0304, G-11.0103a-c)**: A presbytery’s constitutional responsibilities to develop a mission budget consistent with the priorities of the whole church do not permit it to make a congregation’s payment of per capita apportionment and fulfillment of a mission pledge conditions of eligibility for requesting financial assistance from presbytery.
2. **Presbytery’s Discretion**: It is within the discretion of a presbytery to consider a congregation’s financial participation in the life of the larger church as one of the many relevant factors in acting upon a congregation’s request for assistance. But a congregation’s failure to pay per capita apportionment or to fulfill a mission pledge ordinarily cannot become determinative or dispositive in a presbytery’s refusal to grant assistance to that congregation.
3. **Unity in Christ (G-1.0100c)**: Our unity in Christ and the relational nature of our governance require dialogue between and among governing bodies, thus giving life to the mutuality and reciprocity between sessions and presbyteries in furthering the great ends of the church.
4. **Presbytery’s Duty of Pastoral Care (G-11.0103g)**: A presbytery’s duty to “provide pastoral care for the churches” includes a duty to engage them in conversation about their efforts to participate fully in the mission of the larger church.
5. **Higher Governing Body’s “Right of Review and Control” (G-4.0301f, G-4.0302)**: A higher governing body’s “right of review and control over a lower one” must not be understood in hierarchical terms, but in light of the shared responsibility and power at the heart of Presbyterian order.
6. **Per Capita Apportionments (G-9.0404d)**: Payment of per capita apportionments is a high moral obligation, the fulfillment of which visibly demonstrates the covenantal ties that bind us as the one church of Jesus Christ.

7. **Presbytery's Duty to Consider Property Requests (G-11.0103y)**: A presbytery violates its duty "to consider and act upon requests from congregations to take the actions regarding real property as described in G-8.0000" when it makes payment of per capita apportionments and fulfillment of a mission pledge conditions of eligibility to request a loan guarantee.

Arrival Statement

This remedial case comes before this Commission on appeal by Heartland Presbytery of the Presbyterian Church (U.S.A.) (Appellant) from a decision by the Permanent Judicial Commission of the Synod of Mid America (SPJC) dated April 3, 2004.

Jurisdiction Statement

The Permanent Judicial Commission finds that it has jurisdiction, that Appellant has standing to appeal, that the appeal was properly and timely filed, and that the appeal states one or more of the grounds for appeal (D-8.0105).

Appearances

Jeffrey Clayton and Ed Rucker represented the Appellant. Robert Howard represented Appellees A. Kirk Johnston, Laurie Johnston, and Session of First United Presbyterian Church, Paola, Kansas.

History

On June 17, 2003, Heartland Presbytery (Presbytery) adopted the following policy:

The Presbytery Council moves that no congregation be considered eligible to request assistance from the presbytery in the form of mission support, shared grants or loan guarantees unless that congregation has demonstrated its full participation in the fiscal and ecclesiastical life of the presbytery, including the payment of per capita, the making and meeting of a mission pledge, being current on Board of Pensions dues, the filling [*sic*] of annual statistical reports, and the annual reporting of the pastor's terms of call.

The motion passed 102 Yes and 76 No.

On July 12, 2003, this Commission in *Minihan v. Scioto Valley Presbytery* (*Minutes*, 2004, p. ___) ruled that a presbytery could not compel or punish a session for not remitting per capita apportionments. In the Presbytery Council (Council) meeting on August 18, 2003, a motion to recommend that Presbytery rescind the policy was defeated. During the September 13, 2003, Presbytery meeting, a motion to rescind the policy was offered. The vote was 92 Yes and 58 No. However, it was ruled defeated due to the necessity for a two-thirds vote based on a procedural requirement of more notice.

At the next Council meeting on October 20, 2003, a motion to rescind the policy was indefinitely postponed. Council did not place the question of rescinding the policy on the docket for the next Presbytery meeting.

Appellees filed complaints on September 5 and 13, 2003, alleging that the policy was irregular in that it unconstitutionally infringed a session's right to determine and distribute benevolences and attempted to compel payment by churches of per capita apportionments and fulfillment of mission pledges. They further claimed that failure to meet the requirements of the policy constituted "punishment" of a session. Appellees asked that the SPJC order Presbytery to rescind the policy and related actions.

The SPJC tried the matter on April 2, 2003. In its decision dated April 3, 2003, the SPJC vacated and set aside the policy of Presbytery regarding eligibility for mission support, shared grants or loan guarantees.

The SPJC found that the policy of Presbytery unconstitutionally infringed the rights of session to distribute its benevolences and offerings (G-10.0102h, i) and cited this Commission's decisions in *Session, Central Presbyterian Church v. Presbytery of Long Island (Minutes, 1992, p. 179)* and *Minihan*.

The SPJC found that the policy had the effect of punishing a session for failure to pay per capita apportionments or to fulfill a mission pledge, again relying on the precedents of *Central* and *Minihan*. The SPJC noted that, while the policy did not require the payment of per capita apportionments or the fulfillment of a mission pledge, "it attempts to require indirectly what cannot be required directly."

The SPJC reiterated the *Minihan* language of the "high moral obligation" of full participation in the covenantal relationship of the church as quoted below:

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). . . . [W]ithholding per capita as a means of protest or dissent evidences a serious breach of trust and love with which our Lord Jesus intends the covenant community to function together.

Presbytery appealed the SPJC decision to this Commission on May 6, 2004, contending that the SPJC erred in its interpretation of the *Constitution* (D-8.0105g) by interfering with the right of a presbytery to determine its budget and budgetary policies under G-11.0304 and G-11.0102a-c, improperly abridging the historic principles of church government and the right of a higher governing body to govern the lower, and incorrectly expanding the reach of the decisions in *Central* and *Minihan*.

Specifications of Error

Specification of Error #1: The decision undermines and interferes with the right of presbytery to determine its budget and policies with regard to its own budget, grant application procedures, and criteria for budget administration, as established in the Constitution, G-11.0304; G-11.0103a-c.

This specification of error is not sustained.

The central issue underlying this specification of error is the suggested conflict between the responsibility and power of the presbytery, on the one hand, to determine and establish its budget (G-11.0103a-c; G-11.0304) and the responsibility and power of session, on the other, to determine the distribution of the benevolences of the congregation (G-10.0102i). In keeping with the principle that every part of the *Constitution* is to be read in a manner that gives it full force and effect,¹ the provisions containing these purportedly conflicting obligations must be construed in a manner which is harmonious so that each maintains its full effectiveness.

According to Presbytery, the SPJC's ruling that its policy is unconstitutional interferes with Presbytery's right and duty to establish a mission budget. Presbytery concedes that *Minihan* held that a presbytery's "reserved powers" in G-9.0103 did not give it power to compel a session to pay its per capita apportionments and were, therefore, not sufficient to override the express power granted to sessions in G-10.0102i to determine the distribution of a congregation's benevolences. It nevertheless argues that the decision in *Minihan* does not compel disapproval of Presbytery's policy because G-11.0304 gives a presbytery express power to determine its budget, just as G-10.0102i gives a session the express power to determine its budget. In sum, Presbytery contends that each governing body has budgetary responsibility and that its policy does not interfere with a session's right to choose not to pay per capita apportionments.

Presbytery's argument that the SPJC decision interferes with its "right" to determine its budget goes too far. Presbytery's duties do require it to develop a budget consistent with the comprehensive strategy of synod and General Assembly (G-11.0304, G-11.0103a-c). Its ability to pursue mission initiatives consistent with that strategy depends largely on the financial support of its constituent churches. Nevertheless, Presbytery's constitutional responsibilities cannot be construed to permit it to make funding decisions that would contravene the *Book of Order*.

There is nothing in the SPJC's decision that prevents Presbytery from fulfilling its duty to have a general mission budget. Therefore, this Commission concludes that the SPJC decision does not undermine or interfere with the right of Presbytery to determine its budget and policies. However, the key question remains whether Presbytery's declaration that a church is *ineligible to request* financial assistance, if it has not fully paid its per capita apportionment and a mission pledge violates other provisions of the *Book of Order*. This is addressed below in specification of error #2.

¹ *Session of Londonderry Presbyterian Church, et al., v. Presbytery of Northern New England, Minutes, 2001, p. 577.*

Specification of Error #2: The decision erroneously equates exercising discretion in allocating mission support with “punishing a session.”

This specification of error is not sustained.

According to Presbytery, its policy represents a pastoral exercise of its discretion to allocate limited mission dollars by announcing in advance that a congregation’s full participation in the fiscal and ecclesiastical life of the church is relevant in the awarding of grants, mission support and loan guarantees. Presbytery also argues that its policy cannot be construed as “punishment” because congregations have no vested constitutional “right” to receive grants, mission support, or loan guarantees in the first instance.

In this case, Presbytery is understandably wrestling with the tensions created by the following factors: (1) a presbytery’s constitutional responsibility to remit full per capita apportionments to synod and General Assembly for all its churches, whether or not those congregations pay full per capita apportionments to it, (2) a presbytery’s inability under the *Book of Order* to mandate a session’s payment of per capita apportionments, (3) the limited dollars available for mission, and (4) the acknowledged high moral obligation of all congregations to participate fully in the life of the larger church by sharing the costs of the larger church’s mission and operations.²

The Commission appreciates Presbytery’s effort to give substance to the connectionalism that distinguishes our system of polity from episcopal and congregational forms of church government. Indeed, all of the Commission’s decisions on per capita apportionments, and all parties to this case, acknowledge that payment of per capita apportionments is a high moral obligation, the fulfillment of which visibly demonstrates the covenantal ties that bind us as the one church of Jesus Christ. In light of this acknowledged moral obligation, a congregation’s effort to pay its full per capita apportionment and to fulfill a mission pledge is clearly relevant as one factor among many others that a presbytery may consider in exercising its stewardship responsibility to allocate limited resources in acting upon a congregation’s request for assistance. This Commission does not wish to remove discretion or capacity of the presbyteries to fulfill their constitutional duties, but to assure them that such responsibilities can be effected without infringing on the powers of sessions.

This Commission does not view the SPJC’s decision as equating the exercise of discretion with punishment. But, as the SPJC correctly held, a presbytery’s exercise of discretion cannot be turned into an indirect mandate. In short, a congregation’s failure to pay full per capita apportionments or to fulfill a mission pledge ordinarily cannot become determinative or dispositive of a presbytery’s refusal to grant that congregation financial assistance. Therefore, a congregation’s failure to pay per capita apportionments or to fulfill a mission pledge cannot be made a condition of eligibility to request a presbytery’s financial assistance.

² Presbytery’s policy addresses more than per capita apportionments. However, because Presbytery argued from *Minihan*, which deals solely with per capita apportionment, the language in this section reflects that limitation.

Presbytery's policy does not open the door to Presbytery consideration of the ways in which a congregation has demonstrated its efforts to further the great ends of the whole church. Instead, its policy closes the door to positive dialogue between governing bodies who are partners in mission. Presbytery's policy precludes a congregation's application for Presbytery's financial assistance, without any opportunity for inquiry into the reasons underlying the congregation's nonpayment. The policy on its face represents a misuse of discretion. However, as noted above, it is within the right and discretion of a presbytery to consider a congregation's financial participation in the life of the larger church as one of the many relevant factors as it crafts policies and exercises pastoral care.

The policy improperly turns payment of per capita apportionments or the fulfillment of a mission pledge into a mandate. It also violates a presbytery's duty under G-11.0103g to "provide pastoral care for the churches" and its duty under G-11.0103y "to consider and act upon requests from congregations to take the actions regarding real property as described in G-8.0000." A presbytery's duty to "provide pastoral care to churches" includes a duty to engage them in conversation about their efforts to participate fully in the mission of the larger church. Where there is no opportunity for conversation about the reasons for nonpayment or inaction, there is no opportunity for the presbytery to fulfill its pastoral obligation to counsel with churches.

Unfortunately, Presbytery's declaration of a congregation's ineligibility to request assistance reflects a decision to disengage rather than engage with certain of its congregations regarding the mission of the whole church. Such a declaration of ineligibility improperly paints with a broad brush where a genuine exercise of discretion is needed to give life to the mutuality and reciprocity between sessions and presbyteries in furthering the great ends of the Church. Presbytery's failure to consider the requests of applicants made ineligible by its policy is a misuse of its discretion and therefore improper.

Specification of Error #3: The decision improperly abridges the historic principles of church government and the right of a higher governing body to govern the lower, as established in the Constitution, G-1.0400; G-4.0301f; G-4.0301i; G-9.0103; G-11.0103; and elsewhere.

This specification of error is not sustained.

Presbytery argues that the SPJC decision effectively insulates a session from any oversight or consequences when it exercises its budgetary freedom under G-10.0102i to refuse to pay per capita apportionments. According to Presbytery, the decision thus effectively endorses congregationalism, in contravention of the historic authority of higher governing bodies in our polity.

A presbytery's right of oversight cannot be construed to give presbytery a right that our polity withholds—namely, a right to mandate a session's full payment of per capita apportionments as a condition of its eligibility to seek presbytery's assistance. Furthermore, a presbytery's right of oversight does not permit it to avoid its duty to counsel with churches, to share in mission, or participate in ecclesiastical duties as required by the *Book of Order*.

Specification of Error #4: The decision applies an overly broad interpretation of this Commission's decisions in Central and Minihan.

This specification of error is not sustained.

Presbytery argues that its policy differs from the policy proscribed in *Minihan* because Presbytery's "is a policy about how presbytery will go about responding to requests for financial assistance of various kinds." Moreover, unlike the policy in *Central*, Presbytery's policy does not refer to unpaid per capita apportionments as "an outstanding obligation," but merely as one factor in discerning a congregation's overall fiscal and ecclesiastical participation.

As noted above, the Commission concludes that these attempted distinctions do not accurately describe Presbytery's policy as it relates to per capita apportionments. The policy makes full payment of per capita apportionments an absolute precondition of eligibility to seek presbytery assistance and not simply one criterion to be weighed along with other factors in the exercise of Presbytery's discretion. As in *Minihan* and *Central*, this policy effectively transforms payment of per capita apportionments and fulfillment of a mission pledge into a presbytery mandate.

Decision

Although the parties have framed the questions in this case as competing "rights" of governance, this case rests upon the nature of governance in our polity, and even more fundamentally upon the nature of our organic unity. Because all fall short of the glory of God (Romans 3:23) while at the same time being guided by the Holy Spirit, no one governing body is properly an entity unto itself. G-1.0400 does not characterize the task of governance as power and authority to carry out edicts, but in terms of arriving at "the collected wisdom and united voice of the whole Church." While the *Book of Order* refers to a higher governing body's "right of review and control over a lower one" (G-4.0301f), these concepts must not be understood in hierarchical terms, but in light of the shared responsibility and power at the heart of Presbyterian order (G-4.0302).

Through His high priestly prayer in John 17, Christ calls His Church to unity. The Report of the Special Commission of 1925 (Swearingen) (*Minutes*, 1927, p. 59) states:

The Presbyterian Church is not a unity in the sense that it consists of an undivided oneness without distinguishable parts; neither is it a group of smaller bodies with common history and tradition which find it advantageous to work together in close harmony for the accomplishment of purposes common to all of them. Our Church is an organism. Its unity is not a unity of articulation, part touching part, like the bones of a skeleton, but the unity of life, the parts united by vital bonds, thus constituting a living whole and that whole imparting impulse and strength and order to the several parts, as the body to its members.

This understanding of our organic unity finds expression throughout our *Book of Order*.³ Mutuality expresses the unity of the church. In this fashion, we are bound together in covenantal relationships that assume and require the blessings and difficulties of dialogue based on trust and love (G-7.0103). The nature of our union requires that each governing body treat the other pastorally, as having high moral obligations to and for each other. In this way, without the congregations, the presbytery is a hollow shell; without the presbytery, the vision of the churches is limited.

Our unity in Christ and the relational nature of our polity require dialogue between and among governing bodies. Thus, wherever per capita apportionments or mission pledges are being withheld, there is a reasonable question regarding the well-being of a particular congregation. At a minimum, a presbytery should deal pastorally with that congregation. Further, with this knowledge of the spiritual health of a congregation in its specific context, a presbytery may open a dialogue with a session. Since dialogue requires participation by both parties, if a session determines not to fulfill its high moral obligation to remit per capita apportionment or a mission pledge, it should engage in conversation with its presbytery as to its reasons for doing so.

The presbytery's witness, concern, and responsibility are not solely to one congregation, but to each congregation in light of the whole. The congregation's responsibility is not to itself, but to itself in light of its call to "fulfill its responsibilities as the local unit of mission for the service of all people, for the upbuilding of the whole church, and for the Glory of God." (G-4.0104) This understanding of our unity in Christ and of the relational nature of our polity has shaped this decision.

Order

IT IS THEREFORE ORDERED, that the decision of the Permanent Judicial Commission of the Synod of Mid America is hereby affirmed.

IT IS FURTHER ORDERED, that the Clerk of Session of First United Presbyterian Church of Paola, Kansas, report this Decision and Order to the Session at its first meeting, 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 (D-8.0404f).

IT IS FURTHER ORDERED, that the Stated Clerk of Heartland Presbytery report this Decision and Order to the Presbytery at its first meeting, 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 (D-8.0404f).

IT IS FURTHER ORDERED, that the Stated Clerk of the Synod of Mid America report this Decision and Order to the Synod at its first meeting, that the Synod enter the full Decision

³ See G-1.0100c ("Christ gives to his Church . . . its unity"); G-2.0300 ("The confessions express the faith of the one, holy, catholic, and apostolic Church"); G-4.0202 ("There is one Church."); G-4.0301a ("The particular churches of the Presbyterian Church (U.S.A.) . . . constitute one church"); G-15.0101 ("The Presbyterian Church (U.S.A.) seeks to manifest . . . the unity of the church of Jesus Christ").

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 (D-8.0404f).

Absences

The following members of the Commission were not present and took no part in this Order: William Carlough, John Dudley, Bruce Gore, June Lorenzo and Wendy Warner. Jesse Butler was recused from participation in this case.

Dated this 18th day of October, 2004.

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 217-2, Johnston, *et al.*, v. Heartland Presbytery, made and announced at St. Louis, Missouri, on October 18, 2004.

Jane E. Fahey, 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 UPS Next Day Air, directing C. Laurie Griffith to deposit it in the mail at Louisville, Kentucky, on October 18, 2004.

Jeffrey Clayton, Counsel for the Appellant
Robert Howard, Counsel for the Appellee
Blake Herd, Clerk of Session, First United Presbyterian Church, Paola, Kansas
Brian Ellison, Stated Clerk, Heartland Presbytery
Stated Clerk, Synod of Mid America
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 October 18, 2004.

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 St. Louis, Missouri, on October 18, 2004, in Remedial Case 217-2, Johnston, *et al.* v. Heartland Presbytery, and that it is the Decision and Order of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, Kentucky, on October 18, 2004.

C. Laurie Griffith
Manager of Judicial Process and Social Witness