

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

Session of Second Presbyterian Church,	)	
Tulsa, Oklahoma,	)	
Complainant/Appellant,	)	
	)	<b>DECISION AND ORDER</b>
v.	)	
	)	<b>Remedial Case 217-5</b>
Eastern Oklahoma Presbytery,	)	
Respondent/Appellee.	)	

**Headnote**

1. **Maintaining records for hearings to determine preliminary questions** - Whenever a lower permanent judicial commission conducts a hearing concerning a potential final disposition that might be the subject of a further appeal, it would be a wise practice for a permanent judicial commission to create such a record, even though it is not required by the Constitution.

**Arrival Statement**

This remedial case comes to the General Assembly Permanent Judicial Commission (GAPJC) on appeal from the Session of Second Presbyterian Church of Tulsa, Oklahoma (Second) from a decision by the Permanent Judicial Commission of the Synod of the Sun (SPJC) dated June 18, 2004. 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 states one or more grounds for appeal under D-8.0105.

**Appearances**

James Kerr appeared as counsel for the Appellant. Robbie Emery Burke appeared as counsel for the Appellee.

**History**

In June 2003, Eastern Oklahoma Presbytery (EOP) appointed an Administrative Commission (AC) to look into and make recommendations regarding the future viability of Second. In the period from the time of the appointment of the AC until December 2, 2003, it met with Second on two occasions.

At the December 2, 2003, meeting of EOP, the AC made a recommendation stating it would work with Second and EOP Trustees to negotiate a sale of the church property. The recommendation also stated that if no contract of sale were approved by February 5, 2004, the AC would reconvene and make other recommendations.

Second's congregation held a called meeting on February 15, 2004, and did not approve the sale of the property.

On March 2, 2004, at the stated meeting of EOP, EOP approved the following:

- 1) The Presbytery authorize this Administrative Commission to assume original jurisdiction for Second Church, Tulsa, (G-11.0103s) and to consult with the Board of Trustees of the Presbytery to sell the property of Second Church, Tulsa (G-8.0401),
- 2) The Presbytery authorizes the Administrative Commission to dissolve the congregation of Second Church, Tulsa (G-11.0103i), pending consultation with the church members,
- 3) The Administrative Commission and the Board of Trustees be directed, in consultation with the former members of Second Church, Tulsa, to bring a recommendation to the Presbytery as to a meaningful use of the assets resulting from the sale of the property by the June 9, 2004, Stated Meeting of the Presbytery,
- 4) The Presbytery hold the membership of Second Church, Tulsa, for up to two (2) years and transfer them to congregations of their choice (G-11.0103i),
- 5) A service of celebration for the ministry and mission of Second Church, Tulsa, be conducted.

The AC and Trustees, in accordance with action directed by EOP, entered into a contract for the sale of Second's property on March 17, 2004. On the same date, March 17, 2004, Second filed a complaint against EOP with the Synod of the Sun and requested a Stay of Enforcement. A Stay of Enforcement was granted by SPJC on March 26, 2004, and was terminated after a hearing on April 16, 2004. Thereafter Second requested a Stay of Enforcement from the GAPJC which was granted May 5, 2004. The Stay was vacated on May 15, 2004, for lack of jurisdiction. On May 28, 2004, Second's property was conveyed to the buyer.

On May 5, 2004, the Moderator and Clerk of the SPJC dismissed the Complaint filed by Second against EOP because the Complaint did not state a claim upon which relief could be granted. On June 18, 2004, the SPJC ruled to uphold the decision of the Moderator and Clerk to dismiss the Complaint.

On August 6, 2004, a Notice of Appeal and Request for Stay of Enforcement was filed with the GAPJC. A Stay of Enforcement was granted on August 8, 2004. The Stay was modified after oral argument on EOP's Motion to Dismiss and Objections to Stay of Enforcement on October 15, 2004. The Motion to Dismiss was denied and the case was set for hearing.

### **Specifications of Error<sup>1</sup>**

*Specification of Error Number 1: (error in irregularity in the proceedings, D-8.0105a)*

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<sup>1</sup> These specifications of error are those enumerated in the Notice of Appeal dated August 6, 2004, rather than those found in Second's brief (D-8.0304). Further, several of these specifications of error in the Notice of Appeal do not address the decision of the SPJC.

- a) *The SPJC erred in that at the April 16, 2004 hearing, SPJC ruled on the merits of the Complaint after giving “specific instructions to the committee of counsel for both the Complainant and Respondent that all testimony must be restricted only to issues relating to the Stay of Enforcement.”*

This specification of error is not sustained.

Although the SPJC ruled only on the Stay of Enforcement, it was appropriate to hear limited oral argument on the merits, because the standard for a stay requires a permanent judicial commission to determine whether probable grounds for error have been stated (D-6.0103a(3)(c)).

- b) *The SPJC erred in that EOP’s stated clerk did not follow D-6.0307a, requiring that a list in writing of all papers and other materials pertaining to the case be submitted to Second.*

This specification of error is sustained.

Although this specification of error is sustained, this Commission finds that there was no harm since no trial was held.

- c) *The SPJC erred since SPJC did not follow D-7.0402c which requires that “a copy of the written decision shall immediately be delivered to the parties to the case by personal service or by certified delivery.”*

This specification of error is not sustained.

The Book of Order provision which addresses challenges on preliminary question determinations does not require delivery of the decision to the parties by personal service or by certified mail (D-6.0306c). D-7.0402c refers to remedial trials. No trial was held.

*Specification of Error Number 2: (error in refusing a party reasonable opportunity to be heard or to obtain evidence or present evidence, D-8.0105b) The respondent’s brief dated June 12, 2004, was mailed on June 14, 2004, and received by Second on June 17, 2004, the day prior to the scheduled hearing on June 18, 2004. “In this document, the respondent had requested that the hearing move immediately to trial if the finding of the full PJC of the Synod of the Sun should conclude that the complaint did state a claim upon which relief could be granted. ... The committee of counsel for the complainant certainly had no reasonable opportunity to contact witnesses or to prepare evidence for an immediate trial.”*

This specification of error is not sustained.

The SPJC did not err since SPJC did not rule on the request by the EOP to proceed directly to trial.

*Specification of Error Number 3: (error in receiving improper or declining to receive proper evidence or testimony, D-8.0105c)*

- a) *The SPJC erred by receiving misleading evidence and testimony from the committee of counsel of EOP about Second.*

This specification of error is not sustained.

There is no record of the SPJC hearing on the challenge to the Moderator and Clerk's jurisdictional findings, and one is not required by the Book of Order (D-6.0306). Therefore, there is no record that would permit this Commission to sustain the error. The Commission notes, however, that whenever a lower permanent judicial commission conducts a hearing concerning a potential final disposition that might be the subject of a further appeal, it would be a wise practice for a permanent judicial commission to create such a record.

- b) *The SPJC erred by ruling on April 16, 2004, that the empowerment to dissolve Second was maintained by the Presbytery, when such empowerment had been given by the Presbytery to the Administrative Commission.*

This specification of error is not sustained.

The SPJC correctly ruled that Presbytery retained power to dissolve Second. That power remained with Presbytery, notwithstanding the motion granting that power to the AC, because "the decision of an administrative commission shall be the action of the appointing governing body ..." (G-9.0505a).

- c) *The SPJC allowed an inaccurate label to be attributed to a document presented as exhibit "G".*

This specification of error is not sustained.

This is not a ground for appeal, and relates to the merits of the case.

- d) *The Council altered the wording of a motion which is not allowed by the Presbytery's Manual of Operation.*

This specification of error is not sustained.

This Commission has held that failure of a governing body to follow its own stated policy does not rise to the level of a constitutional error. This Commission rules on violations of the requirements of the Book of Order rather than those of internal governing body policy. "Hope, et al., v. Presbytery of San Francisco, *Minutes*, 2004, p.363."

*Specification of Error Number 4: (error in hastening to a decision before the evidence or testimony is fully received, D-8.0105d) When asked by a member of the SPJC if the committee of*

*counsel for Second was prepared to proceed to trial on the same day as the hearing, it was clearly stated that witnesses could not be obtained on such a short notice.*

This specification of error is not sustained.

This specification of error is not an action of the SPJC. One member's comment does not constitute an action of the SPJC. Further, no trial ensued.

*Specification of Error Number 5: (error in injustice in the process or decision, D-8.0105f) The SPJC erred in not allowing a full and complete opportunity to present witnesses and to discuss specific and relevant aspects for the defense of the church. Such opportunity was preempted by the decision of the SPJC to dismiss the case prior to a requested trial.*

This specification of error is not sustained.

This case was dismissed on jurisdictional grounds. There is no "right" to a trial if all the jurisdictional questions are not answered in the affirmative (D-6.0306c).

*Specification of Error Number 6: (error in constitutional interpretation, D-8.0105g) The action of EOP to empower an administrative commission to dissolve the church was irregular according to a 1995 authoritative interpretation of the General Assembly.*

This specification of error is not sustained.

Second refers to the 1995 Authoritative Interpretation by the 207<sup>th</sup> General Assembly regarding Powers and Responsibilities of Presbytery That Should Not Be Delegated (Section 21.127 and 21.128, 3, i). Delegation to an administrative commission is merely assigning a task to another part of its own body, with full power to act as the body. In addition, the use of the phrase "should not" in the Authoritative Interpretation is not prohibitive. Therefore, the action of EOP was not irregular.

### **Decision and Order**

IT IS THEREFORE ORDERED that the decision of the Permanent Judicial Commission of the Synod of the Sun is affirmed.

FURTHER, in light of the long and faithful ministry of Second Presbyterian Church, Tulsa, Presbytery is encouraged to implement its decision to hold a Service of Celebration for mission and ministry of the church, as appropriate.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Sun 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.

IT IS FURTHER ORDERED that the Stated Clerk of the Eastern Oklahoma Presbytery 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.

### **Absences and Non-participants**

William Carlough, a member of the Commission, was present for argument of the appeal, but took no part in the decision.

Dated this 3rd day of April, 2005.

### **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 217-5, Session of Second Presbyterian Church, Tulsa, Oklahoma, v. Eastern Oklahoma Presbytery, made and announced at Linthicum, Maryland, on April 3, 2005.

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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 Linthicum, Maryland, on April 4, 2005.

Robbie Emery Burke, Counsel for Appellee  
James Kerr, Counsel for Appellant  
Dana Bailey, Stated Clerk, Eastern Oklahoma Presbytery  
Elizabeth Johnson Pense, Stated Clerk, Synod of the Sun  
General Assembly Permanent Judicial Commission

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 April 4, 2005.

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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 Linthicum, Maryland, on April 3, 2005, in Remedial Case 217-5, Session of Second Presbyterian Church, Tulsa, Oklahoma, v. Eastern Oklahoma Presbytery, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Linthicum, Maryland, on April 4, 2005.

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C. Laurie Griffith  
Manager of Judicial Process and Social Witness