

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

Synod of the Northeast, Presbytery of	)	
Southeastern Illinois, Presbytery of Northern New	)	
England, Session of First Presbyterian Church of	)	
Hoopeston, Illinois, and Session of Presbyterian Church	)	<b>PRELIMINARY ORDER</b>
of Paris, Illinois,	)	
Complainants,	)	<b>AND</b>
	)	
v.	)	<b>ORDER FOR HEARING</b>
	)	
The Board of Pensions of the Presbyterian Church	)	Remedial Case 217-9
(U.S.A.),	)	
Respondent.	)	
	)	

**Headnotes**

1. **G-14.0506(b)(2): Fiduciary Responsibility of the Board of Pensions:** The Board of Pensions is an agency of the General Assembly that is simultaneously accountable to the General Assembly and governed by the laws of the Commonwealth of Pennsylvania. Through its establishment of the Board and its approval of the Benefits Plan, the General Assembly has delegated fiduciary responsibility for the Benefits Plan to the Board of Pensions.
  
2. **Interpretation of the Constitution:** The General Assembly has the authority to clarify the Constitution through authoritative interpretations and decisions by its permanent judicial commission. Without an authoritative interpretation, a General Assembly overture alone cannot interpret the Constitution.

**Arrival Statement and History**

These cases come before the General Assembly Permanent Judicial Commission on complaints against The Board of Pensions of the Presbyterian Church (U.S.A.) (Board) filed by the Synod of the Northeast, Presbytery of Southeastern Illinois, Presbytery of Northern New England, Session of First Presbyterian Church of Hoopeston, Illinois, and Session of Presbyterian Church of Paris, Illinois (hereinafter collectively Complainants). Each of the five remedial complaints challenges the Board’s alleged failure to implement a directive of the 216<sup>th</sup> General Assembly (2004) (216<sup>th</sup> GA) concerning the calculation of medical dues coverage for clergy couples installed by a congregation to share one installed position. The Board has answered each complaint and requested dismissal, arguing that three of the preliminary questions under D-6.0305 cannot be answered in the affirmative. The Board argues specifically that this Commission lacks jurisdiction, that the complaints were not timely filed, and that the complaints fail to state a claim upon which relief can be granted. (D-6.0305a, c, d)

On January 31, 2005, this Commission granted the Board's motion to consolidate the complaints for all pretrial and trial proceedings.

The 216<sup>th</sup> GA received overtures from the Presbyteries of Southeastern Illinois and Northern New England, with concurrences by the Presbyteries of the Palisades and Western Kentucky, titled "On Directing the Board of Pensions to Revise their Rules For the Calculation of Salary for Churches with a Clergy Couple Installed to One Position." The 216<sup>th</sup> GA approved this overture before its adjournment on July 3, 2004.

The Board was formed by the Articles of Agreement (Article 11.3) of the Plan of Reunion of the United Presbyterian Church in the United States of America and the Presbyterian Church of the United States in 1983, based on a "joint plan of merger" of the two predecessor bodies. The Board is incorporated in the Commonwealth of Pennsylvania as a "church plan," "construed and administered in accordance with the laws of the Commonwealth of Pennsylvania." The Benefits Plan was adopted by the 198<sup>th</sup> General Assembly (198<sup>th</sup> GA) in 1986. A number of resolutions were adopted by that same Assembly, including the specific rules for the new Plan, and a requirement that "participation in the Plan shall be made mandatory for all pastors installed in churches." "*Minutes*, 1986, p.700." The full plan of the Board in Article V requires each minister installed to a position in a congregation to be enrolled for full participation in the Benefits Plan, which is further interpreted by Administrative Rule # 106.

The 214<sup>th</sup> General Assembly (2002) (214<sup>th</sup> GA) voted to move to biennial rather than annual General Assemblies, and the Board amended its rules and organization in order to be responsive to changing needs without waiting for two years to implement needed decisions. Its Bylaws were amended March 1, 2003, with an effective date of August 1, 2004. On January 1, 2004, a newly "amended and restated" plan document became effective, which said in part that dues for part-time pastors would be based on the full-time equivalent salary (Article II.1(u) of the Plan). Minutes of a meeting of the Board on March 5-6, 2004, stated that the issue of member couples was to be considered among other concerns, continuing to be clear that the "primary concern" is the "financial health of the plan."

In a letter dated April 20, 2004, the Board asked the Advisory Committee on the Constitution (ACC) to interpret G-14.0506 "with respect to a Clergy Couple Serving a 'Shared' Installed Position," that is, to advise whether these couples are two people sharing one call or two people in two calls. The Board made this request after the 120-day deadline for seeking interpretations of the Constitution prior to the 216<sup>th</sup> GA (G-18.0301a).

At the 216<sup>th</sup> General Assembly (216<sup>th</sup> GA), Overture 14-09 was approved, directing the Board to revise the rules for the calculation of medical dues for clergy couples sharing one position. Although official notification of the action of the 216<sup>th</sup> GA was not received until early September 2004, the Board, at its July 16-17, 2004, meeting, voted to renew their request to the ACC for interpretation of whether clergy couples could "share" a position. In the meantime, in letters dated August 13, 2004, the Board wrote to the church treasurers of congregations being served by a "clergy couple filling the position previously filled by a single pastor." These letters advised that there were various plans in place to find a solution to the problem, that the Board

was requesting an interpretation of the ACC, that “fundamental principles of the Medical Plan’s coverage rules and funding structure” would be reviewed in October 2004, that an interim plan would be considered for a January 1, 2005, implementation, and that churches should expect to be billed as usual in the meantime.

On October 1, 2004, as in previous months, churches received invoices from the Board, billing them at the higher part-time rate. On October 23, 2004, Synod of the Northeast voted to initiate a remedial complaint against the Board, received by the Stated Clerk of the General Assembly on November 8, 2004. Similar complaints were filed by the Presbytery of Southeastern Illinois, received November 2, 2004; First Presbyterian Church of Hoopeston, Illinois, received November 15, 2004; the Presbytery of Northern New England, received November 15, 2004; and the Presbyterian Church of Paris, Illinois, received December 3, 2004.

### **Appearances**

Appearing for the complainants were Cornell Edmonds, David Stoner, and Robert McNabb. Appearing for the Board were Justin Johnson and Bruce Castor.

### **Jurisdiction Statement**

This Commission finds that it has jurisdiction, the Complainants have standing to file, the Complaints were timely filed, and that the Complaints state a claim upon which relief can be granted under D-6.0305.

#### ***Timeliness and Failure to State a Claim (D-6.0305c-d)***

The Board argues that this case presents a delinquency, rather than an irregularity, that the procedures for requesting a cure of a delinquency have not been followed, and therefore, the case cannot come before this Commission.

This case presents elements of both an irregularity and a delinquency. The 216<sup>th</sup> GA “directed the Board of Pensions to revise their rules ....” This has not been done; therefore there could be a delinquency. Complainants allege that, in response to the direction of the 216<sup>th</sup> GA, the Board sent each of the churches in question invoices, beginning August 13, 2004, which reflected charges for two part-time ministers at a higher rate than if one person were filling the position, thus committing an irregularity. Subsequent invoices were received monthly, thus repeating the irregularity. Therefore, the filing of the complaints of the Synod of the Northeast (November 8, 2004), the Presbyteries of Northern New England (November 15, 2004) and Southeastern Illinois (November 2, 2004), and the Session of First Presbyterian Church, Hoopeston, Illinois (November 15, 2004) fall within 90 days from the first allegedly irregular invoice and are timely. Because the subsequent invoice repeated the irregularity, the first 90-day window commenced anew with each subsequent billing. Therefore, the filing by the Session of Presbyterian Church of Paris, Illinois (December 3, 2004) was also timely.

### ***Jurisdiction (D-6.0305a)***

The issue of jurisdiction is the crux of the matter before this Commission. Established by the General Assembly, incorporated under the law of the Commonwealth of Pennsylvania, the Board lives between two worlds. As the Board deals with the financial soundness of the Plan, by collecting dues and providing payments for pensions and for medical benefits, the Board is clearly a fiduciary under non-profit, church plan civil law. However, in concerns and disputes that deal with constitutional and ecclesiastical issues, General Assembly, acting through its Permanent Judicial Commission, can appropriately interpret the Constitution by deciding judicial cases on trial and appeal.

This case arises in an area in which there is an apparent overlap between the General Assembly's ecclesiastical duties and the Board's fiduciary duties. General Assembly has reserved limited areas of responsibility in its relations with the Board. These areas include the election of members of the Board of Directors, the confirmation of the Executive Director, and prior approval of any proposed reduction of pension benefits. Under G-14.0506b(2), the General Assembly "may" fix the requisite percentage of an installed minister's compensation that must be paid by congregations for that minister's full participation in the pension and medical plan. By its establishment of the Board and its approval of the Benefits Plan, the General Assembly has chosen to delegate to the Board responsibility for fixing that percentage.

When the 216<sup>th</sup> GA approved the overture in question, it did not take back this fiduciary power to fix the dues. Rather, it exercised its power to address an ecclesiastical issue—namely, whether a clergy couple can fill one position for purposes of calculating medical dues only. In fact, the Board has acknowledged its understanding that this is an ecclesiastical, not a fiduciary, issue by requesting an opinion from the ACC, an ecclesiastical entity. While the 216<sup>th</sup> GA clearly assumed a certain reading of G-14.0506b(2), i.e. that a clergy couple can share one call, it did not issue an authoritative interpretation of this provision. The General Assembly has the authority to clarify the Constitution through authoritative interpretations and decisions by its permanent judicial commission. Without an authoritative interpretation, a General Assembly overture alone cannot interpret the Constitution.

Acknowledging that this Commission has no jurisdiction over the Board's fiduciary responsibilities under Pennsylvania law, and that its jurisdiction is limited to constitutional interpretation, this Commission concludes that it has jurisdiction, and that the relief that can be granted is declaratory in nature.

### **Preliminary Order and Order for Hearing**

IT IS ORDERED that a trial will be scheduled on August 5, 2005, on the issue of whether a clergy couple can share one position.

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

Commissioner Fred Denson recused himself, and took no part in the deliberations or decision of the Commission on this case. Commissioner William Carlough was absent and took no part in this Decision.

Dated this 4<sup>th</sup> day of April, 2005.

### **Certificate**

We certify that the foregoing is a full and correct copy of the Preliminary Order and Order for Hearing of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 217-9, Synod of the Northeast, *et al.*, v. The Board of Pensions of the Presbyterian Church (U.S.A.), made and announced at Linthicum, Maryland, on April 4, 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.

Cornell Edmunds, Counsel for Complainants  
Justin Johnson, Counsel for The Board  
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 Preliminary Order 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 Linthicum, Maryland, on April 4, 2005, in

Remedial Case 217-9, Synod of the Northeast, *et al.*, v. The Board of Pensions of the Presbyterian Church (U.S.A.).

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

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C. Laurie Griffith  
Manager of Judicial Process and Social Witness