

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

The Session of the Palos Park Presbyterian)
Community Church,)
Complainant,)
v.)
The Advisory Committee on the Constitution)
of the General Assembly of the Presbyterian)
Church (U.S.A.),)
Respondent.)

**DECISION ON MOTION
TO DISMISS; DECISION ON
REQUEST TO AMEND COMPLAINT;
AND ORDER**

Remedial Case 218-03

Arrival Statement

This remedial case comes before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) as a matter of original jurisdiction to adjudicate a Complaint filed with the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) on July 7, 2006.

Jurisdictional Statement

This Commission is the appropriate body before which a complaint against an entity of the General Assembly of the Presbyterian Church (U.S.A.) is heard. The Complainant is a session of the Presbyterian Church (U.S.A.) and has standing to file the Complaint. The Respondent, the Advisory Committee on the Constitution (ACC), appeared by an Answer and a Motion to Dismiss dated July 28, 2006.

Appearances

Gordon Fish and James R. Tony, minister, (Tony) appeared on behalf of the Complainant. Stephen S. Grace and Justin M. Johnson appeared on behalf of the Respondent.

Background

This case involves the responsibilities of the ACC when questions of constitutional interpretation arising from governing bodies or individuals are delivered to the ACC by the Stated Clerk pursuant to G-13.0112. On February 14, 2006, Winfield R. Jones, minister (Jones) and M. Douglas Harper, Jr., minister (Harper), submitted certain questions (Jones/Harper Questions) to the Stated Clerk of the General Assembly (Stated Clerk). On February 14, 2006, Tony also submitted certain questions (Tony Questions) to the Stated Clerk. The Jones/Harper Questions and the Tony Questions posed issues of constitutional interpretation for the 217th General Assembly (2006). The Jones/Harper Questions and the Tony Questions were timely filed with the Stated Clerk, and they were referred to the ACC, pursuant to G-13.0112d.

On or about March 13, 2006, the ACC formulated its advice concerning the Tony Questions. On March 29, 2006, Mark Tammen, the Associate Stated Clerk assigned to staff the ACC, advised Tony, and possibly Jones and/or Harper, of the ACC action. It is not clear from the record what advice was formulated by the ACC with respect to the Jones/Harper Questions. On April 3, 2006, Jones and Tony requested the ACC to reconsider its advice (Jones/Tony Letter). On April 5, 2006, Harper wrote the ACC (Harper Letter), noting that the ACC had not given advice on the Jones/Harper Questions and urged that the ACC was required to do so.

On April 10, 2006, the ACC went into executive session during a conference call meeting¹ and had before it the Jones/Tony Letter and the Harper Letter. On April 11, 2006, the Office of the Stated Clerk advised Tony, and perhaps Jones and Harper, that in the executive session portion of the April 10, 2006, meeting, the ACC had reviewed its original advice, as requested by the Jones/Tony Letter and the Harper Letter, and had declined to change or reconsider its original actions. The ACC subsequently reported to the General Assembly, but the date(s) of such report(s) is/are unclear from the record.

On July 7, 2006, the Session of Palos Park Presbyterian Community Church (Session) filed a remedial complaint with this Commission against the ACC. On July 28, 2006, the ACC filed its Answer and a Motion to Dismiss the Complaint. The grounds upon which the Motion is based are:

1. Failure to State A Claim. The actions of the ACC were not “actions” or “decisions” that can form the basis for a constitutional “irregularity” under D-2.0202a, and hence the Complaint does not state a claim upon which relief can be granted.
2. Timeliness. The Complaint was not timely filed because the action of the ACC was taken at its meeting on March 13, 2006, and Tony, Jones and/or Harper were informed of such action at least by March 29, 2006. The Complaint was filed on July 7, 2006, which was after the expiration of the required filing period.
3. Open Meeting Policy. The allegation that the ACC executive session which occurred during the conference call on April 10, 2006, violated the General Assembly’s Open Meeting Policy, as approved by the 209th General Assembly (1997), does not state a claim upon which relief can be granted because concerns about the Open Meeting Policy are to be directed to the Office of the Stated Clerk.
4. Mootness. The issues raised by the Complaint are moot because the 217th General Assembly (2006) received the advice of the ACC and acted upon it prior to the filing of the Complaint.

¹ During oral argument, Complainant indicated that Jones and Tony attended the conference call meeting as observers until the ACC went into executive session.

On July 31, 2006, the GAPJC set a hearing on the Motion to Dismiss for October 13, 2006, and directed the parties to file briefs on the issues of timeliness and whether the Complaint failed to state a claim upon which relief can be granted.

On or about August 29, 2006, Complainant filed its Hearing Brief together with a Request for Leave to Amend Complaint (Request). The Request sought to amend the Complaint by adding the following “Specification of Error:”

- f. The ACC erred in its constitutional obligation pursuant to D-6.0307a, by failing to timely provide to the Complainant a listing of all the papers and materials pertinent to the instant matter, as required by [sic] to be provided to [sic] the parties in writing within forty-five (45) days after receipt of a remedial complaint.

Respondent filed its Brief in support of its Motion on September 28, 2006. Respondent did not respond in writing to the Request. The hearing was held on October 13, 2006.

Decision on Motion to Dismiss

Respondent’s Motion to Dismiss is denied. In support of the Motion, Respondent has argued that the Complaint failed to state a claim upon which relief can be granted, that it was not timely filed, that the issues were moot because the ACC’s advice was acted upon by the 217th General Assembly (2006), and that the General Assembly’s Open Meeting Policy was not subject to judicial review.

As to the failure to state a claim, Respondent’s Motion relied on the case, *Session of the Concord Liberty Presbyterian Church v. Office of the General Assembly of the Presbyterian Church (U.S.A.), et al, Minutes, 2006, p. ____*. The *Concord Liberty* case is not applicable. It is factually distinguishable because it concerned a report of a non-constitutional task force of the General Assembly. The ACC is a constitutional committee with a constitutional mandate (G-13.0112). As a permanent committee of the General Assembly, the ACC is governed by the *Constitution* as well as by the *Manual of the General Assembly (2006) (Manual)* and by its own internal policies and procedures. Further, the Complaint herein alleges that the ACC failed to *act*, whereas the *Concord Liberty* case dealt with a review of recommendations of a non-constitutional task force. In summary, the *Concord Liberty* case dealt with *content*; this case deals with a constitutionally mandated *process*.

This Commission notes that Section A.5.a. of the *Manual* provides, “The Advisory Committee on the Constitution shall report its findings along with its recommendations on all questions requiring an interpretation by the General Assembly of the *Book of Order*...” The Complaint alleges that the ACC did not report findings and recommendations on all questions requiring constitutional interpretation. There is a factual dispute concerning this point, since Respondent has denied this allegation in its Answer. Notwithstanding this factual dispute, this Commission is duty-bound to assume the truth of the facts alleged in the Complaint in determining the preliminary jurisdictional question of whether the Complaint states a claim upon which relief can be granted. Thus, at this stage of the proceeding, this Commission is compelled to accept as true the allegation that the ACC did not report findings and recommendations on all

questions requiring constitutional interpretation (McKittrick v. Session, West End Presbyterian Church of Albany, New York, *Minutes*, 2003, pp.272-274). However, Complainant has the burden of proving the truth of this allegation at trial.

As to timeliness, the ACC conceded at the hearing that its report was not finalized until an unspecified date after April 10, 2006. The Complaint was filed on July 7, 2006, which was within 90 days after April 10, 2006.

As to the General Assembly's Open Meeting Policy, both parties agreed at the hearing that the policy applies to the ACC, but they differed as to remedies for alleged violations of the Policy. This Commission reserves for trial the determination of both the application of the policy to the ACC and appropriate remedies, if any, for non-compliance. This is a matter of original jurisdiction, and as in any trial situation, it is within the purview of a permanent judicial commission (in this case, the GAPJC) to ascertain whether an "entity" complies with the policies of its governing body (in this case, the General Assembly).

At oral argument, both parties referred to Hope, *et al v.* Presbytery of San Francisco, *Minutes*, 2006, pp.____, a remedial case on appeal. The *Hope* case does not apply because it concerned a higher governing body being asked to enforce the policies of a lower governing body. Policies of a governing body, such as the General Assembly, adopted by itself and governing its entities and committees, are appropriately considered when that same governing body is functioning judicially in a trial concerning its own entities or committees.

As to the issue of mootness, the *recommendations* of the ACC to the General Assembly may be moot, but not the propriety of the ACC's *actions*. Such actions, if alleged to be erroneous, are subject to judicial review by this Commission.

This Commission notes that in the Respondent's Answer to the Complaint, the Respondent "neither admits nor denies" that the ACC is an "entity" of the General Assembly. The Authoritative Interpretation adopted by the 216th General Assembly (2004), held that "the word 'entity' in D-2.0202 and D-6.0202b denotes an organized body, such as a committee, board, council, division, etc." Therefore, the ACC is an "entity" of the General Assembly and a session may bring a complaint against it.

Decision on Request to Amend Complaint

Complainant's Request for Leave to Amend Complaint is denied. Since this Commission has accepted jurisdiction of this case, it has full authority and power to control all trial-related proceedings. This includes the authority and power to insure that the parties comply with the requirements of the Rules of Discipline as well as with directives and orders of this Commission pertaining to pretrial and trial matters. In view of the jurisdiction that this Commission has over this matter, the requested amendment to the Complaint is unnecessary. While this Commission has denied the Request, the Respondent nonetheless was required by D-6.0307a to provide the list referenced therein, even though there were other concurrent pretrial proceedings. This Commission has ordered below appropriate relief with respect to this obligation.

Summary of Decisions

Respondent's Motion to Dismiss is denied.

The Complainant is a session of a church in the Presbytery of Chicago, and has standing to file the Complaint.

This Commission is the appropriate body before which a complaint against an entity of the General Assembly is heard. This Commission has jurisdiction in this case.

The Complaint states a claim upon which relief can be granted.

The Complaint was timely filed.

The issues related to the General Assembly's Open Meeting Policy are reserved for trial.

The alleged irregularities of the ACC are not moot.

Complainant's Request for Leave to Amend the Complaint is denied.

Order

IT IS THEREFORE ORDERED that this Complaint proceed to trial before this Commission on February 9, 2007.

IT IS FURTHER ORDERED that the ACC and the Stated Clerk of the General Assembly comply with the requirements of D-6.0307a by November 30, 2006.

IT IS FURTHER ORDERED that the Executive Committee of the General Assembly Permanent Judicial Commission (or its designee) conduct a pretrial conference and establish pretrial and trial procedures. The Executive Committee of the General Assembly Permanent Judicial Commission is authorized to act on behalf of the full Commission on any matters as may be necessary to prepare for and expedite all matters related to the conduct of the trial.

IT IS FURTHER ORDERED that the Clerk of Session of the Palos Park Presbyterian Community Church report this decision to the Session at its first meeting after receipt, that the Session 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

Judy Woods was not present and took no part in this case.

Certificate

We certify that the foregoing is a true and correct copy of the Decision on Motion to Dismiss and Order of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 218-03, The Session of the Palos Park Presbyterian Community Church v. The Advisory Commission on the Constitution of the General Assembly of the Presbyterian Church (U.S.A.), made and announced at Louisville, Kentucky, on October 16, 2006.

Dated the 16th day of October, 2006.