

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

Barlow J. Buescher, Dave R. Brown, Mary D.)
McGonigal, Jeanne Howell, Serena Sullivan, Eileen)
Dunn, Wayne H. Keller, Don E. Keller, Dwight W.)
Whipple, David R. Kegley, F. Mark Dowdy, Brian)
Heath, R. Sidney Cloud, Isaac H. Jung, Irene Van)
Arnam, Michael Baugh, Chuck Jenson, Donna Lee,)
and the Session of Lakewood Presbyterian Church,)
Complainants-Appellants,)
v.)
Presbytery of Olympia,)
Respondent-Appellee.)

DECISION AND ORDER

Remedial Case 218-09

Headnotes

1. **Authoritative Interpretation Did Not Change any Ordination Standard:** While the General Assembly and the GAPJC may *interpret* ordination standards set forth in the *Book of Confessions* and the Form of Government, the Authoritative Interpretation of the Theological Task on the Peace, Unity, and Purity of the Church adopted by the 217th General Assembly did not (and constitutionally could not) change any ordination standard, including the requirements set forth in G-6.0106b.
2. **Statements of “Essentials of Reformed Faith and Polity”:** Attempts by governing bodies that ordain and install officers to adopt resolutions, statements or policies that paraphrase or restate provisions of the *Book of Order* and/or declare them as “essentials of Reformed faith and polity” are confusing and unnecessary, and are themselves an obstruction to constitutional governance in violation of G-6.0108a.
3. **Rationale for Decisions not Required but Recommended:** While the Constitution does not require that a permanent judicial commission provide a rationale for every irregularity or delinquency assigned in the complaint when rendering a decision (D-7.0402), this Commission recommends that permanent judicial commissions provide enough explanation for the church to understand the reasons for decisions and be guided accordingly.

Arrival Statement

This remedial case came before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) on an appeal filed by the Complainants-Appellants, Barlow J. Buescher, Dave R. Brown, Mary D. McGonigal, Jeanne Howell, Serena Sullivan, Eileen Dunn, Wayne H. Keller, Don E. Keller, Dwight W. Whipple, David R. Kegley, F. Mark Dowdy, Brian

Heath, R. Sidney Cloud, Isaac H. Jung, Irene Van Arnam, Michael Baugh, Chuck Jenson, Donna Lee , and the Session of Lakewood Presbyterian Church, (Buescher, *et al.*) from a decision of the Permanent Judicial Commission of the Synod of Alaska-Northwest (SPJC) dated March 30, 2007.

Jurisdictional Statement

This Commission finds that it has jurisdiction, that Buescher, *et al.*, have standing to file the appeal, that the appeal was properly and timely filed and that the appeal states one or more of the grounds for appeal required under D-8.0105.

Appearances

Buescher, *et al.*, Complainants-Appellants were represented by Doug Nave and Dwight Whipple. The Presbytery of Olympia (Presbytery), Respondent-Appellee, was represented by William Holt and Pamela Anderson.

History

At a meeting of the Presbytery held on September 21, 2006, at Church of the Indian Fellowship in Tacoma, Washington, the Presbytery adopted the following Resolution:

We hereby declare that in our discernment of the movement of the Holy Spirit, every mandate of the Book of Order (2005-2007) is an essential of reformed polity. Therefore, any violation of a mandate of the Book of Order (2005-2007) constitutes a failure to adhere to the essentials of reformed polity and thus presents a bar to ordination and installation.

Following this action, Buescher, *et al.*, filed a Complaint with the SPJC seeking remedial relief.

After a hearing held on March 20, 2007, in Seattle, Washington, in which both parties were represented by counsel, the SPJC entered its Decision affirming the action of the Presbytery.

Buescher, *et al.*, timely filed a Notice of Appeal dated March 20, 2007, with this Commission. On May 25, 2007, this Commission entered its Preliminary Order and Order for Hearing and on August 6, 2007, entered its Amended Order for Hearing setting a hearing on this matter at this Commission's February, 2008, meeting. The appeal was heard by the GAPJC on February 8, 2008.

Specifications of Error

Specification of Error No. 1. The SPJC erred in allowing the Resolution to stand because it voids the presbytery's responsibility to conduct meaningful examinations.

This specification of error is sustained.

Specification of Error No. 2. The SPJC erred in allowing the Resolution to stand because it violates individuals' freedom of conscience and presbytery's duty to show mutual forbearance in non-essentials.

This specification of error is sustained.

Specification of Error No. 3. The SPJC erred in allowing the Resolution to stand because it violates Olympia Presbytery's connectional responsibilities as part of the larger church.

This specification of error is sustained.

Specification of Error No. 4. The SPJC erred in applying an improper standard of review.

This specification of error is sustained.

Specification of Error No. 5. The SPJC erred by committing other procedural irregularities and injustice by failure to engage in transparent and reasoned decision making and by disregarding the immediate and harmful effects of the Resolution.

This specification of error is sustained.

Decision

The record on appeal and statements of counsel at oral argument suggest that the Presbytery adopted the Resolution in response to concerns among the churches and members of the Presbytery about the implementation of the Authoritative Interpretation of the Theological Task Force on Peace, Unity, and Purity of the Church (Authoritative Interpretation) adopted by the 217th General Assembly (2006) (*Minutes*, pp. 514-515). The Presbytery submitted that it desired to provide advice to potential candidates for the office of minister of the Word and Sacrament as to what the Presbytery would consider to be "essential" in the event the process set forth in the Authoritative Interpretation resulted in "scruples" by such candidates, as contemplated by the Authoritative Interpretation.

The Authoritative Interpretation provides that "the *Book of Confessions* and the Form of Government of the *Book of Order* set forth the scriptural and constitutional standards for ordination and installation." The Authoritative Interpretation clarifies procedures for applying those standards. G-6.0108b provides that the "decision as to whether a person has departed from essentials of Reformed faith and polity is made initially by the individual concerned but ultimately becomes the responsibility of the governing body in which he or she serves."

The question herein is whether the Resolution is constitutional. This Commission reiterates the rationale contained in a case decided contemporaneously herewith, *Bush, et al., v. the Presbytery of Pittsburgh* (218-10, February 11, 2008):

The Authoritative Interpretation correctly states that the standards for ordination of officers in the Presbyterian Church (U.S.A.) are set forth in the *Book of Confessions* and the Form of Government. Section “b” of the Authoritative Interpretation states that “these standards are determined *by the whole church*, after the careful study of Scripture and theology, *solely by the constitutional process of approval by the General Assembly with the approval of the presbyteries*” (emphasis added). The constitutional process for amending ordination standards (or any other provision of the Constitution) is defined in Chapter 18 of the Form of Government. While the General Assembly and the GAPJC may *interpret* these standards, the Authoritative Interpretation did not (and constitutionally could not) change any ordination standard, including the requirements set forth in G-6.0106b. Similarly, no lower governing body can constitutionally define, diminish, augment or modify standards for ordination and installation of church officers (footnote omitted).

* * *

[A]ttempts by governing bodies that ordain and install officers to adopt resolutions, statements or policies that paraphrase or restate provisions of the *Book of Order* and/or declare them as “essentials of Reformed faith and polity” are confusing and unnecessary. G-6.0108a sets forth standards that apply to the whole church. These standards are binding on and must be followed by all governing bodies, church officers and candidates for church office. Adopting statements about mandatory provisions of the *Book of Order* for ordination and installation of officers falsely implies that other governing bodies might not be similarly bound; that is, that they might choose to restate or interpret the provisions differently, fail to adopt such statements, or possess some flexibility with respect to such provisions. Restatements of the *Book of Order*, in whatever form they are adopted, are themselves an obstruction to the same standard of constitutional governance no less than attempts to depart from mandatory provisions.

In allowing the Resolution to stand, the SPJC disregarded such immediate and harmful effects as those described above.

Therefore, this Commission finds the Resolution to be unconstitutional.

If there were concerns in the Presbytery about the Authoritative Interpretation and its impact on freedom of conscience, *Bush* clarifies the issue:

While G-1.0301 permits broad freedom of conscience for members of the church, “in becoming a candidate or officer of the Presbyterian Church (U.S.A.) one chooses to exercise freedom of conscience within certain bounds” (G-6.0108b). G-6.0108a defines the limits of this freedom of conscience for ordained church officers. It first states the requirement that all church officers adhere to the essentials of Reformed faith and polity as expressed in the *Book of Confessions* and the Form of Government (footnote omitted). It next assures freedom of

conscience, but *only* with respect to the interpretation of Scripture. Even then, freedom of conscience is permitted only to the extent that it (a) is not a serious departure from the essential standards of Reformed faith and polity, (b) does not infringe on the rights and views of others, and (c) does not obstruct the constitutional governance of the church.

By declaring in advance the mandates to be “essentials,” and by establishing in advance the mandates to be an absolute bar to ordination and installation, the Presbytery violated G-6.0108 and the Authoritative Interpretation.¹ As was stated in the 1927 Report of the Special Commission of 1925 (the “Swearingen Commission Report”) Presbyterian Church in the United States of America *Minutes*, 1927, pp. 78-79:

One fact often overlooked is that by the Act of 1729, the decision as to essential and necessary articles was to be in specific cases. It was no general authority that might be stated in exact language and applied rigidly to every case without distinction. It was an authority somewhat undefined, to be invoked in each particular instance... . It was clearly the intention that this decision as to essential and necessary articles was to be made after the candidate had been presented and had declared his [or her] beliefs and stated his [or her] motives personally, and after the examining body...had full opportunity to judge the man himself [or woman, herself] as well as abstract questions of doctrine.

The SPJC’s decision did not make clear what standard of review it used to determine the constitutionality of the Resolution, but simply stated that the Resolution “does not preclude Olympia Presbytery from conducting a meaningful examination to assess the fitness of individual candidates on a case-by-case basis... .” Without a clear articulation by the SPJC of its rationale, this Commission is unable to determine the SPJC’s standard of review. Given the foregoing rationale as to the other specifications of error, this Commission concludes that the SPJC’s review was constitutionally flawed.

Finally, while the Constitution does not require that a permanent judicial commission provide a rationale for every irregularity or delinquency assigned in the complaint when rendering a decision (D-7.0402), this Commission recommends that permanent judicial commissions provide enough explanation for the church to understand the reasons for decisions and be guided accordingly.

Order

IT IS THEREFORE ORDERED that the Decision of the Permanent Judicial Commission of the Synod of Alaska-Northwest be reversed and that the Resolution of the Presbytery of Olympia is void and of no further force or effect.

¹ Both parties cited *Presbytery of West Jersey v. Synod of Northeast*, *Minutes*, 1993, p. 181, in support of their positions; however, *West Jersey* is not pertinent herein because it did not involve a declaration regarding “essentials.”

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Olympia 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.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of Alaska-Northwest 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.

Absences and Non-participants

Tony Cook was recused from participation in this case.

Certificate

We certify that the foregoing is a true 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 218-09, Barlow J. Buescher, Dave R. Brown, Mary D. McGongal, Jeanne Howell, Serena Sullivan, Eileen Dunn, Wayne H. Keller, Don E. Keller, Dwight W. Whipple, David R. Kegley, F. Mark Dowdy, Brian Heath, R. Sidney Cloud, Isaac H. Jung, Irene Van Arnam, Michael Baugh, Chuck Jenson, Donna Lee, and the Session of Lakewood Presbyterian Church, Complainants/Appellants, v. Presbytery of Olympia, Respondent/Appellee, made and announced at Louisville, Kentucky, on February 11, 2008.

Dated this 11th day of February, 2008.

Wendy G. Warner, 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 February 11, 2008.

Doug Nave, Counsel for Appellant
Dwight Whipple, Counsel for Appellant
William Holt, Counsel for Appellee
Pamela Anderson, Counsel for Appellee
Joyce Carr, Stated Clerk, Presbytery of Olympia

Rick Melin, Stated Clerk, Synod of Alaska-Northwest
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 February 11, 2008.

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, Kentucky, on February 11, 2008, in Remedial Case 218-09, Barlow J. Buescher, Dave R. Brown, Mary D. McGonigal, Jeanne Howell, Serena Sullivan, Eileen Dunn, Wayne H. Keller, Don E. Keller, Dwight W. Whipple, David R. Kegley, F. Mark Dowdy, Brian Heath, R. Sidney Cloud, Isaac H. Jung, Irene Van Arnam, Michael Baugh, Chuck Jenson, Donna Lee, and the Session of Lakewood Presbyterian Church, Complainants/Appellants, v. Presbytery of Olympia, Respondent/Appellee, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, Kentucky, on February 11, 2008.

C. Laurie Griffith
Manager of Judicial Process and Social Witness