

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

Jae G. Lee, Ji Suk Kim, and Hyung Young Choi,)
Appellants (Complainants),)
v.)
Presbytery of Midwest Hanmi,)
Appellee (Respondent).)

DECISION AND ORDER

Remedial Case 219-05
(formerly 218-20)

Headnote

Authority delegated to administrative commissions must specify powers and authority delegated; those not delegated are reserved to the delegating body. Under the *Book of Order*, when a governing body establishes an administrative commission, it shall state specifically the scope of power given to the commission (G-9.0502). Powers not delegated by a governing body are reserved to that body.

Arrival Statement

This remedial case came before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) on an appeal filed by the Appellants, Jae G. Lee, Ji Suk Kim, and Hyung Young Choi (collectively Lee), against Appellee Presbytery of Midwest Hanmi (Presbytery), from a decision of the Permanent Judicial Commission of the Synod of Lincoln Trails (SPJC), dated April 26, 2008.

Jurisdictional Statement

This Commission finds that it has jurisdiction, that Lee has 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

Lee was represented by W. Dan Lee and Robert Worley. Presbytery was represented by David G. Strom.

History

Canaan Presbyterian Church (Canaan) is a member church in the Presbytery, which is a non-geographic Korean-language presbytery, created in 1994. Canaan became a charter member when it transferred to the Presbytery from the Presbytery of Chicago.

In 2006, Canaan was severely affected with disorder, and its Session became unwilling or unable to manage Canaan's affairs. On October 5, 2006, at a special called meeting, the Presbytery appointed an administrative commission (AC) pursuant to G-9.0500 for the peace and unity of Canaan. The AC was directed by Presbytery to dissolve the Session of Canaan and to exercise jurisdiction over Canaan as the session according to G-11.0103s. The AC was granted "both the authority of the Session stated at G-10.0000 of the *Book of Order* and the authority of the Presbytery listed at G-11.0000 of the *Book of Order*." Presbytery did not grant to the AC the power to act as the Presbytery or as the Session with respect to other matters. When dealing "with matters as to the search for the new pastor and dissolving pastor relationship" with Canaan, the AC was limited to the powers and authority of a session. This limitation was consistent with G-9.0503a(4), which provides that an administrative commission may be granted power:

to visit particular churches, governing bodies, or other organizations of the church reported to be affected with disorder, and to inquire into and settle the difficulties therein, *except that no commission shall have the power to dissolve a pastoral relationship unless such power has been specifically delegated to it by the appointing body . . .* (emphasis added).

The AC Plan

On October 24, 2006, the AC adopted a "Road Map," which dealt almost exclusively with the retirement of the pastor, Yong S. Rhee (Rhee). It was crafted by the AC based in part on discussions held with Rhee concerning his retirement and with an opposition group at Canaan known as "CaSaMo."

The Canaan November Response to the AC Plan

On November 1, 2006, nine elders filed a complaint with Presbytery stating that the AC had exceeded its powers by dealing with the dissolution of the pastoral relationship between Canaan and Rhee, and by establishing a process for naming Rhee's successor. That complaint was never heard by Presbytery. On November 7, 2006, the AC reaffirmed the "Road Map" and dealt with other matters, including directing that a congregational meeting that had been called for the purpose of electing officers be postponed until the Session's functions were restored.

On November 28, 2006, the "Board of Directors" (trustees) of the CPC Corporation, of which Rhee was the president, voted to withdraw Canaan's membership in Presbytery and transfer back to the Presbytery of Chicago. On December 1, 2006, the AC requested by letter to Rhee that Canaan's previous organizational structure be maintained.

The "December 5 Actions" of the Rhee/Elders Group

On December 5, 2006, in defiance of the November 7, 2006, request of the AC and of the action of Presbytery in establishing the AC, Canaan held, without notice, a congregational meeting at which the congregation purported to direct the board of trustees to form a “steering committee” for the operation of the church and “have it take the church session’s position.” Until the session was organized, the steering committee would consist of five people who had attended the church’s worship services and would exclude persons who had “never paid offerings.” At that meeting the congregation also elected elders and deacons. On December 5, 2007, the so-called steering committee wrote to the congregation explaining what had transpired at the congregational meeting, detailing the disagreements with the AC and stating that “we reached a conclusion in which we couldn’t help but declare a separation from the Midwest Hanmi Presbytery, and from now on we will remove any kind of interference from the Presbytery.” Also on December 5, 2006, Canaan’s attorney wrote a letter to the moderator of Presbytery asserting violations of the *Book of Order* by the AC and by Presbytery, and advising that Canaan was withdrawing from Presbytery. Canaan’s steering committee wrote a letter to the members of Presbytery stating: “we announced to leave the Midwest Hanmi Presbytery. Of course, this does not mean to leave the denomination. From now on, if permitted, we will return to the Presbytery of Chicago of which we were a member for over seventeen years.”

Following the December 5 Actions, on December 8, 2006, Canaan’s steering committee published a newspaper ad containing the same content as the steering committee’s December 5 letter to the congregation.

The December 11 Meeting of Presbytery

On December 11, 2006, at its regular stated meeting, Presbytery observed in its minutes that Canaan’s December 5 congregational meeting was not legitimate because it had not been called by the AC. It considered the meeting to be a fractional gathering of Rhee and his supporters. The Presbytery further observed that it respected the decision of the pastor and elders to withdraw from the Presbytery, but that since the withdrawal did not recognize the jurisdiction of the Presbytery, the Presbytery would consider the pastor and elders who made that decision to have renounced the jurisdiction of the PC(USA). The Presbytery went on to state that the persons who had made the decisions may have made them without an understanding of the resulting consequences of their withdrawal from Presbytery.

The Presbytery recommended that those persons cancel their decisions to withdraw and resolved that if by December 20, 2006: (i) Rhee did not send a letter cancelling the withdrawal (and advertise such in the congregation newsletter), and stating that he would be in compliance with the governance of the Presbytery; and/or (ii) certain elders did not do likewise; then, the Presbytery would presume that Rhee had renounced the Presbytery’s jurisdiction, and that pursuant to G-6.0502 (now G-6.0702), he would be terminated from ordained office, removed from the list of ministers of the PC(USA) and his exercise of office ended. Likewise, the elders who supported the withdrawal resolution would be “automatically removed from membership and ordained office and the exercise of their office shall be terminated.” The Presbytery further resolved that it would only acknowledge those members of Canaan who did not “renounce jurisdiction of the Presbyterian Church (U.S.A.)” as the true church.

At the December 11, 2006, meeting of Presbytery, the AC's request that Presbytery delegate to the AC from the Committee on Ministry the authority to call Canaan's next pastor and dissolve the pastoral relationship between Canaan and Rhee was denied.

Actions of Rhee and Elders to Correct Conduct

On December 14, 2006, Canaan placed a newspaper ad: "accepting sincere recommendations from members of the Presbytery and pastors, we inform the resolution adopted by the board of trustees and steering committee to resolve the issues while staying with the Presbytery" (emphasis in original). On December 19, 2006, Canaan's attorney wrote to the Presbytery, stating that: (i) the Presbytery had not responded to his previous advice concerning alleged violations of the *Book of Order* by Presbytery; (ii) the withdrawal was not from the PCUSA but from the Presbytery; and (iii) he represented Canaan, not any minister, officer or member. He wrote that Canaan was not renouncing the jurisdiction of the "church," but rather of the Presbytery. He requested that the Presbytery grant an extension of time from December 20, 2006, to February 14, 2007, for Canaan to respond. He advised that his client was "considering and contemplating joining other Presbytery with the P.C.U.S.A."

On December 20, 2006, Rhee wrote to the Stated Clerk of the Presbytery that he "never expressed the renunciation of the jurisdiction of the denomination." He requested that his part in the December 5 Actions be taken to the Presbytery's Permanent Judicial Commission (PPJC). He indicated that even if the PPJC punished him, he would still "prefer to transfer to the Chicago Presbytery but I am not withdrawing the membership from the PCUSA." He also requested an extension of time but, if Presbytery dismissed Canaan, it "would transfer to the Chicago Presbytery."

2006 Year-end and Early 2007 AC/Presbytery Actions

On December 28, 2006, the AC declared as "unauthorized and illegal" the nomination and election of Canaan's new officers and as "illegal" the special meeting of the congregation on December 5, 2006. The AC determined that such officers would not be recognized.

At a meeting on January 4, 2007, of Presbytery's Coordinating Council, Rhee, who was a member of the Coordinating Council as the chair of Presbytery's Policy and Record Committee, stated his position that he "had never expressed any intention to terminate and withdraw from the denomination." The Coordinating Council discussed and by implication affirmed Rhee's continuing status as a member of the Presbytery. The chairman admonished Rhee to "faithfully follow all power of governance and decisions that need to be complied with as a member of the presbytery, since he clearly announced his standpoint stating he had never expressed terminating and withdrawing from the membership of the denomination."

Also on January 4, 2007, the AC called a congregational meeting to be held on February 4, 2007, for the purpose of dissolving the pastoral relationship between Rhee and Canaan. In a letter dated January 18, 2007, Rhee objected to the calling of the congregational meeting, arguing both constitutional grounds and that the AC had exceeded its authority. He also filed a complaint with the Presbytery concerning the actions of the AC, including those related to the

calling of the congregational meeting, and requested that an investigating committee be formed. It does not appear from the record that the congregational meeting was held.

The “January Actions” of Rhee and Elders

The calendar portion of Canaan’s worship bulletin of January 7, 2007, contained a date for “recognition of the 2007 Church Officers” and “Retirement of Elders and Deacons.” On January 8, 2007, a banner on Canaan’s pulpit proclaimed “Chicago Canaan Church” instead of “Canaan Presbyterian Church.” On January 14, 2007, the annual meeting of the Canaan congregation was held, at which the December 5, 2006, withdrawal resolution was vacated and the previously elected officers were “inaugurated.” A new committee structure was approved, including a board of trustees, pastor nominating committee and commissioners to the Presbytery. The congregation also confirmed the new officers elected at the December 5, 2006, congregational meeting and confirmed the members of the steering committee. These actions were clear violations of the directives and findings of the AC. On January 16, 2007, Rhee withdrew \$19,500.00 from the “Canaan Presbyterian Church” bank account and deposited it into a new bank account created in the name of “The Canaan Church.”

The AC Hearing

Following those January Actions, the AC, on January 26, 2007, set a hearing pursuant to G-9.0505b(1), and notified Rhee and certain Elders that because Rhee had “persisted doing actions that may lead to a renunciation,” his views were sought before the AC drafted its final report. The notice cited G-6.0502 and G-9.0505b(1). The notice contained no specific enumeration of how Rhee or the elders had “persisted doing actions” that might lead to renunciation. On January 30, 2007, Canaan’s steering committee objected that the hearing was “illegal” and that its members, including Rhee, would not attend.

On February 1, 2007, the AC hearing was held. No minutes of that hearing were produced in these proceedings. On February 8 and 11, 2007, Rhee and an elder, in separate letters, objected to the findings of the AC. On February 12, 2007, at the Presbytery’s regularly scheduled meeting, the AC presented its written Report, determining that Rhee had “renounced the jurisdiction of the *Book of Order*” by certain enumerated actions, citing in the last paragraph, G-6.0501 (now G-6.0701) and G-6.0502 (now G-6.0702). The Report made no determination as to the status of the Elders. At the point when the AC Report was made to the Presbytery, the meeting erupted into a physical melee. The Record is unclear what further action, if any, the Presbytery took with respect to the AC’s determination that Rhee was presumed to have renounced jurisdiction of the PC(USA). It appears that the AC Report was accepted and approved as action of the Presbytery at its next meeting.

On February 14, 2007, the Stated Clerk of the Presbytery notified Rhee that, based on the report of the AC at the February 12 Presbytery meeting, Rhee had been removed from the rolls of the Presbytery. On February 19, 2007, Rhee wrote to the Stated Clerk objecting to the AC Report.

On February 22, 2007, the Chair of the AC wrote the Elders notifying them that they had been removed from ordained office and from membership in Canaan, because they had

renounced the jurisdiction of the Midwest Hanmi Presbytery, based on the December 5 Actions and the January Actions. On March 3, 2007, one of the many complaints concerning the actions of the AC was filed by elder Hyung Young Choi.

Consolidation of Complaints and Stipulations

The various complaints were consolidated for trial and the parties stipulated that the issues to be tried were:

Issue 1, whether the administrative commission acted within scope of the powers authorized by Midwest Hanmi Presbytery set forth in its resolution adopted at the 50th Presbytery meeting on October the 5th, 2006.

Issue 2, whether the Midwest Hanmi Presbytery erroneously applied the Book of Order G-6.0501, now G-6.0701 in finding that Reverend Rhee renounced the jurisdiction of the Presbyterian Church of the United States of America in writing to the stated clerk of the Midwest Hanmi Presbytery.

Issue 3, whether the Midwest Hanmi Presbytery erroneously applied the Book of Order G-6.0502, now G-6.0702 in finding that Reverend Rhee was presumed to have renounced the jurisdiction of the Presbyterian Church of the United States of America.

Issue 4, whether the administrative commission of the Midwest Hanmi Presbytery, the acting session of the Canaan Presbyterian Church, erroneously applied the Book of Order G-6.0501, now G-6.0701 in finding that the eight elders of the Canaan Presbyterian Church renounced the jurisdiction of the Presbyterian Church of the United States of America in writing to the clerk of the administrative commission that is the acting session of the Canaan Presbyterian Church.

Issue 5, whether the administrative commission of the Midwest Hanmi Presbytery, the acting session of the Canaan Presbyterian Church, erroneously applied the Book of Order G-6.0502, now G-6.0702 in finding that the eight elders of the Canaan Presbyterian Church were presumed to have renounced the jurisdiction of the Presbyterian Church of the United States of America.

SPJC ruled in favor of Presbytery on issues 1, 3 and 5, and in favor of Lee on issues 2 and 4. Lee appealed the SPJC decision as to issues 1, 3 and 5. Presbytery did not appeal the SPJC decision as to issues 2 and 4. Therefore, this Appeal involves only issues 1, 3 and 5.

Specifications of Error

Specification of Error No. 1. The SPJC erred in constitutional interpretation in failing to rule that the AC acted beyond the scope of its authority.

This Specification of Error is sustained for the reasons discussed below in the Decision, Part I.

Specification of Error No. 2. **The SPJC erred in constitutional interpretation in failing to rule that the AC acted beyond the scope of its authority, acting as the Presbytery, in presuming that Rhee had renounced the jurisdiction of the church pursuant to G-6.0702.**

This Specification of Error is sustained for the reasons discussed below in the Decision, Part I.

Specification of Error No. 3. **The SPJC erred in constitutional interpretation in failing to rule that the AC acted beyond the scope of its authority, acting as the Session of Canaan, in presuming that certain elders had renounced the jurisdiction of the church pursuant to G-6.0702.**

This Specification of Error is sustained for the reasons discussed below in the Decision, Part I.

Specification of Error No. 4. **The SPJC erred in denying Lee’s motion for production of documents related to or pertaining to the minutes and related documents of the proceedings of the AC.**

This Specification of Error is not sustained for the reasons discussed below in the Decision, Part II.

Specification of Error No. 5. **The SPJC erred in receiving the testimony of the stated clerk of the Presbytery as both fact and expert witness.**

This Specification of Error is not sustained for the reasons discussed below in the Decision, Part II.

Specification of Error No. 6. **The SPJC erred in finding that the decisions of the AC and the Presbytery were not unjust and unfair.**

This Specification of Error is not sustained for the reasons discussed below in the Decision, Part II.

Decision

I.

Specifications of Error 1, 2 and 3

This case is tragic. It involves issues of culture and language, power and stubbornness. It also reflects misunderstandings on the part of individuals and governing bodies as to processes and procedures set forth in the *Book of Order*. Because the facts in this case reflect extraordinary and egregious conduct and unique cultural circumstances, the application of this Decision to other circumstances is limited.

The actions of Rhee and his supporters were egregious in many respects and certainly improper under the Constitution; but, the actions of the AC were sometimes ill-considered in that its attempts at reconciliation often did not allow sufficient time for process and consultation. Communication on both sides was problematic, if not obfuscatory.

The Commission is dismayed at the conduct of Rhee and his supporters. However, the Presbytery's attempts to address this conduct by an administrative commission were procedurally flawed. When a governing body establishes an administrative commission, it shall state specifically the scope of power given to the commission (G-9.0502). Powers not delegated by a governing body are reserved to that body (*see Sundquist v. Presbytery of Heartland, Minutes*, 2010, p. __). In its resolution creating the AC for the purpose of promoting the peace and unity of the CPC, Presbytery granted to the AC both the authority of a session as stated in G-10.0000 and the authority of a presbytery as stated in G-11.0000. Presbytery could have but did not grant to the AC the power to act as the Presbytery with regard to matters arising under G-6.0702. Nor did it grant to the AC, acting as a session, the power of a governing body with regard to matters arising under G-6.0702.¹

Therefore, despite the improper actions of Rhee and his supporting Elders, the AC acted improperly when, acting as the Presbytery, it presumed the renunciation of jurisdiction by Rhee as a minister of Word and Sacrament and when, acting as the Session, it presumed the renunciation of jurisdiction by certain Elders. The power to presume renunciation remained with the Presbytery. In fact, the retention of that power by the Presbytery is implied by the Presbytery's actions at its December 11, 2007, meeting, when it resolved that Rhee and the Elders would be presumed to have renounced if they did not correct their December 5 Actions, and by the action of Presbytery's Coordinating Council on January 4, 2007, when it apparently (the record being unclear) determined that Rhee and the Elders had responded affirmatively to the Presbytery's admonitions, and that Rhee, at least, remained a member in good standing of the Presbytery.

As noted above, the Record is unclear as to the Presbytery's actions as a plenary body in presuming the renunciation of Rhee. The AC, acting alone under the authority granted to it by the Presbytery, could not have made the presumption of renunciation. Only the Presbytery could have done this based on the limited authority delegated to the AC (which did not include powers under G-6.0702). Further, it is not clear whether Rhee and the Elders received notice that even after their cure of the December 5 Actions, they were persisting in conduct disapproved by the Presbytery.

In addition, there is no evidence in the record that the AC, acting as the Session, ever made a determination of presumed renunciation of jurisdiction by the designated Elders. The report of the AC to Presbytery on February 12, 2007, is silent in regard to the Elders. On February 22, 2007, the chairman of the AC wrote a letter to the Elders stating that they had "renounced the jurisdiction of the Midwest Hanmi Presbytery" and thereby from ordained office and membership in the CPC, on the basis of their part in the December 5 Actions and because of

¹ The AC, acting as a session under G-10.0302b(4), had the power to delete from the rolls of the church the name of a member who has renounced jurisdiction of the church, but the issue in this case is not the management of the church's membership rolls, but rather the authority to presume renunciation under G-6.0702.

unidentified decisions they were said to have made on February 13, 2007. As suggested above, the record before this Commission implies that the December 5 Actions had been corrected, and there is no indication in the record of any notice from the AC concerning the February 13 decisions.

For all of these reasons, including the limited delegation of authority given to the AC and failure to notify Rhee and the Elders of their continuing disapproved conduct, and because the Record is unclear, this Commission is unable to affirm the Decision of the SPJC, and this case is remanded for a new trial.

II.

Specifications of Error 4, 5 and 6

As to Specification of Error 4, this Commission finds that the documents requested by Lee were not relevant to the resolution of the issues at trial, as stipulated by the parties. However, this Commission notes that G-9.0502 requires a commission to keep a full record of its proceedings, which must be submitted to its governing body and incorporated into the minutes of that governing body.

As to Specification of Error 5, witnesses may be both factual and expert if qualified and if a proper foundation is laid. Fact witnesses should have first-hand knowledge. Experts should have sufficient expertise to aid the trier of fact and the ability to express opinions that assist the trier of fact. The expert to which Lee objects on this Appeal had the requisite factual knowledge and expertise.

As to Specification of Error 6, the procedures at trial were just and fair to all parties and, therefore, the Specification of Error is without merit.

Order

IT IS ORDERED that the portions of the SPJC decision that are before this Commission are set aside and this case is remanded for further proceedings consistent with this Decision.

IT IS FURTHER ORDERED that the SPJC is instructed to conduct a pre-trial conference or other proceeding(s) with the parties to clarify issues with respect to the current status of the parties under G-6.0702 before commencing any further judicial proceedings in this matter. The parties are cautioned that in the event this matter is re-tried, they should take steps to assure that the Record is clear with respect to actions of the parties.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Midwest Hanmi 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 Lincoln Trails 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

A. Bates Butler was absent and did not participate 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 219-05, Jae G. Lee, Ji Suk Kim, and Hyung Young Choi, Appellant v. Presbytery of Midwest Hanmi, Respondent, on October 27, 2008.

Dated this 27th day of October, 2008.

Fred L. Denson, Moderator
Permanent Judicial Commission of the General Assembly

Gregory A. Goodwiller, Clerk
Permanent Judicial Commission of the General Assembly