

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

Steve S. Hwang,)
Complainant)
v.)
Synod of Southern California and Hawaii,)
Respondent.)

DECISION AND ORDER

Remedial Case 220-05

Arrival Statement

This is a remedial case of original jurisdiction which is before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) as a result of a Remedial Complaint filed by Complainant Steve S. Hwang (Hwang) against the Respondent Synod of Southern California and Hawaii (Synod). The trial of the case was held at the Fall, 2011 meeting of the GAPJC held in San Diego, California, October 27-31, 2011. Hwang was present and was represented by W. Dan Lee. Synod was represented by Kay Virginia Gustafson and its Committee on Counsel members Leon Fanniel and Paul Kim.

Jurisdictional Statement

In its Preliminary Order dated April 5, 2011, the Executive Committee of the GAPJC found that this Commission has jurisdiction, that Complainant has standing to file the Complaint, that the Complaint was timely filed, and that the Complaint states a claim upon which relief can be granted.

Appearances

The Complainant was represented by W. Daniel Lee. The Respondent was represented by Kay V. Gustafson, Leon Fanniel, and Paul Kim.

Brief History

The case involves actions taken by the Synod at a meeting held on December 18, 2010 (the Meeting). On February 13, 1999, the Synod had appointed an Administrative Commission (SAC) to take jurisdiction over Hanmi Presbytery (Presbytery). The SAC's duties and powers were modified several times over many years, and the SAC was still operating on the date of the meeting. At the meeting, the Synod voted to add to the jurisdiction of the SAC by: (i) adding the responsibilities of the Presbytery's Committee on Ministry (COM) outlined in G-11.0502 a, b, c,

and j of the *Book of Order*¹, (ii) adding jurisdiction over the administrative commissions previously created by Presbytery, specifically including the Administrative Commission for Torrance First Presbyterian Church (TAC), and (iii) prohibiting the Presbytery and its COM from taking any actions from those designated responsibilities without the prior consent of the SAC.

Prior to the trial, there were three pre-trial conferences held pursuant to D-6.0310. By agreement of the parties and pursuant to a Pre-Trial Order dated August 23, 2011, the issues tried by the GAPJC were limited to:

(i) Whether on December 18, 2010, the Synod committed an irregularity under G-11.0502 when it added to the jurisdiction of the pre-existing Synod Hanmi Presbytery Administrative Commission by giving the Commission full jurisdiction over the responsibilities of the Presbytery's Committee on Ministry as outlined in G-11.0502 a, b, c, and j, without giving the Commission complete jurisdiction over the Presbytery itself; and

(ii) Whether on December 18, 2010, the Synod committed an irregularity under G-9.0502 when it gave the pre-existing Synod Hanmi Presbytery Administrative Commission complete jurisdiction over administrative commissions previously constituted by Hanmi Presbytery, including specifically the Administrative Commission for Torrance First Presbyterian Church.

Decision

After two days of trial, this Commission considered the documentary evidence presented to it, evaluated the testimony of the witnesses and carefully deliberated and voted on each alleged irregularity. This Commission finds that neither alleged irregularity is sustained by a preponderance of the evidence.

As to the first alleged irregularity, while it may be questioned whether the Synod wisely allocated G-11.0502 responsibilities between the SAC and the Presbytery, this Commission declines to substitute its judgment for that of the Synod. Under the *Book of Order* as currently interpreted, a synod may appoint an administrative commission with original jurisdiction over some or all of the functions of a presbytery Committee on Ministry (G-9.0503a); it may do so without giving the Commission complete jurisdiction over the Presbytery (G-9.0503a(4)).

In reaching this conclusion, this Commission acknowledges that, in 2003, the General Assembly adopted an authoritative interpretation of then G-9.0408 (now G-3.0108b) which listed the assumption of original jurisdiction over a presbytery by a synod as one of the remedies available to the synod if a presbytery within its jurisdiction is not obeying decisions of the General Assembly's Permanent Judicial Commission. While this Commission defers to and does

¹ This case was tried under the *Book of Order* in effect at the time of the alleged irregularities.

not set aside that authoritative interpretation, it notes that the authority to assume original jurisdiction over a lower governing body is not a specifically delegated authority in the *Book of Order*, except in the case of a presbytery assuming original jurisdiction of a session. This Commission lifts up to the church for its consideration the question of whether the 2003 Authoritative Interpretation adequately embodies the principle of F-3.0209 (formerly G-9.0103) that “the jurisdiction of each council is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries.” While the provision of former G-9.0503a(4) (now G-3.0109b(5)) makes it clear that councils may appoint administrative commissions to “inquire into and settle the difficulties” in bodies within their jurisdiction, this Commission suggests that assuming original jurisdiction of a lower body is a matter of such a serious nature that the authority to do so should be explicitly prescribed in the *Book of Order*.

As to the second alleged irregularity, it may be questioned whether the Synod should have included the TAC as one of the administrative commissions over which it was taking jurisdiction, since the record is unclear as to whether the TAC existed on December 18, 2010. However, the Synod's action did not rise to the level of an irregularity since, if the TAC did then exist, the Synod would have had authority to assume jurisdiction over it under G-9.0503 (but see discussion above); if it did not then exist, the assertion of authority would have been of no effect.

At the conclusion of the trial, Complainant submitted a Motion for a Directed Finding regarding the status of the TAC. The Commission finds that such Motion is outside the limits of the Pre-Trial Order entered August 23, 2011, and is therefore ruled out of order.

Order

IT IS ORDERED that the Stated Clerk of the Synod of Southern California and Hawaii report this Decision and Order to the Synod at its first stated meeting following the date of this Order, that the Synod enter the full Decision and Order upon its minutes, that the Stated Clerk of the Synod deliver a copy of this Decision and Order to its Administrative Commission having jurisdiction over Hanmi Presbytery, and that an excerpt from the Synod's minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.).

Concurring Opinion

We reluctantly concur with the decision. The parties carefully agreed on the specific issues before this body. As the issues have been narrowly defined, no irregularity occurred. However, this case demonstrates the difficulties that can arise when a synod administrative commission assumes original jurisdiction over a troubled presbytery.

Original jurisdiction is an inadequate and confusing response to the problems posed by a troubled presbytery, particularly where, as here, the presbytery membership is of a discrete ethnic, cultural and linguistic minority. A fundamental principle of the Presbyterian Church is that “[t]he government of this church is representative, and the right of God’s people to elect their officers is inalienable” (G-6.0107). The right to self-government of the members and

congregations of the Hanmi Presbytery has been restricted for a dozen years. While the Synod has diligently tried to respect the cultural differences between itself and the Presbytery, the lack of self-government over such an extended time has created distrust and misunderstanding.

If a presbytery is so fragile or so conflicted that it cannot govern itself then it should be asked if the presbytery is viable. If not, the presbytery should be dissolved and its congregations transferred to other presbyteries. However, a presbytery, having been established, should first be given a fair opportunity to succeed or fail by its own efforts. The current situation, where a presbytery is deemed viable but denied self-government, is unworkable. The congregations and ministers of Hanmi Presbytery deserve better.

Barbara A. Bundick
A Bates Butler III

Opinion Concurring in Part and Dissenting in Part

We are dissenting from the Decision of the Commission as it pertains to Issue #1. We are in agreement with Commissioner Lukens' rationale and have signed his dissenting opinion.

We concur with the legal conclusion of the Commission regarding the SAC's assumption of jurisdiction over all existing ACs in Hanmi Presbytery. We are troubled, however, by some of the testimony heard at trial.

We heard testimony that the report of the Hanmi Administrative Commission was not distributed to commissioners prior to the October 2010 meeting of the Synod Assembly. We heard that no consultation took place between the Hanmi AC and representatives of Hanmi Presbytery. Indeed, we heard that the SAC's report and recommendations were intentionally kept confidential prior to the meeting of the Assembly.

We also heard at trial energetic efforts by the Synod to suppress information about the Synod PJC Decision in Case Number: R-2010-03 (Sohn v. Hanmi Presbytery consolidated with Case No. R-2010-04, Chon and Kang v. Hanmi Presbytery). This Decision post-dated the events considered in this proceeding. However, the underlying complaint was filed at the time of the Stated Synod Assembly meeting of October 2010; was certainly in process before the December 18, 2010 vote; and dealt with Hanmi Presbytery's action of September 30, 2010 which dissolved the AC in place at the Torrance Presbyterian Church, an AC which had been appointed by Hanmi Presbytery on March 24, 2005.

In other words, the status of the Torrance AC was the subject of judicial process at the time of the Hanmi AC's report and its subsequent adoption by the Synod. It seems, therefore, rather disingenuous for the report to have included the words, "including specifically the Administrative Commission for [Torrance] First Presbyterian Church." This does not seem to be a transparent representation of the status of the Torrance AC which, as the Decision in this case states, was at best "unclear."

While we concur with the legal reasons for denying the Complainant's Motion for a Directed Finding, we believe that the facts, including the decision of the SPJC, support the conclusion that "the Torrance AC did not exist on December 18, 2010." Therefore, it was inappropriate and even misleading for the SAC's recommendation to have given specific emphasis to the Torrance AC. That portion of the Synod's action should be considered null and void. Neither a declaration by the Synod nor a Decision of this Commission can call back into existence an AC which no longer exists.

Meta Shoup Cramer
Michael B. Lukens

I concur with all but the first two paragraphs of this document.

Flor Velez-Diaz

Dissenting Opinion

We undersigned respectfully dissent from the majority's decision.

It is the constitutional mandate that all governing bodies of the church share with one another responsibilities, rights, and powers. And also, "with powers not mentioned being reserved to the presbyteries" (G-9.0103, now F-3.0208-.0209).

Since, the jurisdiction of each governing body is limited by the express provisions of the Constitution, even though it is possible that a higher governing body exercise its right of review and control over a lower one (G-9.0407-.0408), In Johnston, et al. v. Heartland Presbytery, this Commission ruled that "it must not be understood in hierarchical terms, but in light of the shared responsibility and power at the heart of Presbyterian order" (*Minutes*, GA 217 pg. 462), and such a reviewing authority does not provide authority for a pro-active taking over of the jurisdiction of a lower governing body. It is not the Presbyterian way that "one governing body interferes with the constitutional mandate of another governing body" (Williamson. vs. Presbytery of Western North Carolina, *Minutes*, GA 217, pg. 475).

The Presbytery's Committee on Ministry (COM) and Administrative Commission (AC) are the core entities of the Presbytery to carry out its mission in its boundary and govern the local churches effectively (G-11.0103s, G-11.0501a). Granting a Synod Administrative Commission (SAC) jurisdiction over the Presbytery's COM jurisdiction and over Administrative Commissions appointed by the Presbytery will paralyze the role and function of the Presbytery. Furthermore, since the SAC does not have complete jurisdiction over the Presbytery, it will bring unnecessary conflict of accountabilities and confusion between two governing bodies. During the course of the trial, the witnesses of both sides demonstrated their misunderstanding and confusion regarding the governing bodies' structures and accountabilities resulting from this Synod decision.

Our constitution has no explicit provision whether a synod can appoint an Administrative

Commission to assume the original jurisdiction over a Presbytery. Applying a provision for Presbytery to Synod is over-reaching interpretation of the Constitution and may not be well reflected the principle of Presbyterian governing (F-3.0208, F-3.0209). We believe the empowering of the SAC by the Synod to intervene in the existing Presbytery's power to govern its congregations through its committee on ministry and administrative commissions is un-Presbyterian and an erroneous decision and, therefore, the complaints must be sustained.

Yun Jin Kim
Flor N. Velez-Diaz

I concur with all but the last paragraph of this dissent.

Tony M. Cook
Barbara Bundick
A. Bates Butler III

Opinion Concurring in Part and Dissenting in Part

In the first stipulated issue in this case, Synod granted to the Synod Administration Commission additional authority in partial jurisdiction over the Committee of Ministry of Hanmi Presbytery. This additional authority pertained to G-11.0502, a., b, c, and j, while the other functions in G-11.0502 remained with the Hanmi Presbytery Committee.

The functions of a Committee on Ministry as outlined in G-11.0502, a-j, are not to be pastorally or operationally fragmented because its processes and procedures are holistic by nature. The segregation of selected functions or divided authorization between a committee and a commission is unwieldy and unnecessary. It fractures the operations of work that is often pastorally delicate and operationally intricate.

This action presents the possibility of a highly disruptive situation in the life of the Presbytery. Action that offers the possibility of substantial confusion and chaotic operation may be legal but in its threat of disorder it rises to the level of irregularity.

The substantial likelihood, if not inevitability, of disorder and disruption supports a decision to sustain the Complaint that this action is irregular. If the Synod's intention was alleviating problems within the Hanmi Presbytery Committee on Ministry, the better option for preserving the unity and integrity of the functions in G-11.0502 would be to grant complete jurisdiction to the Synod Administrative Commission.

While I concur with the decision of the Commission regarding the second issue in the Complaint, I respectfully dissent from the majority view of this Commission on the first issue and would sustain the Complaint that this action is irregular.

Michael B. Lukens
Meta Cramer
Tony M. Cook

Susan J. Cornman
A. Bates Butler III

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 220-05, Steve S. Hwang, Complainant v. Synod of Southern California and Hawaii, Respondent, made and announced at San Diego, CA. this 30th day of October, 2011.

Dated this October 30, 2011.

Susan J. Cornman, Moderator
Permanent Judicial Commission of the General Assembly

Gregory A. Goodwiller, 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 Fed Ex, Next Day Air, directing C. Laurie Griffith to deposit it with Fed Ex at San Diego, CA on October 30, 2011:

W. Dan Lee, Counsel for Appellant
Kay Gustafson, Counsel for Appellee
Stated Clerk, Synod of Southern California and Hawaii
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 October 30, 2011.

Gregory A. Goodwiller, 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, in San Diego, CA., on October 30, 2011, in Remedial Case 220-05, Steve S. Hwang, Complainant v. Synod of Southern California and Hawaii, Respondent, and that it is the final

judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at San Diego, CA on October 30, 2011.

C. Laurie Griffith
Manager of Judicial Process and Social Witness