

THE PERMANENT JUDICIAL COMMISSION OF
 THE SYNOD OF SOUTHERN CALIFORNIA AND HAWAII
 THE PRESBYTERIAN CHURCH (U.S.A.)

DECISION & ORDER

ROBERT G. SPITZER)	
Complainant)	Case Number: 2017-R- 2
)	Decision of the Permanent Judicial
V.)	Commission of the Synod of Southern
)	California and Hawaii after Trial
PRESBYTERY OF RIVERSIDE)	
Respondent)	

This is a remedial case which has come before this Permanent Judicial Commission as a result of a complaint filed by the above-named Complainant against the Presbytery of Riverside, Respondent. It is a complaint against the Presbytery of Riverside for four alleged irregularities associated with a vote of the Presbytery on March 18, 2017, to transfer Idyllwild Community Presbyterian Church of Idyllwild, CA to A Covenant Order of Evangelical Presbyterians (ECO) Presbytery of Southern California according to the terms presented in the Gracious Discernment, Dismissal and Transfer Agreement. The initial complaint was received on June 6, 2017.

On June 15, 2017, the officers of the Permanent Judicial Commission found that the Complainant has standing to complain, that the complaint was properly and timely filed, and that the complaint states a claim upon which relief can be granted.

A trial date was set for October 13, 2017. However, the Complainant requested a continuance as his witness was not available on this date.

A trial date was set for December 29, 2017. At 11:00 a.m. on that date, the Synod of Southern California and Hawaii Permanent Judicial Commission met in order to hear evidence in the trial. Members of the Commission present were Moderator Rev. Shelby Larsen, Elder. Marie Castellano, Elder Peter K. Lee, Elder Larry Lindsay, Elder Pat Niles, Rev. R. Winston Presnall, and Rev. Bob Wendel, Clerk Pro Tem. A quorum was present.

Present for the Complainant was Elder Robert Spitzer. The witness for the Complainant was Rev. Bradley Copeland.

Present for the Respondents were: Committee of Counsel, Rev. Neal Neuenschwander and Rev. Cheryl Raine. The witness for the Respondents was Elder Melodee Kistner.

Each party made their statements and presented their witnesses and evidence.

FINDINGS

SPECIFICATION OF COMPLAINT #1: “The Presbytery’s vote and subsequent action to transfer the property of Idyllwild Community Presbyterian Church is a result of a process that as implemented failed to adequately consider the interests of the Presbytery and the PC(USA) in continued ministry in the geographical area currently served by the Idyllwild Community Presbyterian Church.”

This specification of irregularity is sustained by a vote of 7 for and 0 against.

The Agreement failed to identify any other Presbyterian, or Reformed Church in the geographical area of the San Jacinto Mountain currently served by Idyllwild Community Presbyterian Church.

The officers and members of Idyllwild Community Presbyterian Church breached their fiduciary duty under the Trust Clause of the Constitution of the Presbyterian Church (USA).

The Presbytery of Riverside, and its delegates breached their fiduciary duty under the Trust Clause of the Constitution of the Presbyterian Church (USA).

Both parties were in breach of the requirements of *Locke v The Presbytery of San Diego, 2016-R-3* that the issue of valuation of personal and real property did not follow the specific directions of *Locke*

The parties were in error when they allowed the exchange of compensation (\$75,000 for the property assessed at \$1,400,000) prior to the dates of expiration for challenges to the transaction. The interests of the Presbytery of Riverside and the PC(USA) include the possibilities of continuing divine worship or other ministry in the real property at Idyllwild Community Presbyterian-Church, but they also include the possibility of transferring the ‘value’ stored in the real property to another ministry that might be more responsive to the needs of the Presbytery’s area. The Task Force that prepared the transfer recommendation for the Presbytery offered opinions about the usefulness of the real property as an active church, but its inquiry appears to have been limited. Little consideration seems to have been given to the possibility of transferring the value in the property to another more promising work.

SPECIFICATION OF COMPLAINT #2: “In determining the monetary amount agreed upon to justify the transfer of real property to the departing congregation, the Presbytery ignored its own Gracious Discernment, Dismissal and Transfer Policy and its fiduciary responsibilities under the “trust provision” to the PC(USA) and the other churches within the Presbytery.”

This specification of irregularity is sustained by a vote of 7 for and 0 against.

The action is irregular because the terms presented in the Gracious Discernment, Dismissal and Transfer Policy agreement fail to show a reasonable and fair relationship between the value of the property and the compensation Idyllwild Community Presbyterian Church will pay upon dismissal. GAPJC, (Tom v. Presbytery of San Francisco, 2012)

In setting a payment amount, the principal concern seemed to have been selecting a sum that would be convenient for the congregation, requiring, for example, no indebtedness or appeals to the congregation.

The Presbytery of Riverside's Gracious Discernment, Dismissal and Transfer Policy needs to take into account the SPJC'S decision in *Locke v Presbytery of San Diego, 2016 R-3* and needs to permanently include a copy of that decision as an appendix to their policy.

SPECIFICATION OF COMPLAINT #3: "The Gracious Discernment, Dismissal and Transfer Policy, the actions of Vision Coordinating Team and the parliamentary procedures in place at the March 18, 2017 meeting failed to provide the Presbytery with the information upon which it could intelligently and deliberately exercise its non-delegable fiduciary duties as trustee over the Idyllwild Community Presbyterian Church property."

This specification of irregularity is sustained by a vote of 7 for and 0 against.

The information regarding the assessment of the community, the preferences of the members (as opposed to the vote of those in attendance on March 18, 2017 meeting of the Presbytery), the details over the last five years of the financial standing of the congregation, as well as the factors affecting the widely varying monetary value of the property were not presented at the meeting of Presbytery, and, insofar as can be determined, were collected in one place, known as the Big Notebook. Said notebook may have been available for examination at the Presbytery Office, and may have been in the room during debate on March 18, 2017. However, information in it was never summarized or distributed to Commissioners to Presbytery by means of posting on the website, power point presentations, letters, or other means of communication

In addition the failure of the team and presbytery officers to inform the Presbytery of the complete *Locke v Presbytery of San Diego, 2016 R-3* decision hindered the Presbytery from being prepared to make an informed decision. This lack of due diligence is demonstrated by the fact that the Presbytery changed their Gracious Discernment, Dismissal and Transfer Policy the same day that the team presented their report, and told the Presbytery that the one change was all that was needed to have their policy be compliant with *Locke*.

The action is irregular because the Presbytery of Riverside has failed to take into consideration the PC(USA)'s use and benefit of the property. GAPJC (Presbytery of New York City v. McGee, 2014)

SPECIFICATION OF COMPLAINT #4: “The Gracious Discernment, Dismissal and Transfer Policy, the actions of Vision Coordinating Team and the parliamentary procedures in place at the March 18, 2017 meeting failed to provide the Presbytery with the information upon which it could reasonably determine what members of the Idyllwild Community Presbyterian Church congregation represented the “true church” and were thus entitled to possession of the church property.”

This specification of irregularity is sustained by a vote of 7 for and 0 against.

The Gracious Discernment, Dismissal and Transfer Policy Team report lists seven members who wished to remain in the PC(USA) and no report of eleven members who did not vote. There is no report of the interest of these eleven members in remaining in the PC(USA).

Also see comments under specification#3

ADDITIONAL COMMENTS

“The polity of Presbyterianism--- with its strong insistence on the rule of the majority and the rights of the minority--- is indeed the way in which Presbyterians affirm their unity amid their diversity. This polity not only organizes dissent and diversity, it is itself a product of dissent, diversity, compromise and creative resolution of bitter conflict.” (Historic Principles, Conscience, and Church Government, adopted by 195th General Assembly (1983), Presbyterian Church U.S.A. p. 1)

The Presbytery of Riverside in its meeting on March 18, 2017 acted contrary to the historic principle of “conscience” to dismiss Idyllwild Community Presbyterian Church to ECO by denying a thirty (30) day allowance for commissioners to file a stay of enforcement (D-6.0103a). The action of Presbytery to dismiss the Idyllwild Community Presbyterian Church property was consummated a mere 13 days later (March 31, 2017) by the deed of transfer. Indeed, the Gracious Discernment, Dismissal and Transfer Policy for the Presbytery which was last revised on March 18, 2017 imposes a time to complete a dismissal of “no more than ninety (90) days after the vote of the Presbytery.” (Effective Date of Dismissal, p.10) There is no limitation on the Presbytery to dismiss a congregation in less than thirty (30) days. To dismiss a church with property within thirty (30) days is to expend the matter of conscience and render moot a rule of Church Discipline (D-6.0103a), which protects the rights of the minority to file a stay of enforcement along with a complaint. The action by the Presbytery of Riverside to dismiss Idyllwild Community Presbyterian Church to ECO in a matter of thirteen (13) days demonstrates very little “insistence” on the rights of the minority.

It is grievous that the action of the Presbytery cannot be overturned and the property retained for a future decision by the Presbytery of Riverside. However, at the least the Gracious Discernment, Dismissal and Transfer Policy should be revised to deny any transfer of church property before thirty-one (31) days and the Presbytery to act on no dismissal of a church with property until such time as the policy is revised to reflect the change.

DECISION-AND ORDER

The Permanent Judicial Commission of the Synod of Southern California and Hawaii sustains each and all of the alleged irregularities. While the precipitate action of the church and the Presbytery prevents us from recovering the wrongly transferred property, except by civil action, the Commission can provide the appropriate order under ecclesiastical authority. Accordingly, the action of the Presbytery of Riverside on March 18, 2017, transferring Idyllwild Community Presbyterian Church of Idyllwild, CA to A Covenant Order of Evangelical Presbyterians (ECO) Presbytery of Southern California is set aside and is of no effect.

It is also ordered that the Gracious Discernment, Dismissal and Transfer Policy should be revised to deny any transfer of church property before 31 days and the Presbytery to act on no dismissal of a church with property until such time as the policy is revised to reflect the change.

FURTHERMORE, the Permanent Judicial Commission of the Synod of Southern California and Hawaii hereby orders all churches and presbyteries under its jurisdiction, to rely on the Constitution of the PC(USA) as it conducts its business. In particular, the churches and presbyteries that comprise the Synod of Southern California and Hawaii are to use caution in exercising their fiduciary duties, and to be cognizant of the fact that breach of fiduciary duty can result in civil and criminal liability, both corporate and individual.

Rev. Mickie Choi and Elder Izar Martinez took no part in the proceedings in accordance with D-5.0205. Rev. Peter Hintzoglou and Elder Geraldine Tayler were not present and took no part in the proceedings.

Dated this 29th day of December, 2017.



Rev Shelby Larsen

Moderator, of the Permanent Judicial Commission



Rev. Bob Wendel

Clerk Pro Tem of the Permanent Judicial Commission