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Advisory Opinions: Note 19 Implementing the Trust Clause for the Unity of the Church

"The unity of the Church is a gift of its Lord and finds expression in its faithfulness to the mission to which Christ calls it. The Church is a fellowship of believers ..." (G-4.0201).

Each local congregation is the setting of a particular history of that fellowship; for its members it is the site of baptisms, of confirmations, of marriages, and of celebrations of the resurrection to join the communion of saints. Such significant personal experiences make the local congregation an indelible part of the lives of their members. These shared experiences are what most of us picture when we think of our home congregation.

"The particular churches of the Presbyterian Church (U.S.A.) wherever they are, taken collectively, constitute one church" (G-4.0301a);

The church is not a voluntary association of those who share the same opinions and experiences, but is an organic body called into existence by God that celebrates and transmits through the ages the name and knowledge of Jesus Christ. The constitutional provisions under which congregations hold property for the benefit of the Presbyterian Church (U.S.A.) arise out of and reflect our theological conviction that this denomination constitutes one indivisible body, which itself is part of the body of Christ, and which encompasses not only the visible church today but our forebears and heirs in the one holy, catholic, and apostolic church.

Together we affirm that our God is in control of the world we occupy. We order our affairs out of an abiding conviction that persons do not join the Presbyterian Church (U.S.A.) of their own volition, but are called to membership in this denomination by the sovereignty of God, and participate in its government through the work of the Holy Spirit. "A presbyterian polity recognizes the responsibility of all members for ministry and maintains the organic relation of all congregations in the church" (Confession of 1967, § 9.40). Recently, this theology was affirmed by the 218th General Assembly in its "Gracious Separation" document.

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Exhibit 6 to Dardenne Opp.

That polity incorporates these theological principles regarding church property:

I. There is not a unilateral right of a Presbyterian Church (U.S.A.) congregation to depart from the denomination or its presbytery of membership. Withdrawal from the Presbyterian Church (U.S.A.) is not a matter that can be considered at a congregational meeting.¹

A. Nothing in our polity provides any such right.

No such authority is given in G-7.0304 (powers of a congregation).

No such authority is given in G-10.0102 (powers of a session).

Dissent is always protected, but defiance is abhorred (G-9.0303).

Congregations that fail to abide by the principles of the "Gracious Separation" response "have breached important responsibilities and duties."² There may not be any secret acts by the pastors and sessions diminishing a church's connection to the PC(USA).

B. Congregations may be released only with the approval of their presbytery.

G-8.0601: "The relationship to the Presbyterian Church (U.S.A.) of a particular church can be severed only by constitutional action on the part of the presbytery."

G-11.0103I: "The presbytery is responsible for the mission and government of the church throughout its geographical district. It therefore has the responsibility and power... to divide, dismiss, or dissolve churches in consultation with their members"; These consultations may be in the form of listening sessions, hearings, or other consultations and are for the benefit of informing the presbytery as it considers a request for dismissal.³

C. "By giving to presbytery rather than to session or congregation the power to dismiss a church, the constitution of this denomination guarantees a formal meeting of presbytery as the forum in which loyalist minorities of whatever size might press their claims that they were sufficient in numbers and dedication to continue a church in its connectional relationship within this denomination" (PCUS 1976, 92, *Strong v. Synod of Mid-South*).

II. There are also significant restrictions on how and under what circumstances a presbytery may release a congregation.



of advancing the mission of the Presbyterian Church (U.S.A.) in the presbytery's geographic area. "The presbytery ... has the responsibility and power "to develop strategy for the mission of the church in its area ..." (G-11.0103a); "mobilizing their [member churches'] strength for the most effective witness to the broader community for which it has responsibility" (G-11.0103b).

B. The General Assembly Permanent Judicial Commission has found that

"[a]n 'independent' or 'congregational' Presbyterian church is an anomaly which runs counter to the notion that we are a 'family' of churches and dismissal must therefore be made to another church within the family group The ... presbytery had no constitutional right to dismiss ... the churches to Independent status. ... The policy of not allowing members and ministers to be cut loose with no ties indicates the historic Presbyterian policy of ecclesiastical connectionalism. This policy likewise forbids ... dismissal to independency" (PCUS 1973, pp. 119-121, *Anderson v. Synod of Florida*).

C. While not explicitly prohibited by the General Assembly Permanent Judicial Commission's recent decision in *Sundquist v. Heartland*, we believe it would be risky -- in light of the Foundational responsibilities involved -- for the presbytery to delegate the final decision to an administrative commission.⁴ Power may not be delegated to another body; the decision must be made at a "formal meeting of the presbytery."⁵

D. Presbyteries are responsible for enforcing the trust clause:

"All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive

production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)" (G-8,0201).

The purpose of the Trust Clause (G-8.0201) is to support the purposes and mission of the particular church as a part of the Presbyterian Church (U.S.A.) operating under the Constitution of the Church. Presbyteries have an obligation to see that secular litigation is seen as a last resort.⁶

The idea of holding property in trust has always been part of the Presbyterian theology and practice as has been recognized by U.S. Supreme Court (*Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872))

E. Of course a presbytery cannot release itself, nor all its congregations, for only the General Assembly itself can release or dissolve a presbytery (G-13.0103n).

III. If a presbytery fails to carry out these constitutional responsibilities, the synod may be required to intervene.

A. It may undertake review of the presbytery's processes and decisions (G-9.0408).

B. If the synod finds that the presbytery has not been faithful to its Presbyterian mission (G-9.0409), the synod may direct the presbytery to appropriate action (G-9.0410).

C. If a presbytery is unable or unwilling to carry out these constitutional responsibilities, the synod may assume jurisdiction over the presbytery's G-11.0103i, G-8.0201 & G-8.0601 powers (G-12.0102m, n).

IV. The 217th General Assembly (2006) called upon "...every member of the Presbyterian Church (U.S.A.) to witness to the church's visible oneness, to avoid division into separate denominations that obscure our community in Christ, and to live in harmony with other members of this denomination, so that we may with one voice together glorify God in Jesus Christ, by the power of the Holy Spirit; and all sessions, congregations, presbyteries, and synods to renew and strengthen their covenanted partnership with one another and with the General Assembly."

¹ *Sundquist v. Heartland, Remedial Case 219-03*



³ *Sundquist v. Heartland, Remedial Case 219-03*

⁴ *Sundquist v. Heartland, Remedial Case 219-03*

⁵ (PCUS 1976, 92, *Strong v. Synod of Mid-South*)

⁶ *Sundquist v. Heartland, Remedial Case 219-03*

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