

**THE PERMANENT JUDICIAL COMMISSION
OF THE SYNOD OF THE PACIFIC
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

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MAR 24 2010

Synod of the Pacific - PJC

DONALD HOLDEN)
Appellant/Complainant)
v.)
THE SESSION OF MT. TABOR)
PRESBYTERIAN CHURCH OF)
PORTLAND, OREGON)
Appellee/Respondent)

FINAL DECISION AND ORDER

Remedial Case 09-03

ARRIVAL STATEMENT

This remedial case came before the Synod Permanent Judicial Commission (this Commission or SPJC) on appeal filed by the Appellant, Donald Holden (Holden), from a decision of the Permanent Judicial Commission of the Presbytery of the Cascades (PPJC).

JURISDICTIONAL STATEMENT

The preliminary questions posed in D-8.0301 were all answered in the affirmative.

APPEARANCES

The Appellant (Holden) appeared and represented himself. The Appellee (Session), was represented by Committee of Counsel Margaret Anderson and L. Parry Ankersen.

HISTORY

This case concerns a session decision to transfer interest from a church's Restricted Building Fund to its General Fund.

In February 2009, the session of Mt. Tabor Presbyterian Church in Portland, OR, voted to use accrued interest from the congregation's Restricted Building Fund to balance the operating budget for 2009. The session shared this decision and the 2009 budget with the congregation during its Annual Congregational meeting on March 1, 2009.

On April 30, 2009, Donald Holden filed a complaint with the Presbytery of the Cascades against the session of Mt. Tabor Presbyterian Church alleging that the decision to transfer interest was irregular.

The Moderator and Clerk of the PPJC reviewed the preliminary questions (D-6.0305) and determined that the complaint did not state a claim upon which relief could be granted. On July

8, 2009, Holden challenged the findings of the Moderator and Clerk on the preliminary questions. On July 30, the PPJC held a hearing on the preliminary questions, at which time it answered all four questions in the affirmative.

The trial took place on October 22, 2009 and the PPJC decided against Holden, after which Holden filed an appeal to the SPJC.

On March 19, 2010, this Commission heard oral arguments on Holden's appeal of the PPJC decision. At the hearing, Holden raised an objection to the constitution of Session's Committee of Counsel. The decision of the SPJC on this issue is contained in the findings made regarding Specification of Error #1.

SPECIFICATIONS OF ERROR

Specification of Error No. 1. There was irregularity in the proceedings in that the Moderator erred at trial by allowing two persons to act as Respondent's Committee of Counsel who were not listed among the maximum number of three persons designated by the Respondent in its Answer to the Complaint, to represent it until a final decision was reached as mandated in the Book of Order, D-6.0302.

This specification of error is not sustained.

As a point of procedure, this allegation of error was not properly preserved by Holden at the PPJC hearing. No record was made of an objection to the constitution of the Committee of Counsel. This Commission encourages early, cordial communication between parties, particularly when there are changes in representation.

Holden objected to the composition of the Committee of Counsel at the SPJC hearing. Despite the failure to preserve the issue at trial and in light of the objection raised at the SPJC hearing, there was no irregularity in allowing persons to act as Session's Committee of Counsel who were not listed as the original Committee of Counsel. A change in the identity of individual committee members (as long as the committee does not exceed three members) is not improper. The language of continuity of the Committee of Counsel in D-6.0302 refers to the function and size of the Committee of Counsel and not the identity of its individual members. Failure to allow for changes in committee membership, as a result of illness or scheduling conflicts as occurred in this case, could result in a committee without members.

Specification of Error No. 2. There was a manifestation of prejudice in the conduct of the case in that the Moderator and Clerk appeared to prejudice the case from the outset by ruling that it be dismissed in their preliminary findings.

This specification of error is not sustained.

Answers to the Preliminary Questions in D-6.0305 do not manifest prejudice toward either party in a case. There is no evidence in the trial record of bias by any member of the PPJC.

Specification of Error No. 3. There was error in the constitutional interpretation in that the PJC misinterpreted the word all in the Book of Order G-10.0102h "assuring that all offerings are distributed to the objects toward which they were contributed," in deciding that all does not include interest accrued by the offerings. Webster defines all as "the greatest possible; everything; completely."

This specification of error is not sustained.

The allegation that the PPJC misinterpreted the Constitution in the application of this case has not been demonstrated by a preponderance of evidence. The evidence in the record does not suggest that the session failed to deposit and use any gifts to restricted funds as required by G-10.0102h. In the absence of specific language regarding the use of interest, the session's exercise of its authority pursuant to G-10.0102i does not constitute an irregularity. The record contains no such specific language limiting the use of interest.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the decision of the Permanent Judicial Commission of the Presbytery of the Cascades is AFFIRMED.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of the Cascades report this Decision and Order to the Presbytery in its first meeting after receipt, that the Presbytery enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the Synod of the Pacific.

ABSENCES

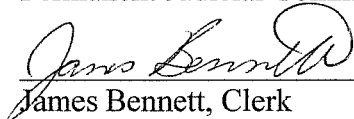
Gail Saxowsky, Commissioner from the Presbytery of the Cascades, was recused and took no part in the deliberations of this case.

DATE

Dated this 19th day of March, 2010

Signed Ruth Goldthwaite

Ruth Goldthwaite, Moderator
Permanent Judicial Commission of the Synod of the Pacific


James Bennett, Clerk

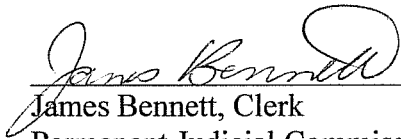
Permanent Judicial Commission of the Synod of the Pacific

CERTIFICATES

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the Synod of the Pacific, Presbyterian Church (U.S.A.), in Remedial Case on Appeal No. 09-03, Donald Holden, Appellant v. The Session of Mt. Tabor Presbyterian Church, Appellee, made and announced at Oakland, CA., on March 19, 2010.



Ruth Goldthwaite, Moderator
Permanent Judicial Commission of the Synod of the Pacific


James Bennett, Clerk

Permanent Judicial Commission of the Synod of the Pacific

I certify that I did transmit a certified copy of the foregoing to the following persons by certified mail, return receipt requested, directing Wendy G. Warner to deposit it in the United States mail at Modesto, CA, on March 22, 2010.

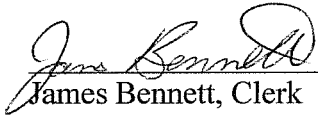
Donald Holden, Appellant
931 S.E. 55th Ave.
Portland, OR 97215

Clerk of Session
Mt. Tabor Presbyterian Church, Appellee
5441 SE Belmont St.
Portland, OR 97215-1837

Presbytery of the Cascades
Rev. John Huenink, Stated Clerk
0245 SW Bancroft St., Suite D
Portland, OR 97201-4272

Commissioners of the Permanent Judicial Commission of the Synod of the Pacific


I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the Synod of the Pacific by delivering it in person to Wendy G. Warner on March 19, 2010.


James Bennett, Clerk

Permanent Judicial Commission of the Synod of the Pacific

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 Synod of the Pacific, made on March 19, 2010, in Remedial Case on Appeal No. 09-03, Donald Holden, Appellant v. The Session of Mt. Tabor Presbyterian Church, Appellee.

Dated at Oakland, CA on March 19, 2010.


Wendy G. Warner, Stated Clerk
Synod of the Pacific