

A SHORT COURSE ON CHURCH PROPERTY
IN THE PRESBYTERIAN CHURCH (U.S.A.)
FOR PEOPLE WHO AREN'T LAWYERS

We start with the Form of Government at G-8.0201: all property of a particular church is held in trust for the use and benefit of the Presbyterian Church (U.S.A.).

George McKeag, the Solicitor of the General Assembly for many years, explains this: "What then is the relationship, purpose and use of property titled in a particular church of the Presbyterian Church (U.S.A.)? In my opinion, it is to support the purposes and mission of the particular church as a part of the Presbyterian Church (U.S.A.) agreeably with the Constitution of the church."

When I looked to see if it was any different in the southern stream, I found the report distributed with the proposed revision of chapter 6 Church Property 1981. In the years leading up to reunion in 1983, the PCUS Assembly repeatedly reaffirmed a statement adopted in 1953 which said that title to church property could be held in any legal form, the congregation was the beneficial owner with all the rights of a property owner, and "In every instance, nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church."

The idea in both streams of the reunited church seems to be that the denomination, through the presbytery, does not claim to own the meeting house, but it does claim oversight ~~through the Book of Order over who stands in the pulpit and how the congregation operates as a presbyterian church. The denomination doesn't want the land and building. It wants a congregation that looks and acts like the church described in G-4.0103 & 4 of the Book of Order.~~

To get down to what this means in the life of a local church, notice that chapter eight begins with the statement that all the rules about who makes decisions apply the same for property ~~as for anything else, G-8.0100. That means the session is in charge.~~

As long as the session is there doing its job leading a presbyterian church, ~~nothing that has happened during or since reunion is going to touch the church property. If the membership dwindles away, the presbytery, like an heir, gets the property. If individuals who make up the membership try to take the property to become a church of another denomination, of course the presbytery will object and try to hold the property for a loyal presbyterian church. Nothing new since reunion about that.~~

Section G-8.0500 which requires churches to get the permission of presbytery in order to sell, mortgage or lease church real property, (except for former PCUS congregations that vote to exempt

themselves) has raised several questions. First, it is not true that after June 1991 the exemption ends. If the congregation votes to exempt itself by June 10, 1991, it is out from under section five forever. Second, the sale, mortgage, & lease section does not give the presbytery a license to move in and manage the property.

It will help to understand this section to know that it was adopted in the UPC to help presbyteries do a better job of assisting churches in the financial crisis of the Great Depression and later in the problems of changing neighborhoods. The presbytery's interest is in the financial soundness of the project and the protection of the congregation from unwisely giving up more than it intended in its haste to get income by leasing part of the building. If it's basically reasonable and the congregation can afford it, they should get permission without difficulty.

We know that this is how it works because there is a history of judicial cases. In one case the presbytery was actually the landlord for an ethnic new church. The commission held even that did not give the presbytery the power to interfere with the powers of the session in the use of its building. In another case the presbytery attempted to compel a congregation that wanted to move to the suburbs to sell to a certain buyer so the property would be available for use in a neighborhood ministry after the congregation had gone. Can't do that either.

Another question that has been asked about this section is whether presbytery assumes liability for the debt when it gives permission. This works like when you give your child advice about buying a car. If you only give advice the lender cannot reach you. If you co-sign, then the lender can reach you to collect. But since presbytery is like a parent to each of its churches, is it not also true that if one of them falls on hard times the presbytery will help with the debt? It had better help if it wants lenders to treat its other churches as good credit risks.

The newly adopted addition to G-11.0103 s, on original jurisdiction, has worried some people. Look at it closely. A presbytery can no longer set up an administrative commission and give it original jurisdiction when the presbytery first discovers there may be a problem. The commission must first investigate carefully, talk to the session, find out whether the session will correct the problem, and only after that come back with a motion to take original jurisdiction. When that happens the session has a right to oppose it before the whole presbytery.

Additional information on church property is available at the Office of the General Assembly.

C. Fred Jenkins, Director Constitutional Services
July 6, 1990