

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

Rev. John C. Minihan

and

J. Randall Richards, Elder,

Appellants-Complainants,

v.

Presbytery of Scioto Valley,

Appellee-Respondent.

Case No. 216-1

BRIEF OF PRESBYTERY OF SCIOTO VALLEY

Rev. John C. Minihan

J. Randall Richards, Elder

Two Miranova Place, Suite 310

Columbus, OH 43215

Complainants

Rev. Craig Seitz

Debra Bergmann, Elder

John S. Jones, Elder

867 High Street, Suite C

Worthington, OH 43085

Committee of Counsel

Presbytery of Scioto Valley

TABLE OF CONTENTS

Statement of the Case	1
Introduction	1
History of G-9.0404b	4
Background of Motion Adopted by the Presbytery of Scioto Valley on February 5, 2002	5
Discussion	6
Summary and Conclusion.....	18
Certificate of Service.....	21
APPENDIX	22
Overture 89-106	1
Overture 90-100	2
ACC Advice on Overture 01-1	3
COGA Comment on Overture 01-1	4
Letter dated August 9, 2001, to Johnstown Church.....	5
ACC Advice on Overture 02-15	6

STATEMENT OF THE CASE

This is a remedial action brought by Appellants, Rev. John C. Minihan and J. Randall Richards, Elder, alleging an irregularity by the Presbytery of Scioto Valley. On February 5, 2002, at its 173rd Stated Meeting, the presbytery adopted a motion that "establishes a responsibility on the part of sessions ... to raise and timely transmit per capita funds to the presbytery." Appellants' claim the motion violates the Constitution of the Presbyterian Church (U.S.A.).

The parties submitted briefs and presented their cases orally before the Permanent Judicial Commission of the Synod of the Covenant on December 7, 2002. By decision dated December 8, 2002, the SPJC found that the alleged error was not sustained and ordered that the complaint be dismissed.

Appellants have timely appealed the decision of the SPJC to this level.

The record of the case submitted to the GAPJC includes the briefs of the parties submitted to the SPJC, along with attachments, and a list of exhibits. In this brief, the presbytery will make reference to exhibits on the exhibit list by letter. In addition, documents that are not specifically on the exhibit list but were attached to the briefs of the parties will be reproduced and attached as addenda to this brief.

INTRODUCTION

Appellants contend that the motion adopted by the presbytery changes the practice of a session transmitting per capita payments to the presbytery from a "voluntary commitment" to a "mandatory responsibility." Appellants admit that the transmission of per capita has always been

at least a "moral obligation" of the session. But they are unwilling to acknowledge that a session does not have the option to ignore this moral obligation.

The presbytery's motion represents both an implementation of the rights of a presbytery under G-9.0404d and a clarification for the local churches within the presbytery of their responsibility to transmit per capita payments to the presbytery.

The focus of Appellants' brief is on the "nature" of per capita (as supposedly voluntary) and on their concerns that noncompliant churches may be punished or disciplined. However, the presbytery believes there are broader and deeper issues before this judicial body that are inherent, yet largely unspoken, in the concerns presented by Appellants: (1) whether withholding per capita as a means of dissent or protest is appropriate, and (2) whether a session has unfettered discretion to determine the distribution of the gifts it receives from the congregation (that is, whether or not all contributions from the congregation are "benevolences").

The GAPJC in *Session of Central Presbyterian Church v. Presbytery of Long Island* (1992), while not specifically addressing G-9.0404d, recognized that "underneath the apparently calm surface swirls a maelstrom of issues that demand consideration [and] ... go to the heart of our Presbyterian system of church governance."

The presbytery believes the issues before the GAPJC are not isolated or unique. Because we believe that similar issues may come before this body from other presbyteries around the country, we would encourage you to resolve the following issues of constitutional interpretation:

1. Does a presbytery have the authority to direct sessions to transmit per capita payments to the presbytery pursuant to G-9.0404d?
2. Under G-10.0102i, what does the term "benevolences" mean?
3. Is the withholding of per capita an appropriate means of protest or dissent?

Appellants have made some assertions in their Brief concerning "authoritative" interpretations by the General Assembly relating to per capita. For example, Appellants assert at pages 5 and 6 that the 213th General Assembly (2001) made an "official" comment that per capita is voluntary, and that the 214th General Assembly (2002) "authoritatively declared" per capita to be voluntary. Neither of these assertions is accurate. The GA does not make "official" comments. Nor does the GA "authoritatively declare" anything except through an authoritative interpretation. Neither the comment by the 213th General Assembly nor the statement of the 214th General Assembly is "authoritative."

G-13.0103r gives the General Assembly the responsibility "to provide authoritative interpretation of the *Book of Order* which shall be binding on the governing bodies of the church *when rendered in accord with G-13.0112* or through a decision of the Permanent Judicial Commission in a remedial or disciplinary case." (Emphasis added). Thus, there are only two ways an authoritative interpretation of the Book of Order can occur – through a decision of the GAPJC or through action by the General Assembly taken in accordance with G-13.0112. A comment (such as the one issued by the 213th General Assembly in rejecting Overture 01-1) or a recommendation (such as the one adopted by the 214th General Assembly) **are not** authoritative interpretations of the Book of Order. They are nothing more than they purport to be – a comment and a recommendation. Also, Appellants refer to the GAPJC decision in *Central* being "adopted" by the General Assembly in 1992. The General Assembly does not adopt decisions of the GAPJC – it merely receives them.

HISTORY OF G-9.0404d

The per capita apportionment process, although in use for many years, was first incorporated into the Book of Order by the 202nd General Assembly. Overture 89-106 (Appendix 1) was adopted in 1990 and provided only that "each governing body above session shall prepare a budget annually for its operating expenses, including administrative personnel, and may fund it with a per capita apportionment among the particular churches within its bounds."

A second and similar overture was also presented in 1990, but was received too late to be considered by the 202nd General Assembly. Overture 90-100 (Appendix 2), from the Presbytery of the Western Reserve, also noted the lack of a per capita process in the Constitution. One significant difference in this second Overture, as noted in its prefatory paragraph, was that "the Form of Government does not give any governing body the authority to place a per capita apportionment on any other governing body or on a *particular church*." (Emphasis added). Thus, the stated purpose of the Overture was to give authority to higher governing bodies to place per capita apportionments on lower governing bodies, including sessions.¹ This second overture proposed the specific language that was adopted by the 203rd General Assembly in 1991 and became effective in June, 1992:

The presbyteries shall be responsible for raising their own per capita funds, and for raising and timely transmission of per capita funds to their respective synods and to the General Assembly. The presbyteries may direct per capita apportionments to the sessions of the churches within their bounds.

To date, there has been no authoritative interpretation of the last sentence of G-9.0404d. The 211th General Assembly, in 1999, adopted an authoritative interpretation of G-9.0404d that placed a responsibility on a presbytery to remit per capita allocations to higher governing bodies

¹ Appellants claim the last two sentences of G-9.0404d were added "without either comment or a statement of purpose." (Brief, p. 13).

even though a session may not have paid the per capita allocated to it by the presbytery. However, that did not answer the question later posed by Overture 01-1 from the Presbytery of Scioto Valley of whether or not presbyteries can hold sessions responsible for transmission of per capita funds to the presbyteries. Unfortunately, the 213th General Assembly did not adopt Overture 01-1, and the presbytery remains without a clear answer from the General Assembly as to the responsibility the presbytery may place on sessions pursuant to G-9.0404d.

**BACKGROUND OF MOTION ADOPTED BY
PRESBYTERY OF SCIOTO VALLEY**

The Presbytery of Scioto Valley had submitted Overture 01-1 to the 213th General Assembly. The Advisory Committee on the Constitution (ACC) (Appendix 3) advised against adoption of the overture, opining that "a per capita apportionment is a moral responsibility rather than an enforceable obligation." The Committee on the Office of the General Assembly (COGA) (Appendix 4) also recommended against approval of the overture, but for an entirely different reason. It advised the General Assembly that "presbyteries already possess the authority and responsibilities the overture seeks to make explicit in the text of G-9.0404d." Following the action of the 213th General Assembly disapproving Overture 01-1, the Presbytery of Scioto Valley began a series of discussions about per capita, culminating with the adoption of its motion in February, 2002. That motion provides as follows:

To direct per capita apportionments to the sessions of the churches within its bounds, [G-9.0404d], the action of the Presbytery establishes a responsibility on the part of the sessions, as governing bodies of the church, to raise and timely transmit per capita funds to the Presbytery, unless the Presbytery excuses a session from doing so."

As noted in memoranda prepared by the presbytery's stated clerk and then chair of Presbytery Council, Jim Wilson, the primary purpose for adopting the motion was "to clarify the

responsibility of sessions to pay per capita" (Memo, July 3, 2001, Exhibit A); and to provide "clear guidance that per capita is a responsibility rather than an option for sessions" (Memo, p. 3, September 6, 2001, Exhibit H).

The presbytery has suffered serious budget shortfalls caused at least in part by the refusal of some large churches in the presbytery to pay their per capita. An Administrative Commission formed by the presbytery in January, 2000, reported that some sessions did not believe they were obligated to pay per capita under the current language of G-9.0404d (Memo, July 3, 2001).

The issue of per capita was discussed at the July 19, 2001, and August 30, 2001, meetings of the Council of Presbytery. The motion was presented to the 172nd Stated Meeting of the Presbytery on November 20, 2001; and then adopted at the next presbytery meeting on February 5, 2002.

The presbytery has not adopted any policy or guidelines as to what may constitute an "excuse" under the motion. It is anticipated that each request for an excuse will be considered on a case by case basis, but it was made clear that the presbytery would not and could not enforce payment of per capita or punish or penalize nonpayment.

DISCUSSION

I. Does a presbytery have the authority to direct sessions to transmit per capita payments to the presbytery pursuant to G-9.0404d?

The answer to the question of whether or not a presbytery has authority under G-9.0404d to direct sessions to transmit per capita payments involves a two-part discussion: (1) What do the words of the last sentence of G-9.0404d mean? and (2) What is the significance of per capita in the Presbyterian Church (USA)?

(1) What do the words of the last sentence of G-9.0404d mean?

The last sentence of G-9.0404d is: "The presbyteries may direct per capita apportionments to the sessions of the churches within their bounds." Does this mean that a presbytery may instruct a session to pay per capita if the presbytery votes to use per capita as a means of funding the presbytery budget? Or does this mean that a presbytery may only "send a bill" to a session for per capita, and that a session receiving such a bill may choose to ignore it?

The GAPJC in *Central* never considered G-9.0404d, but nonetheless noted that the Book of Order "mandates certain activities to be carried out by a presbytery" and "*inherent in this mandate is the authority to finance these activities.*" (Emphasis added). One of the ways to accomplish this was to "adopt a per capita system of apportioning the presbytery's operating costs." Thus, even without G-9.0404d, a presbytery had the "inherent" authority to finance its budget through per capita apportionments directed to its sessions.

It is clear that G-9.0404d does not automatically impose an obligation on sessions to raise and transmit per capita to presbyteries. That is, the last sentence of G-9.0404d is not self-implementing. Instead, it gives authority to a presbytery to take action if it chooses, but the presbytery is not required to do so. As noted above, COGA advised the 213th General Assembly that Overture 01-1 was not necessary because "presbyteries *already possess the authority to hold sessions responsible* for the 'timely transmission' of per capita funds." (Emphasis added).

Even if the phrase "direct per capita apportionments" simply meant that a presbytery could notify sessions of the per capita bill, the receipt of such a bill by a session would necessarily impose a responsibility on the session to pay the bill. In providing advice to the 213th General Assembly about Overture 01-1, the ACC commented that "a per capita apportionment is a *moral responsibility* rather than an enforceable obligation." (Emphasis added). Both parties

here agree with that statement. Indeed, can there be any responsibility greater than a moral responsibility? The payment of per capita is a moral responsibility placed on the sessions because we are a connectional church that relies on those connections to thrive and serve Christ.

There is nothing in the actual language of G-9.0404d that prohibits the motion adopted by the presbytery. What appears to be the concern of Appellants is the use of the words "responsibility" and "excused" in the motion. Appellants infer that a church may be punished if it fails to meet its responsibility or if it is not "excused" from making its per capita payments.

The presbytery believes there is no basis for such inference.

In *Central*, the GAPJC found that the resolution adopted by the Long Island Presbytery, by using the word "obligation," presented "the potential for the presbytery to take coercive action such as demanding payment, assessing interest, or otherwise penalizing a church which is behind in making payments."² The GAPJC held that a presbytery may not punish a church, directly or indirectly, for withholding per capita.

It is clear that the Presbytery of Scioto Valley may not punish or penalize a church if the church does not make its per capita payments. This point was made repeatedly during the discussions preceding the adoption of the motion, and, in fact, no church has been punished or penalized since adoption of the motion (or before, for that matter).

Furthermore, the motion does not threaten enforcement of the per capita payments. It simply makes sessions aware of their responsibility to raise and transmit the per capita. The presbytery believes the fear of reprisal is unfounded.

Contrary to Appellant's concerns, because churches may be excused from payment of per capita, the motion allows the presbytery to respond pastorally rather than punitively.

² The SPJC decision made a distinction between "responsibility" and "obligation" The presbytery believes such a distinction is unnecessary to make in this case. The words are essentially synonymous. The importance here is not the word used but the fact that the presbytery may not, in either event, coerce or enforce per capita payments.

Even so, Appellants complain about what they refer to as "this presbytery's growing heavy handedness regarding the matter of per capita." (Brief, p 10). The examples provided by Appellant to support their concerns are both irrelevant and disturbing. They are irrelevant either because (1) they relate to matters that occurred prior to the adoption of the motion and were not mentioned in the complaint; or (2) they relate to the fear of what the presbytery *might* do and are "not ripe for determination because they are based on future actions that cannot be known." *Session of Mount Auburn Church v. Presbytery of Cincinnati* (1995). They are disturbing because Appellants complain about individual presbyters or congregations exercising their democratic rights of free speech and petition.

First, Appellants claim that a financial policy adopted by the presbytery in June, 2001, "has already had a disastrous effect on at least one growing and vital church within the presbytery." (Brief, p. 10).³ The SPJC properly dispensed with this claim as not being relevant because it "was not mentioned in the Complaint." (SPJC Decision, p. 2).

Second, Appellants claim (without any evidence in the record) that "individual pastors and churches have been verbally singled out by name" at various presbytery meetings with some presbyters supposedly wanting to discipline churches that had not paid per capita. (Brief, p. 11). So far as the presbytery is aware, any such comments reflect the personal opinions of the presbyters and do not reflect any formal position of the presbytery. As such, those presbyters are free to say what they believe. It is disturbing that Appellants would want to limit the free speech

³ The Presbytery of Scioto Valley, like other presbyteries, has adopted a financial policy that restricts the right of a church to borrow funds if the per capita payments are not current. This is not a punishment but rather the exercise of good stewardship by the presbytery. Since dissent and protest are not appropriate reasons for withholding per capita, then the normal reason for failure to pay per capita would be financial inability. Therefore, it would generally be imprudent for the presbytery to permit an encumbrance of property where the church has not demonstrated financial stability.

The presbytery also strongly disputes the facts as presented by Appellants in their brief. They presented no witnesses and no documents before the SPJC to support their claim. Furthermore, in other documents submitted by Appellants, the particular church was specifically advised in writing to request an exemption from the policy, but no such request was ever made. See Attachment 5.

of others on the floor of presbytery. It is even more disturbing to suggest that the free speech of individuals represents the voice of presbytery in the absence of any formal action by presbytery.

Third, Appellants make reference to an overture presented by one of the churches in the presbytery calling for discipline of churches not compliant with their per capita payments. (Brief, p. 11). Appellants apparently fear that the overture is a "harbinger of an increasingly aggressive attitude" of the presbytery toward non-compliant churches. Ironically, the presentation of an overture is precisely the way a church may seek change. Any church has the right to present an overture; but such action would have no relevance to Appellant's case unless it was actually approved by the presbytery. Again, it is disturbing that Appellant's are criticizing the very process that permits dissent and change within the Church.

The adoption of the motion codified and affirmed the expectation of a majority of the churches in the presbytery that all will participate in the funding of the presbytery budget through per capita as allowed by G-9.0404d.

The SPJC found the motion to be constitutional. It does not give the presbytery any authority to take or threaten punitive or coercive action. Instead, it simply carries out the authority specifically given to presbyteries by G-9.0404d to direct per capita apportionments to sessions within their bounds. Just because Appellants may be able to envision actions taken by the presbytery to enforce the motion does not make the motion itself unconstitutional. If the presbytery were to penalize a church for non-payment of per capita, then such action would undoubtedly be unconstitutional – but that has not occurred and is not the issue before this PJC.

(2) What is the significance of per capita in the Presbyterian Church (USA)?

It is not enough to look at the language of G-9.0404d in isolation and conclude that the motion adopted by presbytery is constitutional. The significance of per capita in the

Presbyterian Church (USA) must also be considered, especially in light of the opposition of some churches to pay their per capita apportionment.

There are essentially three types of church governance: Episcopal, characterized by a top-down structure; Congregational, characterized by independent churches perhaps loosely organized in a bottom-up structure; and Presbyterian – which is unique. The Presbyterian Church (U.S.A.) is a connectional, covenantal church. As such, individual churches have "agreed" to be governed by a Constitution that creates important relationships that connect local congregations with one another and with higher governing bodies.

The GAPJC in *Central* made the following important observation:

When one becomes a Presbyterian, one enters into relationships with others that are unique in modern systems of church governance. Individuals and governing bodies become accountable to one another. Decisions made at one level must be made in light of our understanding of the Presbyterian Church (U.S.A.) as being one church (G-4.0301a; G-9.0103).

We are not a congregational church, yet Appellants commented at length during the hearing before the SPJC that we are a bottom-up organization. This is disturbing. As noted by the GAPJC in *Central*, our system "neither imposes decisions from the top down nor allows particular churches to operate in a vacuum. We proclaim and take seriously the notion of 'one Church.'" The suggestion that a local church has the right to act independently (i.e., to not participate in the responsibility shared and apportioned among the churches) is a congregational proclamation.

The 213th General Assembly commented that "Per capita is one of the sinews or our *covenantal relationship*." And the 214th General Assembly reminded individual sessions "that to withhold per capita puts at jeopardy the connectional and covenantal nature of our church that is affirmed by our ordination vows."

The 210th General Assembly (1998) affirmed that "per capita apportionment provides for the vital life and for the open decision-making process of our governing bodies and so constitutes an essential element of the mission of Jesus Christ through the Presbyterian Church (U.S.A.)." The entire concept of per capita is to spread the cost of supporting the administrative, ecclesiastical and judicial functions of the higher governing bodies fairly among all the churches in our connectional system.

The Committee on the Office of the General Assembly, in responding to Overture 02-15, described the significance of per capita as follows:

Per capita apportionments provide the undergirding for our structure of governance in support of the mission of Jesus Christ. For a presbytery to passively (or actively) participate in a congregation's withholding of per capita apportionments is to place an unfair burden on other presbyteries and Presbyterians while still receiving all of the rights and privileges of full participation in the governance system.

The ACC, in its Advice on Overture 02-15, made the following observation about per capita:

In our Reformed tradition, giving by members of the church results from thanksgiving to God for gifts received and the commitment to share those gifts with others as witness to Jesus Christ in the world beyond the church. Such gifts cannot be coerced any more than gratitude can be coerced. *There is an important distinction about payment of per capita apportionment: per capita payment is a simple and responsible acknowledgment of the obligation of the governing body to the higher governing bodies.* Gifts shared with higher judicatories enable the interrelated system of government in the Presbyterian Church (U.S.A.), as well as mission outreach beyond the bounds of a particular governing body. The practice of withholding the payment of per capita as a strategy of protest of the actions of the larger church has frequently undermined the precious connections within presbyteries, synods, and with the General Assembly. (Emphasis added).

Without per capita, the Presbyterian Church (U.S.A.) literally could not function. There would be no funds to pay for the administrative, judicial or ecclesiastical functions of the church. The governance structure that binds us together as Presbyterians could not exist. As

Presbyterians, we voluntarily accept the covenantal relationships that exist both vertically, through the different governing bodies, and horizontally among our sister churches in the denomination.

Appellants have referred in their Brief (at pages 2 and 3) to a "per capita relationship" between sessions and presbyteries as being voluntary. We do not believe this to be an accurate characterization of either per capita or the relationship between the two governing bodies. There is no per capita relationship. The relationship is among the bodies of the Church. The 213th General Assembly referred to the covenantal relationship as being voluntary, not the payment of per capita. In a sense, we give up the notion of voluntary once we take ordination vows. After that, we take on responsibilities and obligations.

All members of the church are asked to accept Christ's call "to be involved responsibly in the ministry of his Church" (G-5.0102). This may be the only purely voluntary relationship in the Church. It requires that members "respond in trust and obedience to God's grace in Jesus Christ and desire to become part of the membership and ministry of his Church" (G-5.0103).

Church officers, on the other hand, have stepped forward in answer to Christ's calling and have "volunteered" to take on the responsibilities that leadership imposes. They take specific ordination vows that require them, among other things, "to be governed by our church's polity" (G~ 14.0207e). Where, as here, the presbytery has imposed on its sessions a responsibility to raise and transmit the per capita funds to the presbytery, then the sessions do not have the freedom to simply disregard this responsibility.

II. Under G-10.0102i, what does the term "benevolences" mean?

One of Appellants' arguments is that the motion conflicts with the right of a session under G-10.0102i to determine its own benevolences. A discussion of this also requires a two-

part response: (1) What is the relationship between the presbytery and its sessions? and (2) What is meant by the term benevolences?

(1) What is the relationship between the presbytery and its sessions?

G-10.0102 sets forth many responsibilities that are placed on sessions. However, it is not an exhaustive list of responsibilities. This is recognized in G-10.0102p that requires the session "to maintain regular and continuing relationship to the higher governing bodies of the church, including ... (4) observing and carrying out the instructions of the higher governing bodies consistent with the Constitution of the Presbyterian Church (U.S.A.)." Thus, it is explicitly contemplated that there will be other duties or obligations imposed on the session from higher governing bodies in addition to those spelled out in G-10.0102.

The corollary to G-10.0102 (4) is G-4.0301i that states, "Governing bodies possess whatever administrative authority is necessary to give effect to duties and powers assigned by the Constitution of the church."

G-9.0103 recognizes that "all governing bodies of the church are united by the nature of the church and share with one another responsibilities, rights, and powers as provided in this Constitution," and "the jurisdiction of each governing body is limited by the express provisions of the Constitution, *with powers not mentioned being reserved to the presbyteries.*" (Emphasis added).

As noted by the SPJC, the 206th General Assembly (1994) adopted an authoritative interpretation of G-11.0103f as to whether or not guidance constitutes a "mandate" in the Book of Order:

Within the list of responsibilities and powers of the presbytery are items that only the presbytery can effect, and items that require the concurrent action of the congregation(s) or other governing bodies, e.g., guidance regarding equitable compensation may be advisory for congregational employees, but mandatory for

pastoral calls that require approval by presbytery. *The responsibilities of the session as listed in the Book of Order, G-10.0102, may thus be limited by requirements established by the presbytery as it seeks to fulfill its responsibilities in G-11.0103. To the extent that guidance incorporates requirements established by the presbytery in the fulfillment of its unique responsibility, such advice is mandatory.* (Emphasis added by SPJC)

Thus, the mere fact that the Book of Order gives sessions the responsibility to determine its own benevolences does not mean that the presbytery cannot require a session to pay per capita.

(2) What is meant by the term benevolences?

Appellants rely, in part, on their interpretation of G-10.0102i that it has the "unfettered right" to determine its own benevolences – and that per capita payments would, of necessity, come from the benevolences of the churches, thus creating a conflict between the presbytery motion and G-10.0102i.

"Benevolence" is not actually defined in the Book of Order. However, the term is used synonymously with "mission" in G-16.0201o (relating to Union Churches):

While recognizing the basic right of any giver to designate the cause or causes to which personal gifts shall go, the session of the union church shall annually propose to the congregation a general *mission or benevolence* program which shall be divided equitably among the officially approved causes of each denomination. (Emphasis added).

Logically, a local church should have control over how it spends its mission dollars. That makes sense. It does not make sense, in a connectional church, that the local church would have complete and unfettered control over all funds coming into its coffers, and this is supported in the Book of Order.

G-14.0506b, for example, requires the call of a pastor to "provide for payment to the board responsible for benefits of a sum equal to the requisite percent of the minister's

compensation, which may be fixed by the General Assembly. ..." Other financial requirements for a pastor's call are also set forth in G-14.0506.

Thus, if benevolences include all monies received by the church, and if a session has the complete right to determine the distribution of all such funds, then it could determine not to make payments to the Board of Pensions – but this would be in direct conflict with G-14.0506b. If benevolences are in fact mission funds, then there is no conflict between G-10.0102i and G-14.0506b. And because benevolences *are* mission funds, there is no conflict for the presbytery to place a responsibility on sessions to make per capita payments – and such responsibility does not affect the session's right to determine the distribution of its mission dollars. The presbytery urges the GAPJC to find that benevolences under G-10.0102i means only the mission funds for the church.

III. Is the withholding of per capita an appropriate means of protest or dissent?

The unspoken and underlying theme of Appellants is their desire to be able to withhold per capita payments as a means of dissent or protest, and to do so with impunity.

Individual dissent and protest are important rights recognized by the Book of Order (G-9.0303 and G-9.0304). However, the 210th General Assembly stated that "the withholding of per capita by governing bodies is not an appropriate exercise of dissent or protest." As a connectional church, "together we shoulder the burden and blessings of our bonds." 213th General Assembly.

The GAPJC in *Central* made the following findings:

Our system protects the rights of minority viewpoints, yet affirms the principle of majority rule (G-1.0400). Means are provided for the expression of these viewpoints and the effecting of change within the system. Yet there is no guarantee that these minority viewpoints will prevail on all issues. While

freedom of conscience is preserved, it is to be exercised within certain limits (G-6.0108b), and officers promise to be governed by the polity of the Church and to abide by its discipline (G-14.0207e; G-14.0405b.5).

Appellant asserts its right to protest as a matter of conscience. While affirming this, this commission believes that there is also a 'duty of conscience' to support the ministry and mission of the church. Our system provides mechanisms by which grievances may be addressed which are in harmony with the Historic Principles of Church Government (G-1.0400) and the Principles of Presbyterian Government (G-4.0300). While they are not always the most expedient or may not always produce immediate results, using such processes preserves the integrity of the system and often effects desirable changes.

The GAPJC in *Westminster United Presbyterian Church of Port Huron, Michigan v. Presbytery of Detroit* (1976), noted that the "willful refusal to contribute, however, is symptomatic of serious problems within a congregation or session, whether they be financial, theological, or stem from a lack of understanding and appreciation of the connective nature of our denomination." The proper response is to "inquire into the cause and nature of the refusal." In like manner, the 214th General Assembly resolved that "presbyteries are urged (1) to partner with those churches who struggle financially to pay per capita and (2) to work pastorally with those sessions who choose to withhold their per capita."

The presbytery urges the GAPJC to clarify that the withholding of per capita payments is not an appropriate means of protest or dissent.

SUMMARY AND CONCLUSION

It is hard to overstate the importance of per capita to the Presbyterian Church. The General Assembly has recognized per capita as "one of the sinews of our covenantal relationship" and affirmed that it "constitutes an essential element of the mission of Jesus Christ through the Presbyterian Church." Per capita apportionments "provide the undergirding for our structure of governance."

We are a connectional church. As Presbyterians, we voluntarily enter into a covenantal relationship with our sister churches and with our higher governing bodies. This is not a covenant lightly made. As church officers, we take ordination vows that place responsibilities upon us, including the responsibility to be guided by the polity of the Church.

G-9.0404d formally establishes the per capita apportionment system in the Presbyterian Church (U.S.A.). However, it is up to the presbytery to take formal action to implement its authority to direct sessions to pay per capita. That is precisely what the presbytery did in February, 2002. Given the authority of G-9.0404d, the presbytery has notified sessions within its bounds that they have a responsibility to raise and transmit per capita payments unless excused. What constitutes an excuse has not been pre-determined. What is pre-determined is the position of the General Assembly that withholding of per capita as a matter of protest or dissent is not appropriate. What is also pre-determined is the fact that no church may be compelled, punished or penalized for failure to pay its per capita, regardless of its reasons and regardless of whether or not it has been excused.

We believe the fear of punishment (from withholding per capita as a means of protest or dissent) is the core of Appellants' concern in this case. They have characterized the motion of presbytery as making the per capita payments "mandatory" as if prior to the motion there was no

obligation to make the payments. Appellants argue that the per capita payments are and should be wholly voluntary. In support of such an argument, they rely on the *Central* case and language from the ACC advice to the General Assembly on Overture 01-1. Reliance on either of those sources in support of their claim is misplaced.

The GAPJC in *Central* preceded the effective date of the amendment to G-9.0404d and "therefore does not include an interpretation of the last two sentences of G-9.0404d," (SPJC Decision, p. 3).

The ACC advice given to the 213th General Assembly (in which it noted that "all gifts to the church are voluntary whatever their purpose") was clarified the next year in its advice to the 214th General Assembly for Overture 02-15:

A study of previous interpretations and documents concerning per capita apportionment indicates that *previous documents have sometimes confused the principle of voluntary giving by the congregation and its individual members with the budgetary requirements and responsibilities of a session, inadvertently granting the congregation the attributes of the session. The gifts of individual members, and, collectively, the congregation, are indeed voluntary. On the other hand, the constitutional responsibilities and accountability of the session to the larger church are not voluntary.* The responsibilities of session are detailed in Chapter X of the Constitution, and bound by the ordination vows taken by its members (G.14.0405b(3), (5)). The session needs to be called to accountability for the promotion of faithful stewardship among its members in the same way G-9.0404d calls the presbyteries to account for their faithful stewardship. (Emphasis added). (Attachment 6).

Appellants have argued that the motion of presbytery is unconstitutional. But the motion does nothing more than what G-9.0404d specifically permits. Appellants may not like the fact that sessions have a responsibility to make per capita payments, but such responsibility is not unconstitutional.

We respectfully request that this Commission (1) uphold the decision of the SPJC; (2) determine that benevolences under G-10.0102i means mission funds; and (3) determine that withholding of per capita is not an appropriate means of dissent or protest.

Respectfully submitted

(signed)
John S. Jones

(signed)
Debra Bergmann

(signed)
Craig W. Seitz

CERTIFICATE OF SERVICE

I, John S. Jones, certify that the enclosed Brief has been furnished to the Appellants by ordinary U.S. mail on the 31st day of May, 2003.

May 31, 2003

(signed)

John S. Jones