

THE PERMANENT JUDICIAL COMMISSION
of
THE PRESBYTERY OF SALEM
of
THE PRESBYTERIAN CHURCH (U.S.A.)

DECISION

Thomas E. Morgan -)
Complainant)
)
)
v.)
)
)
Session, First Presbyterian)
Church, Asheboro -)
Respondent)

----- **ARRIVAL** -----

This is a remedial case which has come before this Permanent Judicial Commission (Commission) as a result of a complaint filed by the above named complainant(s) against the Session of the First Presbyterian Church, Asheboro, respondent.

----- **JURISDICTION** -----

Salem Presbytery's Commission finds that it has jurisdiction, 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.

----- HISTORY -----

On December 3, 2015, Complainant filed with the Stated Clerk of Salem Presbytery a Complaint of Irregularity, seeking judicial review of the "Policy Regarding Same-Sex Marriage Services at FPC" of the Session of the First Presbyterian Church Asheboro, North Carolina. This policy was adopted by the Session on September 16, 2015. This policy states in part, that "all marriage services conducted at First Presbyterian Church shall reflect the understanding that Christian marriage is a covenant between a man and a woman."

On December 4, 2015, the Stated Clerk informed the Clerk of Session of the First Presbyterian Church, Asheboro, North Carolina of the receipt of the Complaint. The Stated Clerk invited the Clerk of Session to acknowledge receipt of the Complaint, form a Committee of Counsel to defend the Session, and to provide an answer to the complaint and a listing of all papers and other materials pertaining to this matter. The Committee of Counsel filed these documents with the Stated Clerk on January 14, 2016.

The Presbytery Stated Clerk provided the Complaint, the Response, and the listing of papers and materials to the officers of Salem Presbytery's Permanent Judicial Commission January 21, 2016. On February 11, 2016, the Commission officers determined that this matter meets all the jurisdictional tests in D-6.0305 of the *Book of Order*. A trial was duly noticed and scheduled for April 22, 2016 and was held at the Faith Presbyterian Church in Greensboro, North Carolina. The following members of the Commission were present and participated in the hearing: Ruling Elders Daniel Hawkins, Moderator, Wade Harrison, Clerk, Ed Gregory, Frank Longest and Charles McGirt and Teaching Elders Dale Walker, Fred Beck and Stephen Scott. Scott Templeton did not take part in the hearing or deliberations. Neither of the parties offered challenges to any participating member of the Commission. The complainant Thomas E. Morgan and Jeff Caison, for the Committee of Counsel, First Presbyterian Church, Asheboro, North Carolina each addressed the Commission on the pending issue at an open hearing. Neither party presented any witness testimony nor affidavits for the consideration of the Commission. The Commission engaged in deliberations and recessed until April 28, 2016 when the participating members reconvened, continued their deliberations and issued the decision of the Commission by unanimous vote.

----- SPECIFIC IRREGULARITIES OR DELINQUENCIES -----

The Complainant alleges that the "Policy Regarding Same-Sex Marriage Services at FPC" conflicts with the Presbyterian Church (U.S.A.) Constitution, Part II (*Book of Order*), F-1.0403, in that it discriminates against a class of people based on their sexual orientation.

The policy complained of is as follows:

Policy Regarding Same-Sex Marriage Services at FPC

We, the Session of First Presbyterian Church, Asheboro, NC, led by the Holy Spirit and called to an identity of compassionate faithfulness, are bound by the authority of scripture and the historical confessions of the PC(USA). The Session will exercise due discretion in affirming marriage service requests, but affirms that all marriage services conducted at First Presbyterian Church shall reflect the understanding that Christian marriage is a covenant between a man and a woman. All marriage services conducted on the property of First Presbyterian Church, Asheboro, NC must be approved in advance by the Session.

Members of the Session sought guidance from the Holy Spirit and the Holy Scriptures through an extended period of prayer and study making this decision. However, members of the Session acknowledge with humility and respect that others in our congregation and the larger church read the same passages and find a different understanding of what Scripture calls us to do. Indeed, not all members of the Session are in full accord on these issues, but have worked faithfully to discern the best way forward for us together. The Session's decision was made in regard to Christian marriage and is unrelated to membership or other participation within First Presbyterian Church, Asheboro, NC.

At least one party to the couple to be married must be a church member, or the child or grandchild of a church member.

ISSUE

The sole issue to be resolved by the Commission of Salem in this instance is whether the Policy Regarding Same-Sex Marriage Services at FPC constitutes an irregularity in accordance with the *Book of Order* and the allegations of the complaint should be sustained.

Opinion

This is a question of first impression in this Presbytery and to the knowledge of this Commission in the PC(USA). It involves the consideration and

interpretation of inherently conflicting policies in the *Book of Order*. Reasonable people informed by the Holy Spirit can and do disagree about the issue of the use of church property for same sex marriage, and about what limits if any the rules in our *Book of Order* place on congregations in the PC(USA) with regard to policies prohibiting the use of church property for same sex marriages.

The parties to this litigation are members of a congregation that has invested a great deal of time, energy and effort prayerfully listening to each other and seeking the guidance and discernment of the Holy Spirit with regard to this policy. Similarly, members of the congregation have carefully and prayerfully considered the provisions of the *Book of Order* as recently amended, as well as instructional materials provided by the PC(USA) to aid congregations in interpreting the amendment. This is not a congregation prejudiced against people with sexual orientation differences. The same elected Session that adopted the same sex marriage policy voted on August 19, 2015 to allow the Boy Scout troop sponsored by the congregation to follow the revised standards of the Boy Scouts of America. Those revisions removed the restriction of openly gay adult leaders. This congregation and this Session have done an exemplary job wrestling with a difficult issue with humility and love, and without clear guidance from our General Assembly and those whom it employs.

The Session of First Presbyterian Church Asheboro, enacted a categorical prohibition of same sex marriages on church property. On its face the policy excludes an individual member, or member couple of the same gender who desire to be married in the church facility by defining "Christian marriage as a covenant between a man and a woman." The policy on its face mandates that the Session approve in advance on a case-by-case basis all marriages between a man and a woman to be held on the church property. However, so long as this policy is in effect, the Session of First Presbyterian Church Asheboro will not consider requests by individual members or those related to members to use the property for a marriage to a person of the same sex. The policy is explicit, published and is the rule in this congregation of the PC(USA).

The celebration of marriage is an act of worship governed by the provisions of W-4. 9001-9006 of the *Book of Order* (2015-17) of the PCUSA. These sections require teaching elders and the session on behalf of the congregation to follow a prescribed process with respect to any couple seeking Christian marriage. This process extends from the time a couple makes their interest in Christian marriage known to the teaching elder up to the time the teaching elder determines whether to perform the marriage and the Session on behalf of the congregation determines whether the marriage may be performed on church property. Those provisions are set forth in their entirety below with emphasis added:

9. Marriage

W-4.9001 Marriage is a gift God has given to all humankind for the well-being of the entire human family. **Marriage involves a unique commitment between two people, traditionally a man and a woman, to love and support each other for the rest of their lives.** The sacrificial love that unites the couple sustains them as faithful and responsible members of the church and the wider community.

W-4.9002 In civil law, marriage is a contract that recognizes the rights and obligations of the married couple in society. In the Reformed tradition, marriage is also a covenant in which God has an active part, and which the community of faith publicly witnesses and acknowledges.

W-4.9003 If they meet the requirements of the civil jurisdiction in which they intend to marry, a couple may request that a service of Christian marriage be conducted by a teaching elder in the Presbyterian Church (U.S.A.), who is authorized, though not required, to act as an agent of the civil jurisdiction in recording the marriage contract. **A couple requesting a service of Christian marriage shall receive instruction from the teaching elder,** who may agree to the couple's request only if, in the judgment of the teaching elder, the couple demonstrate sufficient understanding of the nature of the marriage covenant and commitment to living their lives together according to its values. In making this decision, the teaching elder **may seek the counsel of the session, which has authority to permit or deny the use of church property for a marriage service.**

W-4.9004 The marriage service shall be conducted in a manner appropriate to this covenant and to the forms of Reformed worship, under the direction of the teaching elder and the supervision of the session (W-1.4004–.4006). In a service of marriage, the couple marry each other by exchanging mutual promises. W-4.9000: 2 Helv.Conf. 5.245–5.251; West.Conf. 6.131–6.139 Ordering Worship for Special Purposes W-4.9004–.10003 *Book of Order* 2015/2017 129 The teaching elder witnesses the couple's promises and pronounces God's blessing upon their union. The community of faith pledges to support the couple in upholding their promises; prayers may be offered for the couple, for the communities that support them, and for all who seek to live in faithfulness.

W-4.9005 A service of worship recognizing a civil marriage and confirming it in the community of faith may be appropriate when requested by the

couple. The service will be similar to the marriage service except that the statements made shall reflect the fact that the couple is already married to one another according to the laws of the civil jurisdiction.

W-4.9006 Nothing herein shall compel a teaching elder to perform nor compel a session to authorize the use of church property for a marriage service that the teaching elder or the session believes is contrary to the teaching elder's or the session's discernment of the Holy Spirit and their understanding of the Word of God.

The provisions of W-4.9001 do not limit marriage to a union of a man and a woman. Instead, they expand that definition to any two people who are committed to love and support each other for the rest of their lives. W-4.9003 requires a teaching elder to give instruction to any couple requesting a Christian marriage. This includes same sex couples. It is the responsibility of the teaching elder then to determine whether,

the couple demonstrate sufficient understanding of the nature of the marriage covenant and commitment to living their lives together according to its values. In making this decision, the teaching elder **may seek the counsel of the session, which has authority to permit or deny the use of church property for a marriage service.** (Emphasis added)

W-4.9003 affirmatively requires the teaching elder to instruct and evaluate each couple who seeks a Christian marriage. This is not optional. Whether or not the teaching elder seeks the counsel of the session in this task is left to the discretion of the teaching elder. The role of the session as prescribed in W-4.9003 if asked by the teaching elder is to counsel with the teaching elder concerning the couple in the exercise of its authority to permit or deny the use of church property for the marriage service. W-4.9006 simply and explicitly reiterates that no teaching elder is required to perform any marriage service, and no session is required to permit a marriage to be performed on church property if the marriage service is, **"contrary to the teaching elder's or the session's discernment of the Holy Spirit and their understanding of the Word of God."** (Emphasis added)

The General Assembly adopted the Authoritative Interpretation of W-4.9000 in 2014. This supplanted previous Authoritative Interpretations and remains valid unless and until it is modified by the General Assembly. The language of this Authoritative Interpretation clarifies that a service of marriage is a form of worship. It states in part,

...when a couple requests the involvement of the church in solemnizing their marriage as permitted by the laws of the civil jurisdiction in which the

marriage is to take place, teaching elders have the pastoral responsibility to assess the capabilities, intentions and readiness of the couple to be married (W-4.902) and the freedom of conscience in the interpretation of Scripture (G-2.0105) to participate in any such marriage they believe the Holy Spirit calls them to perform.

It is only after the teaching elder assesses the couple's capabilities, intentions and readiness for marriage, determines that they are ready for marriage, and he or she is called to perform the ceremony that the teaching elder involves the session to authorize the use of church property for a marriage ceremony.

A categorical decision by the session not to permit any marriage by a couple of the same sex on church property without consideration of their commitment to each other, their understanding of the nature of the marriage covenant and their commitment to living their lives together according to its values is inconsistent with the process required by W-4.9001-9006. There is absolutely no question that W-4.9006 authorizes a session to prohibit any marriage on church property contrary to its discernment of the Holy Spirit and understanding of the Word of God. However, that authority is granted in the context of a process that requires the teaching elder to counsel with every couple seeking Christian marriage whether they are of the same sex or not. With regard to each such couple, the teaching elder may seek the counsel of the session and the session is authorized to determine whether that couple may be married on church property. By adopting and publishing a policy that categorically excludes any same sex couple from being married on church property, the session has contradicted the policy requiring inquiry and counselling for any couple seeking a Christian marriage, including same sex couples. The logical effect of this policy will be to discourage any same sex couple desiring Christian marriage to seek counsel from the teaching elder called by the congregation or to seek permission to be married on church property regardless of any other circumstances. A categorical prohibition of same sex marriage on the property constitutes a categorical discrimination against same sex couples who present themselves for consideration for marriage in the congregation.

The Commission was also informed by the provisions of F-1.0403 as set forth below with emphasis added:

F-1.0403 Unity in Diversity "As many of you as were baptized into Christ have clothed yourselves with Christ. There is no longer Jew or Greek, there is no longer slave or free, **there is no longer male and female;** for all of you are one in Christ Jesus. And if you belong to Christ, then you are Abraham's offspring, heirs according to the promise" (Gal. 3:27-29). The unity of believers in Christ is reflected in the rich diversity of the Church's membership. In Christ, by the power of the Spirit, God unites persons

through baptism regardless of race, ethnicity, age, sex, disability, geography, or theological conviction. There is therefore no place in the life of the Church for discrimination against any person. The Presbyterian Church (U.S.A.) shall guarantee full participation and representation in its worship, governance, and emerging life to all persons or groups within its membership. **No member shall be denied participation or representation for any reason other than those stated in this Constitution.**

It is true that the words “sexual orientation” do not appear in this provision. The quotation from Paul’s letter to the Galatians states that our faith is founded on the proposition that for those clothed in Christ, there is no discrimination of any sort between people who are of the male sex or female sex. The categorical exclusion of same sex couples who desire Christian marriage without any counsel or inquiry into their spiritual life is inconsistent with this foundational tenet of the PC(USA) and amounts to categorical discrimination and thus fails to uphold the unity of believers in Christ and discriminates against fellow believers within the congregation.

The following language (emphasis added) was published in March 2015 by the Office of the General Assembly of the PC(USA) accessible at the following link to the PC(USA) website:

http://oga.pcusa.org/site_media/media/uploads/oga/pdf/advisory_opinion_marriage_passage.pdf

Will the approved amendment allow sessions to approve holding marriage services for same-gender couples on church property?

Yes. Sessions may permit the use of church property for the marriage service of a same gender couple.

Will the approved amendment require sessions to allow marriage services for same-gender couples to be held on church property?

No. Sessions may deny the use of church property for the marriage service of a same-gender couple.

Will a session be able to categorically prohibit a marriage service for a same gender couple from being held on church property?

Yes. Under our Constitution, sessions have the authority to make categorical determinations regarding the use of the church’s facilities

The following language (emphasis added) may be found in a document entitled “Frequently Asked Questions: Same Gender Marriage” located at the following

address: http://www.pcusa.org/site_media/media/uploads/oga/pdf/ga221-civil-union-marriage-faq..pdf:

Will sessions have the authority to permit (or not) same-gender marriage services in the church?

Yes. Nothing has changed about the authority of sessions in the way church property is used.

If a pastor is willing to preside at the marriage of a same-gender couple, can the session prohibit the pastor from doing so?

No. The session cannot compel the pastor nor can the pastor compel the session. The pastor has the freedom of his or her own conscience and the session has the responsibility for providing for worship and making decisions about the use of church property.

Can the session make a categorical prohibition of same-gender weddings in its building?

Yes. Nothing has changed about the authority of the session with regard to the use of the church building.

The Session of First Presbyterian Church Asheboro in part relied on the FAQ document published on the PC(USA) website in formulating and publishing its categorical prohibition of same gender marriages on church property. The language of these publications does not constitute an Authoritative Interpretation of the *Book of Order*. The General Assembly has not considered the issue of whether a session may make a categorical policy of prohibiting same sex marriages on church property. The Commission is disturbed that this information has been offered for the guidance of congregations in the PC(USA) apparently both at the time when the presbyteries were voting on whether or not to ratify the amendment to W-4.9000 and after it was ratified up until today. It is particularly unfortunate that diligent congregations like the one in First Presbyterian Church Asheboro cannot rely on pronouncements specifically offered for the guidance of congregations on important issues of polity. Nevertheless, these pronouncements have no authority. They do not control the decision of this Commission, and do not excuse this Commission from its obligation to decide the validity of this particular same sex marriage policy based on the prayerful consideration and interpretation of the Book of Order.

The Commission sympathizes with the efforts of the Session made in good faith based on published guidance following much prayer and spiritual discernment to bring some measure of peace and finality to this issue in the congregation by

categorically prohibiting same sex marriages on church property. On balance however, the Commission interprets the provisions of F-4.9000-9006 to require that the Session's decisions concerning whether same sex marriages may be performed on church property be made on a case-by-case basis, at the time a request is received by the Session, just as are traditional marriages between a man and woman.

Accordingly, the Commission sustains the alleged irregularity by unanimous vote.

----- **ORDER** -----

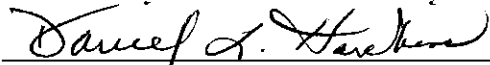
IT IS THEREFORE ORDERED that the existing Policy Regarding Same-Sex Marriage Services adopted by the Session of the First Presbyterian Church, Asheboro, North Carolina as set forth above is not in compliance with the *Book of Order* and therefore is void.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Salem report this Decision and Order to the Presbytery at its first stated meeting following the date of this Order, that the Presbytery enter the full Decision and Order upon its minutes, and that an excerpt from the Synod's minutes showing entry of the Decision and Order be sent to the Stated Clerk of the Synod of the Mid-Atlantic. (D-7.0701)


----- **ABSENCES AND NON-PARTICIPANTS** -----

Ruling Elder Scott Templeton, a member of the Permanent Judicial Commission was not present and did not participate in this case. Otherwise, all members of the Commission were present for all sessions of the hearing and participated in this decision.

Dated this 28th day of April, 2016.



Ruling Elder Daniel L. Hawkins,
Moderator, Permanent Judicial Commission

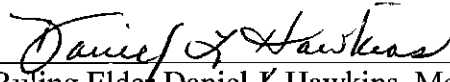


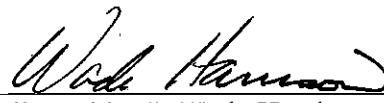
Ruling Elder J. Wade Harrison, Clerk, Permanent
Judicial Commission

CERTIFICATION AND TRANSMITTAL FORM

CERTIFICATES

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of Salem Presbytery, Presbyterian Church (U.S.A.), in Remedial Case No. 2015-01, Morgan v. Session, First Presbyterian Church Asheboro, made and announced at Faith Presbyterian Church, Greensboro, North Carolina, on April 28, 2016.


Ruling Elder Daniel J. Hawkins, Moderator
Permanent Judicial Commission of the
Presbytery of Salem

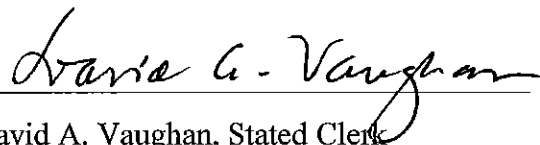

Ruling Elder J. Wade Harrison, Clerk
Permanent Judicial Commission of the
Presbytery of Salem

TRANSMITTAL CERTIFICATES

I certify that I did transmit a certified copy of the foregoing to the following persons by certified mail, return receipt requested, depositing it in the United States mail at
Elon, NC 27244 on 4/29/2016.

- Thomas Ed Morgan, Complainant
- Jeff Caison, Member of the Respondent Committee of Counsel

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the Synod of the Mid-Atlantic, Presbyterian Church (U.S.A.), by delivering it by mail on
4/29/2016.


David A. Vaughan, Stated Clerk
Presbytery of Salem