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Why is an agency of the United Methodist Church in court?

By Joe Whittemore

The Superior Court of the District of Columbia will soon rule on a request from the General Board of Church and Society as to whether that agency can continue to handle its fiduciary responsibilities as it has operated for many years.

Why is an agency of The United Methodist Church in a court of law? Did some outside party haul them into court, maliciously bearing false witness against an agency of the church? As a former member of the general church Committee on Audit and Review, these are among the questions I have been asked lately.

Normally, when an agency of the Church agrees to assume control over money or other assets under terms of a trust document the agency very carefully carries out those trust provisions it agreed to when it accepted the assets. There are literally hundreds of trusts and endowment funds throughout the organizations of The United Methodist Church. For example, the Women's Division and the General Board of Global Ministries have dozens of these situations. Most of the time—even under very difficult circumstances—the Church does a wonderful job carrying out the provisions it agreed to uphold.

Some background will be helpful to understand why one agency has created a legal action in a court of law. In February 2007, the General Board of Church and Society filed a legal request in the Superior Court of the District of Columbia: 1) asking the Court to bless the expanded use of trust assets and rule on the ambiguity of the language of the 1965 Methodist Building Endowment Trust; 2) requesting approval of the Court for Church and Society to continue to operate the trust as it has for the last thirty to thirty-five years; and 3) asking the court to release the restrictions if the Court could not rule in Church and Society's favor in the first two requests. These requests are referred to as Count I, Count II and Count III in Church and Society's legal action.

Shortly after Church and Society filed its request with the Superior Court, it withdrew Count III at the insistence of the General Council on Finance and Administration, the financial agency of the general church. The reasoning for withdrawing Count III was that if the Court determined that Church and Society's use of trust money and assets was outside the Trust Agreement, it would not be appropriate to ask the Court to change the expressed will of the persons who created the Trust.

In other words, the financial agency of The United Methodist Church (GCFA) was properly calling for a program agency of the church to obey and live by the Trust document which was agreed to by that agency. In the accounting world this is sometimes referred to as "living within the trustee's fiduciary responsibility" by carrying out the provisions of a trust agreement.

After Church and Society withdrew its Count III request, the Court was being asked by Church and Society to declare that the agency could continue to operate as it has for most of the forty-year Trust existence.

This brings into focus the question, "Why did Church and Society feel it needed to request a court of law to bless how it has been operating the Methodist Building Endowment Trust?" In a Summary Judgment issued on January 18, 2008, the Superior Court rejected Church and Society's Count I request and ruled that the Trust Agreement restricts usage of income generated by the trust to "abstinence from alcohol— a commonly understood meaning of temperance—and to other alcohol problems."

Church and Society's position as stated in its 2007 Financial Statement (Note 2, page 9) was that "management believes the work it performs in *all* (emphasis added) core programs of the Board meet the 'public morals' and 'general welfare' descriptions… This would include the following core programs: Public Witness and Advocacy, Legislative Briefing, Ministry of Resourcing Congregational Life, Communications, Christian Social Action, Resource Production, United Nations Office, and the program-related portion of the General Secretary's Office."

In other words, *management of Church and Society has been spending trust assets and income for just about anything the agency does.* Indeed Church and Society has not even been accounting for trust assets, income, or expenditures over the past thirty years. The agency has treated all trust income and assets as being without any restrictions and has spent millions of dollars of trust money as if the assets and income were owned outright by Church and Society. The Trust Agreement restricts trust funds for "work in the area of temperance and alcohol problems." There is a huge difference in the specific wording of the Trust and how things have been handled by agency management over the years.

The real question then becomes, "Why is Church and Society trying to get the Court to allow it to violate the explicit provisions the agency agreed to when it took control of the Methodist Building—and approximately $1,000,000 in stocks and bonds—in 1965?" Furthermore, if Church and Society intended to redefine the clear terms of the agreement, why did they not ask permission of the Court thirty years ago, rather than paying the agency's corporate counsel for a legal opinion that clearly was not what the Trust Agreement provided?

The answer becomes clear by simply looking at the money involved. Why risk being told "no"? In 2006 alone, rental income from the Methodist Building was $1,739,255 while expenses were $979,032, producing a net rental income of $760,223. Over the seven-year period from 2000 through 2006, the net cash generated from the building has been approximately $5,000,000. During this time Church and Society used $5,000,000 without any restrictions, as if no Trust existed.

This has occurred over the past thirty years, even though there were periodic calls for restricted spending of trust funds by concerned church members. Those calls were dismissed by management and unheeded over the years. For many years prior to 2004, Board members and trustees were not even informed that a trust existed, and directors and trustees were not given a copy of the Trust Agreement. There was no accounting whatsoever to anyone for the use of trust income.

The restrictions of the Trust, according to the Superior Court's January 2008 Summary Judgment, are "not ambiguous." Management simply spent huge amounts of money as it budgeted without any regard to the Trust restrictions and did not inform the directors or trustees that a Trust existed.

The United Methodist Church has a Committee on Audit and Review (A&R) that is charged with the responsibility of examining all annual financial statements of organizations receiving World Service funds. A&R brought this matter to light in 2003 when it examined the 2002 financial statements of Church and Society which contained disclosures required by new accounting standards. Two footnotes in the 2002 financial statements contradicted one another. One footnote said there were no restrictions on trust income and another footnote said Church and Society was treating part of the trust assets as restricted.

A&R asked for a copy of the 1965 Trust Agreement and discovered clear and strongly worded restrictions on *every* aspect of trust assets and income. A&R, of which I was a member, refused to accept the Church and Society financial statements the way those disclosures were written. Church and Society then shopped around for a legal opinion that would support its unrestricted treatment of the income of the trust. The opinion they finally settled upon was not strong enough to support what was being claimed by Church and Society management, and over the next three years A&R pressed for clear documentation of the financial statement positions being taken by management.

This background explains why Church and Society has filed its request that a federal judge authorize the continued use of trust income and assets for a wide array of agency programs, rather than being restricted to "work in the area of temperance and alcohol" as clearly stated thirteen times in the Trust Agreement which Church and Society signed.

Once Church and Society filed its request in Superior Court, the Attorney General of the District of Columbia was charged with the responsibility of representing the people. Generally in this type case, if the Attorney General does not file an objection to a request the judge will rule in favor of the petitioner (Church and Society). This makes it imperative for the Attorney General to have full knowledge and background of all the facts and circumstances.

When dealing with a forty-year-old trust, discovery can be time consuming. This is where several present and past Church and Society Board of Directors members felt a responsibility to the church. These persons (called "Intervenors" in the language of the court) requested to be heard and the judge ruled—over Church and Society's objections—that the Intervenors could assist the Attorney General by presenting arguments and facts opposing what Church and Society was requesting the Court to approve. That is what the Intervenors have done. They did not initiate the court action, they are not official parties of the case, and they do not represent the opposition— the Attorney General of the District of Columbia is the "opposition" to Church and Society.

After reviewing the facts of the case the Attorney General filed motions with the Court asking the judge to rule against Church and Society on both counts. As noted earlier, the judge issued a strongly worded Summary Judgment on Count I in January of last year. A ruling on Count II should come soon.

QUESTIONS AND ANSWERS

Are the Intervenors to blame for this court case? Absolutely not. Church and Society executives created this unfortunate situation by ignoring the clear wording of the 1965 Trust Agreement which was signed by the agency in order to take over the Methodist Building and other assets. Rather than living within the agreement they signed, management pressed corporate counsel on three occasions during the 1970s for a legal opinion that would expand the Trust restrictions.

Did the Intervenors bring the case to court? No, Church and Society filed the case with the court.

Who is opposing Church and Society in the case? The Attorney General of the District of Columbia.

Did the Intervenors press this matter on Church and Society? No. The properly functioning financial review committee of the General Church is doing its job (see ¶¶ 805.4.b and 806.12 of the 2004 *Book of Discipline*).

Are the Intervenors bad people trying to persecute Church and Society? No. They are former Church and Society Trustees and Board of Directors members, as well as highly esteemed delegates to past General and Jurisdictional Conferences, who are properly carrying out the responsibilities delegated to them as duly elected directors of the agency and representatives of the Church.

Will the decision of the Court end this matter? There is no way to tell at this time; however, the 2008 General Conference was assured by the chair of the Church and Society Trustees that the agency would abide by the decision of the Court. If the judge clearly rules against Church and Society continuing to operate as it has, there will be a matter of Christian ethics and accountability involved as to whether the trust should be "made whole" for the misuse of its funds in the past, which would mean the agency should repay those funds to the trust.

Church and Society has no one to blame for this situation other than management of the agency over the past forty years. Claiming that people are out to "get" the agency is a "kill-the-messenger" mentality. A&R did not ignore the Trust provisions. GCFA did not accept the assets and then use funds for purposes not authorized by the Trust Agreement. The Intervenors did not bring the legal action.

The fact that there are people who wish to hold a United Methodist agency accountable to commitments the agency has made is not bad for the Church. The Church would be better served if Church and Society handled its fiduciary responsibilities more appropriately and made fewer accusatory remarks toward others.

In all fairness, it needs to be remembered that the Directors of Church and Society and especially the Trustees should not be blamed for the misuse of trust funds over the years. Prior to 2004 none of the Directors knew of the Trust. They did not have a copy of the Trust Agreement, which when read even by a novice to trust fiduciary responsibility, can be easily seen as problematic for the lack of accountability to the provisions. This does not change the way things are—or Church and Society's responsibility to the Trust—but individual directors who are kept in the dark about a trust agreement cannot very well control what has happened.

No organization is compelled to accept assets. However, many people, including this author, believe passionately that provisions of a trust or endowment agreement (whether directions or restrictions) should be carried out by the Church if the assets are accepted. Furthermore, anytime an organization of the Church feels it cannot carry out the provisions of an agreement the organization has an ethical, moral, and Christian obligation to turn the assets over to another trustee who will live within the provisions of the trust document.

What's at stake here? Nothing less than whether the United Methodist Church can be counted on to carry out its trust and endowment agreements after it takes control of the assets.

Joe Whittemore, a retired CPA, is a member of Hartwell (Ga.) First United Methodist Church. He has served on the Committee on Audit and Review of the General Council on Finance and Administration and as chair of the Southeastern Jurisdiction Committee on the Episcopacy.