

**Church Property and the Trust Clause
Stated Clerk Advisory Opinion
Presbytery of New Harmony**

The Issue

There have been questions raised at the past two stated meetings, October 2012 and February 2013, of the Presbytery of New Harmony regarding the issue of a church's property as it relates to the trust clause in the Book of Order (G-4.0203). This is a question of concern and confusion specifically with regard to former Presbyterian Church in the United States (PCUS) churches and their understanding of the property clauses included in the Articles of Agreement which were part of the approved constitution for Reunion after the 1983 General Assembly. The understanding of some former PCUS churches is that the Articles of Agreement nullified the trust clause and a presbytery's right to make decisions about the property and assets of a church that either was being dissolved or was being dismissed to another Reformed denomination. This is a misunderstanding that needs to be clarified for the former PCUS churches who by 1992 voted to take the "exception" granted in the Articles of Agreement for former PCUS churches to be able to encumber their property without requiring approval of the presbytery.

Actions Taken at Reunion in 1983

1. The 195th General Assembly (1983) of the newly formed PC(USA) approved the trust clause at G-8.0201. Virtually identical clauses existed in the Book of Order of the United Presbyterian Church in the United States (UPC) and the Book of Church Order of the PCUS. These earlier clauses were a direct response to an invitation in 1979 by the United States Supreme Court. This was the second time the US Supreme Court had studied our polity as it related to church property. In 1871 the Court noted an implied trust in connectionalism found in our Form of Government.
2. The same assembly also adopted G-8.0701, which permitted former PCUS congregations to deal with their property as they had under the PCUS Book of Church Order. By the time of reunion in 1983, Chapter 6 of the Book of Church Order contained a trust clause that allowed PCUS congregations to encumber their property without the presbytery's permission. With reunion, such PCUS congregations had to vote within an 8-year window (ending in 1992) to continue to operate under Chapter 6 and the presbytery had to be informed of that decision and record it in its minutes. G-8.0701 preserves the right of those congregations that took the exception to encumber real property without seeking the permission of the presbytery (this is the ONLY exception covered by G-8.0701). UPC congregations never had such a right.
The 1983 assembly also adopted Article 13 as part of the Articles of Agreement, which provided a one-time window for former PCUS churches to leave the PC(USA) with their property. That window closed in 1992. There are NO "Article 13 churches" remaining in the PC(USA).

Legal History re Church Property and “Trust” **(Presbyterian Outlook 2007, “Statement re Church Property”)**

In 1871, the U.S. Supreme Court addressed a Presbyterian schism arising from debates over slavery (*Watson v. Jones*). The Court set out in detail the Presbyterian system of church governance: sessions, presbyteries, synods, and General Assembly. The Supreme Court held this system created an implied trust in property whereby the civil courts must defer to the decisions and rulings made by the highest church governing body that had considered the matter. In contrast, the Court held that in congregational settings (like the Baptists) there was no higher body above the local church and, thus, the property decision would be made by majority vote of the congregation.

Presbyterian property came before the U.S. Supreme Court again in 1979 (*Jones v. Wolf*), when disagreements about women's ordination and other social issues led a congregation to withdraw. In that case, the Court affirmed the traditional rule from *Watson v. Jones*, regarding deference to higher church governing bodies. However, the Court also held that civil courts may resolve church property disputes by referring to state statutes, corporate charters, property deeds, and other instruments that courts use to address secular property disputes. The Court noted that denominations could easily avoid any uncertainty under this approach by setting out, in their constitutions, express trusts codifying the implied trusts that have always been understood to exist.

As a result of this decision, both predecessor denominations of the Presbyterian Church (U.S.A.) adopted constitutional provisions stating expressly what has always been understood. They did not create any new trust interests; rather, they codified an implied trust grounded in centuries of Presbyterian ecclesiology. Upon reunion of the Presbyterian Church in the United States and the United Presbyterian Church in the United States of America 1983, these trust and related provisions were carried over into Chapter VIII of the *Book of Order*.

What the Current Book of Order Says and the PCUS Property Provisions

Our current Book of Order (BoO 2011-13) in G-4.0203, Church Property Held in Trust, reads “all property held by or for a congregation, a presbytery, a synod, the General Assembly, or the PC(USA), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a congregation or of a higher council or retained for the production of income, is held in trust nevertheless for the use and benefit of the PC(USA).”

The “exception” clause derived from the Reunion Agreements of 1983 in G-4.0208 reads “The provisions of this chapter shall apply to all congregations of the PC(USA) except that any congregation which was not subject to a similar provision of the constitution of the church of which it was a part, prior to the reunion of the Presbyterian Church in the United States and the United Presbyterian Church in the

United States of America to form the Presbyterian Church (USA), has been excused from that provision of this chapter if the congregation, within a period of eight years following the establishment of the PC(USA), voted to be exempt from such provision in a regularly called meeting and thereafter notified the presbytery of which it was a constituent congregation of such vote. The congregation voting to be so exempt shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the PC(USA). This paragraph may not be amended (G-6.05).”

The key phrase for our consideration is “The congregation voting to be so exempt shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the PC(USA).” Turning to the applicable Constitution, the Book of Church Order of the PCUS (1982-83), G 6-3 through 6-5 read as follows:

6-3 “All property held by or for a particular church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States.”

6-4 “If a particular church is dissolved by the Presbytery, attempts by either majority or unanimous vote to withdraw from the PCUS or otherwise ceases to exist or function as a member of the PCUS, any property that it may have shall be within the control of the Presbytery and may be held for designated purposes or sold or disposed of in such manner as the Presbytery, in its discretion, may direct.”

6-5 “The relationship to the PCUS of a particular church can be severed only by constitutional action on the part of the Presbytery. If there is schism within the membership of a particular church and the Presbytery is unable to effect a reconciliation or a division into separate churches within the PCUS, the Presbytery shall determine if one of the factions is entitled to the property because it is identified by the Presbytery as the true church with the PCUS. This determination does not depend upon which faction received the majority vote within the particular church at the time of the schism.”

6-7 “Nothing in this chapter shall be construed to limit the power of Presbytery to receive and dismiss churches with their property, provided such requests are made in proper order.”

The exception clause therefore applies specifically and exclusively to the following statements found in the Book of Church Order, PCUS (1982-83). G 6-1 reads, concerning a church that is unincorporated, that church may elect trustees “to hold property in trust for the benefit of the particular church and of the PCUS. The trustees have power and authority to buy, sell or mortgage property for the church...In buying, selling or mortgaging real property, the trustees shall act under the instructions of the

congregation adopted in a regularly constituted meeting.” G 6-2 reads, concerning a church that is incorporated, may elect officers of the corporation who may be “given any or all of the following responsibilities: holding title to church property for the benefit of the corporation and the PCUS: acquiring and conveying title to the property; buying, selling and mortgaging the property of the church...In buying, selling and mortgaging real property, the officers shall act under the authority of the corporation granted in a duly constituted meeting of the corporation.”

Emphasizing the Supreme Court decisions of 1871 and 1979, the Book of Church Order, PCUS (1982-83) the chapter on church property concludes with G 6-10 as follows. “This Chapter is declaratory of principles to which the PCUS and its antecedent church bodies have adhered from the inception of the Presbyterian form of church government.”

Summary Conclusion

The proper response to the question of “does the property/trust clause apply to those churches of the former PCUS who have officially taken the “exception” provided under the Articles of Agreement at reunion in 1983-1992” is **yes it does**. This is specifically true and pertinent at the time at which a church is dissolved or in the case of a church that is seeking dismissal to another Reformed body. The property of a particular church **is** held in trust for the use and the benefit of the PC(USA). The Presbytery **has** the final decision as to the disposition of the property of a particular church.