JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION 1293

IN RE: Review of a Bishop's Decision of Law in the Arkansas Conference Regarding Non-appointive Members of the Cabinet Participating in Appointment-making in Light of ¶¶ 403.2, 419.2, 424, 428, and 608.6

DIGEST

The Bishop's decision of law is modified. The modification deletes all of the Bishop's "substantive" ruling beginning with the word "Therefore…" and all of his commentary, except for the point that he expressed in the following judgment

> …to declare this request for a ruling of law as inappropriately moot and hypothetical because it was not an item related to any business undertaken during the 2014 annual conference, but legislation addressed in a previous annual conference session.

STATEMENT OF FACTS

During the 2014 session of the Arkansas Annual Conference, a clergy member presented the following matter to Bishop Gary E. Mueller.

> I request a ruling of church law regarding the Arkansas Conference practice of non-district superintendents participating in the making of appointments. Specifically, does the Structure of the Arkansas Conference as found in the 2013 Conference Journal defining the Appointive Cabinet…and, the Arkansas Conference's current practice of non-district superintendents participating in the making of clergy appointments comply with The 2012 Book of Discipline paragraphs 403.2, 424, 428, 419.2, and 608.6?

The Bishop ruled in a timely manner, with a document that combines commentary on the request as well as a substantive ruling. In a portion of the commentary, the Bishop wrote:

> It might be appropriate to declare this request for a ruling of law as inappropriately moot and hypothetical because it was not an item related to any business undertaken during the 2014 annual conference, but legislation addressed in a previous annual conference session… Further, it might be inappropriate because it asks for a ruling of law about an entity, "the appointive cabinet," that does not exist in, and is not defined by, *The Book of Discipline*. Nevertheless, I will address the request in a substantive manner.

After providing some additional commentary, the Bishop issued the following decision:

> Therefore, I rule that, within the limitations explicitly outlined by *The Book of Discipline*, including the tenure of district superintendents, ¶¶ 403.2, 424, 428, 419.2, and 608.6 give the bishop the right to include those who are not superintendents in a consultative fashion in cabinet meetings that address the making of appointments. The standing rule addressing the composition of the "appointive cabinet", while substantively in compliance with *The Book of Discipline*, is not binding on the bishop and is unnecessary since it is addressed by *The Book of Discipline*.

The Judicial Council placed a review of the Bishop's decision of law on the Docket for October 2014. However, in Memorandum 1279, the Judicial Council deferred the matter to the April 2015 Docket and requested that the Secretary of the Arkansas Conference supply missing records that were necessary for the Judicial Council to conduct a review. Those records include the Minutes of the Annual Conference Session, to show whether the request for a decision of law was properly presented in writing and whether it related to an item of business, consideration, or discussion by the Annual Conference. In response to Memorandum 1279, the Secretary of the Arkansas Annual Conference supplied the Minutes of the 2014 session and the written text of the request for a decision of law.

In addition to these materials, the Reverend David Orr submitted briefs on the matter.

JURISDICTION

The Judicial Council has jurisdiction under ¶¶ 51 and 56.3 of the Constitution and under ¶ 2609 of *Discipline 2012* as modified by Decision 1244.

ANALYSIS AND RATIONALE

In Decision 799, the Judicial Council ruled that "A so-called 'question of law,' though properly presented, must relate to the business, consideration, or discussion of the annual conference session," adding that any questions which do not meet this test "are improper and should be so ruled and do not require a substantive answer." That determination by the Judicial Council had its precedent in Decision 33, which addressed requests for decisions of law and insisted that such "requests should be based upon some action taken or proposed to be taken" by the conference.

There is no evidence in the record that an action had been taken, was being considered, or was about to be taken during the business of the annual conference, which would be the sufficient basis for this request for a decision of law to be raised. The request was posed as a reference to the "Structure" and the "Standing Rules" of the annual conference. But those matters were not under discussion. Indeed, even the person who raised the request for a decision of law acknowledged as much:

> There was no discussion on the floor of the conference dealing with the question of church law which was raised; because, we do not discuss the appointments made as business on the floor of the conference.

Appointments are typically announced during a session of the annual conference and are often thereby "fixed" by the Bishop after the required consultations have occurred. But the annual conference conducts no "business," engages in no official "consideration," or has no parliamentary "discussion" on the appointments. So a request for a decision of law about the appointments is inappropriate, in light of Judicial Council Decisions 33, 799, 1086, 1214, and other precedents.

Therefore, the Bishop erred in moving beyond an explicit doubt that request was "appropriate." The Bishop could have fulfilled his presidential responsibilities without issuing a substantive ruling.

DECISION

The Bishop's decision of law is modified. The modification deletes all of the Bishop's "substantive" ruling beginning with the word "Therefore…" and all of his commentary, except for the point that he expressed in the following judgment

> …to declare this request for a ruling of law as inappropriately moot and hypothetical because it was not an item related to any business undertaken during the 2014 annual conference, but legislation addressed in a previous annual conference session.

Beth Capen was absent.

Warren Plowden, third lay alternate, participated in this decision.

April 18, 2015

CONCURRING OPINION

I concur with the Decision of the Judicial Council in this matter. Under United Methodist church law and Judicial Council precedents, it is clear that this request for a decision of law at the 2014 session of the Arkansas Annual Conference did not meet the threshold required for a bishop to deliver a substantive decision beyond declaring it to be moot. There was no business that gave standing to the request. The Bishop should have resisted an impulse to provide a substantive response. The Constitution of The United Methodist Church authorizes the Judicial Council in Division Three, Article VII, ¶ 51, to pass upon a decision of law by the Bishop. But we cannot probe any further into the issues than the Constitution and the *Discipline* allow.

However, there are serious constitutional and legislative issues lying beneath the facts that present themselves in this case. Annual conferences have taken steps to reduce the number of district superintendents, enlarge the geographical sizes of districts, and diminish the amount of contact between superintendents and the clergy as well as the laity whom they superintend. In the process, our practices have altered the nature of the superintendency.

Meanwhile, we United Methodists have allowed bad habits of imprecision and carelessness to corrupt our language. Individuals who do not bear the responsibilities of either the general or the district superintendency have acquired influence over matters and decisions that properly belong to the superintendency. Phrases like “appointive cabinet” have become common currency in the church, even though—as the Bishop in this case has noted—the term does not even exist in the *Discipline* or have any meaning

in our ecclesial system. In the process, we place our polity, our connection, and our Constitution at risk.

The word "cabinet" does exist within our system, and it has a very precise meaning in our *Discipline*. It is a legislative term that refers to the body in an annual conference to which district superintendents are appointed. Paragraph 424 of the 2012 *Discipline* defines the "cabinet" as the entity for ministry where district superintendents have their appointment. In specific activities of the "cabinet," other designated office holders in an annual conference "shall be present" or "shall be invited to be present" according to ¶ 424.6. But those office holders are not members of the cabinet because only the persons appointed to the cabinet—the district superintendents—are members of it. District superintendents are "appointed" first to a cabinet and then are "assigned" to their respective districts, according to ¶ 424.1.

Although "cabinet" is a word with a precise meaning, it is strictly a legislative term. But the term "district superintendent" is both constitutional and legislative. It is specified twice within the Constitution—in Division Three, Article IX (¶ 53), and in Division Three, Article X (¶ 54).

Within Division Three of the Constitution, which establishes the nature of the "Episcopacy" that is protected by the Restrictive Rules in Section III of Division Two of the Constitution (¶ 19), only two offices for "Episcopal Supervision" are named. They are the office of bishop and the office of district superintendent. So "Episcopal Supervision" is a responsibility that constitutionally belongs only to two offices in the church: bishop and district superintendent.

With regard to the making and fixing of pastoral appointments, "consultation" is an important and vital principle. Legislatively, ¶ 426 specifies that the bishop, district superintendent, pastor, and pastor-parish relations committee participate in consultation with regard to the process of making appointments. And the legislation is clear about the aspects of this consultation that are "advisory."

Under the Constitution, "The bishops shall appoint, after consultation with the district superintendents, ministers to the charges." (Division Three, Article X, ¶ 54). So, constitutionally, only the district superintendents consult with the bishop when it comes to the stage where the bishop "shall appoint."

The Judicial Council, in this specific case on the Docket, did not have jurisdiction to explore these constitutional matters. Perhaps someday, on some other case such as a request for a declaratory decision on an appropriate consideration, the Judicial Council will have an opportunity to examine the issues at a deeper level through a constitutional lens.

William B. Lawrence

April 18, 2015

DISSENTING OPINON

The record indicates that the rules of order were adopted by the Friday morning, June 20, 2014, session of the Arkansas Annual Conference. This would have included approval of the standing rules, including those originally adopted in 2013; thus, the matter raised in this decision of law was appropriately before the Annual Conference. It was not moot and hypothetical.

In making and fixing the appointments, a bishop is to consult with the districts superintendents. The bishop and/or the district superintendent shall consult with pastor-parish relations committees about appointments. The director of administrative services is not to be present when the cabinet discusses matters related to the making of appointments. Beyond these restrictions and within the boundaries of separation of powers, the bishop may consult with others.

F. Belton Joyner, Jr.

April 18, 2015