

## JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

### DECISION 1254

**IN RE: Review of a Bishop's Decision of Law in the California-Pacific Annual Conference Regarding the Legality of a Resolution Urging Bishops, Clergy, Local Churches, and Ministry Settings "to Operate as if the Statement in ¶ 161F Does Not Exist"**

### DIGEST

The Bishop's decision of law is affirmed. In passing upon the Bishop's decision and affirming it, the Judicial Council is addressing only the content of the judgment made by the Bishop about the legality of the action taken by the Annual Conference.

### STATEMENT OF FACTS

During its June 2013 session, the California-Pacific Annual Conference adopted Resolution 13-16, which was titled "Biblical Obedience." The Conference resolved that it would affirm an action of the Western Jurisdictional Conference and that it would adopt a "Statement of Biblical Obedience," prefaced by the following language:

LET IT BE RESOLVED that the California Pacific Annual Conference supports the action taken by the Western Jurisdiction as outlined in the following statement adopted by the Jurisdictional Conference.

Included in the "Statement of Biblical Obedience" was the following:

We commend to our bishops, clergy, local churches, and ministry settings, the challenge to operate as if the statement in Para. 161F does not exist, creating a church where all people are truly welcome. The secretary of the Western Jurisdictional Conference will submit this statement of Gospel Obedience to the Jurisdictional College of Bishops, each Annual Conference, and chairpersons of Boards of Ordained Ministry for discussion and implementation.

A clergy member presented a request for a decision of law by the Bishop on the matter of this statement. The questioner asked,

Is it legal for an Annual Conference to take an action urging the church "to act as if ¶ 161F of The Book of Discipline does not exist" as in Resolution 13-16?

Bishop Minerva Carcaño issued her decision of law in a timely manner. She ruled that the Social Principles, of which ¶ 161F is part, are not Church law and that the action by the Annual Conference to exhort the church to behave in a certain manner, namely as if ¶ 161 F does not exist, is not a violation of church law. Specifically, the Bishop wrote:

I find that Resolution 13-16 does not violate the legal authority of the *Book of Discipline* in that it does not require any person, office or body within the church to violate the *Book of Discipline*. What Resolution 13-16 does do is commend to bishops, clergy, local churches, and ministry settings, the challenge to operate as if Paragraph 161F of the *Book of Discipline* does not exist. The act of *commending* and *challenging* persons and entities of the church to act in a particular way in response to a section of the *Book of Discipline* that is not intended to be church law does not in and of itself constitute an illegal action.

Briefs were filed by other interested parties.

## **JURISDICTION**

The Judicial Council has jurisdiction under ¶¶ 51 and 56.3 of the Constitution and ¶ 2609.6 of the *2012 Discipline* as modified by Decision 1244.

## **ANALYSIS AND RATIONALE**

A peculiar feature of this case is the fact that the Annual Conference took an action that affirmed an action of the Western Jurisdictional Conference. But the question of law raised by the clergy member of the California Pacific Annual Conference addresses only the affirmation by the Annual Conference. Therefore, it is relevant to consider whether it is a violation of church law to embrace a statement issued previously by another body—in this case, the jurisdictional conference—when the legality of the first action has not been tested. Yet the Judicial Council neither has nor claims jurisdiction to review the action of the Western Jurisdictional Conference on this matter, because nothing occurred at the jurisdictional conference to bring it to the Judicial Council. Hence, on one level, the Judicial Council has to ponder what it might mean for us to decide on the legality of the Annual Conference action when we cannot decide on the legality of the Jurisdictional Conference action that the Annual Conference affirmed.

The focus of the Bishop’s decision of law is upon the statement in the portion of *2012 Discipline* (p. 103), which states that the Social Principles are “not to be considered church law” but rather “are a prayerful and thoughtful effort on the part of

the General Conference to speak to the human issues in the contemporary world from a sound biblical and theological foundation...” While it may be regrettable if any United Methodist individual or body were to choose to ignore some portion of the General Conference’s summons to “prayerful and thoughtful” consideration of important public issues, such an action is not in itself a violation of church law. There are many facets of the Social Principles that individual United Methodists and their various organizations choose to ignore, and there is no unanimity among United Methodists about the merits of the denomination’s Social Principles on health care, gun control, and other matters. But to ignore those statements in the Social Principles, while doing so might theologically imperil or weaken the church, is not an illegal action under Church law.

While other decisions by the Judicial Council have addressed matters with some similarities to this instant case, there are none that provide precise precedence for this matter. In Decision 833, the Judicial Council did find that some matters in the Social Principles may have the force of law: “the General Conference has the authority to speak on connectional matters, and, when this authority results in a legislative enactment stated in mandatory language, it is the law of the church, notwithstanding its placement in the *Discipline*.” However, in passing upon the Bishop’s decision, the Judicial Council finds no mandatory language in ¶ 161F of the *Discipline* and nothing that objects to mandatory language in the *Discipline*. In Decision 1220, the Judicial Council declared that an Annual Conference did not have authority to “renounce” a legislative enactment of the General Conference but added the following: “Inviting other bodies to take an action that is legal and aspirational is, however, entirely within the bounds of church law.” In this instant case, the Annual Conference took no action to “renounce” a mandate issued by the General Conference. Instead, the Annual Conference action affirmed, or joined itself to, an action by the Western Jurisdictional Conference. In summary, neither Decision 833 nor Decision 1220 is directly applicable to the issues in this case. The Bishop’s decision of law did not involve a legislative mandate by the General Conference because ¶ 161F contains no legislative mandate.

The Judicial Council has responsibilities for the law and the Constitution of The United Methodist Church. We find no deficiency in the decision of law by the Bishop in this matter. The request for a decision of law asked simply, “Is it legal...?” In essence, the Bishop said, “It is legal.” We concur.

## **DECISION**

The Bishop’s decision of law is affirmed. In passing upon the Bishop’s decision and affirming it, the Judicial Council is addressing only the content of the judgment made by the Bishop about the legality of the action taken by the Annual Conference.

Dennis Blackwell was absent.

Timothy K. Bruster, first clergy alternate, participated in this decision.

October 26, 2013

## DISSENT

We respectfully dissent from the majority decision.

In a long line of Decisions the Judicial Council has upheld and reaffirmed the principle that Annual Conferences may not legally negate, ignore, or violate provisions of the *Discipline* with which they disagree, even when the disagreements are based on conscientious objections to those provisions.

The current controlling principle is that an Annual Conference resolution may express disagreement with the current language of the *Discipline* and may express aspirational hopes, but an Annual Conference may not legally negate, ignore or violate provisions of the *Discipline*, even when disagreements are based upon conscientious objection to those provisions. See Decision 1120.

In Decision 1220, the Judicial Council stated that:

“According to the Constitution of The United Methodist Church (Division Four, Article II, ¶ 56.3) the Judicial Council has authority “To pass upon decisions of law made by bishops in Annual Conferences.” Legislatively, the General Conference has determined that, when the Judicial Council “shall pass upon” such decisions of law, it “shall...affirm, modify, or reverse” them. From time to time, members of Annual Conferences use this procedure to invite the Judicial Council into debates about the social policies of the church or into disputes about the church’s theological positions. However, the Judicial Council is authorized only to pass upon the decisions of law made by bishops as matters of church law. See Decision 59. Indeed, as ¶ 2609.6 of the 2008 Discipline states, after such a decision has been passed upon by the Judicial Council “it shall become the law of the Church to the extent that it is affirmed by the council.” **Therefore, the Judicial Council reviews a bishop’s decision of law not only with an eye toward the existing law of the Church but also with an eye toward the proposition that whatever is affirmed about a bishop’s decision will thereby “become the law of the Church.”** (emphasis mine). In light of this, the Judicial Council must pass upon a bishop’s decision of law in the narrow terms of Church law.”

The Judicial Council in said Decision 1220 also stated that

“However, in the first stipulation of the resolution, where the Annual Conference acted to “renounce the statement that homosexuality is incompatible with Christian teaching,” the Annual Conference claimed for itself an authority to “renounce” language that was not in its legal authority

to “renounce.” That language, in ¶ 161F of the 2008 Discipline, was adopted by the General Conference under the constitutional authority that grants to the General Conference “full legislative authority over all matters distinctively connectional.” (¶ 16) What the General Conference has adopted legislatively cannot be renounced by another body that has no legal authority to do so. See Decisions 96, 232, 544, 886, 1111.

Applying the principle enunciated in Decision 1220, the California Pacific Annual Conference’s affirmation of Resolution 13-16 and urging others to disobey and ignore ¶161F of the Social Principles is impermissible because the resolution doesn’t merely express disagreement with the current language of the Discipline and it doesn’t merely express aspirational hopes. The effect is to negate and ignore the church’s clearly stated position on issues of sexuality – homosexuality, LGBT, same sex marriage – as reflected in the Social Principles.

It should be noted that the Social Principles is the foundation of most, if not all, legal requirements of church law in respect of sexuality. Therefore, ignoring the Social Principles undermines all the corresponding requirements of church law, as stipulated in the *Discipline*.

Regrettably, the argument is now being made that while an Annual Conference may not legally negate, ignore or violate provisions of the *Discipline*, it may legally negate, ignore or violate the Social Principles because they are not “church law”.

As was expressed in Decision 1220, we should be cautious in our review and affirmation of bishops’ decision of law, as affirmation of a bishop’s decision of law becomes the law of the church. In the present case, the affirmation of the bishop’s decision of law by the majority now becomes the law of the church.

In Decision 1220 the Judicial Council held that “A declaration by an Annual Conference to renounce a legislative act of the General Conference is not legal.”

We should similarly declare Resolution 13-16, which is a renunciation of a legislative act of the General Conference (¶161F), illegal.

We respectfully dissent.

N. Oswald Tweh  
J. Kabamba Kiboko  
Ruben T. Reyes

October 26, 2013