

PRESBYTERIAN CHURCHMEN UNITED

# Contact

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## WHO OWNS YOUR CHURCH PROPERTY?

### A JURIST SPEAKS

(NOTE: The following address was delivered at a recent PCU rally at the First Presbyterian Church of Jackson, Miss. by Judge Leon F. Hendricks.)

The question is simple. The answer is difficult and complicated.

Before an answer is attempted there are other questions that arise.

Is a congregation of the Presbyterian Church, U. S. in reality the true legal owners of the church property or does it legally belong to Presbytery, Synod, or to the General Assembly of the denomination known as the Presbyterian Church in the United States?

Ultimately, the question is whether a majority of the members of a local Presbyterian church may withdraw from the Presbyterian Church in the United States and take with them the title, use and control of the church property.

The United States Supreme Court in the case of *Watson vs. Jones*, 13 Wall 679, 20 L. Ed. 666, decided in the year 1871, classified the questions concerning the right of property held by religious bodies under three headings.

Most of our local Presbyterian churches would fall in the third category, to-wit:

"Where the property is not subject to any expressed trust and is held by a religious congregation whose church government is hierarchial or connectional in nature."

The Presbyterian Church, U. S. is representative in government. Some of our civil courts have put our Church in the same class as Catholic, Episcopal and Methodist, whose government is hierarchial or connectional in nature. For this reason these civil courts have held that the property of a congregation is subject to an implied trust in favor of the General Church. The Supreme Court of Florida and South Carolina have so held, and one or two local congregations in these states lost their property when they withdrew from the General Church.

The Supreme Court of Mississippi has never had before it a case involving a congregation of the Presbyterian Church, U. S.

Prior to January 19, 1970 it would have been the opinion of many lawyers:

(1) "That if a Presbyterian Church is incorporated under the laws of Mississippi, as some churches now are, legal ownership is in the entity known as the First Presbyterian Church of Jackson, for an example;

(2) "That the legal title is in the Corporation but the Corporation holds title in trust for and on behalf of the Congregation which may be identified, in case of division, by the governing body of the Presbyterian Church in the United States. The trust extends to an implied prohibition against diversion to uses not approved by the Presbyterian Church or foreign to its doctrines;

(3) "That ownership is in the Corporation. Control is in the Congregation, but identity is not determined by a majority of the members and the control is limited by and subject to the government of the Presbyterian Church in the United States in the United States;

(4) "That a majority of the members of the local church cannot withdraw from the Presbyterian Church in the United States and take with the church properties without the consent of the general Church." In my opinion the Presbytery could give that consent under the provisions of our Book of Church Order.

Now, what happened on January 19, 1970? The two Savannah Presbyterian Churches finally won the legal battle for their local church property. The Supreme Court of the United States refused by a vote to again hear the appeal of Presbyterian Church in the United States against the Savannah churches on the ground that no substantial federal question had been raised by the parent Church's appeal. By this action the decision of the Supreme Court of Georgia, rendered on April 14, 1969, became final. Thus, The Hull Memorial and the Eastern Heights Churches of Savannah were awarded their property and the legal title was declared to be in the local congregations.

In 1966 two churches withdrew from the Presbyterian Church, U. S. The Presbytery of Savannah and the general church intervened and attempted to take the property of each of the churches. The trial court of Georgia decided in favor of the local churches and on appeal the Supreme Court of Georgia affirmed. On petition the Supreme Court of the U. S. took jurisdiction and reversed on the grounds that the Georgia Courts decided the controversy on ecclesiastical law which the Civil Courts could not do under the first and fourteenth amendments, and sent the cases back to the Supreme Court of Georgia for further proceeding not inconsistent with the decision of the U. S. Supreme Court. The Supreme Court of Georgia then adopted the "Neutral principle" approach and found the legal title in the local churches and awarded them their respective properties. So this ended the matter.

Hence, it is the judgment of many that in any future case involving local property of a congregation in the Presbyterian Church in the United States, a State Civil Court cannot apply the implied trust theory. This would violate the decision in the Savannah cases, and also the holding in the Maryland Church of God case.

## WHO OWNS THE PROPERTY?

### A PASTOR SPEAKS

This conclusion is reached because there is no ecclesiastical law in the Presbyterian Church, U. S., which binds the local church property to any superior tribunal. Our Book of Church Order gives the control of local church property to the local congregation. It can buy, sell and mortgage such property. The only case where a superior ecclesiastical tribunal has anything to do with local church property is when a church ceases to exist and no disposition has been made of its property. Then and only then the property shall be transferred to **The Presbytery**. This has always been the historic position of The Presbyterian Church, U. S. This position may now be enforced in a civil court.

It is hoped and believed that the other states, as Georgia did, will adopt the "Neutral principles of law" approach; which means legal and equitable principles of ownership are studied and applied to a factual situation, such as, Where is the title vested? Who paid for the property? Who has the use and control since the church was built? Who controls the membership? Who has the authority to buy, sell or mortgage the property?

The State Courts will find that for most local Presbyterian Churches the answer will be **the local congregations**.

The State Courts may also now consider special state statutes governing church property. We have a good one in Mississippi, which is Section 5350 of the Code of 1942.

When a church is organized under it the section provides that the church "shall be a distinct and independent society" and that its property "shall not be divested out of the same, or encumbered, except by a deed, deed of trust, or mortgage, duly executed under the authority of a resolution adopted by a majority vote of the members present at a meeting duly called by that purpose, at which meeting at least twenty percent (20%) of the members in good standing of such organized society must be present." If your church is not incorporated under the provisions of that section I suggest that it be done. The procedure is simple.

**Who Owns Your Church Property?** At this time, it is my opinion that the local congregation does. The General Church recognizes this. Because it intervened in the Savannah cases, and one or two overtures were offered at the Memphis, 1970, General Assembly to change the Book of Church Order as to property so as to give control to The Presbytery. Thus our Higher Court realizes the force of the Georgia cases and the Maryland case. Careful watch will have to be made of the aforesaid overtures.

There is a great deal of talk going around about the ownership of church property these days. Whenever one hears the laymen talking there seems to be no question in their minds that the property should belong to the people who have worked, sacrificed, agonized, and lovingly cared for the property through the years; the people (either themselves or their forefathers) who chose its site, planned and paid for its construction, and kept it beautiful through the years.

On the other hand, when one listens to the ministers talk, one hears many of them talking about the "doctrine of church property" teaching that the property belongs to the Church (in this case the presbytery) and not the people. It seems to me that such talk is so much gobbledegook.

It is easy for the preacher to talk this way since most preachers don't have the same attachment for the land and building of their churches that the people have, since they rarely have made the same sacrifices or investment their people have.

The people of the church it is my privilege to pastor built their church back during the depression when time was more available than money. They built it with their own hands and never asked a penny from the presbytery. When that building burned in 1964 they wept and mourned as though it had been a member of their family.

When they set about to rebuild they took on \$27,000 annual payments on a note while increasing their giving to missions, and again, did not ask for a cent from the presbytery.

How could the "doctrine of church property" possibly argue that this property belongs to the presbytery?

This story could be repeated thousands upon thousands of time in the Presbyterian churches of America.

There is one more observation I want to make. Has anyone else besides me ever noticed that many of the preachers who want to claim church property for the presbytery on the grounds of "the doctrine of church property" are the same preachers who cry "foul" when their theology is questioned on the basis of fidelity to "Presbyterian doctrine?"

—(Rev.) Kennedy Smartt  
Hopewell, Va.

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## CHURCH PROPERTY IN DIFFERENT CHURCHES

Church Property is not **the most** important issue before the church, but it is **an** important issue. To every Christian it should be a concern that his church property is controlled and used to the Glory of God for true worship and teaching. It is also his concern that he be a faithful steward of the property entrusted to the care of his church.

The ecclesiastically ambitious, on the other hand, are now making a desperate bid for power and control through central treasurers and grasp of property by top level denominational agencies.

As we struggle with these matters in the Presbyterian Church U. S. under the heavy clouds of proposed church union, we all should refresh our knowledge on PCUS church government as it pertains to property. Especially should we remember that the polity on property under our *constitution* is quite different from that of the UPUSA (Northern Church). It would be a fair (but incomplete) summary to say that the Northern Presbyterian Church places its property under the control of the general church while the Presbyterian Church in the U. S. places local church property under the local congregation. Many of the growing disorders in proposed union Presbyteries and Synods are brought about by trying to unite bodies that are committed to different property rules.

The basic property statement in our Constitution reads as follows: "A particular church which is not incorporated, desiring to elect trustees, may select from among its membership trustees or officers of like nature who shall have the power and authority to buy, sell, or mortgage property for the church, to accept and execute deeds as such trustees, to hold and defend titles to the same, to manage any permanent special funds entrusted to them for the furtherance of the purposes of the church. In the fulfillment of their duties such trustees shall be subject always to the authority, and shall act solely under the instructions, of the congregation which they serve as trustees. The powers and duties of such trustees must not infringe upon the powers or duties of the Session or of the Board of Deacons. Such trustees shall be elected in regularly constituted congregational meetings." (Book of Church Order 6-1). A local church controls its property until it is dissolved: "If a church is dissolved by the Presbytery, or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the church; and the receipt and acquittance of the Presbytery, or its power representatives, shall be a full and complete discharge of all liabilities of such persons holding the property of the church." (Book of Church Order 6-3).

Study the different statement from the government of the UPUSA Church (Form of Government 62.11 and 62.12): "11. Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it

may have, both real and personal, shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America. 12. A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church. A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church."

—John E. Richards, Ex. Sec.

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## AS OTHERS SEE US

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The moderator of the General Assembly of the Presbyterian Church U. S. is reacting with what some in his denomination feel is unjustified vigor in denouncing groups that have emerged to defend the historic theology and polity of that church, which they feel has been increasingly affected by radical innovations.

Speaking to a joint meeting of the Christian-education boards of his denomination and the United Presbyterian Church, Dr. William A. Benfield, Jr., urged that these two groups take steps toward a merger, even though their churches have not voted to merge. In his address he strongly criticized what he described as "pressure groups" in his church formed to protect and promote what they believe to be the true nature and mission of the church. He went on to say that if he had the power he would abolish Concerned Presbyterians (an organization of laymen), Presbyterian Churchmen United (made up chiefly of ministers), the Covenant Fellowship of Presbyterians (growing group of ministers and laymen trying desperately to save their denomination), and the Presbyterian Evangelistic Fellowship (whose staff consists of about a dozen men who primarily give their time to holding evangelistic meetings, though they are increasingly interested in evangelical world missions).

The moderator made no mention of other "pressure groups," those that are working, without known organizational names, to further the liberal trend in his church. These groups are deeply involved in ecclesiastical power politics and have been for years.

The vigorous denunciation of conservatives by the moderator is something new in Presbyterian U. S. history. It appears to have the effect of drawing to the conservative cause some men who till now have remained more or less neutral.

Perhaps Benfield is angered and somewhat frightened by two particular matters. First, eleven presbyteries have served notice on the General Assembly that there is a limit in compromise beyond which they will not go. And at a recent meeting of the Nashville Presbytery, a small group of conservative leaders, both clergy and

laymen, canvassed the situation within the presbytery (which has long been dominated by the more liberal element) and came up with its own state of nominees. All were elected—thereby completely changing the control of that presbytery. These developments may make the moderator feel he must strike back with vigor.

Conservatives within the Presbyterian Church U. S. are far better organized and more articulate than those in some of the other major denominations. Liberals who have dominated the machinery of that church in recent years may have reason to fear a reversal of control. Fortunately for the conservatives, the moderator has neither the power nor the authority invested in the Pope, for example.

Benfield is chairman of the committee that drafted COCU's Plan of Union. His present attitude is not likely to increase enthusiasm for COCU among Reformed groups.

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## **A Letter**

### **TO THE MEMBERS AND FRIENDS OF PRESBYTERIAN CHURCHMEN UNITED**

Dear Sisters and Brethren:

Presbyterian Churchmen United is now one year from its first rally. During that brief year we have seen synods and presbyteries organized to further the causes for which we have declared ourselves. Eleven presbyteries have passed resolutions in opposition to COCU and UPSUA union, a demeaning of the Confession and alteration of the Book of Church Order on the ownership of church property. Other presbyteries as well as clusters of churches will be considering similar action in the months ahead. It is no secret that PCU has been active in promoting and supporting these actions.

"Contact," PCU's newsletter, has been informing ministers and laymen on issues in the Church and armed with this information laymen have been standing with and for the conservative ministers in their presbyteries. Dr. John Richards

and other members of PCU's Executive Committee and area contact men have traveled, spoken, and counseled fellow supporters of the Declaration.

Dr. Richards as Executive Secretary has labored almost full time yet his salary has continued to be paid by First Church, Macon. PCU has paid for the expenses of his office, travel, publicity, etc. During the coming year that operation will increase. We still hope to hire a full-time Executive Secretary although Dr. Richard's work makes it hard for us to want such a man.

Last summer's General Assembly did not take any actions that we considered precipitous. The issues are still confused and unsettled. The liberal leadership of the Church seems less certain of its strategy. Privately, they are talking of "the certainty of division" and of "peaceful settlement." The committee on union is talking about an escape clause for the UPUSA churches as well as the U. S. congregations. Now for the first time the conservative is viewed as a "coalition" rather than a "negative minority." ~~His power and voting strength is more and more respected.~~ We have seen very encouraging progress in these last months.

The crucial issues that divide our church concern the inspiration and authority of Scriptures, the uniqueness of Christ, Salvation as the primary mission of the Church, and the scriptural mandate for Presbyterian doctrine and government.

These are issues for which we are crusading, working, and praying. For these we consider no sacrifice too great, no price too dear to pay for their preservation—in our Church or the Church we become in the event a division is forced upon us.

We salute you our fellow laborers, our brothers in the bonds of this distinctive and high calling. God bless your labors for Him. "Pray without ceasing. Rejoice evermore."

In His Name,

The Executive Committee  
Presbyterian Churchmen United  
Donald B. Patterson, Chairman.