

Analysis Of The Opinion Rendered By The Kansas Court of Appeals

Church of God in Christ, Inc. and Kansas Southwest
Church of God in Christ

v.

Board of Trustees of Emmanuel Church of God in Christ

June 8, 2012

Church Of God In Christ, Inc. and Kansas Southwest Jurisdiction
Church Of God In Christ

v.

Board Of Trustees Of Emmanuel Church Of God In Christ, Wichita, Kansas;
R. E. Stidham; James S. Rich; Doris Woods; Evelyn Echols; Missy Lois McIntyre;
Donald C. McIntyre, Brenda Stidham; and Jerome Franklin

Analysis of the Opinion Rendered By the Kansas Court Of Appeals

The following analysis examines the recent Kansas opinion and its impact on local congregations and local trustees throughout the COGIC. All quotes are from the recent court opinion unless otherwise stated.

The following issues are herein addressed:

1. The judicially created hierarchical classification and its impact on all local church property owned by local churches, within the COGIC denomination.
2. The COGIC constitution's trust language and its impact on local church congregations control, possession, and use of local church property.
3. How local trustees are impacted by the judicially created hierarchical classification coupled with the trust language.

The court in its opinion makes the finding that the COGIC is a **hierarchal** denominational church. This classification is of great importance, since the classification directly impacts each local church's authority and ability to control and possess local church property, purchased by the local congregation. The opinion decrees that by virtue of the hierarchical classification and the trust language in the COGIC constitution, all local church property purchased by the local congregation is held in trust for the benefit of the national church, not the local church.

The court in its opinion expressly states that:

"According to the COGIC's constitution, member congregations hold property in trust for the benefit of the COGIC." p. 16.

The court made a finding that local church property deeded to a unincorporated association or to a corporation must contain the COGIC required trust language.

According to the opinion a local church is permitted to incorporate under COGIC rules; however incorporating does not change the trust relationship that exist between the local church and the COGIC. The court specifically states who the trust language benefits in the following statement:

"When the defendants decided to create a corporation and deed the Mascot property to it, **they were still required to hold ownership of the property in trust for the national church.**" (p. 17). Bold face added.

"a continual, longstanding, and formal affiliation with the National Church, is sufficient to support an implied trust in favor of the National Church". *Church of God in Christ v. Bd. of Trustees*, 26 Kan. App. 2d 580. Thus under *New Jerusalem*, the COGIC continued to be entitled to possession of the property regardless of the corporate status of the local church. (p. 17).

In the Emmanuel case, the unincorporated association Emmanuel Church Of God In Christ, was incorporated and legally became Emmanuel Church Of God In Christ, Wichita, Kansas. The trustees transferred the property which was exclusively purchased by the local church to the above named corporation. There was no attempt to remove the words COGIC from the deed; yet the court decreed that the deed must contain the trust language and that the trust benefits and protects the national church, not the local church. It is interesting to note that many trustees have been taught that the trust language is mandatory:

"Where State or National monies have been used to build or buy a church, the District Superintendent shall see that all charters, deeds and other conveyances of church property ... conform to the discipline and laws of the church". *Church Of God In Christ, Official Manual*, 1973 edition, p. 148, paragraph 9.

Within the COGIC, there are historically three classes of real property ownership and three classes of trustees designated to hold title to real property within the COGIC. The three classes are the local church, the jurisdictional church and the national church and each class has its respective trustees. It is an anomaly in the COGIC for a district to own property, districts do not elect trustees and district superintendents serve at the will of the jurisdictional bishop.

1. How many local churches (trustees) have incorporated throughout COGIC?
2. How many local churches built or bought the local church without any state or national monies?
3. How many local church deeds contain the trust language?
4. How many trustees have relied on the instructions in the *Official Manual* and executed deeds, without the trust language where no state or national monies was used to build or buy the local church property?

Yet, the opinion states that the local trustees did not have authority to transfer the property to the corporation without the trust language in the deed.

Local trustees are elected by local congregations and accountable to the local membership. Traditionally local trustees are expected to act in the best interest of the local church congregation. These men and women are entrusted with the responsibility of holding title to all real and personal property for the use of the members of the church. It is an anomaly that these individuals hold property for the use and benefit of those **who did not elect them**. The hierarchical classification, coupled with the trust language mandates that all COGIC local trustees first allegiance must be to the national church, rather than to the local members who elected them.

Under the hierarchical system the exposure and subjection to personal liability looms heavily over local trustees who believe their first responsibility is to act in the best interest of the local church. A precarious set of circumstances now besiege local trustees elected by the local congregation, accountable to the local congregation; yet due to the hierarchical classification, trust language and the current judicial view these men and women are judicially bound to act in the best interest of the national church, and in many cases simultaneously execute their duties in a way that is harmful to the local church. The civil court opinion further states that the local trustees did not have the authority to prohibit the COGIC or its designee from having access to the local church property. If the jurisdictional bishop makes a request or demand for keys trustees beware.

The court decrees:

"It has long been held that it is appropriate to bring an action against the trustees to prohibit a local church from excluding officers of a national hierarchical church—even when the local church is incorporated." *Feizel v. Trustees German M.E. Society*, 9 Kan. 592, 596-97, (1872); *St. Paul, Inc. v. United Methodist Church*, 145 P. 3d 541, 558-59, (Alaska 2006).

The First Amendment to the U. S .Constitution permits religious organizations to determine their system of governance; however when the religious organization fails to do so, the civil judicial system will impose its patterns, rules, and standards upon the organization when it enters into and embraces the secular arena. The hierarchical classification coupled with the trust language institutionally establishes the national church as the beneficial owner of all church property with the right to control, possess, seize and use local church property to the detriment and exclusion of the local church congregation; in spite of the fact that most local church property is exclusively purchased by the local membership without any financial investment from the jurisdictional or national church.

It is reported that during the April Call Meeting, an appointed official stated that the local

property belongs to the local church. The court's ruling fails to embody the church's unwritten non published belief, that the trust language is for the benefit of the local church. The General Assembly of the COGIC must choose, adopt and publish in writing the church's belief. The failure to do so will allow the courts to continue to interpret the trust language in favor of the national church, to the detriment of the local church.

The General Assembly must also choose and adopt its own form of government. The failure to do so, allows the court to continue to impose on the church the judicially created hierarchical classification. If a secular governmental pursuit were to ensue against the national church and all the property is governmentally viewed as held in trust for the benefit control, possession and use of the national church; attempts by local churches to extricate local church property from such a pursuit will prove to be most difficult and local trustees due to reasons heretofore addressed would be virtually helpless in asserting any rights of ownership on behalf of the local church.

The origin of the hierarchical church classification can be traced back to the U. S. Supreme Court, the case of *Watson v. Jones*, 80 U. S. (13 Wall) 679 (1871). A popularly held judicial view is that in a hierarchical form of government local churches purchase land, construct buildings and maintain property for the national church, not the local church. This view disregards the fact/reality that the local church invests the funds, without any assistance from the national church. Local church property under this system of church polity (government) is usually held in the name of the local church, yet the courts have allowed the national church to impose, often unilaterally a trust in favor of the national church. This trust whether express or implied is often imposed without the local congregations knowledge or consent.

It is absolutely imperative that the General Assembly of the COGIC determine the following:

1. Duly determine, adopt and publish whether or not the COGIC is hierarchical. This determination must be made by the General Assembly, no other branch of church government can establish legislation for the church. This issue must be addressed with clarity.
2. The General Assembly must duly determine, adopt and publish with clarity that the trust language is for the benefit of the local congregation not the national church.