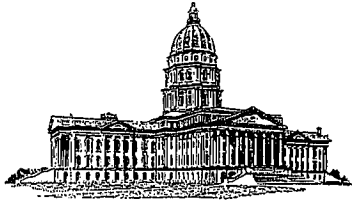


State of Kansas
House of Representatives

State Capitol
Topeka, Kansas 66612
(785) 296-7695
craig.mcpherson@house.ks.gov



11091 W. 133rd Terr, Apt 7
Overland Park, Kansas 66213
(913) 735-6804

Craig A. McPherson
Representative, 8th District

To: Chairman Kinzer, Vice-Chairman Bruchman, Ranking Minority Pauls, and fellow House Judiciary Committee Members

Date: March 18, 2013

Re: Neutral Principles for Church Property Disputes

Thank you for the opportunity to testify regarding the need for clarifying legislation regarding the standard that will be applied in Kansas during the adjudication of a church property dispute. I testify today as a proponent of a "neutral principles" approach.

Understanding the Problem

Different religious organizations have different structures. In some cases an individual neighborhood church is fully autonomous, while in others it is part of a larger denominational structure. The manner in which this organization takes place exists within the realm that is properly separated from government interest and varies greatly depending on the religion and the denomination.

In certain instances, however, these organizational structures come into conflict, and those conflicts spill into the secular court system. Today's discussion revolves around the question of how a secular court system should determine proper title in a dispute over property that is owned by a religious entity.

In the modern era, these disputes are most common when a local church congregation disagrees with the direction that the larger denomination may be going and believes that it must sever its ties with the parent organization.

Frequently, the local congregation has funded the purchase and/or construction and maintenance of the physical church building through its own member contributions. Upon making the determination to leave the denomination; however, the denomination will assert a claim of title to that underlying church. In PCUSA (Presbyterian Church USA) cases this claim is based upon the assertion that all local churches hold property in trust for the denomination.

Neutral Principles – What it Means and Why It is the Best Approach

A dispute over property is the type of dispute that a secular court system is very able to handle. In general, there is a large history within the law that concerns transfer of title,

noted that a “neutral principles” approach “relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.” 443 U.S. 595, 603 (1979).

The opponent in today’s hearing expresses concern that a “neutral principles” approach does not properly take into account the unique governing structure of the Presbyterian or Episcopal Church models. In the former, there is a system of government that contains an internal balance of power and governing structure, with checks and balances between levels of government that are ultimately elected by church members. In the latter, local bishops hold sovereignty over many important matters. To the opponent, applying “neutral principles” forces the state’s will upon a church that wishes to be governed in another manner, and requires a certain one-size fits all type of approach to church property disputes.

I disagree with this analysis. Applying “neutral principles” is the only way to give certainty to all churches as to what steps they will need to take to protect their intent. Rather than placing these important and distinct systems of church polity into the arbitrary hands of a secular court system, a church under a “neutral principles” system is given the freedom to arrange its legal documents in a manner that reflect its wishes. Alternatively, a court that attempts to discern the will of the church by evaluating intricate arguments about the internal organizational of the denomination necessarily places itself into making judgments about an ecclesiastical system, which steps outside of the purview of what normally is seen as the proper role of government, even possibly creating first amendment concerns.

Neutral Principles Promote Efficiency

One of the key reasons the legislature should adopt neutral principles is the potential clarity that it will bring to all interested parties in property debates. If the legal standard is unclear, then parties are encouraged to litigate their disputes. This is an inefficient use of court resources, as well as resources of the local congregations and the denominations. Furthermore, as the money spent on litigation will in most cases be money that is exempt from taxation due to its charitable purpose, it is of particular public interest that we do not encourage those funds to be wasted in litigation due to unclear legal rules.

Current Kansas Law

Existing Kansas precedent is rather unclear on the standard to be used in adjudicating church property disputes. Most scholars believe Kansas likely leans toward “neutral principles” due to a decision in 1973 that stated “The law recognizes the distinction between the church as a religious group ... and the church as a corporation owning real estate . [I]n the latter the activities of the church are subject to the same laws as those in secular affairs.” *Gospel Tabernacle Body v. Peace Publishers & Co.*, 506 P.2d 1135, 1137 (Kan. 1973). In this; however, the Kansas Supreme Court did not explicitly adopt the neutral principles standard.

Furthermore, there is some disagreement as to the use of neutral principles in Kansas. In fact, in a memorandum decision in *Heartland Presbytery v. Colonial Presbyterian Church*, a judge in the Johnson County District Court, while finding for Colonial under collateral estoppel grounds due to a prior decision in Missouri court, actually stated that unlike Missouri that follows a “neutral principles” approach, “Kansas follows the ‘hierarchical’ approach”.

While we could debate back and forth as to whether Kansas already has “neutral principles”, what seems undisputable is that current Kansas law leaves enough ambiguity that parties have difficulty predicting outcomes. Such situations are precisely where it is appropriate for new legislation.

Religious Freedom

A system that has such confused legal precedent undermines the freedom of religious bodies to make faith-based decisions regarding their denominational affiliation. A lack of legal clarity promotes instead stagnation and indecision, because the consequences of action are uncertain. Further, the current law makes litigation between disagreeing parties a near certainty, and thus introduces a barrier to the free exercise of religion by congregations who may feel convicted to leave their denomination.

For all of these reasons, the Kansas legislature should clarify existing law and introduce a statute that will require neutral principles of law to apply to church property disputes. Adjudicating disputes based upon known principles that apply to similar secular organizations supports religious freedom, promotes judicial efficiency, and maintains a proper first amendment government restraint.

Respectfully Submitted,



Craig McPherson
Representative, District 8