

REPORT TO SESSION: ON STATUS OF LITIGATION WITH MISSION PRESBYTERY
September 14, 2015

As you know, the trustees of First Presbyterian Church authorized the filing of a declaratory judgment action asking a court of law to determine who has the ultimate right to determine the use and control of the church's property. It seems to be undisputed that title to the church's property is in the name of First Presbyterian Church of San Antonio. The Book of Order, however, contains a clause that says all property held by any church, no matter how title is taken, is for the benefit for the Presbyterian Church (USA) (PCUSA), the denomination with which FPC became associated when the northern and southern Presbyterian denominations merged in 1983. This is referred to as the "trust clause." The Book of Order also contained a provision allowing churches to be exempt from that provision if exercised within eight years of the merger. At a congregational meeting on June 10, 1984, FPC timely exercised that exemption. The exemption was carried forward in the church's by-laws adopted by the Session in December of 1990. Based on these actions, FPC rejected the PC(USA)'s trust clause claim. Thus, many members of FPC believed the church owned its property in fee simple title without any sort of beneficial right of the PC(USA) in FPC's property.

The issue FPC raised in the court action is to determine whether the PC(USA) claim of some beneficial interest in FPC's property is valid under Texas law. A 2013 decision by the Texas Supreme Court clarified that courts can decide church property issues based on "neutral principles," i.e. the same principles that apply to ownership of property by any other corporation or person. The court can review the deeds and articles of incorporation of the church and the constitution of the denomination (Book of Order) and, after applying Texas trust law, determine ownership, benefit and control of the church's property. A number of churches in Texas and across the country have filed suits to determine their property rights. FPC filed this suit asking the court to declare that it holds its property for its own sole use, benefit and control. In order to give the court an opportunity to rule on this issue, First Presbyterian Church has asked the Court to issue an order (injunction) preventing Mission Presbytery, the district representative of the denomination, from:

1. Interfering with FPC's ownership, use, control or disposition of its property (including real estate, personal property or financial assets);
2. Interfering with FPC's corporate officers in the exercise of corporate powers designated to them under Texas law;
3. Appointing an administrative commission or committee to assume jurisdiction over FPC's governance or control of its property; or
4. Taking disciplinary action against the ministers or members of the church that pertains to the ownership, control, use or disposition of FPC's property.

Mission Presbytery and six members of FPC (Ed and Paula Bondurant; Bob and Anna Wise; Miriam Ellison and Don Drummond or “Intervenors”) filed a counter-claim against FPC. They have asked the Court to create a “constructive charitable purpose trust” declaring that FPC’s property is restricted for use as only a Presbyterian Church (USA) church and to issue an order (injunction) preventing FPC from using any donation subject to the “constructive charitable purpose trust” for any denomination other than the PC(USA).

The hearing on these requests was held on August 26-27 before The Honorable Judge John Gabriel. The trial team for FPC was David West, Dykema Cox Smith; Kent Krause, Craddock, Davis & Krause LLP and Elder at Highland Park Presbyterian Church, Dallas; Lloyd Lunceford, Taylor, Porter, Brooks & Phillips, L.L.P., Baton Rouge and Elder at First Presbyterian Church, Baton Rouge, La. and author of *A Guide to Church Property Law*. Counsel for Mission Presbytery and the Intervenors were Jose de la Fuente, Lloyd Gosselink Rochelle & Townsend, P.C., Austin; and Keith Kendall, David Troilo Ream and Garza, San Antonio.

Witnesses for the church were Barbara Anne Stephens (Elder, Trustee and member of Every Member Canvas and Missions Committee); Jeanne Douglas (Elder on rotation, Trustee and member of Stewardship and Finance); Kelley Terry (Elder and member of Church Relations Committee); and Prof. Stanley Johansen (professor of Trusts and Estates, University of Texas Law School). In addition, FPC submitted deposition testimony from the Rev. Ray Tear, First Presbyterian Church, Ingram; Rev. Hector Reynoso, former pastor with El Principe de Pas, in Mercedes, Texas; and Rev. Tom Johnson, San Benito Presbyterian Church, San Benito, Texas. Witnesses for Mission Presbytery and six church members were the Rev. Bill Poe, Interim Stated Clerk; Mr. Ruben Armendariz, Interim Presbytery Executive; and church members and Intervenors Bob Wise; Paula Bondurant and Miriam Ellison.

For purposes of this hearing Mission Presbytery and the Intervenors did not argue that the trust clause in the Book of Order was valid. They agreed, for purposes of the hearing, that FPC had a probable right of success on that claim. They argued instead that the judge should impose a “constructive trust” (a remedy the court can impose for wrongful actions) on the property of the church and declare that it can only be used for the benefit of the Presbyterian Church (USA).

Excerpts of deposition testimony and trial briefs were submitted to Judge Gabriel last week. The Judge took the matter “under advisement” to review the evidence and law, and indicated he expects to issue a decision in approximately two weeks.

David West, Co-Counsel, First Presbyterian Church of San Antonio