



EPISCOPAL DIOCESE OF PITTSBURGH

October 30, 2006

The Rt. Rev. Robert Wm. Duncan, Jr.
Episcopal Diocese of Pittsburgh
900 Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222

Dear Bishop Duncan:

You have asked for my opinion on two matters expected to come before Diocesan Convention. The first is whether the Diocese may withdraw from the Third Province of the Episcopal Church and the second is whether the Diocese may appeal to the Archbishop of Canterbury, the Primates of the Anglican Communion, and the Panel of Reference for alternative Primatial oversight and pastoral care.

1. Withdraw from the Third Province.

Article VII of the Constitution of the General Convention of the Episcopal Church reads in its entirety:

Dioceses may be united into Provinces in such manner, under such conditions, and with such powers, as shall be provided by Canon of the General Convention; *Provided, however*, that no Diocese shall be included in a Province without its own consent.

There is nothing in the legislative history or subsequent commentary with regard to this Article that suggests that the final clause should be read in any way other than its literal sense. No Diocese shall be included in a Province without its own consent. In my opinion, the Diocese of Pittsburgh is free to revoke its consent to inclusion in the Third Province at any time and remain non-provincial for as long as it sees fit.

It has been suggested that Canon I.9.1 somehow refutes Article VII. This is incorrect for two reasons. First, as a matter of statutory interpretation, the Canon is subordinate to the Article. The Canon cannot alter, expand or contradict the meaning of the Article. Second, rather than standing in conflict with Article VII, Canon I.9.1 actually incorporates the proviso of Article VII in the opening phrase of Section 1: "Subject to the proviso in Article VII of the Constitution." That is a clear statement that the consent requirement set forth in the Article is to be carried forward into the Canon.

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It has been suggested that Article VII is ambiguous, and that Canon I.9.1 is intended as a clarification. If General Convention believed that the Article was ambiguous, the proper approach would have been to amend the Article, not adopt a Canon that perpetuates the confusion by incorporating the very phrase in question. Further, if General Convention had intended "included" to refer to the point of initial assignment it could have stipulated consent "at the time of admission" or "at the time of assignment." It did not. Finally, there is no Article or Canon requiring a Diocese to be a member of a Province, which indicates that membership is not mandatory. Since no limitation was placed upon the time of consent and membership is not required by Canon, I believe that the proper interpretation of the Article VII proviso is that consent is required for as long as inclusion continues. Not only the initial assignment, but also continued membership in a Province, requires Diocesan consent.

We have been asked how an appeal from an Ecclesiastical Trial would be handled if the Diocese is non-provincial. That question is answered by Canon IV.4.37, which provides that "the appeal to the Court of Review of the Province which is geographically closest to that Diocese or is otherwise most appropriate as determined by the Presiding Bishop." Note that the existence of Canon IV.4.37 supports the proposition that a Diocese may elect to be non-provincial.

2. Appeal for Alternative Primatial Oversight and Pastoral Care.

The Constitution and Canons of the General Convention of the Episcopal Church set forth the internal governance procedures of the Episcopal Church. One would not expect them to speak to an appeal for alternative Primatial oversight and pastoral care, and they do not. To address that question we must look to the history and traditions of the broader Anglican Communion.

The most recent thorough consideration of the nature of authority within the Anglican Communion is the Windsor Report. A theme running through the Windsor Report is that Provincial autonomy must be framed by Anglican interdependence on matters of deep theological concern to the Communion.¹ That the motivating factors for the appeal for alternative Primatial oversight and pastoral care are matters of deep theological concern to the whole Communion is evident from the July 16, 2006 letter from the supplicant dioceses to the Archbishop of Canterbury. Paragraph 21 of the Windsor Report gives an example of one instance of decision-making on a contentious issue with Communion-wide significance, and notes the importance of the involvement of the traditional Instruments of Unity in the process. The message is that consultation with the Archbishop of Canterbury and the Primates is an appropriate path in crisis situations.

¹ Windsor Report, paragraph 21, <http://www.anglicancommunion.org/windsor2004/>

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“From the beginning, the Archbishop of Canterbury, both in his person and his office, has been the pivotal instrument and focus of unity; and relationship to him became a touchstone of what it was to be Anglican.”² In petitioning the Archbishop of Canterbury, the Diocese of Pittsburgh is asking the Archbishop to claim a role rooted in the conciliar tradition of Patriarchs. The Archbishop of Canterbury, as first among equals with respect to the Primates of the Anglican Communion, would be expected to initiate and coordinate explicit pastoral, canonical and theological oversight for the good of the Communion. This is a clear demonstration of the patristic understanding of Primacy, which includes the right of the Archbishop to convene the Primates and act in *collegium*.

In addition, a direct appeal to the Archbishop of Canterbury and the Primates is an application of the emergency right of intervention through which help can be sought by a Bishop through the assumptive authority and oversight of the Anglican episcopal college (which is how the Primates can be understood). An appeal of the Bishop of a local jurisdiction to the Primates has roots in a long recognized canonical tradition whereby deviation from day-to-day church order is permitted in extraordinary circumstances. Certainly, the present disorder of the Episcopal Church would meet the criteria of extraordinary circumstances.

Finally, the appeal to the Panel of Reference is squarely within the intention of the Primates in establishing the Panel. The purpose of the Panel, as expressed in the Primates’ Communiqué of February 24, 2005, is “to protect the integrity and legitimate needs of groups in serious theological dispute with their diocesan bishop, or dioceses in dispute with their Provinces.”³

Therefore, while I cannot cite internal policies or procedures of the Episcopal Church in support of the legitimacy of the Diocese of Pittsburgh’s appeal for alternative Primatial oversight and pastoral care, it is my opinion that the Anglican Communion’s traditions as well as its contemporary examination of the nature of authority within the Communion permit such an appeal. I believe that the positive reception the appeal has received from the Archbishop of Canterbury and the Primates indicates at least their initial acceptance of this conclusion.

Very truly yours,


Robert G. Devlin
Chancellor

² Windsor Report, paragraph 99.

³http://www.globalsouthanglican.org/index.php/comments/the_anglican_communion_primates_meeting_communique_february_2005_dromantine/