

present as the primary and voting delegate from First Church.

- a. This is a violation of *BCO* 13-1 which allows only one ruling elder from each congregation for the first 350 communing members to comprise the Presbytery when it meets as a court plus all the teaching elders.
  - b. *The Revised Edition of Roberts Rules of Order* states in Section 43 that a man who is not a principal may not vote.
3. For upholding a ruling of the moderator that all dismissed members of New Life Presbyterian Church who were dismissed on December 10, 1982 by the Session of New Life Presbyterian Church are re-installed to the rolls of New Life Presbyterian Church.
    - a. The moderator may not take any actions on his own except points of order. He can only take an action when directed to do so by the Presbytery and not the reverse.
    - b. According to *BCO* 40-3, no judgment of a lower court shall be reversed except by complaint or appeal. A complaint has been filed against the action of the lower court; but this complaint has been referred to the General Assembly for adjudication. Therefore this action by the Moderator sustained by the Presbytery is out of order.  
Lest we be misunderstood, it is not our desire to keep these people off the rolls of New Life Presbyterian Church. We more than welcome them back if they will uphold their church membership vows. However, the point here is that the moderator nor the Presbytery can take matters into their own hands contrary to the *BCO*.
  4. For the Presbytery again attempting to determine the membership of the Lower court (i.e. the membership of the New Life Presbyterian Church).  
It is our contention that a higher court may not determine the membership of a lower court in any case.

Respectfully submitted.

TE JACK EUBANKS

TE CHARLES WILSON

## ADJUDICATION OF CASE 12

### I. STATEMENT OF THE FACTS

The facts are the complaint of Jack Eubanks and Charles Wilson dated March 5, 1983 regarding the legality of issues concerning the moderator of Central Carolina Presbytery at the called meeting dated February 19, 1983 and the authority of a higher court to determine the membership of a lower court.

### II. STATEMENT OF THE ISSUES

The issues involved is a question of conflict of interest with the moderator and the New Life Presbyterian Church and whether the moderator who is not a member of the court has voting privileges. There is also question regarding a higher court's authority over a lower court in the area of membership.

### III. JUDGMENT OF THE CASE

1. Items 1, 2 and 3 were sustained. *Adopted*
2. Item #4: The commission reserves judgment because General Assembly has not ruled on this judgment. *Adopted*

## CASE 15

### Case 15: Complaint of TE W. Ted Smith, Jr. against Central Carolina Presbytery Fathers and Brethren:

I wish to lodge a complaint against the way in which a very serious matter was allowed to happen over the last three meetings of Central Carolina Presbytery.

At the January 8, 1983 meeting of the Presbytery the members of the New Life congregation who were dismissed for the second time in violation of the Book of Church Order and the mandate of the 10th General Assembly were ordered restored to the rolls of the Church. It was also understood that each would be personally notified by letter.

At the next meeting of Presbytery on January 22, 1983, it was asked if they had been notified and restored and Mr. Eubanks replied that he had verbally told them (those who were present that Sunday), "The Presbytery informs us that you have been restored." Presbytery had failed to do what it had agreed to do and Mr. Eubanks had not properly followed through either.

At the January 22, 1983 meeting it was decided that Mr. Eubanks and the Session would make the written notification and he was given a letter (this action witnessed by the whole Presbytery) by the Clerk.

Mr. Eubanks was addressed by me through the Moderator to ascertain whether or not the people were put back on the rolls and his answer was, "The Presbytery says so." When asked again for a "yes" or "no" answer he hesitated to reply and was interrupted by his elder who began castigating me for questioning the sincerity of his pastor. By this diversion he evaded a yes or no specific answer. Asked if he had restored Burnette Coley to the session as directed Mr. Eubanks replied, "If they do not fulfill their duties, I would remove them again." He again evaded a direct answer.

At the February 19 meeting the truth of where Mr. Eubanks had been all along came out. When the question of hearing a complaint and charges that had been filed with the Clerk, Mr. Eubanks objected by saying that "the complaint is out of order since these persons are not members of the New Life Church."

These actions put clearly and obviously in question Mr. Eubank's sincerity on whether or not he has ever complied in spirit and truth with any of the intentions of the General Assembly's directions of last June and the specific directions of several directives of the Presbytery.

The foregoing incident and the previous years of harrassment of his people by similar dismissals, trials, and suspensions through his and his Session's leadership warrant immediate dissolution of his pastoral relation and censure.

*BCO 13:9* gives the presbytery power, indeed the responsibility, "where the interest of religion imperatively demands it."

As a Presbytery and a people who have been ordered by the General Assembly "to exercise proper oversight of the members of the New Life congregation both past and present," we are grossly negligent in not having handled this matter properly by taking decisive and compassionate action after last April's (1982) congregational meeting when one less than 50% of his people sought to dissolve the pastoral relation.

In allowing such divisive and out of order dismissals, suspensions, and trials to continue without decisive action we have divided our Presbytery, risked losing a congregation of people, injured many young people's lives, hurt the witness of the church and will open ourselves to further disruption of the ongoing of the work of our Lord by more trials before the highest court of our church. We should begin to correct these errors by dissolving the pastoral relation of Mr. Eubanks and the New Life Church.

## ADJUDICATION OF CASE 15

### I. STATEMENT OF FACTS

The complaint by W. Ted Smith against Central Carolina Presbytery dated March 2, 1983 regarding presbytery's oversight of New Life Presbyterian Church.

### II. STATEMENT OF ISSUES

The issue is whether or not the Central Carolina Presbytery was indeed negligent concerning General Assembly directives and Book of Church Order responsibilities to exercise proper oversight of the members past and present of New Life Presbyterian Church.

### III. JUDGMENT OF THE CASE

The complaint is not sustained since it is not the proper form as a complaint but appears rather to be a protest.

NOTE: However, much of the substance of this reference has been dealt with in answering complaints referred to this commission. *Adopted*

## APPENDAGE

### I. STATEMENT OF FACTS

The evidence in the cases considered by this General Assembly Judicial Commission indicates that all parties involved in the conflict (including Central Carolina Presbytery and its commission) have contributed to the conflict in the New Life Presbyterian Church and bear some responsibility for the distressful situation which exists within the church.

## II. RECOMMENDATIONS

1. The commission recommends that the General Assembly direct Central Carolina Presbytery to divide the congregation of the New Life Presbyterian Church into congregations, being the supporters of the present leadership and those generally referred to as the "determined minority". *Adopted*
2. The commission further recommends that the Presbytery be directed to completely separate the two congregations with respect to the use of the facilities in an equitable manner. The property shall be jointly owned and maintained by both congregations and each shall be equally responsible for all indebtedness including mortgage payments, maintenance, utilities, insurance and all other expenditures related to the property as determined by Presbytery. *Adopted*
3. The Presbytery be directed that both congregations choose new names for their congregations. *Adopted*
4. Further direct the presbytery to assist the "determined minority" with pastoral leadership until such time as they can call a pastor or for a period of no longer than one year beginning July 1, 1983. *Adopted*
5. The General Assembly recommends censure by admonition.
  - a. The Judicial Commission recommends to the General Assembly that the pastor and session of New Life Presbyterian Church be censured for precipitous removal of communing members for not following the disciplinary order of the Book of Church Order 46-5 and 27-5. The Commission takes note of evidence of repentance and regret for earlier improper actions.
  - b. The Judicial Commission recommends to the General Assembly that the "determined minority" of the New Life Presbyterian Church be censured for its persistent refusal to respond to efforts of reconciliation by the Central Carolina Presbytery Judicial Commission and by the pastor and session at various times.
  - c. The Judicial Commission recommends to the General Assembly to exhort Central Carolina Presbytery to take fresh heed to study the purity and peace of the Church and to take all necessary steps to preserve such in the congregations under their care rather than becoming privately involved under the jurisdiction of the presbytery. All the Elders of the Presbytery are exhorted to take heed to the counsel of I Peter 5: 1-11. *Adopted*
6. Any findings by a future General Assembly of a failure of good faith by either party will nullify that parties rights and privileges under the directives of this Eleventh General Assembly. *Adopted*
7. We exhort all parties to take heed to the Word of God in Ephesians 4:23-5:2,6 and Proverbs 13:10. (King James Version) *Adopted*

TE David F. Coffin, Jr. rose for personal privilege to explain that he would vote against each and every case before the Assembly on the basis that he objected in principle to requesting the Assembly to vote concerning questions where there has not been sufficient time or information to make a reasonable decision.

Cases 6,8,10,12,15 were presented by TE James R. Simoneau, and the Judgments were adopted.

Negative votes were recorded as follows.

George W. Mitchell  
Stephen A. Parker  
Bob Korn  
Timothy B. Dobbins  
Gerald Markus  
James R. Griffith

Robert E. Hays  
James Jones  
Robert C. Wilson  
Thomas J. Seese  
Bryan Chapell

John C. Ropp, Jr.  
Charles L. Winkler  
Harold O. Kelley  
Steven Bradford  
Bailey C. Cadman

TE C. Eugene Craven led the Assembly in prayer at 3:30 p.m.