

Here is the Steeple—But Whose Steeple?

**Theresa Lynn Sidebotham
Telios Law PLLC**

*Here is the church
And here is the steeple.
But does it belong
To the group or the people?*

Church property disputes are painful and usually contentious. Usually, though not always, they begin when a congregation wants to leave the denomination, often over doctrinal fidelity. Because it is a dispute over church property, deep constitutional issues apply that may trump regular property law.

A recent case, *Windwood Presbyterian Church, Inc. v. Presbyterian Church U.S.A.*, issued August 30, 2012 from the Texas Court of Appeals, lays out the church law principles that govern these cases in a way that is easy to understand. In this case, the local church asked for a judgment stating that it owned the property. The denomination countered that it owned the property, and was entitled to deference as a hierarchical church.

Windwood was incorporated in 1971, and its trustees were given the power to handle property. In 1983, its denomination became the PCUSA through a merger. The PCUSA Book of Order had an express trust clause that provides that all property of local churches is held in trust for the PCUSA. Local churches had the option to opt out of that trust provision, which Windwood never did. The conflict, therefore, was whether the property title or the Book of Order prevailed.

The court explained that the First Amendment prevents a court from resolving church property disputes on the basis of doctrine or practice, though it can resolve disputes based on other rules. The rule of hierarchical deference says that the civil court will defer to the decision of the highest judicatory body in a hierarchical church. The rule of “neutral principles” allows application of state property law, as long as the court is not drawn into religious controversies. Finally, special statutes could apply, though they did not in this case. The court decided it could use either of the two rules to solve the issue.

First, the court found that the PSCUSA is a hierarchical church (not a tough call). Under the hierarchical deference approach, the rule in the Book of Order prevailed, and the denomination won. But the court said the result would be the same under the “neutral principles” approach. Although the church held title to the property, its articles also specifically deferred to the Book of Church Order. And even under the “neutral principles” approach, a denomination was allowed to enact an express trust clause. By joining the PCUSA and remaining a member, Woodwind had consented to follow its governance, including the trust provision. So the property belonged to the denomination.

Though this case is a sound application of the principles of church property law, these cases are not all consistent in their holdings and may go either way. Spiritually, some question taking church disputes between believers into the civil courts. Certainly one very real problem is that these cases may erode the independence and First Amendment freedom of churches to make their own decisions, particularly the holdings that are in favor of the seceding church. Commendably, this civil court was very careful not to step into the realm of the church. But churches should consider that the ultimate question may be whether they want to invite Caesar to have power over the Church.