

The Diocese of Virginia

NEWS RELEASE

December 1, 2006

On Friday, Dec. 1, the Bishop of the Episcopal Diocese of Virginia, Peter James Lee, sent a letter to the rectors, vestries and wardens of congregations known to have engaged in a "40 Days of Discernment" program to consider their place in The Episcopal Church and the Diocese of Virginia. Some of those congregations have chosen to conclude that program with votes, to be held this month, to determine their future affiliation with the Episcopal Church and the Diocese of Virginia

In his letter, Bishop Lee highlighted that the members of those congregations are cherished members of the Diocese and the Episcopal Church, and that he and the Standing Committee hope they will decide to continue to worship as one, unified family.

"I pray you will remain in communion with your brothers and sisters in Virginia and take your full place in the life of the Diocese of Virginia," he wrote. "Ours is a faith historically defined by our ability to bring together people with different theological emphases within traditional faith and order," he added. Bishop Lee also stated his concern that any decision to leave the Episcopal Church will be a source of regret for future generations.

The letter also explained some of the potential legal and canonical consequences of a decision to separate from the Episcopal Church, addressing issues of property and personal liability.

"Along with the damaging effects any split would have on the Diocese as a whole and these churches in particular, we are concerned that these congregations may not fully understand the potential legal consequences of their actions," said Russell Palmore, chancellor of the Diocese of Virginia. "The decision to leave the Diocese should be a fully informed one."

The Bishop's Letter

Greetings in the Name of Our Lord Jesus Christ who has called us to His service.

I ask that you share this letter with each member of your vestry as it is intended for you and each of them.

The purpose of this letter is to outline ways forward and potential consequences of decisions.

Yours is a congregation that has completed or is engaged in a process of discernment of your place in the Episcopal Church and the Diocese of Virginia.

First, let me stress that you are a cherished member of this diocese whose historic stance is one often described as a "generous orthodoxy," holding together people with different theological emphases within traditional faith and order. Our diocese's unambiguous affirmation of the Windsor Report by the Annual Council is a sign of that faithfulness. So I pray you will remain in communion with your brothers and sisters in Virginia and take your full place in the life of the Diocese of Virginia. I hope your parish will weigh the consequences of any decision to leave and consider the long term identity of [your] Church. If [your] Church decides to leave, I believe your successors in the future will regret that decision and its destructive consequences for the whole church.

In late 2005, I appointed a Special Committee to consider how we might remain in as close a union as possible, given the stresses in the church. That committee has issued its unanimous report which outlines some steps for congregations to follow when they believe they must separate from our common life. The report has been distributed to all of our churches. While I believe the report is a useful way forward, which I support, neither the Executive Board nor the Standing Committee has endorsed or approved it and it may not be the only way forward to a mutually acceptable outcome. You should not assume the Episcopal Church will endorse or approve the steps outlined in that report. The Executive Council of the Episcopal Church may well wish to retain its property interests. I have encouraged the Executive Board and the Standing Committee of our diocese to pay close attention to whether congregations that wish to depart have followed the steps outlined in the report and have engaged faithfully in negotiations that meet the needs of each party in each unique situation. The Standing Committee has told me it wishes to meet personally with the leadership of each church that wishes to leave.

I remind you that absent a negotiated settlement of property, an attempt to place your congregation and its real and personal property under the authority of any ecclesial body other than the Diocese of Virginia and the bodies authorized by its canons to hold church property will have repercussions and possible civil liability for individual vestry members.

Your Declaration and Promise

Canon 11.8 of the Diocese of Virginia requires that every person chosen a Vestry member qualify by subscribing to a declaration and promise in which the Vestry member states, among other things:

...and I do yield my hearty assent and approbation to the doctrines, worship and discipline of The Episcopal Church...

Similarly, Canon I.17.8 of The Episcopal Church describes the fiduciary responsibility of Church officers as follows:

Any person accepting any office in this Church shall well and faithfully perform the Duties of that office in accordance with the Constitution and Canons of this Church And the Diocese in which the office is being exercised.

Constitutional Provisions Concerning the Discipline of the Church

Article I of the Constitution of the Diocese of Virginia provides:

Order, Government and Discipline.

The order, government, and discipline of the Protestant Episcopal Church in the Diocese of Virginia shall be vested in the Bishop, and in the Council of the Diocese, constituted as provided in Article III hereof, which shall have power to adopt Canons, and take any other action for the conduct of its affairs not in conflict with this Constitution.

In addition, Article XVII of the Constitution says:

Parishes to be Bound by This Constitution.

Every Congregation within the Diocese of Virginia, however called, shall be bound by the Constitution and the Canons adopted in pursuance hereof.

Thus, the discipline of The Episcopal Church to which you yielded your hearty assent and approbation are vested in the Bishop, the Council of the Diocese and the canons, which likewise bind [your] Church.

Moreover, all congregations, including those that have chosen or choose in the future to incorporate under Virginia law, must conform their By Laws, Articles of Incorporation and other corporate documents to the Constitution and Canons of the Episcopal Church and the Diocese.

Trust Canons

Canon I.7.4 of the Episcopal Church states clearly that:

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located.

Similarly, Canon 15.1 of the Diocese of Virginia provides:

All real and personal property held by or for the benefit of any Church or Mission Within this Diocese is held in trust for The Episcopal Church and the Diocese of Virginia.

Thus, the property of [your] Church is trust property. You are the trustees of this trust and, as such, have a fiduciary duty to protect the property for the benefit of the Episcopal Church and the Diocese of Virginia. In addition, under applicable civil law the Diocese of Virginia has proprietary and contract rights in the property of [your] Church.

Consent Canons

Consistent with these trust canons are Canon I.7.3 of the Episcopal Church and Canon 15.2 of the Diocese of Virginia. These canons forbid vestries from alienating, selling, exchanging, encumbering or otherwise transferring any real property, including but not limited to consecrated property for any Church or Chapel which has been used solely for divine services, without the written consent of the Bishop and the Standing Committee of the Diocese. Neither the Standing Committee nor I has been asked to consent, or consented, to any proposed property transfer by [your] Church.

Parish Meetings

Diocesan Canon 11 provides for parish meetings. It is my expectation that you will assure that the requirements of Canon 11 will be followed.

Mission Status and the Standing Committee

Canon 10, Section 1 of the Diocese of Virginia empowers me, with the advice and consent of the Standing Committee, to change the status of [your] Church to that of a Mission if [your] Church no longer: acknowledges the jurisdiction of the Bishop of the Diocese of Virginia, has a regular program of identifiable Episcopal services, shares in the support of the episcopate of the Diocese, or functions under the supervision of a Priest or Deacon. If [your] Church proceeds with its contemplated action, and if I were to make the change and the Standing Committee were to consent, [your] Church would become a Mission, I would then appoint a Vestry Committee to replace you under Canon 11, Section 14 and I would appoint a Vicar as minister in charge under Canon 10, Section 7.

Abandoned Property and the Executive Board

Canon 15.3 of the Diocese of Virginia empowers the Executive Board of the Diocese in reference to real or personal property formerly owned or used by any congregation of the Episcopal Church in the Diocese of Virginia for any purpose for which religious congregations are authorized to hold property under Virginia law to declare such property abandoned if the property has ceased to be used by the congregation for such purposes. In that event, the Executive Board is authorized to take charge and custody of the real and personal property and take such steps as may be necessary to transfer the real property to the Bishop or to sell it.

Consequences of Departure

The decision of a congregation to leave the Episcopal Church places its clergy in a difficult position. Clergy who are affiliated with such a congregation risk a finding by the Standing Committee that they have abandoned the communion of the Episcopal Church. If the Bishop agrees with that finding, he may inhibit the cleric from officiating in any Episcopal Church, and if the cleric does not recant within six months, the cleric may be released from the obligations of ministry and removed therefrom. The cleric would thereafter be ineligible to earn further credited service towards a pension from the Church Pension Fund and the employing church could not pay pension assessments. (The cleric would be credited for

service prior to his removal and upon reaching retirement age, would receive a pension calculated on his credited service in the Episcopal Church.)

The cleric, and lay employees of the parish, would no longer participate in the diocesan health insurance plan and the departing parish could not participate in property and casualty insurance plans sponsored by the affiliates of the Church Pension Fund.

Potential Personal Liability

I am bound, just as you and your vestry members are, to adhere to and to enforce the Church's canon law. My obligation to uphold the canon law derives from the oath I took when I was ordained and consecrated Bishop. Your obligation, which continues even now, derives from the promises and commitments you made. In the case of the Rector, those promises were made at his ordination and at his installation as your Rector by one of the Bishops of Virginia.

The principles reflected in the Church's canon law as it relates to parish property have been enforced by many courts throughout the United States in cases involving hierarchical churches such as the Episcopal Church. Those cases include cases decided by Virginia courts.

A recent enforcement occurred in a case brought in a Pennsylvania court by the Episcopal Diocese of Pennsylvania and its Bishop against a parish vestry that had caused the parish to leave the Church and deny the Diocese its beneficial use of the parish property. The Pennsylvania court recognized the fiduciary duty of the vestry to maintain the property in trust for the benefit of the Diocese and ruled that the vestry, in refusing to maintain the property for that purpose, had acted with "bad faith and breached fiduciary duties." Members of the vestry were held individually liable for the expenses the Diocese and the Bishop incurred in the litigation. The Pennsylvania court's application of the law of trusts and fiduciaries was consistent with what a Virginia court would do if faced with a similar case. Under Virginia law, a trustee of a tax exempt organization such as a church is civilly liable for willful misconduct.

As I have made clear on a number of occasions, each of you has my prayers if you feel that you must leave the Episcopal Church. You have freedom of conscience but that freedom does not include alienating the property of the church you have sworn to serve.

You and I have undertaken solemn commitments and made binding promises to be good stewards and caretakers of the real and personal property of the Diocese of Virginia and of the Episcopal Church. Those are commitments we are obliged to keep no matter what our future church affiliation may be. I pray that as the persons responsible for maintaining [your] Church, you will keep all of this in mind as you consider your actions as leaders of that parish and fiduciaries of the properties it holds in trust for the Episcopal Church and the Diocese of Virginia.

I pray that together we can reach a resolution to the issues where we differ that takes into account the promises we have made, our obligations of respect and care for one another and most of all expresses our obedience to Christ.

Faithfully yours,

Peter James Lee

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