

“Principles” of Catholic Order

(A report from the Standing Committee)

Introduction

1. In the supplementary Presidential Address to the General Synod delivered on 21 November 1992, the Primate said -

“While the bishops will seek to be fair and pastorally sensitive to minorities, I believe they must do so in a way which accords with established principles of catholic order. Among such principles are these -

- (1) There can be no implication that a bishop who acts in accordance with the Constitution and Canons of this Church is acting improperly.
- (2) No bishop may accept an invitation to minister in another diocese other than with the permission and under the authority of the bishop of that diocese.
- (3) There can be no suggestion that the subsequent sacramental ministrations of a bishop who ordains women to the priesthood somehow become invalid.
- (4) There can be no suggestion that the chief consecrator of a new bishop should be other than the Metropolitan or a bishop acting under the authority of the Metropolitan.”

2. Concerned that the four “principles” of catholic order stated by the Primate may not be accurate, the Standing Committee requested that the Legal Committee give an opinion on what the law is on those four matters. The Legal Committee subsequently provided an opinion which is set out in paragraphs 3 to 10 of this report.

Opinion of the Legal Committee

First “Principle”

3. The Legal Committee said that the question of whether a bishop who acts in accordance with the Constitution and Canons of the Anglican Church of Australia is acting “improperly” is not a legal question since impropriety is a wider concept than that of illegality. A bishop who acts in accordance with the Constitution, the Canons of the Church and any ordinance applicable to his diocese may be acting legally. Whether the bishop is acting improperly is a question which may fall for determination by reference to matters other than the law (for example, having regard to theological principles).

Second “Principle”

4. In relation to the second principle, it was not clear what the Primate meant when he referred to an invitation to “minister”. For the purposes of its opinion the Legal Committee took “minister” to mean the exercise of liturgical functions.

5. In advising on the law on the matters referred to in second principle the Legal Committee distinguished between -

- (a) acts which the bishop of one diocese (diocese A) intends to undertake in another diocese (diocese B) on property which is church trust property held for the purposes of diocese B; and
- (b) acts which the bishop of diocese A intends to undertake in diocese B on property which is not church trust property.

7. If the bishop of diocese A wishes to “minister” on church trust property held for diocese B any rules applicable to the church trust property must be observed. These rules may require the prior permission or authority of the bishop of diocese B.

8. The Legal Committee was divided on whether there is any restriction, beyond custom, on what the bishop of diocese A may do without the permission and authority of the bishop of diocese B on property situated in diocese B which is not church trust property held for diocese B. One view is that the bishop of diocese A may not “minister” on any property situated in diocese B without the prior permission and authority of the bishop of diocese B. The alternative view is that there is no legal restriction on what the bishop of diocese A may do in diocese B on property which is not church trust property held for the purposes of diocese B.

Third “Principle”

9. In the Legal Committee’s view the third principle did not raise a legal matter since the concept of “invalidity” is not the same as that of “illegality”. Whether the subsequent sacramental ministrations of a bishop who ordains women became “invalid” is a question which may fall for determination by reference to matters other than the law. Accordingly the Legal Committee did not further consider this matter.

Fourth “Principle”

10. In the Legal Committee’s view the correctness of the fourth principle depends on the law in a particular diocese. In a diocese (such as the Diocese of Sydney) which has adopted General Synod Canon No 3 of 1966, the chief consecrator of a new bishop is required to be the Metropolitan or a person acting under authority from the Metropolitan. The Legal Committee noted that some dioceses (such as the Diocese of Sydney) which have adopted the General Synod Canon have power to reject the Canon at a future time and to enact an alternative.

Recommendation

11. Following receipt of the Legal Committee's opinion, the Standing Committee resolved to reject the assertion that the principles enunciated by the Primate and set out in paragraph 1 of this report are “principles” of catholic order. The Standing Committee recommends that the Synod take the same position.

For and on behalf of the Standing Committee.

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