



CONGREGATIO
PRO CLERICIS

Prot. N. 20082582

Vatican City, 2nd January 2009.

Ms Kathleen Stone,
245 Beach Avenue,
Hull, MA 02045,
U.S.A.

Dear Ms Stone,

This Congregation has received your letter of the 15th August 2008, with its attachments, presenting a hierarchical recourse against the dispositions of His Eminence Seán Cardinal O'Malley, O.F.M.Cap., concerning the parish of the Holy Trinity, Boston.

The Dicastery must firstly note that while you present the recourse on behalf of the "Parish Pastoral Committee", the Congregation can only accept the recourse insofar as you present it in your own name. The reason for this is twofold.

Firstly, according to an official response from the Pontifical Council for the Interpretation of Legislative texts concerning Can. 299, whether a group of the Faithful, lacking juridical personality and even recognition envisioned in Can. 299 §3, can legitimately make hierarchical recourse against a decree of its own diocesan bishop, the response was: negative as a group; affirmative as individual members of the Faithful acting either singly or together.

Secondly, insofar as the "Parish Pastoral Council" is the Pastoral Council mentioned in Can. 536, this body is a consultative body for the Pastor and presided over by him, so as to give him assistance in fostering pastoral action. The Pastoral Council can in no sense act in its own name, by its own authority or independently of the Pastor; neither does it represent the parish as a juridical person, as Can. 532 makes clear. Therefore, if the "Parish Pastoral Council" is the body referred to in Can. 536, the Dicastery must inform you that its members have acted entirely *ultra vires* in this matter. Nevertheless, for technical reasons the Dicastery does accept the hierarchical recourse insofar as it is presented in your own name.

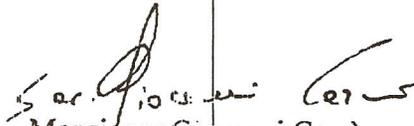
The Congregation has carefully examined both your submission and the documents submitted to it by the Ordinary. Please find the decree of its conclusions attached.

Although you may not agree with the conclusions of the Dicastery, it asks you to adhere in a spirit of filial co-operation and fidelity to your Ordinary who seeks to provide for the care of

souls of all Christ's Faithful within his Archdiocese.

With assurance of prayers and cordial best wishes, I remain,

Sincerely yours in Christ,


Mor. signor Giovanni Carrù
Under-Secretary

Enclosures



CONGREGATIO
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DECRETE

PROT. N. 20082582

IN NOMINE SANCTISSIMAE TRINITATIS

The Facts of the Case

Following upon the determination of the Ordinary of the Archdiocese of Boston, in The United States of America, His Eminence, Seán Patrick Cardinal O'Malley, O.F.M.Cap., that a reconfiguration of the parochial structures within the Archdiocese was required by the diminished number of clergy, the demographic variations within that territory and the need to give the parishes of the Archdiocese stability in the face of many challenges, on the 11th May 2004 the Presbyteral Council received a recommendation that the territorial parish of the Holy Trinity, the church being located at 140 Shawmut Avenue, Boston, MA 02118, should be suppressed. The Parish of the Holy Trinity was established as a personal parish to provide for the care of souls of German speaking immigrants in the nineteenth century. In 1973, following the departure of the Jesuit fathers from the care of the parish, the parish was placed under the care of an administrator, being Parish Priest of St James the Great. In 1990 the Ordinary established the church of the Holy Trinity as the *locus* wherein the liturgy according to the extraordinary form of the Roman Rite might be celebrated, following the provisions of the indult of His Holiness, Pope John Paul II, in the Apostolic Letter *Ecclesia Dei* of the 2nd July 1988. Following various representations by members of Christ's Lay Faithful at the church of the Holy Trinity before the Ordinary, Ms Kathleen Stone [the recurrent], with other signatories, styling themselves the "Parish Pastoral Committee", petitioned the Ordinary to revoke his decree of the 4th April 2007 by which he transferred the *locus* for the exercise of the aforementioned indult to the church of Mary Immaculate of Lourdes, by the same decree establishing the faithful who so worship there to be "full parishioners of this parish and to enjoy the rights and duties of full parishioners". On the 16th April 2007 Ms Kathleen Stone *et al.* presented a hierarchical recourse before this Dicastery against this decision. That recourse was rejected by the Dicastery in its Decree of the 27th August 2007, Prot. N. 20071264. The recurrents petitioned the Dicastery for a reconsideration of its decree on the 14th September 2007. The Dicastery denied this request in its response of the 24th October 2007. Subsequent to the decree of suppression of the parish of the Holy Trinity, issued by the Ordinary on 24th June 2008, the recurrent petitioned him for a reconsideration of his decree on the 8th July 2008. The Ordinary denied this request on the 1st August 2008 whereupon the recurrent presented her recourse to this Congregation on 6th September 2008, (dated the 15th August 2008).

IN IURE:

Can. 515 — § 1. Paroecia est certa communitas christifidelium in Ecclesia particulari stabili^{ter} constituta, cuius cura pastoralis, sub auctoritate Episcopi dioecesanⁱ, committitur parocho, quapropr^{io} eiusdem pastorⁱ.

§ 2. Paroecias erigere, supprimere aut eas innovare unius est Episcopi dioecesani, qui paroecias ne erigat aut supprimat, neve eas notabiliter innovet, nisi audito consilio presbyterali.

§ 3. Paroecia legitime erecta personalitate iuridica ipso iure gaudet.

Can. 518 — Paroecia regula generali sit territorialis, quae sciicet omnes complectatur christifideles certi territorii; ubi vero id expediat, constituentur paroeciae personales, ratione ritus, linguae, nationis christifidelium alicuius territorii atque alia etiam ratione determinatae.

Can. 113 — § 1. Catholica Ecclesia et Apostolica Sedes, moralis personae rationem habent ex ipsa ordinatione divina.

§ 2. Sunt etiam in Ecclesia, praeter personas physicas, personae iuridicae, subiecta scilicet in iure canonico obligationum et iurium quae ipsarum indoli congruunt.

Can. 120 — § 1. Personae iuridicae natura sua perpetua est; extinguitur tamen si a competenti auctoritate legitime suppr. mantur aut per centum annorum spatium agere desierit; persona iuridica privata insuper extinguitur, si ipsa consociatio ad normam statutorum dissolvatur, aut si, de iudicio auctoritatis competentis, ipsa fundatio ad normam statutorum esse desierit.

§ 2. Si vel unum ex personae iuridicae collegialis membris supersit, et personarum universitas secundum statuta esse non desierit, exercitium omnium iurium universitatis illi membro competit.

Can. 121 — Si universitates sive personarum sive rerum, quae sunt personae iuridicae publicae, ita coniungantur ut ex iisdem una constituatur universitas personalitae iuridicae et ipsa pollens, nova haec persona iuridicae bona iuraque patrimonialia prioribus propria obtinet atque onera suscipit, quibus eaedem gravabantur; ad destinationem autem praesertim bonorum et ad onerum adimpletionem quod attinet, fundatorum oblatoorumque voluntas atque iura quaesita salva esse debent.

Can. 122 — Si universitas, quae gaudet personalitate iuridica publica, ita dividatur ut aut illius pars alii personae iuridicae uniatur aut ex parte dismembrata distincta persona iuridica publica erigatur, auctoritas ecclesiastica, cui divisio competat, curare debet per se vel per executorem, servatis quidem in primis tum fundatorum ac oblatoorum voluntate tum iuribus quaesitis tum probatis statutis:

1° ut communia, quae dividi possunt, bona atque iura patrimonialia necnon aes alienum aliaque onera dividantur inter personas iuridicas, de quibus agitur, debita cum proportione ex aequo et bono, ratione habita omnium adiunctorum et necessitatum utriusque;

2° ut usus et ususfructus communium bonorum, quae divisioni obnoxia non sunt, utrique personae iuridicae cedant, oneraque iisdem propria utrique imponantur, servata item debita proportione ex aequo et bono definienda.

Can. 123 — Extincta persona iuridica publica, destinatio eiusdem bonorum iuriumque patrimonialium itemque onerum regitur iure et statutis, quae, si sileant, obveniunt personae iuridicae immediate superiori, salvis semper fundatorum vel oblatoorum voluntate necnon iuribus quaesitis; extincta persona iuridica privata, eiusdem bonorum et onerum destinatio statutis regitur.

Can. 383 — § 1. *In exercendo munere pastoris, Episcopus dioecesanus sollicitum se praebet erga omnes christifideles qui suae curae committuntur, cuiusvis sint aetatis, condicionis vel nationis, tum in territorio habitantes tum in eodem ad tempus versantes, animum intendens apostolicum ad eos etiam qui ob vitae suae condicionem ordinaria cura pastorali non satis frui valeant necnon ad eos qui a religionis praxi defecerint.*

The Code of Canon Law 1983 establishes the principle in Can 515 §1 that a parish is a certain *community* of Christ's faithful stably established within a Particular Church. It is clear from the context of the organisation of the Code and the wording of the text that this community exists within the Particular Church, falling as it does within Title III of the same code, concerning the *internal* ordering of a Particular Church. Can. 368 establishes the diocese as the principal embodiment of the Particular Church, and is itself described as *populi Dei portio*, entrusted to the Bishop for shepherding (Can. 369). This portion of the People of God, otherwise referred to in the Code as the *Christifideles*, adheres to its pastor, the Bishop. In canonical language, such adherence is no mere vague association, but an attitude replete with a comprehension of and fidelity to ecclesiastical communion (Cfr. Can. 753). It is for this reason that it is for the Bishop alone to erect, suppress or change parishes, and for which reason Can. 515 §1 states that the portion of the People of God which is erected as a parish is cared by for a Parish Priest under the authority of the Bishop. Moreover, the principle of community precedes that of territoriality within the organisation of the Codified texts.

Can. 518 establishes that parishes are to be territorial, as a general rule, but that a personal parish may be constituted where circumstances make it useful, for such reasons as language, rite, nation etc. Such parishes have a similar canonical stability as territorial parishes. This stability arises from both the needs arising from the care of souls within that certain group of Christ's Faithful and from the ability of the bishop to provide for this care in proportion to the needs of Christ's Faithful under his care and authority. In indicating the responsibility of the diocesan Bishop the Code of Canon Law establishes, before specifying particular duties, the guiding principle of his ministry, namely "*se praebet erga omnes christifideles qui suae curae committuntur*" — "he is to be solicitous for *all* Christ's faithful entrusted to his care (Can. 383 §1). Therefore, the Bishop has the duty of oversight over all Christ's Faithful, and it is his to regulate the *cura animarum* according to the needs of all, therefore taking account of the resources available to him as a good steward of the Lord's household. Thus the portion of the People of God within a parish belong first, theologically and juridically, to the portion of the People of God which is constituted within a Particular Church, under the Bishop as the proper pastor. It is within this ecclesial context that all Christ's Faithful are bound to act and to exercise the rights and obligations of their state, and within which the parish is erected, suppressed or changed according to the authority and duty of the bishop to see to the care of souls of all Christ's Faithful entrusted to his care.

Can. 515 §3 establishes that a legitimately erected parish enjoys juridical personality *ipso facto*. A juridical person is canonically *perpetual*, that is to say that it has the capacity of perpetuity and cannot cease to exist except as provided in universal and particular law, as stated in Can. 120 §1. Perpetuity is not eternity, and the canons of the Code envisage that juridical persons can be erected, suppressed or altered according to the provisions of the Code of Canon Law. Thus, in considering the parish as a juridical person, the code itself makes clear that the Bishop may erect, suppress and alter it, having heard the Presbyteral Council (Cfr. Can. 515 §2). Such decisions by the Diocesan Bishop must be guided by his solicitude towards all Christ's Faithful within his diocese. Canonical perpetuity allows for the stability of the juridical person so that the work for which it is established may be accomplished and secure. Can 120 §1 establishes that a juridical person may be extinguished by being *legitimately* suppressed by the competent authority. Can. 515 §2 establishes how a diocesan Bishop may legitimately suppress a parish, having heard his Presbyteral Council. This act will be exercised always according to the norm of Can. 383 §1. Moreover, the provisions of Can. 50 support a wider consultation with

Christ's faithful who will be effected by such a decision. When a diocesan Bishop so suppresses a parish, it is rarely the case that that parish has become extinct according to the provisions of Can. 123, but more often the case that the suppression takes the form of a union as described in Can. 121. The destination of the rights and obligations of the juridical person is determined accordingly.

In Facto Esse

In the matter of the recourse of Ms Kathleen Stone [the recurrent], against the dispositions of His Eminence Seán Patrick Cardinal O'Malley O.F.M.Cap., Archbishop of Boston [the Ordinary] to suppress the personal parish of the Holy Trinity, Boston,

Whereas the Ordinary undertook a process of consultation with Christ's Lay Faithful within the Archdiocese of Boston, according to the provisions of Canon 50 *CIC 1983*, in view of the proposed reorganisation of the parishes therein.

Whereas the Ordinary received a recommendation *inter alia* that the personal parish of the Holy Trinity be suppressed.

Whereas the Ordinary consulted with his Presbyteral Council on the 11th May 2004 concerning the parishes proposed for reorganisation, including the parish of Holy Trinity in particular.

Whereas members of Christ's Lay Faithful attending the church of the Holy Trinity made representations before the Ordinary that they had not been legitimately consulted

Whereas the Ordinary established means to consult Christ's Lay Faithful so aggrieved, through the agency of The Most Reverend Richard Lennon, Auxiliary Bishop to the Ordinary, The Very Reverend Mons. David W. Smith, Chancellor, and the Reverend Robert Kickham, and through meeting directly with the aggrieved members of Christ's Lay Faithful.

Whereas the Ordinary saw to the restitution to the parish of Holy Trinity the temporal goods illicitly transferred from it to the parish of St James the Great, having heard the concerns of the members of the Parish Council for Economic Affairs, and having provided for a careful examination of the administration of the parish of the Holy Trinity.

Whereas by his decree of the 4th April 2007 the Ordinary provided for the transfer of the provisions for the indult according to the Apostolic Letter *Ecclesia Dei* from the church of Holy Trinity to the church of Mary Immaculate of Lourdes, further providing that "the new worshippers joining the parish who celebrate according to the liturgical books in effect in 1962, are full parishioners of this parish and have the rights and duties of full parishioners".

Whereas the Ordinary's action was not intended to undermine the stability of the parish of Holy Trinity, but were a provision in view of the proposed suppression of that parish according to the ~~provisions already applied for the reorganisation of parish structures within the Archdiocese of Boston.~~

Whereas on the 15th May 2008 the Ordinary notified Christ's Faithful of his intent to suppress the parish of the Holy Trinity.

Whereas the Ordinary issued a decree on the 24th June 2008 to suppress the parish of the Holy Trinity, effective on the 30th June 2008, according to the provision of Can. 51

Whereas the recurrent petitioned the Ordinary for a revocation of his decree on the 8th July 2008, according to the provisions of Can. 1734, §§1-2.

Whereas the Ordinary refused to suspend the execution of his decree by a letter of the 11th July 2008.

Whereas the Ordinary refused to reconsider his decree by a letter of the 1st August 2008.

Whereas the recurrent presented a hierarchical recourse against the determination of the Ordinary before this Dicastery on the 6th September 2008 (dated 15th August 2008).

Whereas the acts submitted to this Dicastery do not prove any intent on the part of the Ordinary to "seize assets" from the parish of the Holy Trinity; this proven by the clear intent of the Ordinary that all the patrimony of the parish of the Holy Trinity would belong to the Cathedral Parish

Whereas the recurrent has presented a valid hierarchical recourse, having respected the peremptory times of Can. 1734, §§1-2, the Ordinary having declined to suspend the execution of his decree and, subsequently, having refused to modify the said provisions according to the norms of Can. 1735, the recurrent presented her recourse to this Dicastery according to the provisions of Can 1737.

Wherefore the Congregation decrees that this petition for recourse as presented, has no canonical basis in law and in fact and is hereby rejected both *de procedendo* and *de decernendo*.

Given at the Seat of the
Congregation for the Clergy
2 January 2009

Cláudio Card. Hummes

Cláudio Cardinal Hummes
Prefect

+ *Mauro Piacenza*

*Mauro Piacenza
Titular Archbishop of Vittoriana
Secretary