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November 10, 2004

The Rev. Arabella Meadows-Rogers
 Presbytery of New York City
 Suite 240
 475 Riverside Drive
 New York, New York 10115

Dear Arabella:

You and Reade Ryan have requested our comments concerning the authority of the Board of Trustees of the Presbytery to determine the funds which are to be included within the Presbytery's investment fund and to make determinations concerning funds available to budget for annual operations. We understand there are particular concerns as to possible differences on these issues between the Board of Trustees and the Presbytery's Council on Administrative and Support Services which prepares the annual budget for the Presbytery. This letter responds to that inquiry.

The ecclesiastical Presbytery of New York City is a body operating under the Constitution (Book of Order) of the Presbyterian Church (U.S.A.). The members of the Presbytery consist of its elected officers, all ministers and elder commissioners. The Presbytery has established a civil corporation, Presbytery of New York City, a New York Not-for-Profit Corporation, which has the same membership as the Presbytery and a Board of 18 trustees with staggered terms elected by such membership. The corporate by-laws provide for the annual meeting for the election of trustees to be held during the proceedings of the annual meeting of the ecclesiastical Presbytery. The Standing Rules of the ecclesiastical Presbytery provide for the election of the trustees by the membership of the ecclesiastical Presbytery sitting as the membership of the corporate Presbytery after nomination by the Committee on Nominations of the ecclesiastical Presbytery.

A not-for-profit corporation in New York is managed by its board of directors except as otherwise provided in the certificate of incorporation, as provided in section 701 of the New York Not-for-Profit Corporation Law. See also Weiss v. Opportunities For Cortland Co., 40 A.D. 2d 45, 47 (3d Dept. 1972). The certificate of incorporation of the Presbytery's civil corporation is the certificate of merger filed March 5, 1980 by which the constituents forming such corporation were merged. This certificate contains no provisions in any way shifting the governance of the

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corporation from the board of trustees of the corporation. Unless the certificate of incorporation were amended to transfer specific powers of governance to other bodies - such as to the members of the Presbytery or to the Council on Administrative and Support Services - those powers of governance would remain with the Board of Trustees.

Hence, unless the certificate of incorporation is amended to provide otherwise, the Board of Trustees would retain the power to determine the funds which are to be included in the Presbytery's investment fund and to determine the portion of the investment fund which can be annually withdrawn for budgeted operations. The trustees' determinations in this regard would be within their general authority to manage the affairs of the corporation, and the ecclesiastical presbytery or its committees would not have legal authority to countermand such determinations. As noted above, to transfer this authority to, for example, the Council on Administrative and Support Services would require an amendment to the certificate of incorporation.

In this connection we reviewed various provisions of the Book of Order, to which the Presbytery is subject. We did not find any provisions in the Book of Order which would alter our conclusions above. It does not appear that a presbytery is required to incorporate or operate through a corporation under the Book of Order, although the Book of Order provides that "whenever permitted by civil law, each particular church shall cause a corporation to be formed and maintained" (G-7.0401). The presbyteries are accorded substantial authority and responsibility under the Book of Order. The governing body of a presbytery is charged with preparing a budget for operating expenses, including administrative personnel, and raising per capita funds among the churches within its bounds (G-9.0405). Further, a presbytery is responsible for the mission and government of the Church throughout its geographical district, including coordination of work and guidance of member churches, pastoral care, ordination of ministers, serving in judicial matters, relationships with higher governing bodies and to establish and superintend agencies necessary for its work (G-11.0103).

We also considered possible court decisions which might relate to these issues. A parallel offering guidance, although not entirely analogous, is the respective roles and powers of the board of directors of an incorporated union and the delegates representing its members, all operating under the constitution of the union. In Simoni v. CSEA, 133 M.2d 1, 9 (Sup. Ct. Albany Cty), a case presenting such an issue, the court stated in part as follows:

**** [T]he law has long been settled that once a union decides to incorporate it is subject to New York State's statutes controlling corporate activity irrespective of any countervailing union policy, (Kunze v. Weber, 197 App Div 319). Not-for-Profit Corporation Law §701 clearly and unequivocally states that a corporation, such as CSEA, is to be managed by its board of directors unless the

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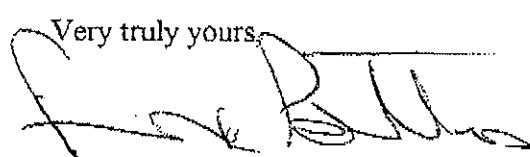
certificate of incorporation otherwise provides, which is not the case here. ... CSEA's board of directors has the power and duty to manage the general affairs of the corporation, and any attempt by the delegates to place general management responsibility in another person without so specifying in the certificate of incorporation would be a violation of Section 701, Polchinski Co. v. Cemetery Floral Co., 79 AD2d 648; Weiss v. Opportunities for Cortland County, 40 AD2d 45. On the other hand, the board of directors must conduct its management within the framework of the union's constitution and by-laws, which constitute a contract between it and the general membership, Ballas v. McKiernan, 41 AD2d 131, aff'd 35 NY2d 14; Republic Corp. v. Carter, 22 AD2d 29, aff'd 15 NY2d 661. Failure of a board member or officer to comply with CSEA's constitution and by-laws could be a ground for removal for cause."

The Court went on to note that the delegates (members) had the power to elect directors, remove directors and amend the certificate of incorporation (as is the case here), all of which are avenues available to restrict the power of or remove trustees if the members consider that the trustees are not acting consistently with the Book of Order or the best interests of the presbytery.

In conclusion, the Board of Trustees of the Presbytery's civil corporation has the legal authority, under the certificate of incorporation and pursuant to New York law, to determine the funds to be included within the Presbytery's investment fund and to determine the portion of those funds available for annual budgeted operations. At the same time, the trustees should bear in mind in making their determinations the responsibility of the ecclesiastical Presbytery under the Book of Order to prepare a budget for the presbytery and its general responsibility for the mission of the Church in its district.

Please call me with your comments and questions

Very truly yours,



Frank Patton, Jr.

cc: Reade Ryan