

## RELEGATION OF A CHURCH TO SECULAR BUT NOT UNBECOMING USE

### 1. Process used to “close” a church building.

**Canon 127§2** When it is established by law that in order to place acts a superior needs the consent or counsel of certain persons as individuals:

1/ if consent is required, the act of a superior who does not seek the consent of those persons is invalid.

2/ if counsel is required, the act of a superior who does not hear those persons is invalid.

**Canon 1222 §1** If a church cannot be used in any way for divine worship and there is no possibility of repairing it, the diocesan bishop can relegate it to secular but not unbecoming use.

**Canon 1222§2** Where other grave causes suggest that a church no longer be used for divine worship, the diocesan bishop, after having heard the presbyteral council, can relegate it to secular but not unbecoming use, with the consent of those who legitimately claim rights for themselves in the church and provided that the good of souls suffers no detriment thereby.

The DECREE again points out the limitations of the letter 12 March 2009 that the Bishop of Cleveland intended to be a form of decree and have juridic effect since the Chancellor was required to affix her signature to it. While this letter is not available here, the DECREE stated that if it was intended to be used to “close” the Church of St. James it omitted any specific reference to the relegation of the church to secular but not unbecoming use, or to the canonical process required by canon 1222§2. This canon covers situations of grave need when the church still is able to be used for divine worship or when it is possible to restore it to such use.

While the acts are not available here, the DECREE stated that it is apparent (from these acts) that the Bishop of Cleveland did in fact arrive at a decision to implement the effects of the process envisioned by canon 1222§2 without fulfilling its procedures. The letter from the Bishop of Cleveland was quite specific, indicating that the Church would not be used after the “suppression” of the parish. In doing so, an essential element for the validity of the relegation of a church to secular but not unbecoming use was omitted. Specifically, the Bishop of Cleveland did not engage the required consultation of the Presbyteral Council regarding the matter as required for the act to be valid.

The DECREE emphasized one particular element of the process required to relegate a church to secular but not unbecoming use, namely, the consultation of the Presbyteral Council. However, the diocesan Bishop must observe all the requirements of the law. He must:

- 1.) Determine if there is a grave reason to close a church.
- 2.) Consult the Presbyteral Council for his act to be valid,
- 3.) Have the consent of those who legitimately claim rights for themselves in the church for his act to be valid.
- 4.) Determine that the good of souls would not be harmed.
- 5.) Determine that the proposed use of the place will not be unbecoming, which judgment should be made in keeping with cultural variables and local circumstances.

Those who could lawfully claim rights for themselves in the church would in every case be the juridic person or persons who own the church property. For example, when a parish owns the church building and the land on which it was built, the Bishop would have to obtain the consent of the Pastor (canons 515, §3; 532) to implement canon 1222§2. A physical person might also be able

to claim rights, e.g., a major donor to the church whose donation was accepted on the condition that the church would continue in use as a sacred place for a certain period (canon 1284, §1, 3°).

The DECREE references a letter dated 8 September 2009 (Prot. N. 20092603) sent to the Bishop of Cleveland advising him of shortfalls in his process and documents. The Bishop of Cleveland refused to clarify the matter either by allowing the Church to remain open or by following the procedure for relegation. By the law itself, such an omission renders invalid the decision by the Bishop of Cleveland to permanently close St. James Church and its simultaneous relegation to secular but not unbecoming use.

## 2. Reasons no longer to be used to “close” a church building.

The Apostolic Signatura recently publicized its preference for keeping churches open. Usually permission for such closure is now being denied. The hierarchical court typically informs the bishop of this fact rather quickly which precludes a formal hearing. This happened in the Diocese of Allentown. The authority of the Bishop to suppress and merge parishes continues to be upheld. The permission to relegate the churches to secular but not unbecoming use has generally been denied. As a result, the Churches remain open for worship and devotional services; now called worship sites or some other name. The Apostolic Signatura intends that regular worship take place in the Church and the people be afforded access for devotional services. The Church retains its original name. The plan by the Bishop to sell the churches was now impossible. The plan to make money from the sale of these buildings became instead a responsibility to spend money to maintain them into perpetuity.

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The two paragraphs for canon 1222 require grave cause for relegating a church to secular but not unbecoming use. The possibility envisioned in canon 1222§2 must rise at least to the level of the causes in canon 1222§1. The sacred character of a place for Divine worship requires that it remain a holy place, and not sold to the highest bidder.

Jurisprudence on the question of church closings is developing rapidly. This year the topic is receiving considerable attention during the US bishops’ *ad limina* visits to the Holy See. Both the Congregation for Clergy and the Apostolic Signatura now make a clear distinction between the legitimate reasons to merge parishes and legitimate reasons to close a church. No longer considered legitimate reasons for closing a church are:

1. The shortage of priests
2. The church is in close proximity to another church.
3. The church is no longer considered necessary for worship when a parish is suppressed or merged.

4. The maintenance for a building no longer needed as a church for Divine worship is a financial burden to the parish.

The Holy See recognizes the possibility for a parish to have more than one church, and in certain instances for a church to exist apart from a parish. And finally, while worship may not be celebrated on a weekly basis within a church, the edifice is to be maintained for the good of the faithful.

Recognition of the permanence conferred by dedication of a space to sacred use, once called “consecration” and now called “dedication” trumps the merely utilitarian values of cost-savings and need. The Holy See now requires a bishop demonstrate substantially grave reasons to overturn the act which permanently handed that space over to Divine worship.

The above facts have serious implications for the Bishop of Cleveland should he decide to enact the implications of the DECREE. The Presbyteral Council would be wise to pay attention to these implications when they give their counsel to the Bishop of Cleveland. It would be prudent for all to take into consideration the preference of the hierarchical courts and the consequences of their directives concerning closing churches. More than likely these courts will be consistent in their directives should they be asked to evaluate decisions made by the Bishop of Cleveland concerning the churches of the thirteen (13) parishes.

When seeking advice from the Presbyteral Council, the Bishop of Cleveland might suggest clustering as a better option for reconfiguration of the thirteen (13) parishes. The study “*Vibrant Parish Life*” initiated years ago was intended to study the vibrancy of parish communities and to promote the vibrancy through consolidating resources.

Clustering is the most common structure to “share resources among parishes”. The parishes that are clustered all remain in existence: they remain independent juridic persons according to the law. As a cluster they share resources. These could include, but are not limited to, the sharing of human resources, such as one priest, one principal, one Parish Administrator, one DRE, one secretary, etc for overall parish governance. Sometimes, especially in rural areas, there is a lay administrator (religious sister, lay woman, lay man) appointed by the bishop, as the Director for Parish Life, to manage the day to day operations and ministries; with one or more priests assigned to supply the sacramental needs for all of the parishes that form the cluster.

In addition, various leadership models should be considered, as canon law allows, considering the appointment of pastoral teams led by one priest, and/or the appointment of Parish Life Coordinators to administrate local parish communities under the appointment of one canonical pastor. Such options, including clustering, provide viable options to the problem of declining numbers of the clergy and the ratio of priests to the Catholic faithful. Most important, considering all options, as law allows, promotes and protects existing vibrant parish communities. The Cluster model for parishes engages the laity to be more involved in the administration of their parishes. Parishes that are clustered all remain in existence: they remain independent juridic persons in the law. In clustered parishes the Churches remain open and are used for regular worship and devotional services. The clustering model does not provide a provision for church buildings to be abandoned and sold.

Since the hierarchical superiors and hierarchical courts for the most part do not support relegating churches to secular but not unbecoming use, it would seem imprudent for the Bishop of Cleveland to use his authority to suppress parishes with the unfortunate side-effect of opened

church buildings that are no longer supported by former parishioners; that would require ongoing preventive maintenance, absorb assets, and not be used to their full capacity. If these buildings are not used for religious purposes, they become a taxable liability, and owners would be required to pay property tax to the civil authorities. Utilizing these buildings for other purposes to generate income could result in fines associated with Pastors or Administrators that are not familiar with current tax code attached to unrelated business income. This would only add to additional financial stress.

(Excerpt from "Commentary" by Sr. Kate Kuenstler)

*Sister Kate Kuenstler PHJC, JCD received her doctorate in Canon Law from the Pontifical University of St. Thomas Aquinas in Rome, Italy. She also has a BA in education, and an MA in theology. Sister Kate comes with a background as a former diocesan tribunal lawyer, teacher, parish catechetical director, and diocesan director of religious education. She is a writer for the catechetical program, "Seasons of Faith" and is published in Italy, England, Germany, and the United States. Sr. Kate recently moved to Rhode Island where she has opened a private practice. Her focus is working for the rights of laity and their role in the Catholic Church.*

*Sr. Kate assisted several parishes in Cleveland whose appeals were upheld by the Congregation for the Clergy effective 3/1/2012. She has also successfully assisted other parishes around the US with their appeals to the Vatican.*

*Sr. Kate is the author of the canonical information FutureChurch sent to all appealing Cleveland parishioners when they first learned of the closings and mergers on March 12, 2009. For the next several months FutureChurch distributed a steady stream of canonical information from Sr. Kate to parishioners trying to discern whether or not to appeal their parish's closing/merger or not.*

*Thanks for your interest in this important matter affecting the rights of Catholics in the Church*

*Sr. Chris Schenk CSJ*

**About FutureChurch** Headquartered in Cleveland, Ohio, FutureChurch is a national coalition of 3,500 parish centered Catholics striving to educate fellow Catholics about the seriousness of the priest shortage, the centrality of the Eucharist (the Mass), and the systemic inequality of women in the Catholic Church. FutureChurch makes presentations throughout the country, distributes education, advocacy and prayer resources and recruits activists who work for changes that will provide all Roman Catholics the opportunity to participate fully in Church life and leadership.

**FutureChurch \* 17307 Madison, Lakewood, OH 44107 \* 216-228-0869 \*[info@futurechurch.org](mailto:info@futurechurch.org)**