

Archdiocese will argue assets are parish-specific

If 10 test cases fail, a bankruptcy judge could open parish property and cash to sex abuse claimants
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The Oregonian

Sunday, January 30, 2005

<http://www.oregonlive.com/news/oregonian/index.ssf?/base/news/110700371120660.xml>

The 450 families of St. Mary, Our Lady of the Dunes Catholic Church in Florence, have no doubt that the parish belongs to them.

The congregation dates to at least 1949, when the parish priest in Reedsport made monthly trips to Florence to celebrate Mass in people's homes. Since then, the church has been housed in an American Legion hall, the upstairs of Cooper's Mercantile Store and a 20-by-50-foot donated building that had to be trucked to a previous site in 1953.

Today, parishioners have pledged \$1.9 million toward a major building expansion, said Ken Janowski, fund-raising chairman.

There's just one problem: The parish might not actually exist -- at least legally. If that's the case, St. Mary's could see \$1.5 million in property, cash and savings used to help settle a staggering \$534 million in claims against the bankrupt Archdiocese of Portland for alleged clergy sexual abuse of at least 72 men and women.

As a result, the building expansion, which had gone out to bid, is on indefinite, and perhaps permanent, hold.

That's why St. Mary's, 123 other parishes, 24 missions and 44 Roman Catholic schools in Western Oregon -- as well as the archdiocese itself -- are scrambling to prove that parishioners never intended for their money to be used for any purpose other than to build and operate their parishes and schools.

The parishes have undertaken "an unprecedented factual inquiry" into their histories, Douglas Pahl, an attorney for a group of 67 parishes, told Bankruptcy Judge Elizabeth Perris at a Dec. 28 hearing.

Each parish is combing through property, financial and contribution records, as well as collecting written and oral histories, to document the intentions of the people who built the parishes.

By Monday, the archdiocese must present the Bankruptcy Court with a list of 10 parishes that it intends to use as test cases. By April 4, the archdiocese must be prepared to argue that, based on the test cases, those parishes have a strong enough legal existence to claim they have a right to their own assets. A court hearing is scheduled for May 9.

If the archdiocese's arguments fall short, Perris could rule that all assets registered in the archdiocese's name belong unequivocally to the archdiocese. Such a ruling would make available to sex-abuse claimants about \$400 million in parish, school and cemetery real estate and more than \$100 million in cash and investments.

At that point, the archdiocese could continue to argue that it holds those assets in trust not for the parishes, but for individuals or organizations that donated toward specific purposes, such as a building fund.

Creditors of the archdiocese first raised the ownership issue in August, a month after the archdiocese became the first in the United States to file for bankruptcy in the wake of the national clergy sex-abuse scandal. Since then, the court has granted the archdiocese three delays in the ownership proceedings, the latest after church officials said it must consult property and finance records that fill at least 72 file drawers scattered among the archdiocese's East Portland Pastoral Center, its archive center and parishes throughout Western Oregon.

Says assets held in trust

The archdiocese acknowledges that it holds legal title to hundreds of millions of dollars in parish and school assets. But it contends it holds the assets strictly in trust for the benefit of parishes, according to both civil trust law and church law. Roman Catholic law recognizes parishes as separate entities.

In addition, the archdiocese argued that the Bankruptcy Court is prohibited from ruling on the property issue because the decision would illegally entangle the court in interpretation of religious law.

In November, the committee that represents sex-abuse plaintiffs asked the court to throw out several of the archdiocese's arguments, including the independence of the parishes and questions about the court's jurisdiction.

"Does the Catholic Church have the right to impose its internal rules on the state of Oregon and the United States of America?" Albert N. Kennedy, attorney for the committee that represents sex-abuse plaintiffs, asked during a Dec. 28 hearing. "That really is the threshold issue here."

Kennedy pointed out that the archdiocese has argued three times since 1979 that its schools have no separate civil legal existence -- a major departure from its current argument.

"A few examples will suffice to show how debtor is attempting to play 'fast and loose' with the court," Kennedy wrote in a legal memorandum.

In 1979, for example, the archdiocese won a dispute with the Oregon Employment Department, arguing that its school employees were exempt from unemployment taxes because the schools were intertwined with the archdiocese's corporate structure.

In 1990, in another dispute with the Employment Division, the archdiocese argued that its schools, as arms of the church, were not subject to Oregon employment law. The archdiocese lost the case after appeals that went to the U.S. Supreme Court.

In 1993, the archdiocese stopped a union from trying to organize some of its teachers, saying that the action would interfere with the archbishop's authority. The Oregon Supreme Court affirmed a decision in favor of the archdiocese, agreeing that the church was not subject to the jurisdiction of the Employment Relations Board.

Relying on church law

For their part, the archdiocese and its parishes say the crux of the issue is whether a parish has a sufficient identity to be the beneficiary of a charitable trust. In the Dec. 28 hearing, the archdiocese's expert on religious law, attorney Martin Nussbaum, said federal case law required the judge to consider all evidence, including internal church law, in determining the issue.

"This case is not only incredibly important to the individuals and the parishes and the schools and the students and the employees involved," Nussbaum told Perris, noting the national interest in the Portland case.

"It is also a case of first impression in the United States," he said, "and the court's decision on the parish property issues will have far-reaching effect, and it should be based on a thorough consideration of the totality of the evidence."

To help resolve the conflict over whether to consider church law, Perris ordered the archdiocese to study 10 sample parishes and present legal arguments by April 4.

If the Archdiocese of Boston is any indication, Portland may be in for a hard sell. Last year, Boston convinced the Massachusetts Supreme Court that a parish priest, as an agent of the archdiocese, held the parish's assets, not the parishioners. The decision affirmed the archdiocese's argument -- essentially the opposite of Portland's argument -- that the parish was an unincorporated subdivision of the archdiocese and that the archbishop had the authority to sell parish assets and take parish funds.

"The parishioners are concerned, very concerned that we're able to honor the way they donated their money," said John Rickman, spokesman for the Committee of Parishioners, which he said represents at least 55,000 practicing Catholics. "They've supported their parishes so they can carry on their mission. They have faith that this is going to work out."