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News Service of the Southern Baptist Convention

NATIONAL OFFICE  
SBC Executive Committee  
901 Commerce #750  
Nashville, Tennessee 37203  
(615) 244-2355  
Wilmer C. Fields, Director  
Dan Martin, News Editor  
Marv Knox, Feature Editor

### BUREAUS

ATLANTA Jim Newton, Chief, 1350 Spring St., N.W., Atlanta, Ga. 30367, Telephone (404) 873-4041  
DALLAS Thomas J. Brannon, Chief, 103 Baptist Building, Dallas, Texas 75201, Telephone (214) 741-1996  
NASHVILLE (Baptist Sunday School Board) Lloyd T. Householder, Chief, 127 Ninth Ave., N., Nashville, Tenn. 37234, Telephone (615) 251-2300  
RICHMOND (Foreign) Robert L. Stanley, Chief, 3806 Monument Ave., Richmond, Va. 23230, Telephone (804) 353-0151  
WASHINGTON Stan L. Hastey, Chief, 200 Maryland Ave., N.E., Washington, D.C. 20002, Telephone (202) 544-4226

May 8, 1986

86-68

Attorney Questions Whether  
SBC Constitution Enforceable

By Dan Martin

ATLANTA (BP)--The question of whether Southern Baptist Convention rules of procedure are enforceable underlies an appeal of a federal court decision favoring the SBC and its Executive Committee, according to an Atlanta attorney.

On May 5, Judge Robert Hall ruled in favor of the SBC in a lawsuit in the U.S. District Court for the Northern District of Georgia, saying the First Amendment to the U.S. Constitution prohibits him from intruding into the internal church matters of the 14.4-million-member Southern Baptist Convention.

On the following day, a notice of appeal was filed by attorneys for Robert S. and Julia Crowder of Birmingham, Ala.; Henry C. Cooper of Windsor, Mo.; and H. Allen McCartney of Vero Beach, Fla., who had brought the suit against the convention, complaining their rights had been violated by the ruling of SBC President Charles F. Stanley during the 1985 annual meeting.

"All the judge ruled on was that the First Amendment prohibited him from hearing the case," said John Floyd, an attorney with the Atlanta lawfirm of Bondurant, Mixson and Elmore, who represented the Crowders, Cooper and McCartney.

"He (Hall) did not rule on the merits of the case, and I would not expect the appeals court (the 11th Circuit Court of Appeals) to consider if Stanley were right or wrong, either," he said.

The attorney said a primary concern is that the order granting summary judgment to the SBC "appears to be very broad. We can only read between the lines, because he obviously did not stop to explain his decision and wrote only what he felt he had to say.

"We cannot predict how others will read this order, but it at least has the potential to be read very broadly. It may very well say the bylaws of the convention and the convention Constitution and Robert's Rules of Order are simply unenforceable," Floyd said.

Floyd said he is not predicting "arbitrary" rulings by SBC President Stanley, or others, at the 1986 meeting of the SBC, scheduled June 10-12 in the Georgia World Congress Center in Atlanta, but added: "There is, at least, the capacity for capricious activity.

"No one has said that will happen, and I hope it does not, but we recognize that after what happened last year in Dallas, the potential exists, no matter how good the intentions may be."

The Crowder lawsuit was based on the belief Stanley violated the SBC bylaws and Robert's Rules of Order while presiding at the Wednesday (June 12) session of the 1985 annual meeting, concerning the election of the SBC Committee on Boards, Commissions and Standing Committees.

The 1985 Committee on Committees, which had been appointed by Stanley, nominated 52 persons to serve on the 1986 Committee on Boards. An effort was made to amend the nomination by substituting a new slate of persons. Stanley ruled the effort out of order, but his decision was overridden by messengers present and voting Wednesday morning.

After the vote, the convention adjourned, and when it met again for the evening session, Stanley, on the advice of Parliamentarian Wayne Allen of Memphis, Tenn., ruled any effort to amend the report was out of order. He moved quickly to a vote, declining to recognize calls for parliamentary order. The slate of nominees for the Committee on Boards was elected by a majority of those present and voting Wednesday night.

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SOUTHERN BAPTIST HISTORICAL  
LIBRARY AND ARCHIVES  
Historical Collection, 1800-1950  
Nashville, Tennessee

The sequence of events was the basis of the lawsuit. The SBC and its Executive Committee, through attorneys James P. Guenther of Nashville, Tenn., and Griffin Bell of Atlanta, did not address the merits of the case but based the defense on the First Amendment to the U.S. Constitution.

Judge Hall agreed with the defense, ruling he was prohibited from dealing with the merits of the case because of the First Amendment requirements of separation of church and state.

"We continue to believe we are correct on the merits of the case," Floyd told Baptist Press. "We continue to believe it is not necessary for a court to address any question of theology to deal with the question of procedure. Robert's Rules can be used by the Boy Scouts, by any corporation or by virtually any group of more than one person. There is nothing about Robert that changes simply because the Southern Baptist Convention decides to use it."

The attorney added: "The defendants have never cited any Scripture or Baptist belief which aids in the understanding of Robert. No one ever cited any biblical passage which would explain Robert or the bylaws when they deal with whether nominations can be taken from the floor.

"This is not a theological question. There is no need for the court to interfere with any Baptist belief. It is clear a civil court has no right to interpret a question of belief and we know that, no question."

Floyd said, however, there is "nothing inherently theological in Robert's Rules. They are simply housekeeping rules."

He added the plaintiffs "do not want to imply the officers of the convention plan to ignore the rules and indulge in the kind of activity of Dallas. We hope these incidents won't repeat themselves, but because you can't predict the future and someone who wanted to act capriciously can apply the ruling there is the very real potential that the democratic process can be thwarted."

Floyd said he does not expect the appeals court to make any decision before the 1986 convention, but lifted the spectre of a convention without enforceable rules facing the potential of 50,000 to 70,000 messengers who will assemble in Atlanta.

"You are a society unto yourself for three days. People come together to get things done. A considerable amount of the work done (at the convention) is business. There is praying and preaching and singing, but a lot of it is just like the things done by corporations around the world on a daily basis.

"You will be bringing 50,000-plus people together to do business. Where can you go if the rules don't mean anything? What can happen if there are no enforceable rules for them (messengers) to conduct themselves by?"

Floyd said the SBC and its attorneys have done an admirable job of spelling out why civil courts should not be involved in theological aspects, but added: "What they haven't done is deal with what happens when the rules are unenforceable. People have the right to have the votes conducted properly and to be heard when they raise a question properly. When you can't do that, you have the potential for a breakdown, and that potential is elevated when you have that many people who have strong feelings."

The attorney said the issue "concerns me from a legal perspective, but also concerns me from another area. An organization the size of the SBC needs rules and they must be rules people can rely on and be sure they are going to be followed."

He concluded: "The ruling leaves at least the possibility of allowing some people to say there is no enforcement mechanism. If the rules are unenforceable, it is hard to call them rules. It is especially hard to expect people in the heat of things to be obligated to follow them."

IRS Announces New Procedure  
For 'Integrated Auxiliaries'

By Kathy Palen

WASHINGTON (BP)—The Internal Revenue Service has announced a new revenue procedure that will exempt certain church-affiliated organizations—or "integrated auxiliaries"—from filing annual financial information returns.

The revenue procedure establishes an additional class of organizations—affiliated with a church, convention or association of churches and exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code—that is not required to file Form 990, "Return of Organization Exempt from Income Tax."

Under the procedure (Rev. Proc. 86-23), the IRS will use a two-pronged mechanical test to determine whether an organization fits within the new class. An organization will be exempt from filing unless it both offers goods or services for sale to the general public other than on an incidental basis and receives more than 50 percent of its support from those sales and/or government support.

The new procedure will supplement a current regulation that requires a church-affiliated organization to pass a three-part test to be considered an integrated auxiliary and thus exempt from filing Form 990. That test requires an organization be tax exempt under section 501(c)(3) of the Internal Revenue Code, be affiliated with a church, convention or association of churches, and have a principal activity that exclusively is religious.

"It is important to remember that this revenue procedure creates an additional class of organizations that are exempt from filing Form 990," said Oliver S. Thomas, general counsel for the Baptist Joint Committee on Public Affairs. "Thus organizations that might not satisfy a strict application of the new procedure may still claim the exemption for 'exclusively religious organizations' under the existing regulations. This should alleviate the concerns of the (Southern Baptist) Sunday School Board and other religious publishers who had some reservations about the new procedure."

Questions about integrated auxiliaries of churches arose following congressional approval of the Tax Reform Act of 1969. During its revision that year of the Internal Revenue Code, Congress removed tax exemption of churches' unrelated business income, a move endorsed broadly in the religious community.

In doing so, Congress determined that all 501(c)(3) organizations, including religious organizations, must file financial information returns. In response to churches' arguments that such a requirement would constitute government involvement in internal church affairs, Congress initially agreed to exempt churches and conventions or associations of churches.

And in response to a Utah senator's concern that some units in the Mormon church known as "auxiliaries" be included in the exemption, the Senate added that word to the measure. Still later, when a conference committee met to hammer out differences between the House and Senate versions of the bill, the qualifying word "integrated" was added, making the final version read, "churches, their integrated auxiliaries, and conventions or associations of churches."

Because the term "integrated auxiliaries" was not the subject of extensive hearings or debate, application of its meaning was left to the IRS. To determine which church organizations were to be recognized as integrated auxiliaries, the IRS in 1977 instituted its three-part test.

Under the "principal activity" part of that test, the IRS did not consider an organization's principal activity to be exclusively religious if that activity itself would have qualified the organization for tax exemption under section 501(c)(3). That interpretation meant an organization—such as a denominational children's home, retirement home or college—that could qualify on its own for tax-exempt status was not considered an integrated auxiliary of a church body.

In response to the integrated auxiliary issue, the late John W. Baker, then with the Baptist Joint Committee on Public Affairs; Frank Ingraham, a Baptist attorney from Franklin, Tenn.; and representatives from several other church groups collaborated to form an ad hoc committee on church taxation. That committee eventually developed into a coalition of 36 religious organizations that worked with the IRS to reach a new regulation.

The most visible Southern Baptist battle against an IRS integrated auxiliary ruling is a case involving the Tennessee Baptist Children's Home, Inc. Following an IRS decision that the institution is not exclusively religious, Tennessee Baptist Children's Home and the Tennessee Baptist Convention executive board filed suit against the IRS in federal court. A district judge in 1984 ruled in favor of the Tennessee Baptist organizations. That decision now is under appeal.

Ingraham, attorney for the Tennessee Baptist Children's Home, said the new revenue procedure is significant because it reflects "quite a change from the court position" the IRS took against the Tennessee institution. He said a Justice Department attorney representing the IRS argued during the appeals hearing that "religious activity is limited only to the conduct of worship."

Ingraham also pointed to a statement made by the IRS in announcing the new procedure. That statement reads, "Generally, organizations excused from the filing requirement are the internally supported affiliates of churches or conventions or associations of churches."

"There is a world of difference between those two positions," Ingraham said. "The real issue is that the church is not limited to its 'format of public worship' in regard to its missions and activities."

Thomas called the new procedure "a real breakthrough in our relations with the IRS." He added, "We appreciate the service's willingness to enact this administrative compromise, but realistically it probably would not have happened without the pressure created by the litigating successes of Baptist attorneys Frank Ingraham and John Stophel in the Tennessee Baptist Children's Home case."

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Hunger Crisis Threatens  
Haitian Countryside

By Erich Bridges

Baptist Press  
5/8/86

PORT-AU-PRINCE, Haiti (BP)—Hunger in Haiti's countryside could reach a crisis stage if relief aid, including food sent by Southern Baptists, doesn't reach isolated areas soon.

Southern Baptist missionary Jack Hancox was waiting at the end of April for a shipment of food paid for with Southern Baptist hunger funds. But he said he wasn't quite sure how he would distribute it when it arrived. Many roads to the countryside have been washed out by recent heavy rains; others are periodically blocked by protest demonstrations and burning tires as the nation struggles for stability.

Hunger is nothing new in Haiti, the poorest nation in the Western Hemisphere. But it could become much worse if normal commerce doesn't resume soon.

The worst threat hangs over isolated rural areas, where the rains and food distribution problems have compounded widespread economic disruption. Hancox, a veteran missionary who works with Haitian Baptists in a variety of social ministries, reported "two or three areas where there is extreme hunger. But I have not heard about anyone starving to death." None of the international relief agencies in the country has sounded a famine alarm yet, he said.

However, the United Nations Disaster Relief Organization has declared Haiti is in a "state of extreme need" and issued a call for international humanitarian aid. In April the U.S. government pledged an additional \$10 million for emergency food and urged other governments and relief agencies to respond to Haiti's need for immediate help and long-term development.

Looting still threatens relief efforts. Church World Service lost two relief trucks to hijackers recently, Hancox reported, and machete-wielding mobs have assaulted that agency's food warehouse three times. Baptist warehouses were looted repeatedly during the height of the unrest leading to the downfall of "president for life" Jean-Claude Duvalier.

"I'm a little nervous about it because I don't want to keep (the new food shipment) out in my warehouse and have everybody find out about it," said the missionary. "But we need it because of the terrible hunger up in the mountains. So that's a chance you've got to take." He said he would seek police protection for Baptist food distribution efforts.

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Hancox and his wife, Doris, added that other Baptist social ministries, such as well-drilling, are continuing relatively normally. The missionaries are moving about freely in Port-au-Prince, though they're avoiding crowds.

One volunteer medical team from the United States recently canceled its visit to Haiti because of transportation problems in the countryside and the current tension. But Hancox said several other Southern Baptist volunteer teams are still scheduled for work in Haiti this summer.

A military-civilian council is in charge of the government on an interim basis until new elections are held and a new constitution drafted. But violence, strikes and economic disruption have continued.

"The sad thing is that many of the businesses that really would like to raise salaries have lost so much business since November that they're laying people off," Hancox said of the situation in the capital. "And if they (the people) don't calm down and let people who have jobs work, let the factories that are still in business get out their orders, we're really going to be in a mess."

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CORRECTION:

In the May 2, 1986, article entitled, "Volunteerism Makes Impact On Kansas-Nebraska Baptists," please substitute the following for the 12th graf which begins, "Ingathering had been humbling...":

Speaking during the monthly Sandhills Rural Ministry Ingathering, Lewis said the experience had been humbling. "We forget some of the early beginnings of our churches. They don't have the material provisions that some of our churches do, but the spirit is good."

Thanks,  
Baptist Press

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CORRECTION:

In BP story "'Less Pronouncements, More Commitments,' Moore Tells Virginians," mailed 5/7/86, please correct sixth paragraph to reflect the correct size of First Baptist Church of Amarillo. The church has 10,000 members, not the 1,000, as sent.

Thanks,  
Baptist Press

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901 Commerce #750  
Nashville, Tennessee 37203

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HISTORICAL COMMISSION  
901 COMMERCE  
NASHVILLE, TN 37203