White Paper: Are Resolutions of General Convention Binding?
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The question of whether resolutions of General Convention are binding is one that is asked in a variety of contexts. It may be a question of whether it is worthwhile to consider resolutions if they will not be binding. Or it may be a question of what the difference is between a Canon and a resolution in terms of whether clergy or church organizations are required to follow the Canon or resolution. Or, it is sometimes a question of whether a clergy person can be disciplined for violation of a General Convention resolution under our ecclesiastical disciplinary system contained in Title IV of the Canons.

There is nothing in the Constitution, Canons, Rules of Order or even General Convention resolutions giving guidance or instruction on the question of whether resolutions of General Convention are mandatory. So, we must look elsewhere for things that may help us. As with many questions of a legal or quasi-legal nature the answer is, "It Depends." It depends on the type of resolution. It depends on the context the question is being asked in. It depends on the exact language of the resolution.

There is no official list of types of resolutions but the following list is one I find helpful in considering this and other questions. Generally, there are four types of resolutions considered by General Convention. Resolutions that:

> Change the governing documents including the Constitution, Book of Common Prayer, Hymnal, Canons and Rules of Order;
> Provide for funding of various bodies or activities and ultimately the Budget resolution itself;
> Adopt a position on an external issue such as a social justice issue or other issue of national or international concern such as war, birth control, the environment, or tax policy; or
> Articulate the Episcopal Church's position on an internal issue such as the ordination of GLBT persons, non-discrimination in hiring lay people in the Church, recommending certain employment practices for the Church or regarding the adoption of sexual misconduct policies and training.

If the question is "What position should the Office of Government Affairs take on a proposal before Congress to allow drilling in the Arctic National Wildlife Refuge (ANWR)" you would look at resolutions of General Convention on the environment or public policy positions, for example. If there is a clear statement of General Convention's position, that is the one that the Office must take. If the question is "Can a clergy person be disciplined under Title IV for expressing an opinion that drilling in ANWR should to be allowed" the answer may be different. The resolution may require the Office of Government Affairs to act a certain way but not require individual clergy or lay members to follow it.

The language of the resolution itself is usually the clearest indicator of whether a resolution is mandatory or "recommendatory." Drawing on the rules of interpretation lawyers and judges use to determine the meaning of legal documents such as statutes or contracts the following words generally indicate something is intended to be mandatory:

> Shall
> Must
> Require
> Mandate
> Command
> Decree
> Order

Other words usually indicate something is not mandatory but optional or "recommendatory":

> May
> Urge
> Encourage
> Request
> Consider
> Recommend
> Suggest
> Commend

So, a resolution that says, "we urge dioceses to X" will generally be recommendatory while a resolution that says "dioceses are required to Y" will be mandatory.

There is some guidance available on this question from an Opinion of The Court for the Trial of a Bishop in the Case against The Rt. Rev. Walter Righter for the ordination of a non-celibate gay man.* Bishop Righter was charged, among other things, with violating the "Doctrine" and "Discipline" of the Church for acting contrary to a resolution of General Convention which reaffirmed the Church's traditional teaching on sexual expression outside of marriage. The resolution said, in part, "we believe it is not appropriate for this Church to ordain a practicing homosexual or any person who is engaged in heterosexual relationships outside of marriage." Resolution A-53s, *Journal of General Convention of the Protestant Episcopal Church in the United States of America* (New York: General Convention, 1979) C-89-C-93. The Court held that the resolution was not binding because it contained "advisory" language. It stated, "that this General Convention *recommend* to Bishops, Pastors, Vestries, Commissions on Ministry and Standing Committees, . . ." It was "clearly recommendatory and therefore not binding on members of this Church for the purpose of canonical discipline under Title IV." The Court also stated:

> General Convention has the authority to pass Canons which are binding, and could, perhaps, adopt resolutions which clearly declare themselves to

be mandatory, and which call for specific penalties when they are disobeyed.

Opinion In the Court for the Trial of the Bishop, Stanton v. The Rt. Rev. Walter C. Righter, p. 19.

The context for the Court's statement was to determine whether a clergy person could be disciplined under the Church's ecclesiastical disciplinary Canons in Title IV for acting contrary to a General Convention resolution. The exact language of the resolution and the purpose the question was being asked were both important in the Court's decision.

So, as you consider whether a resolution of General Convention is mandatory, look at the type of resolution it is, why the question is being asked, the exact language used, and the context.

* An Opinion of The Court for the Trial of a Bishop is not the ultimate authority in the Episcopal Church as is an opinion of the Supreme Court of the United States. The Constitution of the Church says that General Convention may create a Supreme Court but so far in its nearly 225 year history has not chosen to create one. That means that General Convention is the ultimate authority when it comes to questions of this kind.