

ARIZONA LAWSUIT FINALLY SETTLED

Throughout the history of the Seventh-day Adventist Church, this is the first instance in which one denominational entity has sued another. In the fall of 1992, the Arizona Conference filed suit against Adventist Health Systems/West.

We have written about this suit in earlier years. In this present study, we will again review details of this litigation, which has been so complex, lengthy, and expensive. Fortunately, we now are able to tell you the outcome—for the suit has finally been settled.

With no plans to start something that would end up as precedent-setting Adventist history, a young man moved his family to Arizona in 1936.

Earnest E. von Pohle had just graduated from the College of Medical Evangelists (now Loma Linda University), and, arriving in Tempe, Arizona, began a medical practice. Gradually, his private practice developed into a clinic, which in 1944 became the Tempe Clinic-Hospital. On March 2 of that year, it opened as a ten-bed hospital. Later it became the Tempe Community Hospital and was incorporated with nine on the board.

In 1961, he donated the hospital to the Arizona Conference. At which time its name was changed to the Tempe Community Hospital, and it operated under the conference as a medical institution of the Seventh-day Adventist denomination. (This legal transfer, incidentally, occurred simply by expanding the board and placing enough denominational officers on it to give the church a majority vote. The same pattern, earlier applied to the Voice of Prophecy, transforming it into a denominationally owned radio broadcast.)

All went well for this new addition to the Arizona Conference and; as the years passed, a fair amount of growth at the hospital was made. Subsequent additions of land and buildings had eventually brought it up to a 110-bed

capacity. That is a good-sized hospital! It had 30 physicians on the active medical staff, while the combined courtesy and consulting staffs included 140 physicians. There were 180 employees and 50 volunteers. Because Tempe was next to Phoenix, it was able to help serve one of the largest metropolises in the southwest.

But, then in 1973, although not clearly recognized at the time, everything changed.

During the 1972 Autumn Council (now called the Annual Council), the General Conference voted that medical care within the respective union conferences be reorganized into multi-hospital systems under the control of a central corporation for each union. It is now widely recognized by our leaders that that action was a mistake. Although made at the insistence of certain men in the interest of "saving money," it has brought massive overspending, bond floating, and immense debt to our denomination. The whole thing has been a great tragedy, which could eventually cause us to lose many of our church properties when the debtors foreclose on us. Instead of smaller institutions, closely managed by men located right there, immense fleets of hospitals and allied care facilities were placed under the control of a single committee! In this manner, each little mistake could compound into terrible blunders affecting many institutions—especially when, in the 1980s, those small committees decided to use the properties as leverage to float bonds and borrow all kinds of money to build, invest, and expand (see our *Medical/Publishing Tractbook* for a historical overview of those wild years).

In agreement with that 1972 council decision, such an organization was established in the territory of the Pacific Union Conference, and was given the name, "*Pacific Union Conference Adventist Health Services, Inc.*" Later the name was changed to "*Adventist*

Health Systems/West," or, simply, *AHS/West.*

Each Adventist hospital corporation within those western states was then asked to transfer itself to the new giant conglomerate. Because conference and union personnel had a majority of the seats on the board of each denominational institution, it was relatively easy to obtain a majority vote of approval. For this reason, it has been claimed that "the hospitals voted to do it." Yet the fact was that, in each instance, the union conference president controlled the board and its decisions, since he and his subordinate workers had majority control of each board.

On January 31, 1973, the Tempe Community Hospital held its board meeting and, according to the minutes, Elders Walton and Bietz, representing the Pacific Union and AHS/West, presented a report describing the proposed changeover. Vigorous discussion followed! There were those (Eddlemon and Price) who did not want the hospital given to some faceless, out-of-state, monolithic organization. But they were a tiny minority on the board. Everyone else remained in lock-step, and the vote was 22 to 2, in favor of the transfer.

Yet was there a full "transfer" of hospital ownership in any of the actions taken in that meeting? Second, did the hospital board totally change at that time? Later in this study, we will learn that, to this day, both questions are still controverted.

According to AHS/West, the motions passed at that meeting stated that a new constituency was to be named, at which time the transfer to AHS/West would be completed. In contrast, according to attorneys representing the Arizona Conference, there is no indication of that in the minutes of that meeting. AHS/West steadfastly maintained that it became the sole owner of the Tempe Hospital, as a result of that January 31, 1973, board action. The Arizona Conference said it never

relinquished the right to control the membership of the constituency, and that the meeting only provided for pooled purchasing and management responsibilities. AHS/West disagreed.

However, it does appear that, for practical purposes, the working control of the hospital was given into the hands of a group of men in an office building in Roseville, near Sacramento, California.

Newly formed AHS/West quickly had so many hospitals handed over to it, that it could hardly keep track of where they all were, much less “manage them.”

On July 31, 1973, the AHS/West board got around to giving its attention to Tempe Hospital, and it is said to have elected a new board to manage that hospital. This board was also called the “Tempe Community Hospital Board.” We will find that it has had an unusually long existence, having already outlived the hospital by thirteen years!

By the late 1970s, AHS/West was busily engaged in making big hospital acquisitions and sales, and borrowing money and spending it. Big time expenditures and an ever-tightening financial picture became the order of the day at AHS/West—and all the other AHS entities throughout North America. We have written extensively on all this. You owe it to yourself to read it! (See our *Medical/Publishing Tractbook*.)

As the 1980s began, our “Health Systems” began moving into corporate jets and similar high-priced expenditures, to help their beleaguered executives run from hospital to hospital. A frenzy of growth occurred in the early 1980s throughout our Health Systems, which ultimately led to the massive indebtedness which still hangs relentlessly over them—and our entire church in the United States.

It 1981, AHS/West turned its attention again to little Tempe. What good was that hospital to illustrious AHS/West? Helping people out in the desert somewhere; surely, the money could be better spent someplace else.

So AHS/West sold our hospital—Tempe Hospital—to the Catholics.

In 1981, it was given to St. Luke’s Hospital for about \$10 million. St. Luke’s

Hospital was located in nearby Phoenix. After acquiring it, they renamed it “Tempe St. Luke’s Hospital.” It is there today in Tempe, Arizona, if you want to stop by and see it. Go to 1500 South Mill Avenue.

So that is what happened to that money which eventually led to the lawsuit.

As with many other items of history, the Arizona Conference and AHS/West differ on what happened next. From official statements made by both sides, we glean the following:

Arizona Conference: Proceeds of the sale were dedicated to the establishment of a new medical and/or health facility in Arizona and placed in a trust fund under AHS/West management. AHS/West sent monthly statements to the conference, notifying them how much was in the trust fund. By June 30, 1988, it had grown to \$12,941,647. Throughout that entire time, the conference believed that those funds would only be spent on another hospital or similar outreach in Arizona.

AHS/West: Immediately after the sale, AHS/West hired consultants to help it decide how to spend the money, and they sold it in order to invest it in retirement centers and skilled nursing home facilities in Arizona. AHS/West began acquiring land for that purpose.

Arizona Conference: Without telling the Arizona Conference what was taking place, AHS/West then transferred some of those dedicated funds to Pacific Living Centers, *after* it had begun to experience financial losses. This should not have been done. Later, against the objections of the conference administrators, all the remaining money in the Tempe Hospital Fund was transferred out of it.

AHS/West: AHS/West decided to reinvest the money in facilities in Arizona. They decided to do this through Pacific Living Centers. This was a wise decision. Pacific Living Centers would own and operate these Arizona facilities, which would result from: (1) the loan of AHS/West funds for working capital, (2) donation of land already purchased by AHS/West, and (3) construction of the facilities by \$40 million

borrowed by AHS/West from banks and the sale of bonds.

Elders Frank Sherrill and Tom Bledsoe, president and secretary-treasurer of the Arizona Conference, actively cooperated in the entire procedure, since they were on the board of Tempe Community Hospital [which still existed, even though the hospital was gone]. In addition, Bledsoe was on the Pacific Living Centers board. The two of them supported every action taken up to 1990.

AHS/West: It eventually became apparent that, despite the counsel of the consultants, the facilities were not going to succeed. Causes include a sudden change in Arizona’s laws and healthcare regulations, as well as a sharp decline in Arizona’s economy. As a result, Pacific Living Centers began selling off those Arizona healthcare facilities, and their sale resulted in a loss of about \$20 million. That sum was borne first by the Tempe Hospital Fund, as sponsor of the Arizona facilities, with AHS/West assuming the balance of the loss, which amounted to approximately \$7 million. The plan had been for Pacific Living Centers to succeed with its Arizona facilities, and eventually repay the loan (of the \$10,000, with interest, in the Tempe Hospital Fund from the 1981 sale of the hospital) to AHS/West.

Arizona Conference: AHS/West’s use of the Tempe Hospital Fund, to compensate itself for losses for which AHS/West was solely responsible, constituted a breach of AHS/West fiduciary responsibility to the conference.

Comment: By this time, the membership of the Arizona Conference had become a nest of angry hornets. They demanded that something be done, and they were deeply upset that their key conference officers (president and treasurer) had quietly been a party to the handover of money to Pacific Living Centers. They wanted their Tempe Hospital Fund money back, plus interest, so they could reinvest it in another hospital in Arizona—with this one not being handed over to that hospital cartel in California. Conference officials tried to quiet them down, with pleas of loyalty to the church, but it was only oil

cast on the fire. They demanded action, and, because they would not cease demanding it, they eventually got it. They put in a new conference president who promised to do as they asked.

Arizona Conference: On February 2, 1989, Arizona Conference lodged a complaint against AHS/West. At its April 30 constituency meeting, the membership voted to ask AHS/West to submit the matter to binding arbitration. In this way, the matter would be settled by a neutral expert in the field. But if AHS/West should refuse to do that, then a lawsuit should be filed to retrieve the money.

On September 7, not desirous of filing a suit against a sister church institution, the conference withdrew the complaint and once again proposed binding arbitration. But, once again, AHS/West rejected it.

Then, on October 27, the conference proposed a mediation process. On March 21-22, 1990, a mediation conference was held, but no settlement was achieved.

On March 29, a special meeting was held in the Arizona Conference and it was voted to resort to litigation. The lawsuit was filed in Maricopa County Superior Court in June 1990. The discovery phase began. The brethren still wavered, and once again time passed without the suit being taken to court.

On September 22, 1992, a final attempt was made to go to binding arbitration—and again it was rejected by AHS/West. So the suit was taken to court.

AHS/West: AHS/West had tried to fulfill its obligation to the Tempe fund and the Arizona Conference by investing in those Arizona properties. This required placing the Tempe fund money at risk, if the projections were not realized. In fact, if the fund had not been there, the Arizona investments probably would not have been made.

Bledsoe had asked that the Tempe Community Hospital board [which still existed as a subsidiary of AHS/West] give \$5 million to the Arizona Conference. But this request was refused. [AHS/West considered it a request for a gift; Arizona Conference considered

it a demand for payment.]

Twice arbitration attempts were made; the first through mediation within the church, and the second through the American Arbitration Association. On both occasions the conference rejected the recommendations of the mediators.

Based upon assertions by Arizona Conference officers, their constituents have expressed outrage at a mistaken belief that more than \$10 million was allegedly stolen from the conference. But, in fact, AHS/West spent that money on Arizona facilities, with the full approval of Arizona Conference officers. AHS/West lost millions more in those Arizona losses.

Arizona Conference: On December 10-11, 1992, Judge Michael O. Wilkinson heard arguments by conference and AHS/West attorneys. A basic issue was whether the membership of the Tempe Community Hospital board had really changed on January 31, 1973? And, along with that: Had that meeting really transferred total hospital control out of the hands of the Arizona Conference?

The conference presented four witnesses who were present at that contested 1973 meeting. All of them denied that any change in corporate membership had taken place. Among them was John Stevens, the Arizona Conference president in 1973. In contrast, AHS/West presented only one witness, the brother-in-law of Frank Dupper, president of AHS/West. But his testimony conflicted with a letter he had written on the subject in 1985. In that letter, he said that a certain individual had made a presentation at the 1973 meeting—in which he stated that the conference would be giving up control of the hospital. In his testimony to the court, this witness admitted that the person he had credited with having made such a clear presentation—had not attended that 1973 meeting.

In addition, attorneys representing the conference presented numerous documents as evidence that no change had taken place at the 1973 meeting. Included here was the formal notice in the Pacific Union Recorder, which gave no mention of such a change. Yet corporate law required such notification, if

such a major change had actually occurred. In addition, the very minutes of the meeting did not indicate any change. [!]

Finally, a letter was presented to the court, which had been found during the discovery phase. Dated July 15, 1981, it was from Frank Dupper (at that time AHS/West president) to Erwin J. Rembolt. It was at the time the hospital was sold to St. Luke's Hospital, and Rembolt had been assisting Dupper in planning to transfer the hospital funds to AHS/West. The letter said this: "We must come up with a way of keeping the money on AHS/West's books for health care in Arizona." Then, following a detailed proposal, he added: "I am sure if we are too forward on this, the Arizona Conference will see right through it."

AHS/West: In spite of a lack of a strong case, the Arizona Conference filed a lawsuit against AHS/West, which included certain officials of the Pacific Union Conference and AHS/West. Among other things, the suit charged those parties with fraud, theft, racketeering, being of an evil mind," and many other terrible allegations.

Later, the conference dropped the names of the individuals from the lawsuit, yet their fundamental accusations remained unchanged. But, throughout all that had transpired in these controverted years, officials of the Arizona Conference had been involved in making and/or approving these actions.

AHS/West must defend itself against these charges.

Back to our own comments: As far as the church members in Arizona could ever determine, Tempe Hospital had been doing fine when it was sold to the Catholics. Today, it is still doing fine! Why then, was it sold? This was one of the burning questions in the minds of Arizona church members.

The \$10 million had been put into a new corporation, called Pacific Living Centers. When the investments in Arizona soured, the conference was left with nothing. In retrospect, handing the hospital over to AHS/West seemed like putting their money into a lottery: Throw it in, and maybe it will not all be lost; some might even come back. They

wondered why they had ever given the hospital away. Yet almost no church members knew anything about the transaction when it had occurred. Oddly enough, attorneys for both sides were, at the bitter end, still fighting over whether the hospital had ever been given to AHS/West.

The disputes as to who decided what, what happened to the money, and why was it not returned—led to the lawsuit which was filed in June 1990.

Then, in the spring of 1994, a decision was handed down by the court.

But, five days before it was given, the parties involved drafted a “settlement agreement,” by terms of which, no matter what the outcome might be, neither party would appeal the decision to a higher court. It was signed by

Herman Bauman, Arizona Conference president, and three other plaintiffs. It was also signed by representatives of the three defendant institutions, including Ralph Dupper, president of AHS/West.

The case of *Arizona Conference of Seventh-day Adventists vs. Adventist Health Systems/West, Pacific Living Center, Inc., and Tempe Community Hospital, Inc.*, was settled in court on January 10, 1994. On that day, attorneys for all parties gathered to the Maricopa County Courthouse, to hear the decision by presiding Judge Michael O. Wilkinson, which concluded with these words:

“The Court accordingly hereby enters judgment in favor of defendants and against plaintiffs, with all parties to bear their own attorney’s fees and costs.”

The judge, ruling in favor of AHS/West and its associates, awarded no compensation to the Arizona Confer-

ence. But he did state that all parties would have to bear their own legal expenses.

That decision, along with the settlement agreement, effectively closed the case. Whatever might be the lingering questions, the matter was declared settled.

Bauman, the conference president, subsequently issued this statement:

“The lawsuit has consumed valuable resources including time, attention, money and energy from all sides . . . Regrettably, the litigation has created a certain amount of hurt feeling and distrust among many people associated with the litigation and events surrounding it. It is the sincere desire of the Arizona Conference and AHS/West to put the entire litigation behind them and move forward from this day together.”

So many of these problems could have been avoided if our leaders had adhered to the Bible and Spirit of Prophecy counsels.

One of these counsels is about “*consolidation*.” This occurs when various institutions, located at a distance from one another, are all placed under single management. Ellen White wrote extensively on this topic, in relation to our publishing houses. But the same principle would apply to our medical institutions.

“I beg of you and all the officials of the Pacific Press to know that every move you make is in the light of the counsel of God. The moves being made of consolidation mean placing all your powers under the jurisdiction of the powers in office at Battle Creek [at the Review and Herald Publishing Association]. I say, God forbid that you should adopt the plans and be controlled by the principles that have ruled them like the laws of the Medes and Persians.—*August 2, 1895 (E.G.W., Cooranbong, to C.H. Jones, Pacific Press)*”

For many, many more quotations on this, please see two earlier of our earlier publications: (1) *Free and Not Consolidated [RS-9]*, and (2) *Confederation and Consolidation—Part 1-3 [RS—17-19]*. A surprising number of statements are there included.

Another principle is based on the

repeated statements that workers in the mission field should not feel they must counsel with leaders at a distance in regard to everything that occurs,—as if those other men had some type of superior wisdom. In actuality, they would know far less about the local situation than would the workers there. (See *Testimonies to Ministers, 212-213, etc.*)

This great burden that men get to control others is not of God. Each should go to the Lord for himself. Yes, there needs to be cooperation and orderly working. But a few men are not to control a large work.

Here are several additional quotations:

“Organizations, institutions, unless kept by the power of God, will work under Satan’s dictation to bring men under the control of men; and fraud and guile will bear the semblance of zeal for truth and for the advancement of the kingdom of God. Whatever in our practice is not as open as day, belongs to the methods of the prince of evil. His methods are practiced even among Seventh-day Adventists, who claim to have advanced light.”—*Testimonies to Ministers, 366.*

“Sometimes a man who has been placed in responsibility as a leader gains the idea that he is in a position of supreme authority, and that all his breth-

ren, before making advance moves, just first come to him for permission to do that which they feel must be done. Such a man is in a dangerous position. He has lost sight of the work of a true leader among God’s people.”—*Testimonies to Ministers, 491-492.*

Another point which should be kept in mind was the effort of John Harvey Kellogg, M.D. to control our medical work at the turn of the century. *He tried to do exactly that which the 1972 Annual Council voted for AHS to do!* Yet the Spirit of Prophecy vigorously opposed it! Kellogg wanted all the Adventist sanitariums to be subordinate to his office in the Battle Creek Sanitarium.

He urged this and tried in every way to accomplish it. Yet the letters of Ellen White blocked him at every step. She knew that such a reorganization would be detrimental to the daily work of each distant institution, would tempt that central leaders into the control of Satan, and, if and when the central organization went into apostasy—it would take all the others with it—since it would legally own them!

Continued on the next tract

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