CANONS 705-707

THE MEMBERSHIP OF A RELIGIOUS BISHOP IN HIS RELIGIOUS INSTITUTE

QUESTION

A member of a clerical religious institute was recently ordained a bishop. Another bishop told him that he is no longer a member of his religious institute now that he is a bishop. What truth is there to such an assertion?

OPINION

1. The current legislation is in the Code of Canon Law, canons 705-707. It makes clear beyond any doubt whatsoever that:
   - A religious raised to the episcopacy remains a member of his religious institute; i.e., he is not secularised to become a secular cleric (c. 715).
   - His vow of obedience is modified so that he is subject in obedience only to the Pope, i.e., not to his major religious superiors – or to any other bishop for that matter (c. 705).
   - His vow of chastity is not modified or compromised.
   - As regards the vow of poverty, the vow is radically adjusted for a religious bishop. If he has lost the right to ownership (as is normal for those professing solemn vows in a religious order), he acquires the right henceforth to have the use, revenue and administration of any goods that accrue to him. However, if such a religious bishop is a diocesan bishop, any property he acquires belongs to the diocese he governs; if such a religious bishop is a titular bishop, any property he acquires belongs to his religious institute or, if the institute is incapable of possessing property, to the Holy See (c. 706, 1°).
   - If the religious bishop has not lost the right to ownership (as is normal for those professing simple vows in a religious congregation), he recovers the use, revenue and administration of any goods which he had, and he acquires fully for himself those which come to him henceforth (c. 706, 2°).
   - In many – even most – cases, community fraternal living will not be possible. For most diocesan bishops, it would be impossible; but many auxiliary bishops, as well as bishops in posts such as the Roman Curia, choose to live in their religious community; as do most retired religious bishops. Many religious bishops decide to spend recreation time and holidays with their religious community. It was the norm with bishops in many missionary territories that religious institute bishops (who were often the majority of the episcopate) had their residence and administrative offices within the house of their religious institute. It would appear eminently sensible for a religious bishop who is an auxiliary bishop to live within his religious institute if he wanted to, and go daily to his office in the diocesan administrative center.
   - It is left to him to decide – in his own personal prudent judgement – if there are other obligations of religious life, in particular those arising from the proper law of his own religious institute, that are incompatible with his episcopal obligations (c. 705).
   - In retirement, it is presumed he will return to his community, but he is allowed to choose to live outside community (c. 707 §1).
   - In retirement, the primary obligation to maintain him is on the diocese he served, unless his own religious community wishes to maintain him, or the Apostolic See provides otherwise (c. 707 §2).

2. In 1986, an authentic interpretation from the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law, ratified by Pope John Paul II, legislated that religious bishops lack both active and passive voice within their religious institutes (i.e., they cannot be elected superiors, nor can they vote in chapters).

3. The legislation of the previous Code was similar to the 1983 Code, except that a retired religious bishop had to retire to his religious institute, although he could choose which house of the institute he lived in. (CIC/17, cc. 626-629).

4. The matter of episcopal vesture is instructive. Formerly, religious order bishops always wore complete episcopal dress, although to distinguish their religious status (and emphasise they were not seculars) they had distinctive colours. For example, Augustinians wore black choir dress and Franciscans wore grey choir dress. Similarly, it was brown for Capuchins, white for Cistercians and Dominicans, and so on. In the 1960s, in the wake of Vatican

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1 Acta Apostolicae Sedis 78 (1986) 1324; Canon Law Digest 12, 398.
II, there were several documents from the Holy See reforming episcopal vesture. They are summarised in an appendix of the current *Ceremoniale Episcoporum* published by the Holy See in 1984, and provide three levels of vesture for bishops.

- Choir dress for liturgical occasions: purple cassock, sash, mozzetta and zucchetto; linen rochet; with a pectoral cross. This is worn by all bishops, secular and religious; consequently the distinctive choir dress for religious order bishops is abolished.²

- Solemn non-liturgical dress: black cassock with red buttons; purple sash and zucchetto; pectoral cross. This is worn by all bishops, secular and religious.³

- Vesture for ordinary daily wear: seculars wear plain black cassock without red buttons, and with a pectoral cross; purple sash and zucchetto are optional. Religious wear the habit of their religious institute and a pectoral cross; zucchetto is optional.⁴

5. In summary, a member of a religious institute most certainly remains a full member of his religious institute. His status as a professed religious remains intact. However, the provisions of canon law outlined above enable him to remain a religious without compromising the episcopal office.

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### Canon 803

#### Catholic Parish School

**Question**

A pastor objects to the Board of Trustees of the Parish School appointing a teacher to the school. She is publicly living in a de facto illicit relationship. The pastor wants the bishop to declare that the school is no longer Catholic and close it. Is this canonically permissible?

**Opinion**

In New Zealand, the *Integration Act* was passed by Parliament in 1975. The integration of the Catholic schools involved significant financial agreements encompassing suspensory loans to bring school buildings up to state standards, and proportional repayment arrangements of these loans and other expenses in the event of a school or schools ceasing to be integrated. The proprietor of the school under the *Integration Act* is the diocesan bishop or the superior of the religious institute that owns the school.

The management of Catholic Schools was then further modified by an Education Act passed in 1989. This rearranged the management of Catholic integrated schools along with their state counterparts by putting in place School Boards of Trustees. An Integrated School Board has a membership of five parents' representatives, the principal, a staff representative, up to two persons selected by the Board, and four proprietor representatives. Such Boards are responsible for appointing teachers and the maintenance of buildings.

As a result of the *Integration Agreement* between the Catholic Bishops of New Zealand and the New Zealand Government and subsequent legislation, the School Boards are, in effect, the operators of the Catholic schools.

The parish is a juridical entity in canon law that is a separate legal entity from the diocese (c. 515 §3). The parish is not just an administrative unit of the diocese. The pastor legally represents and acts in the name of the parish (c. 532); he is an office holder and the proper pastor of the parish under the authority of the bishop. He is not, however, merely an agent of the bishop, his delegate, or even

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2 *Ceremoniale Episcoporum* (CE) nn. 1199-1202.
3 CE n. 1203.
4 CE, n. 1204.