

Closed parishes cite Wash. ownership case

The Boston Globe

By Michael Paulson, Globe Staff | June 11, 2005

Catholics trying to prevent Archbishop Sean P. O'Malley from claiming the assets of closing parishes believe they have found an unwitting ally in an unexpectedly high place: the president of the US Conference of Catholic Bishops, who is arguing in a bankruptcy court filing that he does not control the assets of parishes in his diocese.

A lawyer who is a parishioner at a closed Brookline church, Infant Jesus-St. Lawrence, has cited a deposition from Bishop William S. Skylstad of Spokane, Wash., in asking the Vatican to bar O'Malley from seizing the parish's assets, which include an architecturally distinctive building on 2 acres along Route 9 and a \$4 million bank account. Now advocates for three other closed parishes, St. Frances Xavier Cabrini in Scituate, St. Anselm in Sudbury, and St. James the Great in Wellesley, are making similar arguments to the Vatican.

The parishes are attempting to call attention to what they believe is a contradiction between the position put forward by three Western state bishops and O'Malley. The Western bishops have argued in bankruptcy filings that they do not control parish assets; O'Malley has asserted the right to claim the property of closing parishes.

"It seems to me that there's an enormous conflict in these two positions, and you can come up with an explanation, but not one that passes a straight-face test," said David A. Skeel, a professor of corporate law at the University of Pennsylvania Law School who studies bankruptcy law and has been following the church cases closing. "It seems offensive to the idea that somebody owns property, and when you own it, you face the upsides and the downsides of that property."

The Boston Archdiocese says there is no contradiction. The archdiocese says O'Malley clearly said that the financial assets of a parish were not a factor in choosing which ones would close and that the archdiocese would assume all the liabilities as well as the assets of closing parishes.

"Our situation is very different," said the Rev. Mark O'Connell, the archdiocesan assistant for canonical affairs. "We agree that we would never seize a parish just for its assets, because the assets belong to the people while the parish exists. But in Boston, the parishes closed for a very different reason, and the assets and the liabilities go to the archdiocese."

In the three dioceses that have filed for bankruptcy protection -- Portland, Ore., Spokane, and Tucson -- the bishops in each are arguing that even though they own their parishes, they hold them in trust for the benefit of parishioners and the parishes' assets do not belong to the dioceses. The bishops are seeking to prevent creditors, primarily victims of clergy sexual abuse, from forcing the sale of parish property.

"Those assets belonging to the . . . parishes are not my assets and not subject to my control in an unfettered manner," Skylstad said in an affidavit filed May 27. "When a bishop acts as the trustee, for example in the sale of parish property, he does not act as its owner. The parish is the owner and receives the benefit of the sale."

Skylstad said that when the Spokane diocese closed two mission churches, their assets went to the same parishes as the worshipers. "The basic rule is: The money goes where the parishioners go," Skylstad wrote.

Another affidavit submitted by the Spokane diocese goes further.

"The diocesan bishop is neither the owner nor the administrator of parish property," declared Nicholas P. Cafardi, a canon lawyer and the dean of Duquesne University Law School. "The bishop as corporation sole can only hold bare legal title to parish property."

Boston parishioners say the filings in Spokane have reenergized their efforts to challenge the archdiocese of

Boston. Not only has the Brookline parish sent a supplement to its appeal to the Vatican, but lawyers representing two other closed parishes with valuable real estate, in Scituate and Wellesley, are preparing similar challenges to send to Rome.

"The May 27 affidavits are very significant, particularly to Catholics in the Boston area, many of whom have been under the impression that everything in the archdiocese belongs to the archbishop," said Peter Borre, the cochairman of the Council of Parishes, a coalition of opponents of parish closings.

In the Brookline filing, lawyer Warren D. Hutchison cited the Spokane affidavits: "The conduct of the Archbishop of Boston is philosophically and morally inconsistent with the three points the Catholic Church is advancing in the Spokane Bankruptcy Case: (1) Canon Law recognizes that parish property is held in trust for its parishioners; (2) a parish and its assets cannot be sacrificed for the "good" of the archdiocese; and (3) if a need exists to close a parish the patrimony of that parish follows the parishioners to the new parish created."

O'Malley's lawyers have argued that he has the right to take the property of closing parishes and that he intends to use the proceeds for programs that benefit other parishes that remain open. Although O'Malley insists that the archdiocese's financial crisis is not the reason for closing parishes, the archdiocese stands to gain, by some estimates, several hundred million dollars from the property and cash holdings of about 80 closing parishes.

O'Malley has prevailed in the only local court test so far: A judge ruled against a request for a preliminary injunction against the archdiocese sought by parishioners at St. Albert the Great in Weymouth, which O'Malley had closed but has promised to reopen. The Weymouth suit is still pending, as are legal challenges brought by supporters of closed parishes in Framingham and Wellesley. Eight closed parishes are occupied by parishioners trying to reverse the closing decisions.

Michael Paulson can be reached at mpaulson@globe.com. ■

© [Copyright](#) 2005 The New York Times Company