

The Council of the Presbytery of Hudson River asks the presbytery to concur with this overture from the Presbytery of New York City:

**On Creating a Special Committee to
Assure Compliance with Donor Restrictions on the
Administration of the Jarvie Commonweal Service**

The General Assembly expresses concern that the recent restructuring of the Jarvie Service raises ecclesial issues; and recognizing its responsibility and duty to oversee the work of its bodies, and to ensure that those bodies honor express promises made to donors, and to promote openness and accountability in the Presbyterian Church (U.S.A.):

The 223rd General Assembly (2018) directs the moderator or co-moderators to appoint within 60 days from the close of the 223rd General Assembly:

- 1. A special committee to conduct an administrative review, which shall have the power and responsibility to investigate the recent changes to the governance and accounting treatment of the Jarvie Commonweal Service (“Jarvie Service”) and compliance thereof with the terms of the 1934 Trust Agreement and the General Assembly’s instructions to its constituent bodies, and to take what action it finds necessary to assure that the Jarvie Service thenceforth continues to be in compliance with the Trust Agreement and those instructions, including the power to speak with appropriate witnesses and obtain relevant documents under the control of any Presbyterian Church (U.S.A.) body or agency; and including the authority to obtain staff support (as funded below) through the Office of the General Assembly;**
- 2. The special committee shall complete the first phase of its work and prepare an interim report and set of recommendations no later than one year from its date of appointment, bearing in mind the needs of the Jarvie Service recipients, which shall be presented to the Stated Clerk of the General Assembly; and a final report that shall be made to the 224th General Assembly (2020); and**
- 3. The expenses incurred by the special committee shall be budgeted and advanced by the Board of National Missions (“BNM”) or its fiduciary, the Presbyterian Church (U.S.A.) Foundation (“Foundation”) out of the Jarvie endowment or the earnings thereon, as administrative expenses incurred under the Trust Agreement.**

Rationale

1. The new Form of Government in G-4.0101 requires that a corporation formed by the General Assembly to hold property (such as money), shall “receive, hold, encumber, manage, and transfer property, real or personal, for and at the direction of the council” [*i.e.*, the General Assembly].
2. The General Assembly has placed express restrictions on the management of “property” by its subordinate entities, which include the Foundation and the BNM, which are designed to preserve this property and ensure that the national Presbyterian Church (U.S.A.) honors the express terms of any gift accepted by the Foundation or its constituent corporations, including the express terms of the Trust Agreement signed by BNM in 1934 when it accepted the Jarvie endowment.
3. The 198th General Assembly included such restrictions in the “DELIVERANCE IMPLEMENTING A DESIGN FOR THE CORPORATION STRUCTURE OF CERTAIN AGENCIES OF THE GENERAL ASSEMBLY” issued in 1986, which states in Section 3(d)(3) that “in every case where a donor has specified the purposes for which principal or income may be expended, refrain from making any expenditure inconsistent with the terms of the gift.”
4. The Jarvie Service is an old age and relief service for people in the Greater New York City area (defined by a 50 mile radius of Columbus Circle, Manhattan) that was created and operated by Mr. James N. Jarvie in the 1920’s and subsequently transferred by the Jarvie Fund to BNM with a significant self-sustaining endowment pursuant to a 1934 Trust Agreement.
5. The 1934 Trust Agreement required the BNM to create, continue and support the Jarvie Commonweal Service Committee (“JCSC”) with the responsibility of conducting the Jarvie Service. It required the BNM to “charge said committee with the duty of administering the commitments above assumed and of adding thereto and continuing as outlined herein, in fact and in spirit, the Jarvie Concept of Old Age Relief and Service.”
6. The Jarvie Concept of Old Age Relief and Service is not merely care for elderly people; rather, as stated in the 1934 Trust Agreement, the aged needy must be helped to live, not merely to exist. This also includes a Trust requirement for making outside grants to NYC-area senior organizations.
7. The Jarvie Service is entirely financially supported by the earnings on the Jarvie endowment, now worth approximately \$90 million and held and invested as agent for the BNM by the Foundation.
8. Until mid-2015, the Jarvie Service and its staff were administered solely and directly by the Jarvie Commonweal Service Committee, a group independent of the BNM board as required by the 1934 Trust Agreement.

9. In mid-2015 after secret preparations, the Jarvie Service was dramatically restructured and its regular professional and other staff summarily fired by the Foundation, without the prior approval and knowledge of the entire Jarvie Commonweal Service Committee. The Foundation then hired a private for-profit home care agency to provide all services to Jarvie Service beneficiaries, dismissed some or all of the JCSC members mid-term, and replaced the JCSC itself and its Trust-mandated authority with a Foundation “Jarvie Advisory Committee” which operates in a cloud of secrecy.
10. In 2016, the Foundation abruptly changed its accounting treatment of the \$90 million Jarvie Commonweal Endowment Fund which had been a liability “funds held for benefit of others” for 80 years, commingled it with the Net Assets equity owned by the Foundation, and named the Board of National Missions as its new “beneficiary” without required Court approval. A large group of New York City area Ministers and Elders asked the Foundation to reconsider this new accounting treatment, and provided substantial supporting documents and information. The Foundation refused to make any changes and refused to explain why it would not do so.
11. The organizational and accounting changes made by the Foundation to the Jarvie Service and Fund will prevent any other Presbyterian stakeholders from verifying compliance with the promises BNM made to the Jarvie donor under the Trust Agreement. All of the earnings on the Jarvie Funds is required to be available in priority to provide benefits to Jarvie beneficiaries, not to the Foundation or its designees.
12. The 223rd General Assembly received a Commissioner’s Resolution (13-08) raising concerns with the Foundation’s restructuring of the Jarvie Service, and directed that the Foundation and the Commissioners seek reconciliation of those issues. (<https://www.pc-biz.org/#/search/3000196>) Some inconclusive meetings were held, but the Foundation from the outset refused to consider restoring the Jarvie Service to independent control by the Jarvie Service Committee and other measures required by the 1934 Trust Agreement. The important fundamental issues of governance raised in the Commissioner’s Resolution thus remain unresolved along with numerous other incidental and derivate matters.
13. The General Assembly Permanent Judicial Commission declined to take jurisdiction over this dispute with the Foundation, saying that any failure by the Foundation in 2015 to comply with BNM’s fiduciary and other promises to the Jarvie Fund donor raise only civil, state law issues; neither donor nor beneficiaries have any ecclesial compliance recourse within the Church. (*The Session of the Rutgers Presbyterian Church v. The Presbyterian Foundation, the Board of National Missions, and the Presbyterian Mission Agency*, Remedial Case 222-08).
14. Despite the prior direction of the General Assembly to meet and resolve these issues, the staff of the Foundation and the BNM and their Boards have so far failed to provide requested relevant information and documents relating to their unlawful decision to restructure the Jarvie Service, and satisfactorily explain how the restructuring and almost total lack of transparency and professional oversight in its subsequent operation meets the

plain requirements of the 1934 Trust Agreement and the limitations on use of property entrusted to the Presbyterian Church (U.S.A.) imposed by the General Assembly and the needs of Jarvie beneficiaries.

15. The Presbytery of New York City therefore expresses concern that the foregoing operational, accounting and other irregularities and deficiencies detrimentally affecting the Jarvie Service, a significant mission outpost in its jurisdictional area, raise basic ecclesial issues and require review by the General Assembly that recognizes its responsibility and duty to oversee the work of its bodies, ensuring that those bodies honor express promises made to donors, and promoting openness and accountability in the Presbyterian Church (U.S.A.). Consequently the Presbytery of New York City requests that the General Assembly appoint a special committee with direction and powers as set forth above.