

## APPENDIX E

## LEGAL OPINIONS

**1 Proposal to transfer the Palace, Kilkenny to the Heritage Council and interpretation of Chapter X Section 12 of the Constitution of the Church of Ireland**

The Palace in Kilkenny is the See House for the Bishop of the Diocese of Cashel, Ossory, Waterford, Leighlin and Lismore (“COWLL”) and the Diocese of Ferns. The Palace is physically situated in the Diocese of COWLL. The Representative Church Body (“RCB”), in whom the property is vested, proposes to transfer the Palace to the Heritage Council.

Chapter X Section 12 of the Constitution of the Church of Ireland (“the Constitution”) governs transfers of this nature:

“The Representative Body shall be at liberty to let on lease, or to sell either by public auction or by private contract, any see lands, glebes or sites of churches or see or glebe houses, with the buildings thereon, or any school-house vested in it, and the land occupied therewith, which shall be hereafter found unsuited or unnecessary for the Church of Ireland: *Provided that no such sale or letting shall be made without the consent of the diocesan council of the diocese in which such property is situated*; but it shall not be necessary for any purchaser to inquire whether such consent has been obtained.” (Emphasis added.)

The diocesan councils of both the Diocese of COWLL and the Diocese of Ferns voted on the proposed transfer. In COWLL the result was 31 in favour and 11 against, while in Ferns it was 10 in favour and 12 against. The combined vote was 41 in favour and 23 against the transfer.

The situation is somewhat complicated by the Statute of the General Synod passed to consolidate enactments in regard to the Constitution. Section 2(1)(a) of that Statute provides that, in the schedule thereto (ie in the Constitution):

“wherever the context so admits the word “diocese” shall include any diocese or united diocese or united dioceses under the jurisdiction of one bishop ...”

There are three concepts here:

- (a) a diocese – eg the diocese of Ferns;
- (b) a united diocese – eg the diocese of COWLL, which was originally five separate dioceses, and which now share a single diocesan synod and diocesan council;
- (c) united dioceses under the jurisdiction of one bishop – the Diocese of Ferns and the Diocese of COWLL together constitute united dioceses under the jurisdiction of one bishop, but they retain their own individual councils and synods.

The question is whether the context of Chapter X Section 12 admits of the word “diocese” being read as “united dioceses under the jurisdiction of one bishop”. It is the opinion of the Legal Advisory Committee that it does not. The proviso refers to the “diocesan council of the diocese in which such property is situated”. There is no such thing as the diocesan council of the united dioceses of COWLL and Ferns – they each have their own diocesan council. Therefore the section does not appear to contemplate property situated in united dioceses. Although the Palace is the See House for one bishop who is responsible for more than one diocese, it is situated in the Diocese of COWLL.

The opinion of the Legal Advisory Committee is that section 12 is satisfied by the diocesan council of that diocese voting in favour of the proposed transfer of the property.

## 2 Theological College

The Legal Advisory Committee of the Representative Church Body has considered the three questions raised by way of Motion passed at the General Synod held in Belfast on 16<sup>th</sup> May 2000.

The questions as posed are whether:-

1. *The episcopal constitution of the Church necessitates that the Theological College and the Theological College Council are accountable only to the bishops.*
2. *The episcopal constitution of the Church precludes General Synod having any legislative or administrative power in relation to the Theological College.*
3. *The Representative Church Body as trustee owner holds title to the Church of Ireland Theological College for the House of Bishops as beneficial owners.*

### Questions 1 and 2

The Legal Advisory Committee has grave reservations about answering questions 1 and 2 as framed, since these questions have been posed without reference to any well defined issue. If so posed to a Court, the Court would in all probability decline to answer same. However, in order to be as helpful as possible, the Legal Advisory Committee expresses the following observations in relation to questions 1 and 2:-

1. It cannot be said unequivocally that the Episcopal constitution of the Church necessitates that the Theological College and the Theological College Council are accountable only to the Bishops in all circumstances. However, it should be noted that in order for the course as actually run by the Theological College in association with Trinity College, Dublin to qualify a person attending same for possible admission to holy orders, such course must, in accordance with Canon 21(3)(b) be one approved by the House of Bishops.
2. Equally, it cannot be said unequivocally that the Episcopal constitution of the Church precludes General Synod having any legislative or administrative power in relation to the Theological College in any circumstances. Again however, it should be noted that in order for the course as actually run by the Theological College in association with Trinity College, Dublin to qualify a person attending same for possible admission to holy orders, such course must, in accordance with Canon 21(3)(b) be one approved by the House of Bishops.

### Question 3

In relation to question 3, the opinion of the Legal Advisory Committee is as follows:-

The Representative Church Body does not hold the Theological College on trust for the House of Bishops as beneficial owners. Rather, the property is held by the Representative Church Body on the trusts declared in a Deed of Conveyance dated 29th August 1961 made between the Adelaide Hospital Dublin and the Representative Body of the Church of Ireland.

The declared trusts are set out in the said deed as follows:-

*“and it is hereby declared that the Representative Church Body shall hold the premises upon trust as and for the use of a Divinity Hostel or such other objects as the Representative Church Body shall decide and subject to all such statutory rules regulations and powers as are now or may hereafter be vested in the Representative Church Body in respect of lands or premises vested in it.”*