

January 27, 2016

To: Representative Gabriele Lucke

From: Paul Gillies

RE: H. 565 (reduction of voting requirements for Methodist Church property conveyance)

When I first saw Chapter 7 of Title 27, many years ago, I wondered how the Legislature had authority to regulate the sale and purchase of properties of the Baptist, Congregational, Methodist, Protestant Episcopal, and Universalist Churches. I still don't have an answer, except that the constitutional prohibition against mixing state and church is not, I believe, triggered by such legislation. I have to believe that these laws were supported by the various churches. It's interesting to compare them, as they reflect the basic governmental differences among these Protestant sects, and the relative degree of autonomy of each church. Most of the chapter is dedicated to addressing what to do with church property where there is no more congregation to support it.

Section 862 of Title 27 set a two-thirds vote to convey real estate belonging to the United Methodist Church. It was first adopted in 1833. None of the other churches are obliged to reach that threshold to convey property. The reason for the higher standard is unclear.

I see that in 1874, the General Assembly authorized the sale of the Berlin Methodist Church by a vote of a majority of the pew-owners (one vote per pew). See No. 199 (1874), Sec. 2.

Under general corporation law, both for nonprofit and for profit companies, before the laws were reformed in the first decade of this century, a two-thirds vote was required to convey assets other than in the regular course of activities or dissolve, but after those reforms the minimum vote was reduced to at least a majority of the voting power, although in some instances a two-thirds vote is still required if taken at a meeting and requires two-thirds of those present and voting to carry the motion. 11A V.S.A. §§ 12.02(a) (majority of voting power); 21.07(2)(B) (termination of benefit corporation); 11B V.S.A. §§ 12.02 & 14.02(a)(2) (nonprofit corporations to dissolve or convey assets; two-thirds of votes cast or majority of voting power, whichever is less). In that light, reducing the two-thirds requirement to a majority for the Methodists is consistent with the generally-prevailing policy of making conveyance of property easier.

Intentionally or not, this is a trend. In recent years we've seen the elimination of witnesses on deeds, the reduction of the number of witnesses on wills from three to two, the adoption of the self-administered voter's oath, and a general lightening-up of standards that were formerly enforced rigorously in a variety of areas of the law. Some might call this progressive reform; some regard it as the unraveling of custom and usage.

I can't think of a reason not to amend this law in this manner, particularly as the original purpose of the higher standard is no longer remembered.