

# **Court ruling favors case of Missouri Baptist University\_111703**

November 14, 2003

Posted: 11/14/03

## **Court ruling favors case of Missouri Baptist University**

**By Vicki Brown**

*Missouri Word & Way*

JEFFERSON CITY, Mo. (ABP)—A Missouri judge has given an initial legal victory to one of the institutions locked in a messy legal spat with the Missouri Baptist Convention.

Cole County Circuit Court Judge Thomas Brown ruled Nov. 10 that the state convention is not the “sole member” of the Missouri Baptist University corporation. The ruling dismisses the convention's contention that it is the university's sole member, which would have meant that only the convention has the authority to change the university's corporate charter.

In 2001, four convention-related institutions—the university, the Word & Way newspaper, the Missouri Baptist Foundation and Windermere Baptist Conference Center—changed their charters to allow each entity to elect its own trustees rather than to allow the convention to elect them. Trustees for The Baptist Home—a convention-related retirement-home system—had taken

similar action a year earlier.

The trustee boards' moves to become self-perpetuating came after a lengthy battle by fundamentalists to take control of the convention's governing structures. They had largely won that battle by 2001 and attempted to fill open spots on the agencies' boards with like-minded conservatives.

The convention then filed a lawsuit against the five institutions to force the entities to rescind the new charters.

University attorneys filed a summary judgment motion asking the judge to determine whether the convention is a corporate member, as the convention had claimed. According to

Missouri Baptist Foundation legal counsel Larry Tucker, the other entities also have filed motions for judgments on member status. Those cases most likely will be argued sometime early next year.

Tucker noted that Brown ruled the convention did not become a member of the university's corporation simply because it traditionally had elected or appointed the university's trustees.

University attorney Clyde Farris argued the university changed its charter in 1997 to reflect changes in Missouri's not-for-profit laws made in 1995. The charter noted that the corporation would have no members.

Lead convention attorney Mike Whitehead contended that under the statutory definition of election, the convention should be considered a corporate member. He noted that members of a for-profit company are protected by stock shares, while members of a not-for-profit agency are protected by governance.

“The legislature says ... that people who have the right to vote should be

called members,” Whitehead said. “If someone else (other than the institution) has the ability to appoint directors, then the rights of that someone, even if it is an entity, must be protected.”

Whitehead added that the convention has “a right to control the governance” because it “birthed and founded the entity.”

He contended university President Alton Lacey changed wording in the institution's charter to read that the convention elects trustees rather than appoints them. Whitehead said the relationship between the two entities remained the same. The change “doesn't amount to a relinquishment of the known right to choose the trustees,” he said. “The process did not change until the college made a unilateral decision in 2001 ... . It's the 'gotcha' that lets them walk away with a multimillion-dollar entity.”

Farris responded that the university never has been a convention asset. “It has never been on their financial statements,” he said.

The attorney acknowledged the convention helped start the university, but said the convention never owned it. The convention could have owned the university, but “they didn't want to because they didn't want to accept the liability responsibility,” Farris said.

News of religion, faith, missions, Bible study and Christian ministry among Texas Baptist churches, in the BGCT, the Southern Baptist Convention ( SBC ) and around the world.