

LCMS

Commission on Constitutional Matters Minutes — 2002

Table of Contents

January 11, 2002.....	2
February 22, 2002	10
April 15-17, 2002	15
May 20, 2002	30
June 10-11, 2002	32
June 27, 2002	44
August 20, 2002	46
August 28, 2002	48
October 2, 2002	49
October 21-22, 2002	58

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
January 11, 2002

228. Call to Order

Chairman Walter Tesch called the telephone conference call meeting to order and asked Albert Marcis to open the meeting with prayer. All members of the Commission participated in the meeting.

229. Questions re Responsibilities of Vice-Presidents in Bylaw 2.27 Process (01-2242)

In a December 14, 2001 memo, the President of the Synod reviewed *Handbook* references pertaining to the ecclesiastical supervision of District Presidents and asked specific questions relative to charges filed by a complainant against a District President.

QUESTION 1: Since the President of the Synod is the ecclesiastical supervisor of all District Presidents, in the event the President of the Synod "*declines to suspend the member or fails to act within 90 days after receipt of the written complaint...*" (Bylaw 2.27 b), are the charges against the District President thus concluded?

Response: (The Commission notes an apparent error in the Bylaws as printed in the 1998 edition of the *Handbook*. The last sentence of Bylaw 2.27 g states as follows: "If disqualified for the reasons set forth in section b (emphasis added), the next qualified officer of the Synod shall function in the place of the President." It is apparent that the reference should be to section a 1 and the Commission proceeds on that presumption in this opinion.).

The answer to the question is "no." Bylaw 2.27 g states that the President of the Synod shall proceed in the same fashion as a District President if he receives a complaint relative to a District President. Bylaw 2.27 b provides that if a District President declines to suspend the accused member or fails to act within 90 days after receipt of a written complaint, the complainant may present the written complaint to the Praesidium. Thus, since a complainant can appeal to the Praesidium the non-action or negative decision of a District President under Bylaw 2.27 b, a complainant can likewise appeal to the Praesidium the non-action or negative decision of the President of the Synod under Bylaw 2.27 g.

QUESTION 2: If your answer to question #1 is "No," I would assume your understanding would be that the charges against the District President may then be submitted by the complainant to the Praesidium of the Synod, who would consider these charges without the participation of the President of the Synod (Bylaw 2.27 g). If that understanding is accurate, my next question is this: Since both the Constitution and Bylaws clearly state that the President of the Synod has ecclesiastical supervision of all District Presidents and of all officers of the Synod, including the Vice-Presidents, under what constitutional authority would the Synodical-Vice Presidents be charged with the responsibility of determining the continuation of the roster status of a District President under Bylaw 2.27?

Response: The President of the Synod has ecclesiastical supervision of District Presidents by reason of Article XI B of the Constitution. However, ecclesiastical supervision does not include the responsibility of determining the continuation of the roster status of a District President. That matter is covered by Article XIII 2 which provides: "Expulsion shall be executed only after following such procedure as shall be set forth in the Bylaws of the Synod. Bylaws 2.27 and 8.09 establish the steps to be followed to expel a

member from the Synod. Under these Bylaws the President can either decline to seek the expulsion of a District President as a member of the Synod, or pursue such expulsion by following the procedure set forth in Bylaw 2.27 c. If he does pursue such expulsion, the decision to expel is not his but, rather, the decision of the Dispute Resolution Panel (or Appeal Panel, if there is an appeal), which will consider the matter (Bylaw 8.09).

If the President of the Synod declines to seek the expulsion of a District President as a member of the Synod, the complainant has the option to appeal such declination to the Praesidium of the Synod (Bylaw 2.27 b). Should the Praesidium decide to pursue the expulsion from the Synod of the District President, it must follow the same procedure in Bylaw 2.27 c as the President would have had to do should he have decided to pursue the expulsion. As in the case of the President, the decision to expel is not that of the Praesidium but, rather, the decision of the Dispute Resolution Panel or Appeal Panel.

Therefore, the synodical Vice-Presidents in their capacity as members of the Praesidium determine the continuation of the roster status of a District President only in those very limited situations where the Praesidium upholds the decision of the President of the Synod that the alleged actions of the District President are insufficient to expel the District President as a member of the Synod.

QUESTION 3: Article XI B 2 addresses the accountability of District Presidents (as well as other officers, all employees, and individual Districts of the Synod) to the President of the Synod and specifically charges the President with the *"duty to see to it that all the aforementioned act in accordance with the Synod's Constitution."* Under what constitutional authority would this accountability ever be assumed by the Praesidium of the Synod, whether with or without the participation of the President of the Synod?

Response: The Vice-Presidents of the Synod have no constitutional or bylaw "duty to see to it that all the aforementioned act in accordance with the Synod's Constitution." Such duty rests solely with the President of the Synod (Article XI B) except in those situations enumerated in Article XI C.

230. Questions re Publicity of Dispute Cases (01-2243)

A pastor of the Synod in a December 3, 2001 letter noted that Bylaw 8.21 e states that "while a matter in dispute is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the parties involved." He asked a series of questions, stating his intent "not that some new canon laws might be used over against others but rather that all members of Synod may deal with one another in a decent, fraternal and orderly way, especially when certain issues become hotly contested."

QUESTION 1: Is Bylaw 8.21 e to be interpreted that any party involved in a dispute or any synodical official involved in handling the dispute may not use the public press or other means to advocate a position in a dispute resolution case?

Response: Bylaw 8.21 e states: "While a matter in dispute is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the parties involved." The term "any of the parties involved" includes the following if the matter is initially commenced under Bylaw 2.27:

- The party who brings the matter to the attention of the President of the Synod (Bylaw 2.27 g) or a District President (Bylaw 2.27 a) or the Praesidium of the Synod (Bylaw 2.27 b)

- Any party to whom the matter is presented and who is required to thoroughly investigate whether the allegations can be substantiated. Such party would be, unless disqualified, the President of the Synod or a District President or the Praesidium of the Synod, as the case may be
- The respondent (Bylaw 8.03)
- The Secretary of the Synod who forms a Dispute Resolution Panel
- Members of the Dispute Resolution Panel
- Members of the Appeal Panel
- Members of the Review Panel

The word "publicity" as used in the bylaw is defined in Webster's *New World Dictionary* as "any information or action that brings a person, cause, etc. to public notice." Use of the press or other means by a party involved in the matter to bring to the attention of the public information regarding the matter or to advocate a position is "publicity" and is prohibited by the bylaw if it occurs while a matter in dispute is still undecided or while an appeal is contemplated or pending.

QUESTION 2: Since the process described in Bylaw 2.27 f may include a formal presentation of the complaint to the Dispute Resolution Panel, does Bylaw 8.21 e also apply to all parties and synodical officials when a complaint is filed according to Bylaw 2.27?

Response: When a complaint is filed according to Bylaw 2.27, the matter is "in dispute" and therefore Bylaw 8.21 e is applicable. Whether any "synodical officials" are "any of the parties involved" depends upon what position a synodical official has to the matter in dispute. If all of the parties involved in the matter adhere to Bylaw 8.21 e, there should be no public knowledge that the matter is in dispute.

QUESTION 3: Does the Constitution or its Bylaws describe explicitly or implicitly any consequences for failing to abide by Bylaw 8.21 e?

Response: There is no specific provision in the Constitution or Bylaws that deals with a failure to abide by Bylaw 8.21 e. However, individual membership in the Synod is obtained by the procedures set forth in Bylaw 2.07 c, which is authorized by Article VI 7 of the Constitution of the Synod. In addition, Bylaw 1.05 d provides that individual members commit themselves as members of the Synod to act in accordance with the synodical Constitution and Bylaws under which they have agreed to live and work together.

Article XIII of the Constitution provides that members who persist in an offensive conduct shall, after previous futile admonition, be expelled from the Synod by following such procedures as set forth in the Bylaws of the Synod. Whether a violation of Bylaw 8.21 e is a violation of Article XIII depends upon the facts of a given situation.

QUESTION 4: If a synodical employee who has the responsibility for official communications—through (a) the Synod's official printed media (e.g. *The Lutheran Witness*, the *Reporter*), (b) the public press, or (c) an electronic medium such as e-mail—publicizes the issues of a matter in dispute which is still undecided or while an appeal is being contemplated (either by his own volition or at the behest of a superior synodical officer or board), shall that synodical employee be held accountable for such action?

Response: The director of the Synod's news and information services is appointed by and responsible to the Board for Communication Services (Bylaw 12.03). The Board for Communication Services has the responsibility for the official periodicals of the Synod (Bylaws 3.813 c and 12.01 c). Staff (which includes

such director) is responsible to the Synod through its board, which shall exercise supervision in accordance with the Constitution and Bylaws, resolutions of the convention, and the decisions of the respective board or commission (Bylaw 1.07 e). Therefore, an employee of the Synod is accountable for his/her actions to the board or commission he/she serves.

231. Questions re Implementation of Matthew 18 in Bylaw 2.27 (01-2244)

In a November 19, 2001 letter, a pastor of the Synod asked a series of questions regarding the implementation of Matthew 18 in the dispute process and other related matters. The Commission responded as follows.

QUESTION 1: Should the Commission on Constitutional Matters render rulings on how Matthew 18 is to be implemented?

Response: Bylaw 2.27 a 2 directs a District President to follow the guidelines of Matthew 18: 15-16. Bylaw 6.47 a requires a Board of Regents to direct the complainant to first meet face to face with the respondent in an attempt to resolve the issue (Matt. 18:15) and have the president of the educational institution assist in the attempt. Bylaw 6.47 d provides that if a Board of Regents determines that all informal reconciliation efforts have failed, the Board of Regents shall form a Review Committee of five persons (Matt. 18:16). Bylaw 8.05 indicates that before any matter is submitted to the formal reconciliation process, the parties involved in a dispute must meet together, face to face, in a good-faith attempt to settle their dispute (Matt. 18:15). Bylaw 8.07 c states that if the reconciler determines that informal reconciliation efforts have been inadequate, the reconciler shall direct the parties to engage in further informal reconciliation efforts.

Bylaw 3.905 d directs the Commission on Constitutional Matters to interpret the Synod's Constitution, Bylaws and resolutions upon the request of an appropriate party. The Commission on Constitutional Matters is not a fact-finding body. Thus, if the question on how Matthew 18 is to be implemented involves an interpretation of the Constitution, Bylaws or resolutions of the Synod, the Commission on Constitutional Matters will render an opinion. However, if the question involves a factual or theological determination, the Commission has no authority to render an opinion.

QUESTION 2: If, on the one hand, questions about the implementation of Matthew 18 are of a theological nature and outside the purview of the Commission on Constitutional Matters, what entity within Synod would be called upon to make a definitive interpretation in cases which required clarification?

Response: Bylaw 8.21 i provides that if any part of a dispute involves a specific question of doctrine or doctrinal application, each party shall have the right to an opinion from the Commission on Theology and Church Relations.

QUESTION 3: Would the Commission on Constitutional Matters be willing to consider the possibility that Matthew 18 does not necessarily mean that all complainants must have a face-to-face encounter with the offender?

Response: See the responses to questions 1 and 2 above.

QUESTION 4: Bylaw 2.27 a 2 references Matthew 18:15-16, while the Preamble to Bylaw VIII references Matthew 18:15-20 and Bylaw 8.07 e references Matthew 18:16. Is Matthew 18 in fact treated consistently throughout the Bylaws?

Response: Yes. References to specific verses of Matthew 18 relate to the bylaw where the reference is found.

QUESTION 5: A series of questions are then set forth as follows:

- Do Synod's Bylaws distinguish between offenses which are the result of immorality and offenses which are the result of false teaching?
- Do Synod's Bylaws make a distinction between temporal disputes which occur among members and offenses against God's eternal Word?
- If a complaint is filed against a member of Synod who maintains that Jesus Christ didn't really rise from the dead, would this be treated as a disagreement among members of Synod who just have different opinions on the matter or is it treated as an offense against the clear Word of God requiring formal discipline?
- Does an offense against the clear Word of God need "dispute resolution" or does it need to be handled in a different manner?
- What entity would determine whether a matter is merely the difference of theological opinion between contentious parties or is an offense against the clear Word of God?
- If a complaint is filed against a member of Synod who openly espouses the ordination of women, is that likely to be treated as a matter of dispute which needs to be resolved or rather as a matter of error which needs to be disciplined?
- Do Synod's Bylaws 2.27 or 8.01 address a situation in which one member of Synod may formally point out the *de facto* doctrinal dissension of another member who either has or has not followed the procedure listed in Bylaw 2.39? If so, would this be treated as a matter for dispute resolution—or rather for possible expulsion from Synod through some other entity?
- Is the Commission on Constitutional Matters able to give a ruling as to a reasonable length of time after the stipulations of Bylaw 2.39 have been followed to bring closure to the matter—or may a member of Synod maintain his dissent indefinitely as long as he has followed the procedures stated in Bylaw 2.39?

Response: These questions are so broad that a specific response thereto would require a lengthy discourse which would be confusing by reason of the fact that the questions themselves are confusing. Since a definite conclusion cannot be given, the Commission declines to respond thereto in view of the bylaw provision that its opinions are binding on the question decided unless and until it is overruled by a synodical convention.

232. Questions re Difference of Opinion Within the Synod re Actions of District President (02-2245)

In a letter received January 11, 2002, a congregation which is a member of the Synod has written to the Commission relative to a controversy involving allegations against the President of the Atlantic District which assert that the District President violated the conditions of membership in the Synod. The letter notes that the Synod's President and First Vice-President have expressed differing views on the actions of the District President. The letter goes on to ask the following questions:

QUESTIONS: Who is correct, Dr. Kieschnick or Rev. Daniel Preus? Did Dr. Benke violate the LCMS Constitution?"

Response: This Commission's duties are set forth in Bylaw 3.905. Those duties include interpretation of the Constitution, Bylaws and resolutions of the Synod. The questions posed require the application of the Constitution and Bylaws of the Synod to a set of facts that are disputed. The questions inherently ask for

factual determinations. Such factual determinations are beyond the scope of this Commission's duties. Where charges such as these are brought, the factual issues must be resolved through the process defined in Bylaw 2.27 and Chapter VIII of the Bylaws. This Commission cannot make the factual determinations asked in these questions, and therefore is not in a position to answer them.

233. Question re Inability of Praesidium to Reach a Decision (02-2246)

The Praesidium of the Synod, in a memo dated January 11, 2002, described its inability after four separate ballots to determine the eligibility of the President to act in response to a complaint against a District President and asked the following question:

QUESTION: “Does a deadlocked Praesidium on the question of the eligibility of the Synodical President to act in a case of formal charges against a District President mean that the Synodical President is or is not disqualified from acting in this case?”

Response: Such a deadlock has neither effect. The bylaw in question, 2.27 a 1, which applies in the instant case because of a challenge to the synodical President's authority to take action pursuant to Bylaw 2.27 g, requires that the Praesidium reach a definitive conclusion. The bylaw does not allow for a deadlock. The matter at issue in all such cases, the ability of the President to act impartially in investigating a disputed case, is far too important to allow it to be decided by default, deadlock, the vicissitudes of parliamentary procedure, or the manner in which a motion is worded. In the case of such a deadlock, given the importance of the issue, the Praesidium must find a way to reach a definitive conclusion.

The Commission further observes that the Synod depends upon the Praesidium to resolve such weighty issues. It notes that the members of the Praesidium are all learned men, elected to important and solemn office in the Synod because the delegates to the Synod's convention who elected them felt that they had the ability to deal with difficult and weighty matters. The Commission therefore encourages the members of the Praesidium to continue to deliberate upon this important matter in order to arrive at a churchman-like and God-pleasing decision.

234. Questions re Appointment of Interim Directors (01-2237)

The President of the Synod, in an October 26, 2001 memorandum, asked two related questions pertaining to the appointment of interim executive directors or interim chief executive officers by entities of the Synod. The Commission discussed a second draft response and agreed to consider at a later date yet another draft prepared by its chairman.

235. Questions re Duties of District Presidents related to Bylaw 2.27 and Dispute Resolution (01-2239)

In a October 5, 2001 letter, a pastor of the Synod reminded the Commission of its responsibility to “interpret the Synod's Constitution, Bylaws, and resolutions upon written request of a member” (Bylaws 3.905 d) and requested an interpretation of the duties of a District President relative to dispute resolution and a ruling regarding the actions of the President of the Michigan District.

QUESTIONS: [Please provide] an interpretation of the duties of a District President related to his responsibilities in Bylaw 2.27, and also related to the purposes and objectives and procedures of the synodical dispute resolution process. [Please also provide a ruling] based on the misapplication, refusal to act, or disobedience of the requirements of Michigan District President C. William Hoesman related to Bylaw 2.27.

Response: You are correct that it is the responsibility of the Commission on Constitutional Matters to interpret the Synod's Constitution, Bylaws, and resolutions. It is not the responsibility of the Commission to make application of these documents to individual cases since it does not have all the facts to make such determinations. The Commission will therefore limit its comments to your first request for an interpretation of the duties of a District President as provided by Bylaw 2.27.

The Constitution and Bylaws of the Synod provide two avenues of action when disputes arise between members of the Synod. One avenue is the dispute resolution process provided in Chapter VIII of the Bylaws, which "is applicable whether the dispute involves only a difference of opinion without personal animosity or is one which involves ill will and sin which requires repentance and forgiveness" (Bylaw 8.01). The second avenue is the termination of membership process provided by Bylaw 2.27, which applies when a written complaint is made against a member of the Synod regarding "facts which could lead to the expulsion of a member from the Synod under Article XIII of the Constitution" (Bylaw 2.27 a).

Parties with concerns regarding other members of the Synod should decide early on which avenue they wish or need to take. If the goal is "to resolve, in a God-pleasing manner, disputes that involve as parties, members of the Synod, the Synod itself, a District or an organization owned and controlled by the Synod, persons involved in excommunication or lay members of congregations of the Synod holding positions with the Synod itself or with Districts or other organizations owned and controlled by the Synod," the dispute resolution process provided by Chapter VIII of the Bylaws "shall be the exclusive remedy to resolve such disputes" (Bylaw 8.01). In such case, efforts must be made to resolve the matter informally before the formal process begins (Bylaw 8.05). If such informal efforts are unsuccessful, the Secretary of the Synod or of the District (see Bylaw 8.13 b and c) is contacted for the assignment of a reconciler, in which case the process outlined in Chapter VIII is followed to the conclusion of the matter.

If, on the other hand, a concern is of such nature that it could lead to termination of membership in the Synod, then a written complaint should be filed with the appropriate District President, who is required to "investigate whether the allegations can be substantiated" (Bylaw 2.27 a 1) and to make a decision regarding termination of membership (Bylaw 2.27 b). This process requires that the District President "follow the guidelines of Matt. 18:15-16 and may appoint a small committee to assist in reconciliation efforts" (Bylaw 2.27 a 2).

Oftentimes District Presidents become involved in dispute resolution before either of the above avenues are taken, as part of their overall responsibilities to "supervise the doctrine, the life, and the official administration on the part of the ordained or commissioned ministers who are members through his District or are subject to his ecclesiastical supervision" (Bylaw 4.73). In doing so, District Presidents may make use of the trained reconcilers in their Districts.

When either of the formal avenues of dispute resolution are chosen, it is important that the action be clearly taken, either by contacting the District or Synod Secretary for the assignment of a reconciler or by making a formal written complaint to the District President as required by Bylaw 2.27 a. When a written complaint is made to a District President, he has 90 days to act. If he "fails to act" or if he declines to suspend the member, the complainant may present the written complaint to the Praesidium of the Synod (Bylaw 2.27, b).

In large part the questions addressed to the Commission focus on the "fails to act" issue. The Commission on Constitutional Matters has previously interpreted "fails to act" as follows (Ag. 2097):

The CCM interprets "fails to act" to mean that a District President takes no action within 90 days of receiving a complaint. Such inaction would mean no measures were initiated within the 90 day

period to ascertain the truth or falsity of the complaint allegations. The same criteria would apply to the First Vice-President or next qualified District officer under Bylaw 2.27, 1. The words “fail to act” clearly prevent a District President from stifling a complaint through the refusal to act, i.e., by literally doing nothing. A complaint which is ignored by a District President for 90 days triggers the “fails to act” language. In that situation, an appeal to the Praesidium is the proper procedure anticipated in the bylaw.

When, however, a District President receives a complaint, he may take a number of actions which toll the “fails to act” language of the bylaw. He may suspend the member. He may decline to suspend the member. In each case he has acted. The District President may elect to investigate personally or intervene through the efforts of his representatives. He may meet with the complainant or with the person against whom the complaint is lodged. He may appoint a small committee to assist reconciliation efforts. He may take these steps or any other reasonable efforts to get to the heart of the complaint and be deemed to have acted. Such efforts may extend beyond 90 days until a decision concerning suspension is reached. At that time a complainant may appeal if the District President declines to suspend.

If a District President has taken no action or ignored a complaint for the 90 day period stipulated in the bylaw, it is appropriate for the Praesidium to consider an appeal by the complainant under the “fails to act” language of 2.27, b. When a District President takes action within 90 days, the “fails to act” language is tolled while the investigation or reconciliation efforts are pending. An appeal made on a current case in such circumstances should be properly denied by the Praesidium pending its prompt disposition by the District President.

The Bylaws are silent regarding the length of time a District President has to conclude action on a complaint. The clear intent of the bylaw requires expeditious action by a District President when dealing with such a complaint. A District President may not frustrate the purpose of the bylaw by undertaking some action within 90 days and subsequently refusing to act. The actions of a District President upon receiving a complaint must ultimately lead to a decision to suspend or not to suspend. When a District President begins to act within 90 days and subsequently fails to act, a complainant may properly appeal to the Praesidium. The Praesidium shall determine on a factual basis whether the District President commenced and continued to act.

If you continue to believe that the District President in this case failed to act on your complaint within the 90-day required period of time as understood in light of the aforementioned CCM ruling, you may present your written complaint to the Praesidium of the Synod.

The President of the District is not responsible to arrange meetings between the complainant and the respondent. That responsibility rests with the parties involved in the dispute (Bylaw 8.05) and, later in the process, with the reconciler who is chosen (Bylaw 8.07 a, b, c, and d).

236. Adjournment

Following brief discussion of the matter of CCM appointments, the meeting was ended with the Benediction spoken by Albert Marcis.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
February 22, 2002

1. Call to Order

Acting Chairman Walter Tesch called the first meeting of the newly-constituted Commission on Constitutional Matters to order and asked Albert Marcis to provide an opening prayer. All members of the Commission participated in the conference call meeting: Donald G. Little, Daniel C. Lorenz, Albert M. Marcis, Norman C. Sincebaugh, Walter Tesch, and Raymond L. Hartwig. Discussion followed regarding the manner in which the Commission will carry out its business.

2. Questions re Appointment of Interim Directors (01-2237)

The Commission's response to two questions submitted by the President of the Synod on October 26, 2001, was briefly discussed. A latest draft will be prepared in preparation for the Commission's next meeting.

3. Questions re Relationship of Chapter II and Chapter VIII of Bylaws (02-2247)

A District President in a letter dated January 9, 2002, submitted a series of questions regarding the role of a District President in addressing complaints.

Question 1: "If a complaint is made under Bylaw 2.27 that is personal and relational in nature (such as alleged slander) wherein the ultimate goal should be reconciliation between the parties who are members of Synod, can a District President direct a complainant to use Bylaw Chapter VIII as a more appropriate means of dealing with the matter? If so, must the complainant use Chapter VIII if he wishes to pursue the matter?"

Opinion: The criteria for use of the procedure set forth in Bylaw 2.27 is whether the facts which are the basis of the complaint could lead to the expulsion of the member from the Synod. Article XIII 1 of the Constitution states: "Members who act contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI or persist in an offensive conduct shall, after previous futile admonition, be expelled from the Synod." Thus, the District President must decide whether the facts of the complaint are such that, if true, are a violation of Article XIII 1. If they are, a proceeding under Bylaw 2.27 is appropriate. However, if they are not, the matter must be commenced under the procedure set forth in Chapter VIII of the Bylaws.

If a District President concludes that the matter does not qualify to proceed under Bylaw 2.27, he declines to suspend the member. The complainant may then (a) appeal such refusal to the Praesidium under the provisions of Bylaw 2.27 b; (b) pursue the matter under the procedure set forth in Chapter VIII of the Bylaws; or (c) take no further action.

Question 2: "Can Bylaw Chapter VIII be used by a District President as a means of accomplishing Bylaw 2.27 a 1 and 2? If a District President so decides, must the complainant follow Chapter VIII if he wishes to pursue the matter?"

Opinion: This question was answered in the opinion to Question 1 above. It should be noted, however, that the procedure under Chapter VIII of the Bylaws begins with a requirement (Bylaw 8.05) that the parties involved in the dispute must meet together face to face in a good-faith attempt to settle their

dispute (Matthew 18:15). In the same manner, Bylaw 2.27 a 2 requires that the District President follow the guidelines of Matthew 18:15-16 and may appoint a small committee to assist in reconciliation efforts. Thus reconciliation is the stated goal of procedures under Bylaw 2.27 as well as Chapter VIII of the Bylaws. Further, a District President who follows the mandates of Bylaw 2.27 a 2 is acting and thus does “act after receipt of the written complaint” (Bylaw 2.27 b).

Question 3: “Can a District President purposefully, for the good of the church, decide to not “act” (Bylaw 2.27 b) on a complaint with the intention that, if the complainant wishes, the complaint be forwarded to the Praesidium of Synod? If so, can a District President, prior to the 90 day deadline (Bylaw 2.27 b), notify the complainant and/or the Praesidium of Synod to expedite the matter?”

Opinion: A District President can “fail to act” for any reason he deems appropriate. The Bylaws are silent on the issue. In a previous decision (Ag. 2097) dated May 22, 1998, the Commission stated the following regarding the term “fails to act”:

The CCM interprets “fails to act” to mean that a District President takes no action within 90 days of receiving a complaint. Such inaction would mean no measures were initiated within the 90 day period to ascertain the truth or falsity of the complaint allegations. The same criteria would apply to the First Vice-President, or next qualified District officer under Bylaw 2.27 a 1. The words “fails to act” clearly prevent a District President from stifling a complaint through the refusal to act, i.e., by literally doing nothing. A complaint which is ignored by a District President for 90 days triggers the “fail to act” language. In that situation, an appeal to the Praesidium is the proper procedure anticipated in the bylaw.

The Bylaws do not provide for a waiver of the 90 day passage before the complainant may present the written complaint to the Praesidium. Further, a District President has no authority to notify the Praesidium that he will fail to act on a written complaint he has received. The complainant alone is the party who must make the decision as to whether or not he will appeal to the Praesidium the decision of the District President to decline to suspend the respondent or the failure of the District President to act within 90 days after receipt of the written complaint.

4. Proposed Amendment to the Bylaws of the LCMS Foundation (02-2248)

Legal Counsel for The Lutheran Church—Missouri Synod Foundation, in a letter dated January 15, 2002, requested that amendments to the Foundation’s Bylaws, approved by the Board of Directors of the Synod at its November 14-16, 2001 meeting, be approved by the Commission.

Synod Bylaw 3.603 b requires that the Board of Trustees of the LCMS Foundation consist of:

- Two members elected by the Synod in convention, one ordained minister and one layperson
- The chairman of the Board for District and Congregational Services or his representative from that board
- At least seven members appointed by the members, as provided in the Bylaws of the Foundation
- The Chief Financial Officer of the Synod as a nonvoting member
- The President of the Synod or his representative

The Commission notes that the amendment to Article II, Section 1 of the Foundation’s Bylaws meets the requirements of Synod Bylaw 3.603 b, including the requirement that seven members of the Board of Trustees be appointed by the Members of the Foundation as provided in the Bylaws of the Foundation.

The Bylaws of the Synod do not restrict the method of selection or the composition of the seven Trustees appointed by the Members of the Foundation pursuant to its own Bylaws, so long as there are at least seven, and leaves to the wisdom of the Members of the Foundation the method of selection of those trustees.

The Foundation's amended Article II, Section 1 requires that four of these seven members of the Board of Trustees be elected by the At Large Members of the Foundation (identified by Foundation Bylaw Article I, Section 1 as five individuals appointed by the Board of Directors of the Synod) and that the remaining three Trustees be elected by all the Members of the Foundation (the At Large Members as well as one representative from each District, college, university, seminary, or other agency or auxiliary of The Lutheran Church—Missouri Synod that has entered into a formal partnership with the LCMS Foundation as defined under policies of the corporation's Board of Trustees). It is noted that the Synod's Bylaw 3.603 b does not specify how these appointments should be accomplished. The amended Foundation bylaw calls for the "election" of those trustees as the method of "appointing" them. Since the Bylaws of the Synod do not restrict the manner of appointment, the Commission sees nothing that would prohibit the appointment through an election process as outlined in the amended Foundation bylaw. The amendment to Article II, Section 1 is therefore approved.

Article II, Section 3 of the Foundation's Bylaws governing the filling of vacancies has also been amended. The amended bylaw requires that any vacancy in a trusteeship be filled by that entity that originally filled the position. This is in accord with Synod Bylaw 3.63 and with prior Opinion 99-2143 of the Commission. The amendment to Article II, Section 3 of the Bylaws is therefore also approved.

5. Questions re Academic Freedom for Non-Member LCMS Faculty (02-2249)

In a letter dated January 15, 2002, a pastor referred to the Commission's previous Opinion 99-2142 and asked its application to a professor at a synodical school who is not a commissioned minister of the Synod but is a member of an LCMS congregation.

Question 1: "Page 320 of the 2002 *Workbook* of the Synod contains your response to 'Question regarding Academic Freedom (99-2142).' You there write, 'In the case of both categories of persons, doctrinal resolutions and statements are to be honored and upheld until such times as the Synod amends or repeals them' (Bylaw 1.09 b). If there is disagreement, 'Dissent from doctrinal resolutions and statements shall be governed by Bylaw 2.39 c' (Bylaw 1.09 d). In the meanwhile, dissenters are to 'continue to honor and uphold publicly...the position of the Synod, notwithstanding further study and action by the Synod' (Bylaw 1.09 c 10) or face removal from office (Bylaw 6.43 c 6). Does this apply to a professor at a synodical school who is a member of a Missouri Synod congregation but not a commissioned minister of the Synod? Specifically, is such a person governed by Bylaw 2.39 c? The above quotation certainly seems to indicate that such a person is."

Opinion: Bylaw 6.23 c requires that when laypersons are employed in full-time teaching positions, they pledge to perform their duties in harmony with the Holy Scriptures as the inspired Word of God, the Lutheran Confessions, the Synod's doctrinal statements, and the policies of the Synod. Further, in speaking of doctrinal resolutions, Bylaw 1.09 b states that doctrinal resolutions are to be honored and upheld until such time as the Synod amends or repeals them.

Bylaw 2.39 applies to members of the Synod, and by definition the professor in question is not a member. Bylaw 2.39 is therefore inapplicable. Any expression of disagreement or dissent from such faculty member with a position of the Synod must not violate such non-member's duty and agreement to perform his or her duties "in harmony with the Holy Scriptures as the inspired Word of God, the Lutheran

Confessions, the Synod's doctrinal statements, and the policies of the Synod" (Bylaw 6.23 c), and to perform such duties in a manner that does not violate the requirement to "honor and uphold the doctrinal position of the Synod..." (Bylaw 6.43 c 6).

Question 2: "Is 7.3.3 (sic) of the BHE/CUS Policy Manual revised statement of Academic Freedom," adopted by the BHE/CUS Board on July 9, 1998, but never approved by the Synod, in harmony with Bylaws 1.09 b, 1.09 d, and 2.39 c:

'It is not inappropriate to present information regarding concepts that conflict with synodical doctrinal statements/resolutions. This involves (1.) a fair and accurate description of the synodical position, and (2.) a manner of presentation that encourages constructive insights and enhanced understanding of the issues. Presentation of differing and even disturbing concepts is appropriate within the context of a constructive educational activity.'"

Opinion: A policy manual adopted by an entity of the Synod sets forth the internal operating procedures of that entity. Such policies have no force beyond the entity. They are subordinate to the Constitution and Bylaws of the Synod. They are not approved by the Synod but only by the entity that adopted the policies. Bylaw 3.905 sets forth the functions of the Commission on Constitutional Matters (CCM). Included in those functions is the duty to interpret the Synod's Constitution, Bylaws, and resolutions. The CCM does not have the authority to interpret policies that are adopted from time to time by the entities of the Synod. Accordingly, the Commission cannot respond to Question #2.

6. Sundry Questions re the Bylaw 2.27 Process (02-2250)

In a January 22, 2002 letter, a pastor of the Synod submitted a series of questions and concerns to the Commission regarding the Bylaw 2.27 procedure for investigating complaints brought against a member of the Synod.

Question 1: "In looking through the Bylaws of the Synod (Bylaw 2.27 specifically), it speaks of the fact that the complainant, if the District President declines to suspend, can appeal to the Praesidium. I understand the 90 day rule. But what if the District President investigates and rules against the complainant. Can it be pursued further by the complainant or is the matter over?"

Opinion: This question is answered by the provisions of Bylaw 2.27 b. If the District President declines to suspend the member or fails to act within 90 days after receipt of the written complaint, the complainant may present the written complaint to the Praesidium of the Synod.

Question 2: "Does the process as it is set up in Bylaw 2.27 make the Praesidium the de facto "Supreme Court" of the Synod, if the District President or synodical President or other supervisory entity, after investigating a complaint, rules against the complainant?"

Opinion: Again, Bylaw 2.27 b provides the answer. If after investigation the Praesidium concludes that the facts form a basis for expulsion of the member under Article XIII of the Constitution, the Praesidium shall proceed in the same fashion as hereafter required of the District President. If the Praesidium determines not to proceed, it shall in writing so inform the complainant and the involved member, which shall terminate the matter. Thus, if the Praesidium decides to pursue the matter, the Praesidium is the party that must present the facts to the Dispute Resolution Panel that will decide whether the member is to be expelled from the Synod. On the other hand, if the Praesidium decides not to pursue the matter, such decision is final and there is no further appeal of that decision.

Question 3: “What happens to the accused in all this? If the complainant can bring the charges farther up the ladder, does this not place the accused in a case of double jeopardy?”

Opinion: Double jeopardy involves being tried more than once for the same violation. The procedure of Bylaw 2.27 b is not a trial. It is an investigation. It is a procedure whereby a District President investigates whether the matter should be formally presented to a Dispute Resolution Panel for decision. If the conclusion of the District President is in the negative, the complainant has a right to ask the Praesidium to undertake a similar investigation. Double jeopardy does not attach to investigations. Double jeopardy is applicable to the formal hearing at which the Dispute Resolution Panel reaches a decision as to whether the accused is guilty of the charges and that such guilt is of such a type that it requires expulsion from the Synod. Once a decision is reached, the accused cannot be tried a second time on the same facts.

7. Requests for Reconsideration of Opinion 01-2243 (02-2251)

Letters were received from a District President and several pastors requesting a reconsideration of the Commission’s January 11 ruling regarding publicity in dispute cases. After brief discussion, the Commission asked the Secretary of the Synod to research past Commission on Constitutional Matters minutes to identify any former opinions pertaining to the question.

8. Next Meeting

The Commission will next meet April 15-17 in St. Louis. A portion of the meeting time will be reserved for orientation of new members.

9. Adjournment

The Commission having addressed all business on its agenda for this meeting, Albert Marcis closed the meeting with words of benediction.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
April 15-17, 2002

10. Call to Order

The meeting was called to order by acting Chairman Walter Tesch with all members present. Albert Marcis was asked to open the meeting with prayer. Chairman Tesch then invited the members of the Commission to introduce themselves by sharing personal background information.

11. New Member Orientation

Chairman Tesch began the new member orientation process by sharing from personal knowledge and experience how the Commission has functioned in recent years. He emphasized that Bylaw 3.905 governs the activity of the Commission and detailed how opinions have ordinarily been developed and disseminated. General discussion followed.

12. Election of Chairman

A motion was made and seconded that Walter Tesch continue to serve as Chairman of the Commission on Constitutional Matters for the duration of the triennium. The motion carried without dissenting vote.

13. Approval of Minutes

The proposed minutes of the February 22, 2002 meeting were distributed and editorial changes were made. Discussion followed regarding item 5. Questions re Academic Freedom for Non-Member LCMS Faculty (02-2249). When agreement was reached and final changes were made, the Commission approved the minutes for dissemination and publication.

14. Questions re Appointment of Interim Directors (01-2237)

The President of the Synod in an October 26, 2001 memorandum requested an opinion relating to Bylaw 3.101 C 4 and the powers and duties of the President of the Synod when interim executive directors or interim chief executive officers are appointed.

Question 1: “When a program board, commission, or governing board of a synodwide corporate entity appoints an interim executive director or chief executive officer, does the slate of candidates for such an interim position require the mutual concurrence between the appointing board and the President of the Synod?”

Opinion: The question uses the term *interim* executive director or chief executive officer. The Bylaws do not use the term *interim* but speak only of the initial appointment of the executive officer (Bylaws 3.69 e and 3.193) and executive director or chief executive officer (3.101 C 4).

Prior to the 1998 convention of the Synod, Bylaw 3.69 e provided that “the executive officer of each entity must also be approved by the President of the Synod.” As recommended by the Blue Ribbon Committee, this bylaw was amended to its present wording: “The slate of candidates for the initial appointment of the executive officer of a board, commission, or synodwide corporate entity shall be selected by the board or commission in consultation and mutual concurrence with the President of the Synod.” In commenting on the proposed change the Blue Ribbon Committee Report to the convention

stated: “In practice, the President approves a slate of candidates.” Resolution 8-02B, which approved the amendment, included the same comment: “In practice, the President approves a slate of candidates.”

Bylaw 3.183, which relates to synodwide corporate entities, was likewise amended by Resolution 8-02B. Its former wording, “The election of the chief operating or executive officer shall have the approval of the President of the Synod, in accordance with Bylaw 3.69 e,” was amended to read, “The slate of candidates for the initial appointment of the executive officer of a synodwide corporate entity shall be selected by its governing board in consultation and mutual concurrence with the President of the Synod” (Bylaw 3.193).

Present Bylaw 3.101 C 4 provides that the President of the Synod shall “engage in consultation with each program board, commission, and the governing board of each synodwide corporate entity to reach mutual concurrence on the slate of candidates for the position of executive director or chief executive officer.” This bylaw was also created by Resolution 8-02B and had no counterpart in the previous Bylaws. Both the Blue Ribbon Committee Report and Resolution 8-02B make the very same comment relative to the creation of this bylaw: “In practice, the President now approves a slate of candidates. See Bylaw 3.69 e.”

Thus it is clear that Resolution 8-02B codified that which had become the practice under the previous Bylaws. Therefore, if prior to the 1998 convention of the Synod the President did not approve the slate of candidates for the interim executive officer of a board or commission, the amendments adopted by Resolution 8-02B did not change that practice. This Commission is advised that prior to the 1998 convention the President did not approve the slate of candidates for the interim position of an executive officer. Accordingly, such approval is not required under the present Bylaws. However, as provided in Article XI B 3 of the Constitution, the President has and always shall have the power to advise, admonish, and reprove.

Question 2: “If a program board, commission or governing board of a synodwide corporate entity determines, for any reason, that a vacancy in the position of its permanent executive director or chief executive officer should remain vacant for a significant period of time, does the slate of candidates for such an interim position require the mutual concurrence of the governing board and the President of the Synod?”

Opinion: An interim executive officer is one who provides leadership during the interval necessary to accomplish the established procedure to select a successor permanent executive officer. If the selection process is not conducted in an expeditious manner or is delayed because the governing board determines that other matters require prior resolution, then it is not an interim executive officer that is being appointed but rather an executive officer who is serving for an indeterminate period of time. In such a situation, the individual who is to serve during such indeterminate period of time must be selected from a slate of candidates selected by the board or commission in consultation and mutual concurrence with the President of the Synod. To hold otherwise would be contrary to the intention of the Bylaws that the President of the Synod must approve those individuals from whom a board or commission will choose its permanent executive officer. Therefore, it is a violation of the Bylaws of the Synod for a board, commission, or synodwide corporate entity to select an executive officer to serve for an indeterminate period of time without consultation with and the mutual concurrence of the President of the Synod.

Since the Bylaws lack specific reference to the matter of interim appointments, the Commission refers this matter to the Commission on Structure for its consideration and possible modification of the Bylaws to further address this concern.

15. Requests for Reconsideration of Opinion 01-2243 (02-2251)

In letters dated January 29, January 30, and February 12, 2002, a District President and two pastors formally requested that the Commission reconsider its January 11, 2002 ruling regarding publicity in dispute cases, raising several issues and offering their own rationale and counsel. The Commission has taken into consideration the points made and issues raised by the questioners and upon reconsideration, rules that its opinion 01-2243 stands, for the following reasons:

- (1) Opinion 01-2243 is consistent with other opinions of the Commission since the Synod replaced the pre-1992 adjudication process with the post-1992 dispute resolution process. In its July 8, 1999 response to a series of questions regarding the relationship of Bylaw 2.27 to Chapter VIII of the Bylaws (99-2151), the Commission explained how the two fit together. After Bylaw 2.27 “triggers the procedure,” the process may move to Chapter VIII and Bylaw 8.07, h. “In this case the ‘complainant’ is the member who is contesting the expulsion, and the ‘report of the reconciler’ is the District President’s ‘statement of the matter in dispute.’” The Commission concluded: “Therefore, in response to the question, Bylaw 2.27 and Chapter VIII of the Bylaws do not operate independently of and without regard for each other.” Instead, “Bylaw 2.27 ties into Chapter VIII of the Bylaws at Bylaw 8.07, h. Bylaw 8.07, a-g, are not utilized in a Bylaw 2.27 action.” Therefore, the remaining paragraphs governing the Chapter VIII process apply also to disputes originating with Bylaw 2.27, including Bylaw 8.21 and paragraph e.
- (2) Opinion 01-2243 recognizes a relationship between the two pertinent sections of the Bylaws that has long existed in the *Handbook* of the Synod. Over the years as the *Handbook* was revised, including revisions to processes for addressing disputes of all kinds, the requirement regarding publicity has not been significantly changed. Portions of the former processes were carried over into new processes, in particular the requirement governing publicity:
 - j. While a case is still undecided or while appeals are contemplated or pending, there shall be no publicity of the case by any party to the proceeding (Bylaw 5.31 j; 1973 *Handbook*, p. 124).
 - m. While a case is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the case by any party to the case. A violation by a party may place the party’s stand in jeopardy. At the request of either party the status of the process and periodic progress reports on the process may be properly disclosed by the chairman of the commission to parties on a need-to-know basis (Bylaw 8.51 m; 1989 *Handbook*, p 134).
 - e. While a matter in dispute is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the parties involved (Bylaw 8.21 e; 2001 *Handbook*, p. 126).

1989 Bylaws 8.31 and 8.35 stipulate the kinds of “situations” to which the adjudication process, including the above bylaw, apply. Included are disputes such as are covered by the current (2001) Chapter VIII Dispute Resolution Process. Also included are “cases involving expulsion under Article XIII of the Constitution,” covered by current (2001) Bylaw 2.27, “Commencing an Action to Terminate Congregational or Individual Membership.” Both kinds of cases were included under the same process. Requirements regarding publicity applied to both kinds of cases. This is demonstrated by Commission on Constitutional Matters' rulings prior to 1992.

- (3) Opinion 01-2243 is consistent with opinions rendered by the Commission before the Synod replaced the pre-1992 adjudication process with the post-1992 dispute resolution process. Regarding a 1975 case in which charges of false doctrine were made against a church worker, the Commission was asked on two occasions to rule regarding the release of information. In a February 21, 1975 ruling delineating the procedure to be followed when a board of control has sustained a charge of false doctrine, the Commission ruled: “6. Since the Board of Control is obligated under Bylaw 6.79 to forward the accusation to the District President, no publicity should be given the case beyond the simple announcement by the Board of Control of the action taken and of its basis (Bylaw 5.31, j).”

This was followed by an April 11-12, 1975 ruling (Ag. 809, 809 A and D) in response to a series of additional questions from the board of control regarding the same case. Noting that it had forwarded to the District President of the accused the “charge” (Bylaw 6.79) or “accusation” (Bylaw 5.11) along with accompanying documentation, the board of control asked to what extent it remained a “party of the proceeding” (Bylaw 5.31, j). The Commission responded that “the Board of Control has been involved in the proceedings and therefore comes under the phrase ‘any party’ in the bylaw.” When asked whether the limitations on publicity permit the board an opportunity to defend itself or to deal with its accusers in keeping with the provisions of the Eighth Commandment, the Commission ruled that “as of this moment it would not be proper to initiate discussion of those charges...which could lead to expulsion from the Synod.” When said board noted that news releases and statements have already placed into the public domain a considerable body of information and asked whether “the public repetition of such information at the present time, perhaps arranged in one report for the sake of convenience, be regarded as objectionable publicity,” the Commission ruled that “the circulation of such statements by the Board of Control at this time would be inappropriate under Bylaw 5.13 j.” When said board reminded the Commission that it had ruled that the board would be permitted to announce the basis of its action and asked whether the board’s statement of its “basis” could include “such matters as a chronological and explanatory account of the procedures followed, the charges, the opinion of the CTCR, and the findings of the Faculty Hearings Committee,” the Commission responded that “the Board of Control may list simply the findings of the Board on the basis of which the Board of Control has removed [the accused] from office.”

Correspondingly, a like response was given to inquiries regarding publicity in a non-suspension case. In a 1989 dispute case involving a church worker and an agency of the Synod over a decision made by the agency, the Synod’s Director of News and Information was refused a copy of an appeal document submitted by one of the parties to the dispute to the entity involved in resolving the case. He indicated that it was his desire and intention to report factually and objectively in the light of reports on the matter which had tended to circulate in the Synod’s “grapevine.” At the same time, the chairman of the entity involved in resolving the case argued that the release of such information would not only be contrary to the bylaw regarding publicity (Bylaw 8.51 m), but it would also fail to honor Objective III, 9 of the Constitution of the Synod to “provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties.” The Commission responded that “a reporting of the naked fact that an appeal had been filed was legitimate. However, any reference to substance, etc., in its opinion, was not appropriate.” Therefore, the appeal document was not released as requested.

In summary, the stipulation regarding publicity was carried over from the old process when it was changed in 1992. In the old process, requirements regarding publicity were applied to expulsion cases as well as to other dispute cases. The Commission’s Opinion 01-2243 is consistent with prior rulings and practice and therefore stands.

Finally, the Commission has also considered the additional issues raised in the letters it received and offers the following additional comments in response:

- 1) Issue: If a complaint is made against a member of the Synod and the District President concludes that the facts form a basis for the expulsion of the member from the Synod, the District President would have to discuss the matter with leaders of the congregation served by the member and possibly the congregation itself. Would not the President of the District thereby be giving publicity to the matter?

Response: Bylaw 2.25 a states that when a formal proceeding has been commenced against a member of the Synod that may lead to expulsion of the member from the Synod, the member shall have suspended status. Paragraph d of the same bylaw requires the District President to notify the congregation or other agency being served by the member of the Synod of such suspended status. Therefore discussions with the leaders of the congregation or the congregation itself are not publicity. Rather, they are part of the dispute resolution process.

- 2) Issue: A complaint against a member of the Synod may be made by a non-member of the Synod. Such non-member is not bound by the Bylaws of the Synod and thus such non-member is not bound by the prohibition against publicity set forth in Bylaw 8.21 e.

Response: This is correct. This is, however, what the Bylaws provide. If there is a problem it is with the provisions of the Bylaws and not with the opinion issued by the Commission. Non-member complainants should be encouraged to respect the intent and nature of the dispute resolution process that has been established by the Synod and as outlined in the Preamble to Chapter VIII of the Bylaws. The Commission suggests that this matter also be reviewed by the Commission on Structure.

- 3) Issue: The opinion of the Commission “gags” the President of the Synod who, under Article XI of the Constitution of the Synod, “shall have the power to advise, admonish and reprove” (subsection B, paragraph 3). How can he do this if the CCM ruling takes away his free speech?

Response: Article XIII 2 of the Constitution provides: “Expulsion shall be executed only after following such procedure as shall be set forth in the Bylaws of the Synod.” As pointed out in its Opinion 01-2243, the bylaw prohibition against publicity in a proceeding under Bylaw 2.25 f is applicable to the President of the Synod since he is a party involved in the matter. Thus, the prohibition against the President of the Synod giving publicity to a matter in dispute has its genesis in the Bylaws of the Synod and not in the opinion of the Commission.

Properly understood, the opinion of the Commission does not infringe upon the duties of the President that are set forth in the Constitution and Bylaws of the Synod. There is no prohibition against the President communicating with the members of the Synod as to the underlying doctrinal topics that are involved in a disputed matter. The President cannot give publicity to the particular matter in dispute. Some confusion appears to exist as to the Commission’s use of the term “matter in dispute” to which the prohibition of publicity applies. This phrase includes the details of the charges or allegations made, the correspondence and other communication which follow, the status of proceedings or deliberations, the President’s actions pertaining thereto, and his opinion as to who is right or wrong. The duty of the President of the Synod under Article XI B of the Constitution is to supervise the doctrine and administration of officers, employees, Districts, and District Presidents, to see to it that they act in accordance with the Synod’s Constitution, to admonish all who in any way depart from it, and, if such admonition is not

heeded, to report such cases to the Synod. This duty, as well as the power to advise, admonish, and reprove, is tempered by the provisions of Article XIII and the bylaws that flow from it.

16. Question re Propriety of Bylaws 2.23–2.27 (01-2252)

Several pastors of the Synod in a letter dated November 1, 2001, questioned the propriety of the Synod's Bylaws pertaining to restricted status, suspended status, and commencing an action to terminate congregational or individual membership. After stressing the responsibility, accountability, and authority of the local congregation in all matters of doctrine, practice, and polity, they asked the following question of the Commission:

Question: "Is not our synodical Constitution as outlined in Bylaw II.D.2.23, 2.25 and 2.27 of the 1998 LCMS Handbook in flagrant violation of the Holy Scriptures, the Lutheran Confessions and our Pure Doctrine of Polity in respect to the divine right and sacred responsibility of exclusive ecclesiastical authority given by God into the hands of the Hearers of the Word of God and to the office of the public ministry within the local community congregation?"

Opinion: This question raises issues that are theological in nature and are outside the scope of responsibility of this commission delineated in Bylaw 3.905. The petitioners may wish to direct their question to the Commission on Theology and Church Relations.

17. Question re Withdrawal from Dispute Resolution Process (01-2253)

In a letter dated November 5, 2001, a Dispute Resolution Panel, upon completion of a hearing and decision in a case involving the suspension of a pastor who sought to resign from the Synod prior to the opening of the hearing in order to avoid the hearing process, asked the Secretary of the Synod on its behalf to ask the Commission to respond to the following question:

Question: "Can a member of Synod withdraw from the dispute resolution process prior to the commencement of the actual hearing but after the hearing has been requested?"

Opinion: Bylaw 2.27 and Chapter VIII of the Bylaws are the exclusive process provided by the Synod for addressing termination of membership. Once the process has been initiated, the Synod and its members are bound to follow the procedure that has been provided. "No person, entity or agency to whom or to which the provisions of this chapter are applicable because such person, entity or agency is a member of the Synod may render the provisions of this chapter inapplicable by terminating that membership" (Bylaw 8.01).

As part of that process, a member whose expulsion has been requested according to Bylaw 2.27 c is given 15 days to decide whether to have the matter heard by a Dispute Resolution Panel or whether not to contest such expulsion and thereby consent to termination of membership (Bylaw 2.27 c 2 c). Once the choice is made to continue the process by requesting a hearing before a panel, the Synod is duty-bound to finish its process. Should the member of the Synod decide to withdraw from the dispute resolution process at any time after the decision to request a hearing has been made, the process must none-the-less be continued to its conclusion.

18. Question re Applicability of Bylaws to Dispute Case (01-2254)

In a letter dated November 10, 2001, a reconciler of the Synod appointed to a dispute case addressed the following question to the Commission regarding the applicability of certain bylaws to the matter in dispute.

Question: “What is the applicability, if any, of Chapter X of the Bylaws to membership in the Association for Clinical Pastoral Education, Inc.?”

Opinion: The Commission notes that the “Chapter X” referred to in the question has since been incorporated by convention action into Bylaw 3.925 (2001 *Handbook*, pp. 74-75). In any case, the applicability of this bylaw to the particular matter in dispute cannot be decided without factual determinations that are beyond the scope of responsibility of this commission.

19. Ecclesiastical Supervision of Rostered RSO Workers (01-2255)

In a memorandum dated December 13, 2001, a District President offered comment regarding the Commission’s earlier decision (01-2234) governing the ecclesiastical supervision of rostered workers who have been called or appointed by Recognized Service Organizations. He called attention to the fact that application of that opinion in the case of RSOs that deploy workers throughout the country and world can make it difficult for District Presidents to provide appropriate ecclesiastical supervision. He therefore suggested that this concern be included with this Commission’s previously-announced request of the Commission on Structure that it provide clarification in the Bylaws in this regard.

The Commission is pleased to forward a copy of the District President’s letter to the Commission on Structure for its consideration.

20. Function of the Commission’s GUIDELINES for Constitutions and Bylaws (02-2256)

A pastor of a congregation working on its Constitution and Bylaws in a February 13, 2002 letter asked several questions regarding the Commission’s “GUIDELINES for the Constitution and Bylaws of a Lutheran Congregation.” He noted that these guidelines are used and interpreted differently across the Synod.

Question 1: “We would like your committee to issue an opinion as to the function of the guidelines in producing a constitution and by-laws. Is it their intent to be guidelines or is the essence of the material to be used verbatim?”

Opinion: The Commission calls attention to its comments in the Preface of said guidelines. Noting the desirability of uniformity and also the wide divergences that exist among the congregations of the Synod, the Commission states that what is included in its document “should be regarded as guidelines.” Noting that Bylaw 2.03 requires that all constitutions and bylaws, including changes to existing constitutions and bylaws, be submitted to a District standing constitution committee for examination and to the District’s Board of Directors for approval, the Commission states that such committees, “in evaluating constitutions and bylaws that are submitted, will judge them in light of the principles contained in this document.” The Commission also describes its approach to the guidelines by explaining that “the following are subjects that should ordinarily be addressed” by a congregation. It is therefore not the Commission’s intention that the material must be used verbatim.

Question 2: “Our mother church has in ‘3.0 Confessional Standard’ that the God’s Word (sic) is ‘without error’ in addition to the usual verbiage. That wording, we feel from looking at our Synodical position, is not going beyond either the Scriptures or the Synod’s position. It is without question the position of the Brief Statement. Would such a modification be permissible in light of the guidelines?”

Opinion: According to Bylaw 2.03, decisions regarding such matters are the responsibility of District standing constitution committees, for which decisions such committees may wish to obtain guidance from the Commission on Theology and Church Relations.

Question 3: “We also notice in the Membership area the statement on communicant membership is quite open. Churches I have been to in the past have defined this area to include regular use of Word and Sacrament....Does this kind of concept exceed the position of the church or are we able, through this document, to stand very specifically for a position which we feel gives direction to our people?”

Opinion: The Commission reiterates that decisions of this nature are the responsibility of District standing constitution committees. It is the stated responsibility of these committees not to needlessly restrict congregations but to “examine the constitution and bylaws to ascertain that they are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod” (Bylaw 2.03 a).

Question 4: “How the guidelines are to be used is not seen uniformly across our Synod. Is this document, as would be implied from the title, “guidelines” in which we find our unity or are they to be understood in a more rigid fashion where divergence from their position would leave a church outside our fellowship?”

Opinion: As already stated, the Commission intends that its document serve to provide guidelines to the congregations of the Synod, recognizing the desirability of uniformity as well as the wide divergences that exist among congregations. While the guidelines may also serve to promote unity in the Synod, such unity is grounded in “common confession and mission” (Bylaw 1.01) according to the requirements of membership established by the congregations (Article VI; Bylaw 1.05 d).

21. Questions re Duties of the President and Board of Directors, Dispute Process (02-2257)

In a letter dated February 13, 2002, a pastor of the Synod, emphasizing their urgency, “put seven questions to the Commission on Constitutional Matters in view of recent and important developments.”

Question 1: “Constitution XI B sets forth the duties of the President of Synod. Is it legitimate to use a Bylaw (e.g. 2.27 g) to abridge Constitution XI B?”

Opinion: It is never appropriate for a bylaw to abridge any part of the Constitution. The Commission opines that the bylaw in question does not impinge upon Article XI of the Constitution.

Question 2: “Constitution Article XI C 1 states that the Vice-Presidents shall function upon request of the President. Do the Vice-Presidents of Synod have the authority to assume his function without the request of the President?”

Opinion: Article XI C 2 and Bylaw 3.105 provide such provision in the case of disability, deposition from office, or death. Other than under such circumstances, the Vice-Presidents have no authority to assume any function of the President unless specifically provided for by the Constitution and Bylaws of the Synod under certain conditions or situations.

Question 3: “Constitution Article XI A 1 limits the officers of the Synod only to such rights as have been expressly conferred upon them by the Synod. Do the Board of Directors, the Secretary of Synod, or the Vice-Presidents of Synod have the authority to direct the President in his constitutionally mandated responsibilities?”

Opinion: None of the officers mentioned has the authority to direct the President in his constitutionally-mandated responsibilities.

Question 4: “Constitution Article XI F 2 sets forth the duties of the Board of Directors: ‘It shall exercise supervision over all the property and business affairs of the Synod.’ Does this include ‘general oversight responsibilities for the behavior of the Synod’s members toward one another?’”

Opinion: The Board of Directors does not have general oversight responsibility for the behavior of the Synod’s members toward one another.

Question 5: “In light of Bylaw 3.183 d 2, does the Board of Directors have the authority to order the Communications Department, the editor of the REPORTER, all program boards, all officers of Synod, and all staff not to distribute information?”

Opinion: The Commission will respond to this question in its forthcoming opinion 02-2259.

Question 6: “When a complaint is filed under Bylaw 2.27, is it legitimate to invoke the limitation of 8.21 e before the steps mandated in 2.27 have been completed? To do so confuses two intentionally separate procedures.”

Opinion: See Opinion 02-2251.

Question 7: If Matthew 18 has not been followed as Scripture itself requires, and as referenced in Bylaws 2.27 a 2, Preamble to Chapter VIII, and 8.07 e, then must not charges be dropped with prejudice?

Opinion: The Bylaws make no such provision. Such concern should be brought to the District President. However, Matthew 18 is an integral part of the entire dispute resolution procedure, even as reconciliation is the ultimate goal of the entire process. This is clearly stated in the Preamble to Chapter VIII: “The words of Jesus provide the basis for church discipline for the local congregation. The same passage also grants Christ’s guidance for all Christians in seeking to settle other disputes, many of which fall outside the purview of church discipline involving the congregation. In either case, the steps of Matthew 18 should be applied lovingly in both formal and informal settings. The parties and others attempting to effect resolution of a dispute must always remain mindful that the church has been given the ‘ministry of reconciliation’ (2 Cor. 5:18). Hence, conflict resolution in the church is to lead to reconciliation, restoring the erring member in a spirit of gentleness (Gal. 6:1). Its aim is to avoid the adversarial system practiced in society” (Preamble to Chapter VIII, paragraph 3).

22. Role of Board of Directors in Dispute Resolution Process (02-2258)

In a letter dated February 17, 2002, a pastor raises an issue prompted by an OFFICIAL NOTICE by the Secretary of the Synod published in the February 2002 issue of *REPORTER* in which he requested comments regarding the dispute resolution process. The pastor expressed concern that Resolution 7-19 of the 2001 synodical convention, which gives responsibility to the Council of Presidents to review Bylaw 2.27 g, is contradicted by the decision of the Board of Directors referred to in the official notice. He also expressed concern that the Board of Directors by this action has inappropriately involved itself in supervision of the dispute resolution process.

Question: Does the action of the Board of Directors of the Synod reported in an official notice in the February, 2002 issue of *Reporter*, contradict Res. 7-19 of the 2001 convention of the Synod,

and does this action inappropriately involve the Board of Directors in supervision of the Synod's dispute resolution process?

Opinion: The Commission responds that the provisions of 2001 convention Resolution 7-19, which call upon the Council of Presidents to review Bylaw 2.27 g, will not be interfered with by the referred-to action of the Board of Directors.

The Commission notes that the Secretary of the Synod has been given the responsibility to administer the Synod's dispute resolution process (Bylaw 3.143 o). The Secretary has informed the Commission that an action intended for the 2001 convention of the Synod, "To Study Dispute Resolution Process" (2001 Res. 7-33), was not acted upon by the Synod due to lack of time. Recognizing the importance of that intended action, the Secretary, as administrator of the dispute process, has decided to conduct such a study and therefore approached the Board of Directors for approval of expenditure of funds for this purpose, also offering to report back to the Board regarding the use of such funds. This was the extent of the involvement of the Board of Directors in the matter. It did not involve itself in matters that are the responsibility of other officers and entities of the Synod.

In response to an additional question included by the pastor in his letter, namely, "What is the time length for 'interim' appointments?", the Commission refers the petitioner to its decision regarding such appointments, Opinion 01-2237.

23. Questions re Board of Directors and Board for Communications Services Relationship (02-2259)

In letters dated February 20 and 28, 2002, the chairman of the Board for Communication Services and a pastor of the Synod question the right of the Board of Directors of the Synod to adopt its February 1, 2002 resolution, "To Bring Publicity to an Immediate Halt." The Commission continues to study this question and will respond at a later time.

24. Question re Propriety of Action of President of the Synod (02-2260)

In a February 20, 2002 e-mail message to the chairman of the Commission, a pastor asks whether the President of the Synod usurped the authority of the Commission by sending out a memo to all congregations of the Synod regarding an event that is currently being addressed by the dispute resolution process.

The Commission does not know the content of the memo referred to and therefore cannot respond to the specific question. The Commission reiterates the final paragraph of its opinion 02-2251 that has already addressed the matter in question:

Properly understood, the opinion of the Commission does not infringe upon the duties of the President that are set forth in the Constitution and Bylaws of the Synod. There is no prohibition against the President communicating with the members of the Synod as to the underlying doctrinal topics that are involved in a disputed matter. The President cannot give publicity to the particular matter in dispute. Some confusion appears to exist as to the Commission's use of the term "matter in dispute" to which the prohibition of publicity applies. This phrase includes the details of the charges or allegations made, the correspondence and other communication which follow, the status of proceedings or deliberations, his actions pertaining thereto, and his opinion as to who is right or wrong. The duty of the President of the Synod under Article XI B of the Constitution is to supervise the doctrine and administration of officers, employees, Districts, and District Presidents, to see

to it that they act in accordance with the Synod's Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod. This duty, as well as the power to advise, admonish, and reprove, is tempered by the provisions of Article XIII and the bylaws that flow from it.

25. Question re Continued Participation in Dispute Process (02-2261)

In a letter dated February 25, 2002, a pastor of the Synod requests clarification regarding the continued participation of a person who has withdrawn, has been recused or dismissed, or has in any other way discontinued participation in the process governed by Bylaw 2.27 and Chapter VIII of the Bylaws.

Question: "May any member of Synod who has been officially involved in a formal complaint or dispute (as clarified in CCM ruling #01-2243) be free to give publicity to the issues of matters involved in that complaint or dispute before the matter itself has been concluded as specified in Bylaw 8.21 e if that member has withdrawn, been recused, dismissed, or in any other way discontinued his participation in that complaint or dispute?"

Opinion: In its April 1975 opinion, Ag. 809, 809 –A and –D, the Commission on Constitutional Matters responded to questions in a then-current dispute case. To one of those questions from a board of control of a seminary which had forwarded to its District President the charges that had been brought against a member of its faculty, "In what way does the Board's role in the remaining procedures make it a 'party of the proceeding' (Bylaw 5.31, j)," the Commission responded: "The Board of Control has been involved in the proceedings and therefore comes under the phrase 'any party' in the bylaw." Consistent with this previous opinion, the Commission therefore rules that any of the parties involved in a dispute, as that term is defined in opinion 01-2243, remains a party involved until final resolution of the dispute, regardless of whether such a party has withdrawn, been recused, dismissed, or in any way discontinued participation in the dispute.

26. Challenge of Secretary's Decision in Dispute Resolution Process (02-2262)

In a March 22, 2002 letter, the President of the Synod forwarded a concern addressed to him by a pastor of the Synod who is involved in a dispute resolution process, challenging a decision by the Secretary of the Synod as administrator of the process. The matter in question: a decision by the Secretary to allow the process to continue despite the pastor's contention that a request for a reconsideration of a dispute panel's decision by the other party in the dispute was not filed in timely fashion. The Commission responds to issues raised by the challenge to the Secretary's decision. The Secretary of the Synod did not participate in the discussion or decision.

Question 1: Bylaw 8.09 d states: "Within 30 days after receiving the decision of the Dispute Resolution Panel, any party to the dispute...may request a decision regarding a reconsideration. ...Such request for a reconsideration shall be mailed to the Secretary of the Synod, each member of the Dispute Resolution Panel, and the other parties to the dispute, and shall be accompanied by a written memorandum stating the basis for the request." When does the 30 day period commence?

Opinion: For the complainant and the respondent, the 30 day period commences for each on the day such party to the dispute receives a written copy of the decision of the Dispute Resolution Panel.

Question 2: In what form must a party to the dispute transmit their request for a reconsideration?

Opinion: Such request for a reconsideration must be in writing. The Commission further determines that the term “shall be mailed” includes regular mail, e-mail, or facsimile.

Question 3: Are the 30 day period and other like time limits in Chapter VIII of the Bylaws to be strictly construed, or may some latitude be applied to such time periods under extenuating circumstances?

Opinion: The Preamble to Chapter VIII of the Bylaws is instructive in responding to this question. There it is stated that the purpose of the Synod’s dispute resolution process is to bring about peace, truth, justice, and reconciliation. Such purpose will be better accomplished if there is a reasonable application of the time limitations rather than a strict application that would lead to a termination of the process before it has had an opportunity to be fully utilized. The purpose of the time limitations in Chapter VIII is to move the matter forward rather than allow technicalities to possibly abort the search for truth, justice, and reconciliation. What is “reasonable” is a matter to be determined on a case by case basis by the Secretary of the Synod who has a duty to administer the Synod’s dispute resolution process (Bylaw 3.143 o), provided such time delay does not have a negative impact on the orderly progress of the dispute resolution process.

Question 4: Does Bylaw 8.09 d require that the request for reconsideration of a dispute resolution panel’s decision and the written memorandum actually reach all of the parties involved within the 30 day period or does it require simply that the request for reconsideration be filed within the 30 day period?

Opinion: The answer to this question is “neither.” The bylaw provides that the request for a reconsideration accompanied by the written memorandum is to be mailed (as defined in the opinion to question #2 above) within 30 days after the complainant or respondent receives the decision of the Dispute Resolution Panel.

Question 5: If the request for reconsideration and accompanying memorandum does not reach all of the parties involved within the 30 day period, does it make the request null and void, thereby effectively upholding the Dispute Resolution Panel’s decision?

Opinion: This question has been answered in the previous opinions herein.

27. Questions re Eligibility of Recused Members of Praesidium (02-2263)

A District President in an April 4, 2002 e-mail letter, requested answers to the following questions regarding the eligibility for subsequent participation in a dispute case of recused members of the Praesidium.

Question 1: If a complaint has been made against a District President according to Bylaw 2.27 and the complaint involves requesting his removal from the Synod, may the President of the Synod submit this matter to a vote of the congregations of the Synod according to the Constitution of the Synod, Article XI B 8?”

Opinion: Article XIII 2 of the Constitution of the Synod provides that expulsion of a member from the Synod is to follow the procedure set forth in the Bylaws. Bylaw 2.27 g is the bylaw that establishes the procedure to be followed if the complaint is against a District President and such procedure can be undertaken at any time. Therefore, since action on such a complaint need not be delayed until the next convention of the Synod, the provisions of Article XI B 8 are not applicable to such a matter.

Further complaints under Bylaw 2.27 g cannot be brought before a convention of the Synod since the Bylaws created under the authorization of Article XIII 2 make no provision for the dispute to be resolved by a convention of the Synod.

Question 2: If a Vice-President of the Synod charged with investigating this case declines to suspend the District President, may the complainants present their request to the Praesidium of the Synod for a decision, according to Bylaw 2.27 b?

Opinion: The answer to this question is “yes.” As provided in Bylaw 2.27 b, “the complainant may present the written complaint to the Praesidium of the Synod, which consists of the President and the Vice-Presidents of the Synod.”

Question 3: In the event that the case is submitted to the Praesidium according to Bylaw 2.27 b, may any member(s) of the Praesidium who have been recused and the member of the Praesidium who was initially charged with the investigation of the case participate in the process which engages the Praesidium in dealing with the case?

Opinion: That member of the Praesidium who has conducted the investigation according to Bylaw 2.27 g (in this case a Vice-President because he is “the next qualified officer”) “shall not participate as a member of the Praesidium” in its responsibilities described in 2.27 a 1 and 2.27 b. Furthermore, any member of the Praesidium who has been disqualified from investigating the case, whether by action of the Praesidium or by personal decision “because he is a party to the matter in dispute, has a conflict of interest, or is unable to act” (Bylaw 2.27 a 1), remains disqualified from further participation in the Praesidium’s remaining responsibilities described in Bylaws 2.27 a 1 and 2.27 b.

28. Questions re Council of Presidents’ Policy re Sexual Misconduct (02-2264)

In an e-mailed letter dated April 10, 2002, a pastor, upon receiving a public letter sent by the President of the Synod, raised questions regarding the sexual misconduct “Zero Tolerance” policy of the Council of Presidents and that policy’s relationship to the dispute resolution process that is provided in the Bylaws of the Synod.

Question 1: “I have grave concerns that this policy might circumvent the dispute resolution policy by automatically reaching a decision without any real defense possible for the one accused. I am especially concerned about this since an investigation, which was also mentioned, will destroy any ministry even if the individual is found innocent. Is this policy in addition to the dispute policy already in place in our by-laws, something not covered by our current by-laws, or is this policy exempt, and thus outside, from the normal dispute resolution policy? The information I have does not mention the possibility of an appeal.”

Opinion: Any policy developed by the Council of Presidents is its internal elaboration of the dispute resolution process prescribed in Chapter VIII of the Bylaws. Such policy cannot circumvent or contradict the Constitution and Bylaws of the Synod.

Question 2: “In the president’s letter he states that ‘the appropriate District President shall, in his discretion, determine whether the kind of sexual contact is “sexual intercourse” within the spirit and purpose of this policy.’ Does this mean that each District will have a different definition of what sexual intercourse means and thus make the zero tolerance policy different in each District? If so, is this difference in what is needed to expel a pastor proper in the LC-MS?”

Opinion: Bylaw 2.27 charges each District President with the responsibility to conduct a thorough investigation when facts which could lead to the expulsion of a member from the Synod under Constitution Article XIII are presented to him or have otherwise become known to him. It is his personal responsibility to investigate whether the allegations can be substantiated and whether the facts form a basis for expulsion. The Commission assumes that one purpose of said policy of the Council of Presidents would be to provide some uniformity as District Presidents carry out this responsibility. However, the responsibility to make these Bylaw 2.27 decisions remains with the President of that member's District in each case.

Question 3: "Also in the letter it is stated that this policy is contained in a Manuel (sic) that is meant for internal use only by the ecclesiastical supervisors of our Synod. Is it proper in the LC-MS to have policies, especially ones that call for the dismissal of a pastor from the Synod, that are kept secret except for a select few to know?"

Opinion: Policies adopted by an agency of the Synod set forth the internal operating procedures of that agency. Such policies have no force beyond that agency. They are subordinate to the Constitution and Bylaws of the Synod. They are not approved by the Synod but only by the agency that adopts the policies. Bylaw 3.905 sets forth the function of the Commission on Constitutional Matters. Included in those functions is the duty to interpret the Synod's Constitution, Bylaws, and resolutions. The Commission does not have the authority to interpret policies that are adopted from time to time by the agencies of the Synod.

29. Suggestions to the Commission re Legal Counsel

It was suggested from several sources that the Commission on Constitutional Matters, as a matter of regular practice, seek advice from the legal counsel of the Synod before issuing its rulings.

After discussion, the Commission responds that Bylaws 3.903 and 3.905, which govern the membership and functions of the Commission on Constitutional Matters, make no mention of additional legal counsel. The Commission notes that the membership requirements of the Commission already provide for legal counsel, since two of its members are required to be lawyers. In addition, the Commission always retains the right to ask for input from other sources as necessary, which on occasion may include the legal counsel of the Synod. Therefore the Commission recognizes no need to do as suggested.

30. Clarification of Eligibility for Office (00-2265)

The Secretary's Office of the Synod, in preparation for the nominating process for the 2004 convention, requested an opinion of the Commission in response to a question that has arisen regarding the eligibility of certain members of boards of regents.

Question: "According to Bylaw 6.01, d, college and university boards of regents members may be elected or appointed to serve a maximum of three consecutive three-year terms (three-year terms for synodically elected boards of regents members will take effect with the 2004 elections). Regents elected in 2001 are serving a six-year term. If they had already served a three-year term (1998-2001), are they eligible to serve another term (three years if elected in 2004) which will total twelve years?"

Opinion: The Commission notes that a similar question prompted a November 9, 1990 opinion by the Commission (Ag. 1902) in which the Commission concluded that the number of years served rather than the number of terms served was determinative. In light of this opinion, the Commission responds that board of regents members who have served terms of three and six years will have served the maximum

number of years allowed by Bylaw 6.01 d and will not be eligible for an additional consecutive term of service.

31. Date of Next Meeting

After discussion, the Commission agreed to meet in St. Louis on June 10 at 8:15 a.m. The meeting will end on June 11 at noon. A major topic of the meeting will be the discussion and evaluation of the revised *Handbook* that is being proposed by the pro tem Commission on Structure.

32. Adjournment

The meeting was closed with words of benediction.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
May 20, 2002

33. Call to Order

Chairman Walter Tesch called the conference call meeting to order, with all members of the Commission participating. Norman Sincebaugh provided an opening prayer.

34. Request for an Opinion re Role of Bylaw 8.05 in Bylaw 2.27 Process (02-2267)

A party to a dispute, in a May 13, 2002 letter, requested an opinion regarding the role of Bylaw 8.05 in a dispute process initiated according to Bylaw 2.27.

Question: “Is it not incumbent upon any party complaining against another party under the Constitution and Bylaws of The Lutheran Church—Missouri Synod, to follow specifically the provision of Bylaw 8.05 before filing any charge?”

Opinion: The Preamble to Chapter VIII of the Bylaws states that the words of Jesus in Matthew 18:15-20 grant guidance to all Christians in seeking to settle disputes and that the steps of Matthew 18 should be applied lovingly in both formal and informal settings. It goes on to say that the parties and others attempting to effect resolution of a dispute must always remain mindful that the church has been given the “ministry of reconciliation” and that conflict resolution in the church is to lead to reconciliation.

Bylaw 8.05 provides as follows: “Before any matter is submitted to the formal reconciliation process, the parties involved in a dispute must meet together, face to face, in a good-faith attempt to settle their dispute (Matt. 18:15).” It should be noted that this bylaw relates to a complaint commenced under Chapter VIII of the Bylaws where there are specific provisions for informal and formal reconciliation efforts before a matter can be presented to a dispute resolution panel. However, the matter in question was commenced under Bylaw 2.27 that sets forth the following steps:

1. The written complaint is presented to the President.
2. The President thoroughly investigates whether the charges can be substantiated.
3. As part of that investigation and because a dispute has arisen among members of the body of Christ, the President is to follow the guidelines for dispute resolution as set forth in Matthew 18:15-16.
4. As part of that investigation, the President may appoint a small committee to assist him in his efforts to reconcile the parties.
5. The President reaches a decision as to whether or not the charges in the complaint can be substantiated and thus lead to the expulsion of the member from the Synod.

Because the goal of all Christians should first be reconciliation, it is incumbent upon those within the church to always follow Matthew 18.

Thus in those matters commenced under Bylaw 2.27, Matthew 18 is part of the process during the investigative actions of the President, whereas in those matters which would not lead to the expulsion of a

member from the Synod and thus commenced under Chapter VIII of the Bylaws, the parties involved in a dispute must meet together, face to face, as set forth in Matthew 18, before a reconciler is appointed to assist in reconciliation efforts. In either procedure, Matthew 18 is central for it is the methodology our Lord and Savior Jesus Christ mandated for brothers to reconcile their differences.

35. Adjournment

The meeting was closed with a prayer by Norman Sincebaugh.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
June 10-11, 2002

36. Call to Order

Chairman Walter Tesch called the meeting to order. All members were present except Norman Sincebaugh who was absent due to illness. He provided an update on Reverend Sincebaugh's health condition and led the Commission in prayer. He called attention to the updated list of agenda items and suggested an order of business. Discussion followed regarding the role of the Secretary when questions are being addressed that are closely related to his other board and commission responsibilities.

37. Questions re Board of Directors and Board for Communication Services Relationship (02-2259)

In letters dated February 20 and 28, 2002, the chairman of the Board for Communication Services and a pastor of the Synod questioned the right of the Board of Directors to adopt its February 1, 2002 resolution, "To Bring Publicity to an Immediate Halt." The Commission offers the following responses to the questions submitted.

Question 1: "In light of the limitations placed on the jurisdiction of the Board of Directors to the supervision of property and business affairs of the Synod (Const. Art. XI F 2; cf. Bylaw 1.07 c), has the Board of Directors by its resolution usurped the authority given to the President by the Constitution and Bylaws? Does the assertion of the Board of Directors in this issue vitiate the power of the President to carry out the responsibilities given him by the Constitution (Art. XI B 1, 2, 3 and 4) and Bylaws (Bylaw 3.101), since this issue is ecclesiastical and theological in nature? Does the Board of Directors exceed its jurisdiction and authority to act in light of Art. XI B 1, 2, 3 and 4 when it orders the President of the Synod not to distribute information that he is not otherwise restricted by Bylaw or convention resolution from distributing?"

Opinion: Article XI F defines the constitutional role and duties of the Board of Directors and its authority. Bylaw 1.07 c reaffirms its status as legal representative and custodian of all property of the Synod and its responsibility for the general management of the business affairs of the Synod. Bylaws 3.183 to 3.189 further elaborate on those issues. The Board of Directors has those "powers and duties which have been accorded to it by the Articles of Incorporation, Constitution, Bylaws, and resolutions of the Synod" (Bylaw 3.183 a) and is required to "provide for the coordination of the policies and directives authorized by the Constitution, Bylaws, and resolutions of the Synod, evaluate plans and policies, and communicate to the appropriate boards and commissions suggestions for improvement" (Bylaw 3.183 b). It is "responsible for the general management of the business and legal affairs of the Synod and is authorized to take on behalf of the Synod any action related to such business and legal affairs which has not been expressly delegated by the Constitution, Bylaws, and resolutions of the Synod to other officers or agencies of the Synod, and as to those it shall have general oversight responsibility" (Bylaw 3.183 c). To the extent of its responsibilities relative to the general management and supervision of the business and legal affairs of the Synod, or as required by Resolution 7-03C of the 2001 convention, such management and supervision includes "the right to call up for review, criticism, modification, or revocation any action or policy of a program board, commission, or council, except opinions of the Commission on Constitutional Matters" (Bylaw 3.183 d 2). The Board is also required to "allocate available funds to the program boards, commissions, councils, and departments of corporate Synod and hold them accountable therefore" (Bylaw 3.183 d).

Article XI B defines the duties of the President and imposes on and grants to him the ecclesiastical supervision of the Synod. These duties and powers are further defined in Bylaw 3.101, including the provision that "the President of the Synod has ecclesiastical supervision of all officers of the Synod and its agencies,..." (Bylaw 3.101A 1) with the power to "call up for review any action by an individual officer, executive, or agency which, in his view, may be in violation of the Constitution, Bylaws, and resolutions of the Synod..." (Bylaw 3.101 B 5).

The Synod in its 2001 convention, by Resolution 7-03C, also charged both the President and the Board of Directors with specific responsibilities:

Resolved, That the President and Board of Directors of the Synod shall see to it that the Constitution and Bylaws of the Synod are observed; and be it further

Resolved, That when a failure to comply with the Constitution and Bylaws is discovered, the President or Board of Directors, whichever is charged with supervision or oversight, shall act to correct such failure to comply as quickly as possible; and be it finally....

The action of the Board of Directors was taken following the issuance of CCM opinion 02-2243, and before the issuance of opinion 02-2251 which clarified the information to which the prohibition of publicity applied. While the Board of Directors may allocate funds to the President and hold him accountable for their use, the Board of Directors may not control his ecclesiastical purposes, including the expenditure of funds for ecclesiastical activities. The Board of Directors cannot, consistent with the Constitution, restrict the ecclesiastical power of the President and his communications in fulfilling that responsibility. The resolution as passed restricts the President in the performance of his ecclesiastical responsibilities. In doing so, the Board of Directors acted outside the scope of its authority in its resolution as directed to the President.

Question 2: "Does the Board of Directors likewise exceed its jurisdiction and authority to act by attempting to restrict the *means* by which the President may distribute such information?"

Opinion: It is the responsibility of the Board of Directors to "allocate available funds to the program boards, commissions, councils, and departments of corporate Synod and hold them accountable therefore" (Bylaw 3.183 d). Insofar as the administrative offices of the Synod are included in the "departments of corporate Synod," the Board is responsible for the allocation of funds and for holding the recipients of those funds accountable, so long as other provisions of the Constitution and Bylaws of the Synod are not thereby violated. As discussed above, however, the Board of Directors cannot, consistent with the Constitution, restrict the ecclesiastical power of the President or the means chosen by him in fulfilling that responsibility within the resources available to him.

Question 3: "The Board for Communications Services and its staff would face a conundrum were the Board of Directors to order the Editor of the official periodicals or other BCS staff not to disseminate certain information while at the same time were the President to specifically direct that the same information be disseminated. To whom would the BCS respond affirmatively in this situation, the Board of Directors or the President?"

Opinion: The Board for Communications Services is created by Bylaws 3.811 and 3.813. It "serves in a specific area of program or ministry in accordance with the Synod's Constitution and applicable Bylaws" (Bylaw 1.07 d). As a program board, it is "charged with developing policies and programs for an operating function of the Synod and supervises their implementation" (Bylaw 3.51 h). The "operating function" that the Synod has charged the Board for Communications Services with is delineated in Bylaw 3.813. Included in that operating function are to "have responsibility for the official periodicals of the

Synod” (Bylaw 3.813 c) and to “assist the appropriate officers of the Synod in their communication responsibilities” (Bylaw 3.813 e). The official periodicals of the Synod, among many services provided, are to “include official reports and notices,... provide current synodical news,... serve as a forum for the responsible exchange of opinion on issues confronting the Synod, and report general church news of interest to the Synod” (Bylaw 11.01 b).

While the Board of Directors significantly influences the Board for Communication Services (appointing 5 of 7 board members, allocating funds for its operation, and holding it accountable for those funds), the Board for Communication Services is an independent board not directly answerable to the Board of Directors. Similarly, while the President influences the Board for Communication Services through his ecclesiastical role and as a primary recipient of the services of the Board for Communication Services in facilitating his communications responsibilities, the Board for Communication Services is not directly answerable to the President. As regards the management and supervision of the business and legal affairs of the Board for Communication Services, the Board of Directors has the power to call up for review, criticism, modification or revocation the actions or policies of the Board for Communication Services under Bylaw 3.183 d 2. The President is to see to it that the Board for Communication Services acts in accordance with the Synod’s Constitution, to admonish it if it departs from the Constitution, and, if such admonition is not heeded, to report such cases to the Synod (Art. XI B 2). He is also to “see to it that the resolutions of the Synod are carried out” (Art. XI B 4). As discussed above, Resolution 7-03C of the 2001 convention of the Synod additionally charged the President as well as the Board of Directors with the specific responsibility to “see to it that the Constitution and Bylaws of the Synod are observed” and that “when a failure to comply with the Constitution and Bylaws is discovered, the President or Board of Directors, whichever is charged with supervision or oversight, shall act to correct such failure to comply as quickly as possible” (2001 *Proceedings*, p. 164).

The President and the Board of Directors therefore share oversight responsibilities for many program boards. Both are required to see to it that the Constitution and Bylaws of the Synod are observed, including, but not limited to, the requirements and responsibilities specifically enumerated in that board’s section of the Bylaws. In a case of non-compliance with the Constitution and Bylaws, the President is to admonish those involved and, if such admonition is not heeded, to report such cases to the Synod. To the extent of his oversight and influence, he is to correct such failure to comply as quickly as possible. In such case of non-compliance, the Board of Directors is also to act to correct any failure as quickly as possible, potential actions to include calling up for review, criticism, modification, or revocation the errant action or policy of the board. Therefore, if the President and the Board of Directors are faithful to their duties and responsibilities, the question that is posed should not happen. Should there be disagreement, they must earnestly consult with one another regarding proper supervision of the board in question.

The Board for Communication Services is independently required to honor the Constitution and Bylaws of Synod. Should directives and guidance be received from different officers (including the President and the Board of Directors) or other boards or commissions of the Synod, the Board for Communication Services must strive to honor those directives and guidance to the extent consistent with its mandated functions under Bylaw 3.813.

The question specifically asks further as to its proper response should the President submit an article regarding a matter in dispute and asks the Board for Communication Services to publish that material and, further, whether the Board of Directors’ resolution referenced above is unconstitutional. Opinion 02-2251, by defining the term “matter in dispute” as it relates to the prohibition of publicity under Bylaw 8.21 e, defines what matters may be published and those which the Board for Communication Services should properly decline to publish.

The Commission on Constitutional Matters previously responded to the question of whether the President could exercise “censorship” over official periodicals of the Synod in opinion Ag. 2073, issued June 25, 1997. That opinion found authority for actions which might be considered censorship on the part of the President, but recognized extreme limitations on that authority. The Commission found that, to the extent that such authority exists, it flows from his general authority under Article XI B 1, which indicates “the President has the supervision regarding the doctrine and administration...” and Bylaw 3.101 C 11, which authorizes the exercise of executive power where there is no specific directive of the Synod and action is required. As applied to the issue of censorship, the opinion observed that “prohibiting or directing items for publication in the official periodicals of the Synod should be done by the President of the Synod only in exceptional circumstances.” The opinion also recognized that the exercise of such extraordinary measures under the bylaw, now renumbered as 3.101 C 11, would require the President to first consult with the Vice-Presidents, the Board of Directors, or the Council of Presidents, whichever in his judgment would be most appropriate and, further, that any such decision could be appealed by any member of the Synod to the Commission on Constitutional Matters and/or to the Synod in convention, whichever would be appropriate.

It should also be noted that the prior opinion also discussed and relied in part on former Bylaw 3.101 h which indicated that the President remains “ultimately responsible for the day to day supervision of the synodical staff.” While that provision was dropped from the Bylaws, the prior opinion was not premised on that provision but rather on the grant of power to the President to act in unforeseen circumstances, with the limitations specifically attached thereto. Since that prior opinion, the power of the Board of Directors has also been expanded. The provisions of Bylaw 3.183 were expanded by the 1998 convention to include the right to call up for “modification, or revocation” rather than the prior right to merely call up for “suggestion.”

Were the BCS actually presented with the factual situation posed in the question submitted, one would expect the BCS to exercise its responsibilities after meeting with the Board of Directors and the President urgently in an attempt to resolve the dispute.

Question 4: “If the President writes about a matter in dispute and asks the Board for Communication Services to publicize that writing through its various channels of communication, does the Board of Directors order prohibit the BCS from doing so? In light of the limitations placed on the Board of Directors by the Constitution and Bylaws noted above, has the Board of Directors issued an order that is unconstitutional?”

Opinion: The Commission has previously ruled that, according to Bylaw 8.21 e, any party to whom the matter in dispute is presented and who is required to thoroughly investigate whether the allegations can be substantiated, whether the President of the Synod or a District President or the Praesidium of the Synod, is not to give publicity to a matter in dispute (see CCM opinion 01-2243). The Commission has also ruled that in dispute cases resulting from Bylaw 2.27 g the President of the Synod is and remains a party until the dispute is finally resolved (see CCM opinion 02-2261). In such case, “use of the press or other means by a party involved in the matter to bring to the attention of the public information regarding the matter or to advocate a position is ‘publicity’ and is prohibited by the bylaw if it occurs while a matter in dispute is still undecided or while an appeal is contemplated or pending” (see opinion 01-2243). The President may therefore discuss underlying doctrinal topics that are involved in a disputed matter, but he is not allowed to discuss “matters in dispute,” specifically, “details of the charges or allegations made, the correspondence or other communication which follow, the status of proceedings or deliberations, the President’s actions pertaining thereto, and his opinion as to who is right or wrong” (see opinion 02-2251).

Therefore, in response to the questions, the President may not write about a matter in dispute or ask the Board for Communication Services to publicize that writing through its various channels of

communication unless he is addressing underlying doctrinal topics without reference to the matters in dispute as defined. If the Board of Directors is aware that the Constitution or Bylaws (as interpreted by relevant opinions of the Commission on Constitutional Matters) are not being observed, the Board of Directors under Resolution 7-03C has the right and responsibility to “call up for review, criticism, modification, or revocation any action or policy of a program board,” including those of the Board for Communication Services (Bylaw 3.183 d 1). In such case, such action by the Board of Directors is not unconstitutional.

Question 5: “In light of the limitations placed on the jurisdiction of the Board of Directors to the supervision of the property and business affairs of the Synod (Const. Art. XI F 2; cf. Bylaw 1.07 c), has the Board of Directors by its resolution usurped the jurisdiction delegated by the Bylaws to the Board for Communication Services? Does the Board of Directors have the general power to censor the Synod’s official periodicals and other communication outlets for which the Board for Communications Services has been given responsibility by the Synod, in light of the limitations placed upon the Board of Directors by Bylaw 1.07 c? May the Board of Directors exercise such censorship even if the periodicals have complied fully with the long-standing ‘program policies, as well as directions’ established for them by the Board for Communication Services (Bylaw 1.07 d)? May the Board of Directors order that no articles be written on a given subject?”

Opinion: As discussed above, the question fails to recognize the extent of the responsibilities of the Board of Directors, including its authority to call up for review the actions of all program boards including the Board for Communication Services, and its responsibilities under 2001 convention Resolution 7-03C. Accordingly, the calling up for review, criticism, modification, or revocation by the Board of Directors of an action of the Board for Communication Services is not a usurpation of its jurisdiction or a censoring of the periodicals of the Synod so long as the bylaws regarding the rightful responsibilities of the Board for Communications Services are not violated. To the extent that the resolution of the Board of Directors, written without the benefit of opinion 02-2251 of this Commission, attempted to restrict the Board for Communication Services in the performance of duties mandated by Bylaw 3.813 b, c and e, the Board of Directors was in error. Its good faith in attempting to fulfill its mandate under Resolution 7-03C to correct a perceived failure by the Board for Communication Services to comply with the Constitution and Bylaws, particularly as it understood those documents under opinion 02-2243, is not here questioned.

Question 6: “Conversely, may the Board of Directors order that an article or statement on a given subject must be published? May the Board of Directors order that an article be published and placed in a specific location within an official periodical, with no deviation in wording or content or placement?”

Opinion: According to Bylaw 11.01 a, the official periodicals of the Synod exist, among other purposes, to “include official reports and notices.” Insofar as an article or statement qualifies as an official report or notice, the official periodicals of the Synod “shall...include” such reports or notices without change in wording or content. Furthermore, since the Board for Communication Services is also required to “assist the appropriate officers of the Synod in their communication responsibilities” (Bylaw 3.813 e), the Board should be willing to cooperate with the officers of the Synod as they look for the best way to carry out those communication responsibilities. Under the Constitution and Bylaws, one would expect the Board for Communication Services to attempt to honor the requests of the Board of Directors, but it must exercise its own judgment in fulfilling its duties under Bylaw 3.813. The Board for Communication Services should carefully consider input from all officers of Synod, including the President and the Board of Directors, but it is ultimately responsible for determining itself how to carry out its mandate in the Bylaws. As such, the Board for Communication Services is not subject to the censorship of the Board of

Directors but is always subject to the actions of the Board of Directors and President to hold it accountable in the performance of those duties.

Question 7: “Finally, if the Board of Directors’ order stands as regards Board for Communication Services staff, including staff of the official periodicals, does the Board’s order stand as regards *all* reporting on the case at issue? For example, does the Board’s order properly prohibit reporting on matters of *procedure* as well as matters of substance in the case? In other words, may the periodicals report how the case is progressing through the process outlined in the Bylaws (e.g., Bylaw 2.27)? For example, even if the periodicals are prohibited by Board of Directors order from explaining the respective positions of the complainants and the person against whom charges are brought, may they report that the case is now in the hands of the synodical President, or before the Praesidium, or before a Dispute Resolution Panel, as the case may be? Are the periodicals prohibited from reporting even an official statement of the Praesidium concerning a vote of the vice presidents on the qualification of the President to rule in a given case?”

Opinion: Bylaw 8.21 e requires that “while a matter in dispute is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the parties involved.” The Commission’s opinion 02-2251 clearly defines what is to be included as a matter in dispute: “This phrase includes the details of the charges or allegations made, the correspondence and other communication which follow, the status of proceedings or deliberations, the President’s actions pertaining thereto, and his opinion as to who is right or wrong.” Accordingly, the information given by example in question 7, since it pertains to “the status of proceedings or deliberations,” is therefore included in “a matter in dispute” and should not receive publicity until the case is decided and the time for appeal has expired.

38. Questions re Relationship of Board of Directors and President of the Synod (02-2266)

In a letter dated April 13, 2002, a pastor asked the following series of questions regarding the rights of the President to use specific property of the Synod given the recent directive of the Board that forbade the use of such property in disseminating further information or publicity regarding a matter in dispute:

1. Does the President of Synod have the authority to use property of Synod if the Board of Directors (the legal custodian of that property according to Article XI, F, 3) has forbidden that use?
2. Does Article XI, B, 1 place the President of Synod in a position to overrule decisions made by the Board of Directors, if he claims it to be part of his supervision of their “doctrine and administration”?
3. Are there restrictions on what the President of Synod can do under Article XI, B, 3 (“...has and always shall have the power to advise, admonish, and reprove. He shall conscientiously use all means at this command to promote and maintain the unity of doctrine and practice in all the Districts of the Synod.”)? Does this mean that the Synod President has the authority to determine which policies, directives, etc. established by various boards and commissions he is to follow? Is there some measure of restraint on this “power to advise, admonish, and reprove” or does the Synod President define its terms?

In response to these questions, the Commission instructed the Secretary to respond by letter to the questioner, providing a copy of opinion 02-2259 and inviting, if questions still remain after he has studied the opinion, that any remaining questions again be submitted to the Commission for a response.

39. Questions re Board Procedure (02-2268)

A pastor member of a board of regents of a synodical university, in a letter dated May 6, 2002, questioned the propriety of a recent election by his board. He described the election process, including a number of parliamentary concerns with the process, and asked whether the election that took place was legitimate.

Question: “Insofar as 3.69 (b), on page 43 of the 2001 Handbook, is very specific when it states that the Boards shall conduct business in accordance with accepted parliamentary procedures. And since Roberts Rules of Order leaves no room for exception when it states ‘the president [chairman in the case of our board] cannot appoint any committees except those authorized by the by-laws or by a vote of the assembly. The Board of Regents did not authorize an election to be held at the April 12, 2002 meeting. No election was announced in any of the previous meetings. I therefore ask: Is the election legitimate?”

Opinion: The functions of the Commission on Constitutional Matters are set forth in Bylaw 3.905. Its responsibility includes the interpretation of the Synod’s Constitution, Bylaws and resolutions upon written request of a member. Each of the colleges and universities of the Synod are agencies of the Synod as defined by Bylaw 3.51 a. Each such college and university is governed, subject to general policy set by the Synod, by a Board of Regents as directed by Bylaw 6.01. The Board of Regents must conduct its business in accordance with accepted parliamentary procedures, whether contained in rules adopted by that agency within its own bylaws or other governing documents, or consistent with other accepted parliamentary procedure. The Commission does not have copies of the Bylaws, rules of order, standing rules, or other organizational documents of the Board of Regents in question, and its authority is also limited under Bylaw 3.905. The Commission is unable to answer further the question posed.

40. Questions re Interim Directors of Synodwide Corporate Entities (02-2269)

A pastor of the Synod, in a letter dated May 13, 2002, asked two questions of the Commission in light of its recent opinion 02-2237 regarding the appointment of interim directors.

Question 1: “When a program board, commission or governing board of a synodwide corporate entity appoints an interim executive director or chief executive officer, is it appropriate for that individual to send correspondence to the members of the Synod with his signature under a title which would indicate that he is the permanent executive of that corporate entity?”

Opinion: The Commission has been given the responsibility, according to Bylaw 3.905 d, to interpret the Constitution, Bylaws, and resolutions of the Synod. The question that has been asked is outside that responsibility. The Commission suggests that this is a question that is best directed to the governing board of the executive officer in question.

Question 2: “If the interim executive of a corporate entity has not been approved by the President of Synod, when a list is prepared for the permanent position, shall the President of the Synod approve such a list before a call can be extended to that interim executive?”

Opinion: Bylaw 3.69 e clearly states that the “slate of candidates for the initial appointment of the executive officer of a board, commission, or synodwide corporate entity shall be selected by the board or commission in consultation and mutual concurrence with the President of the Synod.” This requirement pertains to the entire list of candidates. See again opinion 02-2237.

41. Questions re relationship of BHE/CUS Board and Boards of Regents (02-2270)

The Executive Director of the BHE/CUS Board, in a May 22, 2002 memorandum, raised a series of questions for clarification of “the meaning and limits of authority of the BHE/CUS Board as the ‘governing board’ of higher education,” especially as it relates to boards of regents of the colleges and universities of the Synod. He noted that the question is crucial, given that this relationship “will determine the future of accreditation for Synod’s institutions of higher education.” After discussion, the Commission agreed to await the drafting of a proposed response and further discussion before finalizing its decision.

42. Approval of Proposed *Handbook* Revisions by Commission on Structure (02-2271)

The Commission spent several hours of time reviewing the proposed revision of the *Handbook* of the Synod by the Pro Tem Commission on Structure, a review that will be completed during the Commission’s next face-to-face meeting in the fall. In addition to numerous minor comments and suggestions, the Commission will ask the Commission on Structure to consider several general changes:

- Insert more headings into the text to set off sections, thereby to make the *Handbook* more user friendly.
- Reconsider any changes that have been made without specific reason to avoid change for change’s sake.
- Restore specific bylaw cross-references within the text of the bylaws where they have been deleted.

43. Question re Definition of “Office” in the *Handbook* of the Synod (02-2272)

In a June 4, 2002 letter, the Secretary submitted a question on behalf of the Board of Directors of the Synod regarding the definition and application of the term “office” in Bylaws 3.75 and 4.109.

Question: “When Bylaws 3.75 and 4.109 prohibit holding ‘more than one elective office; or more than two offices,’ what is the definition of ‘office’? Does it refer only to officer positions and membership on boards, or is it to be understood more generally to include any elected or appointed position of the Synod and its Districts that is prescribed by bylaw? In particular, do the prohibitions of Bylaws 3.75 and 4.109 pertain to appointments by the Board of Directors of the Synod under Bylaw 3.501?”

Opinion: The Commission notes that the Constitution and Bylaws of the Synod offer no clear definition of the word “office,” particularly as pertains to the question that has been asked. Therefore, no clear answer can be provided to this question. The Board of Directors may wish to turn this matter over to the Commission on Structure for its attention.

The Commission notes, however, that Bylaws 3.75 and 4.109 both contain the provision that “doubtful cases shall be decided by the President of the Synod.” Until such time as clarification may be provided by a convention of the Synod, this provision is available for a solution to the case at hand.

44. Question re Visitation and Electoral Circuits (02-2273)

A chairman of a Commission on District Bylaws, in a letter dated June 3, 2002, explained that his District is considering the realignment of its Circuits and is considering making a distinction between visitation and electoral Circuits. As his committee prepares recommendations for the next District convention, it is

requesting clarification regarding matters pertaining to Circuits and Circuit Forums in Chapter V of the Synod's Bylaws.

Question: "Is the definition of a Circuit given in Synod Bylaw 5.01 (i.e. –3.05 Electoral Circuit) to be applied to every occurrence of the word Circuit in Chapter V of the Synodical Bylaws? If not, in which instances in Chapter V is the word Circuit used with a different definition? Specifically does the definition of Circuit in Synodical Bylaw 5.01 apply to Bylaw 5.03, 5.31, 5.33, 5.35, & 5.37, so that only Electoral Circuits, that is, Circuits with either sufficient communicant membership and number of congregations to qualify, or which have been granted an exception by the Synodical President for the previous convention, constitute a Circuit Forum?"

Opinion: Chapter V of the *Handbook* of the Synod provides for "visitation Circuits," called such by Bylaw 3.03 when it describes an electoral Circuit as consisting "either of one or two adjacent visitation Circuits." The membership requirements for a visitation Circuit are provided by Bylaw 5.01. The various functions of a visitation Circuit and its officers are provided by Bylaws 5.03–5.51. Every occurrence of the word "Circuit" in Chapter V of the *Handbook* refers to visitation Circuits.

Bylaws 5.31–5.37, which refer specifically to Circuit Forums, therefore also speak of visitation Circuits. Each congregation of a visitation Circuit is to be represented at its Circuit Forum by its pastor and one member designated by the congregation. Among its functions, a visitation Circuit serves also as an electoral Circuit (Bylaw 5.35), although two adjacent visitation Circuits may be joined together by a District (Bylaw 3.03). In such case, a combined meeting of the Circuit Forums of the two adjacent visitation Circuits will be necessary to carry out the functions of an electoral Circuit as described in Bylaws 5.35 and 3.05. In all cases, for both visitation and electoral Circuits, specific membership requirements must be honored unless exception is made by the President of the Synod upon request of a District's Board of Directors.

45. Questions re BHE/CUS Board Approval of Board of Regents Appointments (02-2274)

The Commission is currently considering a request for an opinion regarding the relative authority and relationships of college and university boards of regents and the BHE/CUS Board. That decision is pending (02-2270). In a June 7, 2002 memorandum, the Executive Director of the BHE/CUS Board submitted the following separate question with an urgent request for a more immediate response.

Question: "In the area of initial appointments to seminaries and to colleges/universities of theology faculty members, what is the role of the Board for Higher Education over against the local Boards of Regents in granting prior approval for theological faculty? How do the approvals differ?"

Opinion: The appointment of faculty is governed by Bylaw 6.23 a,

The Board of Regents on recommendation of the president of the institution shall appoint all full-time members of the faculty. The Board for Higher Education shall require certification of theological and professional competency. All initial appointments to seminaries and to college/university theology faculties shall require the prior approval of the Board for Higher Education. All other initial full-time appointments shall require prior approval of the Boards of Regents and shall include a thorough theological review involving the District President and selected members of the Boards of Regents.

Under the bylaw, the Board for Higher Education must require certification of the theological and professional competency of all full-time faculty members hired. In the case of initial appointments to the seminaries or the theological staff of a college or university, the Board for Higher Education must itself approve the certification and also approve the candidate or candidates prior to actual appointment by the Board of Regents. (This responsibility of the Board for Higher Education is also contained in Bylaw 3.409 h.) In all other cases of initial appointment, the Board of Regents is itself responsible for approval of the candidate or candidates after a thorough theological review of each candidate in consultation with the local District President and selected board members. In such cases, the Board of Regents reports the certification of the theological and professional competency of all faculty hired to the Board for Higher Education.

46. Question re Participation in the LCMS Pension and Medical Plans (02-2275)

The chairman of a member congregation of the Synod, with a letter dated May 16, 2002, provided to the Commission a copy of a tax return of an organization independent of the LCMS along with an “important question [that] needs to be asked,...taking into consideration the above statement and IRS regulations relative to Contract Labor.”

Question: “May a person(s) who is an employee of a non-profit corporation and which corporation has no official connection to the Lutheran Church—Missouri Synod (LCMS) such as an RSO or auxiliary, be a participant in the LCMS Pension and Medical Plans?”

Opinion: It is the duty of the Commission on Constitutional Matters to interpret the Synod’s Constitution, Bylaws, and resolutions upon written request (Bylaw 3.905 d). Bylaws 3.701 to 3.715 establish Worker Benefit Plans and describe the plans that are offered. These bylaws do not, however, detail who may participate in the benefit plans. Such detail is published in booklet form under the supervision of the Board of Managers for Worker Benefit Plans.

Because the content of such booklets is not included in the jurisdiction of this Commission, as is also the case with IRS regulations relative to contract labor, it cannot respond further to this question. Further information regarding participation in the pension or medical plans may be obtained from the Board of Managers for Worker Benefit Plans.

47. Questions re Authority of BHE/CUS Board and Concordia University System (02-2276)

In a June 9, 2002 e-mail memorandum, a pastor of the Synod asks a series of questions concerning the relationship between the BHE/CUS Board and the Boards of Regents of the Concordia University System.

Question 1: “Does the Board of Higher Education have doctrinal oversight (sic) over the Boards of Regents of the Concordia University System?”

Opinion: Bylaw 3.101 A 1 places the responsibility of supervision of the doctrine taught and practiced in the Synod, including synodwide corporate entities, under the Office of the President: “The President of the Synod has ecclesiastical supervision of all officers of the Synod and its agencies, the individual Districts of the Synod, and all District Presidents.” Bylaw 3.101 A 2 additionally requires that the President shall “at regular intervals officially visit or cause to be visited all the educational institutions of the Synod to exercise supervision over the doctrine taught and practiced in those institutions.” Bylaw 3.101 B 2 adds that he shall officially visit or cause to be visited all of the Synod’s educational institutions “to see to it that they are in accordance with the Constitution, Bylaws, and resolutions of the

Synod.” The Bylaws, therefore, place the responsibility for doctrinal oversight of boards of regents of the Concordia University System under the Office of the President and not the BHE/CUS Board.

Question 2: “Does the Board of Higher Education have the authority if needed to remove Regents whom (sic) are not upholding the official positions of Synod?”

Opinion: The Bylaws of the Synod grant no such authority to the BHE/CUS Board.

Question 3: “Do the universities of the Concordia System have the authority to begin foundations for the purposes of keeping monies away from Synodical control?”

Opinion: Bylaw 3.607 reads: “Since the Foundation serves all the Synod, no new foundations shall be established by Districts, colleges, seminaries, universities, and agencies without prior approval of the Board of Directors of The Lutheran Church—Missouri Synod.” Bylaw 6.63 adds: “All surplus institutional funds above an adequate working balance shall be deemed to be surplus and shall be deposited with the Vice-President—Finance—Treasurer of the Synod for investment. Earnings from such investments shall be credited to the depositing institution.” Therefore, universities of the Concordia University System do not have the authority to begin foundations for any reason without the approval of the Board of Directors of the Synod.

48. Request for Reconsideration of Opinion 02-2267 re Role of Matthew 18 in the Synod’s Dispute Resolution Process (02-2277)

The First Vice-President of a District in a letter dated June 4, 2002, submitted a “Motion for Reconsideration” of the Commission’s opinion 02-2267, expressing disappointment and offering detailed explanation why said opinion should be reconsidered.

Opinion: In support of the request for reconsideration, the writer points out the requirements under both Bylaw Chapter VIII (the Synod’s Dispute Resolution Process) and Bylaw 6.47 (dealing with complaints against faculty members) that a face-to-face meeting and informal resolution efforts occur between the complainant and the accused before a formal dispute process may be invoked. The writer further suggests that, by implication, such must also be the case under Bylaw 2.27, particularly in view of prior Commission opinions 02-2251 and 02-2257. Unfortunately, the suggested analysis ignores the differences between the purpose and express process of Bylaw 2.27 and the purpose and express processes set forth in the other two circumstances. Bylaw 2.27 is expressly a process to terminate congregational or individual membership.

Because the goal of the church is not expulsion, but reconciliation, the drafters of the bylaws and the conventions which adopted them recognized the desire to seek such reconciliation in lieu of proceeding unhesitatingly down the adversarial process which may lead to expulsion. Bylaw 2.27 a 2 expressly requires the responsible District President to follow the guidelines of Matthew 18 and encourages him to seek reconciliation. As prior opinions of the Commission have recognized, attempts to seek reconciliation are included in the District President’s duty to act on a complaint within 90 days. During such efforts, the time requirements of the bylaw may be tolled. In opinion 02-2251, the Commission attempted to clarify the resulting connection between Bylaw 2.27 and Chapter VIII of the Bylaws.

As reflected in opinion 02-2257, a Bylaw 2.27 process cannot be dismissed on the basis that Matthew 18 has not been followed. Bylaw 8.05 requires a face-to-face meeting as a precondition to proceeding to a formal dispute resolution process initiated under Chapter VIII. Bylaw 2.27 has no such precondition because it is a reflection of the church’s ecclesiastical responsibility to assure a member’s continued adherence to the Synod’s qualifications for membership. That responsibility is independent of the source

by which potential unfitness becomes known to the church, and even independent of any wrongful conduct on the part of the person bringing such allegations. As the Commission earlier suggested, the complaint may even be initiated by someone outside the church, or even a non-Christian who may refuse to consider reconciliation under Matthew 18 or any other process.

Opinion 02-2267 further recognized that “because the goal of all Christians should first be reconciliation, it is incumbent on those within the church to always follow Matthew 18.” This is demonstrated in Bylaw 2.27 by its provision that the guidelines of Matt. 18:15-16 be followed with the assistance of a small committee if necessary. Whenever possible, members of the church must honor Matthew 18 and must seek reconciliation. Failure of a member to act in good faith in seeking such reconciliation should itself be recognized as giving offense and should be addressed by the responsible District President.

49. Adjournment

Time having expired, the meeting was closed with prayer.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
June 27, 2002

50. Call to Order and Prayer

Chairman Walter Tesch called the telephone conference call meeting to order with all members participating except Norman Sincebaugh who was not able to take part due to illness.

President Gerald Kieschnick was granted opportunity to speak to the Commission. He was asked to open the meeting with prayer, following which he spoke briefly to the Commission and provided further background and explanation of the question he has submitted.

51. Question re Notification of Suspended Status of a District President (02-2279)

The President of the Synod in a June 26, 2002 e-mail message requested an opinion regarding his on-going ecclesiastical responsibilities in the case of a District President on suspended status, with particular reference to Bylaw 2.25 d.

Question: “When the member on suspended status is a District President whose ecclesiastical supervisor, the Synodical President (Bylaws 3.101 and 2.27 g), has been disqualified on the basis of Bylaw 2.27 a. 1. from investigating the complaints brought against the District President, is it nevertheless the responsibility of the Synodical President to carry out Bylaw 2.25 d. 2. and 3., or does that responsibility belong to the officer of the Synod who has been charged on the basis of Bylaw 2.27 a. 1. with investigating the complaints brought against the District President?”

Opinion: The President of the Synod is the ecclesiastical supervisor of all District Presidents (Constitution Art. XI B; Bylaw 3.101 A 1). He continues to have this ecclesiastical supervisory responsibility under the Constitution and Bylaws of the Synod also when a District President is on suspended status, even though he may have been disqualified from investigating complaints brought against the District President on the basis of Bylaw 2.27 a 1.

Under ordinary circumstances, when formal proceedings are commenced against a District President under the procedure set forth in Bylaw 2.27, the President of the Synod is responsible for carrying out its requirements (Bylaw 2.27 g). When he is disqualified on the basis of Bylaw 2.27 a 1, “the next qualified officer of the Synod shall function in the place of the President” (Bylaw 2.27 g).

Bylaw 2.25, which provides the conditions and requirements of suspended status, states in its final paragraph f: “If the member on suspended status is a District President, the duties assigned to the District President under sections d and e hereof shall be performed by the next proper successor District officer.” The responsibilities outlined in Bylaw 2.25 d 2 and 3, therefore, belong neither to the President of the Synod nor to the next qualified officer of the Synod but to the next proper successor District officer.

In the case of the suspension of a District President, therefore, it will be necessary for the investigating officer of the Synod, whether the President or the next qualified officer, to inform the next proper successor District officer of the suspension, which officer will then be responsible for performing the duties described in paragraphs d and e of Bylaw 2.25.

52. Minutes of June 10-11 Meeting

The Commission discussed several changes to the minutes of its June 10-11, 2002 meeting, after which the minutes were approved for distribution. After brief discussion it was agreed to make them available to the Synod at large as expeditiously as possible rather than to postpone general distribution until those who submitted questions could be individually informed, as per usual practice.

53. Adjournment

The meeting was closed with a prayer by Albert Marcis.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
August 20, 2002

54. Conference Call Meetings

The Commission, after a series of conference calls and shared drafts, finalized the following opinion 02-2282 on August 20, 2002. Because the Secretary submitted the questions, he was asked to excuse himself from the deliberations leading to the decision.

55. President's Duty to Call up for Review (02-2282)

The Secretary of the Synod has submitted the following questions to the CCM:

Bylaw 3.101 B 5 requires that the President of the Synod shall “call up for review any action by an individual officer, executive, or agency which, in his view, may be in violation of the Constitution, Bylaws, and resolutions of the Synod and, if he deems appropriate, request that such action be altered or reversed.” It also speaks of “the President’s constitutional duty to report to the Synod those who do not act in accordance with the Constitution and do not heed his admonitions, as prescribed in Art. XI B 2.”

Question 1: Does Bylaw 3.101 B 5 give to the President of the Synod the right and/or the responsibility to call up for review an action of an officer carrying out the responsibilities of Bylaw 2.27 c and request that such action be altered or reversed?

Question 2: Does Bylaw 3.101 B 5 give to the President of the Synod the right and/or the responsibility to report to the Synod via pastoral letter the calling up for review of an action of an officer carrying out the responsibilities of Bylaw 2.27 c if such officer does not heed his admonitions?

Although the Secretary’s letter references Article XI B of the Constitution, the two specific questions as posed deal only with the President’s rights and responsibilities under Bylaw 3.101 b 5 as it relates to review of an action of an officer of the Synod acting under Bylaw 2.27. Under Bylaw 2.27, the investigating officer is to thoroughly investigate allegations, follow the guidelines of Matthew 18, and if he concludes the facts form a basis for expulsion under Article XIII of the Constitution, prepare and send to the concerned member a written statement of the case and a notification of the member’s suspended status. If the member contests expulsion, Bylaw 2.27 d then requires the investigating officer to forward to the Secretary of the Synod the statement of the matter in dispute and a memorandum describing compliance with Matthew 18. Under the dispute resolution process, a Dispute Resolution Panel is then formed under the provisions of Chapter VIII of the Bylaws, and the panel eventually issues a decision. Under Bylaw 8.09 c 4 d, that decision is then publicized as deemed appropriate by the District or synodical President.

When a decision is issued by the panel, any party to the dispute, or the President of the Synod (in recognition of the President’s power and responsibility under Article XI B 1-3), if a question of doctrine or practice is involved, may request reconsideration, and the President may request an opinion of the CCM or CTR.

Assuming that all persons involved have scrupulously followed the provisions of Bylaw 8.21 e and the CCM’s prior opinions, the President may learn of the basis of the action of the investigating officer only

after completion of the work of the Dispute Resolution Panel, when he is expressly required to be apprized. If the investigating officer has failed to follow his responsibilities under Bylaw 2.27 c, or erred in his interpretation of the doctrines of the church, the Constitution, Bylaws and resolutions of the Synod, the appeal process is designed to discover and correct such failures or errors, and the President's need to call up the action of the investigating officer for review or the need to report by a pastoral letter such calling up for review would be moot.

If the investigating officer under Bylaw 2.27 commits a procedural error, primary responsibility for correction of that error is vested in the Secretary of the Synod, who is to administer the Synod's dispute resolution process under Bylaw 3.143 o.

Were the President of the Synod to become aware, before announcement of a decision of the Dispute Resolution Panel under 8.09 c 4 d, that an investigating officer has misstated a doctrinal position of the church or acted in violation of the Constitution, Bylaws, or resolutions of the Synod, a President of the Synod has responsibility to act. Article XI B 1-4 of the Constitution sets forth his duties. Subsection 1 imposes on him duties regarding the supervision of the doctrine of the church and administration of all officers of the Synod. Subsection 2 requires that he see to it that all act in accordance with the Synod's Constitution and admonish all who depart from it. Subsection 3 provides that "the President has and always shall have the power to advise, admonish, and reprove. He shall conscientiously use all means at his command to promote and maintain unity of doctrine and practice in all the Districts of the Synod." Subsection 4 requires that the President see to it that the resolutions of the Synod are carried out.

In fulfilling his duties, the President would normally be expected to rely on the provisions of Chapter VIII of the Bylaws to correct errors occurring during the dispute resolution process. This is particularly so in view of the responsibilities given others under Article XIII, and the bylaws flowing from that article. We previously recognized in CCM Opinion 02-2251 that the President's duty and power "to advise, admonish, and reprove is tempered by the provisions of Article XIII and the bylaws that flow from it." Recognizing the procedural protections embodied in the dispute resolution process, including the initial review by a Dispute Resolution Panel, and subsequent appeal to an Appeal Panel, which may then form a Review Panel, the President would normally be expected to choose not to actively intervene until that process has concluded. Following the initial decision of the Dispute Resolution Panel, he may also, under Bylaw 8.09 d, where a question of doctrine or practice is involved, request at that time either reconsideration, or an opinion of either the CCM or the CTCR.

Under extraordinary circumstances, such as when an issue is of synod-wide concern and having an immediate and ongoing negative impact on the Synod, the President may choose to exercise his discretion in fulfilling his duties under Article XI. The President's right and/or responsibility to call up for review an action of an investigation officer carrying out the responsibilities of Bylaw 2.27 c flows from his constitutional responsibilities and powers. Similarly, his right and/or responsibility to report to the Synod via pastoral letter flows from his constitutional responsibilities and powers under Article XI.

It should be noted that, since the Secretary of the Synod submitted the question, he has not participated in the discussions leading to this opinion. Dr. Norman Sincebaugh was hospitalized and unable to participate in deliberations, and was taken to his eternal rest while this question was being considered.

56. Adjournment

The above opinion was the only matter addressed by the Commission.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
August 28, 2002

57. Call to Order

Chairman Walter Tesch called the conference call meeting to order and asked Secretary Raymond Hartwig to open with prayer. Albert Marcis was unavailable for the meeting.

58. Question re Filling of Vacancy on Commission on Constitutional Matters (02-2298)

In an August 22, 2002 e-mail letter to the chairman of the Commission, the President of the Synod asked the following question regarding the process for filling the vacancy on the Commission on Constitutional Matters resulting from the death of Commission member Norman Sincebaugh.

Question: “In consideration of the circumstances..., is the President of the Synod acting within Bylaw 3.903 if, in consultation with the Vice-Presidents of the Synod, he appoints one of the remaining eight candidates [from the original appointment process] to fill the vacancy created by the death of Dr. Sincebaugh, or does the process of selection of candidates need to begin anew?”

Opinion: Bylaw 3.903 c requires that vacancies on the Commission on Constitutional Matters be filled by following the procedure set forth in Bylaw 3.903 a, namely, the initial appointment procedure. The Commission rules that the process must therefore begin anew. Candidates for the open position on the Commission must be nominated by District boards of directors and be presented through the office of the Secretary to the Council of Presidents. The Council of Presidents must then elect five candidates and present them through the office of the Secretary to the President of the Synod. The President of the Synod, in consultation with the Vice-Presidents of the Synod, must then appoint one of the candidates to the open position. The Commission encourages all who are involved in the process to proceed as expeditiously as possible.

59. Adjournment

A date having been established for the next conference call meeting and all business to come before the Commission at this meeting having been accomplished, Secretary Hartwig closed the meeting with words of benediction.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
October 2, 2002

60. Call to Order

Chairman Walter Tesch called the conference call meeting to order and noted that all members of the Commission were present. He asked Secretary Raymond Hartwig to open the meeting with a prayer.

61. Actions by Parties During Dispute Resolution Process (02-2308)

The Secretary of the Synod, as administrator of the Synod's dispute resolution process, has requested clarification of the status of a disputed situation while the dispute resolution process has not been completed. His question arises from a congregation's action to terminate its pastor's call on the basis of a decision by a Dispute Resolution Panel while the appeal process was still underway.

Question: "When the formal dispute resolution process of Chapter VIII of the Bylaws of the Synod has begun, are related matters placed on hold until reconciliation or a final decision is reached?"

Opinion: By accepting membership in the Synod, members have committed to be governed by the Constitution and Bylaws of the Synod, including the use of the dispute resolution process outlined in Chapter VIII of the Bylaws. Members have agreed that they will be bound by the process even to the extent that "no person or entity to whom or to which the provisions of this chapter are applicable because such person, entity or agency is a member of the Synod may render the provisions of this chapter inapplicable by terminating that membership" (Bylaw 8.01).

In cases in which a pastor has challenged the termination of his call and has initiated the dispute resolution process under Chapter VIII, the pastor and the congregation, both being members of the Synod, are committed to resolving that dispute according to the process provided for in the Bylaws. While Bylaw 8.11 recognizes the congregation's right of self-government, which includes the discharge of a pastor, it also includes the expectation that the congregation will honor and act upon the decision of a Dispute Resolution Panel, which is final only after all opportunities for request for review have been exhausted.

Were a congregation to act upon a decision of a Dispute Resolution Panel prior to the completion of the appeal process, and were an Appeal Panel to grant reconsideration of that decision by a Review Panel, and were the Review Panel to arrive at a different final decision, confusion would result due to the congregation's action on the basis of the earlier decision. Congregations therefore are advised to place on hold matters related to the underlying dispute and to defer any actions that might prevent the effective implementation of the final decision from the dispute resolution process.

62. Relationship of BHE/CUS Board and Boards of Regents (02-2270)

The Executive Director of the BHE/CUS Board, in a May 22, 2002 memorandum, raised a series of questions for clarification of "the meaning and limits of authority of the BHE/CUS Board as the 'governing board' of higher education," especially as it relates to boards of regents of the colleges and universities of the Synod. He noted that the question is crucial, given that this relationship "will determine the future of accreditation for Synod's institutions of higher education." After discussion of a draft response, the Commission agreed to postpone a final decision until its next meeting.

63. Interpretation of Article VI 1 b of the Constitution (02-2278)

Several faculty members of a university of the Synod, in a June 24, 2002 e-mail letter, asked for definition of the phrase “taking part” as it occurs in Article VI 2 b of the Constitution. After discussion of a draft response, the Commission agreed to postpone a final decision until its next meeting.

64. Clarification of Effect of Suspension of a Congregation (02-2280)

A pastor of the Synod, in a June 27, 2002 e-mail letter, requested an opinion regarding the suspension of a congregation by a District President and the practical results of such a suspension.

Question 1: “May a District President suspend a congregation pursuant to Bylaw 2.25 if he rules that the congregation is persisting in ‘offensive conduct’ (Article XIII) by effectively ‘terminating’ its pastor for unscriptural and unconstitutional reasons (e.g., personality conflict) by discontinuing or severely reducing the pastor’s salary or by other such circuitous means while not actually removing the pastor from office? This question assumes that appropriate admonition has been carried out according to Scripture and the synodical Bylaws.”

Opinion: Bylaw 2.25 a provides that when formal proceedings have been commenced against a member of the Synod (individual or congregation) under procedure set forth in Bylaw 2.27 which may lead to the expulsion of such member from the Synod, the member shall have suspended status. Thus suspended status is not an independent act by a District President but is, rather, a status that follows automatically when the District President formally requests expulsion of the member from the Synod (Bylaw 2.27 c).

Formal proceedings to terminate a congregation’s membership in the Synod can only be commenced by a District President after he has thoroughly investigated the matter and then concluded that the facts form a basis for termination of the congregation’s membership under the criteria established in Article XIII of the Constitution of the Synod, which includes “an offensive conduct.” However, termination of a congregation’s membership in the Synod is not decided by the District President if the congregation does not consent to termination of its membership in the Synod. Rather, that decision is made by a Dispute Resolution Panel after it hears the evidence presented by the District President and the congregation. What constitutes “offensive conduct” is a decision to be made by the Dispute Resolution Panel, taking into consideration the provisions of Article III 9 of the Constitution of the Synod which states that one of the objectives of the Synod is to “provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights.”

Question 2: “What is the practical effect of suspension on the suspended congregation? Is that congregation entitled to call another pastor while on suspended status? If not, may the District President refuse a request from the suspended congregation for a call list until the suspension has been resolved?”

Opinion: Bylaw 2.25 b states: 1) Suspended status continues until membership is duly terminated or the formal proceedings are completed favorably to the member; and 2) While on suspended status a member shall continue to hold all rights under the Constitution and Bylaws of the Synod subject to the limitations set forth in the Bylaw. Such limitations (Bylaw 2.25 c 1-4) are applicable to individual members of the Synod. The Bylaws are silent as to limitations on activities of a congregation that is on suspended status. However, Bylaw 2.45 addresses issues relating to the calling of ministers of religion. Included therein is the requirement that when calling an ordained minister, a congregation shall seek the advice of the District President. Having sought such advice from the District President, the congregation has complied with the bylaw.

65. District Bylaws Questions (02-2281)

The Bylaw Committee of an LCMS District, in a July 1, 2002 letter, submitted a number of questions to the Commission regarding proposed changes to the District's Bylaws. A copy of the District's *2000 Handbook* was also provided to assist the Commission.

Question 1: "Synod's CCM was concerned that the Treasurer (of the District) still maintain some sort of record regarding LCEF loans. If that is still the concern, we are looking for some clarification as to what sort of record this ought to be."

Opinion: The Commission is not certain as to where this past concern by the CCM has been expressed. The Bylaw Committee is asked to supply more information before a response can be given to this question.

Question 2: "Would establishing a District Commission be in conflict with the Synod CCM? Even if it would not be in conflict, does the CCM regard a District commission as a good practice? Are there any other Districts that have established a District CCM? Also, would such a District Commission have authority to 'interpret the District's Constitution, Bylaws, and resolutions, as well as those of its member congregations...?'"

Opinion: The Synod has established the Commission on Constitutional Matters and its functions are outlined in Bylaw 3.905. The Commission is to serve the Synod and its entities to ascertain that all articles of incorporation, bylaws, regulations, and amendments to such documents are in harmony with its Constitution, Bylaws, and resolutions.

The Constitution and Bylaws of the Synod neither provide for nor prohibit a Commission on Constitutional Matters on the District level. The Commission notes that in a December 8, 1996 opinion (Ag. 2050) the Commission did refer a matter in question to a District Committee on Constitutional Matters. However, it has no knowledge of how many such commissions may be in existence throughout the Synod and, if such do exist, what their responsibilities may be. The Commission would urge caution that any such commissions properly regard the primary role of the Synod's Constitution, Bylaws, and resolutions when issuing opinions on the District level.

The Commission calls attention to the fact that the Constitution and Bylaws of the Synod do provide for a District Constitution Committee (Bylaw 2.03), whose responsibility it is to review the constitutions and bylaws of congregations applying for membership in the Synod and to review proposed changes to the constitutions and bylaws of congregations, in both cases to ascertain that such documents are in harmony with the Holy Scriptures, the Lutheran Confessions, and the teachings and practices of the Synod. The Bylaws of the Synod do not, however, authorize this committee to serve as a District Commission on Constitutional Matters.

Question 3: "Is [the] District's (current) bylaw permitting advisory members to submit memorials to a district convention in conflict with (the) Synod's Constitution prohibiting such to a synodical convention?"

Opinion: Article XII 2 of the Synod's Constitution states, "This Constitution is also the constitution of each District of the Synod; however, each District is at liberty to adopt such bylaws and pass such resolutions as it deems expedient for its conditions, provided that such bylaws and resolutions do not conflict with the Constitution and Bylaws of the Synod." Bylaw 4.07 b repeats this provision, also stating that "the Bylaws of the Synod shall be primarily the bylaws of the District" and adding that "a District may adopt additional bylaws, regulations, and resolutions necessary and proper for its own administration

or for effectively carrying on the work of the Synod” so long as they do not “conflict with the Constitution and Bylaws of the Synod.”

Speaking specifically of District conventions, Bylaw 4.21 requires that such conventions “be governed by the Bylaws adopted by the Synod for its conventions, insofar as these may be applicable,” adding that Districts “may adopt any other regulations, provided these are not contrary to the Constitution and Bylaws of the Synod.” Regarding therefore the submission of overtures to a convention of the Synod, Bylaw 3.19 a 2 states that such overtures “may be submitted only by a member congregation of the Synod, a convention or Board of Directors of a District, an official District conference of ordained and/or commissioned ministers, the faculty of an educational institution of the Synod, a board or commission of the Synod listed in Bylaws 3.55 and 3.57, a committee established by a prior convention, or a forum of a Circuit.” No mention is made of advisory members submitting overtures. They therefore do not have the privilege of submitting overtures to a District convention and the District is advised to amend its Bylaws to bring them into agreement with the Bylaws of the Synod in this regard.

Question 4: “Is [this District’s] practice of allowing an individual to be elected by the convention to the Lutheran Island Camp Board of Directors even after that individual has been elected by the convention to another office in conflict with the Synod’s rule of no one holding more than one elective office? Or is this a possible extension to that rule, due to the fact that it is a camp board of directors?”

Opinion: Bylaw 4.109 of the Synod pertaining to District elections and appointments states the following:

4.109 Holding More than One Office

a. No one, either in the Synod or in a District, or between the Synod and a District, shall hold more than one elective office; or more than two offices, although one or both be appointive; or ever hold two offices of which one is directly responsible for the work done by the other.

b. An office shall be regarded as elective only if it is an office filled through election by a national or District convention, even though a vacancy in such an office may be filled by appointment.

c. Doubtful cases shall be decided by the President of the Synod.

The intention of this bylaw is clear. No one in the Synod or in a District or between the Synod and a District shall hold more than one elective office (filled through election by a national or District convention). Since the question sets forth the possibility of a person holding two such elective offices, this is in conflict with the Bylaws of the Synod regardless of the nature of one of the offices in question, especially given the fact that the District owns the camp, and the District Board of Directors exercises a supervisory role.

Question 5: “Is the phrase ‘pastors and lay delegates’ in the provision for a caucus of the pastors and lay delegates of the Circuit at a District convention (Bylaw 5.11) limited to those pastors and lay people who are voting delegates at a District convention or does it include also advisory ordained and/or emeriti ordained ministers from the Circuit?”

Opinion: Bylaw 5.11 states that if no pastor has received a majority in the balloting for circuit counselor, additional balloting “shall take place by the pastors and lay delegates of the Circuit” in a Circuit caucus during an early session of the District convention. Those pastors and lay delegates who are to participate are identified in Bylaw 5.03 c: “a pastor of each congregation, and one member of each congregation

designated by the congregation.” These delegates are the only persons involved in the election of a Circuit Counselor. Advisory ordained and/or emeriti ordained ministers are not to be included.

Question 6: “The election of synodical convention advisory delegates for commissioned ministers and for ordained ministers takes place at our District convention. In that election, do emeriti commissioned and ordained ministers have a vote in electing the advisory commissioned and ordained delegates to the Synod’s convention?”

Opinion: Emeriti ordained and commissioned ministers are inactive members of the Synod (Bylaw 2.17 a) and therefore are included among the advisory members of the Synod (Bylaw 2.17; Art. V B 3). They therefore have a vote in electing the advisory commissioned and ordained ministers to conventions of the Synod according to Bylaw 3.09.

Note to the District Bylaw Committee: In addressing the above questions, the Commission had occasion to review the *2000 Handbook* of the District and makes the following observations, encouraging the District Bylaw Committee to further review its handbook, giving particular attention to the following:

- The current District Bylaws (e.g., 1.02; 1.08) refer to “pastors and teachers” when defining the members of the Synod. The Bylaws of the Synod, by using the terminology “ministers of religion—ordained” and “ministers of religion—commissioned,” more clearly includes other kinds of commissioned ministers in membership.
- Consideration should be given to changing the reference in Bylaw 1.10 from “duties of members” to the “continued eligibility” terminology used in synodical Bylaws 2.15 and 2.17.
- District Bylaw 2.36 a should be updated to include the entire list of advisory members provided in Article V B of the Synod’s Constitution and related bylaws.
- The District’s Bylaws often do not distinguish between references to District bylaws and bylaws of the Synod (e.g., references in Bylaw 2.64 a and b).
- References to the Synod’s Bylaws have not been corrected to reflect recent changes (as in District Bylaw 3.26 a 1).

66. Dispute Resolution Process Panel Selection (02-2300)

A party to a dispute, in a letter dated August 26, 2002, addressed a series of questions to the Commission regarding the panel selection process used by the Office of the Secretary of the Synod in the administration of the Synod’s dispute resolution process. The questions were submitted “with the understanding that since most of these questions deal with the role of the Secretary of the LCMS in his capacity as administrator of the dispute resolution process, the Secretary will be excluded appropriately in the discussions and decisions of the Commission on Constitutional Matters on a question by question basis by the Commission.” The Secretary of the Synod did not take part in the deliberations regarding this matter or the opinions set forth.

Question 1: “If a party to a dispute has requested to be present or represented in person at the time of the draw made by the Office of the Secretary of the LCMS in its capacity as Administrator of the Dispute Resolution process to determine those eligible to act as reconcilers in a case at the national level, must that request be honored by the Secretary of the LCMS?”

Opinion: Bylaw 8.07 (h) states:

If the complainant requests formation of a Dispute Resolution Panel, the Secretary of the Synod or his representative shall within 21 days select such a panel in the prescribed manner and then forward to each panel member a copy of the report of the reconciler with its attachments.

Bylaw 8.15 b 1 states:

Nine names shall be selected by a blind draw from the Dispute Resolution Roster.

The Bylaws make no provision for a party to a dispute to be present in person or by representative at the time of selection of the Dispute Resolution Panel. Accordingly, there is no right for a party to a dispute to be present at the time of selection of the Dispute Resolution Panel, which is done by the Secretary in the presence of a disinterested witness or witnesses.

Question 2: “If a nominated reconciler panelist is to be replaced once the initial draw and selection process has transpired, should not the Secretary of the LCMS proceed to draw three candidates for the remaining panelist slot, or six candidates drawn if two spots remain, so that

- a) the same selection process and elimination process affording equal opportunity to disputants to know the potential selectees and to discard for any reason an appropriate number of them be continued in subsequent procedure as in the initial procedure?
- b) the disputants would know after the Bylaw 8.17 continuing blind draw the names of the next potential panelist(s)?
- c) the selection process by blind draw indicated in Bylaw 8.16 c 4 being inexact as to methodology, said inexactness would best be made exact by the most fair and reasonable approximation of the process more specifically designed in Bylaw 8.15 b 3?”

Opinion: Bylaws 8.15 b 3 and 4, when addressing the nine names selected by the Secretary from the Dispute Resolution Roster, state:

- 3) The list shall be mailed simultaneously to each party, who shall be entitled to strike three names and return the list to the Secretary of the Synod within one week.
- 4) The Secretary of the Synod will correct any problem in the panel membership by a further blind draw for removals or additions until the panel is constituted.

Thus the pertinent bylaws provide that each party to a dispute has the opportunity to strike three names from the nine selected by blind draw. However, the Bylaws make no similar provision if it is necessary to make further adjustment by addition or deletion to the dispute resolution panel so that it meets the pastor/layman requirements of Bylaws 8.15 b or 8.16 c. Therefore, a member deleted or added to the Dispute Resolution Panel is done by blind draw and the parties to the dispute have no part in that selection process.

Question 3: “In a reconciliation panel proceeding and any proceedings such as a disqualification proceeding (Bylaw 8.17) flowing from the initial proceeding, ought not the disputants be provided by the Secretary of the LCMS with any and all information forwarded to the

panelists from himself as well as from the respective disputants at the same time as the information is supplied by the Secretary of the Synod to the panelists?"

Opinion: This question has two parts. The first is "a reconciliation panel proceeding" which the Commission assumes to be a Dispute Resolution Panel, and the second, a "disqualification proceeding" which the Commission assumes to be the three-member panel to rule on disqualification (Bylaw 8.17).

Bylaw 8.07 f states:

f. Upon conclusion of the formal reconciliation meeting or meetings, the reconciler shall prepare a written report which contains the actions of the reconciler, the facts agreed to, the facts remaining in dispute and whether reconciliation has been achieved. Attached to the report shall be:

1. the statement of the complainant as to informal reconciliation efforts;
2. the statement of the matter in dispute;
3. any reply by the respondent.

The report and the attachments shall be forwarded to the parties to the dispute and the Secretary of the Synod or District as appropriate.

Bylaw 8.07 h states:

h. If the complainant requests formation of a Dispute Resolution Panel, the Secretary of the Synod or his representative shall within 21 days select such a panel in the prescribed manner and then forward to each panel member a copy of the report of the reconciler with its attachments.

Thus, the Bylaws require the Secretary to simultaneously forward the same material to both parties to the dispute as well as to the members of the Dispute Resolution Panel.

Bylaw 8.17 relates to a procedure to be followed when a party to a dispute alleges that one or more members of a Dispute Resolution Panel have actual partiality or the appearance thereof. The bylaw states that if the panel member does not agree to the disqualification, "the decision shall be made by a separate three-member panel of reconcilers drawn for that purpose." The bylaw is silent as to the procedure to be followed by this panel. However, since the Bylaws require that the same material be forwarded to the parties to the dispute as are forwarded to panel members after a Dispute Resolution Panel is formed, the Commission rules that the same practice must be followed upon formation of the three member panel to rule on the allegation that an individual chosen to be a member of a Dispute Resolution Panel is disqualified by reason of actual partiality or the appearance thereof.

Question 4: "If a party in a dispute requests a face to face meeting with a dispute panel once formed, should not that request automatically be honored by the chairman of the panel?"

Opinion: Several portions of the Bylaws are relevant to this question:

a. The Dispute Resolution Panel shall meet in person, or by telephone conference, within 30 days after its appointment, for the purpose of selecting a chairman and secretary. After the chairman confers with the parties to the dispute, the Dispute Resolution Panel shall choose a location and a date for the formal hearing of the matter (Bylaw 8.09 a).

1. The hearing shall be private, attended only by the parties, and one adviser of each party's choice, should any party desire one (Bylaw 8.09 c 1).

...The panel shall establish the procedure to be followed in the hearing and the relevancy of evidence so that each party shall be given an opportunity fully to present its respective position (Bylaw 8.09 c 1).

d. No party to a dispute nor anyone on the party's behalf, shall either directly or indirectly communicate with the reconciler or any member of the Dispute Resolution Panel, Appeal Panel, or Review Panel without the full knowledge of the other party to the dispute (Bylaw 8.21 d).

Also relevant is Rule of Procedure 36, paragraphs a and b:

a) At the request of the parties or at the discretion of the panel, a preliminary conference with the chairman of the panel and the parties may be scheduled to arrange for an exchange of information and the stipulation of uncontested facts to expedite the panel proceedings.

b) In large or complex cases, at the discretion of the panel, a preliminary hearing may be scheduled with the chairman of the panel and the parties to arrange for the production of relevant evidence, to identify potential witnesses, to schedule further hearings, and to consider other matters that will expedite the panel proceedings.

Therefore, the answer to this question is: no. The rules governing attendance at the formal dispute resolution hearing are set forth in Bylaw 8.09 c 1 quoted above. Any other meeting of a party to a dispute with the Dispute Resolution Panel or a member thereof is governed by Bylaw 8.21 d and Rule 36 of the Rules of Procedure,* both quoted above. It should be noted that both parties to a dispute, at all times, must have notice of any meeting of a party to the dispute with the Dispute Resolution Panel or a member thereof and be given the opportunity to be present at a time convenient to both parties.

67. Selection of Special Panel to Decide Bylaw 8.17 Request (02-2303)

A party to a dispute in a September 3, 2002 letter asked a series of questions regarding Bylaw 8.17 relating to the procedure to be followed if a party to a dispute alleges that a member of a Dispute Resolution Panel has actual partiality or the appearance thereof.

Question 1: Must the Secretary of the Synod divulge the names of the three panel members that will decide the issue of partiality?

Opinion: The bylaw is silent on this issue. However, since the names of the members of the chosen Dispute Resolution Panel are made known to the parties to the dispute, the Commission rules that the names of the members of the disqualification panel should likewise be made known to the parties to the dispute.

Question 2: Who determines the procedure to be followed by the disqualification panel to reach a decision?

* The Commission recognizes the Rules of Procedure to the dispute resolution process because they were created as a result of Resolution 7-03B adopted at the 1995 convention of the Synod.

Opinion: The bylaw is silent on this issue also. The Commission rules that the panel itself shall establish the procedure it wishes to follow to reach a decision. Thus, the panel may choose to reach a decision based on written materials submitted by the parties to the dispute; the panel may decide to hold a formal hearing attended by the parties and may follow the procedure used by a Dispute Resolution Panel, if deemed necessary. The procedure to be followed should be sufficient to allow the panel to make an informed decision.

Question 3: Who determines which panel member is to be chairman and secretary of the panel?

Opinion: Bylaw 8.09 a provides a procedure to be followed to organize a Dispute Resolution Panel. It states:

The Dispute Resolution Panel shall meet in person, or by telephone conference, within 30 days after its appointment, for the purpose of selecting a chairman and secretary. After the chairman confers with the parties to the dispute, the Dispute Resolution Panel shall choose a location and a date for the formal hearing of the matter.

This same procedure is to be followed in organizing the disqualification panel. The Secretary of the Synod may request one of the disqualification panel members to be a convener for the sole purpose of contacting by telephone conference the other two panel members for the purpose of the panel selecting a chairman and secretary and related matters.

Question 4: Is it appropriate for the Secretary to instruct the disqualification panel to perform its duties in haste?

Opinion: The Secretary of the Synod may convey to the disqualification panel his desire that it perform its function quickly. It is to be remembered that the matter in dispute cannot be resolved until the members of the Dispute Resolution Panel are chosen and the panel can then begin its work. Thus, it is imperative that the disqualification panel perform its work in an expeditious manner while fully informing itself on all aspects of the question.

68. Adjournment

Time having expired for the conference call, the meeting was adjourned.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
LCMS International Center
October 21-22, 2002

69. Call to Order

Chairman Walter Tesch called the meeting to order and called on Albert Marcis to open the meeting with prayer. All members of the Commission were present. A vacancy continues to exist due to the death of Reverend Norman Sincebaugh.

70. Questions re CUS Board and Boards of Regents Authority (02-2270)

The Executive Director of the Board for Higher Education, in a May 22, 2002 memorandum, asked for clarification regarding “the meaning and limits of authority of the BHE/CUS Board as the ‘governing board’ of higher education, further stating that this question is critical since “the relationship between the BHE/CUS Board and the Board of Regents will determine the future of accreditation for Synod’s institutions of higher education.”

Question 1: “Bylaw 3.401 identifies the BHE/CUS Board as the ‘governing board of the Concordia University System.’ What does this mean? What authority and limits of authority does the BHE/CUS Board have in respect to the oversight of the Concordia institutions?”

Opinion: Bylaw 3.401 a identifies the Board for Higher Education, a program board of the Synod, as “the Board of Directors of the Concordia University System.” Bylaw 3.401 b provides that this board “has authority with respect to the Synod’s colleges and universities” and “to all the Synod’s institutions of higher education, including its seminaries.” The Synod has outlined the “overall responsibility” of the board in Bylaw 3.409, thereby establishing its authority to supervise and coordinate the activities of the Synod’s colleges, universities, and seminaries “as a unified system through their respective boards of regents.” Bylaw 3.409 also establishes limits to its authority by detailing the functions of the board “in keeping with the objectives and the Constitution, Bylaws, and resolutions of the Synod.”

Question 2: “Bylaw 3.401 b identifies the BHE/CUS Board as having ‘authority with respect to all the Synod’s institutions of higher education, including its seminaries.’ What does this mean? What authority and limits of authority does the BHE/CUS Board have in respect to the oversight of the institutions of higher education?”

Opinion: Bylaw 3.401 b identifies the Board for Higher Education as having “authority with respect to all the Synod’s institutions of higher education, including its seminaries.” Bylaw 3.51 k defines such supervision as “to have authority over, to direct actions, to control activities” as to the unified synodical system. Therefore, the board has overall responsibility and the authority to direct actions and control activities to the extent provided by Bylaw 3.409. However, the board must respect the duties that have been expressly given to the boards of regents of each institution of higher education as delineated in Bylaw 6.03.

Question 3: “Bylaw 6.01 notes that ‘each college, university, and seminary of the Synod shall be governed, subject to the general policies set by the Synod, by a Board of Regents.’ What does this mean? What authority and limits of authority does the Board of Regents have in respect [to] the governance of the respective institution?”

Opinion: The functions of a board of regents have been delineated by Bylaw 6.03. The Synod thereby has also provided the authority to carry out these duties as well as the limits to such authority.

Question 4: “At question is the role and limits of authority of the BHE/CUS Board and the Board of Regents. There are some who believe the BHE/CUS Board has authority over the local institution ‘through the Board of Regents.’ If this is correct, what authority does the local Board of Regents have? Those of us who work in education know that accreditation agencies require that the institution is governed by the local Board of Regents and not by an outside source. With this in mind, is the BHE/CUS Board a ‘coordinating board’ with ‘oversight’ but not the governing board?”

Opinion: A board of regents has the responsibility and authority outlined by Bylaw 6.03 and thereby “governs” its institution “subject to general policies set by the Synod” (Bylaw 6.01). As already noted in answer to question 2 above, the Board for Higher Education must respect the duties that have been expressly given to boards of regents as delineated in Bylaw 6.03. To the extent of its functions outlined in Bylaw 3.409, however, the Board for Higher Education does have “overall responsibility” over boards of regents and their institutions as a unified synodical system and is required to carry out these responsibilities.

71. Interpretation of Article VI 2 b (02-2278)

A pastor of the Synod teaching at an educational institution of the Synod requested an opinion regarding the Article VI prohibition against taking part in sacramental rites of heterodox congregations or of congregations of mixed confessions, particularly as it pertains to participation in the Lord’s Supper.

Question: Could you explain the exact meaning of Article VI 2 b of the Constitution which proscribes members of Synod from “taking part in the ...sacramental rites of heterodox congregations or of congregations of mixed confessions”; specifically, with reference to the celebration of the Lord’s Supper in heterodox congregations. Does this forbid members of Synod from communing in such congregations (presumably congregations not in fellowship with the LCMS) or does it only forbid members from being celebrant or helping in the distribution of the elements or some other service at the altar?

Opinion: The Commission previously addressed issues related to Article VI 2 of the Constitution in opinions Ag. 1930 and 98-2122. In response to a series of questions regarding the participation of synodical pastors, teachers, deaconesses, and congregations in services and events sponsored jointly by associations or groups of churches not in church fellowship with each other, the Commission responded:

The question of the application of the language of Article VI in the Constitution of The Lutheran Church—Missouri Synod is a matter which falls within the purview of the Commission on Theology and Church Relations which is to provide study materials on the basis of which, the Synod may determine the application. The study document which the CTCR has prepared and which is now in circulation is intended to serve that purpose. At the conclusion of this study it will be the Synod’s responsibility in keeping with the Bylaws to make the ultimate decision regarding the position of the Synod in relation to questions such as those which have been posed.

The Commission does not believe that there is a specific question of constitutional or bylaw stipulation squarely before it and believes that it would be presumptuous for the Commission on Constitutional Matters to respond at this time to the questions of application which have been posed. (Ag. 1930, March 13, 1992)

In response to the question, “Does Article VI either in 2, b, or elsewhere forbid the participation of pastors of other churches or confessions in the services and sacramental rites of a congregation of the Synod?” the Commission ruled as follows:

Article VI sets forth the conditions required of congregations and individuals to obtain and continue to hold membership in the Synod. To respond to the question, the Commission deems it necessary to review the provisions of Article VI, paragraphs 1 and 2. Paragraph 1 states that a member of the Synod must accept the confessional basis of Article II of the Synod’s Constitution. Paragraph 2 builds on paragraph 1 and requires a member of the Synod to renounce unionism and syncretism of every description.

The last two words of paragraph 2 are: “such as.” These words indicate that what follows in the subparagraphs of paragraph 2 are examples of that which is prohibited in the opening sentence of paragraph 2. The subparagraphs are not, therefore, an all-inclusive listing but only examples of prohibited activities.

Subparagraph b prohibits an individual member of the Synod from taking part in the services and sacramental rites of heterodox congregations or of congregations of mixed confession. The example in subparagraph b does not address directly the question asked of the Commission, namely: “Does Article VI, b, forbid participation of ministers of heterodox congregations or congregations of mixed confession from participating in the services or sacramental rites of a congregation that is a member of the Synod?” However, this is the other side of the coin of that which is prohibited in subparagraph b. It is equally unionism and syncretism whether an individual member of the Synod participates in the services or sacramental rites of a heterodox congregation or a congregation of mixed confession or whether a minister of a heterodox congregation or a congregation of mixed confession participates in the services or sacramental rites of a congregation that is a member of the Synod. The principle remains the same. It is contrary to the condition of membership set forth in Article VI, 2. Neither the remainder of the Constitution nor the Bylaws of the Synod provide any exception to this principle (98-2122, Nov. 30, 1998).

Article VI indicates that taking part in a service or sacramental rite of a heterodox congregation or a congregation of mixed confession is an act of unionism and syncretism. The specific questions are then: 1) What constitutes “taking part”? 2) What constitutes a “service”? 3) What constitutes a “heterodox congregation”? 4) What constitutes a “congregation of mixed confession”? The answer to these questions relates to a minister of religion’s commitment to witness publicly and privately to the one and only Gospel set forth in the Holy Scriptures. Among the functions of the Commission on Theology and Church Relations is to “provide guidance to the Synod in matters of theology and church relations” (Bylaw 3.925 b). Thus this question should be directed to that commission.

72. Rights and Responsibilities of President of the Synod Under Bylaw 3.101 (02-2282A, B)

Two pastors of the Synod in separate letters to the Commission dated July 15, 2002, requested a ruling from the Commission regarding the Bylaw 3.101 distinction between the President’s ecclesiastical and administrative powers and duties as pertaining to his announced intention to call up for review a decision of the investigating officer in a current dispute case.

Question: May the President of the Synod use Bylaw 3.101 to justify the review and possible overturning of the decision that was made by the member of the Praesidium under the provisions of Bylaw 2.27 c?

Opinion: The President's authority in such circumstances derives from Article XI B of the Constitution, which incorporates both the ecclesiastical and administrative responsibilities. An issue can implicate both areas of responsibility. The failure of a reviewing officer to take into consideration some resolution of the Synod would be administrative, but a reviewing officer acting based on a misunderstanding of the doctrines of the church would be considered ecclesiastical.

Opinion 02-2282 of the Commission addressed this question. That opinion indicates that the President's authority is not founded in the Bylaws but rather in Article XI of Synod's Constitution. Under Article XI the President has the authority to advise, admonish and reprove, and if such admonition is not heeded, report such cases to the Synod. He does not have the authority to overturn the decision that was made by the member of the Praesidium under the provisions of Bylaw 2.27 c.

73. Responsibilities of the President and Secretary in Dispute Resolution Process (02-2283)

A pastor of the Synod in a July 11, 2002 letter requested responses from the Commission to a series of questions pertaining to the Synod's dispute resolution process and the role of officers of the Synod in that process.

Question 1: Under the LCMS Constitution and Bylaws and more specifically Article XI B 4 as well as Bylaw 1.09 b, does the President of the LCMS at all times and in all circumstances have the right and responsibility to exercise the duty of ensuring that all members carry out the resolutions of the Synod?

Opinion: The duties of the President of the Synod as set forth in Article XI B of the Constitution of the Synod are applicable at all times during the term of office of the man who occupies the position of President of the Synod. Bylaw 1.09 b deals with doctrinal resolutions and thus comes under the provisions of Article XI B 4, which provides that "The President shall see to it that the resolutions of the Synod are carried out." However, the President's supervisory authority to carry out this directive does not extend over all members of the Synod but is limited to the officers of the Synod, all such as are employed by the Synod, the individual Districts of the Synod and all District Presidents (Article XI B 1).

Question 2: In the event that another synodical officer is granted the authority of the synodical President, by whatever means, does not an officer under those circumstances have the responsibility of carrying out the resolutions of Synod accepted in convention, and failing to carry out that responsibility, is not that officer derelict in his constitutional duties?

Opinion: In the letter that accompanied the request for this opinion, the author indicated that his questions were related to the issues the Commission addressed in opinion 02-2282. Thus this opinion and the opinions in response to questions 3 and 4 hereof are rendered in the context of opinion 02-2282.

The question begins with an erroneous premise. The officer of the Synod who is required to conclude whether the facts form a basis for expulsion from the Synod under Bylaw 2.27 c is not granted the authority of the President of the Synod. The dispute resolution process commenced under Bylaw 2.27 designates the individual who is to make the decision required by Bylaw 2.27 c. The individual initially designated to make that choice is the President. If the President is a party to the matter in dispute, has a conflict of interest, or is unable to act, the First Vice-President or the next qualified synodical officer is designated to undertake the task. Such officer is not granted the authority of the President to see to it that the resolutions of the Synod are carried out. Rather, his authority has as its source Bylaw 2.27.

The responsibility of the officer who carries out the provisions of Bylaw 2.27 c is to determine whether the accused member of the Synod has engaged in conduct which Article XIII of the Constitution states to

be the basis for expulsion from the Synod: “Members who act contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI or persist in an offensive conduct shall, after previous futile admonition, be expelled from the Synod.”

Question 3: If a convention resolution is brought forward as applicable in the matter before the officer who is to make a decision under Bylaw 2.27 c and that officer under the duties of LCMS Constitution Article XI B 4 fails either to distinguish the applicability of the convention resolution or apply the convention resolution in his decision, is that officer derelict in his constituted duties?

Opinion: As stated in the previous opinion, the duties of Article XI B 4 are those of the President and not those of the officer who carries out the function of Bylaw 2.27 c. Whether or not such 2.27 c officer is to distinguish the applicability of a convention resolution or to apply such resolution in his decision depends upon whether such resolution relates to the causes for expulsion as set forth in Article XIII of the Constitution.

Question 4: If the officer who makes the decision under Bylaw 2.27 c is deemed to be derelict in his constituted duties, is not the decision rendered invalidated?

Opinion: Neither the Constitution nor the Bylaws of the Synod use the word "derelict" and thus the Commission chooses not to address that issue. The decision of the 2.27 c officer is put to the test when the officer presents the matter to a Dispute Resolution Panel and the accused is there given an opportunity to refute the charges. The decision of the Dispute Resolution Panel or Appeal Panel will determine whether the officer was correct in his decision rendered under the provisions of Bylaw 2.27 c.

Question 5: If the Secretary of the Synod offers questions to the Commission on Constitutional Matters concerning the supervision of the office of the President in an open case before the church questioning the applicability of Bylaw 3.101 in the presidential supervision and decision process of a complaint leading to the suspension of a rostered worker, 1) can the Secretary participate in the discussion of the issue since he has violated neutrality; and 2) can the Secretary continue to be involved in the process of the complaint under discussion in any way since he has violated neutrality?

Opinion: Bylaw 3.905 d states that one of the duties of the Commission on Constitutional Matters is to interpret the Synod's Constitution, Bylaws and resolutions upon the written request of, among others, a member of the Synod or an official of the Synod. Accordingly, the Secretary is qualified to ask for an interpretation. The Secretary is a nonvoting member of the Commission. When the Commission considers a question that is asked by a member of the Commission or involves a conflict of interest by a member of the Commission, such member does not participate in the discussions leading to the opinion. As an example, the questions addressed in opinion 02-2282 were asked by the Secretary of the Synod and the final paragraph of that opinion states that the Secretary took no part in those discussions.

Both parts of the question addressed by this opinion state that the Secretary has violated neutrality. Asking for an interpretation of the Synod's Constitution, Bylaws or resolutions is not a violation of neutrality. Rather, it is an exercise of a right that the Synod grants to its members and officials to gain a proper understanding of the Constitution, Bylaws and resolutions of the Synod.

Once an opinion has been rendered on a question, such opinion is binding on the question decided unless and until it is overruled by a synodical convention (Bylaw 3.905 d). After the opinion is rendered, the member of the Commission who asked the question or had a conflict of interest resumes his full duties as a member of the Commission.

74. Authority of the President; Participation of the Vice-Presidents in the Reinstatement Process (02-2284)

In a letter dated July 11, 2002, a pastor of the Synod who is also a member of a faculty of an educational institution of the Synod submitted a series of questions regarding the rights and responsibilities of the President and also the involvement of the Vice-Presidents in the reinstatement process.

Question 1: “When the Synod President and all parties to a dispute are forbidden to comment publicly on that particular dispute, may the Synod President still discuss in public the theological issues that are behind the dispute, even though he would not refer directly to the dispute or the participants in the dispute?”

Opinion: The Commission discussed this issue in its opinion 02-2251 wherein it stated: “There is no prohibition against the President communicating with the members of the Synod as to the underlying doctrinal topics that are involved in a disputed matter. The President cannot give publicity to the particular matter in dispute.”

Question 2: “Do the articles of the Synod’s Constitution have a greater authority than the Bylaws of the Synod? For example, if the President of the Synod concludes that following a particular stipulation in the Bylaws, namely, the final stipulation of Bylaw 2.27 g will undermine Article XI B, may the President of the Synod disregard that Bylaw stipulation in the interest of upholding Article XI B of the Constitution?”

Opinion: In general, the Constitution of the Synod establishes broad guidelines by which the Synod operates. Article VII of the Articles of Incorporation of the Synod states: “This corporation shall have and make such bylaws as may be necessary to accomplish its purposes and shall have power to create such corporations, boards, offices, and other subordinate bodies as may be necessary to accomplish its general and specific objectives and in such bylaws assign responsibilities to those bodies.” Bylaw 2.39 a states: “The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.” Nonetheless, bylaws must be in accord with and cannot override the Constitution of the Synod. Whether or not a bylaw is invalid because it is contrary to the Constitution is a matter to be decided by the Commission on Constitutional Matters in accord with Bylaw 3.905.

Article XI A 1 of the Synod’s Constitution states: “The officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod.” Article XI B 4 states: “The President shall see to it that the resolutions of the Synod are carried out.” Bylaws of the Synod come into being by resolutions adopted by the Synod in convention assembled. There is no provision in the Constitution or Bylaws of the Synod that gives to any officer of the Synod, including the President, the right to disregard any provision of any bylaw. As stated in Bylaw 1.07, “The delegate convention of the Synod is the legislative assembly which ultimately legislates policy, program, and financial direction to carry on the Synod’s work on behalf of and in service to the member congregations, reserving to itself the right to give direction to all officers and agencies of the Synod.”

Question 3: “Reinstatement is a matter of ecclesiastical supervision. The only people in the Council of Presidents who have ecclesiastical supervision are the elected district presidents and the President of Synod (see Art. XI B; Art. XII 7-9). Synod vice-presidents do not normally have ecclesiastical supervision of doctrine and practice (see Art. XI C). When Bylaw 2.33 says that reinstatement is done through a 75% or more majority of the *District Presidents* present and voting, it specifically speaks to those who have ecclesiastical supervision (both by experience and by role) according to the Constitution. Does Bylaw 2.33 limit

reinstatement only to those who have ecclesiastical supervision, namely district presidents and the President of the Synod? In other words, does Bylaw 2.33, in accordance with Art. XI B and Art. XII 7-9, stipulate that the way in which the Council of Presidents has determined to reinstate individuals is by means of a vote of *district presidents*?"

Opinion: In its opinion 00-2198 the Commission has already essentially answered this question, as follows:

The Commission notes that Bylaw 2.31 establishes that "the decision to accept or deny a request for reinstatement shall be at the sole discretion of the Council of Presidents." Bylaw 2.33 adds that "procedures for investigating and processing requests for reinstatement ...shall be the responsibility of the Council of Presidents." Such reference to the Council as a whole is consistent with all other bylaws relating Council roster responsibilities. In no case is a vote or other action of District Presidents distinguished from the vote and action of the Praesidium, including, for example, the vote to extend candidate status (Bylaw 2.19, a).

The Commission therefore rules that when Bylaw 2.33 stipulates that "a decision to reinstate shall require an affirmative vote of at least 75 percent of the District Presidents present and voting," the bylaw intends to include the President and Vice-Presidents of the Synod in the voting. The Commission concludes that the drafters of the bylaw, in the interest of carefully delineating the percentage vote needed, referred in particular to District Presidents but had no intention of excluding the Praesidium from the vote. To decide otherwise would labor against other statements in these same bylaws which clearly place decisions regarding reinstatement into the hands of the Council of Presidents.

Question 4: "When Bylaw 2.31 says that the Council of Presidents has the sole discretion in reinstating an individual member of the Synod, while Bylaw 2.33 says the reinstatement is done through a 75% or more majority of the District Presidents present and voting, may the Council of Presidents excuse the Synod Praesidium or a portion of the Praesidium (e.g., Synod vice-presidents) from participating in a particular vote to reinstate?"

Opinion: See answer to question 3 above. The Council of Presidents is required to abide by the Bylaws of the Synod, including the opinions of the Commission on Constitutional Matters, which "shall be binding on the question decided unless and until it is overruled by a synodical convention" (Bylaw 3.905 d). Therefore, Bylaw 2.31 may not be understood to allow the Council of Presidents to excuse the Praesidium or a portion of it from participating in a particular vote to reinstate.

The Commission recognizes the inconsistency of terminology used in Bylaw 2.31 and therefore will refer this matter to the Commission on Structure for its attention.

75. Constitutional Power of President When Recused (02-2285; 02-2285A; 02-2285B; 02-2285C; 02-2301)

In letters dated July 15, July 24, July 25, August 8, and August 27, 2002, a number of pastors of the Synod raised a follow-up question to the Commission's previous opinion 02-2282 regarding the right of a president of the Synod who has been recused from a particular dispute case to invoke his general constitutional power to call into question a decision in the case, as follows:

Question: May a synodical President who has been recused from presiding over a disciplinary case submitted to the Praesidium under Bylaw 2.27 invoke his general constitutional power "to advise, admonish, and reprove" (Article XI B 3) and his specific power given under Bylaw

3.101 B 5 to “call up for review any action by an individual officer” in order to call into question the ruling made by the member of the Praesidium who was given power to investigate and rule on the case?

Opinion: While a synodical president may be disqualified from participation in Bylaw 2.27 and Chapter VIII of the Bylaws for reasons given in Bylaw 2.27 a 1, he may, due to his constitutional responsibilities and powers provided under Article XI and in light of this Commission’s opinion 02-2282, call up for review a decision made by the next qualified officer who is carrying out the responsibilities of Bylaw 2.27 and Chapter VIII. The Commission has responded in further detail to this question in its opinion 02-2297.

76. Former Opinion re *Lutheran Book of Worship* (02-2286)

An emeritus member of the Synod in a June 30, 2002 letter requested that the Commission update its 1983 ruling regarding the *Lutheran Book of Worship* in light of related convention actions. After citing several references from convention actions, he explained: “This evidence is supplied to the CCM to help them find the official decision on the part of the convention of the Synod that the *Lutheran Book of Worship* is doctrinally impure.”

Opinion: In its April 29, 1983 opinion Ag. 1645-1640, the Commission stated:

If in fact the *Lutheran Book of Worship* is not “doctrinally pure,” then under Article VI of our Synod’s Constitution it should not be used by our congregations. However, we can find no evidence of an official decision on the part of the convention of the Synod itself that the *Lutheran Book of Worship* is doctrinally impure.

Bylaw 3.905 d states that an opinion rendered by the Commission on Constitutional Matters shall be binding on the question decided unless and until it is overruled by a synodical convention. The material furnished to the Commission to support the present request was available to the Commission when it rendered its 1983 opinion. Since many synodical conventions have been held since 1983 and none of these have overruled the 1983 opinion, the Commission declines to revisit the question.

77. Questions re Legitimacy of Board of Regents Election (02-2287)

Two members of the Board of Regents of a synodical school, in a July 18, 2002 follow-up letter to the Commission’s June 10-11 opinion 02-2268, supplied additional policy information regarding the question at hand, specifically, the legitimacy of the process used by the Board of Regents in a recent election.

Question: Insofar as Bylaw 3.69 b is very specific when it states that boards must conduct business in accordance with accepted parliamentary procedures, is an election legitimate that has not followed such accepted parliamentary procedure as evidenced in the attached documents?

Opinion: This matter was previously considered by the Commission and thereafter it issued opinion 02-2268. The Commission concluded its opinion by stating:

The Commission does not have copies of the Bylaws, rules of order, standing rules, or other organizational documents of the Board of Regents in question, and its authority is also limited under Bylaw 3.905. The Commission is unable to answer further the question posed.

Upon review of that opinion, the Commission realizes it may have misled the member who asked the question in that the opinion inferred that the Commission had the authority in rendering an opinion to review the rules of order, standing rules, or policy manual of a board of regents. It does not. The

Commission is unable to provide an answer because it has no authority to review the provisions of a policy manual and such review would be imperative to a resolution of the issue.

78. Eligibility of Women for Offices of President/Vice-President in Congregations (02-2288)

A pastor of the Synod in an e-mail letter dated July 23, 2002, explained that his congregation was in the process of updating its constitution. Upon submission of the updated constitution to the District for approval, the congregation was informed that it should add a provision excluding women from the positions of congregational president (chairman) or vice-president (vice-chairman) as per article 12.0 of the Commission's "GUIDELINES for the Constitution and Bylaws of a Lutheran Congregation." The pastor explains that his congregation agrees with the doctrinal position that women should not be involved in the specific functions of the pastoral office nor hold positions in the church that violate the order of creation. He notes, however, that these offices in question can be viewed as strictly functionary and administrative in nature and asks the following question.

Question 1: "Why would it be considered a violation of the order of creation or an improper involvement in the specific functions of the pastoral office for a woman to hold these posts?"

Opinion: For information regarding why it would be considered a violation of the order of creation or an improper involvement in the specific functions of the pastoral office for a woman to hold one or other of these posts, the petitioner is advised to request explanation from the Synod's Commission on Theology and Church Relations.

Question 2: "What is the rationale for the position advocated by the Commission on Constitutional Matters in its 'Guidelines for the Constitution and Bylaws of a Lutheran Congregation'?"

Opinion: Resolution 3-06A of the 1995 convention of the Synod resolved, "That the members of the Synod continue to uphold its position on women serving in congregational offices and to abide by the position as stated in the 1970 opinion of the Commission on Constitutional Matters (CCM) that congregations may allow women to hold all congregational offices except those of chairman, vice-chairman, elder, and any other board or policy-making committee 'whose chairmanship the congregation might wish to restrict to men.'" The Commission's "GUIDELINES for the Constitution and Bylaws of a Lutheran Congregation" incorporates this and earlier convention decisions of the Synod (1969 Res. 2-17; 1971 *Workbook*, p. 244; 1981 Res. 3-11).

79. Relationship of the Synod to Auxiliary Organizations (02-2289)

A pastor of the Synod in a July 24, 2002 letter to the Commission asked a series of questions regarding the relationship of the Synod to auxiliary organizations and their operations, especially as pertains to rostered members of the Synod employed by such organizations.

Question 1: Are the Constitution, Bylaws, policies, administration and activities of an Auxiliary or Recognized Service Organization required to be in conformity with and defer to the Constitution and Bylaws of Synod?

Opinion: The answer to this question is: No. While Bylaw 13.01 c 6 requires that an Auxiliary shall "honor and uphold the doctrine and practice of The Lutheran Church—Missouri Synod as set forth in the Scriptures and the Lutheran Confessions," and while Bylaw 13.01 a 2 requires that an Auxiliary "identifies itself with the Synod," the latter bylaw also states that an Auxiliary "is not a part of the Synod's constitutional structure." Bylaw 13.01 a 4 provides that an Auxiliary "...operates with freedom

and self-determination as a ministry and is independent of the Synod in its organization and administration, in the establishment and evaluation of its own objectives, activities, and programs, and in financial matters, while complying with the responsibilities outlined in Bylaw 13.01."

Regarding a Recognized Service Organization, while Bylaw 13.03 a provides that "the granting of recognition by the Synod signifies that a service organization, while independent of the Synod, fosters the mission and ministry of the church, engages in program activity that is in harmony with the programs of the boards of the Synod, and respects and does not act contrary to the doctrine and practice of the Synod," Bylaw 13.03 b provides that "under the governance and policies of its own board, a Recognized Service Organization operates with freedom and self-determination as a ministry organization independent of the Synod or Districts or congregations of the Synod in the establishment and evaluation of its own objectives, activities, and programs, in organization and administration, and in financial matters."

Question 2: If a rostered member of the Synod who is employed by an Auxiliary or Recognized Service Organization has also been elected or appointed to an office, board membership or other position specified in the synodical Constitution and Bylaws, may the policies or the administrative or governing structure of the Auxiliary or Recognized Service Organization forbid the rostered member from duly carrying out the duties of that office, board membership or other membership or other position as specified in the synodical Constitution and Bylaws, or dictate for the rostered member in carrying out such duties additional stipulations which are not specified in the synodical Constitution and Bylaws?

Opinion: The Synod, an Auxiliary, and a Recognized Service Organization are separate organizations. Each has the right to establish its own governance. The Constitution and Bylaws of the Synod are the governing instruments of the Synod. Each individual by accepting an elected or appointed office, a staff position, or employment with the Synod becomes bound by such governing instruments. In the same manner, an individual who accepts a position with an Auxiliary or Recognized Service Organization becomes subject to the governing instruments of such Auxiliary or Recognized Service Organization. If, on the one hand, an individual holds a position with the Synod and, on the other hand, also holds a position with an Auxiliary or Recognized Service Organization, and such dual positions subject the individual to conflicting requirements in the governing instruments of each organization, the individual must choose which organization he wishes to remain a part of or which position he wishes to hold. The Constitution and Bylaws of the Synod do not impose any limitations on an Auxiliary or Recognized Service Organization enforcing the terms of its governing instruments in such situations.

Question 3: May an Auxiliary or Recognized Service Organization take disciplinary action against a rostered member of the Synod in its employ who has been elected or appointed to an office, board membership or other position specified in the synodical Constitution and Bylaws for duly carrying out the duties of that office, board membership or other position as specified in the synodical Constitution and Bylaws?

Opinion: The answer is provided in the previous opinion.

Question 4: Does becoming an Auxiliary or Recognized Service Organization indicate agreement with, and require conformity and deference to, the Constitution and Bylaws of Synod as regards the Constitution, Bylaws, policies, administration and activities of the Auxiliary or Recognized Service Organization, and does this include a requirement that a rostered member who is employed by an Auxiliary or Recognized Service Organization and has also been elected or appointed to an office, board membership or other position specified in the synodical Constitution and Bylaws be allowed and not be hindered from or disciplined for

by the Auxiliary or Recognized Service Organization, carrying out the duties of that office, board membership or other position as specified in the synodical Constitution and Bylaws?

Opinion: See the first two opinions above.

80. Relationship of Auxiliary Organizations to the Synod (02-2290)

A pastor of the Synod, writing on behalf of a member of a congregation of the Synod that has expressed concern regarding a decision of an auxiliary organization over against a member of the Synod employed by the organization, in a July 26, 2002 letter asks the following questions.

Question: “Has the Commission on Constitutional Matters ever ruled on this matter? If it hasn’t, can it/will it make it an agenda matter any time soon?”

Opinion: The Commission has responded to similar questions in its opinion 02-2289.

81. Previously Addressed Questions (02-2290A)

A pastor of the Synod in a July 25, 2002 letter asked questions that have already been addressed by the Commission regarding the authority of the President of the Synod and the relationship between the Synod and its auxiliaries.

Question 1: “Can a synodical president, previously recused from adjudicating charges because he was deemed to be a party to the matters in dispute, now interrupt the process appointed by the Constitution and Bylaws of the Synod in calling under review the judgment rendered by the duly appointed adjudicator?”

Opinion: The Commission has responded to a similar question in its opinion 02-2285.

Question 2: “Can a recognized auxiliary organization retain its auxiliary status if the Int’l LLL Board of Governors on July 21 ruled unanimously that the organization’s code of ethics and its conflict of interest policy prohibit its employees from carrying out their duties as elective officials of The Lutheran Church—Missouri Synod?”

Opinion: The Commission has responded to a similar question in its opinion 02-2289.

82. Voting Eligibility of a Pastor with a Joint Call (02-2291)

In a July 23, 2002 letter to the Secretary of the Synod, a District Executive for Missions asked for an opinion regarding eligibility to vote in District and Synod conventions when a congregation and the District jointly call a minister of religion—ordained. The worker would serve as the called pastor of a congregation and have duties for the District as well.

Question: If a pastor is called jointly by a congregation and the District, is such pastor eligible to vote in District and Synod conventions?

Opinion: Bylaw 3.03 states that “voting delegates shall consist of one pastor and one layman from each electoral circuit” when delegates are being chosen for a convention of the Synod. Article V A states:

All organized congregations that have joined the Synod hold voting membership. At the meetings of the Districts of the Synod every congregation or parish is entitled to two votes,

one of which is to be cast by the pastor and the other by the lay delegate. At the meetings of the Synod a number of congregations shall form a group which shall be represented by two voting delegates, one a pastor and one a lay delegate.

Further, Bylaw 3.05 states that “all pastors who are not advisory members under Article V B of the Constitution shall be eligible for election” as delegates to a synodical convention, and Bylaw 4.21 states that “the convention of the Districts shall be governed by the Bylaws adopted by the Synod for its conventions, insofar as these may be applicable.”

Since neither the Constitution nor the Bylaws of the Synod draw any distinction between those ministers of religion—ordained who are called by congregations of the Synod full time and those who are called in only a part-time capacity, a pastor who serves a congregation in a part-time called capacity may be elected to serve as a delegate to either a synodical or District convention as long as the above stipulations are met.

83. Southern Illinois District Proposed Bylaw Changes (02-2292)

The Secretary of the Southern Illinois District in a July 23, 2002 letter submitted a number of proposed changes to the District Bylaws for approval by the Commission, such changes to be presented to the District’s February 27–March 1, 2003 convention.

Opinion: The Commission finds the following proposed changes to be appropriate for presentation to the District convention:

- Corrections to references in Bylaws 1.27, 2.35, 2.89, and 5.03.
- The addition of a new executive and a change in the title of the current executive in Bylaws 2.05, 2.11, and 5.01.
- Change of terminology for the current executive assistant in Bylaws 2.53, 2.55, and 2.57.
- Elimination of current Bylaws 2.63 and 2.65 due to elimination of positions.
- Description of new mission executive position in new Bylaws 2.65 and 2.66.
- Description of relationship of new mission executive position with the District Board of Missions in Bylaws 6.01 and 6.05.
- Change to Bylaw 2.03 to give the District flexibility in determining number of Circuits.
- Change to Bylaw 2.71 to make allowance for the fact that several of the Circuits have few ministers of religion—commissioned.
- Change to Bylaw 2.79 to retain District’s current method of nominating and electing vice-presidents.
- Change to Bylaw 3.01 necessitated by changes made by the Synod to its Bylaws.

84. Use of Term “Recusal” in Dispute Resolution (02-2293)

A pastor of the Synod in a letter received August 1, 2002, submitted a request for a ruling regarding the definition of a term that is being commonly used in conjunction with dispute resolution in our Synod. After the pastor provided additional information regarding this term to aid the Commission in its decision, he identified “the exact question” that he wished to place before the Commission, as follows.

Question: “Does the Constitution of Synod give a definition for the term ‘recuse’ or ‘recused’ or ‘recusal’? If a definition is not contained within the constitution, then is it not logical to use that most common understanding of the word mentioned above?”

Opinion: “Recuse” is an old legal term referring to the act of refusing or rejecting a judge, challenging that a judge not try a case on account of partiality. Whereas the Commission itself has on occasion used the term in its rulings in general reference to disqualification from a position or from involvement in a dispute case, neither the Constitution nor the Bylaws of the Synod use, nor do they give a definition to, the term or its related forms. The term that is used by the Bylaws of the Synod is the term “disqualified” (Bylaw 2.27 g) or “disqualification” (Bylaw 8.17). For this reason, reference to “the most common understanding” of the word is not pertinent or instructive, since the term has been imposed upon the dispute resolution process of the Synod from outside its Constitution and Bylaws.

85. Application of 2001 Resolution 3-07A (02-2294)

A pastor of the Synod in a July 30, 2002 letter requests an opinion of the Commission regarding the significance, application, and interpretation of Resolution 3-07A of the 2001 convention in light of opinions being expressed in the Synod. After consideration of a draft response, the Commission agreed to defer action on this request until a later time.

86. Concordia Publishing House Bylaw Change (02-2295)

Corporate legal counsel for Concordia Publishing House in an August 8, 2002 letter informed the Commission of the decision of its Board of Directors to amend Bylaw 1.13 of the corporation regarding conflict of interest.

Opinion: Having reviewed the proposed change to its Bylaw 1.13 by the Board of Directors of Concordia Publishing House and in accordance with Bylaw 3.197 b of the Bylaws of the Synod, the Commission gives its approval to the following new wording:

1.13 Conflict of Interest – The Board of Directors shall maintain and monitor a Conflict of Interest Policy that conforms to the Bylaws of the Synod and the laws of the State of Missouri.

87. Nature and Authority of Ecclesiastical Supervision (02-2296)

A vice-president of a District in an August 16, 2002 letter requested an opinion regarding the possibility of a pastor being subject to discipline who has acted upon the advice of his ecclesiastical supervisor. After brief discussion and upon recognizing that other similar requests for opinions have been submitted that should also be taken into consideration, the Commission decided to defer action on this request to a later time.

88. Questions re Disqualification of President in Dispute Resolution Process (02-2297)

A pastor of the Synod in an August 23, 2002 letter asked a series of questions following CCM opinion 02-2282, contending that “while the CCM dealt with a synodical president’s authority to interject himself into a Bylaw 2.27 procedure under the authority of Article XI B 1-3 of the Constitution, the Commission did not explicitly apply this decision to a case in which a synodical president is disqualified from a Bylaw 2.27 proceeding.”

Question 1: “Is a synodical President who is disqualified from participation in Bylaw 2.27 a and b also subject to disqualification in regard to Bylaw 2.27, subsections c-f, as well as other duties of that ecclesiastical supervisor discussed in Chapter VIII as part of the dispute resolution process? If a synodical President is disqualified from further participation in Bylaw 2.27 c-

f and chapter VIII, is he not then also unable to call up for review any decision made by the next qualified officer acting in accordance with these Bylaws.”

Opinion: Bylaw 2.27 g provides that when complaints are brought against a District President, the President of the Synod must proceed in the same fashion as a District President in investigating whether the allegations can be substantiated. If the President is disqualified, the next qualified officer of the Synod functions in his place throughout the remainder of the process as it continues into Chapter VIII of the Bylaws and the President remains disqualified.

In opinion 02-2279, the Commission ruled that the President of the Synod nonetheless continues to have “ecclesiastical supervisory responsibility under the Constitution and Bylaws of the Synod...even though he may have been disqualified on the basis of Bylaw 2.27 a 1.” Accordingly, the Commission ruled in opinion 02-2282 that “under extraordinary circumstances, such as when an issue is of synod-wide concern and [is] having an immediate and ongoing negative impact on the Synod, the President may choose to exercise his discretion in fulfilling his duties under Article XI. The President’s right and/or responsibility to call up for review an action of an investigation officer carrying out the responsibilities of Bylaw 2.27 c flows from his constitutional responsibilities and powers.”

Therefore, while a synodical president may be disqualified from participation in Bylaw 2.27 and Chapter VIII of the Bylaws for reasons given in Bylaw 2.27 a 1, he may, due to his constitutional responsibilities and powers, call up for review a decision made by the next qualified officer who is carrying out the responsibilities of Bylaw 2.27 and Chapter VIII.

Question 2: “If, in a specific case, a disqualified synodical president calls for a review of a decision made in accord with Bylaw 2.27 or Chapter VIII, are there not two functioning synodical presidents? Should not the synodical President be prohibited from exercising his normal constitutional authority in a case in which he has been disqualified, since another officer is effectively functioning as the synodical President in that case?”

Opinion: Again, the President of the Synod continues to have ecclesiastical responsibility under the Constitution and Bylaws of the Synod, even though he may have been disqualified from carrying out the specific functions of the President of the Synod described in Bylaw 2.27 and Chapter VIII. The next qualified officer has not assumed the office of the President but has been given responsibility for only those specific functions due to the President’s disqualification. Therefore, there are not two functioning synodical presidents.

Question 3: “Is not Bylaw 2.27 g complementary rather than contradictory to the Constitution Article XI B? If so, should not the next qualified officer be functioning as the synodical President for (and throughout) a specific complaint and resolution process, thus upholding both the Bylaws and Constitution and avoiding a conflict of interest on the part of a disqualified synodical President?”

Opinion: Bylaw 2.27 may be said to be complementary to Article XIII of the Constitution, providing the procedure whereby expulsion from the Synod may be executed. The President of the Synod, even when disqualified from carrying out the functions of his office provided by Bylaw 2.27, retains the overall responsibility and power of his office under Art. XI B.

Question 4: “Does Bylaw 3.51 k prohibit applying “to call up for review” in Bylaw 3.101 B 5 to cases of ecclesiastical supervision?”

Opinion: Bylaw 3.51 k provides a definition for “supervision” for the Bylaws of the Synod, specifically, “to have authority over, to direct actions, to control activities.” It also provides that “the definition of ecclesiastical supervision shall be determined exclusively by those Bylaws pertaining to ecclesiastical supervision.” Bylaw 3.101 B 5 occurs under Section B, which outlines the President’s administrative powers and duties. If the President is convinced that his concerns regarding an action by an individual officer, executive, or agency may be in violation of the Constitution, Bylaws, and resolutions of the Synod and that such concerns are administrative in nature, he may act according to the bylaw to the extent of requesting that such action be altered or reversed.

89. Status of “The Lutheran Understanding of Church Fellowship” (02-2299)

In a letter dated August 26, 2002, a pastor of the Synod called attention to a recent resolution of the Synod, 2001 convention Resolution 3-07A, in light of Bylaw 1.09 c.

Question: “Given the requirements stipulated in the Constitution and Bylaws of Synod regarding how a document or statement becomes the doctrinal position of the Synod, does ‘The Lutheran Understanding of Church Fellowship,’ commended to the Synod under Resolution 3-07A from the last synodical convention, qualify as such?”

Opinion: Bylaw 1.09 a grants to the conventions of the Synod the right to adopt doctrinal resolutions and statements in harmony with Holy Scripture and the Lutheran Confessions. Doctrinal resolutions come into being in the same manner as other resolutions, as discussed in Bylaw 1.09 b. Doctrinal statements must be subjected to the procedure provided by Bylaw 1.09 c, requiring passage by the Synod in convention and ratification by a two-thirds majority vote of the Synod’s congregations. Doctrinal statements and resolutions alike are to be honored and upheld until such time as the Synod amends or repeals them.

Resolution 3-07A was adopted according to the procedure provided by Bylaw 1.09 b. It is a resolution that commends to the Synod for continued use and guidance the study developed by the Commission on Theology and Church Relations, as was called for by Resolution 3-03B of the 1998 convention, and the response prepared by the Commission on Theology and Church Relations in conjunction with the synodical President based on the reactions of the Synod to that study.

90. Constitutionality of “A Statement to the Church” by Board of Directors (02-2302)

A pastor of the Synod in an August 23, 2002 letter questioned the constitutionality of the Board of Directors’ “A Statement to the Church: Let All Be Done Decently and In Order,” and offered a series of questions which the Commission summarizes as follows. Due to the Secretary’s membership on the Board of Directors, he excused himself from the discussion of this issue.

Question: “In view of the constitutional and Bylaw authority and responsibility of the Board of Directors, was the Board of Directors acting against the Constitution and Bylaws by reprimanding and supervising the President of the Synod in its August 15, 2002 resolution entitled ‘A Statement to the Church: Let All Be Done Decently and In Order’?”

Opinion: The relative roles of the President and the Board of Directors were discussed in this Commission’s opinion 02-2259.

91. Further Clarification of Opinion 02-2282 in Light of Related Constitutional and Bylaw Provisions (02-2304)

A District President in an August 28, 2002 letter raised a series of “matters of clarification in connection with various constitutional and bylaw provisions” related to the Commission’s recent opinion 02-2282 “which dealt with the power of the office of the President of the Synod.”

Question 1: The Commission on Constitutional Matter states in its opinion 02-2282 "...when an issue is of synod-wide concern and having an immediate and ongoing negative impact on the Synod, the President may choose to exercise his discretion [and his] right and/or responsibility to call up for review an action of an investigating officer carrying out the responsibilities of Bylaw 2.27 c...". Who determines whether an issue exists, and what sort of issue this may be? Is this the decision of the President alone?

Opinion: The above statement from the Commission's opinion 02-2282 is a paraphrase and not an exact quote. The Commission opinion states: "Under extraordinary circumstances, such as when an issue is of synod-wide concern and having an immediate and ongoing negative impact on the Synod, the President may choose to exercise his discretion in fulfilling his duties under Article XI. The President's right and/or responsibility to call up for review an action of an investigating officer carrying out the responsibilities of Bylaw 2.27 c flows from his constitutional responsibilities and powers."

Article XI B of the Constitution sets forth the duties of the President of the Synod. They are applicable to every man who occupies the office of the President. They begin when the man is inducted into the office of President and do not end until his successor is inducted into office. They are to be carried out at all times during his term of office. The Synod established a procedure in the Bylaws for a member's expulsion from the Synod in accord with the mandate in Article XIII of the Constitution. That procedure cannot negate the duties of the President set forth in Article XI B. Thus, if there is authority for his actions under the provisions of Article XI B (since they are applicable at all times during his term of office), the President may use that authority in a phase of an expulsion proceeding to which such authority is appropriate. The authority of the President is found in Article XI B. He does not have authority to overturn the decision made by the investigating officer carrying out the responsibilities of Bylaw 2.27 c.

As stated above, the President's authority under Article XI B is constant during his term of office. In opinion 02-2282 the Commission used the phrase "under extraordinary circumstances." This phrase was an acknowledgement by the Commission that an unfettered use by the President of the authority he possesses under Article XI B could create chaos in the activities of the Synod enumerated in the Bylaws. There are no restrictions in the Constitution on such use other than the provision of Article XI A which states: "The officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod." Yet, the President must give cognizance to the provisions of the Bylaws for they express the will of the Synod through their adoption by members of the Synod in convention assembled. Therefore, when the Bylaws set forth defined responsibilities and procedures, the President should give recognition to those responsibilities and procedures and only use his Article XI B authority relative to those responsibilities and procedures under extraordinary circumstances and in a manner to support the provisions of the Bylaws. The decision to use the provisions of Article XI B is that of the President and the President alone.

Question 2: Does opinion 02-2282 of the Commission exempt the President of the Synod from the requirements of Bylaw 8.01 which states that the procedures outlined in Chapter VIII "...shall be the exclusive remedy to resolve such disputes..." in the event that the President,

by means of a pastoral letter, publicly accuses an officer of the Synod of violating the Constitution or Bylaws, or doctrinal position, or resolutions of the Synod?

Opinion: Opinion 02-2282 does not exempt the President of the Synod from the requirements of Bylaw 8.01.

Question 3: Since according to a previous Commission opinion, only a convention of the Synod may consider resolving a dispute with the President of the Synod, does this mean that the person so accused by the President has no recourse for remedy until the next convention of the Synod when a committee appointed by the President will consider the dispute? If so, how does this agree with the words of John 7:51? Does this deprive an officer of the Synod to speak in his own defense to the same audience before which he was accused?

Opinion: In opinion 01-2240 the Commission affirmed its 1992 opinion (Ag. 1915) that addressed the question of who has supervisory responsibility over the synodical President. The 1992 opinion stated: "It would seem that the only recourse is an appeal to the convention of the Synod when personal admonition fails to have the President of the Synod carry out the responsibilities of his office as defined by the *Handbook*."

The issue posed by this question does not appear to deal with the President carrying out the responsibilities of his office. Rather, it asks what if the President falsely, in a public manner, accuses an officer of the Synod of violating the Constitution or Bylaws or doctrinal position or resolutions of the Synod. A personal dispute involving an officer of the Synod is not a matter to be decided by a convention of the Synod. A dispute between two members of the Synod is to be resolved under the provisions of Chapter VIII of the Bylaws beginning with Bylaw 8.05.

The Commission does not respond to the question regarding John 7:51 because such question is beyond the function of the Commission.

As to the question of whether an officer of the Synod is deprived of an opportunity to speak in his own defense to the same audience before which he was accused by the President of the Synod, the Commission directs attention to its opinions 01-2243 and 02-2251 which addressed themselves to the issue of publicity while a matter is in dispute. The Commission interprets the Constitution and Bylaws of the Synod. It has no authority to enforce its opinions.

Question 4: The opinion of the Commission states that the appeal process, which is designed to discover and correct the investigating officer's errors in fulfilling his responsibility under Bylaw 2.27 c, make the President's need to call up the action of the investigating officer for review, or the need to report by a pastoral letter such calling up for review "moot." The word "moot" is defined as, "subjected or subject to argument or discussion" (Webster's Collegiate Dictionary). Does the use of this word in the CCM opinion mean that the President may, despite the fact that the appeals process has been followed, call up for review the decision made, and claim that he is given this authority by Article XI of the Constitution and Bylaw 3.101?

Opinion: The sentence taken from opinion 02-2282 is part of a paragraph where the Commission pointed out that if all the parties involved in the matter in dispute were to scrupulously follow the provisions of the Bylaws, the President would have no knowledge as to the decision of the investigating officer under Bylaw 2.27 c until such time as the Dispute Resolution Panel issued its decision. This would occur because every party involved in the dispute honored Bylaw 8.21 e and did not give publicity to the matter. However, in opinion 02-2282 the Commission was required to furnish an opinion in a situation where the

President was made aware of the decision of the investigating officer under 2.27 c in violation of the ban on publicity in Bylaw 8.21 e and opinions of the Commission on Constitutional Matters. In such situations, the Commission ruled, the President may invoke the provisions of Article XI B. Thus, if the Bylaws and the opinions of this Commission relative to "publicity" were followed by all parties, there never would be a situation where the President would have knowledge of the decision of the investigating officer before the decision is rendered by the Dispute Resolution Panel and, therefore, any opinion on what is to happen if the ban on publicity is violated would never be necessary. It is in this context that the Commission used the word "moot."

As concluded in opinion 02-2282, the President may invoke the provisions of Article XI B of the Constitution relative to a decision rendered by an investigating officer under Bylaw 2.27 c if he becomes aware of such decision prior to the time the Dispute Resolution Panel renders its decision.

Question 5: The opinion of the CCM states that *"...the president would normally be expected not to choose to actively intervene until that process was concluded."* The process referred to is the dispute resolution process. Do the words, "normally choose" mean that the President has freedom to choose to intervene at any time, should he so wish, and that Article XI of the Constitution and Bylaw 3.101 give him this option? According to this opinion, do the words, "until that process has concluded," mean that the President may exercise his freedom of choice to ask the Dispute Resolution Panel or the Dispute Review Panel to reverse their decision, because he considers it not to be in accord with his understanding of the Constitution, Bylaws, doctrinal position of the Synod, or a resolution adopted by the Synod in convention? If the President may do so, how does this affect the meaning of Bylaw 8.09 e that the decision of the Review Panel ". . . shall be binding and not be subject to further review"?

Opinion: Article XI B of the Constitution states that the President has the supervision regarding the doctrine and administration of (a) All officers of the Synod; (b) All such as are employed by the Synod; (c) The individual Districts of the Synod; (d) All District Presidents. It further states that it is the President's duty to see to it that all the aforementioned act in accordance with the Synod's Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod. Bylaw 3.101 gives the President the right to call up for review any action by an individual officer, executive, or agency which in his view, may be in violation of the Constitution, Bylaws and resolutions of the Synod.

The investigating officer under Bylaw 2.27 c is one of the individuals over whom the President has the supervision regarding their doctrine and administration under Article XI B and one of those whose actions he may call up for review under Bylaw 3.101. The members of a Dispute Resolution Panel or a Review Panel when performing their duties as panel members are not acting as officers of the Synod, employees of the Synod, District Presidents or an executive. They are panel members and as such are beyond the authority of the President under Article XI B. However, Bylaw 8.09 d does provide that the President may request a decision regarding a reconsideration if a question of doctrine or practice is involved in the decision of the Dispute Resolution Panel.

Question 6: In light of the opinion 02-2282, which gives the President authority to call for a Review Panel to reverse its decision, does this give the Synod assembled in convention the authority to call up for review any decision of a Dispute Resolution Panel, or Review Panel, since the authority of the Synod is above the authority of the President? Or is the Synod under the authority of the President in this matter, even when assembled in convention?

Opinion: The question is based on a false premise. As stated in the opinion to Question 5 above, the President does not have authority over the Review Panel. Bylaw 8.09 provides that a decision of a Dispute Resolution Panel is binding upon the parties to that dispute subject to request for review. The same bylaw provides that the decision of a Review Panel is "binding upon the parties to that dispute and not be subject to further appeal" (emphasis added). Unless the bylaw is amended by a convention of the Synod, a convention of the Synod cannot take any action relative to a final decision rendered in a matter in dispute.

Question 7: In the event of such intervention by the President, if in his opinion he believes that either the Constitution, the Bylaws, a resolution of the Synod, or the doctrinal position of the Synod, or that the decision will have "... *an immediate and ongoing negative impact on the Synod...*," does the President have to ask for an opinion from either the CCM or the CTCR?

Opinion: There is no requirement in the Constitution or Bylaws of the Synod that requires the President to seek input from the CCM or CTCR.

Question 8: In the event that a District President is involved in the dispute resolution process because he has suspended a member of the Synod (individual or congregation) and the Dispute Resolution Panel and the Dispute Review Panel have sustained the District President, may the President of the Synod call their decision up for review and request them to reverse their decision because he is personally convinced, without having personally conducted the investigation required of the District President, that they have not acted in accord with the Constitution, Bylaws, doctrinal position of the Synod, resolutions of a convention of the Synod, or that their decision will have "... *an immediate and ongoing negative impact on the Synod*"?

Opinion: The answer to this question is: No. See the opinion to Questions 5 and 6 above.

Question 9: The opinion of the CCM states "*In fulfilling his duties, the President would normally be expected to rely on the provisions of Chapter VIII of the Bylaws to correct errors occurring...*" Does this mean that he is not required to do so? Does this opinion also apply to the President with respect to the other Bylaws of the Synod, that he is "normally expected" to abide by them, but is not required to do so?

Opinion: The opinion to Question 1 above addresses this question. Each opinion of this Commission is in response to a specific question and is applicable to that question alone. The partial sentence from opinion 02-2282 quoted in this question applies to the interaction of Article XI B of the Constitution and Bylaw 2.27 c and nothing more.

Question 10: When a District President is involved in the dispute resolution process, may he, the Board of Directors of his District, his congregation, or any other group of persons conduct a public relations campaign to gain support for him in the Synod and in the public media? May they also solicit contributions from all the congregations of the Synod for a "Defense Fund"?

Opinion: Again this Commission is called upon to issue an opinion regarding a fact situation that arises because there has been a violation of Bylaw 8.21 e and its prohibition of publicity, and a violation of the opinions of this Commission on the topic of "publicity" which are binding on the members of the Synod unless and until such opinions are overruled by a convention of the Synod (Bylaw 3.905 d). The Constitution and Bylaws of the Synod are silent on the fact situations of this question. However, Rule 26 f of the dispute resolution Rules of Procedure is a restatement of Bylaw 8.21 e but then adds that the

reconciler or Dispute Resolution Panel shall bring to the attention of the parties any violation of the rule prohibiting publicity.

Question 11: If the President of the Synod is convinced that an opinion of the CCM will have "*an immediate and ongoing negative impact on the Synod,*" may he call up for review, ask them to reverse their decision, and if this is not done, report in a pastoral letter to the Synod that the CCM has violated the Constitution, Bylaws, doctrinal position of the Synod, or a resolution of the Synod? If this is true, must the President also insist that the opinion of the CCM not be followed, since according to the opinion of the CCM, "Subsection 1 (Art. XI B 1-4) imposes upon him duties regarding the supervision of the doctrine and administration of all officers of the Synod. Subsection 2 requires that he sees to it that all act in accordance with the Synod's Constitution and admonish all who depart from it?"

Opinion: Article XI B 1 states that the President has the supervision regarding the doctrine and administration of all officers of the Synod, all such as are employed by the Synod, the individual Districts of the Synod and all District Presidents. The Commission on Constitutional Matters or its individual voting members are not officers or employees of the Synod and thus do not come under the provisions of Article XI B 1 and 2. The President may publicly comment on the opinions of this Commission, but Bylaw 3.905 states that its opinions shall be binding on the question decided unless and until it is overruled by a synodical convention.

Question 11 a: "Does resolution 3.07A (1991 Convention Proceedings pp 137, 138) adopt the CTCR document, "The Lutheran Understanding of Church Fellowship" (1991 CW pp 375-385), together with the CTCR response (1991 CW pp 48-51) as the official doctrinal position of the Synod?"

Opinion: Resolution 6-03 of the 1962 convention of the Synod established the Commission on Theology and Church Relations. Among the functions and duties assigned to the Commission were the following:

3. Consider and seek to adjust matters concerning which differences of opinion have arisen in the Synod and which have been referred to it by the President and Vice-Presidents. The functions of this commission shall be strictly advisory in this capacity, along the line of brotherly effort in the interest of divine truth;....
7. Advise and prepare special studies in theological matters, both of an internal and external nature, on request of the President of the Synod, the synodical officers, executives, boards, commissions, and committees;....

In the course of time it became necessary for the Commission on Constitutional Matters to clarify the role of the CTCR in the life of the Synod. In an April 29, 1983 opinion (Ag. 1606, A,B,C,D) the Commission stated the following:

The bylaws on the role of the Commission on Theology and Church Relations are quite clear. The Commission is to issue studies for the guidance of the synodical membership. Its proposals may be challenged.

If any proposal of the Commission is to become the official position of the Synod, a detailed procedure, outlined in Bylaw 1.03,¹ is to be followed. Until the Synod has taken action, a proposal of the Commission is of an advisory nature for study and guidance and not binding

¹ Current Bylaw 1.09 c

on the membership of the Synod. It should also be noted that those who dissent should proceed by following the proper avenues as set forth in Bylaws 1.03² and 1.19 e³.

The Commission on Constitutional Matters finds that the Commission on Theology and Church Relations itself has attempted to make this clear, but its proposals continue to be regarded by many as setting forth the official position of the Synod, which is an erroneous conclusion.

The Synod in convention has recognized and promoted the use of studies of the Commission on Theology and Church Relations variously. It has in some fashion commended these studies for:

- study (1967 Res. 2-02; 1977 Res. 3-35; 1983 Res. 3-11; 1983 Res. 3-12; 1983 Res. 3-13; 1983 Res. 3-14; 1986 Res. 3-19; 1992 Res. 3-01; 1992 Res. 3-15; 1992 Res. 3-17; 1992 Res. 3-18; 1995 Res. 3-21; 1998 Res. 3-23; 2001 Res. 3-07A)
- guidance (1967 Res. 2-02; 1975 Res. 3-05; 1983 Res. 3-14; 1986 Res. 3-03; 1995 Res. 3-20; 2001 Res. 3-07A)
- reference (1975 Res. 3-05; 1986 Res. 3-03; 1992 Res. 3-15)
- discussion (1967 Res. 2-02)
- direction (1992 Res. 3-17)
- response (1977 Res. 3-35; 1983 Res. 3-12; 1983 Res. 3-13; 1992 Res. 3-18)
- continued use (2001 Res. 3-07A)
- as a tool (1992 Res. 3-01).

Several studies were “adopted” as synodical documents for reference and guidance (1967 Res. 2-13) as presented by the Commission on Theology and Church Relations (1965 Res. 2-03; 1965 Res. 2-25). Only one statement, *A Statement of Scripture and Doctrinal Principles*, issued by the President of the Synod in consultation with the Vice-Presidents and evaluated and approved by the Commission on Theology and Church Relations, has in recent times been given doctrinal statement status. None of them, including the study and response in question which was commended to the Synod “for continued use and guidance” (Res. 3-07A of the 2001 convention), has been submitted to the process (Bylaw 1.09 c) whereby it has become a doctrinal statement of the Synod.

1973 Resolution 3-01, stated that *A Statement of Scriptural and Confessional Principles*, issued by the President of the Synod in consultation with the Vice-Presidents of the Synod and affirmed by the Commission on Theology and Church Relations, presents what the Synod throughout its history has taught and is therefore “neither a new standard of orthodoxy nor a document ‘based on private writings, but on such books as have been composed, approved, and received in the name of the churches which pledge themselves to one doctrine and religion’” (FC, SD, Comp. Summary, paragraph 2). It declared *A Statement* to be a “more formal and comprehensive statement of belief” in the sense of Resolution 5-24 of the 1971 convention and further declared that *A Statement* hold the status that that resolution described:

Resolved, That the Synod reaffirm the desirability of the formulation of doctrinal statements which clearly set forth the teachings of the Holy Scriptures and apply them to issues of our day; and be it further

Resolved, That the Synod clearly state that such doctrinal formulations are subordinate to the Lutheran Confessions; and be it further

² Current Bylaw 1.09 c

³ Current Bylaw 2.39 c

Resolved, That the Synod distinguish between resolutions concerning doctrine formulated and adopted at a convention and more formal statements of belief which are produced by officially authorized groups, and which are then presented to congregations and clergy of the Synod for study and discussion, and which are subsequently adopted by a synodical convention; and be it further

Resolved, That the Synod reaffirm the resolutions of recent conventions that the Synod “honor and uphold the synodically adopted statements as valid interpretations of Christian doctrine” (1969 *Proceedings*, p. 91); and be it finally

Resolved, That in the case of the aforementioned more formal and comprehensive statements of belief that the Synod declare –

- 1) its position that these statements, together with all other formulations of doctrine, derive their authority from the Word of God which they set forth from the Holy Scriptures;
- 2) its insistence that the ministry of the church regard these formulations with special seriousness and that those who disagree with these formulations in part or in whole be held to present their objections to them formally to those officials whom the Synod has given the immediate supervision of their doctrine;
- 3) its conviction that as a result of joint study of the Word of God the Holy Spirit will lead the Synod into all truth, that possible errors in the aforementioned statements will be discovered and corrected, that instances of failure to submit to the clear teaching of the Holy Scripture will be evangelically dealt with on an individual pastoral basis, and that the Synod can speak with a voice that is Scriptural, Gospel oriented, truly Lutheran, and that we will continue to “walk together” as a true Synod.

1975 Resolution 3-05, reaffirming that *A Statement [of Scriptural and Confessional Principles]* is in accord with the Scriptures and the Lutheran Confessions and contains nothing contrary to them, offers additional insight into the use of Commission on Theology and Church Relations statements in its first resolve: “That the Synod commend to its members for reference and guidance the report titled ‘Guiding Principles for the Use of *A Statement of Scriptural and Confessional Principles* with Special Reference to the Expression of Dissent’ (1975 *CW*, pp. 468-470, the closing sentences of which read:

A Statement is not to be used mechanically or legalistically to discipline members of the Synod, but it is to be honored, upheld, and used fraternally and evangelically throughout the Synod in an effort to assist the Synod in remaining faithful to its confessional position. Used in this way, *A Statement* may, with the blessing of God’s Holy Spirit, serve the ‘conservation and promotion of the unity of the true faith’ (Constitution, Article III) and aid the Synod in the faithful proclamation of the Gospel of Jesus Christ to all the world.”

After also commending the document titled “Report on Dissent” to the members of the Synod “for reference and guidance” and instructing the Commission on Theology and Church Relations to make several revisions to *A Statement*, the Synod not only reaffirmed that “*A Statement* is in accord with the Scriptures and the Lutheran Confessions, and contains nothing contrary to them, and is in accord with the doctrinal position of The Lutheran Church—Missouri Synod as it has been taught historically and expressed in the official doctrinal statements of the Synod,” but it also adopted the following opinion of the Commission on Constitutional Matters:

Since the Synod has the right to adopt doctrinal resolutions, it also had the right to adopt Resolution 3-01 [of the 1973 convention].

In Resolution 3-01 the Synod approved a document known as *A Statement*. That document therefore comes under the provision of New Orleans Resolution 2-12: “That the Synod reaffirm its position (Resolutions 2-21 and 5-24, Milwaukee *Proceedings*) that such statements, insofar as they are in accord with the Scriptures, are, pursuant to Article II of the Synod’s Constitution, binding upon all its members (cf. also Article VII).”

However, the Synod cannot make *A Statement* binding upon its members in the same sense in which the Scripture is binding. Nor can it ask its members to bind themselves to *A Statement* in the same manner in which they freely bind themselves to the Lutheran Confessions.

Resolution 3-01 does not broaden the confessional base of the Synod. It was not offered as a constitutional amendment. It is to be recognized as a properly adopted resolution. In it the Synod determined that *A Statement* defines the corporate position of the Synod and sets forth the public teaching of the Synod.

The adoption of Resolution 3-01 by the Synod does not bind the individual conscience any more than any other human document can; only Scripture should bind the conscience. As Luther stated before the Diet of Worms:

“Unless I am convinced by the testimonies of the Holy Scriptures or evident reason (for I believe neither in the Pope nor Councils alone, since it has been established that they have often erred and contradicted themselves), I am bound by the Scriptures adduced by me, and my conscience has been taken captive by the Word of God, and I am neither able nor willing to recant, since it is neither safe nor right to act against conscience. God help me. Amen.”

To the person troubled in his conscience, the Synod says:

“If a member cannot for conscience sake accept a doctrinal resolution of the Synod, he has the obligation and opportunity through mutually approved procedure to challenge such a resolution with a view of effecting the changes he deems necessary. Failing in that, he is completely free by reason of his wholly voluntary association with the Synod to obey his conscience and disassociate himself from the Synod. Meanwhile every member of the Synod is held to abide by, act, and teach in accordance with the Synod’s resolutions” (Milwaukee Resolution 2-21, 1971 *Proceedings*, p. 119).

Subscription to *A Statement* cannot be a requirement for membership in the Synod. However, already at the Cleveland convention in 1962, the Synod resolved “that the Synod beseech all its members by the mercies of God to honor and uphold the doctrinal content of these synodically adopted statements” (Cleveland Resolution 3-17, 1962 *Proceedings*, p. 106). And “to honor and uphold means not merely to examine and study them, but to support, act, and teach in accordance with them until they have been shown to be contrary to God’s Word.” (Milwaukee Resolution 2-21, 1971 *Proceedings*, p. 119).

In response to the question, therefore, the Commission notes that Resolution 3-07A did not adopt “The Lutheran Understanding of Church Fellowship” and its response as a doctrinal statement of the Synod in the same manner as the Synod has in the past adopted a number of doctrinal statements, such as *A Statement of Scriptural and Confessional Principles*. The resolution in question did, however, commend the study “The Lutheran Understanding of Church Fellowship” and its response “for continued use and guidance” to build unity in the Synod, using similar terminology to that which has been used to commend numerous other studies of the Commission on Theology and Church Relations.

Question 11 b: “Does Resolution 3-07A mean that any member of the Synod who does not abide by, and follow in practice the CTCR documents referred to in Resolution 3-07A, is in violation of the doctrinal position of the Synod, or a doctrinal resolution of the Synod?”

Opinion: Any member of the Synod who does not abide by and follow in practice the CTCR documents referred to in Resolution 3-07A is acting contrary to a study of the CTCR that the Synod has commended to its members for continued use and guidance. All doctrinal resolutions and statements are to be honored and upheld until such time as the Synod amends and repeals them.

Question 11 c: “If the answer to the above question is affirmative, must a District President, or the Synodical President suspend a member who does not teach or practice in agreement with the above-mentioned CTCR documents, if admonition has been futile and the member persistently refuses to heed such admonition?”

Opinion: The Commission notes that even the use of *A Statement of Scriptural and Confessional Principles*, adopted by the 1973 convention as a formal doctrinal statement, was to stop short of such use: “A *Statement* is not to be used mechanically or legalistically to discipline members of the Synod, but it is to be honored, upheld, and used fraternally and evangelically throughout the Synod in an effort to assist the Synod in remaining faithful to its confessional position.”

92. Theological Review of Faculty Appointments (02-2305)

A pastor of the Synod serving as a member of the Board of Regents of a synodical school asked in a September 17, 2002 letter for clarification of the review process for candidates for a professorship of theology.

Question: Does [the] theological review process conducted by the District President and selected board members apply also to candidates for a professor of theology?”

Opinion: The answer is: No. Bylaw 6.23 a states that an initial appointment to theology faculties requires the prior approval of the Board for Higher Education. Through the prior approval process the Board for Higher Education establishes the standards to be met by candidates for appointment to theological faculty positions. Those standards must take into consideration the confessional standard and the objectives of the Synod as expressed in Articles II and III of the Synod’s Constitution.

93. Role of Conscience during Dissent Process (02-2306)

A pastor of the Synod in a September 17, 2002 letter to the chairman of the Commission, questioned how the conscience of a pastor member of the Synod may be respected during the dissent process regarding a matter that impacts the life of the congregation he serves.

Question: “While [a member of the Synod] has begun the dissent process withing (sic) the fellowship of peers and is proceeding according to the guidance of his district president, the question at hand concerns how he ought to regard the promptings of his conscience while the dissent is in process. There appear to be only three alternative courses of action: 1) The dissenter should act contrary to his understanding of God’s will for the duration of the dissent process. 2) The dissenter should be expelled from the synod and be denied the dissent process. 3) The dissenter should act according to his conscience during the duration of the dissent process.”

Opinion: Bylaw 2.39 a requires that “the Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.” Bylaw 2.39 c requires that if resolutions of the Synod are of a doctrinal nature, the process of dissent outlined therein is to be followed, during which time the conscience of the dissenter as well as the consciences of others and the collective will of the Synod shall be respected.

The dissenter, therefore, should not be forced to act contrary to his conscience so long as it is governed by his understanding of God's will. Nor should he be expelled from the Synod and thereby be denied his right as a member of the Synod to the dissent process. However, the consciences of others as well as the collective will of the Synod must also be respected. If his congregation believes otherwise regarding an issue that impacts congregational life, or if the collective will of the Synod has been stated by convention action to be clearly otherwise, these also are to be respected. The dissenter may not under such circumstances act according to his conscience during the duration of the dissent process. A different solution must be found, one that respects the conscience of the dissenter as well as the consciences of others and the collective will of the Synod.

Resolution 3-05 of the 1975 convention includes the following paragraph:

To the person troubled in his conscience, the Synod says: "If a member cannot for conscience sake accept a doctrinal resolution of the Synod, he has the obligation and opportunity through mutually approved procedure to challenge such a resolution with a view of effecting the changes he deems necessary. Failing in that, he is completely free by reason of his wholly voluntary association with the Synod to obey his conscience and disassociate himself from the Synod. Meanwhile every member of the Synod is held to abide by, act, and teach in accordance with the Synod's resolutions" (Milwaukee Resolution 2-21, 1971 *Proceedings*, p. 119).

94. Use of the Term "Ministry" in Constitutions of Congregations (02-2307)

A member of a District Committee for Constitutional Matters, in an e-mail letter dated September 26, 2002, requested clarification of an issue surfaced by the committee's review of a congregation's constitution. Said congregation has expressed interest in renaming all of its boards "ministries." He notes in his letter that this use of the term "ministry" is not the normal use of the term in the Synod. The Secretary of the Synod, to whom the letter was addressed, forwarded the letter to the Commission for a response, as suggested in the letter.

Question: Should the use of the term "ministry" in place of more traditional language such as "board" be allowed to stand in a constitution of a congregation that is a member of the Synod since it does not match the normal use of the term in our Synod and in the Book of Concord? Has this situation come up in other parts of the Synod, and, if so, was this terminology allowed to stand in a constitution where it might conflict with definitions in the Book of Concord?

Opinion: Congregations are bound by the processes set forth in the Constitution and Bylaws of the Synod, as previously discussed in this Commission's opinion 99-2157. That opinion identified in particular four areas of self-government which historically have been recognized by the Synod: "(a) The calling of pastors, teachers, etc., from a list of those accredited by the Synod itself; (b) The owning and maintaining of congregational property without granting any rights of it to the Synod; (c) Church discipline; and (d) The administration of a congregation's programming and financial affairs."

One area for which a congregation voluntarily gives up its right of self-government for the sake of continued membership in the Synod is that of the approval of amendments to its constitution and bylaws. According to Bylaw 2.03 b, "A member congregation which revises its constitution and bylaws or adopts a new constitution or bylaws shall, as a condition to continued eligibility as a member of the Synod, submit such revised or new constitution and/or bylaws to the District President, who shall refer such to the District's constitution committee for review to ascertain that the provisions are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod."

It is the responsibility, therefore, of the District's constitution committee to work with a congregation that has submitted changes to its constitution and bylaws to ascertain that the provisions are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod." If the committee is concerned that such harmony does not exist, it must continue to work with the congregation, using resources at its disposal such as the "GUIDELINES for the Constitution and Bylaws of a Congregation" published by this Commission, or by consulting with the Commission on Theology and Church Relations of the Synod in the case of doctrinal or confessional questions.

Finally, when the committee has done all that it can do for the sake of harmony between the proposed constitution and bylaws and Holy Scripture, the Confessions, and the teachings and practices of the Synod, the committee provides a report to the District President. He makes a recommendation to the District Board of Directors, whose responsibility it is to make a final decision (Bylaw 2.03 b).

Should the District Board of Directors decide that the proposed changes to the constitution and bylaws of the congregation are not in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod and therefore decline to approve the changes, the congregation must continue to use its existing constitution and bylaws until such time as approval can be obtained. All actions of District boards of directors regarding constitutions and bylaws of congregations "shall be reported to the next convention of the District" (Bylaw 2.03 b).

In response to the particular questions asked regarding the use of specific terminology in light of its usage in the Lutheran Confessions, the District committee is advised to consult with the Commission on Theology and Church Relations. Regarding approval of the use of particular terminology in constitutions and bylaws elsewhere in the Synod, the Commission on Constitutional Matters does not have such information and suggests consultation with the Council of Presidents.

95. Consequences of Ecclesiastical Supervision (02-2309)

A District President in a September 27, 2002 letter that included the signatures of twelve other members of the Council of Presidents requested an opinion regarding the consequences of following the advice of an ecclesiastical supervisor. Noting that other similar requests for opinions have been submitted that should also be taken into consideration in preparing a response, the Commission decided to defer action on this request to a later time.

96. Clarification of 2001 Resolution 7-03C (02-2310)

A pastor of the Synod in an October 2, 2002 letter asked for clarification of Resolution 7-03C of the 2001 convention and questions its constitutionality. After consideration of proposed responses, the Commission decided to defer action on this request to a later time.

97. Accountability of Officers to Conventions of the Synod (02-2311)

A pastor of the Synod in an October 11, 2002 letter questions a recent ruling of the Commission (02-2263) in which the Commission stated: "Further complaints under Bylaw 2.27 g cannot be brought before a convention of the Synod since the bylaws created under the authorization of Article XIII 2 make no provision for the dispute to be resolved by a convention of the Synod." He noted that Bylaw 3.73 states: "All officers, boards, and commissions shall be accountable to the Synod for all their actions, and any decision of such officers, boards, and commissions may be appealed to the national convention of the Synod." After consideration of proposed responses, the Commission decided to defer action on this request to a later time.

98. Amendments to the LCMS Foundation Articles of Incorporation and Bylaws (02-2312)

Legal counsel for the Synod in an October 15, 2002 letter requested approval of changes made to the Articles of Incorporation and Bylaws of the LCMS Foundation as already approved by the Board of Directors of the Synod during its September, 2001 meeting.

Opinion: The Commission approves the following changes to the Articles of Incorporation and Bylaws of the LCMS Foundation:

- Article II, Section 6 of the Foundation's Bylaws to be amended to change the term "Chief Financial Officer" to "Chief Investment Officer."
- Article II, Section 7 e of the Foundation's Bylaws to be deleted and a new Section 7 e be inserted to read: "To provide consulting services to promote ministry enhancement and sustained giving for the maintenance of the mission of congregations, institutions, agencies, causes, and objectives mentioned herein."
- Article II of the Foundation's Articles of Incorporation to be deleted.
- Article IV Section C of the Foundation's Articles of Incorporation to be deleted and a new Section C be inserted (in Article III, as re-numbered after the deletion of Article II) to read as follows: "To provide consulting services to promote ministry enhancement and sustained giving for the maintenance of the mission of congregations, institutions, agencies, causes, and objectives mentioned herein."

99. Conflict of Interest and Ecclesiastical Supervision (02-2313)

The President of the Synod in a memorandum dated October 22, 2002, asked a series of questions regarding conflict of interest and ecclesiastical supervision on the part of the President of the Synod in a dispute case involving a District President. After hearing the President explain his questions and concerns, the Commission noted the relevance of these questions to other questions it had deferred at this meeting for consideration at a later meeting and decided to do likewise with these questions.

100. Right to Nominate and Elect a District President on Suspended Status (02-2314)

The President of the Synod in a memorandum dated October 22, 2002, requested an opinion from the Commission regarding the right of a member of the Synod to be nominated and elected to the office of District President while on suspended status.

Question: "The Constitution of the Synod states '*The Synod, under Scripture and the Lutheran Confessions, shall...provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights*' (LCMS Constitution Article III). Furthermore, Bylaw 2.25 b. states '*While on suspended status, the member shall continue to hold all rights under the Constitution and Bylaws subject to the limitations set forth herein.*'"

"Accordingly, do the Constitution and/or Bylaws of the Synod prohibit a District President from being nominated and re-elected to the office of District President that he currently holds, while his suspended status as a member of the Ministers of Religion—Ordained roster of the Synod is under appeal?"

Opinion: The answer to this question is: No. The Constitution and Bylaws of the Synod do not prohibit a District President or any other member of the Synod on its clergy roster from being nominated and elected to the office of District President while his suspended status is under appeal. Bylaw 4.51 only requires that a District President “be elected from the clergy roster of the Synod.”

The Commission has addressed this question previously in its opinion 98-2122 in which it stated:

It is correctly noted that “if a District President is placed on suspended status, he is to be relieved of his duties as District President under the provisions of Bylaw 2.25, c.” The bylaw states that a member on suspended status shall “be relieved of the duties and responsibilities which the member holds with the Synod, District, or other agency of the Synod.” Also asked is, “But what of his office? Does he retain his office until relieved by the next convention of the District?” While formal proceedings are taking place, the District President retains his office, but he is relieved of the duties of that office until such time as a final decision is reached under the dispute resolution process. However, if while formal proceedings are underway, the term of office of the District President comes to an end, the District may, if it chooses, re-elect the District President. If re-elected, the District President continues to be relieved of the duties of his office and will only resume such duties if the final decision in the dispute resolution process determines that the District President has not violated Article XIII, 1, of the Constitution of the Synod.

But “if a District chooses to keep the suspended District President in office – as has happened with congregations and suspended pastors – what recourse does the Synod have?” If at the conclusion of formal proceedings a District President is expelled as a member of the Synod, he is also removed from the clergy roster of the Synod. Since Bylaw 4.51 requires that a District President be on the clergy roster of the Synod, expulsion from the Synod also terminates the District Presidency of the expelled member.

101. Adjournment

After establishing dates for its next meetings and all available time having been expended, the meeting was closed with words of benediction by Albert Marcis.

Raymond L. Hartwig, Secretary