

LCMS

Commission on Constitutional Matters Minutes – 2003

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MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS

Conference Call
January 7, 2003

106. Call to Order

Chairman Walter Tesch called the meeting to order with all members participating. After welcoming the Commission's newest member, Dr. Wilbert Sohns, he called on Raymond Hartwig for an opening prayer.

107. 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. After lengthy discussion, the Commission agreed to incorporate a number of changes into existing drafts and continue discussion at its next meeting.

108. Ecclesiastical Supervision (02-2320)

A Dispute Resolution Panel, in a letter received by the Commission on December 26, 2002, submitted a question on behalf of a party to a dispute regarding the consequences of following the advice of an ecclesiastical supervisor. After discussion, the Commission agreed to request from the panel a two-week extension of the 30-day time limit (Bylaw 8.21 i) and to consider a revised draft and continue discussion at its next meeting.

109. "Review Committee" Membership Requirement (02-2317)

In a November 23, 2002 e-mail letter, a pastor of the Synod asked for a clarification of the requirements for membership of the particular Review Committee described by Bylaw 6.47 d.

Question: When dealing with a complaint concerning a professor at one of our Concordia University System schools, must the complainant select for the "Review Committee" a faculty member from the same campus, or could he be chosen from one of the other schools in our Concordia University System?

Opinion: The Commission notes that this requirement in Bylaw 6.47 is made in a context that consistently references the particular institution, president, and board of regents where the matter in dispute is taking place. The Commission rules, therefore, that the one faculty member (as well as the one regent) to be selected by each party to the dispute must be selected from the institution in which the dispute is taking place.

110. Adjournment

Chairman Walter Tesch asked Wilbert Sohns to serve as chaplain for the Commission's next meeting in St. Louis. He then called on Raymond Hartwig to close the meeting with a prayer.

Raymond L. Hartwig, Secretary

**MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS**

**January 20-21, 2003
St. Louis, Missouri**

111. Call to Order

Chairman Walter Tesch called the meeting to order with all members present. Wilbert Sohns, who served as chaplain for the meeting, provided an opening devotion.

112. Approval of Handbook Revisions by pro tem Commission on Structure (02-2271)

The Commission continued its review of the “Revised *Handbook*” project of the pro tem Commission on Structure. It was agreed that a smaller committee of the Commission composed of Walter Tesch, Albert Marcis, Wilbert Sohns, and Raymond Hartwig will make a special effort to complete the review and will report its findings to the entire Commission.

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

In a July 30, 2002 letter to the chairman of the Commission, a pastor questioned a particular interpretation of Resolution 3-07A that had been circulated in the Synod. He asked whether he could submit the following question to the Commission for a ruling. The Commission grants that as an ordained minister and member of the Synod he is entitled to submit his question.

Question: What does Resolution 3-07A mean and how should it be applied in the church?

Opinion: The confessional position of the Synod, which every member of the Synod accepts without reservation, is set forth in Article II of the Constitution: “1. The Scriptures of the Old and the New Testament as the written Word of God and the only rule and norm of faith and of practice; 2. All the Symbolical Books of the Evangelical Lutheran Church as a true and unadulterated statement and exposition of the Word of God....” Conditions for acquiring and holding membership in the Synod according to Article VI 1 includes “Acceptance of the confessional basis of Article II.” Article VIII C of the Constitution states: “All matters of doctrine and conscience shall be decided only by the Word of God. All other matters are decided by a majority vote.”

For the guidance and use of the Synod, the Synod also recognizes that doctrinal resolutions and statements of the Synod may be adopted by conventions. Bylaw 1.09 a states: “The Synod, in seeking to clarify its witness or to settle doctrinal controversy, so that all who seek to participate in the relationships that exist within and through the Synod may benefit and may act to benefit others, shall have the right to adopt doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions.”

Doctrinal resolutions may be adopted by the Synod for the information, counsel, and guidance of the membership. Pursuant to Bylaw 1.09 b, such doctrinal resolutions “shall conform to the confessional position of the Synod as set forth in Article II of its Constitution,” are adopted in the same manner as other resolutions, and “are to be honored and upheld until such time as the Synod amends or repeals them.”

Doctrinal statements, as compared to resolutions, set forth in greater detail the position of the Synod, particularly in controverted matters. Doctrinal statements must be subjected to the more rigorous

procedure provided by Bylaw 1.09 c. That bylaw requires, among other procedures, adoption by the Synod in convention and ratification by a two-thirds majority vote of the Synod's congregations. Bylaw 1.09 c 7 states that "such adopted and ratified doctrinal statements shall be regarded as the position of Synod" and, as with doctrinal resolutions, are to "be honored and upheld...until such time as the Synod amends or repeals them."

In response to the question regarding the meaning and effect of Resolution 3-07A, the Commission notes that "The Lutheran Understanding of Church Fellowship" is not simply a study document, as it was used prior to the 2001 convention. As noted in its first two whereases, Resolution 3-03B of the 1998 convention called for a study of fellowship principles and practices on the nature of our church body and our fellowship principles and practices, and Resolution 3-10C of the 1998 convention called for all 2000 District conventions to utilize the study to help build a "better understanding, general harmony, and more consistent practice in our Synod." The President of the Synod and the Commission on Theology and Church Relations produced the document "The Lutheran Understanding of Church Fellowship" jointly. Following a period of study by District conventions, conferences, and congregations, the Commission on Theology and Church Relations in conjunction with the President of the Synod submitted a report to the Synod on the synodical discussions, and Resolution 3-07A was submitted to the 2001 convention. Resolution 3-07A recognized that the document "The Lutheran Understanding of Church Fellowship" "is in harmony with Scripture and the Lutheran Confessions and that "a majority affirmed The Lutheran Church—Missouri Synod position on church fellowship that it set forth." The resolution also recognized that a majority "found it scriptural and confessional and wanted The Lutheran Church—Missouri Synod to maintain its historic position." Resolution 3-07A is a doctrinal resolution of the Synod pursuant to the requirements of Bylaw 1.09 a and b. It was not proposed or adopted as a doctrinal statement under Bylaw 1.09 c.

The final four resolves outline the convention-approved uses of "The Lutheran Understanding of Church Fellowship," and the published response of the Commission on Theology and Church Relations. First, "*Resolved*, That we rejoice and give thanks to God for the unity of doctrine and practice that this study has demonstrated." Second, "*Resolved*, That we commend this study and response for continued use and guidance to build that unity where it is still lacking." Third, "*Resolved*, That the Synod reaffirm once again its position on joint worship and recommit ourselves to live according to the instruction of the Lord's apostle...(Eph. 4:1-3)...(Eph. 5:21)...." Fourth, "*Resolved*, That all action taken in this resolution shall be used to help carry out 'The Great Commission' and shall not in any way detract or distract from the primary mission of God's kingdom here on earth...."

In adopting Resolution 3-07A, the 2001 synodical convention not only commended "The Lutheran Understanding of Church Fellowship" document (2001 *Convention Workbook*, pp. 375–387) for use and guidance, but it also commended the "response" of the Commission on Theology and Church Relations ("A Report on Synodical Discussions" – 2001 *Convention Workbook*, pp. 48–51) "for continued use and guidance."

In carrying out their official responsibilities, ecclesiastical supervisors of the Synod are expected, as with all synodical resolutions, including doctrinal resolutions and statements of the Synod, to heed Resolution 3-07A and see to it that it is "carried out" (Art. XI B 4) and "implemented" (Bylaw 4.71 b). In carrying out their official responsibilities, officers of the Synod are expected, as with other doctrinal resolutions and statements of the Synod, to heed the resolution and submit to it. All members of the Synod are to honor and uphold Resolution 3-07A together with all other doctrinal resolutions and statements until such time as the Synod amends or repeals them (Bylaw 1.09 b and c). Those members who dissent are expected to do so within the guidelines of Bylaw 2.39 c.

Regarding interpretation of the content of "The Lutheran Understanding of Church Fellowship" and the response, such questions should be directed to the Commission on Theology and Church Relations.

114. Consequences of Action Taken Upon Approval of Ecclesiastical Supervisor (02-2296; 02-2320)

A Dispute Resolution Panel in a letter dated December 20, 2002, forwarded the following question to the Commission from a party to a dispute. The question is identical to a question submitted by a Vice-President of a District in an August 16, 2002 letter.

Question: Do the Constitution and/or Bylaws of Synod allow or contemplate the discipline of any pastor or contemplate the discipline of any pastor of The Lutheran Church—Missouri Synod who has taken an action with the full knowledge and approval of his superior, where the superior's approval is based upon the superior's interpretation of a synodically approved document, where the interpretation is not plainly or knowingly erroneous, especially where the superior himself has not been formally found in error and disciplined?

Opinion: The Constitution and Bylaws of the Synod do not allow or contemplate the expulsion of a member of the Synod on the basis of an action taken with the full knowledge and approval of the appropriate ecclesiastical supervisor. For a thorough treatment of this issue, see Opinion 02-2309.

115. Ecclesiastical Supervision and Conflict of Interest (02-2309)

A District President, in a September 27, 2002 letter that included the signatures of twelve other members of the Council of Presidents, asked a series of questions regarding the constitutional provision of ecclesiastical supervision and the consequences of following the advice of an ecclesiastical supervisor.

Question 1: May a District President who has acted in a matter after receiving the advice of and authorization of the synodical President be charged under Bylaw 2.27 for such act, which charge could result in his removal from his position as District President as well as from the roster of the Synod?

Opinion: After the example of the apostolic church, Acts 15:1-31, the Synod was formed “to unite in a corporate body the congregations of the Evangelical Lutheran Church that acknowledge and remain true to the *Book of Concord* of the year of our Lord 1580 as a true exhibition of sound Christian doctrine” (Articles of Incorporation, Article II a). The Synod's objectives include: “The Synod, under Scripture and the Lutheran Confessions, shall – 1. Conserve and promote the unity of the true faith...8. Provide evangelical supervision, counsel, and care for pastors, teachers, and other professional church workers of the Synod in the performance of their official duties...9. Provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights” (Constitution, Article III). Recognizing the objectives for which it was organized, the Synod obligated itself “to assist and advise congregations, pastors and teachers affiliated with The Lutheran Church—Missouri Synod and to exercise supervision over such pastors and teachers as to doctrine, practice, and performance of their official duties” (Articles of Incorporation, Article II c).

“Committed to a common confession and mission, congregations of The Lutheran Church—Missouri Synod join with one another in the Synod to support one another and work together in carrying out their commonly adopted objectives” (Bylaw 1.01). According to Bylaw 1.05 d, “members agree to uphold the confessional position of the Synod (Art. II) and to assist in carrying out the objectives of the Synod (Art. III), which are objectives of the members themselves.” Bylaw 1.05 e states: “Membership is held in the Synod itself. However, in accordance with the objectives of the Synod, each member enjoys certain privileges and accepts certain responsibilities also in and through the respective District and Circuit.” According to Bylaw 2.35, “every member of the Synod shall diligently and earnestly promote the purposes of the Synod by word and deed.” Bylaw 2.39 a adds that “the Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.”

This includes doctrinal resolutions that “are to be honored and upheld until such time as the Synod amends or repeals them” (Bylaw 1.09 b).

Mindful of the objectives of Synod, the conditions of membership, the need for and benefit of supervision, and the concern for unity of faith and confession, the Synod also provided ecclesiastical supervision in its Constitution. Article XI B 1 specifically identifies the President as the ecclesiastical supervisor of all officers of the Synod, all such as are employed by the Synod, the individual Districts of the Synod, and all District Presidents. Article XII 7 specifically requires that District Presidents “especially exercise supervision over the doctrine, life and administration of office of the ordained and commissioned ministers of their District and acquaint themselves with the religious conditions of the congregations of their District.”

Bylaw 3.101 A 1 summarizes the ecclesiastical powers and duties of the President of the Synod when it states that the President shall "supervise the doctrine taught and practiced in the Synod, including all synodwide corporate entities. In the Districts of the Synod, he shall carry out his ecclesiastical duties through the District's 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 2.41 i states: "Except as expressly otherwise provided in this section, a member shall be under the ecclesiastical supervision of the President of the District through which synodical membership is held."

Ecclesiastical supervision intrinsically includes all of the following: “supervision regarding the doctrine and the administration” of all officers, employees, Districts, and District Presidents (Art. XI B 1); “to admonish all who in any way depart from [the Synod’s Constitution], and, if such admonition is not heeded, to report such cases to the Synod” (Art. XI B 2); “power to advise, admonish, and reprove” (Art. XI B 3); to “see to it that the resolutions of the Synod are carried out” (Art. XI B 4); “supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers....visit and, according as they deem it necessary, hold investigations” (Art. XII 7); “supervise the doctrine taught and practiced in the Synod....officially visit or cause to be visited all the educational institutions of the Synod....meet regularly with the Council of Presidents...to see to it that they are in accordance with Article II of the Constitution, synodically adopted doctrinal statements, and doctrinal resolutions of the Synod” (Bylaw 3.101 A); and such other constitutional terminology as “counsel,” “care,” and “protection” (Art. III 8 and 9).

As indicated above, the Synod has promised its individual members supervision and counsel when the member is performing his/her official duties. The Synod has further decided that such supervision (and supervision of necessity includes counsel and admonishment) shall be the responsibility of the synodical or District President, as the case may be. The President of the Synod and District Presidents are officers of the Synod. Thus, the Synod, having designated to its members the individuals who will provide to them supervision and counsel, is itself responsible for the accuracy and content of such supervision and counsel. Having promised supervision and counsel, the Synod is precluded from taking any action to terminate the membership of its member who, when performing his/her official duties, follows the advice and counsel of the ecclesiastical supervisor designated by the Synod.

It would be inconsistent with the above constitutional provisions to place the membership of an individual or congregation at risk where that member relies on the ecclesiastical supervision and counsel of the person called and chosen for that role or function. If an act is in fact contrary to Article XIII of the Constitution, the member who acted cannot be charged since he or she acted according to the advice of his or her ecclesiastical supervisor. It should be noted, however, that when an ecclesiastical supervisor discovers error in his counsel, it is incumbent upon that supervisor to correct or amend it. The member should then be held to consider the corrected counsel. Failure to consider such amended admonition could form the basis for disciplinary action as provided in Article XIII.

Where members of Synod have doctrinal disagreements and disputes, mechanisms are in place to allow for dialogue and discussion and the adoption of doctrinal positions (Bylaws 1.09 and 2.39). Such disagreements or disputes, however, are not intended to lead to the bringing of charges under Bylaw 2.27 or the implementation of dispute resolution process under Chapter VIII of the Bylaws.

Question 2: May an ordained or commissioned minister or a member congregation who has acted in a matter after receiving the advice and authorization of his/her District President be charged under bylaw 2.27 for such act, which could result in removal from the roster of the Synod?

Opinion: The answer to this question, as already stated in the response to question 1, is “no.” The District President has ecclesiastical supervision of the ordained and commissioned ministers and member congregations within his District as set forth in Article XII 7 and Bylaws 4.71, 4.73 and 4.75. When an ordained or commissioned minister or member congregation has acted in a manner that is consistent with the counsel of the District President, the Synod is precluded from taking any action to terminate the membership of its member who, when performing his/her official duties, follows the advice and counsel of the ecclesiastical supervisor designated by the Synod.

Question 3: May any person, member or board of the Synod, by invoking Bylaw 2.27 or Chapter VIII of the Constitution and Bylaws of the Synod, be allowed to disrupt, hamper or harass the synodical President who is responsible to the Synod (Art. XI A) in carrying out his duties and responsibilities for ecclesiastical supervision as stated in synodical Constitution Article XI B 1-4 and Article III 8, including advising a District President concerning a doctrinal position of the Synod and/or a question of administrative action, thus assuming only the rights and duties conferred on him by the Synod’s Constitution, Bylaws, and resolutions.

Opinion: The Commission notes that Bylaw 2.27 cannot be invoked in the case of the President of the Synod (see CCM Opinion 01-2240). Whereas there may be occasions when the use of Chapter VIII of the Bylaws may be appropriate (see Opinion 03-2325), implementation of the dispute resolution process should never be intended or allowed to disrupt, hamper, or harass the President as he carries out the duties and responsibilities of his office, including those of ecclesiastical supervision. It is never appropriate to assume rights and duties that have been conferred upon another by the Constitution, Bylaws, and resolutions of the Synod.

Question 4: If the answer to the previous question is “yes,” then under what circumstances can a District President or synodical President carry out their duties without being harassed and hampered by the invoking of Bylaw 2.27 or Chapter VIII.

Opinion: In the case of the President of the Synod, see the answer to question 3 above. In the case of charges brought against a District President, if he has been carrying out his responsibilities and the charges clearly are not supportable, the investigating officer may act quickly to dismiss the matter. Should members of the Synod abuse the Bylaws by bringing clearly unsupportable charges or complaints, such conduct may itself give offense and should be dealt with accordingly.

Question 5: May any person, member, or board of the Synod, after invoking Bylaw 2.27 and receiving a perceived “unfavorable” result, then invoke Chapter VIII against a District President and/or the synodical President although both were providing ecclesiastical supervision and seeing to it that the doctrinal position and the resolutions of the Synod were being carried out before Bylaw 2.27 was invoked in the first place.

Opinion: If an individual makes an allegation under Bylaw 2.27 against a member of the Synod, that allegation is given to the member’s ecclesiastical supervisor, either the President of the Synod or the

appropriate District President. If the ecclesiastical supervisor declines to take any action, the party that has made the allegation may appeal that decision to the Praesidium of the Synod. Should the Praesidium also decline to take any action on the allegation, in the words of Bylaw 2.27 b, that “shall terminate the matter.” In other words, the matter is dead and there is no way that the complainant can invoke any of the provisions of Chapter VIII.

Question 6: If the synodical President or District President are carrying out ecclesiastical supervision according to the Constitution and Article XI and Article III 8 or Article XII and seeing to it that the resolutions of the Synod are being carried out (honored and upheld), under what constitutional provision may the President be recused from any subsequent involvement.

Opinion: There is no such constitutional provision.

Question 7: When the Synod has clearly stated its position or when an ecclesiastical supervisor has expressed his judgment concerning an issue based on a resolution adopted by the Synod, does a dissenter have the right to invoke Bylaw 2.27 or Chapter VIII rather than 2.39 c, the stated procedure for dissent referred to in Bylaw 1.09 d?

Opinion: Bylaw 2.27 is not the method provided by the Bylaws to resolve disputes as to what the doctrines of the church should be. Rather, it provides procedures for expulsion from the Synod according to Article XIII of the Constitution. Where there is disagreement by the complainant about the doctrines of the church, the action is one of a dissenter, which is governed by the provisions of Bylaw 2.39 c.

Question 8: Is it a conflict of interest when a District President and/or synodical President are carrying out their duties of ecclesiastical supervision and seeing to it that the resolutions of the Synod are being carried out? If the answer is “yes” in what sense is it a “conflict of interest” and how is conflict of interest then defined.

Opinion: The answer to the first part of this question is “no.” An ecclesiastical supervisor carrying out his responsibilities of ecclesiastical supervision is not creating a conflict of interest with respect to his duties and responsibilities imposed by the Constitution or Bylaws.

A Bylaw 2.27 action against a District President falls within the provisions of Bylaw 2.27 g, and the synodical President becomes the investigating officer. Disqualification of the President of the Synod, as with the District President, occurs where he is a party to the matter in dispute, has a conflict of interest, or is otherwise unable to act. The fact that the investigating officer, whether a synodical or District President, has been involved in performing his ecclesiastical responsibilities in supervising the accused party is in and of itself not a basis for disqualification. In fact, the Constitution of the Synod presupposes that since or when there is prior supervision, advice, or futile admonition regarding the activity giving rise to a charge, the synodically-designated ecclesiastical supervisor would have been involved in that advice or admonition. Carrying out such responsibility does not make the ecclesiastical supervisor a party to the matter in dispute nor give rise to a conflict of interest. Rather, the duty to investigate flows from and is a natural outgrowth of the District or synodical President’s ecclesiastical supervisory responsibility.

Question 9: Under what constitutional provision, if any, may any person or group, any board or commission, or any other entity assume de jure or de facto the responsibility of ecclesiastical supervision in the Synod that has been given alone to the synodical President or the District President in his respective District. In other words, may any entity that does not have the ecclesiastical supervision, which is the sole responsibility of the synodical President or a District President, publicly reprove or admonish another entity? If the answer is “yes” how may the Synod avoid havoc, disorder and confusion?

Opinion: There is no constitutional provision that allows any person, group, board, commission or other entity to assume the responsibility of ecclesiastical supervision in the Synod that has been given to the President of the Synod under Article XI B or the District President under Article XII 7. This includes the formal or official constitutional responsibility to admonish or reprove members of the Synod. No one is to interfere in the work of another.

116. Constitutionality of 2001 Resolution 7-03C (02-2310)

In a letter dated October 2, 2002, an ordained minister of the Synod questions the validity of 2001 convention Resolution 7-03C in light of the Constitution and Bylaws of the Synod.

Question 1: Does the adoption of Resolution 7-03C (2001 *Proceedings*, p. 164), especially Resolve #3 and Resolve #4, conflict with the Articles and Bylaws of the synodical Constitution (Duties of the President, Duties of the Board of Directors) and therefore such resolution should be deemed null and void?

Opinion: The third and fourth resolves of Resolution 7-03C read as follows:

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.

Article XI B 1 provides that the President has the supervision regarding the doctrine and administration of all officers of the Synod, all employees of the Synod, the Districts of the Synod, and all District Presidents. Bylaw 3.101 A 1 adds to the list of those for whom he is responsible the agencies of the Synod. It is his responsibility to see to it that all the aforementioned act in accordance with the Constitution of the Synod (Art. XI B 2) and its resolutions (Art. XI B 4). He is to see to it that their activities are also in accordance with the Bylaws (Bylaw 3.101 B 1) and to call up for review any action that in his view may be in violation of the Constitution, Bylaws, and resolutions.

Bylaw 3.183 c provides that the Board of Directors has general oversight responsibility over the officers and agencies of the Synod as determined by the Constitution, Bylaws, and resolutions of the Synod. The Board has 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).

Therefore, Resolution 7-03C does not conflict with the Constitution and Bylaws of the Synod regarding the duties of the President and Board of Directors. Both are responsible for seeing to it that the Constitution and Bylaws are observed to the extent of their assigned responsibilities. Whichever is charged with supervision or oversight is responsible to act to correct any failure to comply.

Question 2: When there is a conflict of governance on constitutional adherence between the synodical President and the synodical Board of Directors, who decides who has jurisdiction? Who has authority over whom? The Board of Directors over the President, or the President over the Board of Directors?

Opinion: The Commission has already responded to this question in its Opinion 02-2259 pertaining to one of the agencies of the Synod:

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. (CCM Opinion 02-2259)

117. 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."

Question: If an officer of the Synod charged a member of the Synod under Bylaw 2.27 and did not follow approved synodical resolutions in making his case, could not a national convention overturn this decision under Bylaw 3.73?

Opinion: The Synod, upon instruction of Article XIII 2, has established in its Bylaws the procedure to be followed for expulsion of a member from the Synod. In that procedure, a Dispute Resolution Panel is given the responsibility for deciding whether or not the Bylaw 2.27 investigating officer made a proper decision. The Synod has also provided opportunity for appeal of the Dispute Resolution Panel's decision regarding the investigating officer's decision to an Appeal Panel, with the possibility of a second hearing by a Review Panel to finally decide the case. The Synod has not provided in its bylaws any opportunity for further appeal of the final decision to a convention nor has it provided to itself opportunity to question or overturn any part of its dispute resolution process.

The bylaw in question, Bylaw 3.73, provides for the general accountability of all officers, boards, and commissions, whose decisions may be appealed to a national convention of the Synod. Mention is not made in the bylaw of the panels employed by the dispute resolution process, whose final decisions, including decisions regarding suspensions, are final and binding (Bylaws 8.09 c 4 a and 8.09 e 1) and therefore not subject to actions by conventions of the Synod.

118. Conflict of Interest (02-2313)

In an October 22, 2002 letter, the President of the Synod submitted a series of questions regarding the subject of conflict of interest and its application to the duties of the President under Bylaw 2.27 g.

Question 1: Is there any definition of "conflict of interest" in the Constitution, Bylaws, or resolutions of The Lutheran Church—Missouri Synod, other than as discussed in Bylaw 3.75 and the CCM's prior opinion Ag. 2020?

Opinion: There is no clear definition of “conflict of interest” in the Constitution, Bylaws, and resolutions of the Synod. In addition to Bylaw 3.75 (repeated in Bylaw 4.109), the Bylaws also make specific reference to conflict of interest in Bylaw 3.71, which requires disclosure of conflicts of interest with regard to financial matters and participation in activities that may be detrimental or at odds with the activities of the Synod or in situations in which information obtained through relationship with the Synod could be used in a way that is detrimental to the interests of the Synod. The Bylaws also variously address conflict of interest issues throughout, as in Bylaws 3.69 g, 3.981, 8.17, *et al.*

There have been numerous prior decisions by the Commission on Constitutional Matters that pertain to conflict of interest issues, most of which have addressed financial conflicts of interest. Apart from those, the Commission has also addressed questions regarding actual or potential conflicts of interest as a result of holding multiple offices or positions, e.g., whether a District executive secretary could hold elected or appointed membership on synodical boards and commissions (Ag. 400, June, 1966), whether a member of a District Board of Appeals could also serve on a District *ad hoc* committee (Ag. 286, October, 1971), whether a conflict of interest existed in an appointment of an advisory member of a District board of directors to another position (Ag. 433B, August, 1973), and whether a seminary president could also hold membership on the Board for Admissions’ Services (Ag. 1668, September, 1985).

In one prior opinion, interpreting then-Bylaws 8.05 and 8.07 (Ag. 1873, December 1989), the Commission was asked to determine whether a synodical president could delegate his responsibilities under then-Bylaw 8.05 a to one or more Vice-Presidents of the Synod based upon real or perceived conflicts of interest. The Commission ruled as follows:

Regarding the issue of responsibility you have inquired, “May the synodical president delegate his responsibilities under Bylaw 8.05, a to one or more synodical vice-presidents, particularly in cases where he feels that there may be a real or perceived conflict of interest or that such a delegate of responsibility would enhance the achievement of reconciliation, or where the president is rightly or wrongly alleged by one of the parties to have an involvement in the case under adjudication?” The Commission’s response is, “No, he may not.” The Handbook makes it clear that “the President shall have the right to authorize the Vice-Presidents to perform the duties of his office and shall hold them responsible for their performance. Accountability, however, shall always remain with the President,” Bylaw 3.101, m. The Commission respectfully points out that the President may appoint a small committee to seek to effect reconciliation. This committee may or may not consist of vice-presidents of the Synod.

Question 2: If the answer to Question 1 above is “yes,” what other definition of “conflict of interest” exists?

Opinion: See the opinion to Question 1.

Question 3: If the answer to Question 1 is “no,” do the Constitution and Bylaws of the Synod allow for any other reason by which the Vice-Presidents of the Synod could recuse the President of the Synod from investigation of charges against a District President under Bylaw 2.27 g?

Opinion: Bylaw 2.27 g makes reference to Bylaw 2.27 a 1, which allows for disqualification of the President due to one of three grounds: (1) he is a party to the matter in dispute; (2) he has a conflict of interest; or (3) he is unable to act. Therefore the President can be disqualified from investigating charges against a District President for one of these three reasons. The Constitution and Bylaws provide no other reasons for disqualification.

Question 4: If the answers to Questions 1 and 3 above are “no,” would it ever be in accord with the Constitution and Bylaws of the Synod for a majority of the Vice-Presidents of the Synod to determine that the President of the Synod should be recused from handling charges filed against a District President that could result in his being removed from the clergy roster of the LCMS?

Opinion: As indicated in the opinion to Question 3, the only reasons which allow the Vice-Presidents of the Synod to determine that the President should be disqualified from investigating charges filed against a District President are the three reasons articulated in Bylaw 2.27 a 1.

Question 5: If the answers to Questions 1 and 3 above are “no,” what effect, if any, does the absence of a “conflict of interest” have in a Bylaw 2.27 g case against a District President who has been suspended and whose suspension is currently under appeal, when the President of the Synod was recused by a majority of the Vice-Presidents of the Synod on the basis of an alleged conflict of interest?

Opinion: As indicated above in the opinion to Question 3, Bylaw 2.27 a provides for the disqualification of the investigating officer (in this instance the President) only where he is a party to the matter in dispute, has a conflict of interest, or is unable to act. If the President believes that the Vice-Presidents of the Synod have misunderstood the issue of conflict of interest or have disqualified him for a reason other than those provided in this bylaw, he should request reconsideration by the Praesidium.

For another treatment of the issue of “conflict of interest,” see the Commission’s response to question 8 of Opinion 02-2309.

119. Role of BHE/CUS Board in Light of Board of Directors Resolution (02-2315)

The Executive Director of the BHE/CUS Board, in a memorandum dated October 29, 2002, asked the Commission for assistance in understanding the consequence of a recent action by the Board of Directors of the Synod which resolved “That each agency of the Synod keep the Board of Directors informed by direct communication with the administrative officer of the Synod and the chairman of the Board of Directors of any contemplated action which falls under the supervision and oversight of the Board of Directors and/or which will result in the spending of funds beyond that currently budgeted or which will obligate future funding, and such notification is to be made while the contemplated action is still in the planning stage.”

After asking a series of questions (“What is the role of the BHE/CUS Board and staff? Is this an appropriate and proper interpretation of the Constitution and Bylaws of the Synod? What does this mean for the colleges/universities/seminaries and the policies of the BHE/CUS Board for oversight and governance? Are the agencies of Synod to ask permission from Synod’s Board of Directors in order to do [their] work before it has processed with the BHE/CUS Board and staff? Is the BHE/CUS Board excluded from its role of oversight and governance of the institutions of higher education?”), he asked the following “basic question”:

Question: Should the institutions of higher education make direct communication with the executive director and chairman of the Synod’s Board of Directors, bypassing the BHE/CUS Board? What is the role of the BHE/CUS Board and its staff if this resolution is applied.

Opinion: Bylaw 3.183 c provides that the Board of Directors is “responsible for the general management of the business and legal affairs of the Synod.” It also assigns to the Board “general oversight responsibility” for officers and agencies of the Synod for business and legal affairs, even when these have

been “expressly delegated by the Constitution, Bylaws, and resolutions of the Synod.” Bylaw 3.51 a defines “agency of the Synod” as “an instrumentality other than a congregation, whether or not separately incorporated, which the Synod in convention or its Board of Directors has caused or authorized to be formed to further the Synod’s objectives,” including “each board, commission, council, seminary, university, college, District, Worker Benefit Plans, and each synodwide corporate entity.”

Bylaw 3.187 requires that the Board of Directors also adopt an annual budget of the Synod (paragraph b). Bylaw 3.183 d gives to the Board the responsibility to allocate available funds to program boards, commissions, councils, and departments of corporate Synod and to hold them accountable. These entities are required to provide reports regarding operations and policies as requested by the Board (paragraph 1). The Board also has a right to call up for review, criticism, modification, or revocation any action or policy of one of these entities (paragraph 2).

The Commission concludes that the Board of Directors has been given “general oversight responsibility” over the colleges, universities, and seminaries of the Synod as its agencies (see CCM Opinion 02-2259). As part of this general oversight, the Board has a legitimate interest in any contemplated action of an agency which results in the spending of funds beyond those currently budgeted or which will obligate future spending. By a request for such information, the Board exercises its right to call up an action for review, but this request is to be made, in this case, to the BHE/CUS Board. The role of the BHE/CUS Board and its staff will be to provide the requested information to the Board of Directors through its chairman and chief executive officer.

120. Right of a Board to Adopt a Doctrinal Statement (02-2316)

In a letter dated November 1, 2002, a pastor of the Synod calls attention to the 2001 Report of the Church Growth Study Committee, “For the Sake of Christ’s Commission” (2001 *Workbook*, pp. 442-450), noting that a proposed resolution to the 2001 convention of the Synod commending this study to Synod’s entities (Res. 3-14) was not acted upon by the convention. For the record, the Commission notes that the convention placed this matter in omnibus Resolution B. The pastor asked following questions in its regard.

Question 1: Does an individual board or commission have the right to adopt a doctrinal statement as its editorial position that has not been approved by the CTCR or a convention of the Synod?

Opinion: Only the Synod in convention has the right to adopt doctrinal statements according to the process provided by Bylaw 1.09 c. Boards and commissions regularly identify materials that they find useful for their own purposes, but they must abide by the Constitution, Bylaws, and resolutions of the Synod.

Question 2: Can a board or commission refuse the transfer of a position cost and personnel to another board or commission on the basis of a failure to adopt an unofficial doctrinal position as its doctrinal editorial statement?

Opinion: Boards of the Synod function according to the general regulations provided by Bylaw 3.69 and other pertinent bylaws, and according to the specific bylaws that govern their activity.

121. Right of a Board to Adopt as Policy a Statement Not Approved by a Convention (02-2318)

A pastor of the Synod, in a letter received December 2, 2002, questions the right of the Board of Directors of Concordia Publishing House and the Board for District and Congregational Services to use the document, “For the Sake of Christ’s Commission,” as an editorial policy or guiding principle in their work.

Question: May a board in the LCMS adopt as a piece of its policy a document with doctrinal associations that has not been approved for such use by the Synod in convention?

Opinion: The Commission repeats a portion of its response to a similar question in Opinion 02-2316:

Boards and commissions regularly identify materials that they find useful for their own purposes, but they must abide by the Constitution, Bylaws, and resolutions of the Synod.

122. Review of Michigan District Bylaws and Proposed Amendments (02-2319)

In a December 4, 2002 letter, the President of the Michigan District asked the Commission to review bylaw changes that his District's Board of Directors intends to present to the District convention.

Upon review of the Michigan District Bylaws and the proposed changes, the Commission recommends that the District board take into consideration the following:

- Re Bylaw 1.1: Congregations and ministers of religion are no longer received into membership by conventions. Congregations are received in special worship services held by the congregations (Synod Bylaw 2.05) and ministers of religion are received upon installation following ordination or commissioning, they having previously signed a statement which acknowledges subscription to the Constitution of the Synod (Synod Bylaw 2.07 c).
- Re new wording for Bylaw 3.6 f: For the sake of uniformity, the titles used by the Synod in its *Handbook* for ministers of religion—ordained and ministers of religion—commissioned are “ordained ministers” and “commissioned ministers” (Synod Bylaw 2.07 a), terminology that your District also consistently uses elsewhere in its Bylaws.
- Re Bylaws 4.1, 4.1, et al: The Commission calls attention to the fact that references to the name of the Synod should capitalize the article “The,” i.e., The Lutheran Church—Missouri Synod.
- Re the proposed wording for Bylaw 5.8 d: The antecedent to “its” in the proposed wording may be unclear. The wording “the District’s official publication” would be more clear.
- Re Bylaw 6.1: Since the President is elected for a three-year term of office, it is unclear how the President’s term would not expire at the time of a regular convention of the District.
- Re Bylaw 7.1ff: In describing the duties of the Board of Directors, reference to Synod Bylaw 4.91 and its description of the functions of a District Board of Directors would be helpful.
- Re Bylaw 8.6: Regarding signing responsibility and authority, Synod Constitution Article XII 9 d requires that District Presidents sign all official papers and documents of their Districts.
- Re Bylaw Article XV: This bylaw provides for Regions and how they are established. Circuits, included among the component parts of the Synod (Synod Bylaw 1.05 b), are not mentioned. Furthermore, while the election of Circuit Counselors is covered by Bylaw 5.14 and their duties by Bylaw 8.8, there does not appear to be any provision for how the District creates its Circuits.

123. Review of Nebraska District Proposed Bylaw Changes (02-2321)

The Bylaws Task Force of the Nebraska District, in a December 19, 2002 letter to the Commission, submitted for review bylaw changes it intends to propose to the Nebraska District convention. The

Commission reviewed the proposed bylaws and offers the following recommendations. Bylaw designations and page references will refer to the marked version of the current Bylaws. The Commission also invites the Bylaws Task Force, if it desires, to discuss further the following observations and recommendations with the Secretary of the Synod.

- Article II “Mission” [p. 1]: As the Synod in that place, the District should consider including mention in its mission statement of the second reason for organizing a Synod (Synod Bylaw 1.01), namely, that the Synod, in addition to functioning *in support of* its member congregations, also functions *on behalf of* its member congregations to administer those ministries which can be accomplished more effectively in association with other member congregations of the Synod.
- Bylaw II A, “Relationship to Synod” [p. 1]: Consideration might be given to including reference to Synod’s Constitution and Bylaws that describe this relationship, e.g., Art. XII; Bylaws 1.05 b, 4.01, 4.07.
- Bylaw II B 5 [p. 1]: Perhaps the single title, “Convention Workbook” (as also in Bylaw III F 3 g [p. 19]) would be helpful.
- Bylaw II B 6 [p. 1] does not appear to clarify voting status as intended. In the case of a dual parish served by two called pastors, the proposed bylaw would seem to allow each congregation to have both a lay delegate and a pastoral delegate. Please note Article V of the Synod’s Constitution: “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.” (See also Opinion 03-2327.)
- Bylaw II C 1 b [p. 2]: Including “members” after “lay” would clarify, to therefore read: “three (3) lay members.”
- Bylaw II C 1 c (2) [p. 2]: The Bylaws of the Synod, not the Secretary of the Synod, determine the years in which the District must elect a member of the Synod’s Committee for Convention Nominations.
- Bylaw II C 1 f (2) [p. 3]: Is there a conflict between the requirement of this bylaw that all persons receiving 2% of all District congregations must be included on the ballot and that of other bylaws (Bylaw III F 3) which limit the number of nominations and require that only those candidates receiving “the greatest number of nominations” be included [p. 18]?
- Bylaw II C 1 f (3) [p. 3]: The proposed bylaw provides for no nominations from the floor. The Commission makes three observations: (1) Roberts assumes that nominations from the floor will be received: “After the nominating committee has presented its report and before voting for the different offices takes place, the chair must call for further nominations from the floor” (*Robert’s Rules of Order*, 10th Edition, October 2000, p. 421). (2) This Commission has ruled that floor nominations are to be permitted: “The Nominating Committee should be elected by the convention and additional nominations from the floor should be permitted. For the next convention, however, the present arrangement of an appointed nominating committee may be followed as long as nominations from the floor are also permitted” (Ag. 1185, B-F; 1480, A-F; CCM Minutes, April 24-25, 1981). (3) Synod’s Bylaws provide for nominations from the floor after the report of the Committee for Convention Nominations (Synod Bylaw 3.985). Even the election process for the President and Vice-Presidents (Synod Bylaw 3.961 f) allows for floor nominations by providing the right to alter each slate at the proper time by amendment.

- Bylaw II C 3 [p. 6]: Would this be better numbered Section D since II C covers convention matters while this section deals with a new committee? A change would of course affect the remaining lettering of this article of the Bylaws.
- Bylaw II C 3 a [p. 6]: Current placement of the word “shall” suggests that all of the listed duties have been provided for by the Bylaws of the Synod, which is not the case. The Synod’s Bylaws speak only of the review of constitutions and bylaws of congregations (Synod Bylaw 2.03). Repositioning the word “shall” after the appositional phrase would rightly state that this committee is provided for in the Bylaws of the Synod: “This Committee, as provided for in the Bylaws of the Synod, shall advise....”
- Bylaw II C 3 a [p. 6]: Would better read, “...regarding conformity with the Synod’s Constitution and Bylaws” rather than “regulations.” This would better conform with Synod Bylaw 1.05 d. The Synod operates with numerous additional “regulations” (policies) that are not binding on congregations.
- Bylaw III A 2 a [p. 10]: Should read: “shall serve no more than four (4) consecutive three (3) year terms.”
- Bylaw III A 2 [p. 10]: Does not include reference to the Treasurer, unless this office is intended to be included under paragraph b: “lay members of Board of Directors.”
- Bylaw III A 4 [p. 11]: It may be helpful to use the same terminology used by the Synod in Synod Bylaw 4.91, “Functions.”
- Bylaw III A 4 b [p. 11]: Is it the responsibility of the Board of Directors to “evaluate” the plans and policies that have been directed by the District convention or to administer and carry out such decisions by the convention? Reference to Synod Bylaw 4.91 may also be helpful when referring to the functions of the Board.
- Bylaw II A 4 g [p. 11]: See Synod Constitution, Art. XII, 9 d, where the President of the District is given the responsibility to sign all official papers and documents.
- Bylaw III A 4 n [p. 12]: The appointment of four reconcilers for the District is an important and specific requirement of the Bylaws of the Synod (Synod Bylaw 8.13). In the flow of this bylaw, mention might be included with the other appointive responsibilities of the Board [p. 11].
- Bylaw III B 2 b [p. 13]: The District’s Constitution Committee is responsible to the District Board of Directors (Synod Bylaw 2.03 b). The District Board is then responsible for reporting its actions regarding congregational constitutions and bylaws to the District convention.
- Bylaw III F 3 a (2) and b (2) [p. 18]: Use of term “clergymen” is inconsistent with the otherwise consistent use of “ordained minister.”
- Bylaw III F 3 b and c [p. 18]: Again, as mentioned above under Bylaw III C 1 f (2), is there a conflict here with that bylaw’s 2% requirement?
- Bylaw III F 3 e [p. 19]: The Commission suggests that the provision of a list of eligible commissioned ministers would be consistent and helpful also.

- Bylaw III F 6 [p. 22]: Election of a member of the Synod’s Committee for Convention Nominations at alternate conventions is not included in the list.
- Bylaw III G 1 k [p. 22]: Should this paragraph be made more specific to clarify whether the District President may serve vacancies, serve as an assistant pastor, etc.?
- Bylaw III G 3 [p. 23]: The ecclesiastical supervision of a District President also includes the congregations of the District (Synod Constitution Art. XII, 7; Bylaw 4.71 d 1).
- Bylaw III G 3 f [p. 23]: Should not the lettering of paragraphs start over with “a.” since this is a new section, “Vacancy in the District Presidency”?
- Bylaw III G 3 f (1) [23]: This paragraph fails to cover what happens if the out-going president accepts other permanent employment after 150 days but before the end of his one month per year allowance.
- Bylaw III L 2 [p. 27]: Since the appointment of vice-presidents of LCEF are to be ratified by the Board of Directors, it would be consistent that their termination also be ratified by the Board.
- Bylaw IV B [p. 28]: Amendments to District Bylaws should also be submitted to the Commission on Constitutional Matters prior to presentation to the District convention.

124. Status of District-Trained “Lay Ministers” (02-2322)

A pastor of the Synod in a December 26, 2002 e-mailed letter asked for an opinion on the status of “lay ministers” who have completed a two-year course of study provided by the District and who have been commissioned and subsequently called by congregations of the District.

Question: Can a person who has completed a District program for “lay ministers,” has been commissioned by the District, has been called by a parish of the District, and has had “the laying on of hands” be considered a church worker such as a DCE or Lutheran school teacher, and how does the status of such a person impact her service in the District or as a participant in conferences or as a delegate to conventions?

Opinion: There is no inherent right to membership in the Synod, and the decision regarding qualification for a first call and membership in the Synod is according to the terms and at the sole discretion of the Synod (Bylaw 2.07). Individuals who wish to be members of the Synod as Ministers of Religion—Commissioned must first be declared qualified according to the provisions of Bylaws 2.09–2.11 and placed and installed according to Bylaw 2.13.

Until such time as the above requirements are met, membership on the roster of the Synod is not possible. The participation in localized training or the use of terminology such as “lay minister” or the employment of some form of commissioning or calling or laying on of hands do not qualify a person for roster status. Such non-rostered persons are lay persons and are therefore eligible for service on boards or commissions or as delegates to conventions of District or Synod as lay participants.

Individuals who are interested in membership in the Synod are encouraged to pursue fulfillment of the requirements for rostered status through the Concordia University System (2001 Res. 7-13A).

125. Implications of District Membership for Board of Directors Membership (02-2323)

A District President in a December 21, 2002 letter asked a series of questions regarding the consequences of a member of the Board of Directors of the Synod changing District membership to a District in which

another member of the Board already resides. The Commission will consider a draft of a proposed response at a later time.

126. Rights of Complainant after Review Committee Decision (03-2324)

A pastor of the Synod in a January 3, 2003 letter submitted two questions regarding his right as a complainant to proceed after a decision of the Review Committee of Bylaw 6.47 has been received.

Question 1: If a doctrinal complaint against a non-commissioned professor at a synodical school has been received by a Board of Regents and has been heard by a “Review Committee” as established by Bylaw 6.47, which committee has given its written decision to the Board of Regents and the Board of Regents in response to that written decision has exonerated the non-commissioned professor with the words, “The Board finds that the complaint was not sustained by the Review Committee’s investigation and hereby dismisses the complaint, in keeping with LCMS Bylaw 6.47 f 5,” can the one who brought the complaint to the Board of Regents now invoke Bylaw 8.05 regarding the decision of the Board of Regents, since he is now in “dispute” with that Board, or is their decision “final”? (Bylaw 6.47 f 5)

Opinion: Pursuant to the terms of Bylaw 6.47 f 5, the decision of the Board of Regents in a Bylaw 6.47 action is final as to such non-commissioned professor.

Question 2: Can a complainant bring this doctrinal (ecclesiastical) matter to the President of the Synod under Bylaw 3.101 b 4 and ask him to “call up for review” this “final” (Bylaw 6.47 f 5) decision of the Board of Regents?

Opinion: Ecclesiastical concerns may always be directed to the President of the Synod. The President must decide whether it is appropriate to exercise his responsibilities given the powers afforded him under the Constitution and Bylaws. The action of the Board of Regents, however, is expressly made final by the bylaw itself.

127. The President of the Synod and the Provisions of Chapter VIII of the Bylaws (02-2325)

The President of the Synod in a December 31, 2002 e-mailed letter, noting that from time to time “individual members of the Synod express profound disagreement with the President of the Synod regarding decisions made or actions taken in the regular course of the fulfillment of duties and responsibilities of his office,” submitted the following question to the Commission:

Question: Since the CCM has recognized the responsibility for ecclesiastical supervision given to the President of Synod, and since the President of Synod is responsible to the Synod in convention, and since the CCM has already recognized the potential for the President of Synod to be “harassed and hampered in the carrying out of his duties” by provisions of the Bylaws, and since the CCM has noted that “the provisions of the Constitution and Bylaws...are far from clear on the issue presented” [Opinion 01-2240], is the President of Synod subject to the provisions of Chapter VIII of the Bylaws when the complaints filed against him arise from his actions as President of the Synod.”

Opinion: The President of the Synod is not subject to implementation of Chapter VIII of the Bylaws when complaints are filed against him that pertain to the exercise of his rights, powers, and duties of ecclesiastical or doctrinal supervision (Art. XI B and Bylaw 3.101). See also the Commission’s responses to question 3 of Opinion 02-2309.

The Preamble to Chapter VIII of the Bylaws does provide, however, that “when disputes, disagreements, or offenses arise among members of the body of Christ, it is a matter of grave concern for the whole church (paragraph 1). It encourages that “individuals, congregations, and various entities and agencies within the Synod....proceed with one another with ‘the same attitude that was in Christ Jesus’ (Phil. 2:5).” Bylaw 8.01, by providing that “this procedure is established to resolve, in a God-pleasing manner, disputes that involve as parties, members of the Synod” as well as its entities, includes also the President of the Synod “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.”

Therefore, while the President of the Synod is not subject to implementation of Chapter VIII of the Bylaws when complaints are filed against him that pertain to the exercise of his rights, powers, and duties of ecclesiastical or doctrinal supervision (Art. XI B and Bylaw 3.101), he like every other member of the Synod is subject to implementation of Chapter VIII when other “disputes, disagreements, or offenses arise among members of the body of Christ” (Preamble, paragraph 1). Care should be taken in its administration that the dispute resolution process is not used to harass or hamper anyone in the carrying out of his or her duties.

128. Review of North Dakota District Proposed Bylaw Changes (02-2326)

The Secretary of the North Dakota District in a November 12, 2002 e-mail letter submitted to the Secretary of the Synod the bylaw changes to be proposed to the North Dakota District convention. The proposed changes were forwarded to the Commission for its review.

The Commission offers the following suggestions and recommendations to the North Dakota District:

- The election of a member of the Synod’s Committee for Convention Nominations (Synod Bylaw 3.980) at alternate conventions of the District is not mentioned in any of the District bylaws pertaining to elections (e.g., 2.03). While not necessary, since this is covered by the Bylaws of the Synod, you may wish to include it in your elections information.
- Bylaw 2.02, which designates who the “officers” of the District are, includes positions that are not usually considered officer positions.
- Bylaw 2.88 F (Duties of Executive Director): The Commission questions whether the use of terminology ordinarily reserved for the District President (“oversee” in paragraph a; “supervise” in paragraph c) is the best choice of words.
- In a number of the recommended bylaws, the reference to “pastors” is unclear as to whether parish pastors are being referred to or whether the positions are open to any minister of religion—ordained (e.g. Bylaws 5.01, 6.01, 7.01, 8.01).
- In Bylaw 5.05 1, the proper reference to the Synod is to include the article “The,” i.e., “The Lutheran Church—Missouri Synod.”
- The reference in Bylaw 5.05 3 to “lay ministers” is without definition. This terminology is used variously in the Synod and is unclear without further definition.
- The omission of mention of other church workers in Bylaw 6.05 1 seems to leave an important group out of consideration.

129. Voting Rights of Congregations (03-2327)

A retired pastor of the Synod in a letter dated January 14, 2003, recalled how District convention delegate representation in dual or multiple parish situations was handled during his years of active ministry: “the lay delegates were chosen alternately by one of the congregations or the other.” He asked a series of related questions:

Questions: Is the term “parish” a synonym for congregation, or is a distinction to be made between them? Was [my previous experience] the correct procedure, or should each congregation have had the right to send a delegate? If each congregation holds membership in the Synod, by what right can a congregation be deprived of a separate vote by being the member of a parish with two congregations served by one pastor?

Opinion: In a May 3-4, 1985 ruling (Ag. 1748), the Commission ratified an opinion that had been offered by the Secretary of the Synod regarding the voting rights of congregations at District conventions when several congregations form a dual or multiple parish, namely, “that a multiple parish has only two votes, that of the pastor who serves the parish and a lay delegate chosen by the parish.”

This opinion took into consideration earlier versions of the *Handbook* that had provided a definition of the term “parish,” e.g., “If a pastor serves two or more congregations, these shall be regarded as one parish and shall be entitled to only one lay vote” (1963 *Handbook*, Bylaw 3.09). The term therefore refers to a dual or multiple congregation arrangement served by the same pastor and is not synonymous with “congregation.” As such, two or more congregations served by one pastor share the right of representation by one lay delegate and one pastoral delegate to a District convention.

130. Adjournment

Time having expired, the meeting was adjourned with Scripture reading and prayer.

Raymond L. Hartwig, Secretary

**MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS**

**April 8, 2003
Conference Call**

131. Call to Order

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

132. Responsibility for Publicizing Panel Decisions (03-2346)

The Secretary of the Synod, in carrying out his responsibilities for administering the dispute resolution process, submitted the following question in a March 28, 2003 memorandum:

Question: In a dispute resolution case to decide the suspension of a District President, a case in which the President of the Synod is disqualified and in which a final decision is reached by the appropriate panel, who is responsible for publicizing the decision of the panel as provided by Bylaw 8.09 c 4 d or Bylaw 8.09 e 4? Is this the responsibility of the President of the Synod despite his disqualification, or is this the responsibility of the Vice-President who is asked to assume the role and responsibilities of the President in the case?

Opinion: The duties of the President under Bylaws 8.09 c 4 d and 8.09 e 4 are administrative in nature and not related to his being an involved party. Accordingly, disqualification of the President has no effect on the mandates of Bylaws 8.09 c 4 d and 8.09 e 4.

133. Publicity of Dispute Resolution Panel Decision (03-2347)

In an April 2, 2003 e-mail letter, the President of the Synod submitted the following question to the Commission:

Question: Given the provisions of Bylaw 8.09 c 4 d, may the synodical President publicize as he deems appropriate under the circumstances the final decision of a Dispute Resolution Panel, prior to such decision being appealed by a party to the dispute, without violating the provisions of Bylaw 8.21 e?

Opinion: As administrator of the dispute resolution process under Chapter VIII of the Bylaws, the Secretary of the Synod responded to the same question informally that has now been submitted to the Commission. That response was as follows:

Bylaw 8.09 provides the entire procedure for the panel portion of the dispute resolution process. After a panel has been requested, the process is followed to its conclusion, which conclusion may properly take place at several points in the process: (1) after the dispute resolution panel has issued its decision and no appeal is forthcoming; (2) after a request for reconsideration of a dispute resolution panel has been made but not granted by an appeal panel; or, if a request for reconsideration is granted, (3) after the review panel has issued its decision and no further opportunity for appeal is available.

Bylaw 8.21 e requires that so long as a matter in dispute is 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. Rule of Procedure 26 f specifies that this includes “the reconcilers or panel members, or the Synod.” It is clear that until a matter is finally decided or resolved, there is to be no publicity by anyone who has knowledge. This has been reflected in CCM Opinion 01-2243 and numerous subsequent opinions (01-2251; 02-2259; 02-2260; 02-2261; 02-2266; 02-2284; and 02-2304).

What then of Bylaw 8.09 c 4? It appears to authorize publicity before the entire process has been exhausted. It should be noted, however, that paragraph 4 speaks of the “final decision,” referring to cases in which there is no request for reconsideration. Until the 30 days for such request provided by paragraph d have elapsed, the “decision of the Dispute Resolution Panel” is not yet “final.” Nor is it final if a request for reconsideration is made. This is also clear from paragraph c 4 a, which states that the decision of the panel is binding “subject to request for review,” and paragraph c 4 c, which speaks of the decision being carried out, which is only reasonable after it is truly final. Paragraph c 4 d, therefore, must also be similarly understood. It speaks of publicity by the District or synodical President after a “final decision” has been reached.

Having reviewed the informal response of the Secretary, the Commission adopts that response as its own.

134. Rocky Mountain District Bylaws/Handbook (03-2332)

In a February 5, 2003 e-mailed letter, the Chairman of the Committee on District Bylaws of the Rocky Mountain District requested that the Commission review proposed changes to the District Bylaws prior to submission to the District convention.

After review of the proposed changes, the Commission calls attention to the following:

- Bylaws, Article III, Sec. 3.01, B.5 (p. 11): The first line of the proposed bylaw may benefit from clarification when it reads, “If no District President nominees remain...” It would be likely that “nominees” would remain, but there may be no candidates with the required five nominations to be included as “candidates” in the report to the convention. Replacing “nominees” with “candidates” would be helpful. In addition, the proposed wording is unclear (at the time of floor nominations for District President when the delegate(s) from each congregation nominate one candidate) as to whether each delegate may nominate one candidate or whether only one candidate per congregation is permitted.
- Bylaws, Article III, Sec. 3.02, B.6 (p. 14): The election of Vice-Presidents 3-5 has already taken place in paragraph B.4 and B.5. To now in B.6 speak of a ballot to “elect the Second Vice-President” and another ballot to “elect the Third and Fourth Vice-Presidents” can be misleading. Speaking of “determining” or “deciding” by ballot which of the elected Vice-Presidents will serve in each position would help to avoid confusion.
- Bylaws, Article V, Sec. 5.02, B.6 (p. 26): The proposed change does away with the Synod’s process for electing pastoral delegates to conventions of the Synod (Bylaw 3.05). It is unclear whether provisions exist elsewhere in the District Bylaws for the election of pastoral delegates.
- Handbook Article V, Sec. 11.05 (p. 17): Simply making reference to Bylaw 2.03 in paragraph B would be the more usual manner of referencing bylaws of the Synod, rather than the proposed reference to “Article II, Section A.”

- Handbook Article V, Sec. 11.05 (p. 17): When possible, references to specific Constitution and Bylaw sections of the Synod's *Handbook* in paragraph G would be helpful.
- Handbook Article V, Sec. 11.05 (p. 17): In describing the duties of the Committee on Congregation Constitutions, paragraphs J, K, and L have the committee submitting recommendations to the Board of Directors. According to Synod Bylaw 2.03 b, the committee advises and the District President does the recommending.
- Handbook, Article V, Sec. 11.06 (p. 17): Unless the District wishes to specifically include parish pastors on this committee, the use of "ordained minister" terminology would be more clear and consistent than the term "pastor(s)." In the Synod's *Handbook*, the term "pastor" is reserved for those instances intended to refer to parish pastors.

135. Iowa District West Bylaws (03-2336)

In a February 22, 2003 e-mailed letter, the Secretary of Iowa District West submitted revisions to the *Handbook* of the District and requested the Commission's review before submission to his District's convention.

After review of the proposed changes, the Commission calls attention to the following:

- Bylaw 10.11: The current bylaw states that conferences consist of "all active and retired ordained ministers of the District." Synod Bylaw 5.61 b expects that all ordained ministers on the District rosters will attend official conferences. Since the District's bylaw is already being amended, another amendment is in order to replace "retired" with "inactive," which category includes not only emeritus but also candidate and non-candidate ordained ministers and satisfies the requirements of the Synod's bylaw.
- Bylaw 10.13: Proposed wording includes the category of "retired ordained ministers." According to current usage of terms, a pastor can be "retired" and still accept a call, whereby his status becomes "active." The District may wish to consider using the term "emeritus" as in Synod Bylaw 2.17 if the pastors described in the bylaw are those whom the District wishes to receive the benefits described in this paragraph.

136. Minnesota South District Bylaws (03-2341)

In a February 26, 2003 letter, the President of the Minnesota South District submitted District bylaw changes proposed by the District Board of Directors to the Commission for review and approval.

After review of the proposed changes, the Commission calls attention to the following:

- The heading and wording of proposed Bylaw 15.00 should be improved to better reflect the wording of Synod Constitution Article XII 2 and Bylaw 4.07 b. The primary documents for a District are the Constitution and Bylaws of the Synod. A District may adopt additional bylaws, regulations, and resolutions that it deems necessary or expedient, but these cannot conflict with the Constitution and Bylaws of the Synod. The wording being proposed for the Minnesota South District appears to make the District *Handbook* the primary document by stating that the Synod's Constitution and Bylaws govern in those areas where the District *Handbook* is silent.

137. Eastern District Bylaws (03-2343)

In a March 19, 2003 e-mailed letter, the President of the Eastern District submitted proposed changes to the Bylaws and Regulations of his District, asking for the approval of the Commission in time for submission to the District's June 13 convention.

After review of the proposed changes, the Commission calls attention to the following:

- Article V of the Bylaws names the appointive boards, committees, and representatives of the District. Sections of the "Regulations" detail each of the listed entities, their responsibilities, and how they are appointed—with one exception, "The Roster of Reconcilers." While parenthetical reference is made in Article V to the Bylaws of the Synod, which include information regarding such appointments (Bylaw 8.13 a), no mention is made of these appointments under the duties of the Board of Directors, which duties are otherwise provided in detail. Given the importance of this appointive responsibility of the District board for the Synod's dispute resolution process, consideration should be given to some mention of it in the Regulations of the District.
- Article I, Section 4 of the Regulations (paragraphs 4.03-4.05) requires the recommendation of the District President for the Board to carry out several of its responsibilities. This is contrary to Synod Bylaw 4.91, which provides to District boards of directors sole responsibility for the general management and supervision of the District's business and legal affairs.

138. Review of Michigan District Bylaws/District President Signature Responsibilities (03-2344)

In a letter dated March 21, 2003, the President of the Michigan District submitted a question regarding the interpretation of Article XII 9 d of the Constitution. He also asked the Commission to review changes to his District's Bylaws that will be proposed to its convention.

Upon review of the proposed changes to the Bylaws of the Michigan District, the Commission has no recommendations. Regarding the interpretation of Article XII 9 d, the Commission responds as follows.

Question: According to synodical *Handbook* Article XII 9 d, a District President shall ... "Sign all examination papers and certificates of ordination and, in general, all official papers and documents of their District." How is the "all official papers and documents of their District" to be interpreted? (i.e., a contract for snow removal ... purchase and/or sale of property, office equipment, etc.)

Opinion: This paragraph of Article XII 9, after specifically naming "examination papers and certificates" as requiring District Presidents' signatures, speaks "in general." Thereby, the bylaw does not attempt to itemize those documents that should be signed by District Presidents.

District Presidents are required to assume responsibility for the functions of their office and, in Article XII 9 d, to accept that responsibility by applying their signatures. Documents pertaining to their ecclesiastical supervisory and chief administrative officer responsibilities as delineated in Synod and District Bylaws require their signatures. Lesser documents not included in a general understanding of "official papers and documents" and that do not directly pertain to District Presidents' ecclesiastical and administrative responsibilities do not require their signatures.

139. Minnesota North District Bylaws (03-2345)

The Secretary of the Minnesota North District, with a letter dated March 21, 2003, provided copies of overtures submitted to the District convention that propose revisions to the District Bylaws.

Upon review of the overtures, the Commission recommends that attention be given to the following:

- Under Memorial #1, which advocates changes to District Bylaw 2.36, the proposed wording no longer allows advisory members to submit overtures to District conventions but it continues to grant such privilege to “voting members.” Synod Bylaw 3.19 a 2 is specific regarding which members may submit overtures. It allows only “member congregations” to submit overtures and not individual voting members. This should be clarified in the bylaw change that is being proposed.
- Under Memorial #5, the description of the responsibility of the District Bylaw Committee to interpret the Constitution, Bylaws, and resolutions of the District is incorrect. The opinions of this committee would also be subject to the approval of the Synod’s Commission on Constitutional Matters.

140. Implications of District Membership for Board of Directors Membership (02-2323)

A District President in a December 21, 2002 letter asked a series of questions regarding the consequences of a member of the Board of Directors of the Synod changing District membership to a District in which another member of the Board already resides. After discussion of proposed draft materials, the Commission decided to delay a decision until a new draft can be prepared.

141. Use of Bylaws Chapter VIII to Challenge Board of Regents Decision (03-2324A)

In a February 3, 2003 letter, the member of the Synod who previously submitted Question 03-2324 submitted a subsequent request for clarification.

Question: The member of Synod who previously submitted question 03-2324 indicates that, following the decision of the Board of Regents to dismiss a complaint against a non-commissioned professor, the complainant wishes to invoke Chapter VIII of the Bylaws to address what he describes as a dispute with the Board of Regents as to their action in dismissing the complaint. The member asked whether Chapter VIII of the Bylaws may be used to address such a dispute with the Board of Regents itself.

Opinion: As indicated in the Preamble and Bylaw 8.01, Chapter VIII was established 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 or controlled by the Synod, persons involved in excommunication or lay members of congregations of the Synod holding positions with the Synod itself or with the Districts or other organizations owned and controlled by the Synod, and shall be the exclusive remedy to resolve such disputes.

In other sections of the Constitution and Bylaws, there are specific duties assigned to various individuals or organizations who are directed, authorized, and even mandated to make those decisions. Specific checks and balances are detailed throughout the Constitution and Bylaws with regard to those powers and responsibilities. Disagreement with a decision by a Dispute Resolution Panel under Bylaw 8.09 d, for example, may be appealed only to an Appeal Panel and may not serve as the basis of a Chapter VIII proceeding against the Dispute Resolution Panel or its individual members. Because the decision of the Appeal Panel is expressly declared by Bylaw 8.09 e 1 to be final, disagreement with the panel’s decision would similarly not be subject to a Chapter VIII proceeding. As recognized in Opinion 02-2324, a decision of the Board of Regents, in the circumstances described, are final pursuant to the terms of Bylaw 6.47 f 5. The decision of the Board of Regents is not a dispute to which Chapter VIII of the Bylaws

applies. To rule otherwise would allow any action or any decision of any official or entity of the Synod to be challenged under Chapter VIII. Such was not the intent of Chapter VIII, as described therein.

142. Development and Use of New Confessional Statements (03-2328)

A pastor of the Synod, in a January 17, 2003 letter, addresses a series of questions to the Commission regarding the use of confessional statements in addition to those formally adopted by the Synod. After discussion of draft materials, the Commission agreed to delay action to allow time for further study.

143. Intention of “The Lutheran Understanding of Church Fellowship” (03-2330)

In a January 28, 2003 letter addressed to the secretary of the Commission, a pastor of the Synod asked the opinion of the Commission concerning the Synod’s understanding of the Commission on Theology and Church Relations document, “The Lutheran Understanding of Church Fellowship.”

Question: Does the CTCR document “The Lutheran Understanding of Church Fellowship” which was accepted by convention in 2001 have a bearing on the issue of participation in inter-faith events or worship services? Is it the opinion of the CCM that when the Synod in convention in 2001 affirmed this document, that the Synod understood this to refer not only to inter-Christian interactions but also to inter-faith interactions?

Opinion: The Commission directs the questioner to the very document itself as printed in the 2001 *Convention Workbook*, pp. 375-87, and the Report in the 2001 *Convention Workbook*, pp. 48-51. Regarding interpretation of the content of “The Lutheran Understanding of Church Fellowship” and the response, such questions should be directed to the Commission on Theology and Church Relations.

For application of the 2001 Resolution 3-07A, refer to Opinion 02-2294 (January 20-21, 2003) of the Commission on Constitutional Matters.

144. Adjournment

The meeting was closed with the words of the Benediction spoken by Albert Marcis.

Raymond L. Hartwig, Secretary

**MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS**

**April 29, 2003
Conference Call**

145. Call to Order

Chairman Walter Tesch called the meeting to order. Don Little opened the meeting with the Easter acclamation and a prayer. All members of the Commission participated in the conference call.

146. Recommendations for Further Handbook Revisions by pro tem Commission on Structure (02-2271)

After brief discussion of the following listing of the revised *Handbook* changes that are being recommended to the *pro tem* Commission on Structure, the following resolution was adopted:

Resolved, That the following listing of recommended changes properly reflects the results of the Commission's review of the proposed Revised *Handbook* Report by the *pro tem* Commission on Structure; and be it further

Resolved, That this listing be forwarded to the *pro tem* Commission on Structure for its attention as it completes work on the revised *Handbook*; and be it finally

Resolved, That this submission of recommendations not be regarded as final approval of the proposed revision of the *Handbook* since further discussions may be necessary.

RECOMMENDED CHANGES TO REVISED HANDBOOK

General Recommended Changes

1. Restore bylaw cross-references whenever possible.
2. Insert section headings whenever appropriate.
3. Provide detailed Table of Contents/Index.

Specific Recommended Changes

1. 1.3.2 (b) (7) Change "and" to "or" on line 4, p. 6
2. 1.6.1 Add section heading "Definition" at line 16, p. 7
3. 1.6.1 Line 20, p. 7 to read, "with Scripture and the Lutheran Confessions"
4. 1.6.2 Add section heading "Procedure" at line 7, p. 8
5. 1.7.1 Delete "that" from line 28, p. 10
6. 1.8.4 Line 2, p. 13 to read, "(1) determine general operating policies..."
7. 1.8.4 Line 3, p. 13 to continue, "...and maintain a policy manual."
8. 1.9.1.2 Line 22, p. 15 to read, "procedures in Bylaw 1.5, 'Dissent.'"
9. 1.9.2.1 Delete "(4)" in line 18, p. 16
10. 1.9.2.1 Change "(5)" to "(4)" in line 19, p. 16

11. 1.9.2.1 Add comma before "or" and change "(6)" to "(5)" in line 20, p. 16
12. 1.9.6.1 Change "formal" to "informal" in line 2, p. 18

13. 1.9.6.2 Restore old language from current Bylaw 8.07 b, lines 4-10, p. 18
14. 1.9.6.7 Capitalize “Dispute Resolution Panel” in line 5, p. 19
15. 1.9.8.5 Insert “further” before “formal” in line 38, p. 20
16. 1.9.9.1 Insert “However,” before “when” in line 4, p. 21
17. 1.9.10.4 Change “1.9.10.4” to “1.9.10.3” in line 51, p. 21
18. 1.9.10.4 Change “these Bylaws” to “Bylaw 2.12.4” in line 3, p. 22
19. 1.9.17.2 Change “1.9.10.4” to “1.9.10.3” in line 24, p. 24
20. 1.10.1 Restore old language from current Bylaw 3.69 a, lines 38-39, p. 25
21. 1.10.5 Change “shall” to “may” in line 16, p. 26
22. 1.10.5 (f) Restore old language from current Bylaw 3.69 f, lines 34-36, p. 26
23. 2.2.1 Change “accepted” to “acted upon” in line 44, p. 30
24. 2.2.1 (c) Restore old language from current Bylaw 2.01 b, lines 15-20, p. 31
25. 2.2.2 Repeat paragraph under 2.3 as a new paragraph 2.3.2 at line 9, p. 32
26. 2.3.1 Change “synodically approved” to “approved by the Synod” line 37 p. 31
27. 2.7.2 Insert “colloquy” before “candidates” in line 31, p. 34
28. 2.9.1 Change “according to...” to “this bylaw” in line 20, p. 35
29. 2.9.1 (a) (1) Replace “certified” with “qualified” in line 26, p. 35
30. 2.11.3 Restore old language from current Bylaw 2.41 a in lines 15-17, p. 39
31. 2.11.7 Restore old language from current Bylaw 2.41 e in lines 41-45, p. 39
32. 2.11.8 Restore old language from current Bylaw 2.41 f, lines 47 ff., p. 39-40
33. 2.11.9 Restore old language from current Bylaw 2.41 g in lines 5-10, p. 40
34. 2.12.1 Restore old language from current Bylaw 2.21 in lines 21-33, p. 40
35. 2.12.2.3 Delete “the chairman of” in line 44, p. 41
36. 2.12.2.3 Replace “who...” with “through the President of the Synod,” line 45
37. 2.12.2.3 (c) Restore old language from current Bylaw 2.29 c in lines 24-28, p. 42
38. 2.12.4 Work at better wording in lines 6-9, p. 44
39. 2.12.4 (a) (1) Add “the matter in” after “party to” in line 19, p. 44
40. 2.12.4.1 (a) (b) Restore old wording with bylaw references in lines 41-46, p. 45
41. 3.1.5.2 Insert “and representatives” after “advisory delegates, line 20, p. 50
42. 3.1.5.2 (a) Insert “and representatives” after “advisory delegates, line 25, p. 50
43. 3.1.6 Delete “elected” from line 33, p. 50
44. 3.1.8.2 (b) Restore wording of current Bylaw 3.19 c, lines 3-10, p. 53
45. 3.1.8.3 Restore wording of current Bylaw 3.19 b, lines 28-37, p. 53
46. 3.1.8.4 Delete “a convention manual” line 39, p. 53
47. 3.1.9 Restore wording of current Bylaw 3.19 g, line 17, p. 54
48. 3.1.9 Restore bylaw references, lines 20-22, p. 54
49. 3.1.12 Replace summary bylaw with prior heading, lines 16-17, p. 55
50. 3.2.6 Add wording re BOD 6-year terms of office, line 27, p. 58
51. 3.2.7 (b) Make this paragraph (c), lines 38-39, p. 59
52. 3.2.7 (c) Make this paragraph (b), lines 43-47, p. 59
53. 3.3.1.3 (e) “Corporate” mistakenly omitted, line 39, p. 62
54. 3.3.3 “Customary” mistakenly omitted, line 28, p. 64
55. 3.3.3.1 (b) Restore “local,” line 38, p. 64
56. 3.3.5.1 (d) Delete “its” from line 24, p. 67
57. 3.4.1.3 Substantive change, delete new wording, lines 28-29, p. 70
58. 3.5 Delete “The” in heading, line 36, p. 70
59. 3.6.1 Restore wording and list of current Bylaw 3.190, line 6, p. 71

60. 3.6.1.5 (i) Create new paragraph (j) to keep separate thought, line 29, p. 72
61. 3.6.1.7 Widens requirement; restore old language, lines 1-2, p. 73
62. 3.6.3 Add “producing,” line 41, p. 75 (mistakenly omitted)
63. 3.6.4.3 Use former wording for second sentence, lines 44-47, p. 77
64. 3.6.4.3 Reference should be to Bylaw 3.501, d, line 44, p. 77
65. 3.6.4.3 3 Reference should be to Bylaw 3.501, c, line 3, p. 78
66. 3.6.4.4 Add “of Lutheran Church Extension Fund” after Directors, line 17, p. 78
67. 3.6.5.2.2 (a) Delete “Board of Directors of the Synod, as well as the,” line 31, p. 80
68. 3.6.6 Restore former wording, lines 32-33, p. 81
69. 3.6.6.1 (c) Move (c) to become (a) of 3.6.6.2, lines 13-16, p. 83
70. 3.6.6.2 Change (a), (b), and (c) to (b), (c), and (d), lines 27-36, p. 83
71. 3.6.7.1 Restore “Thus” after “System.,” line 49, p. 83
72. 3.6.7.1.1 “the” should be “this” after “System,” line 5, p. 84 (typo)
73. 3.7.1.3 (m) Add missing phrase after “vote,” line 11, p. 87
74. 3.7.1.4.1.1 Restore as was done with 3.7.1.4.2.1, lines 39-40, p. 87
75. 3.7.1.4.1.1 Create a standards paragraph, as in 3.7.1.4.2.2, lines 40-44, p. 87
76. 3.7.1.4.4 Restore former wording, lines 40-41, p. 91
77. 3.7.1.4.5.3 Restore detail and cross references, lines 31-35, p. 92
78. 3.7.1.4.5.3 (e) Restore phrase with cross-references, line 8, p. 94
79. 3.7.1.4.5.3 (g) Restore former wording with cross-reference, line 20, p. 94
80. 3.7.1.4.5.3 (h) Restore former wording with cross-reference, line 23, p. 94
81. 3.7.1.5.1 Move (a) and (b) to end of 3.7.1.5.2, lines 1-4, p. 95
82. 3.7.1.5.1 Restore former wording, lines 47-50, p. 94
83. 3.7.1.5.2 Restore former wording, “designated,” line 18, p. 95
84. 3.7.1.5.3 Change (a) and (b) to 5. and 6., lines 39-44, p. 95
85. 3.7.1.5.4 Restore former wording, lines 47-48, p. 95
86. 3.7.1.6.1 Include cross reference, line 33, p. 99
87. 3.7.1.7.2 (e) (1) Insert omitted “either” after “individual,” line 20, p. 104
88. 3.7.1.7.2 (e) (2) Insert omitted “status” after “appointment,” line 35, p. 104
89. 3.7.1.7.5 Restore former wording, lines 37-38, p. 106
90. 3.7.1.7.5 (b) Restore cross reference to 3.7.1.7.5 1-6, line 7, p. 107
91. 3.7.1.7.6 Insert “Positions of” (omitted), line 9, p. 107
92. 3.7.1.7.6 (a) Insert “advance notice” (omitted), line 29, p. 107
93. 3.7.1.7.8 Restore former wording, lines 6-8, p. 108
94. 3.7.1.7.8 (a) Restore former wording and cross reference, lines 10-11, p. 108
95. 3.7.1.7.8 (g) Restore former wording and cross reference, lines 8-12, p. 110
96. 3.7.1.7.8 (h) Restore former wording and cross reference, lines 16-29, p. 110
97. 3.7.1.7.8 (j) Restore former wording and cross reference, lines 32-34, p. 110
98. 3.7.1.7.9 Reduce new verbiage, lines 36-41, p. 110
99. 3.7.1.7.9 (i) Restore former wording and cross reference, lines 6-8, p. 112
100. 3.7.2 Replace “advocate” with better word: “enable,” line 47, p. 112
101. 3.7.2.3 Restore former paragraph, lines 19-31, p. 113
102. 3.7.3 Restore former wording, lines 39-40, p. 113
103. 3.7.3.2.1 Restore former language and wording, lines 23-26, p. 114
104. 3.7.3.2.3 Add “of the Synod” after “periodicals,” line 39, p. 114
105. 3.7.3.2.3 Switch paragraphs (a) and (c), lines 42ff and 8f, pp. 114-115

106. 3.7.5.2 (h) Restore cross-reference to RSO chapter, line 20, p. 117
107. 3.7.6.2 (b) Should be a separate main bylaw, lines 6-8, p. 11
108. 3.8.1 Rewrite to provide a better description, lines 3-5, p. 119
109. 3.8.1.1 1 Move “appointed...Synod” after “once,” lines 8-9, p. 119
110. 3.8.1.2 Delete words “and ensure...agencies.,” lines 35-36, p. 119
111. 3.8.2 See former Bylaw 10.01 for wording, lines 23-27, p. 120
112. 3.8.3.1 (c) Replace “teachers” with “laypersons,” line 14, p. 121
113. 3.8.3.2 Summary could be more descriptive, lines 18-19, p. 121
114. 3.8.4 Use “exists to” language as per usual, line 49, p. 121
115. 3.8.5.5 Restore section heading here and as helpful, line 22, p. 124
116. 3.8.6 Use “exists to” language as per usual, line 18, p. 126
117. 3.8.6.2 Delete “to develop...Lutheran worship.,” lines 35-38, p. 126
118. 3.8.6.2 (1-2) Move paragraphs to paragraph (c), lines 8-17, p. 127
119. 3.9.1 Move to become function statement 3.9.1.2, lines 24-30, p. 127
120. 3.9.1.2 Move to become purpose statement 3.9.1, lines 36-39, p. 127
121. 3.9.1 Restore “regarding” in place of “pertaining to” line 26, p. 127
122. 3.9.1.2 Replace “shall...opportunity” with “exists to enable,” line 36, p. 127
123. 3.11 Delete “Nomination and Election of” from subtitle, line 28, p. 128
124. 3.11.1.2 Change “manual” to “*Workbook*,” line 32, p. 129
125. 3.11.1.3 Place parentheses around “s” of “nominee(s),” line 8, p. 130
126. 3.11.1.3 Restore cross-reference, line 11, p. 130
127. 3.11.2 Delete “Nomination...the” from subtitle, line 4, p. 131
128. 3.11.2 (b) Restore cross-reference, line 18, p. 131
129. 3.11.3 Change to “Committee for Convention Nominations,” line 22, p. 131
130. 3.11.3.1 Capitalize “D” in districts, line 30, p. 131
131. 3.11.3.2 Change right column reference to 3.980, a-b, line 44, p. 131
132. 3.11.3.5 Include Bylaw 3.980 c in reference column, line 43, p. 132
133. 3.11.3.7 (c) Delete “in writing” (substantive change), line 48, p. 133
134. 3.11.3.7 (c) Restore cross-reference, line 50, p. 133
135. 3.11.3.9 Insert section heading, “Committee on Elections,” line 17, p. 134
136. 4.1.2 (b) (4) Restore old language, lines 1-2, p. 137
137. 4.1.6 Restore former language and cross references, lines 17-18, p. 138
138. 4.2 Use same wording as for Synod conventions, lines 36-38, p. 138
139. 4.4.1 (a) (b) Combine paragraphs as in original, lines 13-16, p. 140
140. 4.4.1 (c) Becomes paragraph (b), line 17, p. 140
141. 4.4.2 (a) Restore cross-reference, line 27, p. 140
142. 4.4.2 (a-f) Restore paragraph headings, lines 25ff, pp. 140-141
143. 4.5 (c) Restore cross-reference and wording, line 23, p. 143
144. 4.7.2 (a) (2) Restore former wording, line 28, p. 144
145. 4.7.3 1 Delete “and,” line 31, p. 144
146. 4.7.3 2 Restore “however” in place of “In this case,” line 34, p. 144
147. 4.8 (a) Restore former words, line 45, p. 144
148. 4.9 Add “also may” after “meetings,” line 7, p. 146
149. 4.9 (c) Restore “intersynodical,” line 21, p. 146
150. 4.9 (c) Restore final sentence of Bylaw 5.69, “They are not...,” line 22, p. 146
151. 5.2.2 (e) Delete “and shall...Circuit.”—no longer in *Handbook*, lines 45ff, p. 148

- 152. 5.2.2 (g) Restore cross-reference, line 7, p. 149
- 153. 5.2.2 (j) Change right column reference to Bylaw 5.15 b, line 12, p. 149
- 154. 5.2.2.1 Change right column reference to Bylaw 5.13 b, line 19, p. 149
- 155. 5.2.2.1 (b) Delete—no longer in *Handbook*, lines 30-31, p. 149
- 156. 5.2.2.1 (c-d) Change to 5.2.2.1 (b) and (c), lines 32 and 36, p. 149
- 157. 5.3 Should read “commissioned ministers,” line 14, p. 150
- 158. 5.3.1 (b) Right Column should read Bylaw 5.03 b, line 4, p. 151
- 159. 6.1.1 Restore “recognized as,” line 16, p. 152
- 160. 6.1.1 7 Move to become #6 under 6.1.2.1, lines 40-42, p. 152

- 161. 6.1.2 Restore “of The Lutheran...Synod.,” line 1, p. 153
- 162. 6.1.2.1 4 Add right column reference to see also 1.6.1 (e)

147. Missouri District Proposed Bylaw Changes (03-2348)

The President of the Missouri District with an April 10, 2003 memorandum submitted a series of proposed amendments to his District’s Bylaws that are being submitted to the District convention. After review of the amendments, the Commission had no recommendations.

148. Reconsideration of Opinion 03-2347 re Publicity (03-2350)

In an April 23, 2003 e-mailed memorandum, the President of the Synod requested the Commission’s reconsideration of its Opinion 03-2347. After discussion, action was deferred to the next meeting of the Commission.

149. Implications of District Membership for Board of Directors Membership (02-2323)

A District President in a December 21, 2002 letter asked a series of questions regarding the consequences of a member of the Board of Directors changing District membership to a District in which another member of the Board already resides.

Question 1: If there are two current members serving on the Board [of Directors of the Synod], each elected from two separate Districts, and if one of these two individuals transfers to the District in which the other individual holds membership and, therefore, District representation, would this action in any way disqualify either persons from continuing to serve on the Board, since they would both hold membership in the same District as a result of the transfer?

Opinion: Bylaw 3.181 a, in addressing membership on the Synod’s Board of Directors, states: “The Board of Directors shall consist of...four ordained ministers, one commissioned minister, and eight lay persons. No more than one of these 13 may be elected from one District.”

First, there must be an understanding of synodical membership, which consists of congregations and of individual members, that is, ordained or commissioned ministers (Constitution, Article V). The Board of Directors consists of both individual members of the Synod and laypersons, all of whom are to be members of voting congregations (Article X B 1).

Bylaw 2.41 indicates the District through which individual membership is held. An individual member who is serving a congregation in a given District or who is serving a District must hold synodical membership through that District (paragraph a), while an emeritus member has a choice of District membership, as paragraph e states:

An emeritus member not regularly serving any congregation or other agency shall continue to hold membership through the District through which membership was held at the inception of the emeritus status unless a transfer is approved by both the President of that District and the President of the District to which membership would be transferred.

In determining the District membership of individual members of the Synod, Bylaw 2.41 j applies in every case:

The District through which an individual holds membership and the District through which a member is ecclesiastically supervised, will not be determined in any case on the basis of District membership of the congregation to which the individual belongs.

On the other hand, laypersons are not eligible to be members of the Synod. They are eligible to be members of the Board of Directors by being members of voting congregations of the Synod. Therefore, a layperson is “from” that “District” of which his or her voting congregation is a member.

Therefore, the bylaw phrase “from one District” is applied according to the District membership of the individual member of the Synod and the District membership of the congregation to which the layperson belongs. An individual member of the Synod and a layperson being members of the same congregation is in itself of no consequence. The decisive qualification is the District membership of the individual member of the Synod and the District membership of the congregation of which the layperson is a member.

Further, the Commission has previously stated in Opinion 98-2127:

The Commission would clarify that while two current members of the Board of Directors of the Synod may reside in the same state, the decisive qualification for board membership on the part of church workers is not the place of residence but District membership, as stated in Bylaw 3.189 of the 1998 *Handbook* [Bylaw 3.181 of the 2001 *Handbook*]...So long as District membership is held in different Districts of the Synod, residence in the same state is of no consequence. A board member may be an emeritus church worker who has upon retiring changed his place of residency. His synodical membership, however, ordinarily remains in the District where he last served, in accord with Bylaw 2.41 e.

It is therefore conceivable that current members of the Board of Directors can reside in the same state, be members of the same member congregation of the Synod, and yet not be “from one District”(Bylaw 3.181 a).

While, however, two memberships as defined above may in fact be held in the same one District, there may not be two persons from that same District elected to the Board. Bylaw 3.181 states: “No more than one of these 13 may be elected from one District.” When persons are elected from two separate Districts and one transfers to a District that already has a person from that District elected to the Board of Directors, that does not disqualify either person from serving on the Board and finishing his or her term of office. The decisive qualification is the status of membership at the time of the election.

Question 2: What is the distinction between 3.181 a (“no more than one of these 13 may be elected from one District”) and 3.407 d (No more than one of these seven members elected by the Synod in convention can be from the same District of the LCMS)?

Opinion: Bylaw 3.181 relates only to the Board of Directors of the Synod whereas Bylaw 3.407 relates to the Board for Higher Education.

Question 3: In the case of 3.181 a, members are elected for a six (6) year term. If under the above circumstance, one current member's term ends in 2004, while the other member elected from a separate District has a term which does not expire in 2004, (but this person transfers to the other person's District)—at the 2004 convention, which District may not have any other person nominated or elected to this Board—the District from which this transferred member was originally elected, or the District in which this transferred person would currently hold membership?

Opinion: In answer to the question posed, it is the status of District membership at the time of election that is one of the determining factors. If a member midterm transfers District membership to a District from which another Board member has already been elected and is serving, it is when the term ends/timing of the election that is a determining factor.

Assuming that one current member of the Board of Directors who was elected from a separate District and whose term ends in 2007 transfers District membership midterm to another District which already has a person elected from that District to the Board of Directors and whose term ends in 2004, the following is the application of the bylaws: A person from the District of the person whose term ends in 2004 may be nominated and elected from that given District to the Board of Directors since “no more than one of these” was “elected from one District” (Bylaw 3.181 a). The person whose term ends in 2007 (assuming that the previous person was elected in 2004) may not be nominated and elected from that same District in 2007 since “more than one” member would have been “elected from one District” (Bylaw 3.181 a).

Assuming that one current member of the Board of Directors who was elected from a separate District as an individual member of the Synod and whose term ends in 2007 moved midterm to a another state but did not transfer District membership and perhaps even joined the same congregation of the District which already has a person elected from that District to the Board of Directors and whose term ends in 2004, the following is the application of the bylaws: A person from the District of the person whose term ends in 2004 may be nominated and elected from that given District to the Board of Directors since “no more than one of these” was “elected from one District” (Bylaw 3.181 a). The person whose term ends in 2007 may be nominated and elected from that District where membership is still held in 2007 since “no more than one of these” was “elected from one District” (Bylaw 3.181 a).

150. Additional Confessional Statements (03-2328)

In a letter addressed to the Secretary of the Commission dated January 17, 2003, an ordained minister of The Lutheran Church—Missouri Synod asked the following series of questions:

1. Do LCMS pastors or congregations violate the conditions of membership in the Synod if they adopt a “confessional statement” or invite LCMS members to join them in a common confession of this statement?
2. If they practice church fellowship only with those who subscribe to that “confessional statement,” are they practicing selective fellowship?
3. Would the above action and practice in a sense be a “church within a church—a synod within the Synod,” and would they be wrongfully “disfellowshipping” those members of the Synod who accept 2001 convention Resolution 3-07A while rejecting the “confessional statement” of this group?

4. If such a new “confessional statement” is permitted in the LCMS to define a particular group with whom they will fellowship or refuse to fellowship, have they formed a synod within the Synod?
5. If such a group with a confession that binds them to some and excludes others is permitted in the Synod, how will Synod members and congregations be informed whether they want to be in fellowship with this group or not? How will LCMS members know that they have been “disfellowshipped” by other members who have formed a confessional group of their own? If the Synod allows this group to organize its own synod or fellowship group, how many more can the Synod allow to become organized?
6. If a congregation adopts the “confessional statement” in question, which excludes LCMS members from their fellowship, is this in violation of the LCMS Constitution and Bylaws and 2001 Resolution 3-07A?

Opinion: Questions 2 through 4 should be referred to the Commission on Theology and Church Relations. The Commission on Constitutional Matters is not responsible for interpreting the referred-to “confessional statement” or for judging its theological content and implications. The following opinion is an answer to the concerns raised especially in questions 1, 5, and 6 regarding the use of confessional statements in addition to those formally adopted by the Synod and as a condition of membership or fellowship in the Synod.

The conditions of membership in the Synod are contained in Article VI of the Constitution. Article VI requires acceptance of the confessional basis of Article II of the Constitution. Bylaw 1.09 describes the authority of the Synod, retained to its corporate self, to adopt doctrinal resolutions and statements that seek to clarify the Synod’s corporate confession and understanding of doctrinal issues. Dissent from those doctrinal resolutions and statements is governed by Bylaw 2.39 c.

The question is unclear as to whether the “confessional statement” proposed to be adopted by a member is consistent with a doctrinal position of the Synod or is a doctrinal position that has not been addressed by the Synod as a whole. If the “confessional statement” which is proposed were consistent with a doctrinal position of the Synod, there would be no reason for its separate adoption by the individual member or congregation. If the “confessional statement” appears to be contrary to a doctrinal position of the Synod, the action of the member, whether individual or congregation, is governed by Bylaw 2.39 c. If the “confessional statement” is intended to address an issue that has not yet been addressed by the adoption of a doctrinal resolution or a statement on part of the Synod, the processes provided in the Constitution and Bylaws and particularly Bylaw 1.09 govern the action.

Subscribing to or requiring a “confessional statement” in place of or in addition to the confessional position of the Synod as set forth in Article II of its Constitution as a condition for fellowship with one another in the Synod is a violation of the covenant relationship in the Synod (Article VI 1; Bylaw 1.03). Members of the Synod are expected to subscribe only to the Holy Scriptures and the Lutheran Confessions.

The Synod requires that its member congregations accept the Synod’s confessional standard. At the same time the congregation’s own standard must not go beyond the Synod’s confessional standard. The best procedure would be to adapt Article II of the Synod’s own Constitution to the congregation’s constitution (CCM Opinion 98-2135, Review of “Guidelines for Constitution and Bylaws of a Lutheran Congregation”).

Requiring a doctrinal statement, doctrinal formulation, or statement of belief in place of or in addition to the synodically adopted (according to the Synod's established procedures) doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions (Bylaws 1.09 and 2.39) as a condition for fellowship with one another is also a violation of the covenant relationship in the Synod and destroys the "walking together" as a Synod. Divergent confessional or doctrinal resolutions and statements cannot coexist in the Synod without serious disturbance of the members. "Refusal to comply with these provisions as well as active promotion of non-compliance constitute divisive and unbrotherly conduct which destroys the very concept of the Synod as 'a walking together'"(CCM Goetjen Opinion, Minutes #554, June 12, 1967).

When congregations and ordained and commissioned ministers join the Synod, they voluntarily enter a covenant relationship with all other members. They agree to the reason for forming a synodical union, a "walking together" to prevent schism according to the example of the apostolic church, Acts 15: 1-31 (Constitution Preamble, "Reason for the Forming of a Synodical Union"). They agree together in their scriptural and confessional subscription (Article II; Bylaw 1.03), which members accept without reservation and in the carrying out of the objectives of the Synod (Article III).

The first object of the Synod under Scripture and the Lutheran Confessions is to "conserve and promote the unity of the true faith (Eph. 4: 3-6; 1 Cor. 1:10)...and provide a united defense against schism, sectarianism (Rom. 16:17), and heresy"(Article III 1).

Committed to a common confession, member congregations voluntarily "join with one another in the Synod to support one another and to work together in carrying out their commonly adopted objectives" (Bylaw 1.01). In joining the Synod,

.... members agree to uphold the confessional position of the Synod (Art. II) and to assist in carrying out the objectives of the Synod (Art. III), which are objectives of the members themselves. Thus, while congregations of the Synod are self-governing (Art. VII), they, and also 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 and which the congregations alone have the authority to adopt or amend through conventions. (Bylaw 1.05 d)

As such,

The Synod (emphasis added), in seeking to clarify its witness or to settle doctrinal controversy, so that all who seek to participate in the relationships that exist within and through the Synod may benefit and may act to benefit others, shall have the right to adopt doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions. (Bylaw 1.09.a)

Since it is the duty of every member to "diligently and earnestly (emphasis added) promote the purposes of the Synod by word and deed" (Bylaw 2.35), and it is understood 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 a), the "members of the Synod are expected as part of the life together within the synodical fellowship to honor and to uphold the resolutions of the Synod" (Bylaw 2.39 c). This includes honoring and upholding by the mercies of God those resolutions of the Synod that encourage and allow for Christian liberty and pastoral and congregational freedom (e.g., 1969 Resolution 2-17 on women's suffrage [Cf.. CCM Opinion January 23, 1970]; 2001 Resolution 3-07A, "To Commend 'The Lutheran Understanding of Church Fellowship' and CTCR Report on the Synodical Discussions" – V. "Response to Specific Concerns, B. Cases of Discretion").

In answering the questions asked, the Commission also calls attention to Article VII of the Constitution:

In its relation to its members the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the individual congregation's right of self-government it is but an advisory body. Accordingly, no resolution of the Synod imposing anything upon the individual congregation is of binding force if it is not in accordance with the Word of God or if it appears to be inexpedient as far as the condition of a congregation is concerned.

As a part of life together in the Synod, members have the responsibility to continually examine and reexamine their confession (symbols, doctrinal statements, and resolutions) to determine if they are faithful to Holy Scriptures. Members have a never-ending task of testing everything that the Synod believes, teaches, and practices to see if they are in accordance with the Word of God. If there are issues that need to be readdressed or issues that are considered by the members of the Synod that have not yet been addressed, any action is to be governed by the procedures set forth in the Bylaws, particularly Bylaws 1.09 and 2.39.

An October 16, 1969 opinion of the Commission On Constitutional Matters, "An Opinion Regarding Dissenting Groups and Activities Within the Synod," which addresses in general a related question, also importantly includes:

Christians as well as non-Christians expect differences of opinion and judgment to arise when people walk together. The Synod has provided for forums in which such differences can be discussed and evaluated beyond the confines of the local congregation. The pastors and teachers conferences; the circuit meetings; the synodical and District board, commission, and committee meetings; the doctrinal supervision and appeals procedures; and above all the conventions of the Districts and of the Synod provide the proper channels through which the issues of opinion and judgment are to be discussed and decided. In the absence of a clear word of God issues must be decided by the majority principle, applied in Christian love and with Christian restraint (Article VIII, C). When the majority will has been determined, it must be respected. Otherwise life together (synod) becomes all but impossible. Discussion may indeed continue; but it needs to be carried on with full respect for the majority will and within the forums established by the Synod for the preservation of the synodical unity. If additional channels for discussion are needed the Synod can provide for the same in its Bylaws through appropriate convention action....

In this opinion the Commission is not attempting to limit the right of individuals to speak their own minds. Before and after the passage or rejection of synodical resolutions individuals must be free to express their concerns, especially to their peers. Frank and open discussion, carried on in a spirit of Christian love and forbearance, must be part of our life together in the Synod. It can be proper and salutary. However, in this opinion the Commission is addressing itself to the organizing of groups, to the calling of meetings, secret or open, to attempted manipulation of existing groups, to circularizing activities, and to a wide scale of joint actions, all of which by their very nature tend to polarize or fragment the constituency of the Synod, and thus have the effect of disrupting the synodical unity.

In Christian love, members who have joined together voluntarily also have agreed to retain "the right of brotherly dissent" and to respect the conscience of the dissenter when resolutions are of a doctrinal nature (Bylaw 2.39 c). The members have agreed together that the expression of dissent follows these

synodically established procedures: (1) Express the dissent within the fellowship of peers; (2) Then, bring the dissent to the attention of the Commission on Theology and Church Relations; (3) Following these first two steps, dissent may find expression as an overture to the convention for revision or rescission (Bylaw 2.39 c).

Thus, those who have joined the Synod voluntarily agree to the basis of the fellowship, the common commitment and “walking together” as well as the synodically established procedure for the Synod to express its fellowship and unity with one another, to express its common confession, and to clarify its common witness or to settle doctrinal controversy. Any member who disregards the above agreement, including the synodically established procedure for the expression of dissent, and seeks to establish, teach, practice and promote a “confessional statement” or statement of belief within the fellowship that has not been adopted by the Synod itself, violates the very purpose, fellowship, and unity of the Synod, is not acting in accordance with the Synod’s Constitution and Bylaws, is guilty of “offensive conduct” (Article XIII) and is subject to the disciplinary procedures specified in the Constitution and Bylaws.

Among the resolutions that the members of the Synod are to honor and uphold is Resolution 2-21 of the 1971 synodical convention (1971 *Proceedings*, pp. 118–119), which states in its Preamble:

The Synod, therefore, holds that every member, by virtue of his agreement when he *voluntarily* joined the Synod and *freely* placed himself under the provisions of the Synod’s Constitution and Bylaws, is bound by the Word of God expressed in the Synod’s resolutions until it can be demonstrated that a resolution is *in fact* “not in accordance with the Word of God.” Otherwise the Synod holds that its resolutions are to be considered “of binding force if they are in accordance with the Word of God” (Bylaw 1.09 b), and the Synod permits no member to teach or practice in violation of a resolution simply on the grounds that he does not agree with it or that it is in conflict with his private persuasion.

The object of the Synod, as stated in Article III, 1, of the Constitution, is (1) to conserve and promote a unity in which all are “united in the same mind and same judgment” (1 Cor. 1:10), and (2) to avoid schism caused by contrary doctrine (Rom. 16:17). This purpose of the Synod is defeated when individuals are permitted to teach in accordance with their private views, for then there can be no such thing as a *synodical* position, and a meaningful corporate confessional commitment is impossible. Formal commitment of the Synod to a confessional base is pointless unless the Synod has the right *as a synod* to apply its confessional base definitively to current issues and thus conserve and promote unity and resist an individualism which breeds schism....

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 to 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.

Note: The complete text of the October 16, 1969 opinion of the Commission on Constitutional Matters, “An Opinion Regarding Dissenting Groups and Activities Within the Synod,” follows:

AN OPINION REGARDING DISSENTING GROUPS
AND ACTIVITIES WITHIN THE SYNOD

From several quarters the Commission on Constitutional Matters has received inquiries which may be summarized in the following constitutional questions:

Is it permissible under the Constitution of the Synod, without the consent of the Synod, to call into being organizations whose purposes are to express dissent to the resolutions of the Synod or whose purposes might ostensibly be in keeping with the purposes and functions of the Synod but might in reality arrogate responsibilities which the Synod has reserved to itself? By the same token, is it permissible for existing organizations to engage in such activities?

The Commission on Constitutional Matters holds that such actions subvert the Constitution of the Synod.

The very nature and purpose of a synodical fellowship need to be restated once again. A synod is a "walking together." The choice of the word "synod," derived from the Greek, is significant because it emphasizes the idea of unity. For good reason our church body has chosen for itself the name: "The Lutheran Church—Missouri Synod." We are congregations, pastors, and teachers who have decided to join hands and to walk together.

The Preamble of the Constitution has the sub-heading: "Reason for the Forming of a Synodical Union." Union was the major concern in effecting the organization of the Synod. The concepts of fellowship, togetherness, brotherhood, and "walking together" express the basic purpose of the Synod's existence.

The reasons given in the Preamble for forming the union are "1. The example of the apostolic church, Acts:15: 1-31," and "2. Our Lord's will that the diversities of gifts should be for the common profit, 1 Cor. 12:4-31." Once again the emphasis falls upon the idea of unity.

In Article III, Objects, the fundamental thrust of the Synod is not only clearly stated but is given preeminence. The first purpose of the Synod is listed as: "The conservation and promotion of the unity of the true faith (Eph. 4:3-6; 1 Cor. 1: 10) and a united defense against schism and sectarianism (Rom. 16:17)." The Scripture references include the admonitions to preserve the unity of the Spirit in the bond of peace, to avoid all divisions, and to beware of division makers.

Objects 2, 3, 4, 5, and 6 continue with this theme. All of these imply the quest for oneness, its preservation and extension.

Objects 7 and 8 need special emphasis in view of the questions which have been raised regarding the formation and continuation of groups which attempt to carry out the purposes which the Synod reserves for itself:

7. The supervision of the ministers and teachers of Synod with regard to the performance of their official duties;

8. The protection of pastors, teachers, and congregations in the performance of their duties and the maintenance of their rights.

The Synod was organized and is maintained to carry out these objects. The congregations, pastors, and teachers who by their own free decision have joined the Synod have done so with the determination that the important functions described in Article III (and we would stress especially Objects 1, 7, and 8 in view of the questions which have been raised) should be carried out by the Synod. Any assumption of these responsibilities by secret or open, voluntary or auxiliary, new or established groups is disruptive of the synodical purpose and cannot be tolerated.

Christians as well as non-Christians expect differences of opinion and judgment to arise when people walk together. The Synod has provided for forums in which such differences can be discussed and evaluated beyond the confines of the local congregation. The pastors and teachers conferences; the circuit meetings; the synodical and District board, commission, and committee meetings; the doctrinal supervision and appeals procedures; and above all the conventions of the Districts and of the Synod provide the proper channels through which the issues of opinion and judgment are to be discussed and decided. In the absence of a clear word of God issues must be decided by the majority principle, applied in Christian love and with Christian restraint (Article VIII C). When the majority will has been determined, it must be respected. Otherwise life together (synod) becomes all but impossible. Discussion may indeed continue; but it needs to be carried on with full respect for the majority will and within the forums established by the Synod for the preservation of the synodical unity. If additional channels for discussion are needed the Synod can provide for the same in its Bylaws through appropriate convention action.

It is incongruous for separate groups to organize for the purpose of policing the members of the Synod; it is equally incongruous for groups to organize for the purpose of either shaping or nullifying a decision in an area of concern in which the Synod has reserved to itself the right of making decisions. Where the Synod has not reserved this right to itself (e.g., the decision to establish orphanages, high schools, old folks homes, hospitals), congregations and individuals have the right to effect an organization so long as its objectives and operations do not interfere with the purposes and functions of the Synod. However, where the Synod has reserved this right to itself (e.g., the administration of its colleges and seminaries; the supervision of doctrine; the declaration of fellowship with other church bodies), congregations and individuals have no right under the Constitution of the Synod without the express approval of the Synod to effect organizations to achieve purposes for which the Synod itself exists or to carry on activities which rightfully belong to the duly elected or appointed officials of the Synod. Under these circumstances such organizations become divisive and schismatic and therefore subversive of the very purposes of the Synod.

In this opinion the Commission is not attempting to limit the right of individuals to speak their own minds. Before and after the passage or rejection of synodical resolutions individuals must be free to express their concerns, especially to their peers. Frank and open discussion, carried on in a spirit of Christian love and forbearance, must be part of our life together in the Synod. It can be proper and salutary. However, in this opinion the Commission is addressing itself to the organizing of groups, to the calling of meetings, secret or open, to attempted manipulation of existing groups, to circularizing activities, and to a wide scale of joint actions, all of which by their very nature tend to polarize or fragment the constituency of the Synod, and thus have the effect of disrupting the synodical unity.

All members of the Synod and of its congregations are to beware of the danger of groups and activities which divide and splinter the Synod. Synodical and District officers and board and commission members have a special responsibility to identify divisive and subversive movements and to avoid them. By their example and advice they are to conserve and promote the unity of the true faith and the oneness of the Synod.

While the above opinion has been prompted by a specific situation, it holds generally and addresses itself to a problem which has troubled the Synod for some time. We are living in an age in which a great number of institutions are under attack and in which lack of confidence is rampant, an age of the conspiracy syndrome and the power syndrome, after which "the Gentiles" seek. It should not be so among us. We need to remember that we are not two or three or more synods; we are one synod, pledged to share the journey. It is within the context of the Synod—the forums, channels, and procedures which the Synod itself establishes—that differing viewpoints need to be discussed and an issue finally decided. Continuing dialog beyond the point of decision must also be carried on within the same synodically agreed upon framework and in deference to the majority will. We have committed ourselves not to that which divides but to that which unites. We are one synod.

151. Restricted Status (03-2331)

A member of the Synod, in a January 27, 2003 letter, asked a series of questions regarding an individual's placement and retention on restricted status under certain conditions.

Question 1: If a member of Synod is not notified "in writing as to the specific reasons for having been placed on restricted status" is the member actually on restricted status?

Opinion: Yes, placement on restricted status is an initial action taken by a District President for reasons given in Bylaw 2.23 a. The District President is then required to carry out the provisions of Bylaw 2.23 c, including notification of the individual who has been restricted "in writing as to the specific reasons for having been placed on restricted status." If the District President has not fulfilled his responsibility in that regard, the member has the right under Bylaw 2.23 d to challenge the placement on restriction or the continuance of such restricted status by filing a Petition for Removal of Restricted Status with the Council of Presidents.

Question 2: If a member of Synod is not notified "in writing as to the reasons for such continuance of restricted status" is the restricted status removed by default after the year is completed?

Opinion: Bylaw 2.23 c allows a District President to extend the restricted status beyond one year by annually notifying the member in writing as to the reasons for such continuance of restricted status. If the notice is inadequate or the member disagrees with the reasons asserted, again, the individual has the remedy provided under Bylaw 2.23 d, to file a Petition for Removal of Restricted Status with the Council of Presidents.

Question 3: If a member of Synod is not notified "in writing as to the specific reasons for having been placed on restricted status" how is the member able to know what he must do to satisfactorily resolve the issues of concern (i.e., counseling, medical treatment, doctrinal studies)?

Opinion: Bylaw 2.23 e requires that, “while a member is on restricted status, the District President shall minister to that member either directly or through others, concern himself with the spiritual well being of that member, and continue efforts to resolve those matters which led to the imposition of restricted status.” If a member believes that the District President is not fulfilling his responsibilities in this regard, the individual has the rights provided by Bylaw 2.23 d as discussed above.

Question 4: If a member of Synod is not notified “in writing as to the specific reasons for having been placed on restricted status” is it proper for [the] District President to identify the member’s status as restricted?

Opinion: A member’s restricted status continues until the matter is satisfactorily resolved or until a District President chooses not to extend the restricted status beyond one year. In the alternative, restricted status may be terminated by action of the Council of Presidents under Bylaw 2.23 d.

Question 5: If a member of Synod is not notified “in writing as to the specific reasons for having been placed on restricted status” how is the member able to appeal this “undocumented restriction” according to the provisions of Synod Bylaws 2.23 d and 2.29?

Opinion: If an individual is listed as being on restricted status and feels that he has not been appropriately notified in writing as to the specific reasons for having been placed on such status, presumably the Petition for Removal of Restricted Status filed by the affected member under Bylaw 2.23 d would recite, as at least one of the reasons for the petition, the fact that inadequate notice or explanation in writing has been provided for the imposition of such restricted status.

Question 6: If a member of Synod has been put on “restricted status” whether properly or improperly, does he have to apply for reinstatement or does the proper authority remove the restricted status?

Opinion: Bylaw 2.23 c provides that restricted status continues for a period of one year or a lesser period if the matter is satisfactorily resolved. In order for the period to extend past one year, the District President must notify the member in writing as to the reasons for continuance of restricted status. If a District President has not chosen to continue restricted status following the expiration of one year, restricted status would terminate on the anniversary date of the initial restriction. Reinstatement is not necessary since membership in the Synod continues during restricted status.

152. Ecclesiastical Supervision and the Filing of Complaints (03-2333)

In a February 9, 2003 letter, a member of the Synod took issue with Commission Opinion 02-2309. He expressed concern that the opinion contravenes Bylaw 2.27, which provides the right for any person to bring a written complaint, and creates a hierarchy in the Synod. He asked that Opinion 03-2309 be revoked. After discussion of proposed draft materials, the Commission agreed to delay action to allow time for further study.

153. Immediate Termination of Dispute Resolution Process (03-2334)

A pastor of the Synod, after corresponding with the Secretary of the Synod, requested that his questions be forwarded to the Commission on Constitutional Matters, also adding an additional question. He

questions the necessity for the dispute resolution process of the Synod to continue if and when an opinion of the Commission on Constitutional Matters appears to decide the case.

Question 1: If the recent CCM rulings (more properly, binding opinions) say that charges cannot be brought if/when [a] person has checked with [his/her] supervisor and [the] supervisor had given permission and "go ahead" based on his interpretation of a synodical document and/or resolution, how can the effect of charges which have been ruled "not allowed because they are invalid" (my summary) and the process triggered by the charges continue?

Opinion: It is the responsibility of the investigating officer and subsequent panels to decide whether allegations brought against a member of the Synod are valid, taking into consideration all pertinent evidence as well as opinions requested from the Commission on Theology and Church Relations and binding opinions requested from the Commission on Constitutional Matters. In the case of CCM opinions, it remains for the investigating officer and/or panel(s) to become informed of all prior CCM opinions and to determine their applicability and consequences. Until such decisions are finally made and all opportunities for appeal have been exhausted, the dispute resolution process continues.

Question 2: On the basis of what logic or specific constitution/bylaw provision is the CCM decision (binding opinion) not implemented and declared effective?

Opinion: All CCM opinions are binding on the question decided unless and until they are overruled by a convention of the Synod (Bylaw 3.905 d). All CCM opinions are therefore also binding on panels in the dispute resolution process, particularly when the question being decided originates from a panel (Bylaw 8.21 i). If a panel does not implement a CCM opinion, either party to the dispute or the President of the Synod, if a question of doctrine or practice is involved, has the right to ask for a decision from an Appeal Panel regarding a reconsideration of the earlier panel's decision (Bylaw 8.09 d).

Question 3: Is there a specific constitution/bylaw provision which demands that the process which is in operation must be carried out, even when the binding ruling has been made that the charges are invalid?

Opinion: In an earlier opinion (01-2253), the CCM responded to a question regarding withdrawal from a dispute resolution process after a hearing had been requested:

Once the process has been initiated, the Synod and its members are bound to follow the procedure that has been provided....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.

This opinion was provided on the basis of Bylaw 8.01, which reads: "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." While there is no specific constitution or bylaw provision that specifically requires that a dispute resolution process that is underway must be carried out in its entirety, there also is no constitution or bylaw provision, including Chapter VIII of the Bylaws (Synodical Dispute Resolution), that provides for early termination of a dispute resolution process.

Question 4: Is there any provision in [the] constitution/bylaw[s] which precludes the President of the Synod (or the Secretary of the Synod, or the current acting President of the Atlantic District, or some other person elected to office) from [making a] declaration to implement CCM binding opinion immediately.

Opinion: While the officers of the Synod are responsible to the extent of their various responsibilities for seeing to it that the Constitution, Bylaws, and resolutions, including CCM opinions, are carried out, Article XI A 1 of the Constitution provides that “the officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod.” None of the officers mentioned have been expressly given the right to intervene in the dispute resolution process of the Synod. In its prior Opinion 02-2304 the CCM opined that not even a convention of the Synod can take any action relative to a final decision of a matter in dispute. In matters pertaining to the dispute resolution process, it is the business of investigating officers and panels, not officers and not even conventions, to become informed of and to make application of all pertinent CCM rulings in given cases.

Question 5: This opinion [01-2253], which predated the more recent CCM rulings which say that if a person has sought authorization/permission or approval from his supervisor and has received it based on the supervisor’s interpretation then the charges are obviously invalid, would make sense in situations where such actions did not take place. However, surely it would be recognized that if the charges are determined invalid, the process would not continue, because to do that would continue to cause harm to the individual as well as to the Synod. Thus my request for the CCM to review both the more recent rulings and the one you cite above to determine if the earlier one still makes sense or whether it should be set aside in circumstances such as the present one and after the newer rulings.

Opinion: Upon your request, the Commission has reviewed the rulings in question and concludes that there is no reason to set aside Opinion 01-2253, for reasons included in the opinions provided to questions 1-4.

154. Discontinuance of Church Work Program (03-2335)

In a memorandum dated February 21, 2003, the President of the Concordia University System submitted the following question regarding the discontinuance of the BA Deaconess program at Concordia University, River Forest by the Board for Higher Education/Concordia University System Board at the request of the university’s Board of Regents.

Question: May the BHE/CUS Board discontinue a church work program, (in this case the BA Deaconess program at River Forest) which was established by synodical resolution, without submitting its intent to a synodical convention?

Opinion: Individual education programs may be established by colleges and universities of the Concordia University System in various ways, including action by the Synod in convention under Chapter III of the Bylaws as a result of the recommendations of the Board for Higher Education pursuant to Bylaw 3.409 (particularly paragraph b) or upon initiation by the Board of Regents of a particular institution in coordination with the Board for Higher Education, as outlined in Bylaw 6.03 d. Unless restricted by an action of the Synod in convention, the decision-making responsibility for the nature and extent of ongoing programs, including the discontinuance of a particular program, falls to the authority both of the individual institution’s Board of Regents under Bylaw 6.03 (in coordination with the Board for Higher Education) and with the Board for Higher Education on its own initiative under Bylaw 3.409 (particularly paragraphs c and k).

Resolution 6-05 of the 1979 convention authorized the Board for Higher Education to direct Concordia College, River Forest, Illinois to establish a full deaconess training program on its campus by the fall of 1980. The convention recognized (in the resolution’s third whereas) that it was possible to add the deaconess program without adding curriculum or academic staff. It is within the ongoing responsibilities of the Board of Higher Education as well as the local Board of Regents to continue to monitor the

viability and appropriateness of the deaconess program at Concordia University, River Forest, as with any academic program.

Bylaw 3.409 I restricts the authority of the Board for Higher Education with respect to the expansion, consolidation, relocation, change to a junior college level, or separation of a college or university from the Synod to circumstances in which the Board for Higher Education has obtained prior consent by a two-thirds majority vote of the Board of Directors of The Lutheran Church—Missouri Synod together with a two-thirds majority vote of either the Council of Presidents or the appropriate Board of Regents. That limitation, however, does not apply to termination of individual programs.

The same subparagraph of Bylaw 3.409 imposes further restrictions with respect to the closure of a college, university, or seminary. Such closure requires a two-thirds majority approval of the Synod in convention. Here again, however, no such restriction is placed upon the termination of an individual program.

While the Commission therefore finds no prohibition of the discontinuance of the BA Deaconess program at Concordia University, River Forest by the Board for Higher Education, for the reasons set forth above, it should also be noted that Bylaw 3.409 imposes on the Board the overall responsibility to provide for the education of ordained and commissioned ministers and other professional church workers for the Synod. The Synod has expressly indicated its desire to have a deaconess training program and has expressly identified throughout its Bylaws and many past synodical convention resolutions the importance of deaconesses to the Synod. At present, Concordia University, River Forest has the Synod's only BA Deaconess program. Pursuant to Bylaw 3.409 a, b and k, the Board for Higher Education has the responsibility not only to establish criteria for determining the ongoing viability of institutions, but also the responsibility to develop detailed coordinating policies and procedures for the colleges and universities of the Synod that include plans to provide for meeting the constituency needs and interests of the Synod. This responsibility certainly includes a plan for providing for the education and training of deaconesses, as repeatedly expressed in the resolutions of the Synod.

155. Appointments to Commission on Constitutional Matters (03-2337)

A member of the Synod, in a February 19, 2003 letter, called into question the legitimacy of an appointment of a member of the Commission on Constitutional Matters in the event that all bylaw appointment provisions are not followed.

Question 1: If a person is appointed to the Commission on Constitutional Matters (CCM) in violation of Synod's Bylaws, namely Bylaw 3.903 a 3, "in consultation with the Vice-Presidents of the Synod" (p. 71, 2001 *Handbook*), is that person actually and properly to be considered a member of the CCM?

Answer: The members of the Commission on Constitutional Matters are selected pursuant to the procedures outlined in Bylaw 3.903. In paragraph a 3 of that bylaw, the President of the Synod, in consultation with the Vice-Presidents of the Synod, appoints the members of the Commission from a list presented by the Council of Presidents, which list is narrowed to five candidates for each vacant position from a pool of nominees submitted by the District boards of directors. However, it is helpful to understand that the Bylaws do not describe the manner or method of "consultation." The Commission also notes that "consultation," which simply means to seek opinion or advice, is not the same as "mutual concurrence" (also a bylaw phrase used elsewhere), which means to be united or in agreement as in action or opinion. Any alleged violation of the process for selection of a member of the CCM should be brought to the attention of the President of the Synod, the Vice-Presidents of the Synod, the Council of Presidents, and the CCM itself for appropriate review and response.

Question 2: If the answer to question number one is "no," are subsequent decisions of the CCM, in which he participated, valid?

Opinion: The Constitution and Bylaws of the Synod are silent on this question, and since the Commission renders its decisions on the basis of consensus, one such person does not invalidate the opinion of the Commission.

Question 3: If the answer to question one is "yes," is it necessary for other members of the Synod to any longer abide by the bylaws?

Opinion: Members of the Synod commit themselves "to act in accordance with the synodical Constitution and Bylaws under which they have agreed to live and work together and which the congregations alone have the authority to adopt or to amend through conventions" (Bylaw 1.05 d). Bylaw 2.39 a also states, "The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod."

156. Request for Reconsideration of CCM Opinion re Ecclesiastical Supervision (03-2338)

An ordained minister of the Synod, in a letter dated February 24, 2003, "respectfully petition[ed] the Commission to reconsider its recent decision concerning a contemplated disciplinary action when the offending party acted with the full knowledge and approval of his ecclesiastical supervisor." After brief discussion, the chairman of the Commission asked its members to send their thoughts to him via letter for further consideration by the Commission in drafting its response.

157. Adjournment

The allotted time for the meeting having expired, the meeting was adjourned with words of benediction.

Raymond L. Hartwig, Secretary

**MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS**

June 23, 2003

158. Call to Order

Chairman Walter Tesch called the meeting to order and asked Don Little to open with a devotion and prayer. All members of the Commission were present for the meeting.

159. Report on Handbook Revision

The chairman and secretary provided a brief report from the May 22-23, 2003 meeting of the *Pro Tem* Commission on Structure meeting at which the recommendations of the Commission on Constitutional Matters for changes to the proposed revised *Handbook* were discussed. Copies of the revised *Handbook* incorporating the changes were distributed, and plans for providing a report of the final *Handbook* proposal to the members of the Synod, as required by Resolution 7-02 of the 2001 convention, were reviewed.

160. Ecclesiastical Supervision and the Filing of Complaints (03-2333)

In a February 9, 2003 letter, a member of the Synod took issue with Commission Opinion 02-2309. He expressed concern that the opinion contravenes Bylaw 2.27, which provides the right for any person to bring a written complaint, and creates a hierarchy in the Synod. He asked that Opinion 03-2309 be revoked.

Opinion: The opinion of this Commission to question 9 of Opinion 02-2309 stated that the members of the Synod, through the Constitution, assigned certain duties to the President of the Synod. Article XI A states:

1. 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.

Section B of Article XI then sets forth the "Duties of the President." Included in those duties are the following, as set forth in paragraphs 1, 2, and 3:

1. 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.
2. 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.
3. 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.

Article XII of the Constitution is entitled, "Districts of the Synod and Their Regulation." Paragraph 7 therefore states:

7. The District Presidents shall, moreover, especially exercise supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers of their District....

The above quoted paragraphs of Articles XI and XII speak for themselves. As the Commission stated in Opinion 02-2309, the Synod has assigned to the President of the Synod “the formal or official constitutional responsibility to admonish or reprove members of the Synod.” Likewise, the Synod has assigned to a District President the “supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers in their District.”

Therefore, the Constitution provides that ecclesiastical supervision by the Synod is to be performed by the President of the Synod and District Presidents. There is no provision in the Constitution that such ecclesiastical supervision by the Synod is to be performed by any other party. Does this prohibit any other individual member of the Synod from privately admonishing an erring brother? Certainly not. However, it is the constitutionally mandated duty of the President and District Presidents, and only the President and District Presidents, to perform ecclesiastical supervision in the name of the Synod, as detailed in the Constitution and Bylaws.

Bylaw 2.27 establishes the procedure for commencing an action to terminate congregational or individual membership. Such termination requires that the member has, after futile admonition, acted contrary to the confession laid down in Article II of the Constitution and the conditions of membership laid down in Article VI, or persisted in an offensive conduct. (It is to be remembered that termination of membership ultimately lies with a Dispute Resolution Panel or, if appealed, a Review Panel.) Ecclesiastical supervision and termination of membership are two different actions. A written complaint submitted under the provisions of Bylaw 2.27 is not ecclesiastical supervision.

161. Board of Directors—Related Matters (03-2338; 03-2357; 03-2358; 03-2359)

The Commission has been asked for opinions regarding several matters and decisions in which the Commission believes that valuable input may be available from other sources. Recognizing that the Board of Directors and/or the other parties involved in these matters may have perspective regarding the interpretation and historic implementation of the Constitution, Bylaws, and various resolutions of the Synod that may be of assistance to the Commission in considering these matters, the Commission instructed its secretary to contact all parties to these matters and to invite further information, if any, related to the issues that have been raised.

The Commission further invites the Board of Directors or an authorized contingent of its members to meet with the CCM at its next scheduled meeting to provide such information and perspective as the Board believes may be helpful to the Commission in carrying out its responsibilities.

162. Reconsideration of Opinions re Ecclesiastical Supervision (03-2338A, B, C)

In a letter received March 1, 2003, a pastor of the Synod encouraged the Commission to reconsider its January 20-21, 2003 decisions regarding “Consequences of Actions Taken Upon Approval of Ecclesiastical Supervisor” (02-2296; 02-2320) and “all others in any way pertaining to ecclesiastical supervisor[s].”

In a March 3, 2003 letter, a pastor of the Synod expressed concerns about an opinion of the CCM which he believes “has an unnecessarily pejorative spin to it” (02-2309) and asks the Commission to “show specific proof from Scripture, the Confessions, and the Constitution and Bylaws” that the opinion is justified, or, if that cannot be done, to modify the opinion.

In a letter received April 7, 2003, a voters assembly of a member congregation of the Synod offered “An Appeal to the [Commission] on Constitutional Matters of The Lutheran Church—Missouri Synod to Declare Invalid Opinions 02-2296; 02-2320; and 02-2309,” expressing concern that these opinions leave the supervised member free from responsibility or accountability and thereby change the public nature of the Synod.

The Commission deferred action on these requests until its next meeting.

163. Theological Questions Associated with Ecclesiastical Supervision (03-2339)

With a letter received February 27, 2003, a pastor of the Synod provided to the Commission a copy of a letter he sent to the Commission on Theology and Church Relations raising theological questions prompted by recent Commission on Constitutional Matters’ opinion pertaining to ecclesiastical supervision and conflict of interest. The Commission acknowledged receipt of the letter and its request to the Commission on Theology and Church Relations.

164. Board of Directors Appointment Responsibilities (03-2340)

In an e-mailed letter received February 28, 2003, an emeritus pastor of the Synod reminded the Commission of Bylaw 3.75 and questioned the right of the Board of Directors of the Synod to appoint its own members to the boards of synodwide corporate entities.

Question: Is it in harmony with the Bylaws of the Synod for the Board of Directors to appoint any of its own members to the boards of these corporate entities (Concordia Historical Institute; Concordia Publishing House; Concordia University System; The Lutheran Church Extension Fund—Missouri Synod; and The Lutheran Church—Missouri Synod Foundation)?

Opinion: The answer to the question as stated is no. It is recognized that Bylaw 3.75 a states, “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.” It would be improper for an elected member of the Board of Directors to also be a member of the governing board of a synodwide corporate entity because of the oversight responsibility of the Synod’s Board of Directors (Art. XI F 2; Bylaw 3.183). The Constitution and Bylaws of The Lutheran Church—Missouri Synod do not authorize the Synod’s Board of Directors to appoint members to the governing boards of any of the synodwide corporate entities.

The Commission calls attention to the fact that in three of the corporate entities of the Synod the membership of the entity differs from the governing board of the entity. There is membership of the Concordia University System (Bylaw 3.405) and membership of its board (Bylaw 3.407). The Bylaws of the Synod also make a distinction between Members of the Lutheran Church Extension Fund—Missouri Synod (Bylaw 3.501 a) and the Board of Directors of the Lutheran Church Extension Fund—Missouri Synod (Bylaw 3.501 c). Members of The Lutheran Church—Missouri Synod Foundation (Bylaw 3.603 a) are also to be distinguished from the Board of Trustees of The Lutheran Church—Missouri Synod Foundation. Being a “Member” of these entities is not the same as being a member of the governing board of the entities.

The Commission makes note of the following: The Synod’s Board of Directors makes no regular appointments to the following corporate entities: Concordia Historical Institute (Bylaw 3.203) and Concordia Publishing House (Bylaw 3.301). The Board of Directors of The Lutheran Church—Missouri Synod appoints one group of Members to the corporate entity of Concordia University System, but the

Synod's Board of Directors appoints no person to the Board of Directors of Concordia University System (Bylaws 3.405 and 3.407). The Synod's Board of Directors appoints Members to the corporate entity of the Lutheran Church Extension Fund—Missouri Synod but no person to its Board of Directors (Bylaw 3.501 a, c). The Synod's Board of Directors appoints one group of Members to the entity of The Lutheran Church—Missouri Synod Foundation but does not appoint persons to the Board of Trustees of The Lutheran Church—Missouri Synod Foundation (Bylaw 3.603).

Bylaw 3.63 a addresses the filling of vacancies on synodically elected boards, which would include those members of the governing boards of the synodwide corporate entities who are elected by the Synod in convention. This bylaw provides that the Synod's Board of Directors selects the individual to fill such vacancy. However, the slate of candidates from which the Board of Directors selects the individual is prepared by parties other than the Board of Directors of the Synod.

165. Board of Directors Appointments to Other Entities of the Synod (03-2342)

In an e-mailed letter received February 28, 2003, a parish pastor of the Synod questioned the right of the Board of Directors to appoint its own members to certain positions in the Synod and inquires regarding the status of any inappropriate appointments that may have been made.

Question 1: Were the self-appointments that the synodical Board of Directors made for themselves to the Concordia University System and Lutheran Church Extension Fund—Missouri Synod (and others) appropriate, especially seeing how the Concordia University System Board and the Lutheran Church Extension Fund—Missouri Synod report directly/indirectly to the Board of Directors of the Synod?

Opinion: Any appointment, including “self-appointments,” made by the Synod's Board of Directors that complies with the Bylaws is appropriate. Any appointment is inappropriate if it reflects non-compliance. Opinion 03-2340 serves as an answer to this question.

Question 2: Should all preceding appointments and subsequent appointments and elections held thereafter and even decisions rendered from such respective entities as a result of their various appointments be considered null and void?

Opinion: Any appointment or election may be declared null and void if the appointment or election was not in compliance with the Synod's Constitution and Bylaws. The Constitution and Bylaws are silent concerning the validity of a decision in such case.

Question 3: If the Board of Directors of the Synod acted improperly in appointing its own members, does the President of the Synod have the authority to nullify the action of the Board of Directors of the Synod in appointing its own members to the synodwide corporate entities?

Opinion: The President of the Synod has the constitutional duty to see to it that all officers of the Synod “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” (Art. XI B 2). And according to Article XI B 3, “The President has and always shall have the power to advise, admonish and reprove.”

According to Bylaw 3.101 B 1 and 5, the President shall “oversee the activities of all agencies of the Synod to see to it that they are in accordance with the Constitution, Bylaws, and resolutions of the Synod” and “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. If the matter cannot be resolved, the President

shall refer it to the synodical Board of Directors, the Commission on Constitutional Matters, and/or the Synod in convention as the President deems appropriate to the issues and party/parties involved.”

Were the Board of Directors of the Synod to act improperly in appointing its own members, there is no constitutional or Bylaw authority given to the President of The Lutheran Church—Missouri Synod to nullify an unconstitutional action of the Synod’s Board of Directors.

166. District Constitution Committee Review of Congregation Constitutions and Bylaws (03-2349)

In a letter received April 21, 2003, a District Secretary and the Chairman of his District's Constitution Committee request the guidance of the Commission in responding to a section of a congregation’s Constitution and Bylaws that had been submitted for review. The District committee found articulated in the documents submitted for review a view of the Call and the call process that provoked a number of questions. The paragraph in question includes several statements about the nature and tenure of a Call that are not addressed by the “Guidelines for the Constitution and Bylaws of a Lutheran Congregation” provided by the Commission on Constitutional Matters.

Question: Is this section of the submitted Constitution and Bylaws governing “Calls to the Church” a correct and adequate confession of the doctrine and practice of our Synod?

Opinion: Bylaw 2.03 provides that a District Constitution Committee is to review a congregation’s new Constitution or Bylaws or a revision thereof to ascertain that the provisions are in harmony with the Holy Scriptures, the Confessions, and the teachings and practices of the Synod. Since this question addresses doctrinal matters, it should be addressed to the Commission on Theology and Church Relations.

This question with its reference to the “Guidelines for the Constitution and Bylaws of a Lutheran Congregation” calls into question the role of the guidelines in the work of a District Constitution Committee. Congregations cannot become members of The Lutheran Church—Missouri Synod until their constitutions and bylaws have been approved by a constitution committee of a District of the Synod. Furthermore, any amendments must also have that approval before becoming operative.

Since a high degree of uniformity is desirable, the Commission on Constitutional Matters has from time to time issued guidelines for the proper construction of congregational constitutions and bylaws. It should be noted, however, that there are wide divergences among the congregations of the Synod and that it is not advisable to formulate one constitution and bylaws to fit all congregations. Therefore, District committees, when evaluating constitutions and bylaws that are submitted, will judge them as to whether they contain the principles set forth in the guidelines.

167. Reconsideration of Opinion 03-2347 re Publicity (03-2350)

In an April 23, 2003 e-mailed memorandum, the President of the Synod requested the Commission’s reconsideration of its Opinion 03-2347. In a subsequent May 12, 2003 e-mailed memorandum, the President withdrew his request.

168. Board of Regents Policy (03-2351)

In an e-mailed letter received April 30, 2003, a member of the Synod serving as a member of a board of regents of an education institution of the Synod asked a specific question regarding the application of the policy of the board regarding elections.

Question: Can the chairman of the board of regents delay the regular election of the officers of the board for several months, in violation of the policy of the board and without a vote of the board?

Opinion: A similar internal procedural question was raised in Question 02-2268, also involving a board of regents. The Commission responded in that opinion:

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.

As also pointed out in that opinion, the functions of the Commission on Constitutional Matters are set forth in Bylaw 3.905 and include the responsibility to interpret the Constitution, Bylaws, and resolutions of the Synod upon written request of a member. The Commission is unable to provide an answer to the question posed since it asks the Commission to interpret and rule on a policy of the board. It does not ask the Commission to interpret or rule on an issue pertaining to the Synod's Constitution, Bylaws, or resolutions.

169. Confessional Statements (03-2352)

In a May 13, 2003 e-mailed letter, a parish pastor asked a series of questions regarding the confessional position of the Synod and subscription to other confessional statements that may be circulated within the Synod. The Commission will give further consideration to these questions at its next meeting.

170. Consequences of Permission Granted by an Ecclesiastical Supervisor (03-2353)

In an e-mailed letter received May 20, 2003, a pastor of the Synod asked a series of questions regarding the consequences of approval or permission granted by an ecclesiastical supervisor in differing circumstances. After discussion, the Commission deferred its response until its next meeting.

171. CCM Rulings, Dissent, and Ecclesiastical Supervision (03-2354)

In a letter received May 22, 2003, a pastor of the Synod asked a series of questions in three categories: (1) Commission on Constitutional Matters Rulings in Conflict with Official Documents; (2) Regarding Dissent; and (3) Regarding Ecclesiastical Supervision.

Question 1: If, for whatever reason, the Commission on Constitutional Matters had in effect created new governing principles outside of its purview – or issued a ruling which was in conflict with the Scriptures, the Confessions, and the Constitution of the Synod – what recourse would a member of the Synod have for challenging that ruling of the Commission on Constitutional Matters?

Opinion: Bylaws 3.903 and 3.905 define the membership and functions of the Commission on Constitutional Matters. Those bylaws make no provision for an individual member of the Synod to challenge an opinion of the Commission that was issued in response to a question by an eligible party as set forth in Bylaw 3.905 d. However, the Commission has reconsidered an opinion when asked to do so by a written request from any eligible party that the bylaw allows to make an initial request for an opinion from the Commission.

Question 2: If a member of the Synod were to sign a statement such as the example listed below, would his action be interpreted by the Commission as (a) making a formal statement of brotherly dissent as described in Bylaw 2.39 c; (b) engaging in an activity whereby each signatory would be liable for a complaint to be lodged against him by another member of the Synod; or (c) simply stating his personal opinion in public according to our country's freedom of speech as protected by the Bill of Rights?

(Please note: this request for a ruling is not asking in any way for approval or acceptance of the details found in the following statement, which is provided simply for the purpose of serving as an example. It is provocative with highly-charged terms in an attempt to resemble actual documents of this kind which circulate in the Synod at present.)

We, the undersigned, declare with the signatures affixed to this document our formal protest against, and rejection of, the Dispute Resolution Panel (DRP) ruling in the Benke case. We are in total concurrence with the Rev. Dr. Wallace Schulz's protest against the DRP's decision.

Furthermore, we believe that a grave injustice has been done to Christ and His Church in that:

- 1) ...the CCM acted contrary to the Synod's Constitution when it adopted a position on ecclesiastical supervision which is contrary to the Scriptures and the Confessions.
- 2) ...the CTCR acted contrary to the Synod's Constitution when it interpreted Resolution 3-07 to include praying together with non-Christian religions as Dr. Benke did in A Prayer for America.
- 3) ...the DRP was misguided by the CCM and CTCR rulings and that in making its judgment as it did, it violated the constitutional mandate that all judgments must be founded solely on the basis of Scripture and the Confessions.
- 4) ...Dr. Schulz is correct in his assessment of these points as he clearly stated in his report.
- 5) ...Dr. Kieschnick has thrown our Synod into great turmoil and jeopardy regarding our Constitution, our confession, our missions, and our financial situation—and that he must be held accountable for this.

We believe that the ruling made by the Dispute Resolution Panel must be overturned on the basis of the clear evidence provided by Dr. Schulz from God's Word and the Confessions of the Evangelical Lutheran Church. The precedent which the Dispute Resolution Panel has put into place sets the Synod on a new theological and confessional course contrary to that which it has maintained in the past. We are, therefore, compelled by truth to reject the DRP ruling.

Opinion: The Bylaws do not prohibit criticism or comment by any party, member or non-member, regarding an opinion rendered by the Commission on Constitutional Matters. Bylaw 3.73 provides that "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."

Question 3: The use of the term "ecclesiastical supervision" in recent CCM rulings such as CCM ruling (02-2309) "Ecclesiastical Supervision and Conflict of Interest" raises certain questions.

Does the term “ecclesiastical supervision” as used in the synodical Constitution and Bylaws apply only to the synodical President and the District Presidents, or does it apply to other positions and relationships within the Synod as well? For example:

Question 3A: Are pastors to be understood by the Synod’s Constitution and Bylaws as “ecclesiastical supervisors” of the congregations to which they have been called?

Opinion: There is no reference to pastors as ecclesiastical supervisors in the Constitution and Bylaws of the Synod.

Question 3B: Are Circuit Counselors “ecclesiastical supervisors” over parish pastors?

Opinion: The Constitution and Bylaws only refer to the President of the Synod and the District Presidents as ecclesiastical supervisors. Bylaw 5.13 a states that the Circuit Counselor “shall serve under the direction of and be accountable to the District President and shall serve as his spokesman when so authorized and directed and shall assist him in doctrinal and spiritual supervision.” Further, Bylaw 5.13 c states that a Circuit Counselor “shall serve in a servant role and seek to remind and encourage members of the Circuit of their responsibilities as God’s people and the privilege they have in being about His mission.”

Question 3C: Are the Vice-Presidents of the Synod to be understood in any sense of the term as “ecclesiastical supervisors”?

Opinion: The Constitution and Bylaws only refer to the President of the Synod and the District Presidents as ecclesiastical supervisors. Bylaw 3.121 indicates that the First Vice-President “shall be responsible to the President at all times.” Bylaw 3.123 indicates that the four additional Vice-Presidents “shall be responsible to the President at all times for the performance of their duties as Vice-Presidents.” Bylaw 3.125 indicates that the Vice-Presidents “shall be elected advisors of the President” and “may upon his request or as provided by the Synod assist him in discharging his responsibilities or represent him.”

Question 3D: Are the Vice-Presidents of the District to be understood in any sense as “ecclesiastical supervisors,” e.g., over the Circuit Counselors and/or individual members of the District whom they represent or by whom they were elected?

Opinion: The relationship of District Vice-Presidents to the District President is the same as the relationship of the Vice-Presidents of the Synod to the President of the Synod.

Question 3E: Is the President of the Synod an “ecclesiastical supervisor” over the individual members of the Synod?

Opinion: Bylaw 3.101 indicates that the President shall carry out his ecclesiastical duties in the Districts of the Synod through the District Presidents. The same bylaw goes on to state that 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. Therefore, the President of the Synod is not an “ecclesiastical supervisor” over the individual members of the Synod. Such supervision is the responsibility of District Presidents (Bylaw 4.73).

Question 3F: Could a member congregation bypass its “immediate” ecclesiastical supervisor to get permission from a Circuit Counselor or District President? (E.g., the congregation wants to participate in an interfaith prayer service in the wake of a horrible disaster, but the pastor of the congregation is against it. Can the leadership and/or members of a

congregation get permission from an ecclesiastical supervisor who is higher up the totem pole than their own pastor to grant them permission?)

Opinion: The Commission notes that a congregation does have a direct relationship to the Synod, to its District, and to the District President as ecclesiastical supervisor (Art. XII 7; Bylaws 4.73 and 4.75). Questions regarding ecclesiastical supervision on the congregational level should be referred to the Commission on Theology and Church Relations.

172. Exceptions to Electoral Circuit Requirements (03-2355)

A parish pastor in a letter dated May 25, 2003, requested the Commission's opinion regarding "the presidential power to grant exceptions mentioned in Bylaw 3.03."

Question: Does the presidential power to grant exceptions mentioned in Bylaw 3.03 apply only to those visitation circuits not meeting either the 7 to 20 congregations and/or the 1,500 to 10,000 membership requirement? Does the bylaw allow a visitation circuit to be divided into two electoral circuits and be granted two sets of delegates, two pastors and two lay, by the president upon request of a District Board of Directors?

Opinion: Visitation Circuits (generally referred to in the Bylaws as "Circuits") are component parts of the Synod (Bylaw 1.05 f). They are formed by the determination of Districts (Art. XII 3 c; Bylaw 1.05 b). Exceptions to membership requirements for visitation Circuits as provided by Bylaw 5.01 can be made only by the President of the Synod upon request of a District Board of Directors.

Electoral Circuits consist of either one or two adjacent visitation Circuits as determined by the District according to the requirements for electoral Circuits (Bylaw 3.03). As is the case with visitation Circuits, exceptions to the bylaw requirements for electoral Circuits can be made only by the President of the Synod upon request of a District Board of Directors.

Therefore, in response to the above questions, existing visitation Circuits are the basic entities for determining representation to conventions of the Synod. When one or two adjacent existing visitation Circuits fail to meet the requirements of Bylaw 3.03 for electoral Circuits, the bylaw provides to the President of the Synod the authority to grant exceptions in such cases. However, the bylaw does not provide opportunity to divide visitation Circuits to form electoral Circuits, nor does it provide to the President the authority to grant exceptions in such cases.

This opinion is consistent with Opinion Ag. 337 of the Commission, "Temporary Electoral Circuit" (July 21-22, 1972), which ratified a response provided by the Secretary of the Synod to a related question. The Secretary had stated that it was "not permissible to move two parishes from one visitation circuit to another merely for electoral circuit purposes (the choosing of delegates to a synodical convention)."

173. Confessional Statements and Voting Rights (03-2356; 03-2356A)

In a May 30, 2003 letter from a District President and a May 31, 2003 e-mailed letter from a parish pastor, the Commission was asked similar questions: (1) Can signers of such documents as "That they May Be One" and the "Keller Resolution" be voting delegates at conventions, or have they removed themselves from the particular right and privilege by signing such documents? (2) Are individuals/congregations who have declared themselves no longer in fellowship constitutionally authorized to sit as delegates at synodical, District, and Circuit conferences and conventions, and, if so, under what parameters and guidelines, or, if not, with what recourse for congregational/pastoral participation?

After discussion, the Commission deferred its response until its next meeting.

174. Board of Directors' Action re Radio Station KFUE (03-2357)

In a letter received June 9, 2003, a District President questioned the right of the Board of Directors of the Synod to assume direct responsibility for the operation of KFUE radio in light of past convention actions. He also inquired regarding the possibility of a similar action by the Board of Directors over against entities owned by Districts, such as a radio station or resource center.

The Commission deferred its response to these questions pending receipt of additional information.

175. Board of Directors' Requirement for Use of Funds Allocated to Board for Higher Education/Concordia University System (03-2358)

In a letter received May 28, 2003, the Executive Director of the Board for Higher Education/Concordia University System asked whether the Board of Directors has the authority to require the Board for Higher Education/Concordia University System to distribute a specified amount of allocated unrestricted dollars to other entities under the direct supervision and oversight of the BHE/CUS Board.

The Commission deferred its response to this question pending receipt of additional information.

176. Board of Directors' Directive for Use of Funds Allocated to the Board for Communication Services (03-2359)

In a letter received June 9, 2003, the chairman of the Board for Communication Services asked a series of questions regarding the extent of the authority of the Board of Directors to hold a program board accountable for its use of allocated funds.

The Commission deferred its response to these questions pending receipt of additional information.

177. Election of Delegates to a Convention of the Synod (03-2360)

A pastor of the Synod in a June 19, 2003 e-mail letter asked two questions regarding the election of delegates to a convention of the Synod.

Question 1: What is the proper/prescribed method and timetable for notice for the convening of a circuit caucus for the election of synodical delegates?

Opinion: The Commission assumes that what is meant by "circuit caucus" is the meeting of the electoral Circuit for the purpose of electing delegates to a convention of the Synod. Bylaw 3.05 a states, "Each electoral Circuit shall meet at the call of the Counselor(s) to elect its delegates not later than nine months prior to the opening day of the convention." The same paragraph also states, "The privilege of voting shall be exercised by one pastor and one layperson from each member congregation of the Circuit, both of whom shall have been elected in the manner prescribed by the congregation." Furthermore, Bylaw 3.05 b states, "Prior to the meeting of the electoral Circuit, each congregation may nominate one layperson, either from its congregation or from the Circuit. These names must be submitted to the Circuit Counselor prior to the day of the Circuit meeting and shall constitute the slate of candidates."

Therefore, although there is no prescribed method and timetable for notice for the convening of an electoral Circuit in the Constitution and Bylaws of the Synod, ample notice is necessary to provide

opportunity for each congregation to elect its representatives to the meeting in the manner prescribed by its Constitution and Bylaws and to submit the nomination of a layperson to the Circuit Counselor(s) prior to the day of the meeting.

Question 2: Does subscription to a non-approved confessional statement (“That They May Be One” or “The Keller Resolution”) invalidate the election of a delegate to the synodical convention?

Opinion: Members of the Synod continue to hold all rights under the Constitution and Bylaws of the Synod with the single exception of individual members on suspended status. While individual members are on suspended status, they may continue to perform the duties of the positions they hold, but they are relieved of their duties as members of the Synod, including service as a delegate to a convention of a District or the Synod (Bylaw 2.25 b).

178. Adjournment

All business to come before the Commission having been attended to, the meeting was adjourned with prayer.

Raymond L. Hartwig, Secretary

**MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS**

August 15-16, 2003

179. Call To Order

Chairman Walter Tesch called the meeting to order and opened with a devotion and prayer. All voting members of the Commission were present for the meeting. Ray Hartwig, secretary and non-voting member, was unable to be present. The Commission made Wilbert Sohns secretary *pro tem*.

180. Board of Directors – Related Matters (03-2338,A,C; 03-2357; 03-2358; 03-2359; Cf. Minutes # 161, June 23, 2003 CCM Minutes)

In response to an invitation from the Commission on Constitutional Matters, the Board of Directors and others provided further information related to certain issues that have been raised. In addition to the written materials provided, the Board of Directors also provided an oral presentation. The Commission will review the presentations in accord with Bylaw 3.905 (The Functions of the CCM). The Commission directed the Chairman, Mr. Walter Tesch, to draft and send a letter of notification to the BOD concerning the Commission's necessary and pending review.

181. Reconsideration of Opinions re Ecclesiastical Supervision (03-2338; 03-2338A; 03-2338C)

The Commission's opinion to these questions is deferred to allow for further study and review.

182. Concerns re Opinion 02-2309 (03-2338B)

In a March 3, 2003 letter, a pastor of the Synod expressed concern regarding an opinion of the CCM which he believes "has an unnecessarily pejorative spin to it" when it states that "implementation of the dispute resolution process should never be intended or allowed to disrupt, hamper, or harass the President as he carries out the duties and responsibilities of his office, including those of ecclesiastical supervision" (02-2309 response to question #3). He asked the Commission to "show specific proof from Scripture, the Confessions, and the Constitution and Bylaws" that the opinion is justified, or, if that cannot be done, to modify the opinion.

Opinion: The Commission notes that in its response to question #3 of Opinion 02-2309 it repeated the words of the question to which it was responding when it used the words "disrupt, hamper, or harass." It was not the intent of the Commission to disparage the questioner or to discourage proper use of the dispute resolution process. In fact, in the same response to question #3 the Commission acknowledges that there may be occasions when the use of Chapter VIII of the Bylaws is appropriate.

The Commission has never opined that one brother should be denied the right or responsibility to admonish another brother over matters of the soul. However, when it comes to ecclesiastical supervision by the Synod, such supervision is to be provided by those whom the Synod has given that responsibility in its Constitution and Bylaws.

183. Confessional Statements (03-2352)

In a May 13, 2003 e-mailed letter, a parish pastor asked a series of questions regarding the confessional position of the Synod and subscription to other confessional statements that may be circulated within the Synod.

Question 1: Is the “confessional position of the Synod...set forth in Article II of its Constitution, to which all who wish to be and remain members of the Synod shall subscribe” (Bylaw 1.03) exclusive? May individuals or congregations add to or remove items from it?

Opinion: Members of the Synod are required to accept without reservation and subscribe to the Synod’s confessional position as set forth in Article II of its Constitution (Bylaw 1.03). Although the Synod has provided for itself the right to adopt doctrinal resolutions and statements (Bylaw 1.09), even these are not to be regarded as additions to the confessional basis for membership provided in Article II. Accordingly, individuals or congregations may not add to or remove items from Article II.

The Commission calls attention to its earlier Opinion 03-2328, in which it stated:

Subscribing to or requiring a “confessional statement” in place of or in addition to the confessional position of the Synod as set forth in Article II of its Constitution as a condition for fellowship with one another in the Synod is a violation of the covenant relationship in the Synod (Article VI 1; Bylaw 1.03).

Question 2: May members of the LCMS subscribe to “confessional statements,” “confessions of faith,” or “common confessions of the one Holy Christian and Apostolic faith, as set forth in Holy Scriptures, as taught in the Book of Concord, and as presented above,” as “the correct interpretation of our Lord’s teaching” in addition to those listed in Article II of the LCMS Constitution?

Opinion: Other confessional statements, confessions of faith, or common confessions may in fact be correct interpretations of our Lord’s teaching, but as a condition for acquiring and holding membership in the Synod, acceptance of and subscription to the confessional basis described in Article II of the Constitution alone is required for membership in the Synod (Article VI 1).

Question 3: What are the consequences with regard to membership in The Lutheran Church—Missouri Synod for those who subscribe themselves to “the correct interpretation of our Lord’s teaching” on any subject and ask others to join in a confession that is not listed in Article II of the LCMS Constitution?

Opinion: In joining the Synod, members willingly obligate themselves to fulfill the membership requirements of Article VI and agree to accept without reservation the confessional position of the Synod as described in Article II. Accordingly, individual members or congregation members of the Synod may not add to or remove items from Article II. As noted above, other confessional statements, confessions of faith, or common confessions may in fact be correct interpretations of our Lord’s teaching and may be used for a variety of purposes, but such other confessions may not be used as a condition for acquiring and holding membership in the Synod.

The Commission also calls your attention to the following portion of CCM Opinion 03-2328:

The question is unclear as to whether the ‘confessional statement’ proposed to be adopted by a member is consistent with a doctrinal position of the Synod or is a doctrinal position that has not been addressed by the Synod as a whole. If the ‘confessional statement’ which is proposed were consistent with a doctrinal position of the Synod, there would be no reason for its separate adoption by the individual member or congregation. If the ‘confessional statement’ appears to be contrary to a doctrinal position of the Synod, the action of the member, whether individual or congregation, is governed by Bylaw 2.39 c.

If the 'confessional statement' is intended to address an issue that has not yet been addressed by the adoption of a doctrinal resolution or a statement on part of the Synod, the processes provided in the Constitution and Bylaws and particularly Bylaw 1.09 govern the action.

Question 4: If members of the Synod subscribe to a confession other than or in addition to those listed in Article II, are they making a "mixed confession" or serving a congregation of "mixed confession" in violation of Article VI 2 a of the Constitution?

Opinion: If the allegation of a "mixed confession" is substantiated according to the procedures established by the Synod in Bylaw 2.27, then that is the basis for the judgment on whether a member is in violation of Article VI 2. It is not the responsibility of the Commission to make that judgment or interpret the content of a given "mixed confession" or "a confession other than or in addition to those listed in Article II." It is recommended that the Commission on Theology and Church Relations be consulted concerning a definition of a "mixed confession."

Question 5: If members of the Synod subscribe to a confession other than or in addition to those listed in Article II, are they "act[ing] contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI" and in violation of Article XIII 1 of the Constitution of the Synod?

Opinion: As noted above, other confessional statements, confessions of faith, or common confessions may in fact be correct interpretations of our Lord's teaching, but they may not be regarded as a condition for acquiring and holding membership in the Synod. To do so would be contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI and in violation of Article XIII 1 of the Constitution of the Synod.

Question 6: If members of the Synod subscribed to a confession other than or in addition to those listed in Article II, may they be seated as voting delegates in a District convention or in a synodical convention?

Opinion: Members of the Synod may be seated as or represented by voting delegates in a District or Synod convention except when an individual member of the Synod has been placed on suspended status. In such case the member shall "1. be relieved of duties as a member of the Synod (e.g., as a delegate to a District or synodical convention, as a member of any District or synodical board or commission)" (Bylaw 2.25 c 1).

Question 7: If a member of the Synod subscribes to a confession other than or in addition to those listed in Article II, may he/she be nominated for or elected to an office in the LCMS at the Circuit, District, or synodical level?

Opinion: An individual member of the Synod may be nominated for or elected to an office of the Synod at the Circuit, District, or synodical level so long as eligibility requirements have been satisfied. However, if the member has been placed on restricted status and the elected office includes a new position of service (Bylaw 2.23) or if the member has been placed on suspended status (Bylaw 2.25), he/she is ineligible to accept a call to any other position of service in the Synod (Cf. Bylaw 2.15 d) and may not serve in the office or perform the functions and duties of the office until the restricted status or suspended status has been resolved in the member's favor.

Question 8: Have members of the Synod who have signed "That They May Be One" subscribed to a confession in addition to those listed in Article II of the Constitution of the Synod?

Opinion: It is the responsibility of a member's District President as ecclesiastical supervisor to exercise supervision of doctrine (Article XII 7) and discipline (Article XII 8). Therefore, it is the responsibility of the District Presidents of the members in question to judge their actions in light of the content of the document they have signed.

Question 9: Is refusal to practice church fellowship with other members of the Synod removal by self-exclusion from the Synod? If not, what other sign must members give that they have removed themselves from membership in the Synod?

Opinion: The Constitution and Bylaws of the Synod are silent concerning "self-exclusion" and any "signs" members must give to indicate that they have removed themselves from membership in the Synod.

Question 10: "That They May Be One" serves as the basic confession for the "Keller Resolution" subscribed by four Texas congregations on April 14, 2002, and other LCMS congregations since then. The "Keller Resolution" includes the following resolves:

Resolved, That, in keeping with its status as a public confession, we will practice Church Fellowship with those congregations and pastors subscribing to this confession; and be it further

Resolved, That, in keeping with our public confession, we mark and avoid (Romans 16:17) Rev. Gerald Kieschnick and Rev. David Benke as those have publicly participated in, and defended such participation in, unionistic and/or syncretistic worship services; and be it further

Resolved, That, in keeping with our public confession, we will not practice Church Fellowship with those who defend the public sins of Rev. Gerald Kieschnick and Rev. David Benke, outlined above, nor will we practice Church Fellowship with those who reject the biblical doctrine set forth in points 1 through 14 of "That They May Be One"; and finally, be it further

Resolved, That, if Rev. Gerald Kieschnick and Rev. David Benke have not public repented and amended their sinful lives by the Festival of the Reformation, 2002—giving public, unambiguous testimony to their repentance of their willful, public sin—this congregation will gather other congregations which have adopted this resolution to take further action in keeping with our common confession of the Scriptural teaching of Church Fellowship.

Have these congregations "broken fellowship" with the Synod by their actions and removed themselves from the Synod by self-exclusion?

Opinion: If these congregations have not formally terminated their membership in the Synod, they are still considered members and are subject to the ecclesiastical supervision of their District Presidents.

Question 11: May any congregation that has signed the "Keller Resolution" be represented by voting delegates at a District convention or a synodical convention?

Opinion: A congregation may be represented by voting delegates at a convention of a District or the Synod until such time as the congregation is no longer a member of the Synod, as stated in prior opinions of the Commission (Ag. 1907 A-D; Ag. 2084; Ag. 2084B). The congregation does not lose its voting rights for any reason, even if suspended. A congregation's voting rights are forfeited only when a congregation resigns or is removed from membership.

Question 12: May pastors of congregations that have signed the “Keller Resolution” be voting delegates at a District convention or a synodical convention?

Opinion: Unless an otherwise eligible pastor of a congregation has been placed on suspended status, he may serve as a voting delegate at a District or Synod convention (Bylaw 2.25).

184. Questions re Permission Given by Ecclesiastical Supervisor (03-2353)

A member of the Synod asks the following questions of the Commission:

Question 1: If an ecclesiastical supervisor approves a text or speech that is in doctrinal error, is he, or the writer/speaker, or both able to be charged/disciplined for said text or speech?

Opinion: If an ecclesiastical supervisor approves a text or speech that is in doctrinal error, both he and the writer (speaker) are to correct or amend such error. CCM opinion 02-2309 states:

When an ecclesiastical supervisor discovers error in his counsel, it is incumbent upon that supervisor to correct or amend it. The member should then be held to consider the corrected counsel. Failure to consider such amended admonition could form the basis for disciplinary action as provided in Article XIII.

Question 2: As a corollary, if a publication ‘passes doctrinal review’ in accord with synodical Bylaws, who is responsible for doctrinal errors that are found by others to be contained therein—the author, the doctrinal reviewer or both?

Opinion: The procedures for doctrinal review are not the same as those for ecclesiastical supervision. Any member of the Synod can make a challenge to a published item. Bylaw 10.15 states; “A challenge to the doctrinal review certification of a published item may be initiated by any member of the Synod.” It is finally up to a panel of three doctrinal reviewers to determine what should be done with the published material.

Question 3: If an ecclesiastical supervisor gives one permission to do something that is in error, does such permission also free one from accountability for other errors committed in the act or process of doing the “permitted thing”?

Opinion: This question is answered in response to question 1. When an error is discovered, it is to be corrected or amended.

Question 4: Does “absolution” given by the ecclesiastical supervisor for “possible offense caused” by a sinful action mean that an individual is also no longer responsible for the sin itself, that he is under no compulsion and unable to be put under compulsion to renounce his action before those who may have been misled by it—even before the whole Synod or World if that sin is a generally known or publicized action? Does being forgiven by God remove the necessity for a member of the Synod to renounce false teaching and correct both errors he has proclaimed and false impressions he may have given?

Opinion: Although a part of this question is answered in opinion one, the issues pertaining to sin, forgiveness by God and responsibility for a sin itself are questions which could be better addressed by the Commission on Theology and Church Relations.

185. Confessional Statement and Voting Rights (03-2356; 03-2356A)

In letters dated May 30 and May 31, 2003, a District President and a parish pastor asked similar questions regarding the voting rights of those who have signed certain documents or have declared themselves no longer in fellowship with other members of the Synod.

Question 1: Can signers of these documents (“That They May Be One” and “Keller Resolution”) be voting delegates at conventions, or have they removed themselves from this particular right and privilege by signing such documents?

Opinion: The Commission has answered this question in Opinion 03-2352, which is included in these minutes.

Question 2: Are individuals/congregations who have declared themselves to be no longer in fellowship with other members of the Synod constitutionally authorized to sit as delegates at synodical, District, and Circuit conferences and conventions? If so, under what parameters and guidelines? If not, with what recourse for congregational/pastoral participation?

Opinion: Individuals and congregations continue to be members of the Synod until such time as their membership is terminated. Individual members on suspended status are relieved of certain rights and privileges during the period of suspension (Bylaw 2.25 c). Congregations on suspended status continue to hold all rights and privileges because the Bylaws provide no limitations. The Bylaws also do not provide additional parameters and guidelines.

186. The Authority of the Board of Directors (03-2357; 03-2358; 03-2359; 03-2365)

The Commission’s opinion to these questions is deferred to allow for further study and review.

187. Criticism of the CCM by an Elected Officer of the Synod (03-2361)

In a letter addressed to the Commission on Constitutional Matters dated June 6, 2003, an ordained minister of The Lutheran Church—Missouri Synod has asked the following questions:

Question 1: When [an officer of the Synod] in his criticism against the CCM Opinion 02-2309 failed to quote “It should be noted, however, that when an ecclesiastical supervisor discovers error in his counsel, it is incumbent on that supervisor to correct or amend it. The member should then be held to consider the corrected counsel. Failure to consider such amended admonition could form the basis for disciplinary action as spelled out in Article XIII,” did he give inaccurate and misleading information by this misinterpretation to the Synod?

Opinion: This question does not ask for an interpretation of the Synod’s Constitution, Bylaws or resolutions and therefore an answer is not the responsibility of the CCM. It is not the responsibility of the Commission to judge the actions or communications of a member or officer of the Synod. Procedures for dealing with such an alleged “offensive conduct” (Article XIII of the Constitution) are set forth under Bylaw 2.27 if it is considered that the offence calls for expulsion from membership. The use of the Synod’s dispute resolution procedure as set forth in Chapter VIII of the Bylaws is encouraged when disputes, disagreements or offenses arise among the members when it does not involve expulsion from membership.

Question 2: May [the officer], as an elected officer of the Synod, be free to criticize an opinion of the CCM in which he withholds basic information, thus criticizing on the basis of his

misinformation, rather than using the bylaw channels, which Synod requires of members to use to challenge or appeal a CCM decision?

Opinion: While criticism or dissent may not be prohibited, officers of the Synod, just as 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 and which the congregations alone have the authority to adopt or amend through conventions (Bylaw 1.05 d).

An officer of the Synod must recognize that “Elected officers serve the Synod in accordance with duties assigned to them or otherwise authorized by the Constitution and appropriate Bylaws...” (Bylaw 1.07b), that “Every member of the Synod shall diligently and earnestly promote the purposes of the Synod by word and deed” (Bylaw 2.35) and that “The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod” (Bylaw 2.39a).

In their accountability to the Synod, “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” (Bylaw 3.73). And as such, an officer of the Synod must especially respect the requirement that “An opinion rendered by the commission shall be binding on the question decided unless and until it is overruled by a synodical convention” (Bylaw 3.905 d).

As an officer of the Synod, the officer must assume only such rights as have been expressly conferred upon him/her by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod. It is the Synod that at all times has the right to call its officers to account (Article XI A).

188. Convention Chair Responsibilities of District Presidents (03-2362)

In a July 16, 2003 letter a pastor of the Synod requested an opinion from the Commission regarding the right of a District President to cast a deciding vote as chair of a District convention.

Question: In view of the fact that the Constitution and Bylaws of the Synod give voting rights at conventions only to pastors serving congregations and lay delegates, can a District President, who is not serving as a called pastor of a congregation but is an advisory delegate to a convention, cast a deciding vote in the case of a tie vote by the voting delegates?

Opinion: Synod’s Bylaw 4.07b states, “The Constitution of the Synod is also the Constitution of each District.” And Article VIII C of Synod’s Constitution states, “In case of a tie vote the President may cast the deciding vote.” Therefore a District President may cast a deciding vote in the case of a tie vote by the voting delegates.

189. President’s Responsibility under Bylaw 3.19 d (03-2363)

In a July 29, 2003 letter, a pastor of the Synod requested an opinion regarding the responsibility of the President to screen overtures to conventions.

Question: May the synodical President use 3.19 d of the Bylaws to exclude an overture which concerns the synodical President himself?

Opinion: Bylaw 3.19 d requires that the President of the Synod “determine if any overture contains information which is materially in error or contains any apparent misrepresentation of truth or of character” and instructs what must be done with any such overture. The bylaw does not provide for

exceptions to this requirement. Therefore, the President of the Synod may exclude an overture that concerns himself if it is materially in error or contains any apparent misrepresentation of truth or of character. The same is true of any overture that, upon advice of legal counsel, may subject the Synod or its corporate officers to civil action for libel or slander or that contains libel or slander (Bylaw 3.19 c).

190. The Final Decision of a Dispute Resolution Panel (03-2364)

In an e-mail communication addressed to the Commission on Constitutional Matters dated July 29, 2003, an ordained minister of The Lutheran Church—Missouri Synod has asked the following questions:

Question 1: Do the Bylaws of The Lutheran Church—Missouri Synod allow for the Synod in convention to overrule a decision of a DRP?

Opinion: 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.” Members of a Dispute Resolution Panel are not officers of the Synod and a Dispute Resolution Panel is not a board or commission.

It must also be noted: “The final decision of a Dispute Resolution Panel shall a) be binding upon the parties to that dispute subject to request for review;”(Bylaw 8.09 c 4 a). When and if the review has been requested, “The final decision of the Review Panel shall 1. be binding upon the parties to that dispute and not be subject to further appeal” (Bylaw 8.09 e 1). Accordingly, the Bylaws of the Synod do not allow the Synod to overrule a Dispute Resolution Panel or a Review Panel decision.

Question 2: If the Bylaws do not allow the Synod to overrule this decision, then should the overtures be returned to the congregations making them, informing them that the decision cannot be overturned?

Opinion: Depending upon the overture, its nature and contents and the circumstances of the case, either Bylaw 3.19 c or Bylaw 3.19 d are applicable. These are as follows:

[3.19] c. Overtures with reference to a case in which a member has been suspended or expelled and which is at present in the process of or subject to appeal, as well as overtures which, upon advice of legal counsel, may subject the Synod or the corporate officers of the Synod to civil action for libel or slander, or which contain libel or slander, shall not be accepted for convention consideration.

[3.19] d. The synodical President shall determine if any overture contains information which is materially in error, or contains any apparent misrepresentation of truth or of character. He shall not approve inclusion of any such overture in the convention manual and shall refer any such overture to the District President who has ecclesiastical supervision over the entity submitting the overture for action. If any published overture or resolution is found to be materially in error or contains any misrepresentation of truth or of character, it shall be withdrawn from convention consideration and referred by the President of the Synod to the appropriate District President for action.

The President of the Synod must handle any such overture according to the above bylaw provisions.

Question 3: If so, then should the President’s office or the Secretary of Synod return them?

Opinion: This question is answered under question 2 above.

191. Concordia Historical Institute Bylaw Changes (03-2366)

The Commission deferred action until the Commission receives additional pending bylaw changes and additional information.

192. Review of Handbook Revisions by Pro Tem Commission on Structure (02-2271; Cf April 29, 2003 Minutes)

The Commission received the Revised Handbook Report of the *Pro Tem* Commission on Structure, dated 7/23/03. The Commission deferred any review and action until the next scheduled meeting.

193. Articles of Incorporation of All Incorporated Entities of the Synod (98-2128; Cf. September 30, 1998 CCM Minutes)

The Commission received the report from Synod's legal counsel dated July 10, 2003 re the review of the Articles of Incorporation of All Incorporated Entities of the Synod. In consideration of the functions of the CCM (Bylaw 3.905), the Commission deferred any action until further review in accord with Bylaw 3.905 and consultation with the Secretary of the Synod.

194. Request of the Synodical President

In order to facilitate the Commission's responsibility as set forth in Bylaw 3.905 a, the Commission asked its secretary (the Secretary of the Synod) to request of the President of the Synod copies of the 2004 convention reports and overtures as soon as such are received and approved by him according to Bylaw 3.19.

195. Adjournment

All business to come before the Commission having been attended to, the meeting was adjourned with Scripture and prayer by the Chairman, Walter Tesch.

Wilbert J. Sohns, Secretary *Pro Tem*

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS

September 30, 2003
St. Louis, MO

196. Call to Order

Chairman Walter Tesch called the meeting to order and asked Albert Marcis to lead in an opening devotion. All members of the Commission were present for the meeting. Discussion followed regarding the participation of the Secretary of the Synod in the discussion of Board of Directors-related questions due to his voting membership on the Board. The Secretary was invited to participate in discussions.

197. Articles of Incorporation of All Incorporated Entities of the Synod (98-2128)

In May, 1998, the Board of Directors of the Synod requested that the Commission, in consultation with legal counsel, review the Articles of Incorporation of all incorporated entities of the Synod to ascertain that their articles include “appropriate language regarding relationship to the Synod, its appropriate board(s), and property disposal upon dissolution of the corporation.” The Commission instructed the Secretary of the Synod to procure copies of the Articles of Incorporation of all incorporated entities of the Synod and to present these documents to the Synod’s legal counsel for appropriate review.

In a July 10, 2003 letter to the Secretary, legal counsel reported the completion of the review of the Articles of Incorporation of the Districts, seminaries, colleges, universities, and synodwide corporate entities. An attached report included the following information for each corporation:

1. Historical details on the corporate documents filed with the applicable Secretary of State’s office;
2. Provisions in those corporate documents pertaining to the relationship between the corporation and the Synod;
3. Provisions in the corporate documents describing how the assets of the corporation will be distributed upon dissolution of the corporation; and
4. Provisions in the corporations’ constitutions and bylaws pertaining to the relationship between the corporation and the Synod or to the distribution of the corporation’s assets upon dissolution of the corporation.

The Commission instructed the Secretary to report the completion of its task to the Board of Directors, also calling attention to Bylaw 3.197 d and its requirements for governing instruments of synodwide corporations. The Board’s attention is also directed to Bylaw 3.185 a 2 which provides to the Board the authority to change powers and duties with respect to the property of the Synod that it had previously delegated to the incorporated entities of the Synod. As changes are made by the corporate agencies to bring their governing documents into line with bylaw expectations, the Commission stands ready to examine in advance all proposed amendments of such documents to ascertain whether they are in harmony with the Constitution, Bylaws, and resolutions of the Synod.

198. Report on Handbook Revision (02-2271)

The Commission discussed the latest report of the *Pro Tem* Commission on Structure in which that commission incorporated many of the Commission’s recommendations for changes. The Commission

also discussed concerns regarding other changes of substance it believes to have been incorporated into the *Handbook* revision. Evaluation of the report will continue. A letter to the *pro tem* commission will be prepared to communicate additional concerns regarding the project.

199. Reconsideration of Opinions re Ecclesiastical Supervision (03-2338, 03-2338A, 03-2338C)

In letters received February 27 and March 1, 2003, two pastors of the Synod encouraged the Commission to reconsider its January 20-21, 2003 decisions regarding “Consequences of Actions Taken Upon Approval of Ecclesiastical Supervisor” (02-2296; 02-2320) and all others in any way pertaining to ecclesiastical supervisors.

In a letter received April 7, 2003, a voters assembly of a member congregation of the Synod offered “An Appeal to the [Commission] on Constitutional Matters of The Lutheran Church—Missouri Synod to Declare Invalid Opinions 02-2296; 02-2320; and 02-2309,” expressing concern that these opinions leave the supervised member free from responsibility or accountability and thereby change the public nature of the Synod.

The Commission’s response to these requests was again deferred to allow time for further study and review.

200. Authority of the Board of Directors re Radio Station KFUE (03-2357)

In a letter received June 9, 2003, a District President questioned the right of the Board of Directors of the Synod to assume direct responsibility for the operation of KFUE radio in light of past convention actions. He also inquired regarding the possibility of a similar action by the Board of Directors over against entities owned by Districts, such as a radio station or resource center.

Question 1: Since 1986 Resolution 1-12 explicitly delegated responsibility for the management of KFUE to the Board for Communication Services, may the Board of Directors of the Synod reverse that delegation and assume direct control of the administration of KFUE under Bylaw 3.183 c?

Opinion: A general discussion of authority as between the Board of Directors and various agencies and boards of the Synod is set forth in Opinion 03-2358. The specific functions of the Board for Communication Services are set forth in Bylaw 3.813. Those functions may be expanded by synodical resolution, as in the case of 1986 Resolution 1-12. Where an express delegation of authority has been made by bylaw or resolution of the convention, the general authority of the Board of Directors under Bylaw 3.183 c (the Board is “authorized to take on behalf of the Synod any action related to such business and legal affairs which has not been expressly delegated...to other officers and agencies of the Synod”) is inapplicable. Rather, the authority of the Board of Directors in such circumstances is under Bylaw 3.183 d 2, “to call up for review, criticism, modification, or revocation any action or policy of a program board, commission, or council,” and under Bylaw 3.183 b, to “communicate to the appropriate boards and commissions suggestions for improvement.” Absent a voluntary relinquishment of authority from the Board for Communication Services to the Board of Directors, the Board of Directors may not reverse the delegation of authority as described.

Question 2: If the Board of Directors is able to do this, may it also take over responsibilities for entities owned by the various Districts (such as our radio station and resource center)?

Opinion: The division of the Synod into Districts was established by Article XII of the Constitution. The procedure for the formation and realignment of Districts is the subject of Bylaw 4.03. Bylaw 4.07 sets

forth the relationship between the Synod and the Districts, including the manner in which the Synod exercises its authority over the Districts. Bylaw 3.185 a 1 directs the Board of Directors to “delegate to District boards of directors the authority to buy, sell, and encumber real and personal property in the ordinary course of performing the functions which the District carries on for the Synod in accord with general policies (which shall be applicable to all Districts) established from time to time by itself or the Synod in convention.” With respect to entities owned by a District, the Bylaws provide in Bylaw 4.07 d that “upon dissolution of a District, all property and assets to which the District holds title or over which it has control shall be transferred forthwith to the Synod or to the Synod’s nominee. Upon dissolution of a corporation controlled by a District, the assets of such corporation shall be distributed to the District.” Article XII 12 indicates that “the Districts are independent in the administration of affairs which concern their District only, it being understood, however, that such administration shall always serve the interests of the Synod.” As such, the Board of Directors may not take over responsibility for entities owned by the various Districts.

See also the answer to Question 1.

201. Authority of Board of Directors to Direct Allocation of Funds (03-2358)

In a letter received May 28, 2003, the Executive Director of the Board for Higher Education/Concordia University System asked whether the Board of Directors has the authority to require the Board for Higher Education/Concordia University System to distribute a specified amount of allocated unrestricted dollars to other entities under the direct supervision and oversight of the BHE/CUS Board.

Question: Does the Synod’s Board of Directors have authority to “require” the Board for Higher Education/Concordia University System to distribute a specified amount of allocated, unrestricted dollars to other entities under direct supervision and oversight of the BHE/CUS Board (cf. Bylaws 3.183 d and 3.409 e)?

Opinion: In fulfilling its ecclesiastical purposes, the Synod in convention has identified the authority of the Board of Directors of the Synod in Article XI F of the Constitution and Bylaw 3.183. With respect to the financial affairs of the Synod and its entities, that authority includes, under Bylaw 3.183 c, the responsibility for the general management of the business and legal affairs of the Synod and, under Bylaw 3.183 d, responsibility to allocate available funds to the program boards, commissions, councils, and departments of corporate Synod and to hold them accountable therefor. To perform its function, the Board has the authority under Bylaw 3.183 d 2 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 f also provides the Board the responsibility to assure itself that audits are performed by internal auditors or independent certified public accountants for the synodwide corporate entities, colleges and universities, seminaries, Districts, and Worker Benefit Plans.

The Lutheran Church—Missouri Synod is a church body, entitled to the fullest autonomy allowed under the Constitution of the United States. Historically, in order to hold title to property and conduct civil affairs in a secular society, churches have been required in many states to have a civil status as well as a religious status. To further its primarily ecclesiastical functions, our Synod authorized the formation of a civil entity known as The Lutheran Church—Missouri Synod, incorporated under the civil laws of the State of Missouri. The Articles of Incorporation of The Lutheran Church—Missouri Synod reference the Bylaws and Constitution of the Synod no less than seven times each and identify the purpose of the corporation, to “unite in a corporate body the congregations of the Evangelical Lutheran Church...”

While the Synod could have adopted for its governance a corporate model, with power concentrated in a board of directors, subject only to election or reelection every three years, the Synod instead chose as its

church governance structure a system which places ultimate authority in its members in convention assembled, very much consistent with the pre-incorporation polity of the Synod. In fulfilling its function as “church,” the Synod has determined in convention to establish boards and commissions as the best way to carry out various church purposes and functions, as it reserved the right to do in Article VII of the Articles of Incorporation. Bylaw 3.01 indicates that the Synod in convention “establishes general synodical positions and policies, provides overall program direction and priorities, and evaluates all such positions, programs, policies, directions, and priorities in order to provide responsible service for and on behalf of its members.” The Synod has chosen to allocate duties, powers, and responsibilities among various officers, boards (including the Board of Directors of the Synod), and commissions, holding each ultimately responsible to the national convention of the Synod (Bylaw 3.73).

The Synod in convention has chosen to retain authority to identify and elect those persons whom it, as a church body and under the guidance of the Holy Spirit, believes will most effectively carry out its mission and ministry. The Synod in convention has identified specific mechanisms for the selection of others to be called into the service of the church. In specialized areas of ministry, it has created program boards. Bylaw 3.51 h defines a program board as “an officially established group of persons elected or appointed as prescribed in the Bylaws, charged with developing policies and programs for an operating function of the Synod and supervising their implementation.” The Board for Higher Education is one such program board.

Historically, because of the ecclesiastical nature of The Lutheran Church—Missouri Synod, it has operated as “church” and not simply as a non-profit entity. It has reserved in its governance structure the right through the Synod in convention to control itself, delegating pursuant to its historic procedures the authority and responsibility of church functions between conventions. Because of its primary identity as a church and not simply a non-profit corporation, the Synod has authority and autonomy to limit the authority of the Board of Directors of The Lutheran Church—Missouri Synod in ways which directors of secular non-profit corporations may not be limited. Even a secular non-profit corporation may limit the power of its board of directors with detailed limitations in the Articles of Incorporation themselves.

In fulfilling its ecclesiastical purposes, the Synod in convention has identified in its bylaws the duties and responsibilities of each of the separate boards and commissions of the Synod, as well as synodwide corporate entities. With respect to the Board for Higher Education/Concordia University System, those duties and responsibilities are described in Bylaws 3.401 through 3.415. With respect to fiscal issues, the Board for Higher Education/Concordia University System has specific responsibility under Bylaw 3.409 e to “establish policy guidelines involving distribution of synodical subsidy and efforts for securing additional financial support from other sources,” and under Bylaw 3.409 i to “approve capital projects in terms of constituency priorities and system and institutional needs in accordance with campus property-management agreements.”

The issue of balancing responsibilities between the Board of Directors and the responsibilities of program boards and commissions has been dealt with in past opinions of the Commission. For example, Opinion 02-2315, after reviewing the general balance of responsibilities, observed:

The Commission concludes that the Board of Directors has been given “general oversight responsibility” over the colleges, universities, and seminaries of the Synod as its agencies (see CCM Opinion 02-2259). As part of this general oversight, the Board has a legitimate interest in any contemplated action of an agency which results in the spending of funds beyond those currently budgeted or which will obligate future spending. By a request for such information, the Board exercises its right to call up an action for review, but this request is to be made, in this case, to the BHE/CUS Board. The role of the BHE/CUS

Board and its staff will be to provide the requested information to the Board of Directors through its chairman and chief executive officer.

The issue of balancing responsibility between the Board of Directors, charged with overall fiscal responsibility of the Synod, and the responsibility of program boards, commissions, councils, and departments of corporate Synod, charged with use of those allocated funds, has also been dealt with in past opinions of the Commission. A series of opinions dating back to 1976 involving implementation of New Orleans Resolution 6-31 (Ag. 591, Ag. 591A-B, Ag. 927, Ag. 9-27A, Ag. 934, and Ag. 934B-J) recognize that the Synod in convention is the highest legislative authority of the Synod, both as to program and fiscal matters. Later, in Opinion Ag. 1934 (December 5, 1992), the Commission wrote:

Bylaw 3.183 dealing with the authority of the Board of Directors states among other things, the Board of Directors shall...be authorized to take, on behalf of the Synod, any actions not expressly or by reasonable implication delegated to other officers, boards, or commissions. When, for fiscal reasons, an action such as the transfer of the editorial functions and the editors is deemed necessary, there appears to be no other officer or group which would have the authority to take such action. In addition, Bylaw 3.189 c states that the Board of Directors makes the final determination if conflicts develop in the plans and policies of two or more boards or commissions of the Synod.

The Board of Directors is required to act in a fiscally responsible and prudent manner. Included in that responsibility is the establishment of a budget as outlined in Bylaw 9.55 which includes the adoption of a final budget by the Board of Directors. That final budget may involve the allocation of limited funds in such a way that it would be impossible for a Board to carry out a specific function or at least to do so following the normal procedure which may have been followed for many years.

In further review of the issue, the Commission was asked in 1998 to review the effort of the Board of Directors to move the video studio of the Synod from the Board for Communication Services to General Services. In Opinion Ag. 2094 (May 22, 1998) the Commission ruled:

Bylaw 3.817 sets forth the functions of the Board for Communication Services (BCS). Subsection "g" thereof states that the BCS shall "serve as a resource...by providing...production facilities, and other assistance for...electronic media." Therefore, if operation of the video studio is part of the "production facilities," it is one of the designated functions of the BCS and cannot be removed from the BCS without a change of the bylaw by a convention of the Synod.

Later in that same opinion the Commission noted:

Each board or commission is solely responsible for the organization of its own staff. The Board of Directors of the Synod does allocate available funds to the respective boards and commissions (Bylaw 3.191, d) but the usage of such funds is the responsibility of the governing board of each board or commission.

Given the specific question presented, under the present bylaws, without consideration of emergency issues arising during the execution of a fiscal year's budget and consistent with the prior opinions of the Commission, the Board of Directors does not have authority to "require" that allocated unrestricted dollars be spent in a particular fashion. It is certainly anticipated that the Board of Directors will communicate its suggestions and the priorities it perceives within the overall programs of the Synod, as is recognized as its authority under Bylaw 3.183 b, to "communicate to the appropriate boards and

commissions suggestions for improvement.” While a particular board or entity is responsible to determine the use of allocated funds, each board must keep in mind its responsibility to consider input from the Board of Directors, the responsibility of the Board of Directors to call up for review and modification any action it takes, and ultimately the authority of the Board of Directors to make allocations in future years based on its perception of the stewardship of given boards in prior years.

202. Authority of Board of Directors to Direct Use of Funds (Board for Communication Services) (03-2359)

The chairman of the Board for Communication Services, in a letter received June 9, 2003, submitted a series of questions based upon the following background:

In the recent allocation of restricted funds to the various synodical program boards, commissions, councils, and departments, the Synod’s Board of Directors (BOD) included a requirement that the Synod’s Board for Communication Services (BCS) maintain the monthly REPORTER newspaper at “current levels”—i.e., that circulation and frequency of publication stay the same and that REPORTER remain both a *paper* publication as well as an electronic one. At the same time, the BOD reduced the BCS allocation of unrestricted funds by more than \$150,000 from current-year levels, which means that BCS staff and programs not related to REPORTER must be cut or eliminated. The effect is that the Board of Directors, rather than the BCS, is determining the communication-program priorities of the Synod.

There seems to be a lack of clarity between the role of the Board of Directors and that of the BCS regarding the management and prioritization of BCS activities, including oversight of REPORTER. While the Synod’s Bylaws direct the Board of Directors to “allocate available funds to the program boards, commissions, councils, and departments of corporate Synod and hold them accountable therefore” (3.183 d), those same Bylaws direct the Board for Communication Services to:

- “organize the communications activities of the church...” (3.183 a);
- “authorize and supervise the production of the necessary print and broadcast materials for the church and its publics” (3.813 b); and
- “have responsibility for the official periodicals of the Synod” (3.813 c).

The questions submitted to the Commission were as follows.

Question 1: Does the Synod’s Board of Directors have the authority to hold a program board “accountable” to the extent that it, the BOD, can dictate how the unrestricted funds allocated to that program board specifically are to be spent?

Opinion: See Opinion 03-2358. The Board of Directors may suggest priorities in the use of funds and ultimately has responsibility for the allocation of available funds. However, the Board of Directors may not mandate specific use of funds allocated to a program board or commission where the Synod in convention has given responsibility for carrying out a particular function of the Synod to a particular program board or commission.

Question 2: Does the Board of Director’s action usurp the prerogatives of the Synod acting in convention to make bylaws delegating responsibility for the management of synodical programs to synodical program boards?

Opinion: The responsibilities of the Board of Directors as described in Bylaw 3.183 have been discussed in other opinions (see Opinions 03-2357 and 03-2358). With respect to the general authority of various boards and commissions, Bylaw 1.07 d states: “Each board and commission or other agency that serves the Synod or a District in a specific area of program or ministry in accordance with the Synod’s Constitution and applicable Bylaws adopts programs in its assigned area of responsibility; administers the programs and resources as provided or authorized by the Constitution and applicable Bylaws, or as assigned by the respective convention or agency; and proposes modifications thereto. It also provides program policies, as well as directions, for its staff and shall establish, together with staff, evaluation criteria for its programs.”

An action of the Board of Directors dictating, as opposed to suggesting, how the unrestricted funds allocated to a program board specifically are to be spent would be a usurpation of the prerogatives of the Synod acting in convention to make bylaws designed to achieve its primarily ecclesiastical purposes by delegating responsibility for management of synodical programs to synodical program boards created by the Synod in convention to achieve the convention’s stated goals.

Question 3: May the Board of Directors in the exercise of its constitutional mandate to supervise the business affairs of the Synod “micro-manage” the policy, program, and other day-to-day decisions of the program boards to which the Synod in convention has delegated such responsibilities?

Opinion: While the Board of Directors is responsible to hold others accountable under Bylaw 3.183, the Board of Directors is not authorized to “micro-manage” the policy, program, and other day-to-day decisions of the program boards to which the Synod in convention has delegated such responsibilities.

Question 4: May the Board of Directors require what in effect are unfounded mandates of the program boards by not providing along with its requirements the funds to carry out those requirements? Is this, in effect, order the same number of bricks but without providing any straw (Ex. 5:6-8)?

Opinion: Please refer to the answers above.

203. Authority of the Board of Directors Over Restricted Funds (President’s Office) (03-2365)

In an e-mail letter received July 31, 2003, a pastor of the Synod pursues a question regarding President’s Office expenses paid by restricted giving.

Question: Does the Board of Directors of The Lutheran Church—Missouri Synod have fiscal review and authority concerning restricted funds given to the President’s Office? May the Board of Directors intervene if such spending is at odds with the purpose and objectives of the Synod? Can the Board provide oversight on restricted funding? Can the Board stop such spending with proper cause?

Opinion: The Constitution and Bylaws of the Synod give the Board of Directors broad authority in the areas of fiscal responsibility, as outlined in Article XI F of the Constitution and Bylaw 3.183. Those powers and responsibilities are subject to a number of restrictions. For example, “restricted funds” as referenced in the question is understood to include gifts in trust, accepted by the Synod with particular restrictions. If accepted, the trust provisions must be honored and the restrictions complied with.

With respect to restricted funds given to the President’s Office, the same principle applies. Bylaw 3.183 c does include a general recognition of responsibility of the Board of Directors in the business and legal

affairs of the Synod and, as discussed in Opinion 02-2259, the general duty to see that the Constitution and Bylaws of the Synod are observed, as directed in 2001 convention Resolution 7-03C. As further discussed in the response to Question 2 of Opinion 02-2259, however, the President is the chief ecclesiastical officer of the Synod, and the Board of Directors may not restrict the ecclesiastical functions of the President and the means chosen by him to carry out those functions within the resources available to him. It is expected that the Board of Directors, as well as all members of the Synod, will provide such constructive input as they may have to assist the President in the performance of his office.

204. Concordia Historical Institute Bylaw Amendments Review (03-2366)

The Director of Concordia Historical Institute, in a letter received September 23, 2003, provided to the Commission a series of amendments to the Bylaws of Concordia Historical Institute adopted by its Board of Governors at its September 27, 2002 and August 21, 2003 meetings. After review as required by Bylaw 3.905 f, the Commission reports that they are in harmony with the Constitution, Bylaws, and resolutions of the Synod and thanks the Board of Governors for its cooperation.

205. Responsibilities and Expectations of Officers of the Synod (03-2367)

In a letter received August 18, 2003, an ordained minister of the Synod asked a series of questions regarding the responsibilities of a Vice-President of the Synod.

Question 1: May an LCMS Vice-President reject the LCMS 2001 convention Resolution 3-07A by naming it a “human opinion” and “human document” and claiming that a Synod resolution contradicts the Word of God and the constitutional requirement of basing all actions on the Word of God instead of pursuing Bylaw 2.39 c?

Question 2: May an LCMS Vice-President in his official position as adjudicator of a Bylaw 2.27 action formally reject a synodical resolution (3-07A) while failing to state his rejection of a synodical resolution by pursuing Bylaw 2.39 c?

Opinion: Although the 2001 synodical convention Resolution 3-07A is a resolution *de jure humano*, the Synod, which has “the right to adopt doctrinal resolutions and statements” (Bylaw 1.09 a), regards it as being “in harmony with Scripture and the Lutheran Confessions” (Resolution 3-07A, 2001 *Convention Proceedings*, p. 137). An LCMS Vice-President or any officer of the Synod in the performance of their official duties may not reject any resolution of the Synod. As a member of the Synod, the officer must follow the avenues of dissent as set forth in Bylaw 2.39 c and abide by the provisions of Bylaw 1.09.

Question 3: Is an LCMS Vice-President correct in condemning Resolution 3-07A as against the Scriptures and that the CCM opinion is a sin against God’s Word and that the LCMS Dispute Resolution Panel decision is a sin while failing to obey the Synod’s route of dissent?

Question 4: In view of the responsibilities of an LCMS Vice-President to obey the LCMS Constitution and Bylaws and LCMS resolutions and to use the LCMS mechanisms available to reject LCMS resolutions, how does an LCMS Vice-President err when he writes to the LCMS Secretary, “I will not appeal the decision,” and does not pursue his opportunity to object to the Dispute Resolution Panel decision under Bylaw 2.27, but then he appeals to the political arena (“The Schulz Report of Benke-Yankee Stadium”)?

Question 5: In view of the LCMS 1971 Resolution 2-21 which states, “The Synod is irrevocably committed to the Sola Scriptura principle. The Synod maintains that it is not a violation of

the Sola Scriptura principle when it adopts doctrinal resolutions, for the Synod in such resolutions does not presume to establish doctrine, but it intends only to confess doctrine taught by the Scriptures,” is a Synod Vice-President violating the constitutional and bylaw understanding of adoption of resolutions such as 3-07A when in a Bylaw 2.27 action a Vice-President refuses to appeal, but he makes a charge against the Dispute Resolution Panel with violating the LCMS Constitution and sinning against God’s Word?

Question 6: Does the Vice-President err in his public criticism of the Dispute Resolution Panel and the Synod and its resolutions?

Question 7: Does an LCMS Vice-President err in rejecting Resolution 3-07A and the “Lutheran Understanding of Fellowship” (a CTCR – President A. L. Barry document) when the LCMS 1971 Resolution 2-21 states, “The purpose of the Synod is defeated when individuals are permitted to teach in accordance with their private views, for then there can be no such thing as a synodical position, and a meaningful corporate confessional commitment is impossible”?

Question 8: How does an LCMS Vice-President err when he substitutes his own interpretation of God’s Word and selections of Scriptures (not stated in his documents) for the common understanding and will of the Synod through a resolution such as Resolution 3-07A and its “Lutheran Understanding of Fellowship”?

Question 9: Is an LCMS Vice-President’s criticism valid that the action of a District President with the approval of the Synod’s President in honoring a provision of a synodical resolution is divisive, that when counsel is sought from the synodical President, it is his responsibility to “see to it that the resolutions of the Synod are carried out” (LCMS Constitution Article XI B 4)?

Question 10: Documentation reveals that an LCMS Vice-President has accepted political support for his rejection of the Dispute Resolution Panel decision from members of the LCMS even while the Vice-President refused to appeal the decision in this Bylaw 2.27 Synod action in the fact that seventy-one pastors, one congregation, and one pastor’s wife signed a June 25, 2003 letter to the LCMS Praesidium, Secretary, Council of Presidents, Commission on Constitutional Matters, Commission on Theology and Church Relations, and the members of the Dispute Resolution Panel. Should the members of the Synod expect an LCMS Vice-President to disassociate himself from the signatories and reject their support of him and their rejection of the Dispute Resolution Panel decision based on the erroneous and fallacious arguments used by the LCMS Vice-President in his May 11 letter to the LCMS Secretary together with the voluminous enclosures?

Opinion: In response to Questions 3 through 10, the Commission’s opinion is given in part in the opinion and references set forth under Questions 1 and 2 above. It must also be noted, however, that it is not the function of the Commission to judge if a member of the Synod, including any officer of the Synod, has violated any constitutional or bylaw provisions of the Synod or has erred. Nor is it the function of the Commission to judge the facts and correctness or validity of an officer’s behavior, actions, or communications.

206. Role of District Board of Directors in the Configuration of Visitation Circuits (03-2368)

A pastor of the Northern Illinois District, in a letter dated August 20, 2003, asked a series of questions regarding the responsibilities of a District board of directors in the determination of the configuration of visitation and electoral Circuits.

Question 1: Is it permissible for a District board of directors to approve the dividing of two visitation circuits into four permanent visitation circuits when the original circuits were specifically established by the District in convention?

Opinion: Synod Bylaw 4.91 provides that a District board of directors “shall have such powers and duties as are accorded to it by the Constitution, Bylaws, Articles of Incorporation, resolutions, and policies of the Synod, as well as those of the District.” There is no bylaw of the Synod that authorizes District boards of directors to create visitation circuits. Therefore, unless authorized to do so by the Constitution, Bylaws, Articles of Incorporation, resolutions, and policies of the District, a District board of directors is not authorized to realign Circuits.

The Northern Illinois District, most recently by its adoption of Resolution 4-02 during its 2003 convention (which gave final authorization to the division of an existing visitation Circuit into two Circuits), has demonstrated its concurrence with this principle that the District Board of Directors has not been given the final authority to realign Circuits. Therefore, absent any direct provision in the District’s Constitution, Bylaws, Articles of Incorporation, resolutions, or policies, the Northern Illinois District Board of Directors may not approve the dividing of two visitation Circuits into four permanent visitation Circuits. As the Commission stated in its February 8-9, 1974 opinion Ag. 500, “a District convention should realign Circuits or at least specifically authorize the [District’s] Board of Directors to take certain actions in connection with such realignment.”

Question 2: Is it permissible for a District Board of Directors to approve the dividing of two visitation Circuits into four new and permanent visitation Circuits if the individual congregations in these Circuits have not formally approved and requested the same?

Opinion: See the opinion to question #1 above regarding the right of a District board of directors to take such an action. The Constitution and Bylaws of the Synod are silent concerning the rights of affected congregations in a Circuit realignment.

Question 3: Is it permissible for a District Board of Directors to take an official action before that Board has ever met for the first time?

Opinion: A board of directors cannot conduct business outside of a meeting properly called and constituted according to the Constitution and Bylaws of the District and Synod. Synod Bylaw 3.69 b states: “b. Every agency shall organize itself as to officers and subcommittees at its initial meeting after election or appointment and shall conduct its business in accordance with accepted parliamentary procedure.”

Question 4: Is it permissible for a District Board of Directors to take official action when some of the members of the Board have not, as of yet, been officially installed into their position?

Opinion: A board of directors cannot include in its decision-making any members of the board that have not been inducted into office until such induction takes place. For this reason, according to Synod Bylaw 3.65 b, the initial meeting of the newly-constituted board “shall ordinarily be held in association with the induction and shall begin with a combined orientation program conducted under the direction of the President.” If essential business must be transacted in the interim, the existing board of directors “shall continue to function until the newly elected and re-elected members [of the board] assume office....The newly elected members of [the board of directors] shall attend whatever meetings are held in the interim, without vote, to become acquainted with their new responsibilities and functions” (Bylaw 3.67).

Question 5: Is it permissible for a District Board of Directors to take official action outside of an official meeting of that board – where its members have not had the opportunity to enter into face-to-face discussion and to vote on the issue within the construct of an official meeting?

Opinion: Again, it is not permissible for a District Board of Directors to take an official action outside of an official meeting of the board. However, face-to-face meetings of a board are not essential if all other requirements are met. In its Opinion 00-2197, the Commission spoke to the issue of telephone conference calls:

Already in 1974 the Commission on Constitutional Matters ruled regarding conference calls, stating “that such a meeting, although irregular, could be permitted.” The Commission further stipulated that all parties to the meeting should be “agreeable to the arrangement” and that the conference call should be “conducted in such a fashion as to provide for full and complete discussion and opportunity for statements and for the raising of questions,” making certain “that the rights of all parties are respected and protected.”

207. New England District Bylaw Amendments Review (03-2369)

The Secretary of the New England District, in a letter dated August 18, 2003, requested that the Commission review the bylaw changes adopted by the New England District convention in June, 2003.

After review of the bylaw changes, the Commission responds as follows:

- Revised District Bylaw 8.01 a 3 contradicts the requirement of Synod Bylaw 4.101: “The Nominating Committee of each District shall be elected by the District convention.” Therefore, this bylaw change, although adopted by the District in convention, cannot be incorporated into the Bylaws of the New England District.
- In revised Bylaw 8.20 b, reference is made to “vice presidential area,” but the Bylaws do not appear to define how such areas are determined. A future convention will be well advised to include such a provision in the Bylaws.

208. Dispute Resolution Panel Decisions (03-2370)

In an August 26, 2003 e-mailed letter, a pastor of the Synod asked two questions “recognizing that a Dispute Resolution Panel’s unappealed ruling or Review Panel’s ruling is ‘final,’ and thus cannot be ‘overturned,’ even by a convention of the Synod, and recognizing, further, that such rulings have no precedential value.”

Question 1: Can the Synod in convention consider an overture that “repudiates” a specific decision— not with a goal of “overturning” the decision (which is, by bylaw, impossible), but of establishing a contrary finding that serves precedentially in future cases?

Opinion: Bylaw 3.19 c and d specifies the kinds of overtures that shall not be accepted for or must be withdrawn from convention consideration. Mention is not made of overtures treating subject matters related to dispute resolution or appeal panel final decisions. It is a function of the conventions of the Synod to establish general synodical positions (Bylaw 3.01), which, unlike panel decisions that are not precedential (Bylaw 8.09 c 4 b and e 2), are to be honored and upheld by its members (Bylaw 2.39 c). Doctrinal resolutions and statements are governed by Bylaw 1.09. Amendments to bylaws or

constitutional provisions which were considered in a Dispute Resolution Panel decision may be modified as provided by Article XIV of the Constitution and Chapter XIV of the Bylaws. The Synod in convention may thereby consider an overture that addresses an issue that was also an issue in a Dispute Resolution Panel's decision.

Question 2: If a rostered member of the Synod is a participant in a Dispute Resolution Panel that makes statements in doctrinal error in its ruling, is he able to be held accountable for such errors under the Bylaws of the Synod?

Opinion: The proceedings before a Dispute Resolution Panel are private and not subject to publicity. Thus, only the parties to the dispute, as well as the members of the Dispute Resolution Panel, have full knowledge of the evidence that was produced at the hearing. Further, Bylaw 8.21 h provides that all records of disputes in which a final decision has been rendered shall be sealed and shall be opened only for good cause shown and only after permission has been granted by a Dispute Resolution Panel, selected by blind draw for that purpose.

Bylaw 8.09 c 4 d provides that a copy of the final decision of a panel shall be publicized as deemed appropriate under the circumstances by the District or synodical President. In those limited circumstances, publicity would be given to the decision of the panel. However, the decision is that of the panel and not of the individual members of that panel. Accordingly, because the facts presented to the panel at the hearing remain confidential and the opinion is that of the panel and not of the individual members of the panel, individual members of the panel cannot be charged with doctrinal error.

209. Appointments for a New Triennium (03-2371)

In a letter received September 29, 2003, a former District President asked questions regarding the timing of triennial appointments by boards of directors. The Commission agreed to defer its response until its next meeting.

210. Adjournment

The meeting was adjourned with words of benediction by Albert Marcis.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS

Conference Call Meeting
October 22, 2003

211. Call to Order

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

212. Reconsideration of Opinions re Ecclesiastical Supervision (03-2338, 03-2338A, 03-2338C)

In response to several letters asking it to reconsider Opinions 02-2296, 02-2309 and 02-2320 regarding ecclesiastical supervision, the Commission continued its discussion of the matter.

213. Board of Directors Special Legal Opinion and Report (03-2372)

In letters dated October 20 and 23, 2003, two pastors of the Synod asked questions regarding the special legal opinion obtained by the Board of Directors and discussed in the Board's September, 2003 "Board of Directors Report for Responding to Financial and Legal Matters." It was agreed that a draft response be circulated and discussed.

214. Adjournment

All business to come before the Commission at this meeting having been discussed, the meeting was adjourned with words of benediction.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS

Conference Call Meeting
December 6, 2003

215. Call to Order

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

216. Discussion of Board of Directors Actions re CCM Opinions

Chairman Tesch explained the purpose of the meeting, to discuss two resolutions adopted by the Board of Directors at its November 20-22, 2003 meeting: "In Response to CCM Opinions 02-2296, 02-2309, and 02-2320" and "In Response to CCM Opinions 02-2259, 03-2357, 03-2358, 03-2359, and 03-2365." After extensive discussion, the chairman assigned related tasks to members of the Commission.

217. Future Meetings

The Commission agreed to meet again via conference call at 7:00 p.m. on Saturday, December 13. The Commission also agreed to the requested joint meeting with President Kieschnick and representatives of the Board of Directors. The Secretary was asked to inform the President of the Synod and the Chairman of the Board of Directors.

218. Adjournment

With no further business to come before the Commission, the meeting was adjourned with words of benediction.

Raymond L. Hartwig, Secretary

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS

Conference Call Meeting
December 13, 2003

219. Call to Order

Chairman Walter Tesch called the meeting to order and asked Raymond Hartwig to open the meeting with prayer. All members of the Commission were present for the meeting.

220. Approval of Minutes

The minutes of the October 22 and December 6, 2003 meetings of the Commission were reviewed and approved.

221. Joint Meeting with Representatives of the Board of Directors

Chairman Tesch briefly described plans for the Commission's joint meeting with the President of the Synod and representatives of the Board of Directors in early January, also reminding Commission members of plans to meet the evening before the joint meeting. He called attention to a draft of a letter he intends to mail to the chairman of the Board of Directors requesting response to a number of questions prompted by recent Board actions.

222. Reconsideration of Opinions re Ecclesiastical Supervision (03-2338, 03-2338A, 03-2338C)

In a letter received February 27, 2003, a pastor of the Synod encouraged the Commission to reconsider its decision regarding "Ecclesiastical Supervision." The stated reason for encouraging the reconsideration was that for him the decision leaves the impression that no one can be held responsible for his actions when he has received prior permission from his ecclesiastical supervisor, that everyone must give an account of his actions before the throne of God and that no one can claim as an excuse that an ecclesiastical supervisor condoned his action. He further asked these questions: "Should not the Scriptures supersede any interpretation of the Bylaws? Is a decision of the CCM valid when it contradicts the Word of God? Can the church allow them (ecclesiastical supervisors) to be considered above accountability? Can those who follow approval by their ecclesiastical supervisor claim this same immunity from challenge to their action?"

Secondly, in a letter received March 1, 2003, a pastor of the Synod encouraged the Commission to reconsider its January 20-21, 2003 decisions regarding "Consequences of Actions Taken Upon Approval of Ecclesiastical Supervisor" (02-2296; 02-2320) and all others in any way pertaining to ecclesiastical supervisors. He stated: "In some cases, I fear ecclesiastical supervision may even exceed the boundaries of the Holy Scriptures."

Thirdly, in a letter received April 7, 2003, a voters assembly of a member congregation of the Synod offered "An Appeal to the [Commission] on Constitutional Matters of The Lutheran Church—Missouri Synod to Declare Invalid Opinions 02-2296; 02-2320; and 02-2309," expressing concern that these opinions leave the supervised member or an officer of the Synod free from responsibility or accountability and thereby change the public nature of the Synod. The congregation stated, "In this way the Synod, then, can hold no individual under such supervision accountable."

And finally, input that came as a result of the Commission's invitation expressed: "One effect of the CCM opinion is to preclude the Synod from expelling one of its members that engages in offensive conduct (also referred to in the same communication as 'unacceptable conduct' and 'scandalous conduct')...if that member acted with the advice or counsel of the member's ecclesiastical supervisor," and also, "CCM Opinion 02-2309 will certainly be used as a defense to members of Synod who may be charged with scandalous behavior."

Although the above letters were received by the Commission in March and April, 2003, as indicated, and a draft response was considered at the Commission's June 23, 2003 meeting, publication of a response was delayed because of the Commission's invitation to the Board of Directors to provide "information, if any, related to the issues that have been raised" (CCM Minutes, June 23, 2003, agenda item #161). That information was provided at the Commission's meeting August 15-16, 2003, as reflected in those minutes (Agenda item # 180). Having considered the questions, the communications, and the additional input, the Commission on October 30, 2003 drafted its response to the requests for reconsideration and the matters presented, and now issues it on this date, December 13, 2003, upon a scheduled conference call.

Opinion: Opinion 02-2309 (cf. Opinions 02-2296 and 02-2320) concluded that the Synod, having promised evangelical supervision and counsel to its members, is precluded from taking any action to terminate the membership of its member who, when performing his/her official duties, follows the advice and counsel of the ecclesiastical supervisor designated by the Synod. In other words, the opinion addressed the fact that a member of the Synod had the right to rely on the advice and counsel of his/her ecclesiastical supervisor in taking official actions without fear of being expelled from the Synod.

After prayerful consideration and for the following reasons, the Commission reaffirms its prior opinions 02-2296, 02-2309, and 02-2320. In reviewing the nature and function of Synod, the Synod, which is "collectively...an... association of self-governing Lutheran congregations" (Bylaw 3.51 a)¹ expresses its collective understanding (and interpretation) of the Scriptures and the Lutheran Confessions through its doctrinal resolutions and statements in convention (Bylaw 1.09 a)² and also expresses its collective will through its Constitution, Bylaws and other resolutions (Bylaw 3.01)³.

On the basis of the Synod's Constitution and Bylaws, if the Constitution and Bylaws or resolutions of the Synod contradict God's unchangeable Word or exceed the boundaries of Holy Scripture, "the only rule and norm of faith and of practice" (Article II), it is incumbent upon the Synod in convention to amend or repeal such. And any action or decision of officers, boards or commissions may be appealed to the Synod in convention (Bylaw 3.73).⁴

As set forth in Bylaw 3.905 d, the Commission on Constitutional Matters is charged with the duty to "interpret the Synod's Constitution, Bylaws, and resolutions." It does not interpret the Scriptures. Thus the Synod has limited the Commission in its responses to the specific provisions of the Constitution, Bylaws and resolutions of the Synod. The Synod has reserved unto itself the right to determine whether a decision of the Commission is valid or in error or if it contradicts the Synod's Constitution and Bylaws. Bylaw

¹ "The term Synod refers collectively to the association of self-governing Lutheran congregations initially incorporated on July 3, 1894, and presently named The Lutheran Church—Missouri Synod, and all agencies of the Synod as defined in Bylaw 3.51 a. Synod, as defined herein, is not a civil-law entity."

² "The Synod, in seeking to clarify its witness or to settle doctrinal controversy... shall have the right to adopt doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions."

³ "...It is the principal legislative assembly, which amends the Constitution and Bylaws, considers and takes action on reports and overtures, and handles appropriate appeals. It establishes general synodical positions and policies, provides overall program direction and priorities, and evaluates all such positions, programs, policies, directions, and priorities in order to provide responsible service for and on behalf of its members."

⁴ "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."

3.905 d provides that "an opinion rendered by the commission shall be binding on the question decided unless and until it is overruled by a synodical convention."

Further, regarding the issues of evangelical and ecclesiastical supervision, responsibility, and accountability, the Commission calls attention to the following: In the formation of our synodical union, "the Synod, under Scriptures and the Lutheran Confessions" established various objectives including "evangelical supervision, counsel, and care for pastors, teachers, and other professional church workers of the Synod in the performance of their official duties" and "protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights" (Article III 8 and 9). [Emphasis added]

Bylaw 3.51 k defines ecclesiastical supervision as follows: "...ecclesiastical supervision shall be determined exclusively by those Bylaws pertaining to ecclesiastical supervision." Among the bylaws that primarily address this issue are Bylaw 3.101 which relates to the President of the Synod and Bylaws 4.71–4.75 which relate to District Presidents. Both segments of the Bylaws indicate that the President of the Synod and a District President have the duty to "supervise the doctrine" and "see to it that" the Constitution and Bylaws and resolutions of the Synod are carried out as part of their respective areas of responsibility (cf. Constitution Article XI b and Article XII 7 & 8).

Therefore, this Synod-provided ecclesiastical supervision, which is neither a matter of giving permission nor exercising legislative control or coercive power (Article VII) but is one of giving advice and counsel, is circumscribed and exercised not by the will of the ecclesiastical supervisor, not by individual interpretation, and not by public opinion or by groups within or outside of Synod but by the collective will of the congregations of the Synod in convention. This also holds true in administering the supervisory and disciplinary provisions of the Bylaws in carrying out Article XIII of the Constitution. Under the authority of the Synod, the ecclesiastical supervisor does what he has been authorized and directed to do on behalf of the Synod and is accountable to the Synod in convention.

Thus, Opinion 02-2309 opined that in the forming of the Synod, one of the objectives and protections of the Synod itself was that the Synod was to provide for ecclesiastical supervisors, and inherent in such supervision is that those so supervised can reasonably rely on the counsel and advice in the performance of their official duties without having to fear that actions taken in accord therewith will place their very membership in the Synod at risk. That is not to say, however, that the advice will always be correct and that therefore the member's action is correct. It is noted in Opinion 02-2309 "that when an ecclesiastical supervisor discovers error in his counsel, it is incumbent upon that supervisor to correct or amend it. The member should then be held to consider the corrected counsel." The protections of the Synod as expressed in Opinion 02-2309 are protections of one's membership in the Synod and not a protection from the duty and responsibility to constantly consider the appropriateness of one's actions in view of the Word of God. No one is immune from responsible, God-pleasing conduct and behavior or personal accountability before God.

The Commission also calls attention to the language of Opinion 02-2309. Both in the second to last paragraph of the answer to Question 1 and in answer to Question 2, the opinion specifically references official duty and action, not personal offensive conduct. The opinion notes in Question 1 that "the Synod has promised its individual members supervision and counsel when the member is performing his/her official duties." The answer to Question 2 concludes that "the Synod is precluded from taking any action to terminate the membership of its member who, when performing his/her official duties, follows the advice and counsel of the ecclesiastical supervisor designated by the Synod" (emphases added). Thus, personal offensive conduct or conduct that is illegal or criminal can certainly not be included in the context of the quoted prior opinion.

In addressing accountability of the District President and the President of the Synod, Article XII 7 of the Constitution provides that "the District President shall, moreover, especially exercise supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers of their District" Who then exercises ecclesiastical supervision over a District President? Bylaw 3.101 A 1 provides, "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." Who then has ecclesiastical supervision of the President of The Synod? Neither the Constitution nor the Bylaws provide a specific answer to that question. However, in 1992 the Commission issued an opinion (Ag. 1915), which has not been overruled by any subsequent convention of the Synod. That opinion provided in part as follows: The Synod has a right to call its officers to account and to remove them from office in accordance with Christian procedure (Article XI 2). The Commission then commented, "It would seem that the only recourse is an appeal to the convention of the Synod...."

223. President and Board of Directors' Appointments (03-2371)

In a letter received September 29, 2003, an ordained member of the Synod submitted a series of questions regarding the President's right and the Board of Directors' practice of making board and commission appointments for the new triennium prior to the end of the previous triennium.

Question 1: CCM 01-2231 addresses the question, "May a President-elect of the Synod make appointments, which a President is required to make under the Bylaws, prior to being inducted into office?" The CCM cites Bylaw 3.67 c, which applies to boards of directors as well as the President. Would the CCM's answer regarding the President-elect be the same, therefore, to this similar question: "May a Board of Directors-elect of the Synod make appointments, which a Board of Directors is required to make under the Bylaws, prior to being inducted into office?"

Opinion: In Opinion 01-2231, the Commission referred to Bylaw 3.67, "Interim Authority," and quoted paragraph c: "No appointments to synodical boards or commissions shall be made and no new programs shall be initiated by the outgoing President [or the boards of directors or elected or appointed boards or commissions] during the interim." The Commission concluded that "the outgoing President may not make any appointments after the election by which his successor was chosen," noting that the President has no powers or duties as President, including the power and duty to make presidential appointments, until his induction into office "on or subsequent to September 1st following the convention" (Bylaw 3.65).

This same applies to the Board of Directors of the Synod, since Bylaw 3.67 c specifically mentions "boards of directors" as well as the President.

Question 2: Carrying the question a bit further, to *before* a convention rather than *after* a convention: "May an outgoing Board of Directors make appointments for a new triennium prior to being elected (or re-elected) for that new triennium by the Synod in convention?" Put another way, "May the BOD elected for one triennium make appointments for the following triennium? For example, may the Board of Directors that was elected by the 2001 convention for the 2001-2004 triennium make appointments to agencies, boards and commissions that will not take office until after a new Board of Directors is elected by the 2004 national convention of the Synod?"

Opinion: Whereas paragraph c of Bylaw 3.67 provides that no appointments are to be made to synodical boards or commissions by the outgoing President or any other boards or commissions during the interim between the convention and induction into office, it does not address this question. There is at present no

bylaw that explicitly approves, forbids, or addresses the timing of these appointments with the exceptions of interim authority in Bylaw 3.67 c and appointments to the Commission on Structure in Bylaw 3.917 a.

It is reasonable to advocate that no appointments should be made for a new triennium by an outgoing Board of Directors prior to those positions becoming vacant at the end of the triennium. It is also reasonable to conclude that it would be difficult for the Board of Directors to make informed appointments upon taking office on September 1st and expect those appointees also to take office on September 1st (cf. Bylaws 3.59 b and 3.65). Therefore, the Commission recommends that this matter be referred to the Commission on Structure for the development of a convention action that will resolve this question.

224. Board of Directors Special Legal Opinion and Report (03-2372, 03-2373)

In letters dated October 20 and 23, 2003, two pastors of the Synod asked questions regarding the special legal opinion obtained by the Board of Directors and discussed in the Board's September, 2003 "Board of Directors Report for Responding to Financial and Legal Matters." After brief discussion, it was agreed that a final opinion should be postponed.

225. Challenge to Circuit Forum Election Procedure (03-2374)

A Circuit Counselor in a November 6, 2003 e-mailed letter asks the Commission's opinion regarding procedure to be followed in the case of a mistake in the procedure used to elect delegates to the 2004 convention of the Synod.

Question: We have a person in our Circuit who wants to protest the vote for the lay delegate on the following bases: one of our churches placed two names from their church to be the lay delegate for the 2004 convention. We did not find out until it was too late and the voting was done and I had sent off the names to the District. The lay delegate was one of the two names given by [the congregation]. With the October 10th [elections] deadline here and gone and with November 7th being the deadline for me to have the names in, we are unable to make a change. What is the proper way to correct this problem before we send off the money or get to the convention and have someone protest the person who is our lay delegate to the convention?

Opinion: Bylaw 3.05 details the process to be used by electoral Circuits to elect delegates to the conventions of the Synod. Should errors occur, they must be corrected during the course of the meeting or by calling another meeting, provided that such a meeting is possible. The bylaw includes no provision for corrections following the meeting if it is not possible to call another meeting.

Bylaw 3.11 provides that the names and addresses of elected delegates are to be forwarded by the Secretary of the District to the Secretary of the Synod and that this process constitutes certification. Bylaw 3.25 requires that conventions of the Synod be conducted according to parliamentary law, which allows for challenges to the report of the credentials committee of the convention at the time that it makes its report to the convention. In the present case, therefore, the matter may be challenged at that time, in which case the delegates (other than those whose credentials are challenged) will decide the matter.

226. District Funding of Relief Agency (03-2375)

In a letter dated November 10, 2003, a pastor of the Synod submitted a question regarding the action of a District related to the start of a new congregation affiliated with the Evangelical Lutheran Church in America.

Question: Would a District of the LCMS be in violation of the synodical Constitution should it provide financial support to a relief agency that is co-sponsored by the LCMS and ELCA if that agency were funding the startup of a new ELCA congregation?

Opinion: Districts are agencies of the Synod (Bylaw 3.51 a). Accordingly, along with all other officers and agencies, Districts “shall be accountable to the Synod, and any concerns regarding the decisions of such officers or agencies may be brought to the attention of the Synod in convention for appropriate action” (Bylaw 1.07 a). Therefore, questions regarding the propriety of a District’s decisions regarding providing financial support are to be submitted to conventions of the Synod and not to this Commission.

227. Responsibilities of the Board of Directors and the Executive Power of the President (03-2376)

In a December 2, 2003 e-mailed letter, the President of the Synod submitted a series of questions “arising from a constitutional conflict extant in The Lutheran Church—Missouri Synod,” questions pertaining to the constitutional and bylaw responsibilities of the Board of Directors as an officer of the Synod and to the constitutional and bylaw definitions, boundaries, and limits of the President’s “executive power.” The Commission agreed to respond to these questions at its next meeting.

228. Adjournment

All business on the agenda of the meeting having been addressed, the meeting was adjourned with words of benediction.

Raymond L. Hartwig, Secretary