

2001 CONVENTION WORKBOOK – APPENDIX I
OPINIONS OF COMMISSION ON CONSTITUTIONAL MATTERS

Constitutionality of Bylaws on Dissent (98-2120)

A letter from a pastor in effect questioning the constitutionality of the Bylaws on dissent in the synodical Handbook was discussed. Prior to the meeting a copy of this letter had been shared with the Executive Director of the Commission on Theology and Church Relations for his input. Dr. Sam Nafzger offered a copy of a presentation he had made some years earlier to the Minnesota South District Pastors Conference, suggesting that the questions raised by the pastor were addressed in the paper. The Commission commended Dr. Nafzger's paper, "Synod: Walking Together," to the pastor for his study, with an invitation that he resubmit his concerns to the Commission should his questions be not fully addressed.

Adopted Sept. 30, 1998

District President Fellowship and Discipline Questions (98-2122)

In a letter to the Commission, a District President submitted a series of questions relating to Articles III and VI of the Constitution and also Bylaw 2.27, b and g, and Bylaw 2.41, d. To more fully understand the content and significance of key phrases in these particular articles of the Constitution, the Commission invited Dr. August Suelflow to be present at its meeting to provide some of the history behind the wording of Articles III and VI.

Dr. Suelflow began his presentation with historical information regarding Article II, which he considers foundational to the following articles, underscoring from the historical setting the significance of the words "without reservation." He also called attention to the commentary on these articles provided by Dr. C. F. W. Walther, primary author of the Constitution, at the same time also underscoring the care that was taken with the original wording, wording which for the most part is the same as that in use today.

The Commission decided to delay its response to several of the questions raised by the District President pending further research and study, noting the significance of the questions being raised. Replies were given to the remainder of the questions, however, as follows:

In your letter of July 29 you asked the Commission to provide answers to a number of questions in several categories. The Commission is prepared to respond to most of your questions at this time but asks your patience with regard to your third question which specifically addresses Article III (1) of the Constitution of the Synod and in particular its statement that one of the objectives of the Synod is to "conserve and promote the unity of the true faith" by providing "a united defense against schism, sectarianism (Romans 16:17), and heresy." The Commission will also delay its answer to your fourth question regarding Article VI and "the participation of pastors of other churches or confessions in the services and sacramental rites of a congregation of the Synod." These questions will remain unanswered for the present time to allow for further study.

Several other of your questions, however, pertain to the remainder of Article III, 1, where, as you have correctly noted, it is stated that a primary objective of our Synod is "to conserve and promote the unity of the true faith' by working through the official structure of the Synod toward fellowship with other Christian church bodies." Your first question to the Commission in this regard was:

1. “Is it correct to assume that the reference to working through the official structure of the Synod toward fellowship with other Christian church bodies refers to procedures and actions such as the ones that led to the declaration of altar and pulpit fellowship with the Evangelical Lutheran Church of Ingria in Russia at the 1998 convention of the Synod?”

In answer to your question the Commission calls your attention to synodical Bylaw 13.03, a,

- a. When a church body applies for formal recognition of altar and pulpit fellowship with the Synod, such recognition shall be proposed at a synodical convention only after the approval of the Commission on Theology and Church Relations.

Compare also Resolution 3-01 of the 1998 convention, “To Declare Altar and Pulpit Fellowship with Evangelical Lutheran Church of Ingria in Russia,” noting in particular the following paragraphs:

WHEREAS, Doctrinal discussions between official representatives of the LCMS and the ELCIR have revealed that complete agreement between our two churches in doctrine and practice exists; and...

WHEREAS, The Commission on Theology and Church Relations has reviewed the charter of the Evangelical Lutheran Church of Ingria, and in accordance with Bylaw 13.03 a has recommended that The Lutheran Church–Missouri Synod declare itself to be in altar and pulpit fellowship with this church body; ...

Note that the procedure provided in the Bylaw was faithfully followed in the reception of the Evangelical Lutheran Church of Ingria in Russia into fellowship. The answer to your first question, therefore, is “yes.”

You also asked a second question regarding fellowship with other church bodies:

2. “Does the word ‘other’ in the phrase, ‘other Christian church bodies’ (Art. III, 1) indicate that The Lutheran Church– Missouri Synod considers itself a ‘Christian church body’? If so, does this Article require the Synod also to work through its official structure toward fellowship with other Christian church bodies (ecumenical activities and endeavors) or does this objective leave the Synod free to isolate itself from other Christian church bodies?”

The Commission affirms that the phrase, “other Christian church bodies,” in Article III, 1, of the Constitution of the Synod does assume that the Synod is a Christian church body. Furthermore, the phrase, “....work through its official structure toward fellowship with other Christian church bodies....,” indicates that there must be a continuing effort toward fellowship with other Christian church bodies, such efforts to proceed through the Synod’s official structure. Bylaw 3.101, A, 5, as it will read in the 1998 Handbook, elaborates upon the intended “official structure,” stating that the President shall

5. be the chief ecumenical officer of the Synod. He or his representative shall represent the Synod in official contacts with other church bodies.

In addition, Bylaw 3.925 speaks of the functions of the Commission on Theology and Church Relations. The following sections are pertinent:

- a. The commission shall assist the President at his request in discharging his constitutional responsibilities, specifically
 2. in dealing with other church bodies;
 3. in initiating and pursuing fellowship discussions with other church bodies.
- b. The commission shall provide guidance to the Synod in matters of theology and church relations, specifically:
 2. in addressing itself to and evaluating the existing fellowship relations for the purpose of mutual admonition and encouragement.

It should also be noted that Article III requires continuing efforts toward fellowship. At the same time it offers no indication that such efforts toward fellowship should compromise or deviate from the confessional standard of the Synod as set forth in Article II of the Constitution. It is assumed that the degree to which the Synod is isolated from other Christian church bodies is related to the degree to which there is doctrinal disagreement with other church bodies.

A second category of questions submitted by the District President were associated with Bylaw 2.27, g, as adopted by the 1998 convention of the Synod.

Changing subjects in your letter, you also asked a number of questions regarding the newly adopted Bylaw 2.27, g:

1. "Is the word 'complaint' in the clause 'if he receives a complaint relative to a District President' limited to the complaints described in 2.27a., that is, a complaint 'which could lead to the expulsion of a member from the Synod under Article XIII of the Constitution,' or can it be any complaint lodged against a District President?"

The Commission calls attention to the fact that the word "complaint" as used in Bylaw 2.27, g, has the same meaning as the word "complaint" in Bylaw 2.27, a. Thus Bylaw 2.27, g, can only be utilized by the President of the Synod if the facts which form the basis of the complaint are of such a nature that they could lead to the expulsion of the District President from the Synod under Article XIII of the Constitution.

2. "Bylaw 2.27 g. states that the President of the Synod 'shall proceed in the same fashion as a District President if he receives a complaint relative to a District President.' In many cases a District President will restrict the member against whom the complaint has been made under the provisions of Bylaw 2.23. Does Bylaw 2.27 g. give the President of the Synod authority to impose restricted status on a District President? If so, do all the provisions of Bylaw 2.23 apply?"

Bylaw 2.23 (Restricted Status) is a procedure which allows a District President to restrict a member of the Synod under his ecclesiastical supervision from changing the position of his/her ministry or accepting a call to another position of service in the Synod while the District President investigates an allegation that such member has (a) engaged in conduct which could lead to expulsion from the Synod under Article XIII of the Constitution; or (b) is incapable of performing the duties of his/her office or position because of a physical, mental or emotional disability; or (c) neglects or refuses to perform the duties of his/her office or position. Bylaw 2.27, g, did not

extend this authority to the President of the Synod and therefore the President of the Synod cannot place a District President on restricted status.

3. “If a District President is suspended under the provisions of Bylaw 2.25, he is to be relieved of his duties under the provisions of Bylaw 2.25c. But what of his office? Does he retain his office until relieved by the next convention of the District? If a District chooses to keep the suspended District President in office – as has happened with congregations and suspended pastors – what recourse does the Synod have?”

The Commission calls attention to the fact that Bylaw 2.25, a, states that when formal proceedings have been commenced against a member of the synod which could lead to his/her expulsion as a member of the Synod, the member shall have suspended status. Thus suspended status is a byproduct of the commencement of an action to terminate a membership of the Synod. Suspended status cannot be imposed without the prior commencement of such an action. The question here asked of the Commission has several parts and will be responded to separately.

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

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

It is clear from the Bylaws of the Synod that a District is a subdivision of the Synod and therefore subject to its decisions. Bylaw 4.07 states,

- a. The Synod is not merely an advisory body in relation to a District. A District is the Synod itself performing the functions of the Synod. Resolutions of the Synod are binding on the Districts.

- b. The Constitution for the Synod is also the Constitution of the District. The Bylaws of the Synod shall be primarily the Bylaws of the District.

This is further supported by Bylaw 1.05, f:

- f. Districts and Circuits as component parts of the Synod are obligated to carry out resolutions of the Synod.

If therefore a District takes an action that is contrary to the Constitution and Bylaws of the Synod, such action is null and void, and the President of the Synod could proceed under the authority granted to him by Bylaw 3.101, C, 11, where the President shall

11. be authorized, in the event that the affairs of the Synod require the exercise of executive power for a purpose for which there is no specific directive of the Synod, to exercise such power after consultation with the Vice-Presidents, the Board of Directors for The Lutheran Church–Missouri Synod, or the Council of Presidents, whichever, in his judgment, is most appropriate. Any member of the Synod shall have the right to appeal such action to the Commission on Constitutional Matters and/or the Synod in convention, whichever is appropriate.

Another series of questions by the District President raised concerns relating to procedures for making and receiving complaints during the process stipulated in Bylaw 2.27, b:

The Commission furthermore provides the following opinions in answer to the series of questions relating to appropriate involvement by the synodical President and Praesidium in Districts:

1. “May the Presidium receive a complaint from a member during the 90 day period and act on it while the District President is still investigating or following some process to reach a decision as to whether or not to suspend the member against whom the complaint was made?”

This question has already been addressed by the Commission in a May 22, 1998 opinion. A copy is attached.

2. “What recourse, if any, does a District President have if the Presidium receives such a complaint within the 90 day period and acts on it before the District President has reached a decision as to whether or not to suspend?”

The opinion referenced in the previous question constitutes a response to this question also.

3. “May a member of the Synod lodge a complaint which may lead to expulsion from the Synod under Article XIII of the Constitution against another member of the Synod within a District without first bringing that complaint to the District President, especially against a member of the Synod within the District who is clearly under the ecclesiastical supervision of the District President?”

The answer is “no.” The procedure for determining whether a member of the Synod is to be expelled under Article XIII is limited to the procedure established under Bylaw 2.27. This Bylaw requires that there must be a written complaint and that such complaint must be presented to the District President who has ecclesiastical supervision of the member.

4. What recourse, if any, does the District President have if such a complaint is lodged first with the President of the Synod or the Presidium, bypassing his office?”

The President or the Praesidium have no authority to act on this complaint under the stated circumstances, and any action either might take would be a nullity. Under the facts of the question, the President or Praesidium of the Synod must advise the complainant to follow the procedure set forth in Bylaw 2.27 and to file the written complaint with the appropriate District President.

5. “May a member of the Synod lodge a complaint which may not lead to expulsion from the Synod under Article XIII of the Constitution against another member of the Synod within a District without first bringing that complaint to the District President, especially against a member of the Synod within the District who is clearly under the ecclesiastical supervision of the District President? In other words, does the normal chain of command need to be followed, i.e. pastor, elders (or visa verse depending on the complaint), Circuit Counselor, District President, Synodical President or Presidium?”

If the matter does not involve facts which could lead to the expulsion of the member from the Synod under Article XIII of the Constitution, such a matter would be resolved under Chapter VIII of the Bylaws. The provisions of Chapter VIII neither require nor prohibit that the District President be advised of the dispute.

6. “What recourse, if any, does the District President have if such a complaint is lodged first with the President of the Synod or the Presidium bypassing his office?”

The provisions of Chapter VIII of the Bylaws are applicable to the President of the Synod, Praesidium of the Synod, a District President and every other member of the Synod. The Preamble to Chapter VIII provides, “The use of the Synod’s conflict resolution procedures shall be the exclusive and final remedy for those who are in dispute.” The President of the Synod, the Praesidium of the Synod or a District President play no part in such a dispute. It is a Chapter VIII matter and is to be resolved under the process established in Chapter VIII. Bylaw 8.07 sets forth the procedure to initiate the dispute resolution process and the President of the Synod, the Praesidium or a District President must advise the complainant in such cases that the matter has been presented to the wrong party and that the procedure to be followed is provided in Chapter VIII.

The District President finally also asked several questions relating to Bylaw 2.41, d:

You also posed several questions to the Commission relating to Bylaw 2.41, d, and the District membership and ecclesiastical supervision of the President of the Synod.

“Must the President of the Synod be a member of a District of the Synod under the provisions of Bylaw 2.41 d.? Under the provisions of the same Bylaw, does the President of the Missouri District have the right (and in certain circumstances, the duty) to apply the provisions of Bylaws, Chapter II, D. and E. (Bylaws 2.21 through 2.33) to the President of the Synod?”

In answering these questions, the Commission first observes that the President of the Synod is under the ecclesiastical supervision of the President of the Missouri District under Bylaw 2.41, d, since the synodical President serves the Synod at its headquarters in St. Louis, Missouri. Nothing in the Bylaw indicates any intent that the synodical President (or anyone else) be excepted from this provision. Bylaw 4.73 requires that the President of the Missouri District supervise the doctrine, life and the official administration of those who are subject to his ecclesiastical supervision. As part of that supervision, the President of the Missouri District is held to apply the provisions of Bylaws 2.21 through 2.33 when necessary.

The Commission further notes that these provisions do not apply to all grievances which might be brought against the synodical President, but only those listed in Bylaws 2.23, a. 1-3, and 2.27, a. Furthermore, given the importance of the responsibilities of the synodical President and the

disruption of the administration of Synod affairs which would result from the application of these procedures to the indocile President, it is to be expected that the President of the Missouri District would exercise the utmost caution, discretion and good judgment in exercising his responsibilities under these sections.

Adopted Sept. 30, 1998

The Scope of Authority and Jurisdiction of Doctrinal Reviewers (98-2126)

A series of questions were submitted by the Executive Editor of The Lutheran Witness regarding the scope of the authority and jurisdiction of doctrinal reviewers, calling attention to Bylaws 11.03, a-c. He explained that answers to these questions are necessary for the staff of The Lutheran Witness to carry out its editorial responsibilities.

After discussion the Commission offered the following responses to each of the questions:

1. "In Bylaw 11.07c, do the words 'inadequate,' 'misleading' and 'ambiguous' refer only to doctrinal content, or does it refer to any content in an article?"

The matter of doctrinal review is treated in the Bylaws under the provisions of Chapter XI. Bylaw 11.01 provides that "doctrinal review is the exercise of the Synod's responsibility for every doctrinal statement made in its material as defined in Bylaw 11.03." Bylaw 11.03, a, provides that "All official periodicals and journals of the Synod...shall be subject to doctrinal review." Bylaw 11.01, b, clarifies that "The prime concern of doctrinal review is that the doctrine set forth be in accord with the Scriptures and the Lutheran Confessions."

Acting within the scope of 11.07, a, doctrinal reviewers are required to "make careful evaluation of the doctrinal content of all items submitted..." This provision sets forth a context for 11.07, c, which states that "The reviewer shall also be concerned that the items submitted to him do not contain statements that are inadequate, misleading, ambiguous, or lacking in doctrinal clarity."

In the event that there is a disagreement between an author or publisher and the doctrinal reviewer on material that has not yet been published, the matter goes before the Commission on Doctrinal Review. Its duties according to Bylaw 11.11, b, 1, are to establish guidelines for the work of doctrinal reviewers and to concern itself with problem areas in the procedures of doctrinal review. In a matter where doctrinal review is challenged after publication, Bylaw 11.15, c, stipulates that "the challenger is obliged to provide specific references of how the published item is not in agreement with Scripture and the Lutheran Confessions."

Bylaw 11.07, b and d, establishes the standard for review or appeal, that the doctrinal content be in accord with the Scriptures, the Confessions and the resolutions of the Synod. The jurisdiction given to a doctrinal reviewer does not extend beyond matters of doctrine. The Commission therefore interprets Bylaw 11.07, c, to mean that "inadequate, misleading, ambiguous or lacking in doctrinal clarity" apply to doctrine alone.

The line of demarcation between the authority of doctrinal reviews and the Board for Communication Services is clearly set forth in Chapter XII of the Bylaws. According to Bylaw 12.01, c, the Board for Communication Services shall be responsible for the official periodicals (of the Synod)..." Bylaw 12.05 states that "matters relating to doctrine shall be approved under the prescribed procedure for doctrinal review before publication." The doctrinal reviewer is

therefore precluded from failing an article or publication on grounds other than doctrine. To do so would exceed the authority given by the Bylaws and would usurp powers expressly granted to the Board for Communication Services.

2. “Does this Bylaw (11.07) permit a reviewer to ‘fail’ an article – that is, to prohibit its publication – as ‘inadequate’ and ‘misleading’ if the article is deemed by him to be ‘inadequate’ and ‘misleading’ in some sense other than a doctrinal sense?”

For the reasons stated in the Commission’s response to question 1, a reviewer may only fail an article if it is “inadequate, misleading, ambiguous, or lacking in doctrinal clarity” and therefore not in doctrinal conformity with the Scriptures, the Lutheran Confessions and the doctrinal resolutions of the Synod.

3. “What if an article that includes criticism of a certain committee’s actions is, in the reviewer’s opinion, ‘inadequate’ or ‘misleading,’ for example, in the way it explains the committee’s decision to conduct its business in a certain way? May he on that basis refuse to permit its publication?”

The Bylaws state that the regulation of the official periodicals of the Synod falls within the jurisdiction of the Board for Communication Services. This Board has the responsibility and authority to regulate the content of these publications in all matters that do not expressly fall within the purview of doctrinal review. A reviewer may not reject an article or publication if he merely disagrees with its content on a non-doctrinal basis.

Adopted Sept. 30, 1998

Residence of Board Members (98-2127)

A letter was received from a pastor requesting the Commission’s opinion regarding the membership on the Board of Directors of the Synod of two persons “from the same district.” More specifically, “can a newly elected Board of Directors member remain on the Board if they move to a district where an existing Board of Director’s member already resides? Is one member immediately disqualified from serving....whether it’s the newly elected or the existing member?” References were also made to a prior case where a Board member was not allowed to serve after his status changed from lay member to member of the Synod and to the recent convention of the Synod and its measures taken to prevent two persons from the same District from serving on certain boards.

The Commission’s response is as follows:

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 place of residence but District membership, as stated in Bylaw 3.189 of the 1998 Handbook,

The synodical Board of Directors is elected by a convention of the Synod. The board shall consist of 13 voting members serving a maximum of two six-year terms: four ordained ministers; one commissioned minister; and eight laypersons. No more than one of the ordained ministers or laypersons may be elected from any one District.

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:

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.

Adopted Sept. 30, 1998

Role of Praesidium in Termination of Membership Process (98-2114)

A letter was received on November 9, 1998 describing a situation in which charges have been filed against a District President under Article XIII of the Constitution. When the First Vice President failed to investigate the charges within 90 days, the charges were forwarded to the Praesidium of the Synod according to Bylaw 2.27, b. The Praesidium referred the matter back to the First Vice President, who has now referred the matter back once again to the Praesidium, precipitating the following four questions.

1. Does the phrase "If after investigation" (Bylaw 2.27, b) mean that when the Praesidium receives charges which allege Article XIII violations against a member, including a District President, the Praesidium is to, that is, must conduct an investigation (assuming that the 90 day requirement has been fulfilled)?

The Commission answers that Bylaw 2.27, a, requires that, when "facts which could lead to the expulsion of a member from the Synod under Article XIII are made known," the matter is to be "thoroughly investigate(d) whether the allegations can be substantiated" (paragraph 1). In a case in which the District President or Vice President fails to act on the allegation within 90 days and the Praesidium of the Synod is presented with the written complaint, it becomes the responsibility of the Praesidium to "thoroughly investigate whether the allegations can be substantiated." The answer to this question is therefore "yes."

2. Is the phrase "If the Praesidium determines not to proceed" to apply to a decision of the Praesidium following an investigation (i.e., the Praesidium concludes, upon investigating the charges, that there is no evidence to support said allegations)? Or can the Praesidium dismiss the matter out of hand without an investigation?

In answer, the Commission again notes that the words "If after investigation" require that an investigation take place. A determination "not to proceed" must therefore be made on the basis of this investigation.

3. Does the phrase "which shall terminate the matter" mean that the Praesidium of the Synod, having received and investigated specific charges, is the final authority and has the power to formally terminate the matter and is to do so only after a proper investigation?

The Commission responds that the words "which shall terminate the matter" assume that the entire procedure has been carefully followed, including a proper investigation. In such case and after concluding that the facts do not form a basis for expulsion of the member under Article XIII

of the Constitution, the Praesidium is the final authority and has the power to formally terminate the matter.

4. Given the wording of this Bylaw, can the Praesidium of the Synod refer the charges back to the same district officers who failed to investigate the matter the first time?

The Commission responds to this question by reviewing the provisions of Bylaws 2.27, a, and b, as these relate to the duties of the Praesidium of the Synod.

Subsection a directs the Praesidium to decide the question of whether the District President or the next appropriate District officer to function has a conflict of interest. The Praesidium must decide the issue of conflict of interest only if the matter is presented to it in writing by one of the parties to the dispute. The Bylaw leaves open the question of how this decision is to be made, allowing for the referral of the charges back to a District officer who failed to investigate the matter the first time. The decision by the Praesidium is final and not subject to appeal.

If the Praesidium concludes that there is not a conflict of interest, the Praesidium is to advise the appropriate District officer that he is to proceed in accord with Bylaw 2.27, a, 1. If the Praesidium concludes that a conflict of interest does indeed exist, it is to so advise the District officer of its decision and direct that the next qualified District officer is to undertake the matter.

Subsection b deals with the situation where the District President or the next qualified District officer to act has declined to suspend the accused member of the Synod or has failed to act within 90 days after receipt of the written complaint. If the complainant appeals such alleged non-action to the Praesidium, the Praesidium is then to take the following steps: First, it is to decide whether the appropriate District officer has declined to suspend or failed to act within the 90 day period. If its answer is "no," it shall so notify the parties to the dispute of its decision and direct the appropriate District officer to continue performing his duties under Bylaw 2.27. However, if its answer is "yes," the Praesidium is then to proceed to the second step, which is to thoroughly investigate the dispute. In so doing the Praesidium may utilize other persons to assist it in its investigation.

Upon conclusion of its investigation, the Praesidium is then to proceed to the third step, which will depend on its findings. If it decides the charges can be substantiated, it shall proceed with the matter in accord with Bylaws 2.27, a 2, and c in the same fashion as the appropriate District officer would have done had he concluded that the charges could be substantiated. If it decides that the charges cannot be substantiated, it shall so advise the parties to the dispute and the matter is terminated.

Adopted Nov. 30, 1998

Discipline and Fellowship in Articles III and VI of the Constitution (98-2122)

Two questions remained from a list of questions regarding discipline and fellowship submitted by a District President in a letter received July 31, 1998, questions that the Commission delayed answering at the time of its September 30, 1998 meeting to allow opportunity for further study. The first question asks for clarification of Article III of the Constitution:

1. How are the words "provide a united defense against schism, sectarianism (Rom. 16:17) and heresy (Art. III 1.) to be interpreted? A united defense against heresy, for example, would seem to refer to a

defense against permitting the introduction of heresy within the Synod. A united defense against schism would also seem to refer to a defense against permitting schism within the Synod (it might refer to a defense against the introduction of schism within the one holy Christian and apostolic Church). But what about sectarianism? Is that a warning against other sects? Is it a statement that the Synod will work to prevent itself from becoming a sect (instead of a part of the one holy Christian and apostolic Church)? Or is it a statement of intent that the Synod pledges itself to provide a united defense against any and every spirit of sectarianism both within and outside of the Synod? Or do these words mean something else altogether?

The Commission responds that the provisions of Article III, 1, are best understood in the context of the preceding articles of the Constitution. The Preamble links the members of The Lutheran Church–Missouri Synod to the Apostolic Church (Acts 15:1-31), also noting that it is the Lord's will that the diversities of gifts be used "for the common profit" (I Cor. 12:4-30). Article I identifies the members of this Lutheran church as a synod who walk together, which in the case of The Lutheran Church–Missouri Synod has meant walking together in common faith and practice. Article II establishes that the faith and practice of the members of Synod finds its normative basis in the common confession of faith founded on the Holy Scriptures, "the only rule and norm of faith and practice" (Article II, 1), and the Symbolical Books of the Evangelical Lutheran Church, "a true and unadulterated statement and exposition of the Word of God" (Article II, 2).

From these provisions Article III of the Constitution begins, "The Synod, under Scripture and the Lutheran Confessions shall...", and follows with ten stated objectives of the Synod, the wording of the first of which is the statement in question: "...and provide a united defense against schism, sectarianism (Romans 16:17), and heresy." It should be noted that this first objective is mirrored by the second (Article III, 2), "Strengthen congregations and their members in giving bold witness by word and deed to the love and work of God, the Father, Son, and Holy Spirit, and extend that Gospel witness into all the world." It is incumbent upon those who call themselves disciples to be loving witnesses of their faith in Christ to the world, both in sharing the Gospel and in taking a stand against false confessions of faith, as is also clearly demonstrated in the Lutheran Confessions where statements of belief and confession are followed by condemnations of doctrines that are unscriptural.

As we therefore "walk together" as a Synod, we bind ourselves to the same understandings. We also bind ourselves together "in giving bold witness by word and deed to the love and work of God" (Article III, 2) and in providing "a united defense against schism, sectarianism (Romans 16:17), and heresy" (Article III, 1) which have their source in false confessions of faith. The plain language of Article III, 1, is a simple reflection of the common faith and confession of the Christian church which throughout history has been threatened with schism, sectarianism, and heresy.

The provisions of Article III, 1, therefore bind the members of the Synod to a standard of faith and confession. They also bind the Synod to maintain these standards as it carries out its mission in the world. Its members are to "provide a united defense" against schism, sectarianism, and heresy whether these arise from within or without, always on the basis of the Holy Scriptures and the Lutheran Confessions.

The concept of unity is articulated again in Bylaw 2.39, a: "The Constitution, Bylaws, and all other regulations of the Synod apply to all congregational and individual members of the Synod." Bylaw 2.39, b, further provides, "The Synod expects every member congregation to respect its resolutions and to consider them of binding force if they are in accordance with the Word of God..." When dissent of a doctrinal nature arises, Bylaw 2.39, c, provides a procedure that is

intended to bring about doctrinal unity and to prevent the ills that are warned of in Article III, 1, "schism, sectarianism (Romans 16:17), and heresy."

2. Article VI, 2, requires members of the Synod to renounce unionism and syncretism of every sort including "b. Taking part in services and sacramental rites of heterodox congregations or of congregations of mixed confession." Does Article VI either in 2, b, or elsewhere forbid the participation of pastors of other churches or confessions in the services and sacramental rites of a congregation of the Synod? Does the Constitution or Bylaws allow for any circumstance or situation in which such participation might be permitted?

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

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

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

In addition, Resolution 2-16 of the 1965 convention of the Synod, "To Hold No Joint Worship Services Where Pulpit and Altar Fellowship Has Not Been Established, etc.", does not distinguish between joint services hosted by heterodox congregations and those hosted by congregations of the Synod. It prohibits all joint worship services with those with whom the Synod has not established pulpit and altar fellowship:

WHEREAS, The Lutheran Church—Missouri Synod has a well-established policy on joint worship services on the basis of the Holy Scriptures and the Lutheran Confessions (cf. Proceedings, 1941, p. 303); therefore be it

Resolved, That no joint worship services be held with those with whom we have not established pulpit and altar fellowship; and be it further

Resolved, That where a problem of casuistry exists in the area of pulpit and altar fellowship, no judgment be voiced against a pastor or congregation without personal, fraternal confrontation and without ascertaining all the facts involved.

Adopted Nov. 30, 1998

Questions Regarding Suspension Procedures (98-2130)

In a letter received September 28, 1998 a pastor submitted a list of questions that he and his congregation wish to have answered regarding suspension procedures. The Commission assumes that questions 1, 4, and 5 are in reference to Bylaw 2.27 and not Bylaw 2.29 as stated in the letter.

6. Can a member, individual or congregation, be removed from membership under Bylaw 2.27 for any other reason than those defined under Article XIII? If so, then state the other reasons using the LCMS doctrines as defined under Article II.

The Commission answers by pointing out that Bylaw 2.27, a, 1 and 2, describes the process to be used by a District President to receive and investigate complaints or act on his own knowledge regarding "facts which could lead to the expulsion of a member from the Synod under Article XIII of the Constitution." Paragraph a, 1, requires that "the next qualified District officer act in the place of the District President" when the District President is "a party to the matter in dispute, has a conflict of interest, or is unable to act." Paragraph a, 2, allows that a small committee may be appointed to assist in reconciliation efforts.

Paragraph c. makes clear that "facts must form a basis for expulsion of the member under Article XIII of the Constitution" and paragraph c, 1, reiterates the significance of Article XIII of the Constitution in the District President's written statement of the matter in dispute. Bylaw 2.25, a, also makes reference to "expulsion from the Synod under Article XIII of the Constitution." It is very evident, therefore, that any action leading to expulsion from the Synod must be on the basis of Article XIII and for reasons given in paragraph 1,

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

The answer to the above question is therefore "no." It should be noted, however, that Bylaw 2.21 allows that cause for termination of membership may include not only violations of conditions of membership but also as is "otherwise appropriate under the Constitution or these Bylaws." The "offensive conduct" of Article XIII may therefore be understood to include an array of misbehaviors, bearing in mind that "giving offense" according to the Scriptures includes any serious matter which causes a fellow Christian to stumble in his or her faith (2 Cor. 6:3; 1 Cor. 10:32).

2. Do Bylaws 2.39a and 2.39b clearly impart different status to the rules and regulations of the Synod over the resolutions of the Synod. If so, then is the power to judge the applicability of the resolutions of the Synod clearly in the hands of the congregation as Bylaw 2.39b states?

It is true that Bylaw 2.39, a, applies the Constitution, Bylaws, and all other rules and regulations of the Synod "to all congregational and individual members of the Synod." It is also true that Bylaw 2.39, b, "expects every member congregation to respect its resolutions and to consider them of binding force if they are in accordance with the Word of God and if they appear applicable as far as the condition of the

congregation is concerned." It should be noted, however, that Bylaw 2.39, c, also speaking of upholding the resolutions of the Synod, does not distinguish between individual and congregational membership:

c. While retaining the right of brotherly dissent, 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. If such resolutions are of a doctrinal nature, dissent is to be expressed first within the fellowship of peers, then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or rescision. While the conscience of the dissenter shall be respected, the consciences of others, as well as the collective will of the Synod, shall also be respected.

In answer to your question, then, Bylaw 2.39 in its entirety does not impart different status to the rules and regulations of the Synod over the resolutions of the Synod. All are to be upheld by all members of the Synod. Bylaw 2.39, b, does, as you state, place into the hands of the congregation the right to judge the applicability of a resolution to its local condition. It also cautions a congregation to "not act arbitrarily, but in accordance with the principles of Christian love and charity."

3. If an action to remove a member from the Synod is brought against a member for reasons other than those defined under Article XIII, should the action be recognized by the Synod? If so why? If not, then to whom would the member petition to have this illegal action stopped?

If an action to remove a member from the Synod were to be brought against a member for reasons other than those defined under Article XIII, such action should not be recognized. As noted above, expulsion from the Synod must be on the basis of causes given in Article XIII, 1, that is, acting "contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI" or persisting in "an offensive conduct." Note again, however, (as in Question 1 above) that Bylaw 2.21 provides some latitude in determining offensive conduct. Article XII, 8, speaks, for example, of "having given offense by an ungodly life."

If an action is wrongfully taken against a member for reasons other than those defined under Article XIII, the member has the recourse provided by Bylaw 2.27, c, 2, c. Upon receipt of written notification of suspended status under Bylaw 2.25, "the member has 15 days from the date of receipt of the statement of the case to advise the Secretary of the Synod that there is a desire to have the matter heard and resolved."

1. Can a member be removed from the Synod under Bylaw 2.27 without the due process defined under section 2, c, 1, and 2, a? In other words, must the officer of the District prepare a written statement as stated under section 2, paragraph c, 1 and must the officer of the District provide that written statement to the suspended member as stated under section 2, paragraph c, 2, a?

The answer to this question is "no." A member cannot be removed from the Synod without due process. Bylaw 2.27, c, 1 and 2 requires that "the District President shall

1. prepare a written statement of the matter in dispute which sets forth the alleged facts and states that he is requesting expulsion of the member from the Synod in accord with Article XIII of the Constitution.
2. provide the member with
 - a. a copy of the written statement of the case;
 - b. a written notification of the member's suspended status under Bylaw 2.25;
 - c. written notification that the member has 15 days from the date of receipt of the case to advise the Secretary of the Synod....

The answer to the second part of your question is therefore "yes." Due process must be followed and a written statement must be prepared and provided.

5. If the officer of the District fails to perform his duty as defined in Bylaw 2.27, section 2, therefore offering no proof or substance to his charge, or reason for suspension, how can the illegally suspended member end this action against himself without the "guilty until proven innocent" approach of the Synodical Dispute Resolution?

As noted above, the suspended member has the recourse provided by Bylaw 2.27, c through f, which incorporates "the provisions of Chapter VIII of these Bylaws."

6. Can an officer of the Synod use threats or coercion to force a member of the Synod to act in a manner that is contrary to the doctrine of the LCMS as defined under Article II? If the member holds fast to the doctrine of the LCMS as defined under Article II and is not in violation of Article XIII, can he be suspended? If so, use the doctrine as defined under Article II and the Constitution and Bylaws of the LCMS to defend your position.

Assuming that by "officer of the Synod" you are referring to a District President, the obvious answer to your question is, of course, "no." On the contrary, it is the business of the District President, according to Article XII, 8, "to suspend from membership ordained and commissioned ministers for persistently adhering to false doctrine or for having given offense by an ungodly life, in accordance with such procedure as shall be set forth in the Bylaws of the Synod."

The District President, according to Bylaw 4.73, shall accordingly "supervise the doctrine, the life, and the official administration on the part of the ordained or commissioned ministers who are members through his District or are subject to his ecclesiastical supervision, and shall inquire into the prevailing spiritual conditions of the congregations of his District. Bylaw 4.75 also provides that "the District President, even without formal request therefor, may through the proper channels arrange for an official visit or investigation when a controversy arises in a congregation or between two or more congregations of the District, or when there is evidence of a continuing unresolved problem in doctrine in practice."

Such measures are not to be considered coercive. At the same time they are never to be used to force a member of the Synod to act in a manner that is contrary to the doctrine of the LCMS.

Nov. 30, 1998

Questions Regarding Proper Suspension and Dispute Resolution Panel Process (98-2130)

A letter was received on October 23, 1998 from the Secretary of a Dispute Resolution Panel regarding the case before their panel. After recalling a time line of events of the case, the panel asks the following questions.

1. Assuming that the above facts (an outline precedes this question) are true, do the actions of the District Secretary and the District President, including his letter of October 7, 1998, provide adequate due process and notice to the Pastor of the grounds for his suspension in accordance with Synod's bylaws?

The Commission notes that Bylaw 2.27 pertains to this question and is clear in its requirements. Suspension under this Bylaw does not include involvement by the District Secretary, as would be the case had this Dispute Resolution Panel originated out of Bylaw 8.07. In this case the panel has been formed as a result of Bylaw 2.27, d, upon request of the member of the Synod who has been suspended. Therefore any prior actions of the District Secretary are pertinent to this case only insofar as they may have been included in the District President's investigation according to Bylaw 2.27, a through c.

The District President's actions are most pertinent since he has concluded that the facts of this case "form a basis for expulsion of the member under Article XIII of the Constitution" (Bylaw 2.27, c). It will be for the Dispute Resolution Panel, not the Commission on Constitutional Matters, to decide whether his conclusion is correct and whether proper procedure has been followed, to include the question whether existing letters are sufficient for adequate due process. Essential to proper procedure are the specific requirements of the District President, who "shall" according to Bylaw 2.27, 1 and 2,

1. prepare a written statement of the matter in dispute which sets forth the alleged facts and states that he is requesting expulsion of the member from the Synod in accord with Article XIII of the Constitution.
2. provide the member with
 - a. a copy of the written statement of the case;
 - b. a written notification of the member's suspended status under Bylaw 2.25;
 - c. written notification that the member has 15 days from the date of receipt of the statement of the case to advise the Secretary of the Synod that there is a desire to have the matter heard and resolved....
2. Assuming that the District Secretary properly assigned a reconciler to attempt reconciliation between the excommunicated members and the pastor, does the pastor's refusal to participate in the reconciliation process constitute adequate grounds to authorize the District President to suspend him for failure to comply with Synod's bylaws or does congregational autonomy permit him to refuse participation in the reconciliation process?

Bylaw 2.27, c, clearly states that "facts must form a basis for expulsion of the member under Article XIII of the Constitution" and reiterates (paragraph c,1) the significance of Article XIII of the Constitution in the District President's written statement of the matter in dispute. Bylaw 2.25, a, also makes reference to "expulsion from the Synod under Article XIII of the Constitution." It is evident, therefore, that any action leading to expulsion from the Synod must be on the basis of Article XIII for reasons given:

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

It should be noted that the "offensive conduct" of Article XIII, 1, may be understood to include an array of serious misbehaviors, bearing in mind that "giving offense" according to the Scriptures includes any serious matter which causes a fellow Christian to stumble in his or her faith (2 Cor. 6:3; 1 Cor. 10:32). It should also be noted that Bylaw 2.21 allows that cause for termination of membership may include not only violations of conditions of membership but also as is "otherwise appropriate under the Constitution or these Bylaws." Individual membership in the Synod, according to Bylaw 2.39, c, includes the expectation "as part of the life together within the synodical fellowship to honor and to uphold the resolutions of the Synod," with dissent to be expressed in a specific manner. Membership in the Synod, which is voluntary, therefore includes the expectation of

compliance with the Bylaws of the Synod, including those Bylaws that speak of participation in the Dispute Resolution Process.

3. Assuming that adequate notice was given and sufficient grounds for the suspension existed, is there any necessity for the Dispute Resolution Panel to convene a hearing if the only issues to be resolved are those capable of resolution by a decision of the CCM, or must the Panel convene as a formality?

Bylaw 8.09, a, clearly states that "after the chairman confers with the parties to the dispute, the Dispute Resolution Panel shall choose a location and a date for the formal hearing of the matter." Again in paragraph b, "The formal hearing before the Dispute Resolution Panel shall take place within 60 days after the date of the final selection of the panel members..." (emphasis added). You will note that the same verbiage is used throughout Bylaw 8.09, right up to the discussion of the final report of the panel. Given the definition of "shall" in Bylaw 8.03 ("a word of command that must always be given an imperative or compulsory meaning"), it is clear that the panel is expected to convene a hearing.

The purposes of the hearing are also made clear. According to Bylaw 8.09, c, 1, the hearing provides important opportunity for the disputants to provide witnesses to "substantiate the facts relevant to the matter in dispute" and to have "opportunity fully to present" their respective positions so that the panel will not need to assume that pre-hearing information has been exhaustive and reliable. Even more importantly, "the panel shall continue efforts to reconcile the parties on the basis of Christian love and forgiveness," which remains the primary purpose of the dispute resolution process.

Adopted Nov. 30, 1998

Clarification of the Word "Members" in 1998 Res. 3-12A (98-21331)

In a September 29, 1998 letter, a staff member from the synodical President's office requested verification of the proper definition of the word "member" in Resolution 3-12A of the 1998 Convention of the Synod, as follows:

Resolution 3-12A, in the second resolved, states, "That we commend the President of the Synod for his efforts in seeking to have these discussions between members of the Synod and of RIM."

It is our assumption that the word "members" was used in a deliberate sense, that is, to refer to "members of the Synod" as defined under the Synod's Constitution, Article V....

We wish to have the CCM's verification that our assumption on this point is correct, namely, the use of the word "members" in Res. 3/12A is to be understood as the term is defined in Synod's Constitution, Article V. The members of the floor committee that drafted this resolution have informed us that this was their intention in making use of the word, "member."

The Commission notes, first of all, that the above quotation of the second "Resolved" of Resolution 3-12A is not entirely accurate and should read, "That we commend the President of the Synod for his efforts in seeking to have these discussions between members of the Synod continue," as carefully worded by the Floor Committee.

The Commission, in keeping with its duty to interpret the resolutions adopted by the Synod, rules that the word "member" in the second resolve of 1998 Resolution 3-12A does indeed refer to members as identified in Article V of the Synod's Constitution:

Membership in the Synod is held and may be acquired by congregations, ministers of religion—ordained, and ministers of religion—commissioned, such as teachers, directors of Christian education, directors of Christian outreach, deaconesses, [parish assistants,]* and certified lay ministers of the Evangelical Lutheran Church who confess and accept the confessional basis of Article II" (LCMS Constitution, Article V, 1998 Handbook, p. 10).

*Phrase in brackets will become a part of the Constitution and Bylaws if ratified by the congregations of the Synod.

Adopted Nov. 30, 1998

Status of Suspended Congregation while Decision of Dispute Resolution Panel is Being Reviewed (98-2132)

A letter was received from a pastor on September 18, raising questions regarding the status of a pastor and congregation that have been placed on suspended status during the time that a decision of a Review Panel is pending:

1. If a congregation's suspension was overturned by a Dispute Resolution Panel, what is the status of that congregation during the time for an appeal for reconsideration or during the reconsideration process?
2. If a pastor's suspension was overturned by a Dispute Resolution Panel, what is the status of that pastor during the time for an appeal for reconsideration, or during the reconsideration process?

The Commission notes that throughout the Dispute Resolution Process of Chapter VIII of Synod's Bylaws, decisions are binding only when they are finally resolved. Bylaw 8.09, c, 4, a, states that a final decision of the Dispute Resolution Panel shall "be binding upon the parties to that dispute...", but it also states that this decision is "...subject to request for review." Bylaw 8.09, e, 1, is the exception, declaring that the final decision of a Review Panel shall "be binding upon the parties to that dispute and not be subject to further appeal."

Where, therefore, a decision of the Dispute Resolution Panel has been questioned and is being reconsidered by a Review Panel, the decisions of the Dispute Resolution Panel regarding suspensions are not to be considered binding. Suspended members continue to hold membership in the Synod under the conditions of Suspended Status as delineated in Bylaw 2.25. Its paragraph b clarifies that "Suspended status shall continue until membership is duly terminated or the formal proceedings are completed favorably to the member. While on suspended status, the member shall continue to hold all rights under the Constitution and Bylaws subject to the limitations set forth herein," namely as follows in paragraph c. Such suspended status continues until the Review Panel reaches a final and binding decision.

Adopted Nov. 30, 1998

Referral of Convention Overture 5-52 Re Concordia, St. Paul (98-2133)

The President of the Minnesota South District, in a letter received September 30, 1998, requested further clarification regarding the 1998 Synod convention action that referred Overture 5-52 (1998 Convention Workbook, p. 223) to his office (1998 Convention Proceedings, p.171). He posed two questions for the Commission:

1. When the Synod referred the overture to me for action, did the Synod thereby determine in the resolution of referral to sell Concordia University, St. Paul, if a subsequent determination finds that the problems noted in the overture are not corrected during the coming triennium?
2. Or, assuming that problems noted in the overture are not resolved within the triennium, will the Synod need to take specific action at one of the next synodical conventions to sell Concordia University, St. Paul?

The Commission clarifies that referral by convention action places an item of convention business into the care of that board, commission, or individual whose area of responsibility includes the matter at hand. Such referral is not, however, to be regarded as agreement with the overture's concerns or an adoption of its resolves. In answer to your first question, therefore, the Synod by its referral of Overture 5-52 did not thereby, regardless of present or future circumstances, determine to sell Concordia University, St. Paul. The Synod has given to you the responsibility for addressing the concerns that have been raised in keeping with the responsibilities of your office (see reference to Bylaws 4.73 and 4.75 in Resolution A, 1998 Convention Proceedings, p. 171).

In response to your second question, the referral of Overture 5-52 completes the Synod's response to this overture. It will be necessary for these concerns to be raised again via report or overture if they are to be addressed by a future convention.

Adopted Nov. 30, 1998

Majority Vote for Synodical Elections (98-2134)

In letters received on October 14 and October 19, 1998, two pastors of the Synod raised an issue regarding the majority vote requirement for elections to synodical boards or commissions:

May a nominee whose name appears on the ballot for a synodical board or commission be declared elected at a convention of the Synod if such nominee receives less than a majority vote? In a situation when the person with a majority of the votes is, for some reason, not declared elected, may the Elections Committee or the convention disregard this requirement of a majority vote and declare the minority candidate to be elected?

The Commission answers that Bylaw 3.997, a, (1998 Handbook, p. 84) clearly states that "a majority of all votes cast shall be required for election to all elective offices and elective board positions." Paragraph b also states, "In every election balloting shall continue until every position has been filled by majority vote."

In answer to the above questions, therefore, it is clear from these Bylaws that no one may be declared elected at a convention of the Synod unless that person has received a majority vote. Accordingly, neither an elections committee nor the convention itself may set aside this requirement and declare elected a candidate who has not received a majority vote.

Adopted Nov. 30, 1998

Questions Regarding District Polity and Pastoral Office Matters (98-2136)

A District President submitted four specific questions to the Commission in an e-mail transmission on October 14, 1998. Following are the Commission's replies to each of the questions:

1. Is it necessary for a District to have a "Treasurer"? We already have a business manager and an LCEF Area Vice President. Would it be possible for our Board of Directors to appoint a Treasurer from within the Board?

Bylaw 4.51, b, clearly states, "Each District shall have a Treasurer. He shall be a layman and shall be elected or appointed as the bylaws of the District may provide." The answer to your question is therefore "yes." You will also want to take into consideration state law requirements for not-for-profit corporations. How you fill this position will be determined by the Bylaws of your District.

2. How much time is typically needed by the Commission to review a District's Bylaw revisions and make recommendations? Our District plans to have a rough draft by December with hopes for a published draft by March of 1999. Is this reasonable?

The Commission appreciates compliance with Bylaw 4.07, b, which requires that changes in Constitutions and Bylaws of Districts "be submitted to the Commission on Constitutional Matters of the Synod for review and approval." The Commission will therefore make every effort to cooperate. The time frame you have proposed appears to be reasonable.

3. In reference to Bylaw 5.61, is a District limited to four pastors' conferences? Would it be possible for a District to add a fifth conference due to demographic considerations?

Assuming that by "conferences" you refer to what the Bylaw 5.61 calls "major sections" of an official conference, the Bylaw clearly states that such major sections are to number "not more than four." In addition, the geographical boundaries of these major sections "shall be established by the District in convention." The answer to your question must therefore be "no." The Bylaw allows for no exceptions due to special considerations.

4. Can an LCMS congregation be served by a non-LCMS pastor and continue in the LCMS? Does it make any difference if the congregation were also served by an LCMS pastor at the same time?

Bylaw 2.45, b and c, provides a clear answer to your question:

b. Congregations which are members of the Synod, in conformity with Article VI, 3, of the Constitution of the Synod, shall call and be served only by ordained or commissioned ministers who have been admitted to these respective ministries in accordance with the rules and regulations set forth in this Handbook and have thereby become members of the Synod.

c. Congregations which violate this requirement and persist in such violation shall, after due admonition, forfeit their membership in the Synod.

The Bylaw clearly states that an LCMS congregation cannot be served by a non-LCMS church worker in any case.

Adopted Nov. 30, 1998

Amendments to LCMS Foundation Articles and Bylaws (98-2138)

The Commission received from Synod's legal counsel copies of resolutions to amend the Articles and Bylaws of The Lutheran Church—Missouri Synod Foundation, actions approved by Synod's Board of Directors at its December 4-5, 1998 meeting. The amendments are intended to conform the Articles and Bylaws of the Foundation to Synod's Bylaws as amended by the 1998 convention, to delete references to the Synod's high school because the school is in the process of becoming a recognized service organization, and to further clarify the Foundation's Articles and Bylaws.

The Commission ratified the letter sent by its Secretary granting approval to the amendments to the Foundation's Articles and Bylaws. The letter also included the following recommendation, requesting that it be addressed at the Foundation's next appropriate meeting:

The Commission also recommends, however, that the LCMS Foundation make an additional amendment to its Articles of Incorporation in due time, calling its attention to part SIXTH on page 4 of the materials provided. This paragraph speaks of the transferal of all assets at such time as the corporation is liquidated and dissolved, naming The Lutheran Church—Missouri Synod as the receiving entity. It also provides a course of action in such case as the Synod is no longer in existence at that time and stipulates that any successor organization(s) be exempt under the provisions of Section 501 (c) (3) of the Internal Revenue Code. The Commission recommends that a second requirement be added, one which stipulates that any successor organization(s) also accept without reservation the confession of The Lutheran Church—Missouri Synod as presently described in Article II of the LCMS Constitution.

Adopted March 1, 1999

Questions Regarding a District President's Authority (98-2139)

The Commission received the following inquiry from a Dispute Resolution Panel regarding a District President's authority under Bylaw 2.23, b (1998 Handbook, p. 27):

Whereas the Synodical Handbook Section 2.23 b, Restricted Status states: "An individual member of the Synod on restricted status is ineligible to 1. Perform functions of ministry except in the position of service, if any, held at the inception of restricted status and otherwise only if approved by the District President;" does a District President have the authority, in the case of a pastor called by the District Board for Missions as a Mission Developer, to a.) order a brief leave of absence in which the pastor is instructed to step back from ministry and not involve himself during this time in any ministry and pastoral matters; and b.) does the District President when later placing this pastor on restricted status have the authority to declare, "In placing you on restricted status, meaning that you are not to engage in further pastoral work or ministry at _____ Lutheran Church (which the pastor had been serving) or elsewhere until the restricted status is removed."

The Commission notes that two questions are being asked. The first is whether a District President has the authority, in the case of a pastor called by the District Board of Missions as a mission developer, to order the pastor to take a brief leave of absence and further step back from ministry and not involve himself during this time in any ministry and pastoral matters.

Article XII, 7, of the Constitution of the Synod states in part: "The District Presidents shall, moreover, especially exercise supervision over the doctrine, life, and administration of the office of the ordained and

commissioned ministers of their District....” (1998 Handbook, p. 15). Bylaw 4.73 uses much the same language: “Each District President, in accordance with the Constitution of the Synod, shall supervise the doctrine, the life, and the official administration on the part of the ordained or commissioned ministers who are members through his District or are subject to his ecclesiastical supervision,....” (Handbook, p. 90).

Bylaw 3.51, k, defines the term “supervision” as follows: “For the purpose of these Bylaws, other than those pertaining to ecclesiastical supervision, to have authority over, to direct actions, to control activities. The definition of ecclesiastical supervision shall be determined exclusively by those Bylaws pertaining to ecclesiastical supervision.” (Handbook, pp. 41-42). Thus, in the realm of ecclesiastical supervision, the Bylaws pertaining thereto define the term.

Article XII, 8, lends further light on this question, stating, “District Presidents are empowered to suspend from membership ordained and commissioned ministers for persistently adhering to false doctrine or for having given offense by an ungodly life, in accordance with such procedure as shall be set forth in the Bylaws of the Synod” (Handbook, p. 15). The Bylaws dealing with suspended status are 2.25 and 2.27 (Handbook, pp. 28-29). Neither of these Bylaws gives to a District President authority to order a pastor under his ecclesiastical supervision to take a leave of absence from the position of service he holds.

In the case in question, the authority that issued the call to the ordained minister was the District Board of Missions. Under appropriate circumstances and after consultation with its called worker, a calling authority may direct the worker to take a limited paid leave of absence. The Bylaws do not state or infer, however, that a District President has this authority. A District President may ask an ordained minister to take a leave of absence; he may urge a calling authority to take such a step; he may place an ordained or commissioned minister on “restricted status” if the criteria of Bylaw 2.23 are met (Handbook, p. 27); he may even advise the worker to take a leave of absence rather than be the subject of an action under Bylaw 2.27 to terminate membership in the Synod; but a District President does not have the authority to order an ordained or commissioned minister under his ecclesiastical supervision to take a leave of absence.

The second question asked of the Commission is whether the District President, when placing the pastor on restricted status, had the authority to order the pastor not to engage in further pastoral work or ministry at the church he was serving as pastor or elsewhere until the restricted status was removed.

Bylaw 2.23, b, states, “An individual member of the Synod on restricted status is ineligible to 1. Perform functions of ministry except in the position of service, if any, held at the inception of restricted status and otherwise only if approved by the District President; and 2. Accept a call to any other position of service in the Synod.” This Bylaw clearly states that an ordained minister on restricted status is eligible to continue the position of ministry he held when placed on restricted status. The clause “and otherwise only if approved by the District President” allows a District President to enlarge the area of ministry performed by the individual on restricted status beyond the current position of service, but the Bylaw does not give a District President the power to further restrict the activities of an ordained minister beyond the terms of the Bylaw itself.

Accordingly, the answer to the second question is that the District President did not have the authority to order the pastor who was on restricted status to not engage in further pastoral work or ministry at the position of service he held at the time he was placed on restricted status.

Adopted March 1, 1999

Questions Regarding Appropriate Use

of Dispute Resolution Process (99-2140)

The Office of the President has received notice that a member of the Synod is seeking the use of the Dispute Resolution Process with the Chairman of the Synod's Commission on Doctrinal Review because the Commission revoked its certification of a book that he authored. The President's Office requests the opinion of the Commission on Constitutional Matters in answer to the following questions:

How do the limitations of the Dispute Resolution Process as stipulated in Bylaw 8.13 speak to the question of invoking the Dispute Resolution Process in regard to the revocation of a doctrinal review certification?

Since the Commission on Doctrinal Review is to concern itself exclusively with "official periodicals and journals of the Synod as well as any material with doctrinal content" (Bylaw 11.03a), and since the Dispute Resolution Process is to concern itself exclusively with "parties, members of the Synod, the Synod itself, a district, or an organization" that are in dispute, how can the Dispute Resolution Process assume responsibility for adjudicating matters given exclusive to the Commission on Doctrinal Review?

May an individual, whose published work has been the subject of a decision reached by the Commission on Doctrinal Review, bring the Commission on Doctrinal Review into the Dispute Resolution Process because he disagrees with the Commission's judgment concerning his work?

The Commission's response: The overall question being asked is whether a member of the Synod may invoke the dispute resolution process set forth in Chapter VIII of the Bylaws of the Synod in a dispute with the Synod's Commission on Doctrinal Review after the Commission revoked its certification of a book the member authored.

Bylaw 8.01 states that the dispute resolution procedure is established to resolve disputes that "involve as parties members of the Synod, the Synod itself, a District or an organization owned and controlled by the Synod, persons involved in excommunication or lay members of congregations of the Synod holding positions with the Synod itself or with Districts or other organizations owned and controlled by the Synod and shall be the exclusive remedy to resolve such disputes" (1998 Handbook, p. 126). Since in this case the dispute would be between a member of the Synod and the Synod itself, it is a proper subject for dispute resolution under Bylaw 8.13, c, which vests in the synodical dispute resolution process general jurisdiction of all disputes that are not specifically enumerated in Bylaw 8.13, b, and of all cases that fall under Article XIII of the Constitution (1998 Handbook, pp. 129-130).

Bylaw 11.15 (1998 Handbook, p. 138), however, specifically sets forth the appeals procedure for materials already published, a procedure that is intended to provide exclusive remedy when doctrinal content decisions reached by the Commission on Doctrinal Review are challenged. Any use of the dispute resolution process with this Commission must, therefore, necessarily limit itself to the question of whether proper procedures were followed by the Commission in reaching its decision.

Adopted March 1, 1999

Question Regarding Academic Freedom (99-2142)

A pastor who is also a member of the Board of Regents of Concordia, River Forest, asked a question that surfaced during discussions regarding the use of “Guiding Principles of Academic Freedom” provided by the Board for Higher Education of the Synod:

Is it in keeping with the By-laws of the Synod (i.e. 6.23c) for a Board of Regents, using the BHE/CUS Guidelines on Academic Freedom, to contract a member of a Missouri Synod congregation or rostered member of the Synod, who is known to publically hold a teaching that is contrary to the doctrine and practice of the Synod?

The Commission responds as follows. Bylaw 3.409 grants to the Board for Higher Education (BHE) “the overall responsibility to provide for the education of ordained and commissioned ministers and other professional church workers for the Synod.” Part of this responsibility is to “provide details for the application of policies regarding personnel selection and grant prior approval for initial appointments of theological faculty” (paragraph h). The BHE is therefore authorized to provide such guidelines as on academic freedom “in keeping with the objectives and the Constitution, Bylaws, and resolutions of the Synod.”

The question notes that two types of persons may be contracted: (1) laypersons who are members of LCMS congregations, and (2) rostered members of the Synod. Of the two, Bylaw 6.23, c, states that rostered candidates are to be preferred when faculty positions are filled: “Ordinarily candidates for full-time teaching positions shall be rostered members of the Synod.” Bylaw 6.23, c, also stipulates that should laypersons be contracted, the same allegiance to the teachings and practice of the Synod is required as of rostered members of the Synod: “When persons are employed in full-time teaching positions, they shall pledge to perform their duties in harmony with the Holy Scriptures as the inspired Word of God, the Lutheran Confessions, the Synod’s doctrinal statements, and the policies of the Synod.” In the case of both categories of persons, doctrinal resolutions and statements “are to be honored and upheld until such time as the Synod amends or repeals them” (Bylaw 1.09, b). If there is disagreement, “Dissent from doctrinal resolutions and statements shall be governed by Bylaw 2.39, c” (Bylaw 1.09, d). In the meanwhile, dissenters are to “continue to honor and uphold publicly...the position of the Synod, notwithstanding further study and action by the Synod” (Bylaw 1.09, c, 10) or face removal from office (Bylaw 6.43, c, 6).

If, therefore, a rostered member of the Synod or a layperson who “is known to publically hold a teaching that is contrary to the doctrine and practice of the Synod” is considered for a faculty teaching position, it will be necessary to learn if and to what extent this is true. If it is found to be true and full compliance with the stated positions of the Synod is not possible, such a person cannot be offered a teaching position in a synodical school. If a person is hired after pledging full compliance with the stated positions of the Synod and fails to honor that commitment, one of the causes for which members of a faculty may be removed from office is “advocacy of false doctrine (Constitution, Art. II) or failure to honor and uphold the doctrinal position of the Synod as defined further in Bylaw 1.09” (Bylaw 6.43, c, 6). Bylaw 6.23, d, also allows that “the Board of Regents may decline to renew the appointment of a faculty member without tenure at its discretion and without formal statement of cause.”

Adopted May 5, 1999

Amendments to LCEF Articles of Incorporation and Bylaws (99-2143)

At its 1998 convention, The Lutheran Church—Missouri Synod adopted a resolution amending Bylaw 3.503 (formerly Bylaw 3.493) and Bylaw 3.197 of The Lutheran Church—Missouri Synod (the “Synod”) to change the scope of the objectives of The Lutheran Church Extension Fund—Missouri Synod

("LCEF"). At its meeting in November 1998, LCEF's members adopted amendments to Articles Fourth and Ninth of its Articles of Incorporation to reflect the changes to Synod Bylaws 3.503 and 3.197.

Also, at its 1998 convention, the Synod adopted a resolution amending Bylaw 3.161 and Bylaw 3.501 (formerly Bylaw 3.490) of the Synod. At its meeting in November 1998, the members of the LCEF adopted amendments to Article II, Sections 1, 2, 3 and 6, and Article VI of its Bylaws to reflect the changes to Synod Bylaws 3.161 and 3.501.

Synod Bylaw 3.197 requires that the Board of Directors of the Synod and the Commission on Constitutional Matters review any amendments to the Articles of Incorporation and Bylaws of the synodwide corporate entities for conformity to the Synod's Bylaws. The amendments adopted by LCEF's members were approved by the Board of Directors of The Lutheran Church—Missouri Synod at its meeting on February 25, 1999. They now have been presented to the Commission for its review and approval.

After a review of the amendments made, the Commission adopted the following resolution:

Resolved, That the amendments to Articles Fourth and Ninth of the Articles of Incorporation of Lutheran Church Extension Fund—Missouri Synod, adopted at the meeting of the members of that corporation held in November 1998, reflecting the changes to Synod Bylaws 3.503 and 3.197 adopted by the Synod at its 1998 convention, having been reviewed by the Commission on Constitutional Matters, are in conformity with the Constitution and Bylaws of The Lutheran Church—Missouri Synod and are hereby approved; and be it further

Resolved, That the Amendments to Article II, Sections 1, 2, 3 and 6, and Article VI of the Bylaws of LCEF, adopted at the meeting of the members of that corporation held in November 1998, reflecting the changes to Synod Bylaws 3.161 and 3.501 adopted by the Synod at its 1998 convention, having been reviewed by the Commission on Constitutional Matters, are in conformity with the Constitution and Bylaws of The Lutheran Church—Missouri Synod and are approved.

The Commission notes, however, that the last two sentences of Section 3 of Article II of the Bylaws of LCEF state as follows:

Elected directors may be removed by a two-thirds (2/3) majority vote of the Board of Directors of the LCEF at any time, with cause. A vacancy on the Board of Directors shall be filled by election by the Members of the LCEF at any regular or special meeting.

The Commission rules that those directors elected by a convention of the Synod cannot be removed with or without cause by action of the Board of Directors of LCEF. Should a vacancy occur among those members of the Board of Directors elected by a convention of the Synod, the provisions of synodical Bylaw 3.63 must apply. Accordingly, the above quoted sentences of Section 3, Article II, must therefore be amended when the Members of LCEF next have opportunity in the manner set forth in the governing instruments of LCEF.

Adopted May 5, 1999

Questions Regarding the Dispute Resolution Process (99-2144)

A pastor and congregation involved in a dispute resolution case have raised a series of questions pertaining to the Synod's Dispute Resolution Process. The Commission responds as follows:

1. Can District/Synodical officials intervene followed by the Synodical Reconciliation/ Dispute Resolution Process, cutting short or interrupting a congregation's own biblically, confessionally, and synodically approved constitutional reconciliation procedures?

Bylaw 8.05 requires that, prior to the formal reconciliation process of the Synod, the parties must make a good-faith attempt at settling the dispute themselves. Bylaw 8.07, c, furthermore requires that the appointed reconciler, as a first order of business, determine whether such informal reconciliation efforts have been adequate. It is therefore the responsibility of the reconciler to determine whether informal, or as in this case, congregational efforts have been adequate.

2. Can a Dispute Resolution Panel exclude a party's evidence from a hearing on its own without listening to formal arguments to retain such evidence from either party whose evidence is being excluded? Should the DRP process provide for other avenues of due process relative to evidence.

It is not the responsibility of the Commission on Constitutional Matters to determine whether the Dispute Resolution Process should provide for other avenues of due process relative to evidence. Bylaw 3.905 stipulates that it is the business of the Commission only to interpret the existing Constitution, Bylaws, and resolutions of the Synod.

Bylaw 8.21, g, gives responsibility to a panel for determining the number of witnesses necessary for a full and complete understanding of the facts involved in the dispute. Rule 24 of the Rules of Procedure of the Dispute Resolution Process allows that "the parties may offer any evidence that they consider to be fair, relevant, and pertinent to the dispute." The same rule, however, also provides final decision-making authority to the panel, stipulating that "the reconcilers and panels shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary."

3. Can a called worker who resigns from his position have further recourse against a congregation with regard to his worker/employment status when he knowingly agrees to a congregation's constitution and bylaw procedures that resignation is the end of the matter?

If a called worker believes that the congregation has not proceeded according to its constitution and bylaws in his/her resignation from a position or contends that he/she has been improperly removed from his/her position, the worker may request a reconciler and thereby initiate the dispute resolution process according to Bylaw 8.13, b, 2.

4. When a complainant is asking for benefits with relation to a former contractual relationship, which according to Chapter VIII of the Handbook is excluded, would it be proper for a DRP to rule on such a matter?

Bylaw 8.02 specifically notes those matters for which the dispute resolution process does not prescribe an exclusive remedy, including "disputes arising under contractual arrangements of all kinds." The Bylaw, however, provides exception in cases that involve "theological, doctrinal, or ecclesiastical issues."

When, therefore, a dispute involves a divine call, even though it may also include contractual elements, the presence of a call introduces clear theological, doctrinal, and ecclesiastical considerations and is a case for which the dispute resolution process is intended.

Adopted May 5, 1999

**Propriety of RSO Status for and Participation in
Lutheran Association of Missionaries and Pilots (99-2145)**

A pastor questioned whether Lutheran Association of Missionaries and Pilots (LAMP), which employs both LCMS and ELCA clergy, should continue to be granted Recognized Service Organization (RSO) status by the Synod and whether LCMS pastors should be part of LAMP:

Given bylaw 14.03a (especially “respects and does not act contrary to the doctrine and practice of Synod”), and given Article VI.c. of the LCMS Constitution (“Participating in heterodox tract and mission activities.”) may LAMP be given RSO status according to the LCMS constitution? May LCMS pastors be part of LAMP, a mission organization by self definition, determined to spread the gospel of Christ, even though the organization welcomes clergy of heterodox church bodies as part of its professional staff?

The Commission’s response to these questions follows. First, “may The Lutheran Association of Missionaries and Pilots (LAMP) be given Recognized Service Organization (RSO) Status under Bylaw 14.03?”

Bylaw 14.03, a, states that RSO status may be granted to a service organization that extends the mission and ministry of the Synod. It then states that RSO status signifies that the service organization:

- a) while independent of the Synod, fosters the mission and ministry of the church,
- b) engages in program activity that is in harmony with the programs of the boards of the Synod,
- c) respects and does not act contrary to the doctrine and practice of the Synod.

Bylaw 14.03, c, states that within the area of its responsibility, each board of the Synod may determine those organizations to which RSO status will be given according to policies adopted by Synod’s Board of Directors (Bylaw 14.03, d).

The Bylaws of the Synod require that for a service organization to be given RSO status, it must meet the three criteria set forth in a previous paragraph of this opinion and the procedure for granting RSO status must be in accord with applicable policies of the Synod’s Board of Directors. Whether or not this was done relative to LAMP is a factual question that cannot be determined by this Commission. Such questions should be presented to the board that granted RSO status. If new information is available that may call into question the continued RSO status of an organization, the board should be asked to review its decision.

If the member of the Synod is thereafter of the opinion that the board which granted RSO status did not follow the prescribed procedure, he may proceed, if he so chooses, to utilize the synodical dispute resolution process to resolve the question as to whether the granting board acted in accord with Bylaw 14.03 and the applicable policies of the Board of Directors.

It should be noted, however, that the wisdom of granting RSO status is within the sole purview of the granting board. Only the procedure followed in granting RSO status can be tested in the synodical dispute resolution process.

In answer to the second question, “may pastors of The Lutheran Church—Missouri Synod be a part of LAMP?,” Article VI of the Synod’s Constitution indicates that one of the conditions of membership in the Synod is the renunciation of unionism and syncretism of every description, including participation in heterodox tract and missionary activities. Whether being “part of LAMP” is participating in heterodox tract and missionary activities is again a factual question beyond the purview of this Commission. Concerns that individual membership or participation in LAMP by a pastor of Synod may be in violation of Article VI of the Synod’s Constitution should be brought to the attention of the District President who has ecclesiastical supervision of that pastor in accord with Bylaw 2.27.

Adopted May 5, 1999

Memberships In Pan-Christian Organizations (99-2146)

A parish pastor asked the opinion of the CCM regarding the propriety of synodical congregations or districts holding membership in pan-Christian organizations such as the Willow Creek Association. Several specific questions were asked of the Commission:

1. May congregations or Districts of The Lutheran Church—Missouri Synod hold membership in pan-Christian organizations such as Willow Creek Association, et al, especially as related to Article VI of the Synod's constitution, particularly “renunciation of unionism and syncretism” and “participating in heterodox tract and missionary activities”?
2. In its Web page where it promotes membership, the President of the Willow Creek Association states: “We believe that as members of the Association share ideas, strategies, and resources, and learn from each other’s successes as well as mistakes, we will all increase our ministry impact.” Do such sharing of strategies and resources violate the prohibition of participating in heterodox tract and missionary activities as set forth in Article VI(2)(c) of the Synod’s constitution?
3. Is the use by members of the LCMS of the instructional materials, videos, et al of the Willow Creek Association a violation of the mandate for exclusive use of doctrinally pure agenda, hymnbooks, and catechisms in church and school as set forth in Article VI(4) of the Synod’s constitution?

In order to respond to these questions, a differentiation must first be made between Districts of the Synod and congregations that are members of the Synod. Regarding Districts, “The Synod is not merely an advisory body in relation to a District. A District is the Synod itself performing the functions of the Synod” (Bylaw 4.07, a). “The Constitution of the Synod is also the Constitution of each District. The Bylaws of the Synod shall be primarily the Bylaws of the District. A District may adopt additional bylaws, regulations and resolutions necessary for its own administration or for effectively carrying on the work of the Synod. Such bylaws, regulations and resolutions shall not conflict with the Constitution and Bylaws of the Synod” (Bylaw 4.07, b).

Since, therefore, a District is the Synod in that place, the question becomes whether the Synod may be a member of the Willow Creek Association. Since the propriety of such membership would in large part be

a doctrinal question, and since Article XI, B, 1 of the Synod's Constitution states that the President of the Synod has the supervision regarding the doctrine of the Synod, it therefore is the duty of the President of the Synod to determine if such membership by the Synod is appropriate. If there is disagreement with the conclusion reached by the President, such controversy is to be resolved under the procedures set forth in Bylaw 1.09 or by an action of the national convention of the Synod according to Bylaw 3.73.

On the other hand, regarding the membership of congregations in pan-Christian organizations, Article VII of the Constitution of the Synod provides as follows:

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.

Bylaw 1.05, d, provides as follows:

Congregations together establish the requirements of membership in the Synod (Art. VI). In joining the Synod, congregations and other members obligate themselves to fulfill such requirements. 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.

Whether, therefore, membership in an organization such as the Willow Creek Association by a member congregation of the Synod is in violation of Article VI of the Constitution of the Synod, and whether the organization's strategies and resources and instructional materials may be used by members of the LCMS are questions that can only be answered after an examination of the governing documents and resource materials of the organization in light of the above-quoted bylaws, the degree of involvement by a member congregation in such an organization, and the type and extent of use of its instructional materials. The authority of this Commission is limited by Bylaw 3.905 to an interpretation of the Synod's Constitution, Bylaws and resolutions. Bylaw 4.73 assigns to District Presidents the responsibility to determine if such congregational membership and use of materials is appropriate. If there is disagreement with the conclusion reached by the District President, his decision may be appealed to the national convention of the Synod (Bylaw 3.73), where the congregations of the Synod deliberate such questions and adopt resolutions which become binding upon the members of the Synod under Bylaw 1.05.

Adopted May 5, 1999

**Requests for Clarification of Bylaws 3.63, b, and 3.69, c,
re Board Nominations and Appointments (99-2147)**

A pastor raised questions regarding nominations submitted by Synod's program boards and appointments to staff positions to staff positions in boards, commissions and synodwide corporate entities. The Commission addressed each question separately as follows:

Are nominations submitted by staff members of the Synod's program boards, that have not been submitted as a result of board action, to be regarded as nominations "from the board...where the vacancy occurs" as required by Bylaw 3.63b?

Bylaw 3.63, b, is clear regarding the sources of nominees when vacancies occur on synodically elected boards or commissions:

- 1) The board or commission where the vacancy occurs
- 2) The synodical President
- 3) The District Boards of Directors
- 4) The slate of candidates from the previous synodical convention

Each program board has two or more board members elected by the Synod in convention. For purposes of this opinion it is assumed the question posed to the Commission relates to those program board members elected at a synodical convention, for whom Bylaw 3.63, b, is applicable.

Bylaw 3.63, b, requires that "the board or commission where the vacancy occurs" be the source of nominations. Because there is no other bylaw provision that modifies this requirement, a nomination by a staff member of the board where the vacancy occurs is not valid. While the board is free to solicit recommendations from any source, including its staff, only the board itself by specific action may submit the name of a nominee.

Are appointments to staff positions in boards, commissions and synodwide corporate entities valid without that appointment being a result of a plenary board action, for example merely by action of a board's executive committee, or even by the board's executive officer (cf. Bylaw 3.69d)?

The Commission assumes for the purposes of this opinion that the term "staff positions" does not include the executive officer of a board, commission or synodwide corporate entity.

Bylaw 3.69, e, states: "Every board, commission and synodwide corporate entity shall operate under synodical Human Resources policies . . . Every board, commission and synodwide corporate entity may create officer and executive staff positions and fill the same in accordance with such policies..." Thus the creation of the position must be done by action of the respective board. The manner in which such position is filled must be in accord with synodical Human Resources policies and any procedure or policies established by the governing board itself.

Bylaw 3.69, d, sets forth the authority and limitations of an executive committee. There is no bylaw that prohibits an executive committee from making appointments to staff positions previously created by action of the governing board. Such authority, however, must be predicated upon specific authorization from the governing board and must not be in conflict with synodical Human Resources policies. The bylaw also requires that all such executive committee actions be reported to plenary sessions of the governing board.

Adopted May 5, 1999

**Questions re Receiving Charges Against Workers and
re Required Hymnals for LCMS Congregations (99-2148)**

The First Vice President of the Synod raised two issues that had come to his attention while carrying out his duties as an officer of the Synod. The first refers to charges filed with or against a District President by an individual who was at one time a member of a congregation of Synod but who no longer holds that membership:

Do individuals in The Lutheran Church—Missouri Synod who are responsible for dealing with charges filed against workers consider charges filed by individuals who are not members of congregations of the LCMS?

Bylaw 2.27 requires that all allegations that could lead to the expulsion of a member of the Synod under Article XIII of the Constitution shall be investigated, ordinarily by the appropriate District President or his representative (paragraph a), or by those individuals who are responsible for dealing with charges filed against church workers in certain other circumstances, namely the Praesidium of the Synod (paragraph b) or the President of the Synod (paragraph g).

Bylaw 2.27, a, clearly states that “any person” may forward such complaints in writing. The answer to the question submitted to the Commission is, therefore, “yes.” Individuals who are responsible for dealing with charges filed against workers must consider charges filed by any person, including individuals who are not members of congregations of the LCMS, so long as the requirements of Bylaw 2.27, a, are met.

Do Article VI of the Constitution and Article 3.929 of the Bylaws indicate that The Lutheran Hymnal and Lutheran Worship are the only hymnals to be used in worship service of LCMS congregations?”

The answer to this question is “no.” The Constitution and Bylaws of the Synod do not require that The Lutheran Hymnal and Lutheran Worship be the only hymnals used in worship services of LCMS congregations. Resolution 3-01 of the 1979 synodical convention, “To Adopt Lutheran Worship as an Official Hymnal of the LCMS,” for example, encourages but does not require the use of the new hymnal:

Resolved, That The Lutheran Church—Missouri Synod (LCMS) in convention adopt Lutheran Worship as an official hymnal of the LCMS (the general contents of the book are appended to this resolution); and be it further

Resolved, That the congregations of the LCMS be encouraged to use Lutheran Worship as their service book and hymnal.

It is also clear from the Constitution and Bylaws of the Synod, however, that great care must be taken in the selection and use of worship materials in LCMS congregations. Article VI, 4, stipulates that one condition for acquiring and holding membership in the Synod is the “exclusive use of doctrinally pure agenda, hymnbooks, and catechisms in church and school,” making it the responsibility of every church worker and congregation to carefully review the doctrinal content of all worship materials before their public use.

To assist church workers and congregations, Bylaw 3.928, c, assigns to the Commission on Worship the function and duty to “recommend worship materials to the church and advise and warn against the use of worship materials that are unworthy of use in the corporate worship of the church.” Bylaw 3.929, by providing a careful process for accepting official service books and hymnals of the Synod, also underscores the importance of this responsibility.

To further assist church workers and congregations, our Synod has established Concordia Publishing House (CPH) for the purpose of “developing, producing, marketing, and distributing products for use by

members of the Synod” that are “approved through the Synod’s prescribed procedure for doctrinal review before publication” (Bylaw 3.301, b). Such doctrinal review, prescribed by Bylaw 11.07, not only provides to church workers and congregations important assurance that CPH worship materials have been carefully reviewed, but it also demonstrates the care that is to be taken in reviewing materials for use in public worship:

- a. The reviewer shall make a careful evaluation of the doctrinal content of all items submitted to him.
- b. The reviewer’s primary concern is that items submitted to him be in agreement in their doctrinal content with the Scriptures and the Lutheran Confessions.
- c. The reviewer shall also be concerned that the items submitted to him do not contain statements that are inadequate, misleading, ambiguous, or lacking in doctrinal clarity.

Adopted May 5, 1999

The Relationship between Doctrinal Resolutions and Doctrinal Statements (99-2149)

A pastor of the Synod requested an opinion from the CCM on the relationship between doctrinal resolutions and doctrinal statements, specifically the relationship between Bylaw 1.09, which makes a clear distinction between doctrinal resolutions and doctrinal statements and Bylaw 2.39, c, which he believes adds extra weight to doctrinal resolutions and, in effect, obscures the distinction laid out in Bylaw 1.09. He writes in his April 21, 1999 letter:

My fear is that some person or group could use bylaw 2.39c to attempt to bind the consciences of many in Synod to a doctrinal resolution that might have passed by a narrow majority in convention but did not have the ratifying consensus of a clear majority of the Synod’s congregations.

The Commission’s response:

The question before the Commission is whether Bylaw 2.39, c, could be used to bind the conscience of the Synod to a doctrinal resolution (Bylaw 1.09, b) that did not carry the weight of a doctrinal statement (Bylaw 1.09, c) requiring ratification by a two-thirds majority of the Synod’s congregations.

The Commission notes, first of all, that the language regarding doctrinal statements was inserted into the Bylaws by the Synod’s 1975 convention. Since that time there has not been one instance in which the procedure for adoption of a doctrinal statement, requiring passage by the Synod in convention by a two-thirds majority vote and ratified by a two-thirds majority vote of the Synod’s congregations within a six-month period, has been followed.

The Commission also observes that the question that has been submitted carries with it an inference that the Synod can “bind the conscience” of its constituent members by the passage of either a doctrinal resolution or a doctrinal statement. Such an inference is not true unless resolutions or statements are “in harmony with Scripture and the Lutheran Confessions” (Bylaw 1.09, a).

Dissent from doctrinal resolutions and statements is provided for in Bylaw 1.09, d, which provides remedy under Bylaw 2.39, c. With respect to dissent, the Bylaws make no distinction for dissenting parties between doctrinal resolutions and doctrinal statements. The pertinent issue must always be whether the resolution or statement is in conformity with Scripture and the Confessions.

Pending the outcome of any such appeals, Bylaw 1.09, c, 10, requires that the dissenting party “continue to honor and uphold publicly the statement as the position of the Synod...” This corresponds to Bylaw 2.39, c, which preserves the right of brotherly dissent, but also provides that “the members of the Synod are expected as part of the life together within the synodical fellowship to honor and uphold the resolutions of the Synod.”

Adopted July 8, 1999

**Questions re Disagreement with a Board of Regents
Decision re Faculty Appointments (99-2150)**

The Board of Regents of one of the Synod’s universities, in a letter dated May 7, 1999, requested from the Commission a formal response to a series of questions. The Commission responded to each of the questions as follows:

May a regent or former regent who disagrees with a faculty appointment decision of the Board of Regents which was made during his/her term of service pursue that dissent by bringing charges against those responsible for recommending or making the appointment?

The Commission responds as follows:

The last sentence of Bylaw 3.69, 1, states, “Dissent to decisions made by the entities and agencies (of the Synod) shall ordinarily be expressed within the structure of the respective entity and agency.” If the allegation is that proper procedure as outlined in Bylaw 6.23, a, b, and c, was not followed in making the appointment, that issue is one proper to be decided under the Synod’s dispute resolution process in Chapter VIII of the Bylaws of the Synod. However, if proper procedures were followed, the decision of the Board of Regents is not subject to appeal.

If the answer to the first question is “yes,” may the charges be pressed against the institutional president or others who recommended the appointment?

The answer to this question is “no.” Faculty appointments are the responsibility of the Board of Regents under Bylaw 6.03, h.

If the answer to the first question is “yes,” may the charges be pressed against the Board of Regents as the body which made the appointment?

The answer to this question is “yes,” but as explained in the response to the first question above, only if the issue is that the procedures followed in making the appointment were not in accord with those prescribed in the Bylaws of the Synod.

If the answer to the third question above is “yes,” under what LCMS Bylaws are such charges processed and by whom are they adjudicated?

As explained in the response to the first question above, the dispute is processed under the provisions of the Synod’s dispute resolution process as set forth in Chapter VIII of the Bylaws.

Adopted July 8, 1999

**Questions re the Relationship of Bylaw 2.27
to Chapter VIII of the Bylaws (99-2151)**

A District President, concerned that the dispute resolution process and the work of a District President may work at cross purposes with each other, addressed the following questions to the Commission on Constitutional Matters:

How do Bylaw 2.27 and Section VIII of the Bylaws, detailing the operation of the Synodical Dispute Resolution process, relate to each other? Or do the processes and procedures outlined by Bylaw 2.27 and Section VIII operate independently of and without regard for each other?

The Commission responds that Bylaw 2.27 establishes a procedure to terminate congregational or individual membership in the Synod. In broad general terms, 2.27, a, triggers the procedure, provides the initial steps to be taken by a District President, and describes the manner in which the concern is to be resolved; 2.27, b, describes if and how the Praesidium becomes involved; and 2.27, c, stipulates what a District President is to do if he decides to seek the expulsion of the member from the Synod. It is in 2.27, d, which describes what is to be done if the member contests the expulsion, that the procedure now moves to Chapter VIII and specifically to Bylaw 8.07, h. In this case the “complainant” is the member who is contesting the expulsion, and the “report of the reconciler” is the District President’s “statement of the matter in dispute and...written memorandum describing the manner in which there was compliance with the mandate of Matt. 18:15-16” required by Bylaw 2.27, d.

Therefore, in response to the question, Bylaw 2.27 and Chapter VIII of the Bylaws do not operate independently of and without regard for each other.

May a District President in responding to a complaint received under Bylaw 2.27 direct one or more of the parties to file the complaint with the Secretary of the District who then, by blind draw, selects and appoints a District reconciler to work with the parties in dispute?

The Commission’s answer is “no.” The Secretary of the Synod forms a Dispute Resolution Panel only if the accused member of the Synod contests a proposed expulsion (Bylaw 2.27, d). The “written complaint of any person” (Bylaw 2.27, a) is never presented to the Secretary of either District or Synod. Rather, it is the basis for the investigation of the matter by the District President who then decides if the facts form a basis for expulsion of the member from the Synod in accord with Article XIII of the Constitution. It is to be noted that Bylaw 2.27 does authorize a District President to appoint a small committee to assist in reconciliation efforts. An expulsion from the Synod occurs only if the District President (or the Praesidium under Bylaw 2.27, b) decides to pursue the matter. Any person can make a written complaint but only a District President (or the Praesidium) can formally seek expulsion.

If a District President operating according to Bylaw 2.27 can direct one or more of the parties with whom he is working to file a complaint with the Secretary of the District, who then, by blind draw, selects and appoints a District reconciler to work with the parties in dispute, does that action on the District President’s part mean that he has met the time constraints for his action as they are identified in Bylaw 2.27 b?

As stated above in the response to the previous question, a District President cannot direct one or more of the parties to file a complaint with the Secretary of the District if it is an action to terminate congregational or individual membership under the procedures of Bylaw 2.27. The only Secretary

involved in a Bylaw 2.27 procedure is the Secretary of the Synod and then only under the circumstances set forth above. As stated previously, Bylaw 2.27 ties into Chapter VIII of the Bylaws at Bylaw 8.07, h. Bylaw 8.07, a-g, are not utilized in a Bylaw 2.27 action.

Instead, Bylaw 2.27 authorizes a District President to appoint a small committee to assist in reconciliation efforts. The District President is free to appoint one or more of the District reconcilers to this small committee but they are then acting as members of the small committee and not as reconcilers under Bylaw 8.07. Bylaw 2.27, e, further directs the District President to continue efforts to resolve those matters which led to the commencement of the formal action against such member.

Bylaw 2.27, b, indicates that the complainant may present the written complaint to the Praesidium if the District President declines to suspend the member or fails to act within 90 days after receipt of the written complaint. The Commission previously issued an opinion regarding what constitutes “failure to act” (Commission File 98-2097). A copy of that opinion is forwarded herewith.

Adopted July 8, 1999

Question re Late-Triennium Appointments by Synod’s Board of Directors (99-2152)

A pastor of the Synod, noting that Bylaw 3.67, c, requires that “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 of commissions during the interim” between a convention and September 1, asked the question:

Do the synodical bylaws (esp. 3.67, c) explicitly or implicitly prohibit the synodical Board of Directors from making new appointments—that is, appointing board members who will begin their service during the following triennium—at its May or June meeting in a synodical convention year?

The Commission responds as follows:

The first sentence of Bylaw 3.67, c, states, “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 phrase, “during the interim,” is that period between the commencement of a synodical convention and the date when the newly elected and re-elected members of these boards and commissions are inducted into office. The question asked of the commission is whether the definition of the phrase “during the interim” or any other bylaw could be expanded to conclude that appointments by the Board of Directors in May or June prior to a synodical convention also come under the umbrella of prohibited appointments. The Commission concludes that the answer is “no.” The Bylaws are silent on this matter except for the phrase, “during the interim,” and the Commission finds no basis to expand the meaning of those words. If the period of prohibition of appointments is to be expanded, it must come from an amendment to the Bylaws.

Adopted July 8, 1999

Review of Proposed Synodical Convention Floor Nominations Process (99-2154)

In a memorandum dated June 3, 1999, the chairman of a committee charged with the responsibility for reviewing the operations of the synodical convention asked the Commission to review a proposal for a different process to obtain floor nominations at synodical conventions. He explained that this process is being considered because it would make the procedure more orderly, would ensure that the information specified by the Bylaws regarding nominees would be uniformly received, would allow every delegate equal opportunity to nominate candidates for office, and would use less convention floor time than the process that has been in use. According to the proposed process:

1. At the appropriate time the nominations committee would present the slate of candidates it has prepared.
2. After presenting the slate, the nominations committee would inform the convention that nominations would be received from the floor. The committee would explain that in order to allow nominations from the floor of candidates other than those whose names were previously received by the nominations committee, the convention would have to vote to do so. The committee would then move (or entertain a motion) to open the floor nominations to such other candidates.
3. If the convention voted to allow such other floor nominations, the committee would explain that these nominations must be presented in writing on the appropriate form. [Note: these forms along with instructions for how to make nominations from the floor would be distributed with the materials sent to the delegates before the convention and would be available at the convention site.] The form must be signed by the nominee (satisfying the requirement of Bylaw 3.985, a, cited above) and by the nominating delegate and another delegate seconding the nomination (meeting parliamentary requirements) and submitted to the chairman of the nominating committee or his designee in a specified place by a specified time. The “written pertinent information concerning the nominee as detailed in Bylaw 3.983, e,” would have to be attached to the form by the nominating delegate.
4. The committee would then move (and the convention would vote) to close floor nominations automatically at a specified time, probably several hours later in the day in order to allow time for the forms to be submitted to the committee.
5. The committee would check the nominations for validity and subsequently report on the nominations received via Today’s Business and would include all validly nominated candidates on the appropriate ballots later in the convention.

The chairman of the convention committee noted, however, that his committee recognizes that it is proposing a change to a long-established process of nomination and election. Therefore, “for the sake of good order and a peaceful conscience, both for ourselves and for the delegates to the convention, we are seeking a formal ruling on the appropriateness of the process outlined above,” noting especially two questions:

Our first question is whether the chairman could designate another member of the committee to receive the written nominations for him, or would he have to receive them in person. It seems to us that the intent of the bylaw is to ensure that the required material is submitted to the responsible party rather than to define the exact process by which such a submission occurs. If so, the chairman of the committee should be able to designate another person to receive the forms for him and deliver them to him.

Our second question deals with the interpretation of the term “immediately” in the context of the bylaw. The context suggests that the purpose of the word is to ensure that the written consent of the nominee was indeed obtained prior to the nomination. It seems to us that the nomination is not made in the proposed process until the form is submitted, and that since the signed consent of the nominee is on the form at the time that it is submitted, that the information is properly said to be received immediately when the nomination is made.

The Commission responds as follows:

Your memorandum inquires whether a proposed revision of the process for receiving floor nominations for offices other than those of president and the vice-presidents would comply with Bylaw 3.985, a, which reads:

The chairman of the Committee for Convention Nominations shall submit the committee’s report in person to the convention at one of its earliest sessions. The convention may amend the slate by nominations from the floor. Such floor nominations may only be made from the list of names which have previously been offered to the Committee for Convention Nominations prior to the final deadline established and published by the committee, unless the convention shall otherwise order by a simple majority vote. If the convention approves the receipt of such additional nominations, any delegate making such a nomination shall have secured prior written consent of the candidate being nominated and shall immediately submit it to the chairman of the Committee for Convention Nominations along with written pertinent information concerning the nominee as detailed in Bylaw 3.983 e.

At the outset, the Commission observes that the procedure appears to omit any method for nomination from the floor of persons whose names have “previously been offered to the Committee for Convention Nominations” and whose pertinent information and consent to nomination have already been received. Presumably it is intended that these nominations be taken directly from the floor as in the past, since there is no necessity to submit the form described in step 3 above. Alternatively, your committee may decide for the sake of consistency and convenience that such nominations should also be in writing, but need not contain the pertinent information and consent of the nominee, both of which would already have been received by the nominations committee.

Assuming this oversight is rectified, the Commission on Constitutional Matters is satisfied that the proposed procedure would satisfy both the letter and the spirit of Bylaw 3.985, a. The bylaw does not require that the nomination be made during a floor session. It merely requires the majority vote of the convention to allow such nominations. Requiring the signature of the nominee on the nominating form fulfills the bylaw’s requirement of immediate submission of the candidate’s written consent at the time the nomination is made. The procedure allows for submission directly to the chairman of the Nominating Committee or through an intermediary appointed by the chairman. This meets the bylaw’s requirement of submission to the chairman. Nowhere does the bylaw forbid submission through an intermediary. As long as the nomination is ultimately communicated to the chairman, the bylaw’s requirements are met.

If you wish to have a revised version of the proposed procedure reviewed for conformity with Bylaw 3.985, a, the Commission on Constitutional Matters will be happy to do so upon your request.

Adopted July 8, 1999

Questions re the Application of Bylaw 2.23 re Restricted Status (99-2156)

A Dispute Resolution Panel in a letter dated July 7, 1999, requested an opinion from the Commission regarding a number of matters relating to Restricted Status (Bylaw 2.23) as it pertains to individual members of the Synod. The response of the Commission to each of the panel's questions, provided in an August 5, 1999 letter to the panel, follows:

1. Concerning Bylaw 2.23, paragraph b, number 1: Does this Bylaw mean that the restricted individual must be allowed to remain in his present position of service until the matter being investigated is resolved?

Response to Question 1: Yes, although the entity which issued the call may remove the individual from that position if its bylaws so permit.

2. Does this Bylaw give the District President (if he approves) the option to allow the restricted individual to remain in his present position of service, and only that position until the matter being investigated is resolved?

Response to Question 2: The Bylaw provides that the individual continues to serve in his present position and may change only if the District President approves. The Bylaw makes continuation in the present position the norm, which does not require approval of the District President.

3. Does this Bylaw give the District President (if he approves) the option to allow the restricted individual to serve in a new position of service until the matter being investigated is resolved?

Response to Question 3: Yes, provided that this is within the scope of the individual's call, since Bylaw 2.23, b, 2, precludes the individual from accepting a call to any other position of service in the Synod while the restriction is in place.

4. Does Bylaw 2.23 b 1 give the District President (if he does not approve) the option to deny the restricted individual to remain in his position of service until the matter being investigated is resolved?

Response to Question 4: No. The bylaw clearly allows that the person on restricted status can still perform the "functions of ministry...in the position of service...held at the inception of restricted status."

5. Is there any provision in the Bylaws which would prohibit the calling body from removing an individual from his position of service or reassigning him to a different position while the individual is on restricted status?

Response to Question 5: As stated in answer to the first question above, a calling body may remove the person in conformity with its Bylaws if they so permit. The calling body may not reassign the person to a different position without the approval of the District President.

6. Concerning Bylaw 2.23, paragraph f: Is the District President required to notify the body who has called the restricted pastor that he has been placed on restricted status, or is this only a requirement when placed on suspended status?

Response to Question 6: Comparing Bylaw 2.23, f, and Bylaw 2.25, d, 3, it is apparent that the District President need not notify the calling body that a pastor has been placed on restricted status, but must notify the calling body if the pastor is placed on suspended status.

The Commission also noted the following final paragraph in the letter from the dispute panel:

It was also pointed out that Walter Tesch, Commission Chairman, served as legal counsel to the South Wisconsin District while the case we are hearing was unfolding and may be put in a position where conflict of interest could exist.

Response: The Commission responds to this concern regarding the potential for conflict of interest on the part of its Chairman by clarifying that the material furnished to the Commission did not identify the parties to the dispute. Mr. Tesch is therefore unable to determine whether such a conflict of interest does exist. Nonetheless, he has acceded to the concern raised and has not participated in this opinion of the Commission.

Adopted Sept. 14, 1999

Questions Re Rights of Individuals and Congregations (99-2157)

A Dispute Resolution Panel in a July 16, 1999 letter submitted a series of questions for clarification of a number of details from its dispute case, questions raised by the complainant in the case. The Commission responded in an August 11, 1999 letter to the panel as follows:

1. In Matthew 18:17, where it says “Tell it to the Church”, the question is “Who is the Church”?

Response to Question 1: The function of the Commission on Constitutional Matters is to interpret the Synod’s Constitution, Bylaws, and resolutions (Bylaw 3.905, d). The question is one of doctrine or doctrinal application and thus should be addressed to the Commission on Theology and Church Relations in accord with Bylaw 8.21, a.

2. What does the phrase “inexpedient as far as the condition of the congregation is concerned” mean and how is it applied in matters relating to the right of self-government of LC-MS Congregations?

Response to Question 2: The phrase in question is taken from Article VII of the Constitution of the Synod, which states:

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 the congregation is concerned.

It should be noted that the second sentence of Article VII states, “...no resolution of the Synod...” (emphasis added). It does not speak of the Constitution or Bylaws of the Synod. “The right of a congregation to exercise the right of expediency (Bylaw 1.09b) applies only to resolutions of the Synod and not to the Constitution and Bylaws” (1969 Res. 5-23).

Bylaw 1.05, d, elaborates on the principle set forth in Article VII:

Congregations together establish the requirements of membership in the Synod (Art. VI). In joining the Synod, congregations and other members obligate themselves to fulfill such requirements. 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 the 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 1.09, addressing the topic of doctrinal resolutions and statements, provides:

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.

Regarding such doctrinal resolutions, Bylaw 1.09, b, states, “Such resolutions come into being in the same manner as any other resolutions of a synodical convention and are to be honored and upheld until such time as the Synod amends or repeals them.” As to doctrinal statements, Bylaw 1.09, c, 7, states, “They shall be honored and upheld (“to abide by, act, and teach in accordance with” [1971 Res. 2.21]) until such time as the Synod amends or repeals them.”

This relation of the Synod to its members, where its resolutions are concerned, is further defined in Bylaw 2.39, a-c:

a. The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregations and individual members of the Synod....

b. The Synod expects every member congregation to respect its resolutions and consider them of binding force if they are in accordance with the Word of God and if they appear applicable as far as the condition of the congregation is concerned. The Synod, being an advisory body, recognizes the right of the congregation to be the judge of the applicability of the resolution to its local condition. However, in exercising such judgment, a congregation must not act arbitrarily, but in accordance with the principles of Christian love and charity.

c. While retaining the right of brotherly dissent, 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. If such resolutions are of a doctrinal nature, dissent is to be expressed first within the fellowship of peers, then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or rescission. While the conscience of the dissenter shall be respected, the consciences of others, as well as the collective will of the Synod, shall also be respected.

What then is meant by a “congregation’s right of self-government”? Since 1854 conventions of the Synod have refused to adopt resolutions which were thought to interfere with the “self-government” of the local parish, explaining that the Synod “is an advisory body.” Historically, four areas of self government have been recognized: (a) The calling of pastors, teachers, etc., from a list of those accredited by the Synod itself; (b) The owning and maintaining of congregational property without granting any rights of it to the Synod; (c) Church discipline; and (d) The administration of a congregation’s programming and financial affairs.

Thus, in answer to the question to the Commission, the phrase, “inexpedient as far as the condition of a congregation is concerned,” does not refer to the Constitution and Bylaws of the Synod and is restricted to resolutions adopted by a convention of the Synod which are non-doctrinal in nature.

3. Does the LCMS require that an individual who is a member of a LC-MS congregation but not a member of the LC-MS (i.e., not an ordained nor a commissioned minister) waive their individual rights as a prerequisite for participating in the LC-MS Synodical Dispute Resolution Process (i.e., Reconciliation, Dispute Resolution Panel, etc.)—even without individual consent, or in the event that the individual retains/reserves their rights to prior to participating in the LC-MS Synodical Dispute Resolution Process?

Response to Question 3: The Commission understands this question to relate to a layperson and the effect of the Synod’s dispute resolution process on such a layperson. Bylaw 8.01 defines the parties involved in a dispute who are subject to the dispute resolution process. They are:

1. Members of the Synod.
2. The Synod itself.
3. A District of the Synod
4. An organization owned and controlled by the Synod
5. Persons involved in excommunication.
6. Lay members of congregations of the Synod holding positions with the Synod itself or with Districts or other organizations owned and controlled by the Synod.

Relative to number 5 above, “persons involved in excommunication, Bylaw 8.13, b, 1, limits the dispute resolution process to procedural questions involved in excommunication cases. Therefore, the process can be utilized to question the procedure followed in an excommunication matter; it cannot be used to review the facts, which serve as the basis of the excommunication.

“Members of the Synod” is defined in Article V of the Constitution of the Synod. Members of the Synod sign the Constitution of the Synod and thus are bound by the dispute resolution process as set forth in Chapter VIII of the Bylaws of the Synod. Laypersons, who are members of congregations that are members of the Synod, are not themselves members of the Synod. Since such laypersons are not members of the Synod, they have not agreed to be bound by the dispute resolution process of the Synod and thus waive none of their rights by participating in the process.

While laypersons do not meet the technical definition of “member of Synod” as defined in the Bylaws, they are nevertheless encouraged to participate fully in the synodical dispute resolution process. Each person or party to a dispute is urged “by the mercies of God to proceed with one another with ‘the same attitude that was in Christ Jesus’ (Phil. 2:5)” (Preamble to VIII. Synodical Dispute Resolution, Handbook, p. 125). For the sake of the Gospel those who are not “members of the Synod” are invited to employ the means Synod has provided for the resolution of disputes.

4. During LC-MS Synodical Dispute Resolution (Reconciliation, Dispute Resolution Panel, etc.), does the Congregation retain its right of self-government?

Response to Question 4: As stated in Bylaw 8.11, a congregation retains the right of self-government it has as a member of the Synod during the dispute resolution process: “The congregation’s right of self-government shall be recognized.”

5. According to LC-MS Synodical Dispute Resolution Procedure Rule 27, what are the congregation's "scriptural responsibilities toward its member", and what Scripture verses serve as the basis for the congregation's "scriptural responsibilities toward its member"?

Response to Question 5: The Synod's dispute resolution "Rules of Procedure" were created as a result of 1995 Res. 7-03B, which directed their formulation. Accordingly, the Commission can render an opinion on any aspect of the resolution that mandated the procedures. However, interpretation of the content of such procedures is beyond the authority of the Commission. Since this question involves theology, it will more properly be directed to the Commission on Theology and Church Relations.

6. Given that the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the individual congregations right of self-government, it is but an advisory body (LC-MS Constitution: Article VII Relation of the Synod to Its Members), does the Synod or its Districts or any Officer of the Synod or Officer of Its Districts have the ecclesiastical authority to not respect action(s) taken by a LC-MS congregation and to unilaterally cancel and/or declare action(s) taken by a LC-MS congregation or its Voters Assembly as illegal, non-binding, not valid, and/or of no effect?

Response to Question 6: The Commission responds that neither the Synod, nor any of its Districts, nor any of its officers can unilaterally cancel an action taken by an LCMS congregation through its voters assembly or by edict make such action non-binding, not valid, or of no effect. If the action of the congregation is such that it is subject to the Synod's dispute resolution process in Chapter VIII of the Bylaws or could lead to an action to terminate the congregation's membership in the Synod under Bylaw 2.27, the procedures outlined in those Bylaws are the remedy available to the Synod, its Districts, and its officers.

Bylaw 8.11 addresses the consequences of a decision rendered under the Synod's dispute resolution process:

The congregation's right of self-government shall be recognized. However, when a decision of a congregation is at issue, a Dispute Resolution Panel may review the decision of the congregation according to the Holy Scriptures and shall either uphold the action of the congregation or advise the congregation to review and revise its decision. If the congregation does not revise its decision, the other congregations of the Synod shall not be required to respect this decision, and the District involved shall take action with respect to the congregation as it may deem appropriate.

It must be noted that Bylaw 8.11 applies only to those decisions of a congregation that may be brought before a dispute resolution panel.

7. Does a LC-MS District President have the ecclesiastical authority to: (1) not respect, unilaterally cancel and/or declare an action taken by the Voters Assembly of a LC-MS Congregation as not valid, and/or (2) not respect, unilaterally cancel and/or declare as not valid a meeting duly called by the Voters Assembly of a local LC-MS Congregation?

Response to Question 7: Because a District President is an officer of the Synod, the opinion to the previous question is likewise applicable to the District President. Neither the Synod, nor any of its Districts, nor any of its officers have any authority to cancel or declare invalid a duly called meeting of or an action taken by the voters' assembly of a congregation that is a member of the LCMS. A District

President is, however, charged with the responsibility to “give counsel” to congregations (Bylaw 4.73) when “a controversy arises in a congregation or between two or more congregations of the District, or when there is evidence of a continuing unresolved problem in doctrine or practice” (Bylaw 4.75).

Adopted Sept. 14, 1999

Questions re the Service of Women as Teachers of Theology or Campus Presidents (99-2160)

In a memorandum dated April 20, 1999, the Board for Higher Education/Concordia University System Board (BHE/CUS) requested a ruling from the Commission on Constitutional Matters regarding the service of women as teachers of theology or as presidents of synodical colleges, universities, or seminaries. The resolution of the board reads as follows:

Resolved, that the BHE/CUS request a ruling from the CCM on whether or not the constitution and bylaws of the LCMS permit a woman to serve as a teacher of religion/theology or as president of a college, university or seminary.

The question is divided into two parts. The first to be considered:

1. Do the Constitution and Bylaws of the LCMS permit a woman to serve as a teacher of religion/theology of a college, university, or seminary?

Response to Question 1: The Commission responds that the Constitution and Bylaws of the Synod are silent regarding this question. The Commission therefore renders no opinion, noting that Bylaw 3.905, d, limits its work to the interpretation of the Synod’s Constitution, Bylaws, and resolutions. The Commission notes, however, that on page 50 in the 1998 Convention Workbook, Report of the Commission on Theology and Church Relations, B, 1, b, this question, along with a number of related questions and issues, continues to be among the studies in progress of the CTCR.

2. Do the Constitution and Bylaws of the LCMS permit a woman to serve as a president of a college, university, or seminary?

Response to Question 2: Bylaw 3.905, d, states that “an opinion rendered by the Commission shall be binding on the question decided unless and until it is overruled by a synodical convention.” The Commission calls attention to earlier rulings of the Commission on Constitutional Matters in response to this question. In a March 16, 1984 opinion, the Commission ruled:

The Synod has stated that a woman is not to exercise authority over man, particularly in spiritual matters. It is true that the president of an institution may delegate certain responsibilities to staff members. One of these responsibilities that may be delegated is that of spiritual leadership of the institution. However, for the reason that the power to delegate is just that and is not a release of the responsibility, and ultimate responsibility for supervision is that of the person delegating the responsibility, the Commission rules that on the basis of present bylaws and resolutions of the Synod, a woman may not serve as president since the president is to serve as the spiritual academic and administrative head of the institution according to Bylaw 6.15. The Board of Regents may not delegate this ultimate responsibility either since the bylaws specifically assign it to the president of the institution.

The Commission was immediately asked to reconsider this ruling. It responded as follows:

In a telephone conference held on April 6, 1984 and by letter circulated among its members the Commission reaffirmed its previous decision. It is of the opinion that when Bylaw 6.15 designates the President as the “spiritual head” of the institution, service in the position of president by a woman would be in conflict with the position of the Synod as stated in Resolution 2.17 of the 1969 Denver convention, and reaffirmed in conventions which followed. Since ultimate responsibility as spiritual head of the institution remains with the President of the institution, even though that responsibility is delegated, any other ruling under the present bylaws and resolutions of the Synod would be impossible to sustain....

It is the opinion of the Commission that until the Synod clearly indicates that the term, “spiritual head,” does not involve the President of the institution in the distinctive functions of the pastoral office and/or exercising authority over men in spiritual matters, its decision is consistent with the position adopted by previous conventions.

In response to the current question, the Commission therefore answers that because current Bylaw 6.12 retains the content and terminology of the Bylaw 6.15 referred to in the 1984 opinion, including the requirement that a President of an institution serve as its “spiritual head,” the 1984 ruling of the Commission stands because it was never overruled by a synodical convention.

Adopted Sept. 14, 1999

Question re the Eligibility of Called Teachers to Vote in Voters’ Assemblies (99-2161)

A pastor of the Synod in an August 10 letter posed the following question to the Secretary of the Synod:

[A statement in our school’s faculty handbook] reads, “Called teachers at our school are members of the Lutheran Church Missouri Synod (sic)... As members of synod, not the congregation, they are not eligible to vote in the voter’s assembly.”

This has never been my understanding. There are of course times when it is prudent for a called worker to choose not to vote, but I find nothing in the handbook of the Synod that would prohibit called teachers from voting. Please consider my request that you research this matter. If satisfactory information is not available, please ask the CCM to render an opinion.

Response: The Commission replies that there are no provisions in the Constitution or Bylaws of The Lutheran Church—Missouri Synod that prohibit individual members of the Synod from also holding voting membership in a congregation that is a member of the Synod. Article II of the Bylaws addresses membership in the Synod. Nothing in that Article in any way prohibits individual members of the Synod from also being voting members of their local congregation. The Commission recognizes that congregations are autonomous and self-governing (Constitution Article II). A congregation may therefore limit who is eligible to vote in its voters’ assembly. However, the passage from the faculty handbook quoted above is based on an incorrect premise about the interplay of synodical membership and congregation membership.

Adopted Sept. 14, 1999

Questions re 1998 Synodical Res. 7-12 and Dual Membership (99-2158)

Two congregations in letters dated May 30, 1999, and July 16, 1999, raised questions regarding the applicability of 1998 synodical convention Resolution 7-12 to specific situations. The substance of each question queries whether certain congregations are included in the term, “dual membership.” The Commission on Constitutional Matters asserts jurisdiction in this case by virtue of Bylaw 3.905, d, which states that the CCM shall “interpret the Synod’s Constitution, Bylaws and Resolutions upon the written request of a member....”

QUESTION 1: “Whether Synodical Resolution 7-12 applies to Palisades Lutheran Church of Pacific Palisades, California?”

OPINION: The second question raises a similar issue but pertains to a fact situation arising in the Lutheran Church of Arcata, California.

QUESTION 2: “Do two congregations that share pastors and property, that are each incorporated separately, that each pays to their respective synods, that hold title to their church property as tenants in common, and that have no members that are members of both congregations and/or both synods, have dual membership status with the meaning of 1998 Convention Resolution 7-12? If so, what are the Scriptural and legal bases for such a finding?”

OPINION: The fact situation underlying the first question parallels that of the second. Throughout its history Holy Cross Lutheran Church of Pacific Palisades has been a member of The Lutheran Church—Missouri Synod (LCMS). In 1970 Holy Cross entered into fellowship with an American Lutheran Church (ALC) congregation, the Lutheran Church of the Palisades. In 1988 the Lutheran Church of the Palisades followed its ALC into membership in the Evangelical Lutheran Church in America (ELCA). Representatives for Pacific Palisades assert that they are not dual membership congregations, but are in fact two separate congregations holding property together, doing business together as a congregation, and engaging in altar and pulpit fellowship with one another in accordance with a congregational-based fellowship agreement. Both congregations share one pastor and one name in the community.

The facts underlying the second question are somewhat similar. An LCMS congregation, Our Redeemer Lutheran Church, and an ELCA congregation, Faith Lutheran Church, are each incorporated separately under the laws of the State of California. Each congregation has its own corporate articles and bylaws. Together, they do business as The Lutheran Church of Arcata, sharing pastors and property. The people who share the parish building are members of either the LCMS congregation or the ELCA congregation, but not both. No person of either congregation holds dual membership in the other. Our Redeemer has never held membership in the ELCA. The deed to the church property is held in the names of “Our Redeemer’s Lutheran Church (LCMS) and Faith Lutheran Church (ELCA), as tenants in common.” This arrangement was formed in 1971 when Our Redeemer’s property was taken by eminent domain for freeway construction. Over the years the combined congregations were served by two pastors, one belonging to the LCMS, and the other to the ELCA. Currently the congregations are being served by an LCMS pastor.

Do these fact situations create dual memberships under the language of 1998 synodical Resolution 7-12? The Commission’s interpretation is that they do not. Neither LCMS congregation holds, or has ever held, membership in the ELCA or its predecessors.

The Commission is well aware, however, that the substance of these congregational agreements raises a number of troubling issues. In the instant cases involving Pacific Palisades and The Lutheran Church of Arcata, the effects are virtually identical to a dual membership scenario. Only the technical requirements of formal dual membership remain absent.

Members of Synod are bound together by a common confession of faith. Article II of the Constitution of The Lutheran Church—Missouri Synod is unalterable. Every member of the Synod “accepts without reservation: 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 practice; 2. All the Symbolical Books of the Evangelical Lutheran Church as a true and unadulterated statement and exposition of the Word of God....” In Article III, “the Synod, under Scripture and the Lutheran Confessions, shall-- 1. Conserve and promote the unity of the true faith (Eph. 4:3-6; I Cor. 1:10), work through its official structure toward fellowship with other Christian church bodies, and provide a united defense against schism, sectarianism (Rom. 16:17), and heresy.”

Article VI of the Constitution stipulates Conditions of Membership. It provides conditions for acquiring and holding membership in the Synod. Such conditions include inter alia:

1. Acceptance of the confessional basis of Article II.
2. Renunciation of unionism and syncretism of every description, such as:
 - a. Serving congregations of mixed confession, as such, by ministers of the church;
 - b. Taking part in the services and sacramental rites of heterodox congregations or of congregations of mixed confession;...

A congregation attempting to create or maintain unilateral altar and pulpit fellowship with a non-member congregation will inevitably open itself to doctrinal scrutiny. Every member of the Synod has a right to challenge such an arrangement if it is found wanting in light of the Scriptures, the Confessions, the Constitution, the Bylaws, or the resolutions of Synod. Those charged with doctrinal oversight bear special responsibility to carefully investigate the theological implications of each situation and take appropriate action.

Three additional questions were submitted by the Lutheran Church of Arcata.

QUESTION 3: Since the LCMS dissolved altar and pulpit fellowship with the ALC, does convention resolution 7-12 truly apply to parish fellowships established prior to the dissolution? If so, what are the scriptural and legal bases for such a finding?

QUESTION 4: Do all congregations joined in “congregational fellowship” fall within the definition of “dual membership?” If so, what are the scriptural and legal bases for such a finding?

OPINION: In light of the response of the CCM to the previous questions, no response is necessary to these questions.

QUESTION 5: How is it possible, under the LCMS Constitution and Bylaws, for parish partnerships and fellowship to exist and be approved between the LCMS and ELCA and the foreign/international mission field and not in the domestic mission field?

OPINION: The Commission believes the factual assumptions of the question may be incorrect. There are, in fact, joint domestic endeavors between the ELCA and LCMS. These efforts, however, do not involve altar and pulpit fellowship.

Adopted Oct. 20, 1999

**Clarification of Articles II, VI, and XIII and Bylaws 1.09, 2.27,
and 2.39 Re False Doctrine, Suspension, and Expulsion (99-2162)**

A pastor of the Synod, in a letter dated August 17, 1999, “without reference to any specific situation or facts pertaining thereto,” asks the following three questions of the CCM:

QUESTION 1: According to Article XIII of the Synod’s Constitution, is embracing and persisting in false doctrine an act contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI and consequently an act that may subject a member of the Synod to suspension and expulsion?

OPINION: Article II sets forth the confessional standard of the Synod. Embracing and persisting in false doctrine is a denial and rejection of that standard and thus, in accord with Article XIII, is a basis for expulsion from the Synod.

QUESTION 2: Does Bylaw 2.39, c, preclude the suspension of a member of the Synod who makes use of said Bylaw, even if it is determined through investigation under a Bylaw 2.27 proceeding that the member embraces and persists in false doctrine?

OPINION: The Lutheran Church—Missouri Synod is a voluntary association whose members accept the confessional article of the Synod’s Constitution “without reservation.” Article II of the Synod’s Constitution states:

The Synod, and every member of the Synod, accepts without reservation:

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, to wit: the three Ecumenical Creeds (the Apostles’ Creed, the Nicene Creed, the Athanasian Creed), the Unaltered Augsburg Confession, the Apology of the Augsburg Confession, the Smalcald Articles, the Large Catechism of Luther, the Small Catechism of Luther, and the Formula of Concord.

Article II sets forth the nature of the confessional unity of the Synod. At the foundation of this unity in confession is a common understanding of the role of Holy Scripture. In joining the Synod, members indicate their agreement with one another that Scripture is the only rule and norm of faith and practice.

The second part of Article II states that a member of the Synod also accepts, without reservation, “all the Symbolical Books of the Evangelical Lutheran Church as a true and unadulterated statement and exposition of the Word of God.” And then the Symbols, or Confessions, are named, beginning with the ecumenical creeds and continuing down to the Formula of Concord.

Bylaw 1.09 speaks to the adoption of Doctrinal Resolutions and Statements:

- a. 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.
- b. Doctrinal resolutions may be adopted for the information, counsel, and guidance of the membership. They shall conform to the confessional position of the Synod as set forth in Article

II of its Constitution and shall ordinarily cite the pertinent passages of the Scriptures, the Lutheran Confessions, and any previously adopted official doctrinal statements or resolutions of the Synod. Such resolutions come into being in the same manner as any other resolutions of a synodical convention and are to be honored and upheld until such time as the Synod amends or repeals them.

c. Doctrinal statements set forth in greater detail the position of the Synod especially in controverted matters.

This same section of the bylaw provides for the way doctrinal statements should be developed and adopted. Bylaw 1.09, c, 7, then states:

7. Such adopted and ratified doctrinal statements shall be regarded as the position of the Synod and shall be “accepted and used as helpful expositions and explanations” (FC SD Rule and Norm 10). They shall be honored and upheld (“to abide by, act, and teach in accordance with” [1971 Res. 2-21]) until such time as the Synod amends or repeals them;

Finally, Bylaw 1.09, c, 9 & 10, are instructive to the question asked of the Commission:

9. An overture to repeal such an adopted and ratified doctrinal statement shall require a majority vote of a convention of the national Synod in answer to an overture properly submitted and be subject to the procedure of congregational approval set forth in paragraph c 6 above;

10. In the interim, those who submit overtures to amend or to repeal shall, while retaining their right to dissent, continue to honor and uphold publicly the statement as the position of the Synod, notwithstanding further study and action by the Synod.

Bylaw 1.09 then concludes with Section d. which states: “Dissent from doctrinal resolutions and statements shall be governed by Bylaw 2.39 c.” The foundation of Bylaw 2.39, c, is Article VII of the Constitution of the Synod. It reads:

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 the congregation is concerned.

Bylaws 2.35 “Duties of Members,” and 2.39 “Relation of the Synod to Its Members” set forth the meaning of Article II. 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, c, describes how this is done also in times of dissent:

c. While retaining the right of brotherly dissent, 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. If such resolutions are of a doctrinal nature, dissent is to be expressed first within the fellowship of peers, then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or rescission. While the conscience of the dissenter shall be respected, the consciences of others, as well as the collective will of the Synod, shall also be respected.

By joining the Synod a member accepts the confessional standard of the Synod as expressed in Article II and elaborated upon in Bylaw 1.09. By joining the Synod a member agrees to honor and uphold the resolutions of the Synod in public teaching. And this means that a member agrees “to abide by, act and teach in accordance with” (1971 Res. 2-21). This is true not only when a member agrees with the resolutions adopted by the Synod, but also when in disagreement with positions adopted by the Synod. By joining the Synod a member promises that if there is disagreement with a doctrinal position of the Synod dissent will not be expressed publicly but will follow the procedure set forth in Bylaw 2.39. Thus, Bylaw 2.39 can be used as a defense against an action under Bylaw 2.27 only if the member can establish that the position of the Synod has been upheld in actions and teaching and that dissent has been limited to the procedure set forth in Bylaw 2.39.

QUESTION 3: May a synodical Dispute Resolution Panel rule a Bylaw 2.27 suspension decision null and void on the grounds that since the member of the Synod is making use of Bylaw 1.09, d, and Bylaw 2.39, c, he can not be suspended and expelled from the Synod for embracing and persisting in false doctrine?

OPINION: The extended opinion provided above to Question 2 provides the answer to this question. A member that properly teaches and acts is permitted to raise questions under Bylaw 2.39. If a member of the Synod embraces and persists in false doctrine and this is evidenced in actions or teachings, neither Bylaw 1.09 nor Bylaw 2.39 provide a defense thereto.

Adopted Oct. 20, 1999

**Question Re Suspension of a Pastor and Request for
Clarification of “Shall” in Article XIII of the Constitution (99-2163)**

In a letter dated August 20, 1999, a pastor of the Synod inquired regarding latitude and discretion on the part of a District President in the suspension of a pastor. The Commission responds as follows:

QUESTION: When a pastor has been found to have acted contrary to Article II of the Constitution, and the pastor has been admonished and has refused to heed the admonition, does the District President (or the Praesidium, if the matter is presented to them) have the discretion as to whether to suspend the pastor? In other words, does the use of the word “shall” in Article XIII of the Constitution mandate that the District President (or Praesidium) suspend the pastor, or does the District President (or Praesidium) have discretion over whether to suspend the pastor considering the use of the word “shall”?

OPINION: Bylaw 2.27, a, provides:

a. When, either by a written complaint of any person or by his own personal knowledge, facts which could lead to the expulsion of a member from the Synod under Article XIII of the Constitution are made known to the District President who has ecclesiastical supervision of such member, the District President shall

1. thoroughly investigate whether the allegations can be substantiated.

This same bylaw further provides:

c. If the District President concludes that the facts form a basis for expulsion of the member under Article XIII of the Constitution, the District President shall (emphasis added)

- ...1. provide the member with
- ...b. a written notification of the member's suspended status under Bylaw 2.25;

In addition, paragraph 2 of Article XIII provides:

- 2. Expulsion shall be executed only after following such procedure as shall be set forth in the Bylaws of the Synod.

Nothing in the language cited above directly or implicitly suggests that suspension is a matter of discretion. If a thorough investigation (which "shall" be performed by the District President) reveals grounds for suspension, the District President must carry out the requirements of the bylaw and suspend the member.

Adopted Oct. 20, 1999

Questions Re Procedure in Removing a Pastor (99-2168)

A Dispute Resolution Panel has posed two questions to the Commission pursuant to Bylaw 8.21, I:

QUESTION 1: Has a congregation followed proper procedures in dismissing a pastor from office if it did not state (specify) the constitutional reason(s) for doing so when calling the Voter's Assembly for the purpose of dismissing a pastor?

QUESTION 2: Has a congregation followed the proper procedure if the constitutional reason(s) for dismissal are not stated in the motion to dismiss?

OPINION: The Commission observes that under Bylaw 8.21, i, it is limited to interpreting the Synod's Constitution and Bylaws. See also Bylaw 3.905, d. Within that limited grant of authority, the Commission states that the Synod's Constitution and Bylaws are silent as to the questions posed. They neither require nor forbid specificity in stating the reasons for dismissing a pastor either in calling a meeting of the Voters' Assembly or in a motion for dismissal made at a Voters' Assembly meeting. Interpretation of a congregation's constitution or bylaws is beyond the scope of this Commission's responsibilities, and is within the sound discretion of the Dispute Resolution Panel, which is required by Bylaw 8.09, c, 2, to set forth the rationale for its decision in writing.

Adopted Oct. 20, 1999

Definition of "Professional Church Worker" (99-2155)

In a June 16, 1999 letter, the Chairman of the Commission on Ministerial Growth and Support, "whose charge has to do with the Synod's professional church workers," asked the following on behalf of his commission:

QUESTION: How do Synod's Bylaws define the term "professional church worker"? Specifically, are non-rostered teachers included in that group of persons for which the Commission on Ministerial Growth and Support is to provide services as outlined in Bylaw 3.915?

OPINION: Article III, 3, of the Constitution of the Synod states that one of the objectives of the Synod is to "recruit and train pastors, teachers, and other professional church workers (emphasis added) and

provide opportunity for their continuing growth.” Paragraph 8 of the same Article III adds that the Synod is also to provide evangelical supervision, counsel, and care for pastors, teachers, and other professional church workers (emphasis added) of the Synod in the performance of their official duties.” Since in this Article “professional church workers” are referred to in the same context as pastors and teachers, “professional church workers” is intended to include only other rostered workers.

This conclusion is supported also in the Bylaws of the Synod:

- Bylaw 3.409 states that one of the functions of the Concordia University System/Board for Higher Education is “the overall responsibility to provide for the education of ordained and commissioned ministers and other professional church workers for the Synod by supervising and coordinating the activities of Synod’s colleges, universities, and seminaries as a unified synodical system through their respective boards of regents.
- Bylaw 3.503 provides that one of the objectives of the Lutheran Church Extension Fund is to provide financing and services for professional church worker education and the residential housing needs of professional church workers.
- Bylaw 3.713 stipulates that the Support Program of the Synod is intended for eligible ordained ministers, commissioned ministers, and “other professional church workers and their eligible dependents who are in financial need.”
- Bylaw 3.930, e, requires that the Council of Presidents “serve as the Board of Assignments for the first calls to candidates for the offices of ordained and commissioned ministers and to handle or assist with the placement of other professional church workers.”
- Bylaw 6.35, b, instructs that synodical school faculties “develop and construct curricula implementing the recognized and established purposes of the institution and designed to attain the synodically approved objectives of preparation for professional church workers and other Christian leaders.”

Therefore, the Commission rules that the functions of the Commission on Ministerial Growth and Support as enumerated in Bylaw 3.915 are applicable only to rostered ordained and commissioned ministers. Therefore, non-rostered teachers are not included in that group of persons for whom the Commission on Ministerial Growth and Support is required to provide services.

Adopted Oct. 20, 1999

Questions re Interaction between Bylaws 2.27 and 6.47 when Charges are Brought against a Member of a Faculty (99-2164)

The Chairman of the Board of Regents of a synodical university, in a letter dated August 20, 1999, has requested a ruling on the interaction of Bylaw 6.47 and Bylaw 2.27 in the case of charges of false doctrine brought against a member of the university’s faculty. The Board of Regents, having received notification of the complaint against the faculty member, explains in its letter that it “feels responsible to determine its role in this matter.” It asks the Commission to provide a ruling on the interaction between Bylaws 2.27 and 6.47.

QUESTION: “The Board of Regents received notification of the complaint regarding (a member of the faculty) and feels responsible to determine its role in this matter. It would be most helpful if you could provide a ruling on the interaction between Bylaws 2.27 and 6.47 in a case like this.”

OPINION: Bylaw 6.47 sets forth a detailed procedure to be followed by a Board of Regents when it receives a complaint against a faculty member. This procedure is applicable in cases where the faculty

member is accused of false doctrine (which is a circumstance for removal from the faculty under Bylaw 6.47, c). This section also sets forth a detailed process for reconciliation and resolution of the matter by a hearing if necessary. It provides for a Review Committee to decide the issue, which decision shall be final except in cases where the complaint involves conduct under Bylaw 6.43, c, 5 (conduct unbecoming a Christian) or 6.43, c, 6 (false doctrine). In those cases the complainant may, after the Review Committee renders its decision, “take the complaint to the District President, who shall follow the procedure set forth in Bylaw 2.27” (Bylaw 6.47, g).

Although Bylaw 2.27 might also be read to apply in the case of a university faculty member separately and as an alternative to Bylaw 6.47, the Commission believes that this was not intended to be the case. Bylaw 6.47 is specific to the situation of a university faculty member, whereas Bylaw 2.27 is general and applies to any member of the Synod. A common maxim of interpretation of documents such as statutes and bylaws holds that if two provisions disagree, the more specific controls over the more general one. Thus Bylaw 6.47, being more specific, would apply rather than Bylaw 2.27. Additional support for this conclusion is found in Bylaw 6.45, b, which accords finality to decision under Bylaw 6.47 with no right of appeal except as provided in Bylaw 6.47, b (relating to charges of conduct unbecoming a Christian and advocacy of false doctrine). It is apparent from this section that the procedure in Bylaw 6.47 is intended to be primary in all cases, and that in two specified cases only may the procedure of Bylaw 2.27 be applied after the provisions of Bylaw 6.47 have been followed.

Adopted Dec. 16, 1999

Question re District President Responsibility for Roster Classification (99-2166)

A parish pastor in a letter dated September 23, 1999, asked the Commission to respond to the following two questions:

QUESTION 1: “Does a District President have the constitutional right and/or privilege to change the title and, therefore, the status of a pastor (for example, from “Pastor” to “Assistant Pastor” or “Associate Pastor”) without consultation with the pastor and/or the congregation?”

QUESTION 2: “Does a District President have the constitutional right and/or privilege to change the title and voting status of a pastor in the circuit, district, and synod without informing the pastor or the congregation that he has made such a change?”

OPINION: The Commission observes that under Bylaw 2.45, b, a congregation has the right to call ordained and commissioned ministers. The call document defines the position to which the minister is called and the position’s responsibilities, which also determine the roster classification of the Synod. A District President has no authority to change any of the terms of a call document.

Article V, A, of the Constitution of the Synod states that at meetings of the District each congregation is entitled to two votes, one by the pastor and one by the lay delegate. Furthermore, Bylaws 2.43 and 4.77 give to the District President the responsibility of rostering pastors. Therefore, the Commission concludes that when a congregation has two or more pastors, the congregation has the responsibility to define their positions, to thereby indicate the classification of the pastors, and, if they are to be “associate pastors,” to determine which of the pastors shall exercise the right of franchise. It is the responsibility of the congregation to keep the District President informed as to the status of its pastors so that he can report roster changes to the Secretary of the Synod in a timely manner. Failure to do so forces the District President to exercise judgment in carrying out his responsibility under Bylaw 4.77.

Adopted Dec. 16, 1999

Question Re Term Limits for Circuit Counselors (99-2167)

A District Secretary in an October 7, 1999 letter requested the opinion of the Commission regarding the applicability of his District's bylaw regarding term limitations to Circuit Counselors. In his letter he notes that term limitations have not been applied to Circuit Counselors in the past possibly due to an "understanding that the Counselors are officers of the Synod and not officers of the District."

QUESTION: Are the Circuit Counselors of a District subject to the District's three term tenure Bylaw or are they outside the scope of that Bylaw because they are officers of the Synod and not officers of the District?"

OPINION: Article XII, 3, c, and Bylaw 4.51 list Circuit Counselors as officers of the District. While Article XII, 5, provides that the election and time of service of District officers are to be determined by the Bylaws of the Synod, Bylaw 4.125, b, grants to Districts the right to determine limitation of tenure.

Therefore, Circuit Counselors are not officers of the Synod but only of a District. As District officers they are subject to all bylaws of the Synod and the District that pertain to District officers. However, a District may in its bylaws place limitations on tenure of Circuit Counselors.

Adopted Dec. 16, 1999

Questions re Congregations Following Bylaws in Extending Calls (99-2170)

A District Board of Directors in a formal board action instructed that the Commission be requested to make "a determination about the validity, legality, properness, or other conclusion about the call resulting from a congregation violating its own Constitution or Bylaws." The District President submitted the following questions:

QUESTION 1: "If a congregation does not follow its constitution and by-laws in calling a professional church worker, does that 'invalidate' the call?"

OPINION: Bylaw 2.45, a, requires that congregations seek the advice of the District President when calling ordained and commissioned ministers, also providing in paragraph c that congregations that persist in failing to follow that bylaw "shall, after due admonition, forfeit their membership in the Synod." Bylaw 4.73 requires a District President to advise congregations in the calling of pastors and teachers. Article III, Section 9, of the Synod's Constitution includes the protection of congregations, pastors, teachers and other church workers in the objectives of the Synod. These provisions set forth a clear and useful process for calling church workers that should prevent or minimize irregularities in the calling process.

Nothing in the Constitution and Bylaws of the Synod would indicate that a call would be invalidated by the failure of a congregation to follow its own Constitution and Bylaws in the calling process. The Commission further observes, however, that questions regarding the call involve matters of theology that are beyond the scope of this Commission's responsibilities. Further, failure to follow the proper procedures may have legal ramifications which are also beyond the scope of this Commission's responsibilities.

QUESTION 2: “If the call is considered ‘invalid,’ what does that mean for the congregation and the worker?”

OPINION: In conformity with the prior answer, the Commission observes that nothing in the Constitution and Bylaws of the Synod answers this question.

QUESTION 3: “What action may the District or Synod take in the matter?”

OPINION: The role of the District and therefore of the Synod is set forth in the clear and useful process for calling church workers provided by Bylaws 2.45, a, and 4.73. It is the responsibility of District Presidents to advise congregations in the calling of ordained and commissioned ministers. This rightly will include attention to the process for calling church workers contained in the congregation’s Constitution and Bylaws.

Adopted Dec. 16, 1999

Question Re Restrictions on Membership on Board for Higher Education (99-2172)

The Executive Director of the Board for Higher Education, in a letter to the Secretary dated November 8, 1999, raised a question regarding the District membership restriction placed upon elections to the Board for Higher Education. The Commission understands the question to be as follows:

QUESTION: “1995 Bylaw 3.600, a, provided that no more than one elected director of the Board for Higher Education (BHE) (which also serves as the Board of Directors of the Concordia University System) could be from the same District of the Synod. The 1998 convention of the Synod adopted Resolution 8-01B which changed the Bylaws for Higher Education. Included in those changes was a modification of the limitation of the number of members of the BHE who can be elected from one District of the LCMS. What are the limitations at the present time on election of members to the BHE?”

OPINION: Bylaw 3.407 addresses membership of the Board for Higher Education as provided in Resolution 8-01B. The 18 members of the BHE are the following: the President of the Synod or his representative; the Chief Financial Officer of the Synod; 4 persons elected by the Council of Members of the Concordia University System; 4 persons elected jointly by the Boards of Regents of the two Seminaries; 7 persons elected by the Synod in convention, and one District President elected by the Council of Presidents. Bylaw 3.407, d, states that no more than one of the 7 members elected by a convention of the Synod can be from the same District of the Synod. The bylaw does not place such a restriction on any of the other members elected to the BHE. Thus the 7 members elected by a convention of the Synod must come from 7 different Districts. The remaining elected members of the BHE can come in any number from any District, including the District of a member elected by a convention of the Synod.

Adopted Dec. 16, 1999

Questions re the Right of a Congregation to Call Its Own Pastor (99-2171)

A board of elders acting on behalf of a congregation asked a series of questions regarding the influence a District may exert upon a partially subsidized congregation when calling a pastor or when arranging interim pastoral service during a vacancy. The Commission responded to the questions as follows:

QUESTION: May a District refuse a congregation the right to call its own pastor on the grounds that the congregation is partially subsidized by the District?

OPINION: Bylaw 2.01, 2.03, and 2.05 set forth the manner in which a congregation becomes a member of the Synod. In rendering this opinion, the Commission assumes that the congregation in question has complied with those requirements and is a member of the Synod.

Article VII of the Constitution of the Synod states: “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.”

Bylaw 4.07 states: “The Synod is not merely an advisory body in relation to a District. A District is the Synod itself performing the functions of the Synod.” Thus the provisions of the above quoted section of Article VII are applicable to the actions of a District.

Bylaw 2.45, b, provides that “congregations which are members of the Synod, in conformity with Article VI, 3, of the Constitution of the Synod, shall (emphasis added) call and be served only by ordained or commissioned ministers....” Paragraph a of that same Bylaw states that “congregations shall seek the advice of the respective President when calling ordained or commissioned ministers.”

At its March 5, 1982 meeting the Commission on Constitutional Matters addressed a similar question from a congregation in the Central Illinois District: “Does a congregation, duly organized, in membership with The Lutheran Church–Missouri Synod, have the inherent and unalterable right to call her own pastor, or may a provision be made in the constitution of said congregation stating and affirming that the right and power of calling a pastor for such a congregation shall be delegated to and vested with the District’s Board of Directors?” The Commission resolved that “the congregation must retain the right to call a pastor. To be sure, consultation, especially in situations of subsidized congregations, has always been customary. But the right itself belongs to the congregation (see for instance Article VII; Article VI, 3; Bylaw 5.01, a).”

In view of the above, the Commission concludes that the right to call a pastor rests solely with the congregation that pastor is to serve. Should a District threaten to withhold its subsidy unless a subsidized congregation adheres to the wishes of the District relative to the calling of a pastor, the congregation may utilize the Synod’s dispute resolution process to determine if such a threat is coercion and a violation of Article VII of the Constitution of the Synod.

QUESTION: Can a District call a pastor for a partially subsidized congregation without the consent and approval of that congregation?

OPINION: The opinion rendered to the previous question provides the answer to this question.

QUESTION: May a District insist that a partially subsidized congregation accept an “intentional interim pastor”?

OPINION: The previously quoted provision of Article VII of the Constitution of the Synod is also applicable to this question. In addition, 1998 synodical convention Resolution 3.17B states in part,

WHEREAS, Intentional interim ministries ought never to be imposed upon congregations, for the precious relationship of the shepherd to his sheep can be protected

only as long as the congregation maintains the right to choose its own pastor (see C. F. W. Walther, *The Congregation's Right to Choose Its Pastor*);... therefore be it

Resolved, That we recognize the value of intentional interim ministries in certain cases when congregations choose them (emphasis added); and be it further

Resolved, That when congregations do choose to be served by intentional interim ministries, they be assisted by their District Presidents to select among available candidates;....

In light of the above, a District may not insist that a partially subsidized congregation accept an intentional interim pastor.

QUESTION: May a District extend a “non-tenured” call for a pastor of a partially subsidized congregation?

OPINION: Again, the above quoted provisions of Article VII may be applicable to this issue. However, the term “non-tenured” is not defined in the Constitution or Bylaws of the Synod nor is it defined in the question. Accordingly, the Commission cannot render an opinion on this question.

Adopted March 23, 2000

Question re Responsibilities of Commission on Ministerial Growth and Support (00-2177)

The Chairman of the Commissioned Ministers Continuing Education Committee of the Commission on Ministerial Growth and Support (CMGS), in a letter dated January 19, 2000, requests a judgment from the Commission on Constitutional Matters regarding the overall task of the CMGS, asking whether that Commission may also provide growth and support initiatives for non-rostered as well as rostered workers. The letter explains that the CMGS has opportunity to work with both rostered and non-rostered workers and wishes to be clear about how it may proceed. The Commission on Constitutional Matters has provided the following response:

QUESTION: “Does the Commission’s overall task ‘to assist the mission and ministry of the Synod and its congregations’ (By-law 3.195) allow for commission initiatives in providing growth and support for both rostered and non-rostered workers?”

OPINION: The Commission recently answered a similar question in Ag. 99-2155, which appears in the minutes of the Commission’s October 20, 1999 meeting. That question asked whether non-rostered workers are “included in that group of persons for which the Commission on Ministerial Growth and Support is to provides services as outlined in Bylaw 3.915.” (Emphasis added.) The last line of our answer concluded “Therefore, non-rostered teachers are not included in that group of persons for whom the Commission on Ministerial Growth and Support is required to provide services.” Thus if the present question inquired whether provision of services is mandated by the bylaw, the answer is clearly no. However, the question asks whether the bylaw allows such services to be provided. This asks what is permissible, not what is required. Clearly, the permissible may be greater than the mandatory. Nothing in the bylaw forbids providing such services on a voluntary basis.

Adopted March 23, 2000

Questions re the Right of a Task Force to Submit Overtures to a Convention of the Synod (00-2182)

The Secretary of the Task Force on National/District Synod Relations, in a letter dated February 9, 2000, inquired on behalf of the Task Force regarding its eligibility to submit overtures to the Synod in convention. He noted that this question “is of some moment to the Task Force, now in the preliminary stages of preparing a report.” The Commission responded as follows:

QUESTION 1: “Is the Task Force on National/District Synod Relations, created by the Synod in 1998 Resolution 7-02A, ‘a committee established by a prior convention’ in terms of Bylaw 3.19.2., and thus eligible to submit overtures to the Synod in convention?”

QUESTION 2: “If not, is there any other reason under the Bylaws by which this Task Force could be considered eligible to submit overtures to the Synod in convention?”

OPINION: While a “task force” is not mentioned in Bylaw 3.19, a, 2, it does allow that “a committee established by a prior convention” may submit overtures to a convention of the Synod. And while the term “committee” is not defined, Bylaw 3.51, n, does define a task force as “an appointed group which has an ad hoc assignment to accomplish a specific task and whose duties have a definite expiration date.”

The Commission notes that the Task Force on National/District Synod Relations was indeed “established by a prior convention” under Resolution 7-02A of the 1998 convention of the Synod. The Commission also notes that the Task Force, as “an appointed group which has an ad hoc assignment,” is in essence a “committee,” a term commonly understood to represent a group of persons with assigned responsibilities, as is the case with the Task Force in question. Both factors therefore bring the Task Force on National/District Synod Relations into compliance with the requirements of Bylaws 3.19, a, 2, and 3.19, a, 1, the latter Bylaw (3.19, a, 1) stipulating that reports may include overtures when submitted by entities authorized to do so under the former Bylaw (3.19, a, 2).

It is the Commission’s opinion, therefore, in answer to the first question, that the Task Force on National/District Synod Relations is “a committee established by a prior convention” and may therefore include overtures in its report to the convention of the Synod. As a result and in answer to the second question above, no “other reason under the Bylaws” need be sought “by which this Task Force could be considered eligible to submit overtures to the Synod in convention.”

Adopted March 23, 2000

Use of LCMS Foundation by LCMS Educational Institutions (00-2178)

The Executive Director of the Board for Higher Education of the Synod, upon request of Boards of Regents of synodical educational institutions, requested the following opinion of the Commission:

QUESTION: Are the educational institutions of the LCMS required to use the LCMS Foundation as the manager of invested funds (permanent endowment, quasi endowment, restricted funds, etc.)?

OPINION: The Commission responds with a review of pertinent Bylaws of the Synod as they relate to the question.

According to Bylaw 3.401, a, the Board for Higher Education shall serve as the Board of Directors of the Concordia University System. Thus the Bylaws in this section apply to the one board both as the Board for Higher Education, a program board of the Synod, and as the governing board of the Concordia University System. The Concordia University System is a synodwide corporate entity.

According to Bylaw 3.401, b, this board, as the Board of Directors of the Concordia University System, has authority with respect to the Synod's colleges and universities. As the Board for Higher Education, it has authority with respect to all the Synod's institutions of higher education, including its seminaries.

According to Bylaw 6.03, in exercising its relationship to the Synod and to the Board for Higher Education as set forth elsewhere in the Bylaws (3.401), the Board of Regents of each institution shall consider as one of its primary duties the defining and fulfilling of the mission of the institution within the broad assignment of the Synod and shall, among other duties, approve institutional fiscal arrangements (paragraph f) and operate and manage the institution as the agent of the Synod, in which ownership is primarily vested and which exercises its ownership through the Board of Directors as custodian of the Synod's property, the Board for Higher Education, and the respective Board of Regents as the local governing body (paragraph j). Included in the operation and management are such responsibilities as (paragraph 2) the receiving of all gifts by deed, will or otherwise made to the institution and delivering them to the Vice-President–Finance—Treasurer of the Synod or such other person as may be designated by the Board of Directors of The Lutheran Church—Missouri Synod, unless precluded by law or the terms of the gift. In such case, the Board of Regents shall hold and administer the same, in accordance with the terms of the instrument creating such gift and in accordance with the policies of the Board of Directors of The Lutheran Church—Missouri Synod.

According to Bylaw 3.163, the Chief Financial Officer of the Synod (Vice-President–Finance—Treasurer) shall administer the financial affairs of the Synod, excluding the synodwide corporate entities, the Districts, and Worker Benefit Plans. He shall carry out the duties of the office in accordance with the rules and regulations adopted by the Synod and as directed by its Board of Directors. He shall receive and disburse the moneys of corporate Synod and keep accurate account of them under instruction of the Board of Directors of the Synod.

According to Bylaw 3.165, a, the Chief Financial Officer shall act as the depository for all funds in the hands of corporate Synod's boards (excluding Worker Benefit Plans), commissions, officers, and employees who by virtue of their office act as custodians or trustees of such funds.

According to Bylaw 3.601, a, The Lutheran Church—Missouri Synod Foundation shall be maintained and controlled by the Synod as a corporate entity organized under the laws of the State of Missouri and shall be operated by a Board of Trustees, responsible to the Synod, in accordance with the provisions of its articles of incorporation and corporate bylaws.

According to Bylaw 3.605, a, the LCMS Foundation shall provide investment management services for legacies, bequests, devises, endowments, annuity gifts, and other trust funds of the Synod and its agencies as established in its bylaws.

These Bylaws provide that:

(1) the Synod's educational institutions (Bylaw 6.03, j, 2) deliver to the Vice-President–Finance—Treasurer of the Synod (or such other person as may be designated by the Synod's Board of Directors) invested funds such as permanent endowments, quasi endowments, restricted funds, etc., unless precluded from doing so by law or the terms of the gift. It should be noted that the bylaw

requires such funds to be delivered to the Vice-President–Finance—Treasurer and says nothing about delivery of such funds to the Foundation;

(2) the Vice-President–Finance—Treasurer carries out his duties (Bylaw 3.163) in accord with the rules and regulations of the Synod and as directed by the Board of Directors of The Lutheran Church—Missouri Synod;

(3) the Foundation is required to provide investment management services (Bylaw 3.605, a). However, this bylaw mandates that the Foundation provide these services. It does not mandate that the Synod and its agencies use these services;

(4) if these funds of the Synod’s educational institutions are to find their way into the Foundation, they first must go to the Vice-President–Finance—Treasurer of the Synod who then can transfer them to the Foundation only if required to do so by the rules and regulations of the Synod or by direction of the Board of Directors of the Synod (Bylaw 3.163).

Therefore, in answer to the question, the educational institutions of the LCMS are not required to use The Lutheran Church Missouri Synod Foundation as the manager of invested funds. They are required to deliver invested funds

to the Vice-President–Finance—Treasurer of the Synod or such other person as may be designated by the Board of Directors of The Lutheran Church—Missouri Synod, unless precluded by law or the terms of the gift. In such case, the Board of Regents shall hold and administer the same, in accordance with the terms of the instrument creating such gift and in accordance with the policies of the Board of Directors of The Lutheran Church—Missouri Synod (Bylaw 6.03, j, 2).

The Vice-President–Finance—Treasurer of the Synod is then to manage such funds in accord with the rules and regulations of the Synod and as directed by the Synod’s Board of Directors.

Adopted April 13, 2000

Revision of Bylaws re Candidate Status (00-2183)

The Commission gave its approval to the bylaw changes being recommended by the Council of Presidents regarding non-active roster status, as follows:

C. Continuing Eligibility of Individual Members

2.15 Active Members

To remain on the roster of the Synod as an “active member,” an ordained or commissioned minister of religion must be a communicant member of a congregation which is a member of the Synod (except as provided in paragraph c of this section) and be regularly performing the duties of one of the following:

- a. An ordained minister serving a congregation of the Synod;
- b. A commissioned minister serving a congregation of the Synod;

c. A minister of religion, ordained or commissioned, serving a congregation which is not a member of the Synod, provided that such is approved (on the basis of policies adopted by the Council of Presidents) by the President of the District in which the congregation is located.

d. An elected officer of the Synod, including a District or other agency of the Synod;

e. An executive or professional staff member serving the Synod, including a District or other agency of the Synod;

f. A missionary serving under a call by the Synod, including a call by a District;

g. A person serving on the faculty or professional staff of a synodical educational institution;

h. A military or institutional chaplain or other specialized ministry endorsed by the Synod, including endorsement by one of its Districts;

i. An executive or professional staff member called or appointed by a national inter-Lutheran agency referred to in section 13.01;

j. An executive or professional staff member called or appointed by an auxiliary (14.01) or other recognized service organization (14.03), including a person serving an educational institution, whether elementary or secondary, recognized by the Synod.

2.17 Inactive Members

Inactive members are advisory members of the Synod. As such, they have all the rights, privileges, and responsibilities of advisory membership in the Synod as defined in the Constitution and Bylaws of the Synod. To remain on the roster of the Synod as an “inactive member,” an ordained or commissioned minister of religion must be a communicant member in good standing of a congregation which is a member of the Synod and must qualify and make application for one of the following categories:

a. An “emeritus” member is one whose membership is held for retention on the roster upon retirement after reaching the age of 55 or for reasons of total and permanent disability. Any unusual case shall be decided by the Council of Presidents if the appropriate District President so requests.

b. A “candidate” member is one who is eligible to perform the duties of any of the offices of ministry specified in Bylaw 2.15 but who is not currently an active member or an emeritus member. A candidate may be continued on the roster for a period not to exceed four years by act of the President of the District through which the person holds membership. The candidate shall, by January 31, make an annual report to the District President who shall evaluate the member’s eligibility for remaining on candidate status. The candidate’s report shall include current contact information and address the criteria for remaining on candidate status. Among criteria for determining whether candidate status should be granted or continued are: 1) the health of the applicant; 2) a spirit of cooperation in any efforts to address any unresolved issues involving fitness for ministry; 3) the extent of current involvement on a part-time and assisting basis in his/her respective ministry; and 4) a demonstrated willingness to consider a call or appointment to any of the offices of ministry specified in Bylaw 2.15.

c. A “non-candidate” member is one who is eligible to perform the duties of any of the offices of ministry specified in Bylaw 2.15 but who is not currently an active member or an emeritus member and who chooses not to be a candidate member. The member may be continued on the roster for a period of up to eight years by act of the President of the District through which the member holds membership. The non-candidate shall, by January 31, make an annual report to the District President who shall evaluate the member’s eligibility for remaining on non-candidate status. The non-

candidate's report shall include current contact information and the member's efforts to fulfill the responsibilities of an advisory member of the Synod. Non-candidate members are eligible to serve in ministry situations upon approval of their District President and according to guidelines established by the Council of Presidents. The Council of Presidents may grant an extension of non-candidate status for a second period of up to eight years upon request of the appropriate District President.

2.41 District through Which Membership Is Held; Ecclesiastical Supervision

f. An inactive member having emeritus, candidate or non-candidate status shall continue to hold membership in the Synod through the District through which membership was held at the inception of candidate or non-candidate status except when a transfer is approved by both the President of that District and the President of the District to which membership would be transferred.

While granting its approval and thereby clearing the way for forwarding this bylaw change to the Board of Directors of the Synod for final approval (Bylaw 15.01, 2), the Commission also recommends that the Council of Presidents provide in accompanying guidelines further definition and clarification of the words "in good standing" as they occur in the first paragraph of Bylaw 2.17.

Adopted April 13, 2000

Questions re the Delegate Rights of Intentional Interim Ministers (00-2190)

A pastor from the Northern Illinois District explained in an April 7 letter that his District has several men serving as "Interim Ministers." These pastors work in congregations during a vacancy but are called by the District and paid by the District. The congregations they serve reimburse the District for expenses. The Commission responds to the pastor's questions as follows:

Question 1: Can an intentional interim minister called by the District represent the congregation where he is temporarily working as its pastoral delegate to the District convention?

The Commission responds that although the Constitution and Bylaws of the Synod do not address the subject of intentional interim ministers, the matter of representation at District conventions is addressed (Art. V, A). The called pastor and a lay delegate from each congregation or parish are entitled to voice and vote at the District convention. If, however, a pastor is called by the District to serve in a specialized ministry, that call is not issued by the congregation and therefore that individual as an advisory delegate is entitled to speak but not cast a vote at the convention. A similar situation is the case when a missionary-at-large is called by the District.

Question 2: Can an intentional interim minister called by the District vote in a circuit caucus when electing synodical delegates?

The answer to this question is much the same as the answer to question #1 above. Bylaw 5.35 states that "the Circuit Forum which meets triennially shall elect the pastoral and lay delegates, and their alternates, to the national convention of the Synod according to the regulations of the Synod." Bylaw 5.31 states: "Each congregation shall be represented at the Circuit Forum at least by its pastor and one member designated by the congregation." If therefore a pastor is called by the District to serve in a specialized

ministry, that call is not issued by the congregation and that individual is not entitled to vote in a circuit caucus when electing synodical delegates.

Adopted May 8, 2000

Service of Intentional Interim Ministers in Offices (00-2191)

In a letter dated April 4, 2000, a parish pastor noted that “intentional interim ministry” is new to our Synod and that his District calls and employs pastors to serve in this ministry. He raises two questions regarding the service of such ministers in offices of the District, to which the Commission responds as follows:

Question 1: In view of Bylaws 4.11 and especially 3.69, g, may an intentional interim minister also serve as a District vice-president?

The Commission notes that Bylaw 4.11 speaks in general terms with no specific application to the question that is being raised. Bylaw 3.69, g, does however directly apply. It stipulates that, “unless otherwise specified or permitted by the Bylaws, executives, faculty, and staff on either the national or District level, shall not be members of the agency under which they serve, nor shall any such executives or staff be members of any other agency of the Synod, as identified in Bylaws 3.55 and 3.57.” “Members” in the case of this bylaw refers to members of the boards and commissions listed in Bylaws 3.55 and 3.57.

Specific circumstances will determine the answer to this question. According to Bylaw 3.69, g, if an intentional interim minister has been called and employed by a District and therefore is a member of its staff, that intentional interim minister cannot serve on a board of that District or any other agency of the Synod as defined by Bylaw 3.51, a. If, therefore, the vice-presidents of that District are regarded as members of its board of directors, voting or advisory, that intentional interim minister may not stand for election for the office of vice-president.

Question 2: Also, since Vice-Presidents are elected regionally and intentional interim ministers are not “regional,” may they serve as Vice-Presidents?

If the above answer applies, this question is moot. In cases, however, where an intentional interim minister is not a member of the staff of the District and, therefore, Bylaw 3.69, g, does not apply, residency requirements or absence thereof in District Bylaws will determine the answer to this question. If a vice-president position includes the requirement of residency of the vice-president in a given geographical region, the election of an intentional interim minister to such a position will be at best ill-advised, given the mobility that is necessarily an integral component of an intentional interim ministry program.

Adopted May 8, 2000

Council of Presidents Questions Re Bylaw 2.15 (00-2192)

The Clergy Call and Roster Committee of the Council of Presidents, acting on behalf of the entire Council, has requested the following opinions.

Question 1: Please clarify Bylaw 2.15, paragraph a, as follows: Do the words, “serving a congregation of the Synod” pertain exclusively to called positions, or may these words be understood more generally to include non-called workers?

The Commission responds that the phrase “serving a congregation of the Synod” pertains exclusively to called positions. The words “regular basis” in Bylaw 2.19, a, presume the existence of a regular call (Constitution, Article VI, 3) for a worker to be categorized under Bylaw 2.15, in the absence of which an eligible worker may request candidate status.

Question 2: Specifically, may a minister of religion—ordained who has been called by a District as an intentional interim pastor be continued on the active roster of the Synod under Bylaw 2.15, a, because he is “serving a congregation of the Synod,” even though he has not been called by the congregation?

A minister of religion—ordained who has been called by a District as an intentional interim pastor is continued on the active roster of the Synod but not under Bylaw 2.15, a (see answer to Question 1 above). He is continued on the active roster under Bylaw 2.15, e, as a “professional staff member serving the Synod, including a District or other agency of the Synod.”

Question 3: Please clarify Bylaw 2.15, paragraph c, as follows: May the words “serving a congregation which is not a member of the Synod” be understood to refer to both called and non-called service?

Bylaw 2.15, c, originates from the 1986 convention of the Synod, at which time the Commission on Structure proposed the current Chapter 2 of the Bylaws of the Synod, combining “all the membership provisions now found in Chapters 1, 2, 5, 6, and 8” (1986 Convention Workbook, p. 210). Bylaws 5.05, 5.07, and especially 5.09 of the 1983 Handbook addressed the matter of LCMS workers serving non-Lutheran congregations, now covered by current Bylaw 2.15, c. Bylaw 5.09 stipulated the conditions “if such a congregation desires to extend a regular call to one of our pastors” (1983 Handbook, p. 132).

Given the origin of Bylaw 2.15, c, it is therefore clear that “a minister of religion, ordained or commissioned, serving a congregation which is not a member of the Synod” may serve with or without a call, “provided that such is approved (on the basis of the policies adopted by the Council of Presidents) by the President of the District in which the congregation is located.”

Question 4: Specifically, may an LCMS pastor receive and accept a call from an independent Lutheran congregation or is this Bylaw to be regarded as exclusively non-called service?

Given the response of the Commission to Question 3 above, yes, an LCMS pastor may receive and accept a call from an independent Lutheran congregation.

Question 5: If such service may include a call, may the District President who has authorized such “serving a congregation which is not a member of the Synod” participate in the installation service, also when there are other independent Lutheran pastors participating?

If the policies of the Council of Presidents have been met to rightly allow an LCMS pastor to serve a non-member congregation without acting contrary to the fellowship principles and practices of the Synod, the President of the District may no less participate in the installation service. Indeed, Article XII of the Constitution of the Synod requires that District Presidents “perform, either in person or by proxy, the ecclesiastical ordination...as well as the installation...of all ministers and teachers called by the congregations in their Districts.” In addition, Bylaw 4.71, c, requires that “the District President shall

represent the Synod in connection with all ordinations, commissionings, and installations.” Sub-paragraph 5 provides that, except as provided otherwise in earlier sub-paragraphs, all ordained and commissioned ministers “shall be installed upon authorization by the appropriate District President.”

It is the opinion of the Commission, therefore, that a District President not only may participate in the installation service of a worker called by a non-member congregation so long as all policies have been honored. He is required to authorize the installation and is well advised to personally install the worker, thereby demonstrating his ecclesiastical supervision of the worker who holds membership in his District (Bylaw 2.41, j).

Adopted May 8, 2000

Questions Re Elections (00-2195)

The Secretary of the Nebraska District in a letter dated March 29, 2000 requested two opinions from the Commission. In the first case, he explained that a pastor has been nominated for a vice-presidential position (which is also a board of directors position) from a congregation of an existing lay member of the board. Because the Bylaws of the District require that each elected member of the board must be from a different congregation, he requests an opinion regarding the eligibility of the pastor to stand for election. The Secretary also asked for advice to facilitate the voting process of the convention. The Commission responds as follows:

Question 1: Both the teacher member of the board of directors and the pastor nominated for vice-president are from the same congregation. Does this then nullify the nomination of the pastor who was nominated for the position of vice-president so that his name cannot be placed on the ballot for election at the June, 2000 District convention?

The Commission responds that the membership of the teacher member of the board of directors in the congregation in question disqualifies any further membership on the board of directors from that congregation, to include its pastor as vice-president. So long as the teacher remains in an elected position on the board and a member of the congregation in question, the bylaws do not permit consideration of another election to the board from that congregation.

Question 2: If two of the candidates for either president or vice-president decline the nomination, can we go with the names of those candidates who have said yes to the nomination even if there may be only two or three names on the ballot, or do we have to bring up additional names so that the ballot consists of five and four candidates? Quite often there are a large number of pastors receiving only one nomination, which can make the ballot have ten names on it, which in turn prolongs the election process.

The Commission notes that one of the proposed bylaw changes to be considered by the Nebraska District convention will resolve this question by requiring that if any of those candidates receiving the highest number of nominations “decline or are declared ineligible, the next highest nominee shall be placed on the ballot.” This is in keeping with synodical Bylaw 4.127 which permits Districts to adopt such regulations. The Commission further suggests, in response to concerns regarding a prolonged election process, that the District reduce the number of ballots required when there is a long list of names by limiting the number of names to be included on the second ballot.

Adopted May 8, 2000

Question Re the Validity of Conference Call Meetings (00-2197)

The President of a synodical school in a letter dated April 18, 2000, raises the following question regarding meetings of the Board of Regents of his school:

Question: If the Bylaws of Concordia University neither permit nor prohibit it, is it permissible to conduct legal business with a portion of the Board in attendance and the remaining participating in the meeting via telephone conference call?

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.”

The Commission, which itself conducts much of its business by conference call, sees no reason to contradict this ruling. This holds true also for the conduct of legal business, provided that there is full agreement on the part of the entire board to this manner of doing business, provided that appropriate care is taken to respect and protect the rights of all parties, to include opportunity for full and complete discussion, and provided that such practice does not contradict state law.

Adopted May 8, 2000

Role of Vice-Presidents in Reinstatement Process (00-2198)

In a April 17, 2000 letter a pastor inquired regarding Bylaws 2.31 and 2.33 and the role of the vice-presidents of the Synod in the Council of Presidents’ vote in the reinstatement process:

Question 1: When Bylaw 2.31 says that the Council of Presidents has the sole discretion in reinstating an individual member of the Synod, while Bylaw 2.33 says the reinstatement is done through a 75% or more majority of the District Presidents present and voting, if the necessary 75% majority is achieved when the District Presidents vote, can the 6 votes of the Praesidium (assuming they vote against reinstatement) negate the vote of the District Presidents?

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

The Commission therefore rules that when Bylaw 2.33 stipulates that “a decision to reinstate shall require an affirmative vote of at least 75 percent of the District Presidents present and voting,” the bylaw intends to include the president and vice-presidents of the Synod in the voting. The Commission concludes that the drafters of the bylaw, in the interest of carefully delineating the percentage vote needed, referred in particular to the District Presidents but had no intention of excluding the Praesidium from the vote. To

decide otherwise would labor against other statements in these same bylaws which clearly place decisions regarding reinstatement into the hands of the Council of Presidents.

The answer to the above question, therefore, is “yes.” Hypothetically speaking, the vote of the Praesidium could, as suggested in the question, negate the vote of the District Presidents by affecting the percentages.

Question 2: When 75% of the total vote results in a whole number plus a fraction of a percent, may the fraction of a percent be dropped when determining whether a necessary percentage has been achieved?

When a fraction is involved, it must be rounded to the next whole number if the necessary percentage is to be achieved. To drop the fraction of a percentage would result in a failure to obtain the total percentage that is required.

Adopted May 8, 2000

Questions Re Lack of Time Frames in Bylaw 2.27, b (00-2196)

The President of the Synod in a letter dated April 10, 2000, noted the lack of time frames in Bylaw 2.27, b, to govern the opportunity for a complainant to appeal a decision of a District President in response to his or her complaint and to govern the length of time allowed for a District President to complete his investigation of a complaint.

The Commission agrees that the time frame in which a complainant may appeal a decision of a District President is at present open-ended and recommends that an appropriate bylaw change be proposed to a national convention of the Synod.

In the case of the second concern, the Commission calls attention to its May, 1998 opinion which stated the following regarding the interpretation of the “90 days” stipulation for a District President to take action on a complaint:

The CCM interprets “fails to act” to mean that a District President takes no action within 90 days of receiving a complaint. Such inaction would mean no measures were initiated with the 90 day period to ascertain the truth or falsity of the complaint allegations....A complaint which is ignored by a District President for 90 days triggers the “fails to act” language. In that situation, an appeal to the Praesidium is the proper procedure anticipated in the bylaw.

When, however, a District President receives a complaint, he may take a number of actions which toll the “fails to act” language of the bylaw....Such efforts may extend beyond 90 days until a decision concerning suspension is reached. At that time a complainant may appeal if the District President declines to suspend....

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

complainant may properly appeal to the Praesidium. The Praesidium shall determine on a factual basis whether the District President commenced and continued to act.

In this case also, the Commission recommends that an appropriate bylaw change be proposed to a national convention of the Synod to provide wording that will address the stated concern.

Adopted June 15, 2000

Approval of Changes to Bylaws of the English District (00-2202)

The Commission concurred with the Secretary's approval to the proposed change to the Bylaws of the English District removing term limits for the President of the District. The Commission, however, offers the following response to the use of the term "Bishop" in the overture to be submitted to the District convention:

Opinion: The Commission notes that Overture 3-42 to the 1981 synodical convention asked for permission to use the title "Bishop." It resolved "That the Synod in Convention assembled permissively grant as an alternate title the Scriptural term Bishop to the President of the Synod and the District Presidents and the Vice-Presidents of both the Synod and the Districts, but for legal purposes the designation President/Vice-President be retained in the constitution."

In response, Resolution 3-19, "To Retain the Terminology of 'President' and 'Vice-President,'" respectfully declined Overture 3-42. The Commission notes, therefore, that while a resolution to remove term limits for the President of the English District is acceptable, the use of the term "Bishop" in the overture and any ensuing convention action advocating the removal of term limits is out of order.

Adopted June 15, 2000

Questions re Conflict of Interest, District-Initiated Programs, Agreements with Heterodox Entities (99-2173A)

A member of the Synod, upon request of the Commission, reworded his questions originally submitted to the Commission in his December 1999 letter. The Commission responded as follows:

Question 1: "Do the Bylaws of The Lutheran Church—Missouri Synod address whether employees or ministers of the Synod and its Districts, while in the formal, full-time employment of Synod, may draw a regular stipend or receive frequent honoraria from organizations or enterprises and/or use synodical resources to promote such organizations or enterprises for which they have developed, sponsored, served or promoted programs or consulting services designed with the intent of selling those programs or services to Synod or its member congregations and institutions? Could not such efforts, if permitted fall into a conflict of interest wherein employees are using Synodical time and resources to service an agency (be it an RSO or some other organization) outside of Synod and potentially at-odds with Synod?"

Opinion: Synod Bylaw 3.71 deals with the question of conflict of interest. It requires each governing board of a Synod entity to institute a conflict of interest policy. Interpretation of such individual policies is beyond the scope of this Commission's duties under Bylaw 3.905, d. The question posed actually contains multiple questions that are very general. Specific cases should be measured against the

provisions of Bylaw 3.71 and the conflict of interest policy of the appropriate board. The final question of this paragraph seems to be a rhetorical question of policy rather than a request for an interpretation of the Constitution and Bylaws and is thus beyond the duties of this Commission.

Question 2: “Would it be a violation of Synodical Bylaw 3.409 or any other Synodical bylaw if (a) individual, rostered church workers, (b) member congregations of the Synod, or (c) Synodical Districts, of their own initiative (i.e. without any specific directive from Synod), were to establish and promote Synod-wide programs for educating pastors, other commissioned ministers, or lay people? (And if rostered church workers, member congregations, or Synodical Districts are permitted to establish and promote such programs on a Synod-wide basis, what entity bears the responsibility for supervision of these programs with regard to Synod’s Constitution, Bylaws, doctrine and practice; and what entity would address concerns raised by members of the Synod?)”

Opinion: To answer this question requires that a distinction be made between (1) undergraduate and seminary education, which falls under the responsibilities of the Board for Higher Education pursuant to Bylaw 3.409, and (2) continuing education enrichment, which does not fall under that bylaw. Article III of the Synod’s Constitution provides that

The Synod, under Scripture and the Lutheran Confessions, shall –

3. Recruit and train pastors, teachers, and other professional church workers and provide opportunity for their continuing growth;

Bylaw 3.409 gives the Board for Higher Education “overall responsibility to provide for the education of ordained and commissioned ministers and other professional church workers for the Synod by supervising and coordinating the activities of the Synod’s colleges, universities, and seminaries as a unified synodical system through their respective boards of regents.” While these institutions may well provide post-degree continuing education programs, the obvious intent of the bylaw, and the primary mission of the Concordia University System and our seminaries, is to provide education that leads to a degree. Nothing about the bylaw suggests that these institutions are to be the exclusive source for post degree continuing education, nor that the Board for Higher Education should have responsibility for supervising all sources of post-degree continuing education. Indeed, it is apparently a reasonably common practice for continuing education for professional church workers to be obtained from other sources than these. There is no prohibition against rostered church workers, congregations or Districts establishing or promoting continuing education programs and offering them to anyone within the Synod. Such programs would be subject to inquiry by the person with ecclesiastical supervision over the person or entity which offers the program.

Question 3: “If a District, Seminary, or official Board of The Lutheran Church—Missouri Synod were to enter into an agreement with a heterodox church body or a heterodox organization or enterprise to train pastoral candidates, ordained ministers, or commissioned ministers, would that stand in violation of any of Synod’s bylaws, such as Bylaw 4.07e or 3.409? (And if it is possible for a District, Seminary, or official Board of The Lutheran Church—Missouri Synod to be in violation of such a Bylaw, then which entity is responsible for determining whether the agreement stands contrary to the expressed Constitution, Bylaws, and confession of doctrine and practice of the Synod and what entity would address concerns raised by members of Synod?)”

Opinion: If this question refers to undergraduate or seminary training of church workers, such an arrangement would be impermissible under Bylaw 3.409 as explained above. With respect to post-graduate continuing education, the Commission observes that Article VI of the Synod’s Constitution

requires that members of Synod renounce “unionism and syncretism of every description.” The examples given in that article, especially “participating in heterodox tract and missionary activities” would also forbid joining with a heterodox church body for the purpose of training church workers. Oversight of such activities would reside with the individual who had ecclesiastical supervision of the individual or entity engaged in such activities.

Adopted Aug. 17, 2000

Questions Re Conflict of Interest, District-Initiated Programs, Agreements with Heterodox Entities (99-2173A)

A member of the Synod, upon request of the Commission, reworded his questions originally submitted to the Commission in his December 1999 letter. The Commission responded as follows:

Question 1: “Do the Bylaws of The Lutheran Church—Missouri Synod address whether employees or ministers of the Synod and its Districts, while in the formal, full-time employment of Synod, may draw a regular stipend or receive frequent honoraria from organizations or enterprises and/or use synodical resources to promote such organizations or enterprises for which they have developed, sponsored, served or promoted programs or consulting services designed with the intent of selling those programs or services to Synod or its member congregations and institutions? Could not such efforts, if permitted fall into a conflict of interest wherein employees are using Synodical time and resources to service an agency (be it an RSO or some other organization) outside of Synod and potentially at-odds with Synod?”

Opinion: Synod Bylaw 3.71 deals with the question of conflict of interest. It requires each governing board of a Synod entity to institute a conflict of interest policy. Interpretation of such individual policies is beyond the scope of this Commission’s duties under Bylaw 3.905, d. The question posed actually contains multiple questions that are very general. Specific cases should be measured against the provisions of Bylaw 3.71 and the conflict of interest policy of the appropriate board. The final question of this paragraph seems to be a rhetorical question of policy rather than a request for an interpretation of the Constitution and Bylaws and is thus beyond the duties of this Commission.

Question 2: “Would it be a violation of Synodical Bylaw 3.409 or any other Synodical bylaw if (a) individual, rostered church workers, (b) member congregations of the Synod, or (c) Synodical Districts, of their own initiative (i.e. without any specific directive from Synod), were to establish and promote Synod-wide programs for educating pastors, other commissioned ministers, or lay people? (And if rostered church workers, member congregations, or Synodical Districts are permitted to establish and promote such programs on a Synod-wide basis, what entity bears the responsibility for supervision of these programs with regard to Synod’s Constitution, Bylaws, doctrine and practice; and what entity would address concerns raised by members of the Synod?)”

Opinion: To answer this question requires that a distinction be made between (1) undergraduate and seminary education, which falls under the responsibilities of the Board for Higher Education pursuant to Bylaw 3.409, and (2) continuing education enrichment, which does not fall under that bylaw. Article III of the Synod’s Constitution provides that

The Synod, under Scripture and the Lutheran Confessions, shall –

3. Recruit and train pastors, teachers, and other professional church workers and provide opportunity for their continuing growth;

Bylaw 3.409 gives the Board for Higher Education “overall responsibility to provide for the education of ordained and commissioned ministers and other professional church workers for the Synod by supervising and coordinating the activities of the Synod’s colleges, universities, and seminaries as a unified synodical system through their respective boards of regents.” While these institutions may well provide post-degree continuing education programs, the obvious intent of the bylaw, and the primary mission of the Concordia University System and our seminaries, is to provide education that leads to a degree. Nothing about the bylaw suggests that these institutions are to be the exclusive source for post degree continuing education, nor that the Board for Higher Education should have responsibility for supervising all sources of post-degree continuing education. Indeed, it is apparently a reasonably common practice for continuing education for professional church workers to be obtained from other sources than these. There is no prohibition against rostered church workers, congregations or Districts establishing or promoting continuing education programs and offering them to anyone within the Synod. Such programs would be subject to inquiry by the person with ecclesiastical supervision over the person or entity which offers the program.

Question 3: “If a District, Seminary, or official Board of The Lutheran Church—Missouri Synod were to enter into an agreement with a heterodox church body or a heterodox organization or enterprise to train pastoral candidates, ordained ministers, or commissioned ministers, would that stand in violation of any of Synod’s bylaws, such as Bylaw 4.07e or 3.409? (And if it is possible for a District, Seminary, or official Board of The Lutheran Church—Missouri Synod to be in violation of such a Bylaw, then which entity is responsible for determining whether the agreement stands contrary to the expressed Constitution, Bylaws, and confession of doctrine and practice of the Synod and what entity would address concerns raised by members of Synod?)”

Opinion: If this question refers to undergraduate or seminary training of church workers, such an arrangement would be impermissible under Bylaw 3.409 as explained above. With respect to post-graduate continuing education, the Commission observes that Article VI of the Synod’s Constitution requires that members of Synod renounce “unionism and syncretism of every description.” The examples given in that article, especially “participating in heterodox tract and missionary activities” would also forbid joining with a heterodox church body for the purpose of training church workers. Oversight of such activities would reside with the individual who had ecclesiastical supervision of the individual or entity engaged in such activities.

Adopted Aug. 17, 2000

Questions Re the Requirements of Bylaw 6.47 for a Board of Regents of a Synodical School (00-2199)

Related questions were received in a May 1, 2000 letter from the President of the Synod and a May 5, 2000 letter from the Chairman of the Board of Regents of a synodical school regarding the requirements of Bylaw 6.47 when complaints are received against a faculty member or school administrator.

In his letter to the Commission, the President of the Synod explained his decision to “call up for review” an action of a Board of Regents which he believed to be “in violation of the Constitution, Bylaws, and resolutions of the Synod” in keeping with the authority provided to him by Bylaw 3.101, B, 5. The Board of Regents had declined to reverse a decision it had previously made not to receive a complaint brought

forward by an individual against an administrator of their school, citing as a basis for their decision a recent ruling of the Commission on Constitutional Matters. The President in his letter questioned whether said ruling “gives the board of regents the right to disregard the procedures clearly required by Bylaw 6.47” and asked for further clarification from the Commission (question 1 below).

In his letter to the Commission, the Chairman of the Board of Regents noted that the complainant had accepted neither the ruling of the Board of Regents regarding his complaint nor the applicability of the opinion provided by the Commission to the board’s earlier questions and had “taken his arguments to the Office of the President of the Synod,” who in turn “suggested that we return to you for clarity in this matter.” Accordingly, the Chairman on behalf of the Board of Regents addressed two additional questions (questions 2 and 3 below) to the Commission.

QUESTION 1: “When a university board of regents “receives a complaint against a member of that institution’s faculty or administration concerning any matter, including those specified under Bylaw 6.43, c, 1-6” (Bylaw 6.47, a), may the board of regents choose not to follow the requirements of Bylaw 6.47?”

Opinion: Bylaw 6.47 requires a Board of Regents to follow the prescribed procedure when it receives a complaint against a member of that institution’s faculty or administration concerning any matter. Thus the answer to the question is “no.” There are no exceptions. The prescribed procedure of Bylaw 6.47 must be followed in every instance.

QUESTION 2: “Does the wording of Bylaw 6.47, a (“If the Board of Regents receives a complaint against a member of that institution’s faculty or administration concerning any matter...” [emphasis added]) mean that anyone can charge any faculty member or administrator with anything and demand that the procedures of the bylaw be set in motion? Or are there charges which by their nature under civil law or Synodical bylaw are excluded from further consideration?”

Opinion: See the Opinion to Question 1 above. Any complaint from any person requires that the procedure set forth in Bylaw 6.47 be followed by a Board of Regents.

QUESTION 3: “In view of the Commission’s ruling of 28 July 1999, may an individual involved in the recommendation of a faculty member for appointment be lawfully charged under Bylaw 6.47 for his/her role in the recommendation process?”

Opinion: Bylaw 6.23 establishes the following described procedure for the appointment of full time members of the faculty of a synodical educational institution:

- 1) The appointment must be recommended by the president of the institution.
- 2) The candidate must meet theological and professional competency standards established by the Board for Higher Education (BHE).
- 3) If it is an initial appointment to the faculty of a seminary or to a faculty of a college/university theological faculty, the appointment must have the prior approval of the BHE.
- 4) All other initial appointments shall include a thorough theological review involving the District President and selected members of the Board of Regents.

- 5) The terms of the proposed appointment must be set forth in writing and be in the possession of both the institution and the prospective faculty member prior to the appointment.
- 6) When the prior five requirements have been met, the proposed appointment must be considered by the Board of Regents and then be approved by vote of the Board of Regents.

As answered previously, Bylaw 6.47 states that a complaint by any person concerning any matter must be handled in the manner set forth in the bylaw. Therefore, a complaint regarding the actions of a party involved in the recommendation process who is a member of that institution's faculty or administration triggers the prescribed procedure for resolving a complaint. (Only the president of the institution is involved in the process.) However, as pointed out above, there are a number of parties involved in the recommendation process leading to the consideration of the recommendation by the Board of Regents, and, it is the Board of Regents, and not those involved in the recommendation process, which bears the final responsibility for the quality of the appointment.

Adopted Oct. 26, 2000

Questions Regarding Procedure for Handling Complaints (00-2209)

A chairman of a Board of Regents of a synodical school in a letter dated August 18, 2000 asks the opinion of the Commission regarding the handling of a complaint brought to the president of the school regarding the performance of a member of the faculty.

QUESTION 1: "Must there be a complainant who explicitly and intentionally uses the word 'complaint' to the Board of Regents before the board may 'investigate, hear, and act on any complaint arising out of Bylaw 6.43 c 1-6' (6.45 a)? Or is the board at liberty to direct that any individual whose concern with a faculty member comes to the board's attention must meet with the faculty member, if the board is to consider the complaint or any related concern (such as the manner in which someone with supervisory responsibility for the faculty member deals with that faculty member)?"

Opinion: Bylaw 6.45, a, does not stipulate that the word "complaint" must be used in order for there to be a complainant or in order to grant the authority or initiate the process for receiving a complaint described in Bylaw 6.45. Such a complaint may concern "any matter, including those specified under Bylaw 6.43 c 1-6" (Bylaw 6.47, a). More than at liberty, the Board of Regents is required by bylaw to "direct the complainant first to meet face to face with the respondent in an attempt to resolve the issue." In the case of a faculty member, "the president of the institution shall assist in this attempt" unless he himself is the respondent. If the president is the respondent, the chairman of the board is required to act in his stead.

QUESTION 2: "Do the bylaws of Synod permit an individual with supervisory responsibility for the public teaching of a faculty member to be charged with 'neglect of or refusal to perform duties of office' (6.43 c 4) before the due process procedures of Bylaw 6.47 have established that the public teaching of that faculty member, does, in fact, represent 'advocacy of false doctrine (Constitution, Art. II) or failure to honor and uphold the doctrinal position of the Synod as defined further in Bylaw 1.09 c' (6.43 c 6)?"

Opinion: The Bylaws of the Synod permit a member of an institution's "faculty or administration" to be the subject of a complaint "concerning any matter, including those specified under Bylaw 6.43, c, 1-6," including "neglect of or refusal to perform duties of office." If "the president himself is the respondent, the chairman of the board shall act in his stead" to assist in an attempt to resolve the issue (Bylaw 6.47, a).

If supervision of a faculty member is the stated cause for the complaint, the president's "neglect of or refusal to perform (his) duties of office" in that particular regard will be the issue to be resolved, to include his efforts to supervise the public teaching of his institution's faculty members as described by Bylaw 6.12, f, and Bylaw 6.23, c.

The answer to this question, however, remains "no." It will be necessary to first establish that the faculty member has been guilty of advocacy of false doctrine or failure to honor and uphold the doctrinal position of the Synod, without which there is no basis for determining whether the president has been negligent in his supervisory duties.

Adopted Oct. 26, 2000

Question Regarding Electoral Circuit Exceptions (00-2210)

A District President in a letter dated August 23, 2000, refers to Bylaw 3.03 which defines the constitution of electoral circuits of the Synod and underscores the final sentence of the Bylaw: "Exceptions to these requirements and limitations can be made only by the President of the Synod upon request of a District Board of Directors." He raises the following question regarding the nature of those exceptions:

QUESTION: "When a District Board of Directors has requested the granting of such exceptions and when the President of The Lutheran Church—Missouri Synod has granted such exceptions, are such exceptions perpetual or is there a time limitation to them?"

Opinion: Bylaw 3.03 (and corresponding Bylaw 5.03) offer no suggestion that exceptions granted by the President of the Synod extend beyond their immediate purpose and use. To the contrary, the every-three-years nature of the entire "Chapter III, Section A Conventions" section of the Bylaws indicates that this is a process to be undertaken in its entirety in preparation for each convention of the Synod. In addition, membership statistics regularly change, requiring regular reconsideration of the requirements of the Bylaws to assure proper representation. Finally, voting delegates also serve three-year terms of office, beginning with each convention (Bylaw 3.07). Exceptions granted, therefore, are not perpetual but are limited to three years.

Adopted Oct. 26, 2000

Question Regarding the Propriety of a District Convention Resolution (00-2211)

The Chairman of a Board of Regents of a synodical university in a letter dated August 28, 2000, requests the opinion of the Commission regarding an action taken by a District of the Synod to memorialize the convention of the Synod, specifically, to direct the President of the Synod to formally investigate the doctrine and practice of the university. The chairman, on behalf of the Board of Regents, makes the following request, suggesting that the Commission declare the resolution null and void and direct the President of the District that is memorializing the Synod to so inform the constituency of the District:

QUESTION: "On behalf of the board, I respectfully request a ruling on the propriety of a district resolution in apparent conflict with the by-laws of Synod."

Opinion: Bylaw 3.19, a, 2, allows that a convention of a District may submit overtures to a convention of the Synod. The Commission is neither able nor responsible to discern the relevance or advisability or truth of the content of any overture submitted to a convention. This is the concern of the floor committee

that is given the responsibility for responding to the overture and for recommending one of several convention actions in response.

The Commission calls attention to Bylaw 3.19, c, which prescribes those kinds of overtures that shall not be accepted for convention consideration, namely, “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.” The overture in question does not fall into any of these categories.

Adopted Oct. 26, 2000

Question re Propriety of an Action Taken by a District (00-2212)

An official of the Synod, in a September 21, 2000 letter to the Commission, calls attention to an action taken by a District convention which contains an “expression of dissent” to the current synodical position regarding communion practice. He requests a ruling on the following question:

QUESTION: “Since a district of the synod is in reality ‘synod in that place,’ may a district take official action to file an expression of dissent to a doctrine or practice of the synod. Members of the synod have the privilege of doing so, but a district is not a member of the synod?”

Opinion: Bylaw 2.39, c, describes the procedure for dissent to doctrinal resolutions of the Synod by members of the Synod. Districts are not members of the Synod but are divisions of the Synod, “the geographical boundaries of which are determined by the Synod and are altered by it according to circumstances” (Article XII, 1). “The Synod establishes Districts in order more effectively to achieve its objections and carry on its activities” (Bylaw 4.01). As such, Districts “as component parts of the Synod are obligated to carry out the resolutions of the Synod” (Bylaw 1.05, f). An official action by a District, therefore, to file an expression of dissent to the Synod regarding a doctrine taught and practiced by the Synod is out of order and, therefore, null and void.

Adopted Oct. 26, 2000

Question Re Resignations of Board and Commission Members (00-2213)

In a memorandum dated September 26, 2000, the Executive Director of the Commission on Theology and Church Relations (CTCR) forwarded an action of that Commission at its September 21-23 meeting, as follows:

“Resolved, That the Commission on Theology and Church Relations respectfully follow the informal opinions of the CCM dated 9/12 and 9/15/2000 regarding the resignation of George Dolak from the CTCR as those opinions apply to the September meeting of the CTCR; and that further, because of respectful dissent, that the CTCR, in the best interest of the Synod for future situations, request a formal opinion of the CCM regarding bylaw 3.59 as it applies to incumbents serving until the successor assumes office.”

The CTCR is questioning an informal opinion provided by the chairman and secretary of the Commission on Constitutional Matters, which interprets the final sentence of Bylaw 3.59 as not applying to situations where a resignation has occurred but only to “the normal changes that take place after regular elections”

(Letter to Director of CTCR from Secretary of CCM). The question before the Commission on Constitutional Matters is therefore:

QUESTION: “The CTCR, in the best interest of the Synod for future situations, request a formal opinion of the CCM regarding bylaw 3.59 as it applies to incumbents serving until the successor assumes office.”

Opinion: Bylaw 3.59, b, which speaks of members of elected boards assuming office following their elections at conventions, adds in its final sentence, “Incumbents shall serve until their successors assume office.” Persons leaving office in this case continue to be suited to serve except that their terms of office have ended, potentially a very different situation from that of a resignation from office which can be the result of many different causes.

The Commission supports the informal decision provided by its officers that the final sentence of Bylaw 3.59, b, refers only to the normal changes that take place after regular elections and not to changes as a result of resignations. In the case of the latter, a resignation is to be considered as final, at which time the position that has been vacated remains vacant until it has again been properly filled.

Adopted Oct. 26, 2000

Question re Use of Term “Bishop” for District Presidents (00-2215)

The secretary of a District professional workers conference forwarded the following resolution to the Commission, requesting a response:

Resolved: The Midwest Regional Professional Worker’s Conference (English District), meeting at the University of Saint Mary of the Lake, Mundelein, Illinois, September 19-21, 2000 requests the Commission on Constitutional Matters and the Secretary of the Lutheran Church—Missouri Synod to provide “Handbook” clarification for the use of the term “Bishop” in describing the role of our elected District President. Since there is no language in the current By-Laws to prohibit its use, we kindly request your attention to this matter. Please direct your response(s) to the Reverend David Ritt, President/Bishop for dissemination to the professional workers of the English District.

The Commission understands the question submitted by the Midwest Regional Professional Workers Conference to essentially read:

QUESTION: Does the Handbook of The Lutheran Church—Missouri Synod provide clarification for the use of the term “Bishop” in describing the role of our elected District President?

Opinion: The Handbook of The Lutheran Church—Missouri Synod does not make use of the term “Bishop.” The terminology which the Synod has chosen to use in referring to the chief executive officer of the District is “District President” (Constitution Article XII; Bylaw 4.51).

The Commission again notes that Overture 3-42 to the 1981 synodical convention asked for permission to use the term “Bishop” as an alternate title for the President of the Synod, the District Presidents, and the Vice-Presidents of both the Synod and the Districts. In response, Resolution 3-19 of the convention, “To Retain the Terminology of ‘President’ and Vice-Presidents,” respectfully declined Overture 3-42.

In light of the above, the Commission's answer is that the Handbook does not use the term "Bishop" but consistently uses the term "District President."

Adopted Oct. 26, 2000

Question Re the Right to Extend Calls (00-2193)

The Commission continued its discussion of the series of questions submitted by the Department of School Ministry of the Synod and a District President, also incorporating into the discussion, upon request of the Council of Presidents, a review of the Council's working draft, "Rubrics Governing Call and Placement Procedures for Ministers of Religion—Commissioned" (00-2217). The Commission responded as follows.

QUESTION 1: "What is an eligible calling entity? It is generally agreed that a congregation of the LCMS is an eligible calling entity. Who else is eligible to issue a call? Are there any entities that would not be eligible to issue a call?"

Opinion: The Bylaws of the Synod do not directly define an eligible calling entity. Bylaw 2.11 makes reference to "authorized calling bodies" and refers to Bylaw 2.15. Bylaw 2.15 sets forth the duties that an ordained or commissioned minister of religion must be performing in order to be an "active member" of the Synod. Therefore, it follows that the appropriate calling entities of the Synod are those entities that extend calls to ordained or commissioned ministers of religion who perform the duties set forth in Bylaw 2.15, namely:

- 1) A congregation of the Synod;
- 2) A congregation which is not a member of the Synod if the call is approved by the President of the District where the congregation is located and such approval is granted on the basis of policies adopted by the Council of Presidents;
- 3) The Synod itself for a position as an elected officer, executive, professional staff member, missionary, military chaplain, institutional chaplain, or a specialized ministry;
- 4) An agency of the Synod (defined in Bylaw 3.51, a, including a District) for a position as an elected officer, executive or professional staff member;
- 5) A District for a position as a missionary, military chaplain, institutional chaplain or specialized ministry;
- 6) A synodical educational institution for a position as a faculty member or professional staff member;
- 7) A national inter-Lutheran agency referred to in Bylaw 13.01 for a position as an executive or professional staff member;
- 8) An auxiliary referred to in Bylaw 14.01 for a position as an executive or professional staff member;
- 9) A recognized service organization referred to in Bylaw 14.03 for a position as an executive or professional staff member;
- 10) An elementary or secondary educational institution recognized by the Synod for a position as an executive or professional staff member.

The Commission notes that Bylaw 2.15 also refers to ministries that are "endorsed" by the Synod or Districts. These endorsements are not calls, and entities which employ those endorsed church workers are not eligible calling bodies.

QUESTION 2: “Can a congregation delegate the calling responsibility to the board of directors of an association school of which it is a member?”

Opinion: As stated in the Opinion to Question 1 above, a congregation is an eligible calling entity, as is an elementary or secondary educational institution recognized by the Synod. Neither the Constitution nor the Bylaws of the Synod address whether a congregation can delegate its calling authority to another entity. This is a theological issue that should be addressed to the Commission on Theology and Church Relations (CTCR).

QUESTION 3: “Can a recognized service organization (RSO) that operates a Lutheran school issue a ‘Call’ to a rostered worker?”

Opinion: Yes.

QUESTION 4: “Must a school association have RSO status in order to be eligible to issue a call?”

Opinion: No. As stated in the Opinion to Question 1 above, an elementary or secondary educational institution recognized by the Synod is also an appropriate calling entity. The Bylaws do not define the phrase “...recognized by the Synod.”

QUESTION 5: “Can a separately incorporated school association that is not an RSO issue a ‘Call’? Does it make any difference if the association is made up of all LCMS congregations? What if over 50% of the congregations in the association are not part of the LCMS?”

Opinion: This question is answered in the Opinions to the four previous questions.

QUESTION 6: “A teacher who is on the roster of the Synod is given a contract by the calling entity, rather than a ‘Call.’ Does the Synod recognize that this rostered worker has a ‘Call’ even though the calling entity says it is a contract?”

Opinion: Resolution 6-14 of the 1981 convention of the Synod includes the following: “Offers extended to eligible persons but erroneously referred to as “appointments” or “contracts” are also to be considered calls.”

QUESTION 7: “Can a rostered teacher retain rostered status if serving in a separately incorporated association Lutheran school that does not have RSO status?”

Opinion: Yes, if the rostered teacher is serving an elementary or secondary educational institution recognized by the Synod.

QUESTION 8: “If a separately incorporated Lutheran school chooses not to be an RSO, can a District or the school ministry department (of the Board for Congregational Services) consider them one of our schools? Can they be included in the Synod’s group tax exemption? Are they eligible for the same services that a District or the Synod thru the school ministry department provides to its Lutheran schools?”

Opinion: The Commission declines to respond to the tax exemption issue since this is beyond its authority under Bylaw 3.905. Bylaw 3.823 sets forth the functions of the Board for Congregational Services (BCS). It provides that the BCS shall organize itself to enable vision and outcome development, to prepare and revise policies responsive to both current and anticipated situations, and to initiate action in order to meet the changing needs of Districts and congregations. Service areas are to be evaluated and

changed as appropriate. It is to focus its energies on helping Districts help congregations in building up disciples for service in the church and to all people in today's world. In partnership with Districts, the BCS is to support and serve congregations of the Synod in their varied range of diverse and unique ministries with assistance in arranging and carrying out a comprehensive and effective program of Christian education, especially counseling that the most effective education agencies available to the church for equipping children and youth for ministry are the full time Lutheran elementary and secondary schools. Thus, this charge to the BCS leads the Commission to conclude that a separately incorporated Lutheran school that is not an RSO must be recognized by the Synod in order to receive services from the BCS.

QUESTION 9: "If a separately incorporated Lutheran school association has 100% LCMS members, only LCMS congregations or individuals are the member owners, are they required to obtain RSO status from the LCMS?"

Opinion: This question is addressed in the responses to the previous questions.

QUESTION 10: "What privileges does a separately incorporated Lutheran school association lose if it chooses not to be an RSO of the LCMS?"

Opinion: See the Opinion to Question 8 above.

The Commission notes that the above opinions also provide response to the questions submitted by the District President, specifically, does a recognized service organization have the right or privilege to extend a Divine Call to a rostered worker of the Synod, or must a District President endorse such a worker's position in order to make it possible for him/her to retain "active" status in the Synod? (see Opinion 3)

Adopted Dec. 11-12, 2000

Review of Council of Presidents Call Rubrics Document (00-2217)

The Clergy Call and Roster Committee of the Council of Presidents requested a review of the Council's working document, "Rubrics Governing Call and Placement Procedures for Ministers of Religion—Commissioned." The Committee also forwarded a series of questions that surfaced during the Council's discussion of the document at its November 2000 meeting.

After reading through the document, the Commission made the following observations:

1. The equating of a "Call" and an "Appointment" or "Contract" (p. 1, lines 36-40; page 3, lines 15-18; and page 4, lines 5-8) blurs distinctions and raises concerns. Resolution 6-14 of the 1981 convention of the Synod does include the statement: "Offers extended to eligible persons but erroneously referred to as 'appointments' or 'contracts' are also to be considered calls." At the same time, the 1981 Report of the Commission on Theology and Church Relations, "THE MINISTRY, Offices, Procedures, and Nomenclature" states, "The term 'call' should be used for those who have specifically been equipped to perform certain ecclesiastical functions and have made a commitment to dedicate their lives to that service....The term call should not be used where such commitment is lacking, and those who serve the church other than under a call should be referred to simply as 'lay workers....Those who are 'called' must be under the supervision of the whole church."

The CTCR study that is currently underway regarding the “call” should also be taken into consideration, as should the Commission on Constitutional Matters decision 00-2193 which identifies authorized calling entities. Finally, legal counsel also should be consulted due to potential Internal Revenue Service ramifications.

2. It should be added on page 2, line 34, that a District President is the chief executive officer of a District according to Bylaw 4.71, a.
3. The term “lay teachers” is defined differently in different places in the document, e.g., page 3, lines 6-11, and page 6, lines 37-42. In addition, the statement on line 6 of page 3 which speaks of “teachers who have been certified by the church” should rather read, “teachers who have been declared qualified by an authorized synodical institution” (Bylaws 2.09, a; 7.21, 1).
4. It is recommended that lines 27-31 on page 4 not be included. It is to be assumed that proper reasons and a spirit of Christian love and concern will be present.
5. “On occasion” in line 1 of page 7 is understated to the point of being less than true. Lines 3-4 might also be strengthened to include a role for the congregation and even the church at large in making participation in a colloquy program possible.
6. A significant question is raised by line 21 of page 9, specifically, what authority does the District President have in the process. Bylaw 2.11, b, provides for consultation with the President of the District in which a candidate is to be placed, whereupon “his suggestions and recommendations shall be part of the final recommendation to the Board of Assignments.” Such review of a proposed placement does not rise to the level of line 21 of this document, “If the District President endorses (emphasis added) the Call,” nor does it provide him with veto power.
7. The statement on line 30 of page 9, “Candidates will not receive more than one Call at a time,” begs to be reconsidered in light of our Synod’s understanding of the call and the right of congregations to call.
8. The question of greatest concern regarding the proposed document is whether the process as outlined truly complies with the assumption of Bylaw 2.11, a, that the Council of Presidents is to act as the Board of Assignments (see also Bylaw 3.930, c) to assign first calls to church workers. The process as proposed suggests that the Council has almost entirely delegated this responsibility to others, limiting its own involvement to lines 32-33 on page 9. This appears to not comply with Bylaw 2.11, a, and should be addressed. If the process described in the proposed document is to be preferred, bylaw changes should be advocated to bring the Bylaws of the Synod into line with the practice of the Synod.

The Commission also offers brief response to the “Areas of Concern Registered During Presentation to the COP”:

1. Page 3, lines 37-40

The COP requested a CCM opinion regarding who has the authority to extend a Call in the LCMS. Therefore, the document has been submitted to the CCM for review.

The Commission refers to its opinion 00-2193 in response to questions raised by the COP and others regarding the right to extend calls.

2. Page 4, lines 10-31

Are the items included in this section consistent with Scripture, the Handbook of the Synod, and current policies? Do they allow too much discretion on the part of calling entities? It was feared by some that the Call under such an understanding doesn't offer much protection to a worker.

The question of whether this section is consistent with Scripture should be addressed to the Commission on Theology and Church Relations. Current policies, also beyond the purview of this Commission, should always be consulted and should be reviewed to assure that they reflect the authority and teachings of Scripture and a spirit of Christian love and concern for the worker. The Constitution and Bylaws of the Synod, the purview of this Commission, do not specifically address the question of the termination of a call by a congregation. The Commission notes, however, that Bylaw 6.44, which addresses the termination of a faculty position of a synodical college or university, does offer some guidance for determining conditions upon which a called position may be terminated.

3. Page 6, lines 13-17

The COP requested a CCM opinion regarding who has the authority to extend a Call in the LCMS. Therefore, the document has been submitted to the CCM for review.

As noted above, see CCM opinion 00-2193.

4. Page 9, lines 30-33

How is this being handled now, and how can it be enforced?

The COP will want to direct this question to the Board for Higher Education.

5. Bylaw references will be added to all pertinent sections of the document.

The Commission agrees with this expectation.

Adopted Dec. 11-12, 2000