

**2007 CONVENTION WORKBOOK – APPENDIX I
OPINIONS OF COMMISSION ON CONSTITUTIONAL MATTERS**

Dissenting View Regarding 1995 Resolution 3-05 (Ag. 2048)

In a letter to the Commission, a pastor had indicated that in his opinion Resolution 3-05 was confusing because it indicated that disagreement regarding the matter of woman suffrage in the church, as well as the holding of certain positions, was not divisive of fellowship. It was noted that if a person followed the procedures for expressing dissent, it would be possible that the position of the Synod would still not be changed while the dissenter also retained his position on the issue. The question then arose as to whether or not, since the matter was not divisive of fellowship, the person who had followed the process for dissent would be free to teach his position. In responding to the questions which had been raised, the Commission first agreed that the particular resolve in question appeared to be confusing. Nevertheless, it also stated that it believed it could be properly understood and was not contradictory to the other resolves of the resolution. In its response, the Commission stated the following:

The Commission concludes that the very fact that provision is made for dissent and the proper procedure for expressing it implies that not every matter on which one dissents is divisive of fellowship. Nevertheless, because the members of the Synod seek to express their common faith publicly, it is imperative that such dissent be given careful consideration in an effort to achieve objectives 1 and 6 as found in Article III of the Constitution. These are stated as

1. Conserve and promote the unity of the true faith (Eph. 4:3- 1 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.

6. Aid congregations by providing a variety of resources and opportunities for recognizing, promoting, expressing, conserving, and defending their confessional unity in the true faith.

The fact that one who dissents from the position of the Synod does not prevail, i.e., that the position of neither the dissenter or the Synod has changed, does not mean that the dissenter is free to teach the dissenting view. Bylaws 1.09, b, and 2.39, b and c, are quite clear on this matter. They state

1.09 Doctrinal Resolutions and Statements

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.

2.39 Relation of the Synod to Its Members

b. 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 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.

In response to your third question, the Commission concludes that under circumstances noted above, neither the dissenter nor the Synod changing positions after all dissent procedures have been exhausted, the position of the dissenter would still not be divisive providing that the dissenting position is not taught publicly. To so teach publicly that the position of the Synod is contrary to the Scriptures would be to elevate a matter of human opinion to the level of Scriptural doctrine-which from the viewpoint of the Synod would be contrary to the Scriptures, i.e., to declare that what the Synod has included in the category of an open question is, in fact, a closed question (clearly prohibited in the Scriptures). The dissenter may decline to practice woman suffrage, but may not persist in teaching that it is contrary to the Scriptures. If permitted to do so, every member of the Synod would have the right to determine which of the positions of the Synod in similar matters it wished to accept and which to reject.

Adopted Oct. 23, 1996

Inclusion of Women in the Pastoral Office (Ag. 2085)

A pastor had asked the Commission to provide an opinion in response to the following questions:

May a congregation of the LCMS be suspended from membership in the Synod for publicly stating that women should be included in the pastoral office?

May a member of a Missouri Synod congregation continue as a teacher at one of the schools in the Concordia University System who publicly states that women should be included in the pastoral office?

The response of the Commission is as follows:

In a recent opinion, the Commission stated that a congregation which publicly and persistently teaches a position which is contrary to that adopted by the Synod may be suspended from membership in the Synod. This would be true no matter what the issue involved.

Since the Synod has consistently stated as its position that Scripture does not permit the inclusion of women in carrying out the specific functions of the pastoral office, for a congregation to teach publicly and persistently contrary to this position would subject that congregation to the possibility of suspension from membership in the Synod.

With respect to teaching in a school of the Concordia University System by a member of a Missouri Synod congregation that women should be included in the pastoral office, the Commission first notes that schools of the Concordia University System are schools of the Synod. As such they are required to honor and uphold the resolutions of the Synod. To permit a teacher, whether or not a member of a Missouri Synod congregation, to publicly and persistently teach in such a school that women should

be included in the pastoral office would not be consistent with honoring and upholding resolutions of the Synod. It would be the responsibility of the administration of the school and/or its Board of Regents to deal with the issue under the provisions of Bylaws 6.45 and 6.47.

Adopted July 23, 1997

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:

Members of the Synod.

The Synod itself.

A District of the Synod

An organization owned and controlled by the Synod

Persons involved in excommunication.

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

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

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

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

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

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

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

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

Assuming that all persons involved have scrupulously followed the provisions of Bylaw 8.21 e and the CCM's prior opinions, the President may learn of the basis of the action of the investigating officer only after completion of the work of the Dispute Resolution Panel, when he is expressly required to be apprized. If the investigating officer has failed to follow his responsibilities under Bylaw 2.27 c, or erred in his interpretation of the doctrines of the church, the Constitution, Bylaws and resolutions of the Synod, the appeal process is designed to discover and correct such failures or errors, and the President's need to call up the action of the investigating officer for review or the need to report by a pastoral letter such calling up for review would be moot.

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

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

In fulfilling his duties, the President would normally be expected to rely on the provisions of Chapter VIII of the Bylaws to correct errors occurring during the dispute resolution process. This is particularly so in view of the responsibilities given others under Article XIII, and the bylaws flowing from that article. We previously recognized in CCM Opinion 02-2251 that the President's duty and power "to advise,

admonish, and reprove is tempered by the provisions of Article XIII and the bylaws that flow from it.” Recognizing the procedural protections embodied in the dispute resolution process, including the initial review by a Dispute Resolution Panel, and subsequent appeal to an Appeal Panel, which may then form a Review Panel, the President would normally be expected to choose not to actively intervene until that process has concluded. Following the initial decision of the Dispute Resolution Panel, he may also, under Bylaw 8.09 d, where a question of doctrine or practice is involved, request at that time either reconsideration, or an opinion of either the CCM or the CTCR.

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

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

Adopted Aug. 20, 2002

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

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

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

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

Adopted Jan. 20–21, 2003

Ecclesiastical Supervision and Conflict of Interest (02-2309)

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

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

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

“Committed to a common confession and mission, congregations of The Lutheran Church—Missouri Synod join with one another in the Synod to support one another and work together in carrying out their commonly adopted objectives” (Bylaw 1.01). According to Bylaw 1.05 d, “members agree to uphold the confessional position of the Synod (Art. II) and to assist in carrying out the objectives of the Synod (Art. III), which are objectives of the members themselves.” Bylaw 1.05 e states: “Membership is held in the Synod itself. However, in accordance with the objectives of the Synod, each member enjoys certain privileges and accepts certain responsibilities also in and through the respective District and Circuit.” According to Bylaw 2.35, “every member of the Synod shall diligently and earnestly promote the purposes of the Synod by word and deed.” Bylaw 2.39 a adds that “the Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.” This includes doctrinal resolutions that “are to be honored and upheld until such time as the Synod amends or repeals them” (Bylaw 1.09 b).

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

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

Ecclesiastical supervision intrinsically includes all of the following: “supervision regarding the doctrine and the administration” of all officers, employees, Districts, and District Presidents (Art. XI B 1); “to admonish all who in any way depart from [the Synod’s Constitution], and, if such admonition is not heeded, to report such cases to the Synod” (Art. XI B 2); “power to advise, admonish, and reprove” (Art. XI B 3); to “see to it that the resolutions of the Synod are carried out” (Art. XI B 4); “supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers...visit and,

according as they deem it necessary, hold investigations” (Art. XII 7); “supervise the doctrine taught and practiced in the Synod...officially visit or cause to be visited all the educational institutions of the Synod...meet regularly with the Council of Presidents...to see to it that they are in accordance with Article II of the Constitution, synodically adopted doctrinal statements, and doctrinal resolutions of the Synod” (Bylaw 3.101 A); and such other constitutional terminology as “counsel,” “care,” and “protection” (Art. III 8 and 9).

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

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

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

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

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

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

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

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

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

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

Opinion: If an individual makes an allegation under Bylaw 2.27 against a member of the Synod, that allegation is given to the member’s ecclesiastical supervisor, either the President of the Synod or the appropriate District President. If the ecclesiastical supervisor declines to take any action, the party that has made the allegation may appeal that decision to the Praesidium of the Synod. Should the Praesidium also decline to take any action on the allegation, in the words of Bylaw 2.27 b, that “shall terminate the matter.” In other words, the matter is dead and there is no way that the complainant can invoke any of the provisions of Chapter VIII.

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

Opinion: There is no such constitutional provision.

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

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

Question 8: Is it a conflict of interest when a District President and/or synodical President are carrying out their duties of ecclesiastical supervision and seeing to it that the resolutions of the

Synod are being carried out? If the answer is “yes” in what sense is it a “conflict of interest” and how is conflict of interest then defined.

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

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

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

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

Adopted Jan. 20–21, 2003

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

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

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

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

Adopted Jan. 20-21, 2003

Communication to the Council of Presidents and the Board of Directors

Chairman Walter Tesch spoke of his attendance at the February 6-7, 2004 joint meeting of the Council of Presidents and the Board of Directors, where he volunteered that the Commission on Constitutional Matters would again review the eight opinions to which the Board of Directors has objected. Accordingly, the Commission discussed their review of the opinions in light of the documents furnished by the Board of Directors detailing the Board's specific objections to the opinions. The Commission decided to offer the following response, sent on March 23 to the chairmen of the Council of Presidents and the Board of Directors.

COMMUNICATION TO THE COUNCIL OF PRESIDENTS AND THE BOARD OF DIRECTORS

At the recent joint meeting of the Council of Presidents and the Board of Directors, the chairman of the Commission on Constitutional Matters (CCM) stated that the CCM would again revisit its eight opinions which the Board of Directors has resolved to be "of no effect." This the CCM has done.

At its February, 2004, regular meeting, the Board of Directors passed a resolution entitled, "Board of Directors Resolutions Regarding CCM Opinions." Several of the resolves of that action pertain directly to the CCM and the eight opinions. They are as follows together with the CCM's response.

Resolved, That the Board of Directors requests the Commission on Constitutional Matters to reconsider Opinions 02-2296, 02-2309, 02-2320, 02-2259, 03-2357, 03-2358, 03-2359, and 03-2365.

Response: As promised to the Council of Presidents and the Board of Directors, the members of the CCM have again reviewed the eight opinions.

Resolved, The Board of Directors requests the Commission on Constitutional Matters to withdraw these opinions to allow the issues involved to be addressed by the 2004 synodical convention.

Response: Having reviewed the eight opinions, the CCM remains of the opinion that these opinions are correct, appropriate, and consistent with the Constitution and Bylaws of the Synod. Further, it is not necessary for these opinions to be withdrawn in order to allow the issues involved to be addressed by the 2004 synodical convention. Bylaw 3.905 d provides that any opinion of the CCM shall be binding on the question decided unless and until it is overruled by a synodical convention. Thus the Synod has reserved unto itself the right to review, revise, modify, alter, or reject any opinion of the CCM and thereby address the issue involved.

Resolved, That, immediately upon such action being taken by the Commission on Constitutional Matters, the two Board of Directors' resolutions adopted at its November, 2003

meeting concerning these CCM opinions will be similarly withdrawn so as to allow the issues involved to be considered by the 2004 synodical convention.

Response: The two resolutions adopted at its November, 2003, meeting state that the Board of Directors "cannot agree with or accept" the eight opinions of the CCM and that those opinions are "of no effect." These resolutions adopted by the Board of Directors are directly contrary to Bylaw 3.183 d 2 which states that the Board of Directors "shall have the right to call up for review, criticism, modification or revocation any action or policy of a program board, commission, or council, except opinions of the Commission on Constitutional Matters." If the CCM were to withdraw the questioned opinions, the promised withdrawal action by the Board of Directors would be an empty gesture since the withdrawal of the opinions by the CCM makes those opinions a nullity and thereby "of no effect." Further, the Board of Directors could then claim to be acting in accord with the Constitution and Bylaws of the Synod since the constitution and bylaw limitations upon the activities of the Board of Directors as determined in those opinions would no longer exist.

Resolved, That the Board of Directors requests that the Commission on Constitutional Matters consider the attached comments in connection with its reconsideration of its opinion.

Response: After several requests by the CCM, the Board of Directors has set forth a detailed explanation of its concerns regarding the eight opinions. These concerns have been reviewed by the CCM. However, the CCM cannot agree with the conclusions detailed in those explanations.

A common thread running through the comments of the Board of Directors is its assertion of greater authority than that conferred currently by the Constitution and Bylaws of the Synod. It advocates that its supervisory power over all the property and business affairs of the Synod allows it to determine actions and authority which the Constitution and Bylaws presently give to other officers, boards and commissions. Further, the effect of the Board's greater assertion of authority will necessarily be to influence doctrinal matters through its control of finances. If the polity of the Synod is to be changed, such change must come from the Synod in convention assembled and not by fiat of an officer or board.

Adopted March 22, 2004

Validity of Conference Call Meetings (03-2378)

In an e-mailed letter received December 29, 2003, a member of a board of regents of an educational institution of the Synod asked questions regarding the validity of conference call meetings when held under protest.

- Question 1: If one or more of the members of a board of regents object to a conference call meeting before it is held and the chairman proceeds to hold the meeting anyway, what is the validity of any decisions that are made at the conference call meeting conducted under the protest?
- Question 2: If one or more of the members of a board of regents object to a conference call meeting at the opening of the meeting but the chairman rules against the objection and it is upheld, what is the validity of any decisions that are made at the conference call meeting conducted under the protest?
- Question 3: If one or more of the members of a board of regents object to a conference call

meeting at the opening of the meeting but the chairman rules against the objection and it is upheld and the chairman restricts open discussion between members of the board of regents during the meeting, what is the validity of any decisions that are made at the conference call meeting conducted under the protest?

Opinion: Similar board procedural matters have been addressed in CCM Opinions 02-2287 (October 21-22, 2002) and 02-2268 (June 10-11, 2002). The opinion set forth in 02-2268 is applicable to this question and is herewith repeated:

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

Opinion 02-2287 noted further:

Upon review of that opinion [02-2268], the Commission realizes it may have misled the member who asked the question in that the opinion inferred that the Commission had the authority in rendering an opinion to review the rules of order, standing rules, or policy manual of a board of regents. It does not. The Commission is unable to provide an answer because it has no authority to review the provisions of a policy manual and such review would be imperative to a resolution of the issue.

Adopted March 22, 2004

**Authority of Council of Presidents
to Place Requirements upon Candidate Placements (04-2384)**

A pastor of the Synod in a letter received by the Commission on February 20, 2004, asked the Commission for an interpretation of the bylaws governing the authority of the Council of Presidents to place specific requirements upon the placement process of the Synod.

Question: Does the Council of Presidents have the constitutional authority to require that the wives of prospective pastors of the LCMS be members of LCMS congregations before their husbands can be considered for placement in congregations of the Synod?

Opinion: The authority of the Council of Presidents in regard to the first call of a graduate or a candidate who has satisfactorily completed an approved synodical colloquy program, is limited to the assignment of the first call.

Only the faculty of the respective synodical institution has the authority to declare a graduate qualified for the first call. Bylaw 2.09 a states, "A graduate of an authorized synodical institution must be declared qualified for a first call and recommended by the faculty of the respective synodical institution before the

effective date of the first call to service in the church, as assigned by the Board of Assignments as provided in Bylaw 2.11.”

And only the appropriate colloquy committee has the authority to declare a colloquy candidate qualified for a first call. Bylaw 2.09 b states, “Candidates who have satisfactorily completed an approved synodical colloquy program... must be declared qualified for a first call and recommended by the appropriate colloquy committee (see Bylaws 6.99, 6.117, and 6.137) before the effective date of the first call to service in the church as assigned by the Board of Assignments as provided in Bylaw 2.11.”

The Synod through Bylaw 2.09 c establishes the eligibility for individual membership as follows: “Candidates who may be declared qualified for first calls are those who before the effective date of the first calls will have satisfactorily completed the prescribed courses of studies and will have received diplomas from their respective institutions or have fulfilled the requisites of a colloquy. In addition, they must have indicated complete dedication to the ministry and evidenced a readiness for service in the church. Finally, to be declared qualified and recommended by the faculties or colloquy committees for their specific types of service in the church, the appropriate faculty or colloquy committee must be satisfied that the individual will meet all personal, professional, and the theological requirements of those who hold the office of ministry to which the individual aspires. In addition, an academic year of supervised internship (vicarage) is required of all seminary students before graduation, ordinarily in the second year before graduation.”

Acting as the Board of Assignments, the Council of Presidents assigns (places) qualified graduates of synodical educational institutions and workers available from colloquy programs as “first calls” (Bylaws 2.11 and 3.930 e).

Thus, since the Council of Presidents does not have the constitutional authority to establish eligibility for membership or to qualify, declare qualified, certify, and recommend candidates, it does not have the authority to require that the wives of candidates for the offices of ordained and commissioned ministers must be members of LCMS congregations prior to placement. Such a requirement can only be established by the Synod in convention.

Adopted March 22, 2004

Restrictions and Suspensions (04-2383)

A Dispute Resolution Panel, upon request of a party to the dispute, submitted a series of questions for a response from the Commission prior to the panel’s scheduled hearing.

Question 1: Upon request, if the Council of Presidents has already failed to hear charges placed against a pastor in a fair and timely manner while that pastor was on restricted status, is it then possible for the same Council of Presidents to fairly effect the final outcome for the same pastor who has been placed on suspended status for the very same charges?

Opinion: The failure of the Council of Presidents to respond in a timely manner to a petition for removal of restricted status, while a matter of concern, is unrelated to a fair outcome of the suspension process, in which the involvement of the Council will be limited to the possible participation of three District Presidents in an Appeal Panel. The involvement of the Council of Presidents in the Petition for Removal of Restricted Status process was also limited to a three-person hearing panel of three District Presidents with entirely different responsibilities. In the event that a District President was selected for service on the Appeal Panel who has already served on the hearing panel, Bylaw 8.17 also allows for a request for the disqualification of that panel member on the basis of partiality or the appearance thereof. Therefore, the

fact that the Council of Presidents and the same charges may be involved in both processes will not be a factor in the final outcome of the suspension process.

Question 2: Given the fact that Bylaw 2.21 states that there is only one remedy and only one action which can be taken by Synod under this bylaw, and given the fact that both restricted status and suspended status fall under Bylaw 2.21, by what justification does the CCM declare, in response to Rev. Lindeman's question #4 addressed by CCM (January 28 minutes), that restricted status and suspended status are two different actions? How is the opinion of CCM not a contradiction of the wording within Bylaw 2.21?

Opinion: Bylaw 2.21 is a general introductory paragraph to Section "D. Restricting, Suspending, and Expelling Congregations or Individuals from Membership" of Chapter II of the Bylaws. It speaks of instances of "ungodly life" by ordained and commissioned ministers and clarifies that the Synod and its Districts cannot be held responsible to regulate, restrict, or control the activities in the life of an individual member of the Synod. It further states that the only remedy available to the Synod in response to such improper activities is to take "such action as may lead to the termination of that membership and the attendant rights and privileges." The remainder of Section D provides a series of provisions detailing that "remedy," which includes more than one possible action: restriction (Bylaw 2.23), suspension (Bylaw 2.25), expulsion (Bylaw 2.27), and also a procedure for petitioning the removal of restricted status (Bylaw 2.29). The prior opinion of the Commission is therefore not a contradiction of the wording within Bylaw 2.21.

Question 3: What provisions are given within the Constitution and Bylaws to protect a pastor from repeated threat of expulsion from Synod by the repeated application of heresy proceedings under Article 2.21 for the same stated reasons or charges by his District President?

Opinion: As stated in the response to question 2 above, Bylaw 2.21 is a general paragraph that contains no proceedings. It introduces actions that may be used according to the judgment of the District President. One such action, as noted in the question, is suspension (Bylaw 2.25), which sets in motion the procedure set forth in Bylaw 2.27, a procedure that continues until membership is terminated or the formal proceedings are completed favorably to the member. This is an action that can only be initiated one time for any given reason(s) or charge(s), since the outcome of the expulsion process is binding (Bylaw 8.09 c 3 a; 8.09 e 1).

Question 4: When are heresy proceedings against a pastor ever final for a pastor if a District President is not limited in number of times that he can place a pastor on restricted status or suspended status for the same reason?

Opinion: As explained in the response to question 3 above, suspended status as to a particular action for termination of membership is a one-time action that continues until membership is terminated or formal proceedings are completed favorably to the member. Bylaw "2.23 Restricted Status" includes no limitation on the number of times that a District President may place an individual member on restricted status if information with respect to such member provides a substantial basis to conclude that any or all of the three reasons for such action given in Bylaw 2.23 apply to the member.

Question 5: What is the nature of the Bylaws of Synod that failure of the COP to meet the requirements of the Bylaws are a "matter of concern" and therefore to be dismissed, but the sequence of actions by the District President "meet the requirements of the Bylaws" and is therefore to be allowed? Is there a hierarchy to the Bylaws that allow the CCM to decide which bylaws are to be considered, "a matter of concern" and which bylaws are considered dictum by the CCM?

Opinion: The Bylaws articulate the rights and duties of the Synod's officers and agencies, for which they are responsible to the Synod (Constitution Art. XI, Bylaw 1.07, *et al.*). It is therefore a "matter of concern" whenever an officer or an agency of the Synod such as the Council of Presidents fails to meet requirements of the Bylaws. Such failure may be addressed by the President of the Synod (Constitution Art. XI B 2, Bylaw 3.101 B 3) or even the Synod (Constitution Art. XI A). A failure to meet the requirements of the Bylaws is, therefore, in every case a matter of concern. However, any failure to meet the requirements of one bylaw does not reduce the status or applicability of other bylaws.

Question 6: In response to Rev. Lindeman's question 5, as reported in the CCM's minutes of the January 28th meeting states, "A decision of Council of Presidents regarding a particular case of restricted status has bearing only on the restriction in question. The removal or dropping of a restricted status has no bearing on future decisions to place that member of Synod on restricted status or to commence formal Bylaw 2.27 proceedings that result in suspended status."

Rev. Lindeman's question 5 had specific reference to provisions of Bylaw 2.29 e, wherein it states, "The decision of the hearing panel shall be the decision of the COP and shall be final with no right of appeal."

If upon request, a member of Synod placed on restricted status files a petition for removal of Restricted Status with the Council of Presidents through the office of the President of Synod, and the Council of Presidents rules in favor of the petition for removal does the, "no right of appeal" apply to office or person placing the appellant on restricted status as well as the person making the appeal? And if so, can the appellant again be placed on restricted status or suspended status for the same alleged offence, relating to the same specific incident, and under what circumstances and constitutional authority?

Opinion: Bylaw "2.29 Procedure to Consider Petition for Removal of Restricted Status" states in its title and its initial paragraph the purpose of the procedure it outlines, that is, to respond to a request made under Bylaw 2.23 d appealing the placement on or continuance of restricted status. A member of the Synod placed on restricted status may make such a petition no more than once in a 12-month period. The responsibility of the hearing panel that is selected is clear: to consider the petition that has been made for removal of restricted status. Its decision is final, pertains only to the petition that has been made, and cannot be appealed. If the hearing panel denies the petition, the decision of the panel is final and the restriction remains in force. If the panel decides in favor of the petition, the decision of the panel is final and the restriction is lifted.

As stated in the Commission's earlier opinion, restricted status and suspended status are two different actions. Restricted status is imposed when a District President has information which may cause him to conclude that certain conditions exist in a church worker's life that are of serious concern or may lead to serious consequences, the imposition of which status results in ineligibility to perform certain functions of ministry and to accept a call to any other position of service in the Synod (Bylaw 2.23 b). Suspended status results when formal proceedings have been commenced against a member of the Synod, individual or congregation, that may lead to expulsion from the Synod, during which status the activities of the member in question are severely limited (Bylaw 2.25 c). While restricted status may lead to suspended status in the case of individual members (Bylaw 2.25 a), suspended status is not dependent upon the member in question first being placed upon restricted status, nor is it influenced by success or failure in petitioning for the removal of restricted status. The outcome of suspended status is dependent solely upon facts forming a basis for expulsion from membership under Article XIII of the Constitution (Bylaw 2.27

c) and, if there is a desire to have the matter heard and resolved (Bylaw 2.27 c), upon a decision by none other than a Dispute Resolution Panel proceeding according to Bylaw 8.09.

Adopted May 20–24, 2004

Questions Regarding the CCM, Synod’s Constitution and Bylaws and Articles II and XIII (04-2385)

In a letter dated February 18, 2004, an ordained member of the Synod submitted a series of questions regarding the CCM, Synod’s Constitution and Bylaws and Article II and Article XIII.

Question 1: The Synod has given to the CCM the “precisely defined service function” (Bylaw 3.51 b) to “interpret Synod’s Constitution, Bylaws and resolutions” (Bylaw 3.905 d). If the CCM issues an opinion beyond this precisely defined service function or that does not involve interpretation of the Synod’s Constitution, Bylaws or resolutions, does that opinion have any binding effect under Bylaw 3.905 d? In other words, can the CCM bind the entire Synod until overruled by a convention to opinions that are beyond the function of the CCM? If so, what specific bylaw gives the CCM this power?

Opinion: The answer to the question as stated is “no.” The Commission on Constitutional Matters “as prescribed in the Bylaws,” (3.51 b) renders “a precisely defined service function of the Synod and [is] responsible...to the Synod in convention...”(Bylaw 3.51 b). While the answer is “no,” if there is a question whether or not an opinion is in fact under the “precisely defined service function,” it is the Synod in convention that reserves unto itself **alone the right** to determine if in fact any of the opinions, interpretations (an opinion or interpretation is one and the same), or other functions of the CCM went beyond it’s prescribed functions. Bylaw 3.905 d clearly states, “An opinion rendered by the commission shall be binding on the question decided unless and until it is overruled by a synodical convention.”

Question 2: Are the Synod’s Bylaws required to be consistent with the Synod’s Constitution?

Opinion: Yes, the Bylaws of the Synod are to be consistent with the Constitution of the Synod. This is implied in Bylaw 14.01 1 a and d, which states, “Amendments to the Bylaws may be made by the convention provided they are not contrary to the Constitution” and “examined by the Commission on Constitutional Matters prior to presentation to the convention to determine that they are not in conflict with the Constitution and Bylaws of the Synod.” In an opinion of the CCM dated February 21, 1975 concerning “Removal from Office as a Result of Expulsion from Membership in the Synod,” the Commission opined, “The Constitution of the Synod provides for the adoption of bylaws. All duly and regularly adopted bylaws which remain in force and effect are an extension of the Constitution.”

Question 3: If a bylaw conflicts with the Constitution, what controls, the bylaw or the Constitution?

Opinion: If a bylaw conflicts with the Constitution of the Synod, the Constitution controls. However if a bylaw conflicts with the Constitution, it is the CCM which is to initially consider the matter, and ultimately the Synod in convention that makes that determination. The Bylaws which are presently in existence have been adopted by the Synod in convention and are included in the *Handbook* as directed by the Synod through its Bylaws. “The delegate convention of the Synod is the legislative assembly which ultimately legislates policy, program, and financial direction to carry on the Synod’s work on behalf of and in service to the member congregation...” (Bylaw 1.07 a). The national convention of the Synod “is the principal legislative assembly, which amends the Constitution and Bylaws, considers and takes action on reports and overtures, and handles appropriate appeals” (Bylaw 3.01).

Bylaws, as an extension of the Constitution, are binding regulations for the Synod and its conduct and governance. Bylaw 1.05 d states, "...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 convention." And in regard to the relation of the Synod to its members, "the Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod" (Bylaw 2.39 a).

Question 4: Are the Bylaws required to be consistent with Article II of the Constitution?

Opinion: Since all bylaws of the Synod are to be consistent with all articles of the Constitution and not contrary to the Constitution, this includes being consistent with Article II of the Constitution. However any article of the Constitution, including Article II, is also best understood, observed, practiced, or used in the full context of all the Articles of Synod's Constitution (Example: Article III begins with "The Synod, under Scripture and the Lutheran Confessions, shall -;" Articles V, VI, XIII and XIV reference Article II; Articles XI and XII sets forth the supervision over the doctrine). And as the understanding and application of Article II cannot be isolated from the other articles of the Constitution, Article II cannot be isolated from the synodical bylaws which not only help elucidate the articles but which provide a certain prescribed polity which must be followed in order to carry out Synod's Constitution and all its articles.

Question 5: Is the CCM required to issue opinions consistent with Article II of the Constitution? If the opinion issues an opinion that is not consistent with Article II of the Constitution, is the opinion binding? If so, are the ecclesiastical supervisors, officers, and members of Synod required to follow the CCM opinion or Article II of the Constitution? If a member follows the CCM opinion, and thereby acts contrary to Article II, can the member be expelled from Synod under Article XIII of the Constitution for acting contrary to Article II?

Opinion: Since one of the Commission's functions is to "interpret the Synod's Constitution, Bylaws, and resolutions," the Commission's opinions must be consistent not only with Article II but with all the constitutional articles, the Bylaws and the resolutions of the Synod. While an opinion rendered by the Commission shall be binding on the question, the Synod in convention has reserved unto itself the power to overrule any opinion of the Commission that it considers to be inconsistent with the Constitution and Bylaws (see the answers to the above questions).

It must be noted however that it is not a function of the Commission to interpret the Scriptures and the Confessions, the confessional position as set forth in Article II. The authority for such interpretation is the responsibility of the Synod (the Synod has reserved this right to itself) on the basis of procedures as defined in the *Handbook*. The provisions or polity for determining the collective will and understanding of the Synod's confessional position (Article II) are set forth in Bylaw 1.09 and Bylaw 2.39. Those provisions involve the Commission on Theology and Church Relations to which you may address questions of interpretation.

If it is demonstrated by action of the Synod in convention that a CCM opinion is inconsistent with Article II, such an opinion is not binding on the ecclesiastical supervisors, officers, and members of Synod, who are required to follow the collective will of the Synod as expressed in its Constitution, Bylaws, and resolutions. While an ecclesiastical supervisor or perhaps the CCM or CTCR are involved in the process, the decision whether or not to expel a member from synodical membership under Article XIII of the Constitution rests ultimately with a Dispute Resolution Panel which alone determines the facts in the case and acts according to procedures set forth in Bylaws 2.27 and Chapter VIII.

Adopted May 20–24, 2004

**Question Regarding the Relationship of the
Circuit Counselor to Member Congregations (04-2387)**

In an e-mail sent April 30, 2004, an ordained member of the Synod submitted a question regarding the Circuit Counselor's relation to member congregations.

Question: Since the Bylaw [5.13 j] envisions only visits with "congregation[s]," is it appropriate for the Circuit Counselor to meet with a dissident faction within a congregation to receive accusations against other members or the pastor of the congregation, and does meeting with a dissident faction within a congregation constitute such "extraordinary circumstances" that it is permissible for a Circuit Counselor to schedule such a meeting without prior consultation with the president or other officers of the congregation (much less the pastor), much less without 'inviting' them to be present to answer accusations against them?

Opinion: One of the functions of a District President is to inquire into the prevailing spiritual conditions of the congregations of his District and he may call upon the Circuit Counselor to assist him (Bylaw 4.73). Bylaw 4.75 states that a District President, even without a formal request therefor, may through the proper channels arrange for an (a) official visit or (b) investigation when a controversy arises in a congregation or when there is evidence of a continuing unresolved problem in doctrine or practice in order that the District President "may have a clear understanding of the situation." The same bylaw further recognizes that a District President may authorize another person (such as the Circuit Counselor) to represent him in the matter. The Bylaws do not define the term "proper channels" and thus the procedure to be used in the investigation is chosen by the District President or his representative and does not necessarily require the initial contact or meeting to be with any particular person or group. In such an investigation, any meeting is to carry out the purposes as set forth in these Bylaws.

Your attention is also directed to the provisions of Article XII 7 of the Constitution, which provides:

7. The District Presidents shall, moreover, especially exercise supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers of their District and acquaint themselves with the religious conditions of the congregations of their District. To this end they shall visit and, according as they deem it necessary, hold investigations in the congregations. Their assistants in this work are the Circuit Counselors, who therefore shall regularly make their reports to the District President.

Adopted May 20–24, 2004

A Question from Committee 8 Regarding Overture 8-47 (04-2391)

The following question was submitted to the CCM from Floor Committee 8 on July 9, 2004:

Question: Is the hearing, hearing procedure, and procedure for the expulsion of the synodical President from membership in the Synod described in Overture 8-47 of the 2004 synodical *Convention Workbook* consistent with the Constitution and Bylaws of the Synod?

Opinion: No. There is no provision in the Constitution or Bylaws of the Synod for the expulsion of the synodical President directly by the convention. Rather, the provisions for expulsions are as set forth in Article XIII of the Constitution and Bylaw 2.27. In order for the expulsion process under Bylaw 2.27 to occur, the President must first be out of office, whether by resignation, failure to be reelected, or otherwise.

Adopted July, 2004

**Interpretation of Article XI A 4 as to
What Constitutes “in extraordinary cases” (04-2392)**

A member of the Synod submitted the following question to the CCM by letter of July 8, 2004:

Question: In accord with Bylaw 3.905 d, I am requesting of the Commission on Constitutional Matters an interpretation of Article XI A 4 of the Constitution, especially in regard to what constitutes “in extraordinary cases” and as it applies to the synodical President. In view of the fact the 62nd Regular Convention of the Synod is about to convene, your timely interpretation is deeply appreciated.

Opinion: Article XI A 4 reads “4. Conventions of the Synod and of the Districts have the right, in extraordinary cases, to elect a chairman other than the regular presiding officer.” A review of the decisions of the CCM dating back to at least 1965 reveals that the issue has never before been considered in a formal opinion of the CCM. While it would be impossible to anticipate in advance all circumstances which might conceivably fit the description, such circumstances would include the situation where the sitting District President were under suspension as a result of pending charges under Bylaw 2.27, as occurred last summer in the Atlantic District. They might also include the extreme illness or other disability occurring contemporaneous to the convention.

Adopted July, 2004

A Question from a Dispute Resolution Panel (04-2390)

In a letter dated May 11, 2004 and forwarded by the chairman of a Review Panel on July 7, 2004, a party to a dispute submitted a series of concerns and questions to the Commission. In his letter, the party states that the LCMS Secretary has pointed out that information contained in a “Handbook for Reconcilers” imposes “LCMS self-limits” on Dispute Resolution Panels and Review Panels when a congregation is a respondent.

He calls attention to a statement from the handbook (p. 10): “(note that a Dispute Resolution Panel may only make a decision on excommunication issues based on procedural questions – refer to Bylaws 8.01, 8.11, 8.13 b 1),” and states that this quotation has been a significant factor in the failure of the dispute resolution process for his case. He maintains that this instruction establishes and imposes partiality or the appearance of partiality by requiring panel members to disregard LCMS doctrine and instead to comply with the instructions contained in this subordinate handbook. He questions whether a subordinate publication may “limit or withdraw the authority” granted panels in the Bylaws.

Question 1: Is the “Handbook for Reconcilers” in harmony with the conscience of the Synod? Please compare the authority conferred upon dispute resolution and review panels by the Synod in Bylaws 8.03 and 8.09 c 1, and in Rule of Procedure 7 f. If this handbook is not in harmony with the Constitution and Bylaws, will the Commission on Constitutional Matters (a) stand by its own Opinion 02-2308 (October 2, 2002) which already provides the LCMS resolution on disputes over the rights and actions of congregations during the dispute resolution process? (b) instruct the Review Panel to disregard the conflicting handbook and to conduct the required formal hearing according to LCMS Bylaw 8.09 c 1 without partiality or the appearance of partiality toward either party for any reason? (c) request a doctrinal review of the “Handbook for Reconcilers” according to LCMS Bylaw 10.15 so

that steps can be taken to make the handbook obedient to the Constitution and Bylaws of the Synod and therefore the will of God?

Opinion: Bylaw 3.905 d limits the Commission's responsibility for interpretation to the Constitution, Bylaws, and resolutions of the Synod. The referenced "Handbook for Reconcilers" is not included in that responsibility. Therefore, the requested comparison of the authority conferred upon dispute resolution and review panels by the handbook in question and by the Bylaws and accompanying Rules of Procedure cannot be provided by the Commission. And since the remaining questions (a-c) depend upon such a comparison, they also cannot be answered by the Commission.

Question 2: What process or procedure does the CCM propose to resolve or decide the complicated and widespread matters in dispute if not by an unbiased and thorough investigation of the evidence through a formal hearing by the Review Panel?

Opinion: It is not the responsibility of the Commission to propose processes or procedures. It is the responsibility of the Commission to interpret the existing Bylaws and call attention to the processes or procedures that they provide. In this case, Bylaw 8.09 d states in its final sentence: "The Review Panel shall generally decide the issue on the record without further formal hearing but may follow the procedure used by a Dispute Resolution Panel if deemed necessary." Therefore it remains for the panel to decide whether to carry out its responsibilities on the basis of the existing record provided by the Dispute Resolution Panel or whether to follow the procedure followed by a Dispute Resolution Panel that includes a formal hearing.

Adopted July, 2004

A Question from Floor Committee 1 Regarding Bylaw 3.823 (04-2393)

The chairman of Floor Committee 1 asked the following question:

Question: Does Bylaw 3.823 apply to Resolution 1-06? In other words does Bylaw 3.823 prevent the Synod in convention from assigning the function of outreach ministry in North America and the Director of Outreach Ministry to LCMS World Mission?

Opinion: Since the position or function of the Director of Outreach Ministry in North America is not specified or defined in the bylaws, it can exist or be created under any board if consistent with the duties and responsibilities of the board. The whereases of proposed Resolution 1-06 articulate the rationale for placement of this position or function under the Board for Mission Services (which is also identified as LCMS World Mission). Therefore, the Synod in convention may direct, pursuant to Bylaw 1.07 a, that the described position or function of the Director of Outreach Ministry in North America be placed under the Board for Mission Services (Bylaw 3.845).

Adopted July, 2004

A Question from Floor Committee 4 as to How Resolution 4-14 Relates to Resolution 7-02A. (04-2394)

A question was presented from Floor Committee 4 as follows:

Question: Following the approval of Resolution 7-02A, is it in order for Floor Committee 4 to bring Resolution 4-14 (*Today's Business*, page 199) before the convention for consideration?

Opinion: Resolution 7-02A found that the two resolutions of the Board of Directors referred to in the President's Special Report and found at pages 24–26 of *Today's Business* were of no effect. As such, the opinions of the Commission on Constitutional Matters challenged by those board resolutions remain in full force and effect within the Synod pursuant to the provisions of Bylaw 3.905 d, as cited in that resolution. The Board for Communication Services continues to be responsible for the operation of KFUE unless their responsibility to do so is changed by the Synod in convention, or that responsibility is otherwise properly removed from that board. The resolution therefore is entirely appropriate as a way to reaffirm those responsibilities and, as stated in the second resolved, to ...“reaffirm the ministries of the Board for Communication Services to the entire church and encourage the Board for Communication Services in their work to explore a more effective role for KFUE.”

Adopted July, 2004

A Question Regarding “To Allow the Speaking of Presidential Candidates” (04-2396)

During the convention, the president inquired from the podium whether the proposed resolution “To Allow the Speaking of Presidential Candidates” found on page 384 of *Today's Business* would require an amendment to the Bylaws.

Opinion: The proposed resolution would require the addition of a particular election procedure for the office of President that differs from the general procedures currently contained in the Bylaws. The current procedures include Bylaw 3.961 e which describe the current synodical practice for disseminating biographical and other information from the candidates for president, and under the current Bylaw 3.25, the President establishes the agenda, and the convention is held pursuant to parliamentary procedure. As an amendment of the Bylaws, the resolution as currently drafted is not consistent with Bylaw 14.01 1 c, in that it does not identify itself as an amendment to the Bylaws, and has also not been presented to a convention floor committee for their consideration. In addition, it would not comply with Bylaw 14.01 1 e in that it was not presented to the Commission on Constitutional Matters prior to the presentation to the convention to assure that it is not in conflict with the Constitution and Bylaws of the Synod. Upon request of a member, the Commission is prepared to more comprehensively review this proposed resolution to assure itself and the convention that no other unintended conflicts with the current Constitution and Bylaws exist.

Adopted July, 2004

A Convention Session “Point of Privilege” Related to Bylaw 3.19 and Resolution 3-06 A (04-2397)

During a convention session, an opinion was asked of the Commission on Constitutional Matters in a Point of Privilege that was raised concerning a challenge from the floor of the synodical convention on Wednesday, July 14, 2004 on whether the Synod in convention was in violation of Bylaw 3.19 b in considering Resolution 3-06A, “To Commend CTCR Report on *Guidelines For Participation in Civic Events*.”

Opinion: The bylaw cited states “Reports and overtures must be submitted in triplicate to the President of the Synod not later than 18 weeks prior to the opening date of the convention. No report or overture received subsequent to that date shall be accepted for convention consideration unless a committee consisting of the President, the First Vice-President, and the Secretary adjudge it to be a matter of overriding importance and urgency which is not adequately covered by documents already before the convention” (Bylaw 3.19 b).

The essence of a “Report” to a synodical convention must also be considered. Bylaw 3.19 a and 3.19 a 1 includes the following: “a. The principal business of a synodical convention shall be the consideration of reports and overtures.

1. *Reports are (1) statements of work performed or contemplated by those who are charged with conducting the business of the Synod between conventions, (2) communications to a convention with respect to studies which may have been made for the Synod in order to further its work, or (3) other types of communications to the Synod” (Bylaw 3.19 a 1).*

In accordance with these bylaws and others in 3.19 a-f, “All reports and overtures accepted by the President in accordance with the foregoing paragraphs shall be referred by him to convention committees... After due consideration of the matters referred to it, each committee is to report its findings and recommendations to the convention” (Bylaw 3.19 g).

In compliance with the Bylaws, the report of the Commission on Theology and Church Relations was published in the 2004 *Convention Workbook*, pp. 69–79. And the report concerning the *Guidelines For Participation in Civic Events* is on page 70 of that report in the 2004 *Convention Workbook*. In compliance with the Bylaws, the findings and recommendation of the convention floor committee are published in *Today’s Business*, pages 62–63. In considering Resolution 3-06A at this 2004 synodical convention, the convention was in compliance with Bylaw 3.19.

Adopted July, 2004

Identification of District Membership in Constitutions and Bylaws of Congregations (04-2389)

In a letter dated June 7, 2004, a District Committee on Constitutions, upon request of the President of the District, requested an opinion regarding the permissibility of requiring congregations to identify District affiliation in their Constitutions and Bylaws.

Question: Since a congregation’s application for and membership in the Synod is through a District of the Synod (Bylaws 2.01, 2.03, 1.05 b, e), is it permissible for a District Constitution Committee to require a congregation to identify the District in its article of synodical affiliation?

Opinion: The Synod divides itself into Districts (Constitution, Art. XII 1; Bylaws 4.01, 4.03). Districts are component parts of the Synod (Bylaw 1.05 b) that act as and on behalf of the Synod in relation to congregations (Constitution Art. VI, 5; Bylaws 2.03, 2.05, 4.07, *et al.*). Congregations acquire membership in the Synod by application to Districts (Bylaw 2.01), hold membership through Districts (Bylaw 2.41), and relate to Districts as to the Synod (Bylaw 4.09), but membership remains in the Synod (Constitution, Art. V and VI; Bylaw 1.05 e). Jurisdiction with respect to everything that is administered by or for the entire Synod (such as requirements for membership) resides in the Synod itself (Bylaw 4.07 e).

Districts may adopt bylaws, regulations, and resolutions in addition to the Constitution and Bylaws of the Synod (Constitution, Art. XII 2) so long as they do not conflict with the Constitution and Bylaws of the Synod (Bylaw 4.07 b). However, to require a congregation to identify its District in its article of synodical affiliation, while not specifically prohibited by the Constitution and Bylaws of the Synod, labors against a clear and proper understanding of the true nature of membership in the Synod and therefore should not be required.

Adopted Aug. 3, 2004

**Rights and Responsibilities of BHE/CUS Board
after Convention Action (04-2398)**

In a written communication received July 26, 2004, the chairman of the Board for Higher Education/Concordia University System Board asked the following question regarding the rights and responsibilities of his board as a result of the adoption of Res. 5-02 by the 2004 convention of the Synod:

Question: According to Bylaw 3.67 b, does the BHE/CUS Board, as constituted during the 2001–2004 triennium and until a new board assumes office, have the right to continue the process of calling a new executive director for the Board for University Education?

Opinion: Resolution 5-02 of the 2004 convention restructured the governance of higher education in the Synod. It abolished the current Board for Higher Education/Concordia University System (BHE/CUS) Board and created two new boards to assume responsibilities previously assigned to it. The convention amended the resolution as originally presented to the convention, eliminating a provision which would have had the members of the new boards elected by the convention assume office immediately, rather than September 1 as is generally provided in Bylaw 3.59 b. The new Board for University Education (BUE) and the new Board for Pastoral Education (BPE) therefore come into existence as of September 1, 2004, rather than upon passage of the resolution as would have occurred under the resolution as originally presented, and the BHE/CUS Board continues to exist until that date.

As indicated in background information related to the question presented, the BHE/CUS Board has been in the process of selecting a new executive director for some time. To the extent that the historic efforts of the BHE/CUS Board will assist the newly formed BUE and BPE in determining whether to create similar positions under the new boards, and in selecting executive directors for those newly created boards if they choose to do so, it is expected that the experiences, work, and information generated will be passed on to the new boards for their consideration and benefit. To the extent that the BHE/CUS Board needs to call a new executive director to complete its work through August 31, it may certainly issue such a call or make other appropriate arrangements to complete its assigned duties through that date. The question presented, however, is whether the BHE/CUS Board has the right to call a new executive director for the Board for University Education. It may not, any more than it may call an executive director for the Board for Pastoral Education.

In considering the prior work and information gathered by the BHE/CUS Board, as well as any recommendations from the BHE/CUS Board that the new boards may choose to consider, each of the newly constituted boards will of necessity need to consider independently its responsibilities under the new structure, and each board will need to consider independently what officer and/or executive director positions will best suit its assigned responsibilities. To the extent that one of the newly created boards chooses to create an executive director position, it will need to comply with Bylaw 3.69 and particularly Bylaw 3.69 e in that process:

Every board, commission, and synodwide corporate entity shall operate under synodical Human Resources policies. Such policies may recognize the unique character of the operations of each board, commission, and synodwide corporate entity. Every board, commission, and synodwide corporate entity may create officer and executive staff positions and fill the same in accordance with such policies. The chief executive of such board, commission, and synodwide corporate entity shall serve at the pleasure of the governing board. The governing board of each executive shall conduct an annual review and, before the

expiration of five years, conduct a comprehensive review. At the conclusion of each five year period, the appointment shall terminate unless the governing board takes specific action to continue the person in the office. The slate of candidates for the initial appointment of the executive officer of a board, commission, or synodwide corporate entity shall be selected by the board or commission in consultation and mutual concurrence with the President of the Synod.

In this regard, the newly created boards will also need to refer to Bylaws 1.07 d and e, 3.101 C 4, and 3.950 for guidance.

Adopted Aug. 3, 2004

Status of Ongoing Dispute Processes in Light of Convention Action (04-2399)

In an E-mailed letter dated July 20, 2004, a District President asked for a decision regarding the disposition of a current dispute resolution case in his District in light of actions taken by the 2004 convention of the Synod.

Question: Does the current dispute resolution process that involves [an individual and congregation in my District] continue under the old or the newly accepted process passed by the convention?

The President of the Synod, in an E-mailed letter dated August 3, 2004, asked the same question prompted by another dispute case.

Question: What is the status of cases involving as parties members of the Synod whose suspended status was in the process of appeal prior to adoption of extensive amendments by the 62nd Regular Convention of The Lutheran Church—Missouri Synod to the Bylaws of the Synod regarding the process of suspended status and appeals for removal thereof?

Opinion: The 2004 convention adopted Res. 8-01A, resulting in significant changes to the Synod's dispute resolution process. The resolution included no provision to address these questions.

However, similarly significant changes were made by the 1992 convention in its adoption of Res. 5-01B, resulting in a transition from the then-existing adjudication and appeals process to the new dispute resolution process. The 1992 resolution included provisions for transition, resolving that "all cases currently in the adjudication or appeals process be concluded under the existing bylaws governing adjudication and appeals" and that the "new procedure shall apply to all dispute resolutions initiated after the date of adoption of this amendment without regard to the date of onset of the dispute." These provisions were then also referenced by the Commission on Constitutional Matters in its response to specific questions in the months following the convention action (Ag. 1938; Ag. 1962).

In light of this precedent, the Commission concludes that the same understanding and practice should hold true in the present. All cases currently in dispute resolution, including the cases in question, are to be concluded under the bylaws that existed at the time of the initiation of the cases unless such cases were in such early stage that the former bylaw requirements did not yet pertain. In such case, as in the case of all other dispute resolutions initiated after the convention action, the changed procedures will apply.

Adopted Aug. 3, 2004

Omission of "Treatise on the Power and Primacy of the Pope"

in Art. II of Constitution (04-2402)

In an E-mailed letter dated July 22, 2004, a pastor of the Synod asked “the reason for omitting ‘The Treatise on the Power and Primacy of the Pope’ from Article II of the Constitution.”

The pastor further states: “In the Tappert ed. it states in the introduction to the Treatise, ‘Unlike the Smalcald Articles, the Treatise was officially adopted in Smalcald as a confession of faith. It was intended as a supplement to the Augsburg Confession and was not, as used to be supposed, an appendix to the Smalcald Articles. All the clergymen who were present signed the Treatise; the signature of Luther is wanting because he was too ill to attend the meeting.’”

Opinion: Since Bylaw 3.905 d indicates that one of the functions of the Commission on Constitutional Matters is to: “interpret the Synod’s Constitution, Bylaws, and resolutions upon the written request of a member...of the Synod,” and since the question as posed goes beyond the scope of these responsibilities, the Commission suggests that the question would better be posed to the Commission on Theology and Church Relations.

Adopted Aug. 3, 2004

CUS Continuing Level Appointments (04-2403)

In an E-mailed letter dated July 27, 2004, an associate professor of a Synod university asked whether the failure to offer continuing level appointments in the Concordia University System (CUS) is a violation of a synodical bylaw.

Question: I have learned from several CUS colleagues and from some inquiries I have had that some CUS schools do not offer “continuing level” appointments to their faculty (often called “tenure”). They only offer roll-over contracts (that theoretically could end without cause at some point in time, making them initial level appointments according to the definition in the *Handbook*). Is this a violation of Bylaw 3.7.1.7.2 (former Bylaws 6.21 and 6.25)? The reason I ask is because two items in the bylaw seem to require all CUS schools as well as the seminaries to offer continuing level appointments to their faculties:

1. The bylaw states that “there shall be two levels of appointments” and that one will be continuing level (which can only be terminated for cause).
2. The bylaw states under point (b) that normally at least 35% of a faculty’s full-time members shall serve at the continuing appointment level.

So—is not offering continuing level appointments a violation of the bylaw or do CUS schools have the option of offering only roll-over contracts?

Opinion: Bylaw 3.7.1.7.2 (former Bylaw 6.21 a) clearly establishes two levels of faculty appointments: “Each educational institution shall have established policies and procedures related to appointments. There shall be two levels of faculty appointments:

1. Initial level, where the appointment can be terminated with no formal requirement for a show of cause.
2. Continuing level, where termination requires a formal show of cause.”

The bylaw clearly requires that there be two levels of faculty appointments, an initial-level and a continuing-level. For a Board of Regents of an educational institution to offer no continuing level appointments to its faculty as a whole would be a violation of this bylaw.

Paragraphs (b) and (c) of Bylaw 3.7.1.7.2 (former Bylaw 6.25) also state, “Each educational institution of the Synod normally shall have at least thirty-five percent of its full-time faculty serving at the continuing appointment level. . . . Each institution shall require specific action by the Board of Regents for promotion from an initial-level appointment to a continuing-level appointment.” While a specific promotion from the initial-level to the continuing-level is not required, continuing-level appointments are required, although the “at least thirty-five percent” requirement is qualified by the word “normally.”

In the promotion from an initial-level appointment to a continuing-level appointment, the specific action of the Board of Regents of a CUS school is based on specific standards or qualifications and specific steps. If a faculty member is not promoted to the continuing-level, the individual may continue at the initial-level or be terminated (Bylaw 3.7.1.7.2 (d) and (e); former Bylaw 6.25 a and b). A Board of Regents is not required to promote a faculty member to a continuing-level appointment. However, a faculty member may petition the Board of Regents to do so (Bylaw 3.7.1.7.2 (e) (1); former Bylaw 6.25 b 1).

The Bylaws do not use the term “roll-over contract.” The referenced bylaw does state, “Any continuation of employment at the initial-level appointment shall be on a year-to-year basis.” And further, the bylaw also states: “Other types of faculty appointments may be established by institutions as the need arises.”

Adopted Aug. 3, 2004

Standard Operating Procedures Manuals (04-2404)

The 2004 convention, with the adoption of Res. 8-01A, “To Amend Bylaws on Ecclesiastical Supervision and Dispute Resolution,” included the following bylaw responsibilities for the Commission on Constitutional Matters:

l. In consultation with the Secretary of the Synod and with the concurrence of the Council of Presidents, the Commission on Constitutional Matters shall develop and amend as necessary a *Standard Operating Procedures Manual* which will serve as a comprehensive procedures manual for the bylaw provisions set forth in Bylaws 2.26, 2.27, 2.28, and 2.29 (Bylaws 2.26 l, 2.27 l, 2.28 l, and 2.29 l).

k. In consultation with the Secretary of the Synod and with the concurrence of the Council of Presidents, the Commission on Constitutional Matters shall develop and amend as necessary a *Standard Operating Procedures Manual* which will serve as a comprehensive procedures manual for Chapter VIII, Synodical Dispute Resolution (Bylaw 8.21 k).

The Commission discussed a timetable for the development of the manuals and agreed to the following steps:

1. CCM orientation, framing the task and setting the sights on the target.
2. Initial consultation with the Secretary of the Synod.
3. Initial consultation with the Council of Presidents (September, 2004):
 - a. Orientation and framing the task (Where we’ve been, where we are, and where we are going).

- b. Reviewing the existing “Rules of Procedure” and “Handbook for Reconcilers” associated with the dispute resolution process.
 - c. Familiarization with and use of new Bylaws 2.26–2.29 (expulsion from membership) and Chapter VIII (dispute resolution) for relevant input.
 - d. General discussion and suggestions.
 - e. Invitation for initial input from individual Council members by October 1, 2004 (thoughts, reflections, suggestions, questions such as “How is this done?” etc.)
4. Discussion by CCM during October 6–8, 2004 meeting:
 - a. Review of existing “Rules of Procedure” and “Handbook for Reconcilers” as a resource for developing the manuals.
 - b. Consultation with other resource persons for input into the content of the manuals.
 5. Preparation of drafts of operating procedures manuals for Bylaws 2.26 to 2.29 and Chapter VIII by November 1, 2004.
 6. Second consultation with the Council of Presidents to share the drafts with the COP for further input/refinement and, if possible, concurrence and finalization (November, 2004).
 7. Continued refinement and consultation as necessary to produce final documents by January 1, 2005.
 8. Final consultation with Council of Presidents for final concurrence if necessary (February, 2005).

Adopted Aug. 3, 2004

Higher Education Representation in Election Process (04-2408; 04-2408A)

Two questions with related backgrounds and overlapping answers have been asked of the CCM. In an E-mailed letter dated August 6, 2004, the chairman of the current Board for Higher Education/Concordia University System Board asked:

Question: As Chairman of the BHE/CUS I am one of four electors for college and university presidents. On August 24 I will be the BHE/CUS elector to establish a slate of candidates for the presidency of CURF. On September 15 & 16 interviews will be held at [Concordia University—River Forest] with an election to follow the interviews. The new [Board for University Education (BUE)] will not be installed until September 18, and probably will not organize until after the [Council of Members] meets and elects 3 more members of the BUE. Will I continue to serve as an elector for the presidency of CURF on Sept. 16, there being no other person chosen for that position at that time?

Also in an August 6, 2004 letter, the Acting President of Concordia University—River Forest asked:

Question: Since the BHE goes out of existence on September 1st and Gene Oesch is therefore no longer its chair, and the new BUE will not be organized until perhaps September 20th, who will be authorized to cast the BUE chairman's vote in the River Forest election on September 15–16?

Opinion: As indicated in Opinion 04-2398, the Board for Higher Education/Concordia University System Board (BHE) ceases to exist effective September 1, 2004, and as of that date, a new Board for University Education and a new Board for Pastoral Education have been assigned various of the duties previously assigned to the BHE. Under the prior system, the chairman of the BHE participated in the selection of a university president pursuant to the provisions of Bylaw 6.11, and particularly the election process described in Bylaw 6.11 f. Since the position of the chairman of the BHE ceases to exist as of September 1, the current chairman of the BHE ceases to have authority to cast a vote in the election of a university president after that date.

Pursuant to Bylaw 3.905 c, the Commission on Constitutional Matters is charged to “revise the synodical *Handbook* immediately after each convention of the Synod to bring it into harmony with the resolutions or changes adopted by the convention.” In doing so, the Commission will delete all references to the BHE and replace the existing references with references to the appropriate new board. In the case of Bylaw 6.11, the role of the chairman of the BHE will be replaced with the chairman of the Board for University Education (BUE).

The new BUE created by Resolution 5-02A of the 2004 convention includes nine voting members—two ordained ministers elected by the Synod, one commissioned minister elected by the Synod, two lay members elected by the Synod, three lay members appointed by the Concordia University System Council of Members, and the synodical President or his designated representative. There are also nonvoting members. Until the new BUE is fully constituted and convenes, it will be unable to perform its important initial task of selecting a chairman who will carry out critical functions on its behalf, including participation as an elector in the election process as described in Bylaw 6.11.

Bylaw 6.11 f provides that, at a meeting held to elect a university president, the four designated electors shall be present and voting. Therefore, unless the new BUE is able to be properly constituted and convened before the scheduled election and is able to accomplish the task of selecting a chairman, it will not be possible to complete an election on September 16. In such a circumstance, the election must be postponed as contemplated in Bylaw 6.11 h, which provides that “[t]he election shall be held on the day designated in the notice published in the official periodical of the Synod or as soon thereafter as feasible.” In the event an election is not completed on September 16, Bylaw 6.11 i further provides: “If the electors are unable to finalize the slate or complete the election, they shall postpone the election and, if desirable, request the Board of Regents to issue a new call for nominations.”

While it is important to fill the currently existing vacancy in a timely manner, it is equally important to proceed in an orderly fashion, requiring those designated by the Synod to act on its behalf to do so only after opportunity for due deliberation, contemplation, and the exercise of the judgment for which they were chosen to serve.

Adopted Aug. 11, 2004

Reconsideration of CCM Opinion 04-2390 (04-2410)

Pursuant to Bylaw 8.21 i, a complainant through a Review Panel requested a reconsideration of CCM Opinion 04-2390.

The Commission on Constitutional Matters reviewed its Opinion 04-2390 and concluded that it provided an appropriate answer to the questions that were asked.

Adopted Sept. 2, 2004

Board for University Education Organization (04-2411, 04-2411A)

The President of Concordia University System (CUS), in response to Opinions 04-2408 and 04-2408A and in contemplation of the scheduled election of a new president at Concordia University, River Forest (CURF) asked in an August 25, 2004 letter:

Questions: 1. In what context in the synodical governing documents is the expression “fully constituted” used to interpret synodical Bylaw 3.69 b?

2. In light of the scheduled election of a president for Concordia University, River Forest, may the Board for University Education establish a valid elector by electing a chairman or chairman pro tem subsequent to 1 September (Synod Bylaw 3.65) but prior to 15 September, or may the former chairman of the BHE/CUS Board serve as the elector because he participated in the establishment of the selection criteria and in the establishment of “the slate of nominees to be interviewed in the election meeting” (Bylaw 6.11 g)?

The current Chairman of the Board of Regents of Concordia University, River Forest, in a letter received August 27, 2004, also relayed a question asked by his board:

Question: By what means will it be possible for Concordia University, River Forest, to conduct its presidential election on the scheduled date of 16 September?

Opinion: The situation presented in these questions arises because of a unique circumstance in which a new board was created by action of the convention and because, due to an amendment from the floor, the originally contemplated continuity from the old Board for Higher Education (BHE) to the new Board for University Education (BUE) was not achieved. The term “fully constituted” is not used in the governing documents of the LCMS. The language of Resolution 5-02 as proposed provided, “The newly elected members of the Board for University Education and of the Board for Pastoral Education shall assume office and responsibility as the constituted board for the respective entities upon election in order to provide an orderly transition from the old governance structure to the new.” That sentence was deleted by floor amendment. The language of Opinion 04-2408 was used to reflect that amendment, while recognizing that at least one member of the former BHE continued in office (because his term on the old BHE ended in 2007, and he served on the University Education subcommittee of the BHE).

Instead of the BUE beginning to function immediately after the convention, as originally contemplated in the resolution, it now came into existence on September 1. Thus what does it mean to be “fully constituted?” The resolution originally contemplated that the board would be constituted and begin to function without the appointment or election of the remaining members, who were to be chosen or elected other than by the convention. Because of the floor amendment, the issue has arisen as to when and how the BUE is constituted. The new BUE is set up or established by meeting the following bylaw/resolution (legal) requirements:

1. A governing Board for University Education was established by the convention (Res. 5-02A).
2. Six of the nine voting board members have been elected/designated (Res. 5-02A).
3. The elected/designated board members assumed office September 1st, after which they may convene:

3.65 Induction

a. All those elected at the convention or appointed by the President or Board of Directors of The Lutheran Church—Missouri Synod shall be inducted into office on a date on or subsequent to Sept. 1 following the convention.

b. The initial meeting of boards and commissions shall ordinarily be held in association with the induction and shall begin with a combined orientation program conducted under the direction of the President.

4. At the convening meeting, the board organizes:

3.69 General Regulations

b. Every agency shall organize itself as to officers and subcommittees at its initial meeting after election or appointment and shall conduct its business in accordance with accepted parliamentary procedures. (emphasis added)

The above is what fully constitutes the BUE even if there are vacancies (three voting members to be appointed by the CUS Council of Members) at the outset. Boards can have "legal" meetings even though there may be absences or vacancies as long as a "majority" is "present" and voting. The Bylaws are silent concerning any requirement for 100% participation at the initial meeting.

The issues presented in these questions were also reviewed by the Synod's legal counsel, who opined in part:

The seven persons who assume office on September 1 will constitute a valid and acting board of directors of CUS and BUE on that date. Further, because they are a majority of this board, they meet the quorum requirements necessary for meetings. The CUS bylaws state that "a majority of the directors" of CUS constitute a quorum, without stating whether it is a quorum of the total number of directors then in office or of the total number of directors that can serve on the board. We would interpret this provision to be a majority of those then in office. The seven members of the BUE/CUS board may therefore lawfully conduct all business, both as a program board and as a board of directors of CUS, provided the necessary quorum is present at meetings.

As indicated in Opinion 04-2408, "Since the position of the chairman of the BHE ceases to exist as of September 1, the current chairman of the BHE ceases to have authority to cast a vote in the election of a university president after that date." Effective September 1, however, the new BUE may convene and conduct its assigned business. While it may choose not to convene until after the remaining members are appointed by the CUS Council of Members or may decline to appoint a temporary chair to participate in the scheduled CURF election, there is nothing to prevent the existing members of the BUE in proper meeting to make such an appointment to allow the election to proceed as currently scheduled. The last paragraph of CCM Opinion 04-2408 ("While it is important to fill the currently existing vacancy in a timely manner, it is equally important to proceed in an orderly fashion, requiring those designated by the Synod to act on its behalf to do so only after opportunity for due deliberation, contemplation, and the exercise of the judgment for which they were chosen to serve.") is simply the encouragement to follow the orderly procedure of the above referenced bylaws, including the business of electing a chairman.

Adopted Sept. 2, 2004

Direction re Bylaw to be Used in Dispute Case (04-2400)

A district president in a letter dated July 20, 2004, requested guidance regarding whether a dispute case that had been initiated by a letter received by his office July 6 should be handled according to the Bylaws that existed before the July 10-15 convention of the Synod or according to the Bylaws that were adopted by the convention.

Opinion: In a December 5, 1992 opinion (Ag. 1938), at a time when significant changes had been made by the 1992 convention to the Synod's process for resolving disputes, the Commission on Constitutional Matters (CCM) called attention to Res. 5-01B of the convention, which resolved "that all cases currently under the adjudication or appeals process be concluded under existing bylaws" and that the "new procedure shall apply to all dispute resolutions initiated after the date of adoption" of the new dispute resolution process, applying this principle in its response to a question that had been submitted. Furthermore, in a May 22, 1998 opinion (Ag. 2097), in reference to an action to terminate a membership, the Commission opined that such an action "is initiated by a written complaint against a member of the Synod."

Therefore, in response to the current question, the Commission on the basis of the previously stated opinions concludes that the letter received by the district president July 6, because it is a written complaint against a member of the Synod, is an action that initiates the dispute resolution process on that date. Furthermore, since the date of the letter precedes the dates of the convention of the Synod, the process to be followed will be that which is described by the bylaws that were in effect on that date.

Adopted Sept. 27, 2004

Public Rebuke of False Doctrine (04-2401)

In a July 20, 2004 letter to the secretary of the Commission, a pastor requested a response to two questions. The first question sought clarification of the Commission's response to question 9 of former Opinion 02-2309. The second requested an opinion regarding Bylaw 2.26 a (revised *Handbook* Bylaw 2.14.3) adopted by the 2004 convention of the Synod.

Question 1: Does this CCM opinion [02-2309] prohibit an LCMS pastor from publicly rebuking the false, public doctrine and practice of another LCMS pastor, the President of the Synod, or a district president?

Opinion: The questioner specifically references the following question and response of Opinion 02-2309:

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

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

The CCM opinion in question addresses the question of ecclesiastical supervision in the Synod, not the precise situation described in the question raised. If and when a pastor or any individual or group does not assume the constitutional responsibility for ecclesiastical supervision in the Synod, Opinion 02-2309 does not prohibit any Christian from rebuking a Christian brother so long as biblical and confessional principles are followed. For the proper biblical and confessional principles to be followed in rebuking a Christian brother, the Commission would suggest that an opinion of the Commission on Theology and Church Relations be requested. It might also be helpful for the questioner to refer to Opinion 03-2338 for an expanded understanding of the constitutional responsibility of ecclesiastical supervision.

Question 2: Does Bylaw 2.26 a (or any part of the bylaw dealing with restricting, suspending, and expelling congregations or individuals from membership) prohibit an LCMS pastor who has not entered a formal complaint process from publicly rebuking the false, public doctrine and practice of another LCMS pastor, the President of the Synod, or a district president?

Opinion: The Commission assumes that the bylaw referred to as Bylaw 2.26 a is the new bylaw adopted in Resolution 8-01A of the 2004 convention of the Synod (Bylaw 2.14.3 in the 2004 revised *Handbook*). This bylaw and related bylaws do not apply to a person who has not entered a formal complaint. The answer to question one above also applies.

Adopted Oct. 6–8, 2004

Book Reviews Critical of a Member of the Synod (04-2407)

In an August 3, 2004 e-mailed note to the Secretary of the Synod, a pastor asked for clarification regarding book reviews that are critical of an author who is a member of the Synod.

Question: It has been reported that the CCM has rendered the opinion that a book review critical of an author can be considered a “complaint” and the author thereby the “accused.” Is this a correct statement? If so, how does 8-01 apply in the case of a review which criticizes the doctrine contained in a publication of a member of the Synod?

Opinion: In response to the first part of the question, that which was said to have been reported is not a correct statement and does not represent any previous Commission on Constitutional Matters opinion. In its Opinion 99-2140, the Commission did respond to a question regarding doctrinal review. However, the question to which it responded pertained to invoking the dispute resolution process in response to a decision of the Synod’s Commission on Doctrinal Review. In its opinion the Commission concluded that use of dispute resolution process, while it may be used by a member of the Synod over against the Commission on Doctrinal Review, must be limited to the question of whether proper procedures were followed by that commission in reaching its decision. In no known previous decision has the Commission opined that a book review critical of an author can be considered a complaint and the author the accused, thereby invoking the process provided by Bylaw 2.27 (2004 *Handbook* Bylaw Section 2.14).

Therefore, because the statement in the question is not a correct statement and because the question that follows is dependent upon verification that the statement in question is a correct statement, the Commission concludes that a response to the second part of the question is not required. However, the Commission nonetheless calls attention to Bylaw 8-01 (2004 *Handbook* Bylaw 1.10.2) and its statement of the purpose and objectives of the Synod’s dispute resolution process. A book review by a member of

the Synod that criticizes the doctrine contained in a publication of another member of the Synod is the kind of dispute for which the dispute resolution process has been established.

Adopted Oct. 6–8, 2004

Effect of Congregational Vote on Implementation of 2004 Resolution 7-21 (04-2409)

A pastor of the Synod in a letter to the Secretary of the Synod dated August 17, 2004, asked regarding the consequences if the congregations of the Synod fail to approve Resolution 7-21 of the 2004 convention by a two-thirds majority vote.

Question: If proposed Constitutional Amendment A entitled "To Amend Constitution Regarding Officer and Board Responsibilities" as set forth in Resolution 7-21 of the 2004 convention of the Synod is not passed by a 2/3 majority vote, will the implementation or validity of any other resolutions or changes to the bylaws passed at the 2004 convention be affected?

Opinion: It is the opinion of the Commission on Constitutional Matters that the proposed amendment to Article XI F 2 states more clearly what the existing language already means. Any amendment to the Bylaws which is consistent with the former Article XI F 2 would similarly be consistent with proposed Article XI F 2. As such, the answer to the question presented is that if the proposed Constitutional Amendment A entitled "To Amend Constitution Regarding Officer and Board Responsibilities" as set forth in Resolution 7-21 of the 2004 convention of the Synod is not passed by a two-thirds majority vote, it would not effect the implementation or validity of any other resolutions or changes to the bylaws passed at the 2004 convention.

Bylaw 14.01 (Bylaw 7.1 in the 2004 revised *Handbook*) provides that amendments may be made to the Bylaws by the Synod in convention provided the amendments are not contrary to the Constitution. Before presentation to the convention, the Commission on Constitutional Matters is also required to review the proposed amendment to the Constitution or other existing bylaws.

Resolution 7-21 proposes to change Article XI F 2 of the Constitution as follows:

2. The Board of Directors is the legal representative of the Synod. It is the custodian of all the property of the Synod, directly or by its delegation of such authority to an agency of the Synod. It shall exercise supervision over all the property and business affairs of the Synod ~~except in those areas where it has delegated such authority to an agency of the Synod~~ to the extent management authority and duties have been delegated by the Constitution, Bylaws or resolutions of the Synod to other officers and agencies of the Synod or where the voting members of the Synod through the adoption of Bylaws or by other convention action have assigned specific areas of responsibility to separate corporate or trust entities, and as to those the Board of Directors shall have general oversight responsibility as set forth in the Bylaws.

The responsibilities of the Board of Directors under Article XI F 2 have been interpreted on a number of occasions in prior opinions of the Commission on Constitutional Matters. The language of the proposed amendment states more clearly what the existing language has been interpreted to mean. For example, in Opinion 03-2358 the Commission opined that the authority of the Board of Directors was limited by the existing language in circumstances where the Synod has delegated authority or duties to another officer or agency of the Synod. After reviewing the Board's authority under both Article XI F 2 and Bylaw 3.183 (to be renumbered Bylaw 3.3.5 and its subparts in the 2004 revised *Handbook*), the opinion found that the

Synod had delegated certain authority to the Board for Higher Education, and that the Board of Directors' authority was thus limited. The opinion states:

While the Synod could have adopted for its governance a corporate model, with power concentrated in a board of directors, subject only to election or reelection every three years, the Synod instead chose as its church governance structure a system which retains ultimate authority to the membership in convention, very much consistent with the pre-incorporation structure of the Synod. In fulfilling its function as "church," the Synod has determined in convention to establish boards and commissions as the best way to carry out various church purposes and functions, as it reserved the right to do in Article VII of the Articles of Incorporation. Bylaw 3.01 indicates that the Synod in convention "establishes general synodical positions and policies, provides overall program direction and priorities, and evaluates all such positions, programs, policies, directions, and priorities in order to provide responsible service for and on behalf of its members." The Synod has chosen to allocate duties, powers, and responsibilities among various officers, boards (including the Board of Directors of the Synod), and commissions, holding each ultimately responsible to the Synod itself through the synodical conventions.

Reference may also be made to Opinion 03-2357, affirming the same interpretation with respect to authority regarding KFUE delegated by the Synod to the Board for Communication Services and Opinion 03-2359 with respect to authority to determine the manner and level of circulation of *Reporter*. Opinion 03-2358 also reviewed the earlier opinions of the Commission recognizing the limitations of the authority of the Board of Directors under the existing language of Article XI F 2, including a series of opinions dating back to 1976 involving implementation of New Orleans Resolution 6-31, (Ag. 591, Ag. 591A-B, Ag. 927, Ag. 9-27A, Ag. 934, and Ag. 934B-J) as well as a 1998 opinion which reviewed the effort of the Board of Directors to move the video studio of the Synod from the Board for Communication Services to General Services, Opinion Ag. 2094 (May 22, 1998).

Adopted Oct. 6–8, 2004

Supervision of Uncertified Church Workers (04-2415)

A district president in a December 2, 2004 letter to the Commission submitted a series of 15 questions regarding the responsibility for supervision of non-rostered church workers (including an "uncertified" pastor) employed by LCMS congregations.

- Question 1: With regard to Article XIII, under whose authority does an uncertified worker in LCMS congregations fall? If a local congregation has an uncertified worker who acts contrary to "the confession laid down in Article II and to the conditions of membership laid down in Article VI," is the local pastor as a member of Synod responsible for the supervision of the uncertified church worker in doctrine and practice? Is the congregation as a member of Synod—and their Voters Assembly in specific—responsible for the supervision of the uncertified church worker in doctrine and practice? Is this a shared responsibility between the pastor and congregation (Voter's Assembly) as members of Synod?
- Question 2: If the uncertified church worker is a pastor who acts contrary to "the confession laid down in Article II and to the conditions of membership laid down in Article VI," is the local congregation as a member of Synod—and their Voters Assembly in specific—responsible for his supervision in doctrine and practice?
- Question 3: If a congregation's pastor refuses to remove an uncertified church worker who acts contrary to "the confession laid down in Article II and to the conditions of membership laid down in

Article VI," is the District responsible for assuring the removal of the uncertified church worker as it is with certified workers in the LCMS in Article XIII.3? If the pastor refuses to "deal with him in accordance with the Word of God," is the pastor open to expulsion from the Synod himself or does he forfeit his membership in Synod?

- Question 4: If the local congregation refuses to remove an uncertified church worker—including its uncertified pastor—who acts contrary "the confession laid down in Article II and to the conditions of membership laid down in Article VI," is the District responsible for assuring the removal of the uncertified church worker as it is with regard to certified workers in the LCMS in Article XIII.3? If the congregation refuses to "deal with him in accordance with the Word of God," does the congregation forfeit its membership in the LCMS in accordance with Article XIII?
- Question 5: Is there a difference with regard to "offensive conduct?" If a local congregation has an uncertified worker who persists in "offensive conduct," is the pastor responsible for the supervision of his or her conduct? Is the congregation—and their Voters Assembly in specific—responsible for the supervision of his or her conduct? Is this a shared responsibility between the pastor and congregation as members of Synod?
- Question 6: If a local pastor refuses to remove an uncertified church worker who persists in "offensive conduct," is the District responsible for assuring the removal of the uncertified church worker? If the pastor refuses to "deal with him in accordance with the Word of God," is the pastor open to expulsion for the Synod or does he forfeit his membership in Synod?
- Question 7: If the local congregation refuses to remove an uncertified church worker—including its uncertified pastor—who persists in "offensive conduct," is the District responsible for assuring the removal of the uncertified church worker? If the congregation refuses to "deal with him in accordance with the Word of God," does the congregation forfeit its membership in the LCMS in accordance with Article XIII?
- Question 8: If the congregation has "called" an uncertified church worker—including its pastor—does this change the situation? If the local congregation refuses to remove its "called" uncertified church worker—including its "called" uncertified pastor—who persists in "offensive conduct," is the District responsible for assuring the removal of the "called" uncertified church worker? If the congregation refuses to "deal with him in accordance with the Word of God," does the congregation forfeit its membership in the LCMS in accordance with Article XIII?
- Question 9: Most congregations have a clause in their Constitution and Bylaws which allow for the removal of an ordained or commissioned church worker for one of the following reasons: persistent adherence to false doctrine, scandalous life, willful neglect, or inability to perform the duties of the office. If it is not specifically stated, does the same process and reasons for "removal from office" follow for church workers who are not certified by the LCMS?
- Question 10: If a congregation has an uncertified church worker in its employ who persists in adherence to false doctrine, lives a scandalous life, willfully neglects his or her work, or is unable to perform the duties of his or her office, is the local pastor responsible for supervision of this worker in doctrine and practice? Is the congregation—and its Voters Assembly in specific—responsible for supervision of this worker in doctrine and practice? Is this a shared responsibility between the pastor and congregation as members of Synod?
- Question 11: If the uncertified church worker is a pastor who persists in adherence to false doctrine, lives a scandalous life, willfully neglects his work, or is unable to perform the duties of his

office, is the local congregation—and its Voters Assembly in specific—responsible for his supervision in doctrine and practice?

Question 12: If a local pastor refuses to remove an uncertified church worker who persists in adherence to false doctrine, lives a scandalous life, willfully neglects his or her work, or is unable to perform the duties of his or her office, is the District responsible for assuring the removal of the uncertified church worker? If the pastor refuses to "deal with him in accordance with the Word of God," is the pastor open to expulsion from the Synod himself or does he forfeit his membership in Synod?

Question 13: If a local congregation refuses to remove an uncertified church worker—including its pastor—who persists in adherence to false doctrine, lives a scandalous life, willfully neglects his or her work, or is unable to perform the duties of his or her office, is the District responsible for assuring the removal of the uncertified church worker? If the congregation—and its Voters Assembly in specific—refuses to "deal with him in accordance with the Word of God," does the congregation forfeit its membership in the LCMS in accordance with Article XIII?

Question 14: If the congregation has "called" an uncertified church worker—including its pastor—does this change the situation? If the local congregation refuses to remove its "called" uncertified church worker—including its "called" uncertified pastor—who persists in "offensive conduct," is the District responsible for assuring the removal of the "called" uncertified church worker? If the congregation refuses to "deal with him in accordance with the Word of God," does the congregation forfeit its membership in the LCMS in accordance with Article XIII?

Question 15: To what extent does the charge of "offensive conduct" on the part of a member of Synod (church worker or congregation) in Article XIII apply to uncertified workers in local congregations—even if the phrase is not included specifically in the Constitution and Bylaws of the local congregation? Because the congregation is a member of Synod, does this cause of removal from office apply to congregations and church workers, both certified and uncertified?

Opinion: Due to the fact that the questions asked are very similar and closely related, each will not be answered separately. This opinion will address the 15 questions as a unit.

The Commission on Constitutional Matters is charged with the interpretation of the Synod's Constitution, Bylaws, and resolutions (Bylaw 3.9.2.2 of the 2004 *Handbook*). Some of the questions asked are not addressed in Synod's Constitution and Bylaws and therefore no answer or opinion can be given. Some of the questions asked pertain to the relationship of a pastor to his congregation, the supervisory authority and responsibility of each, and the supervision of other offices in a congregation and are theological matters that should be addressed to the Commission on Theology and Church Relations. Still other questions can only be answered by the constitution and bylaws of the given congregation and the specific contract between the church worker and the congregation.

In response to the questions to which the Commission can respond, it calls attention, first of all, to Bylaws 2.5.2 and 2.5.4 (p. 52 of 2004 *Handbook*),

Congregations that are members of the Synod shall call and be served only by ordained ministers who have been admitted to their respective ministries in accordance with the rules and regulations set forth in these Bylaws and have thereby become members of the Synod.

Congregations that violate these requirements and persist in such violation shall after due admonition forfeit their membership in the Synod.

References in the questions, therefore, to an “uncertified church worker” who is a “pastor” speak of a situation that is, with one known exception in our Synod, contrary to the Bylaws of our Synod. Member congregations (as well as individual members) of the Synod obligate and commit themselves to act in accordance with the Constitution, Bylaws, and resolutions of the Synod:

Congregations together establish the requirements of membership in the Synod (Constitution, Art. VI). In joining the Synod, congregations and other members obligate themselves to fulfill such requirements and to diligently and earnestly promote the purposes of the Synod by word and deed. Members agree to uphold the confessional position of the Synod (Constitution, Art. II) and to assist in carrying out the objectives of the Synod (Constitution, Art. III), which are objectives of the members themselves. Thus, while congregations of the Synod are self-governing (Constitutional, Art. VII), they, and also individual members, commit themselves as members of the Synod to act in accordance with the Constitution and Bylaws of the Synod 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 1.3.4, 2004 *Handbook*, pp. 24–25)

The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod. The Synod expects every member congregation of the Synod 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. The Synod being an advisory body, recognizes the right of a 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. (Bylaws 1.7.1 and 1.7.2, 2004 *Handbook*, p. 33)

If, therefore, a congregation violates its agreements with the Synod, or if its actions or failures to act demonstrate disagreement with the Scriptures and the Confessions (Constitution Art. II), or if it is guilty of offensive conduct (Constitution Art. VI), it is in danger of forfeiture of its membership in the Synod and is subject to discipline and expulsion from membership (Constitution Art. XIII) under the provisions of Bylaw section 2.14 (2004 *Handbook*, pp. 62–71). In such case, the congregation should be advised to give attention to the matter for the sake of its membership in the Synod.

In further response to the series of questions, the Commission notes that any layperson or non-rostered worker who is “called,” contracted, or otherwise employed by a congregation is solely under the authority and supervision of the congregation and is not subject to any supervision or protection by the Synod. Supervision by the congregation is provided according to its own constitution and bylaws in a manner that is in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod. Although matters described in Article XIII of the Synod’s Constitution may be at issue, it is the congregation that is responsible. The Synod cannot remove or assure the removal of a non-rostered worker from a congregation, whether for the provisions set forth in Article XIII of the Synod’s Constitution or for any provisions set forth in a constitution and bylaws of a congregation.

What, then, is the role of the district president under these circumstances? While the district has no direct power or responsibility to deal with the employment status of a non-rostered employee of a congregation, the district president does have the responsibility as ecclesiastical supervisor of the member congregation

to make certain that said congregation acts in a manner that is consistent with the Constitution, Bylaws, and resolutions of the Synod and, if such is not the case, to take such action as may be required.

Adopted March 17, 2005

Implementation of Dispute Resolution Panel Decision by a Congregation (05-2417)

In a January 11, 2004 letter, a member congregation of the Synod which has been involved in a dispute resolution process submitted a series of questions related to the congregation's responsibilities as regards the decisions of the Dispute Resolution Panel and the congregation's response to the panel's decisions. The congregation continues to disagree with the decision of the Dispute Resolution Panel and has chosen not to implement the panel's decision. The congregation asks generally if its decision not to implement the panel's recommendations is a violation of its membership in The Lutheran Church—Missouri Synod, specifically asking the Commission to address the following questions.

Question 1: Why can [a congregation] not interpret [Bylaw] 8.11 (now Bylaw 1.10.9) to mean that she has a right to self-governance and that the action of a Dispute Resolution Panel is to “advise,” not issue a “binding decision”?

Opinion: The covenants which bind the members of the Synod in their “walking together” are not subject to revision or reinterpretation by individual members. Bylaw 1.3.4 (2004 *Handbook*, pp. 24–25) provides, in part:

... 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 Constitution and Bylaws of the Synod under which they have agreed to live and work together and which the congregations alone have the authority to adopt or amend through conventions.

Membership in the Synod is voluntary. While the Synod cannot legislate or control the congregation's internal governance, it has been given the authority by the congregations of the Synod to review the actions of a congregation in light of the Holy Scriptures, and may call upon a congregation to review and revise its actions if found in violation of that standard. While the Synod recognizes that it may not force compliance, it has retained the right to take action with respect to a congregation that fails to accept a Dispute Resolution Panel decision as the Synod deems appropriate.

Question 2: Where does Bylaw 8.11 (now Bylaw 1.10.9) state that a decision not to implement Dispute Resolution Panel recommendations means that a congregation violates her voluntary association with the Synod?

Opinion: The conditions of membership are provided in Article VI of the Constitution, and the relationship of the Synod to member congregations is described in paragraph 1 of Article VII 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.

This relationship is further reflected in the bylaw to which reference is made, now renumbered as Bylaw 1.10.9 in the 2004 *Handbook* (p. 43):

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.

Bylaw 1.10.7.4 (d) (2004 *Handbook*, p. 42) states: "Subject to request for review or appeal (contemplated or pending), the final decision of a Dispute Resolution Panel shall (1) be binding upon the parties to that dispute;..." While a congregation retains its right of self-governance, its rejection of a Dispute Resolution Panel decision violates the covenants reflected in the dispute resolution process itself. Whether that action of the congregation warrants further action by the Synod is left to the discretion of the district as reflected in Bylaw 1.10.9.

Question 3: If Bylaw 8.11 (now Bylaw 1.10.9) does not allow congregations to disagree with the recommendations of a Dispute Resolution Panel without threat to such congregations' membership in the Synod, what is the meaning and purpose of Bylaw 8.11?

Opinion: Bylaw 1.10.9 reaffirms the independence of the individual congregation. The Synod in its 2001 convention made that independence even more clear by adding to Article VII of the Constitution a second provision: "2. Membership of a congregation in the Synod gives the Synod no equity in the property of the congregation." Should a congregation determine that it wishes to terminate its voluntary association with the Synod, or should the Synod, through appropriate process, determine that the congregation no longer meets the qualifications for membership, the congregation's independence and property rights are retained, even though the relationship is severed. The language of Bylaw 1.10.9 reflects the range of disagreements which can develop despite our attempts to walk together, and gives discretion to the districts to evaluate a congregation's actions in rejecting a Dispute Resolution Panel decision, and to consider whether such rejection justifies action to address and heal the breach, up to and including an action to terminate membership.

This issue is not new to this Commission's consideration. For example, in a 1993 opinion involving questions arising out of an action for excommunication, the Commission previously wrote (Ag. 1972):

...it should be noted that while the congregation is autonomous, by its membership in the Synod it has covenanted with others in regard to doctrine and practice. It is pledged by its membership in the Synod to honor and uphold the doctrinal position and the resolutions of the Synod. It is for this reason that Bylaw 8.11 states that the "...Dispute Resolution Panel may review the decision of the congregation according to the Holy Scripture and shall either uphold the action of the congregation or advise the congregation to review and revise its decision." In other words, if it determines that the basis for the action was contrary to Holy Scripture, it may advise the congregation to take action as indicated. Because it is autonomous, the congregation need not do so. However, if it does not, the remainder of the bylaw applies as it states, "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."

This issue was also addressed in a 1994 opinion inquiring as to a congregation's right to discharge a pastor. The Commission opined in Ag. 1980:

Congregational autonomy does include the authority of a congregation to dismiss its pastor for any reason. However, as noted previously, if it wishes to remain a member of the Synod, that autonomy is limited. The Commission on Theology and Church Relations has spoken to this matter in response to a question addressed to it prior to the 1992 synodical convention. The Commission on Constitutional Matters concurs with that response which is found on page 67 of the 1992 *Convention Workbook*.

Question 4: The last sentence of Bylaw 8.11 (now Bylaw 1.10.9) seems to give [a] District a broad brush to implement its own interpretation of bylaws and consequential punishments for congregations who do not implement Dispute Resolution Panel recommendations. Could [a] District suspend [the congregation] for not accepting the interpreted (sic) as binding recommendations of a Dispute Resolution Panel? Could [the congregation] expect that expulsion to stand as an "appropriate" response, according to Bylaw 8.11?

Opinion: The process of suspension under Bylaw 2.13.5ff (formerly Bylaw 2.25) occurs as a result of an action to terminate membership. The process of expulsion previously contained in Bylaw 2.27 was replaced by action of the 2004 convention, and the applicable section of the *Handbook* now is Bylaw section 2.14. It is the responsibility of the district president and not the Commission on Constitutional Matters to investigate and evaluate facts that could lead to the expulsion of a member, and to determine whether to initiate that process to do so. The Commission is not a fact-finding body and is not authorized to answer the question as posed.

Question 5: On the basis of Bylaw 8.11 (now Bylaw 1.10.9), does [a] District have to take any action other than to notify other District congregations that they are not bound by [the congregation's] decision?

Opinion: As suggested above, the response of the district to the situation is left to its discretion. At the very least, it would be anticipated that the district would convey information to other congregations potentially affected by the subject congregation's actions, to inform them of their right not to respect the subject congregation's actions.

Question 6: [Our congregation] has made a good faith request for a transfer to [another] district, but our compliance with Bylaw 8.11 (now Bylaw 1.10.9) and the binding interpretation of Dispute Resolution Panel recommendations have been cited as the reasons not to consider our request. Can the CCM explain, on the basis of Bylaw 8.11, why [the congregation] should not have her request considered and honored by the district board of directors?

Opinion: Bylaw 4.1.1.4 (formerly Bylaw 4.03 d) allows transfers between districts upon the mutual approval of the respective district boards of directors. The Bylaws do not provide for the review of districts' decisions by the Commission on Constitutional Matters.

Adopted March 17, 2005

Dissent from Doctrinal Resolutions (05-2418)

A pastor of the Synod, in a February 14, 2005 e-mailed letter, quoted a portion of the second resolve of 2004 convention Resolution 3-08A, "To Affirm the Conclusions of the 1994 CTCR Report: *The Service of Women in Congregational and Synodical Offices*": "That the Synod affirm that women on the basis of

the clear teaching of Scripture...may serve in humanly established offices in the church [i.e. president, vp, elder].” He then stated that “the constitutions of many of our churches, once approved by the CCM, forbid or limit the service of women from the same offices here referenced, and do so on the basis of Scripture as well (citing arguments from the Order of Creation vs. the ‘humanly established argument of 8-01A)’” and asked the following series of questions:

Question: How do we reconcile our congregations and our Synod’s now official position from completely opposing positions on the role of women when they both appeal to Scripture as the basis and authority for their positions? How can a congregation hold to a constitution that is clearly now opposed to an official decision of the convention of the Synod (i.e., it forbids what the Synod declares scriptural and right)? Is it enough to offer a “Sample Paragraph for Congregational Constitutions” that now overturns what many of our churches have confessed, failing to recognize that many of them will still hold to the opposing position and reject this other position as contrary to Scripture?

Opinion: It should be noted that the introductory paragraph to the above questions contains several inaccuracies. First, its partial quotation from the convention resolution’s second resolve misleads when it applies a statement (“women on the basis of the clear teaching of Scripture”) to a later phrase in the resolution (“may serve in humanly established offices in the church...”) when the statement was in fact applied in the resolution to an earlier phrase (“may not serve in the office of pastor...”). Second, the statement, “constitutions of many of our churches, once approved by the CCM,” is not accurate in that the CCM does not approve the constitutions of congregations. Such approval is the responsibility of district boards of directors with the assistance of district constitution committees. Finally, the paragraph misidentifies Resolution 3-08A, referring to it as “8-01A.”

It should also be noted that the questions that have been asked appear to indicate a misunderstanding of the convention action by assuming that the decision of the convention overturns the constitutions of those congregations that do not make the changes allowed by the convention action. In fact, Resolution 3-08A only permits and does not require congregations to allow women to serve in humanly established offices.

The questions asked do, however, raise an appropriate concern, i.e., whether the convention resolution is in accordance with the Word of God. If a congregation or other member of the Synod believes that a decision of the Synod is not in accordance with the Word of God, opportunity exists within the structure of the Synod to express formal dissent to decisions of conventions. That process is described in Bylaw 1.8.2 (2004 *Handbook*) as follows:

Dissent from doctrinal resolutions and statements is to be expressed first within the fellowship of peers and 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.

Adopted March 17, 2005

Explanation of the Term, “Own Personal Knowledge” (05-2420)

In a letter dated February 16, 2005, a pastor of the Synod asked a series of questions in his “on-going quest to understand Resolution 8-01A as passed by [the] synodical convention in 2004.” His questions pertained to the definition provided for the phrase “own personal knowledge” by Bylaw 2.14.2 (I) (2004 *Handbook*, p. 63).

Question 1: If I were to witness a brother pastor participating in a syncretistic or unionistic worship service on television, or on a video recording of such service, does this fit the definition of “own personal knowledge”? Please provide explanation with your answer.

Question 2: In order to charge a brother pastor with adultery, does seeing him leave a motel room with a known prostitute fit the definition of “own personal knowledge,” or do I need to be in the room and witness sexual activity first hand before I can claim a “personal witness to the alleged violation?” Please provide explanation with your answer.

Question 3: Could you please articulate a clear and definitive definition of: “A personal witness to the alleged violation”?

Opinion: The questions posed relating to what one has seen on television and to what one has personally witnessed (a pastor leaving a motel room with an inappropriate companion) appear to be based upon a misunderstanding of Resolution 8-01A and Bylaw 2.26, renumbered 2.14 in the 2004 *Handbook*). The term “own personal knowledge” appears only in the context of a district president’s responsibility as one having supervision to, when appropriate, commence a proceeding to expel a congregation or individual from membership in the Synod (Bylaws 2.14.4, 2.15.4, and 2.17.4). The bylaws in question make clear that such an action can be based upon information contained either in a written complaint (accusation) or upon (facts) evidence witnessed by the district president himself.

Bylaw 2.14 (l) further defines “own personal knowledge” as not including “second-hand or hearsay information.” “Own personal knowledge” can therefore constitute either direct or circumstantial evidence. Facts can be proved by either direct or circumstantial evidence or by a combination of both.

Adopted March 17, 2005

Use of *Robert’s Rules of Order* (05-2421)

In a March 2, 2005 e-mailed letter an LCMS pastor requested an answer to two questions with the following introductory information:

In the November 2004 meeting of the Board of Directors, the Board voted 5 to 9 not to “seek legal remedy through the courts of the State of Missouri to clarify its authority according to the Articles of Incorporation, Constitution, and Bylaws of The Lutheran Church—Missouri Synod.”

The minutes of the Board which are posted on the Synod’s Web site say: “After lengthy discussion, the chair called the question and the motion failed (Yes: 5; No: 9).”

Since the minutes of the Board do not reflect who on the Board voted to oppose this motion and who supported it, it is impossible to ascertain who the five members were who were in violation of 1 Corinthians 6. It is also impossible to know how to hold individuals accountable for their actions on the Board when their individual actions are not reported to the Synod.

In light of the above information, the pastor asked for opinions in response to the following two questions.

Question 1: Is it proper for any board of the Synod to use *Robert’s Rules of Order* in order to veil an action that is contrary to Holy Scriptures?

Opinion: The function of the Commission on Constitutional Matters is to “interpret the Synod’s Constitution, Bylaws, and resolutions upon the written request of a member...” (Bylaw 3.9.2.2). Since this question requests an opinion regarding the content of *Robert’s Rules of Order*, the Commission chooses not to respond, since such matter is not included in its functions.

Question 2: If this motion had passed, would it have been in violation of 1 Corinthians 6?

Opinion: The Commission is not responsible for the interpretation of passages of Holy Scripture. Such questions should be addressed to the Synod’s Commission on Theology and Church Relations. See also Opinion #1 above.

Adopted March 17, 2005

Doctrinal Resolutions and Statements (04-2416)

In a December 14, 2004 letter, the Executive Director of the Commission on Theology and Church Relations (CTCR), acting on behalf of his Commission, forwarded four overtures (7-93, 7-94, 7-95, and 7-96) that had been submitted to the 2004 convention of the Synod and placed by a floor committee into Omnibus Resolution A for referral to the CTCR. In his letter he stated that in the opinion of the CTCR, “the concerns raised in the overtures would be more properly considered by the Commission on Constitutional Matters.”

The Commission noted that the omnibus resolution containing the four overtures had not been adopted by the convention, thereby relieving the Commission of bylaw responsibility to provide an opinion. However, the Commission did discuss pertinent background materials and resources and agreed that the concerns raised have value and beg further response from a future convention of the Synod. The Secretary was instructed to respond by letter to the CTCR, the letter to include a copy of this paragraph of the minutes. A copy of the letter and copies of the convention overtures are also to be forwarded to the President of the Synod, with copies of the letter also to be provided to the parties who originally submitted the overtures to the convention.

Adopted April 18–19, 2005

Interpretation of Convention Resolution 2-08A (05-2419)

In a February 15, 2005 letter, the pastors of two circuits of a district of the Synod asked a series of questions regarding LCMS 2004 Resolution 2-08A, “To Commend Preaching and Teaching Creation.” After lengthy discussion, the Commission responded to the questions as follows, recommending that the questions also be re-directed to the Commission on Theology and Church Relations without reference to LCMS 2004 Resolution 2-08A.

Question 1: Does LCMS 2004 Resolution 2-08A equate taxonomic *species* with the created *kinds* of Genesis, chapter 1?

Opinion: Since the term “taxonomic species” does not occur in Resolution 2-08A, this question as asked is outside of the Commission’s responsibility to interpret the resolutions of the Synod (Bylaw 3.9.2.2).

Question 2: Does this resolution declare fixity of species to be biblical revelation and doctrine? If so, how is the confirmed appearance of new species to be understood and explained in agreement with Scripture?

Opinion: Since the term “fixity of species” does not occur in Resolution 2-08A, this question as asked is also outside of the Commission’s responsibility to interpret the resolutions of the Synod.

Question 3: Does this resolution bind the educational institutions and agencies of The Lutheran Church—Missouri Synod and the Synod’s members to use of the equivocal terms *microevolution* and *macroevolution*?

Opinion: This resolution does not bind the Synod’s educational institutions, that is, its colleges, universities, and seminaries, to the use of the terms “microevolution” and “macroevolution” (“agencies of the Synod” does not include early childhood programs, elementary schools, and high schools unless they are directly associated with one of the Synod’s colleges, universities, or seminaries—see paragraph (a) of Bylaw 1.2.1). The resolution does require that the Synod’s educational institutions “properly distinguish between micro and macro evolution and affirm the scriptural revelation that God has created all species ‘according to their kinds.’”

Question 4: If the answers to the foregoing questions are negative, how may the Synod’s members and educational institutions and agencies rightly judge the faithfulness of their teaching in relation to this resolution? How should this resolution be interpreted and applied?

Opinion: Faithfulness of teaching and application of resolutions are matters of ecclesiastical supervision in our Synod and are the responsibility of its President and district presidents (Constitution Art. XI B 4, XII 7 and 9 a; Bylaws 1.2.1 (f), 3.3.1.1, 3.3.1.1.1, 3.3.1.2 (a), 4.4.2, 4.4.5, *et al.*).

Question 5: How might this resolution be clarified and improved by the Synod in future conventions?

Opinion: Overtures may be submitted to conventions of the Synod to offer clarification or improvement for resolutions previously adopted by the Synod (Bylaw 3.1.6.2). It is not the responsibility of the Commission to suggest such actions but to “examine all reports and overtures to the Synod...to determine their agreement in content and language with the Constitution and Bylaws of the Synod (Bylaw 3.9.2.2.1).

Adopted April 18–19, 2005

Clarification of Resolution 8-01A (05-2422)

In a letter dated March 14, 2005, written on behalf of the pastors of two visitation circuits, a pastor of the Synod asked clarification regarding specific issues associated with 2004 convention Resolution 8-01A, “To Amend Bylaws on Ecclesiastical Supervision and Dispute Resolution.” Quoting from Bylaws 2.14.3 (c) and 2.14.7.7 of the convention resolution (2004 *Handbook*, pp. 65 and 68) and confessional writings, he asked the following questions.

Question 1: “If the matter is ‘public’ as set forth in our Confessions, may we testify publicly concerning [the accused] without question of slander, injustice, or false witness?”

Opinion: The question as asked does not request an opinion regarding the right or duty of members of the Synod to respond publicly to public sin. Concerns regarding when and how a member can or should respond to perceived public sin should be addressed to the Commission on Theology and Church Relations.

The question posed assumes that the person who wishes to speak out has become an accuser under Bylaw section 2.14. Should a member of the Synod choose to initiate the Bylaw section 2.14 process, that person

must abide by the provisions of that process, including the prohibition of publicity under Bylaw 2.14.7.7.(g). In an earlier opinion (01-2243), the Commission offered definition of such publicity:

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

Members of the Synod walk together according to the covenants that they have mutually agreed upon by such membership, as delineated in the Synod's Constitution, Bylaws, and resolutions. One of those covenants is provided in Bylaw 2.14.3 (c), which details how members of the Synod have agreed to respond "even if the alleged violation of Article XIII of the Constitution is considered to be 'public.'" In such case Matthew 18:15 is still followed.

Question 2: "May this testimony be immediate in response to public sin?"

Opinion: See the answer to question 1 above.

Question 3: "If the matter is 'public,' representing a false doctrine or practice which is affecting congregation(s) whose care we have been charged with, are we, the called pastors of those congregations, prevented from warning our flocks and sister congregations that are being impacted by said false doctrine or practice if we are also party to on-going dispute resolution procedures set forth in Bylaw [section 2.14]?"

Opinion: If a false doctrine or practice is public, a pastor is not prevented (while observing principles of Christian love) from informing his own congregation(s) regarding true doctrine or practice when there is danger that the flock will be harmed by the falsehood. This remains true (and is not to be regarded as "publicity") also if he becomes a party to ongoing dispute resolution procedures. However, he may not assume this responsibility for other congregations that are not under his care or for the general public (which would constitute the "publicity" that the bylaw prohibits).

Adopted April 18–19, 2005

Approval of Congregation Constitutions by District Boards of Directors (05-2424)

In a letter dated May 16, 2005, the secretary of a district, writing on behalf of his district's board of directors, submitted questions regarding matters pertaining to the approval process of congregations' constitutions and bylaws involving his district's constitution committee and board of directors.

Question 1: A congregation of our district has sought approval of bylaw provisions to its constitution that include a statement that prohibits women from serving "as a teacher of an adult Bible class containing men." Our district's constitution committee referred this back to the congregation under the opinion that this statement would not be consistent with the policy or theology of the Synod. Is the inclusion of this phrase consistent with the policy of the Synod regarding congregational constitutions? If not, does this provide sufficient basis for the board of directors to decline approval of the proposed revision?

Opinion: In an April 29, 1983 response to questions from a district constitution committee regarding a “debatable constitution” before the committee, the Commission on Constitutional Matters offered the following opinion regarding an article in that congregation’s constitution that was very similar to the bylaw statement currently in question:

If this article implies that women can teach only women and children, it is not acceptable. The Commission can find no evidence that the Synod takes such a restrictive position toward the role of women in the church. Therefore, the Commission on Constitutional Matters concludes that the position taken in the constitution under consideration does not agree with the practice of the Synod and goes beyond its present confessional stance, and is therefore unacceptable (Ag. 1625C).

The Commission reaffirms this opinion and suggests that if any party believes that there has been a change in the teaching or practice of the Synod relevant to this question since it was provided, such theological questions should be addressed to the Commission on Theology and Church Relations.

Question 2: In a matter related to the first question, the above-mentioned phrase is modeled on bylaws of another congregation in the district that were approved at least 80 years ago. This congregation has also submitted a revision of its constitution and bylaws. In the case of proposed changes to a constitution and/or bylaws, do the entire constitution and bylaws come under review again, or only those portions that include changes from the previous edition?

Opinion: It is reasonable and in keeping with earlier opinions of the Commission on Constitutional Matters to request and review entire documents, constitutions and bylaws, when changes are submitted to district constitution committees. A May 17, 2001 opinion (01-2222) stated, “It is the primary interest of the committee, therefore, to take care that nothing in the documents they are examining is contrary to [Holy Scripture, the Confessions, and the teachings and practices of the Synod].” Again (according to June 10, 1995 Opinion Ag. 2008), “if the constitution and bylaws of a congregation included something which was not in keeping with the Constitution, Bylaws, or resolutions of the Synod, even though that constitution and bylaws had been previously approved by a district constitution committee, if something was now identified which was contrary to the Constitution, Bylaws, and resolutions of the Synod, the congregation could be required to make necessary changes to bring its documents into conformity with those synodical documents and positions.” In its January 9-10, 1987 Opinion Ag. 1796A, the Commission also stated, “when error is discovered, it is contrary to all logic and Christian expectation to suggest that it not be corrected.”

Given these prior statements of the Commission, not only should the complete documents of a congregation come under review when amendments are made, but any provision previously approved that is not in agreement with the doctrine and practice of the Synod today should be given attention by a constitution committee.

Adopted June 30, 2005

**Authority of District Board of Directors
to Instruct District Nominations Process (05-2425)**

In a letter dated May 17, 2005, a pastor of the Synod included a copy of a document adopted by his district’s board of directors pertaining to the district’s nominations and elections process. He questioned the right of the board to request specific information from nominees and to instruct the nominations and elections process to act on the basis of the receipt of that information. The mailing of the board of

directors included the statement: “If the nominee does not provide all the information requested they (sic) will not be placed on the ballot.”

Question: Does the district board of directors have the authority to place restrictions on who may be placed on the ballot for the district convention that are not contained in the synodical or district constitutions and bylaws?

Opinion: Bylaw 4.2.1 (a) states: “The conventions of the districts shall be governed by the bylaws adopted by the Synod for its conventions, insofar as these may be applicable.” Bylaw 4.2.1 (b) also states: “Each district may adopt other regulations, provided these are not contrary to the Constitution and Bylaws of the Synod.” Further, Bylaw 4.7.1 states: “Each district may adopt regulations for the nomination and election of its president, the nomination, election, and ranking of its vice-presidents, and the succession in case of vacancies, as long as these provisions do not conflict with the Bylaws of the Synod.” Therefore, districts enjoy some freedom in conducting nominations and elections processes, so long as additional provisions do not conflict with the Bylaws of the Synod.

The responsibilities of a district board of directors are provided by the Constitution and Bylaws of the Synod (Constitution, Art. XII; Bylaws section 4.4; *et al.*) and the constitution and bylaws of the district. The Constitution and Bylaws of the Synod have no provision for the direct involvement of a board of directors, district or Synod, in a convention nominations process. The Synod’s Bylaws provide for nominating committees on the Synod and district levels (Bylaws 3.12.3ff. and 4.7.2), which have the responsibility for soliciting descriptions of criteria for qualified candidates (par. (b) of Bylaw 3.12.4), names (par. (c) of Bylaw 3.12.3.4), qualifications of each candidate (par. (e) of Bylaw 3.12.3.4), and pertinent information concerning each candidate (par. (c) of Bylaw 3.12.3.6) for the consideration of the committees. There is no restriction on what information a nominations committee may request. From the list of candidates, the nominations committee nominates persons that it considers appropriate on the basis of the information received.

Therefore, in answer to the question as asked, a district board of directors, like the Board of Directors of the Synod, does not have authority to place restrictions on the ballot for a district convention.

Adopted June 30, 2005

Limits for Participation in Dispute Resolution Process (05-2427)

In a May 26, 2005 letter a district president submitted questions regarding access to the Synod’s dispute resolution process by laypersons as provided by the five categories of allowable parties defined in Bylaw 1.10.2. He indicated in his letter that his questions have specific reference to a layperson elected to his district’s nominating committee by his district’s convention according to Synod Bylaw 4.7.2.

Question 1: May an individual not defined in (1) through (5) [of Bylaw 1.10.2] invoke the dispute resolution process as a “complainant” as long as the “respondent” is an individual defined in (1) through (5)?

Opinion: The answer to this question is “no.” Bylaw 1.10.2 defines the parties to which it applies as “(1) members of the Synod, (2) the Synod itself, (3) a district or an organization owned and controlled by the Synod, (4) persons involved in excommunication, or (5) lay members of congregations of the Synod holding positions with the Synod itself or with districts or other organizations owned and controlled by the Synod.” The current bylaw derives from the prior dispute resolution process, previously found in Chapter VIII of the 2001 *Handbook* and Bylaw 1.10.2 specifically from former Bylaw 8.01. Only when both participants in a dispute are members of one of the identified classes does the bylaw apply.

Question 2: Does the language of Bylaw 1.10.2 require that both parties to a dispute be individuals defined in (1) through (5)?

Opinion: The answer to this question is “yes” for the reasons set forth above.

Question 3: Are laypersons that have been elected by a district convention to serve on the nominating committee required by Bylaw 4.7.2 “holding positions with the Synod itself or with districts” under the terms of Synod Bylaw 1.10.2 (5)?

Opinion: The answer to this question is “yes.” To the extent that the issue in dispute relates to the layperson’s role as an elected representative of the district, the person is within the list of parties identified in the fifth category, “(5) 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.”

Adopted June 30, 2005

Call of Non-Rostered Commissioned Ministers (05-2428)

In a June 20, 2005 letter, a district president asked questions regarding the extending of calls to non-rostered teachers, questions raised by a particular situation in a congregation of his district. He explained that the teachers in question have been trained and certified by the Synod but have chosen not to be rostered. He added that the involved congregation understands that these teachers would have no protection under the Constitution of the Synod and are employees for whom the congregation must assume its share of the cost of Social Security and Medicare.

Question 1: May a member congregation of the Synod under its right of self-government (Constitution VII 1 and Bylaw 1.10.9) extend a call to a teacher in its school who is not on the roster of the Synod?

Opinion: The term “call” has a variety of usages in the Synod. Even volunteer workers (e.g., Sunday school teachers) and paid staff (e.g., organists) are at times referred to by congregations as “called.” In its 1981 convention Res. 6-14 the Synod defined its own usage of the term “call,” referring to it as a “solemn call” and adopting the following definition for its use in its placement procedures for teacher candidates:

A solemn call is an official request, offer, or agreement extended by a calling body in the name of the triune God to a person eligible to receive such a call into an educational ministry of the LCMS. Offers extended to such eligible persons but erroneously referred to as “appointments” or “contracts” are also to be considered calls. A call may be for a limited period of time (nontenured) or unlimited (tenured). A solemn call is also referred to as a divine call. Official synodical call documents are available from most district offices and Concordia Publishing House. Do not use locally designed documents. Calls may be changed or terminated for valid reasons.

Eligibility to receive a solemn call requires the completion of graduation or colloquy requirements at a synodical teachers college and approval for ministry by its faculty. Men and women educators who are eligible to receive calls should not be otherwise engaged.

Congregations enjoy the right of self-government, which includes the right to call church workers of their own choosing. However, by their voluntary membership in the Synod, congregations agree to limit their right of self-government and to order their rights and responsibilities (including their right to call) according to the Constitution, Bylaws, and resolutions of the Synod.

Bylaw 2.5.3 of the 2004 *Handbook* provides the following limitation on a congregation's right to call: "Congregations that are members of the Synod shall call only commissioned ministers who have been admitted to their ministries in accordance with the rules and regulations set forth in these Bylaws and have thereby become members of the Synod." Therefore it is a teacher's membership in the Synod (and not only training and certification by the Synod) that is specifically required for the receipt of a *call* from a congregation. While it might be contended that a call to a properly trained and certified but non-rostered worker is merely using the word "call" in a manner other than the *solemn call* defined above by 1981 Res. 6-14, Bylaw 2.5.3 makes clear that congregations that contract for services with a non-rostered worker cannot refer to such a contract as a *call*. Similarly, when a properly trained and certified church worker chooses not to be rostered, the worker also has chosen not to be available to receive a *call*.

The Synod places a premium upon the staffing of the classrooms of its member congregations' schools with Synod-trained and Synod-certified teachers (cf. 2004 Res. 2-07; 5-03A). The Synod also places a premium upon the call and membership of those teachers in the Synod (Bylaw 2.5.3), such membership providing opportunity for ecclesiastical supervision (Bylaw sections 2.12; 4.4) and the carrying out of the objectives of the Synod (Constitution, Art. III). The Synod therefore has encouraged its congregations "to introduce a salary adjustment that recognizes the additional and vital education received by the Synod-certified teacher" (2004 Res. 5-03A), thereby to make roster membership more desirable or, as may be necessary in some cases, more feasible (in light of related financial considerations).

Therefore, in response to the question above, member congregations of our Synod have agreed not to extend solemn calls to nonrostered individuals regardless of their training. The congregation in question is well advised to do everything possible to enable its Synod-trained and Synod-certified teachers to apply for membership and roster status in the Synod, thereby making it proper to extend a *solemn call* as defined by the Synod in 1981 Res. 6-14 and according to the expectations established by Bylaw 2.5.3.

Question 2: Are these bylaws to be interpreted to mean that a congregation that extends what in its language amounts to a call with tenure to a qualified but non-rostered teacher is subject to forfeiture of its membership in the Synod under Bylaw 2.5.4?

Opinion: Persistent non-compliance with any bylaw of the Synod may jeopardize a congregation's membership in the Synod. This is particularly true of Bylaws 2.5.1–2.5.3, given the specific mention of forfeiture of membership in Bylaw 2.5.4.

Adopted June 30, 2005

Amendments to Bylaws of LCMS Foundation (05-2429)

In a letter dated June 23, 2005, the Commission received from the Synod's legal counsel a request that the amendments to the LCMS Foundation Bylaws, approved by the Board of Directors of the Synod at its May 23–24, 2005 meeting, also be approved by the Commission. The Commission noted from Board of Directors' minutes that the amendments in question have already been approved by the Foundation's Trustees and Members, although Bylaw 3.9.2.2.4 requires that proposed amendments to articles of incorporation and bylaws or regulations of agencies of the Synod are to be examined "in advance" of adoption "to ascertain whether they are in harmony with the Constitution, Bylaws, and resolutions of the Synod." Nevertheless, the Commission assumes that all amendments will have been approved in the manner required by Synod Bylaw 3.6.1.6 and Article VI of the Foundation's Bylaws and that further changes discussed in this opinion will be adopted by the Foundation as required by Synod Bylaw 3.9.2.2.4.

Synod Bylaw 3.6.5.2.1 requires that the Board of Trustees of the LCMS Foundation shall consist of:

1. Two members (one ordained minister and one layperson) elected by the Synod in convention;
2. The chairman of the Board for District and Congregational Services (or his representative from that board);
3. At least seven members appointed by the Members, as provided in the Bylaws of the Foundation;
4. The President of the Synod (or his representative); and
5. The Vice-President–Finance—Treasurer of the Synod as a non-voting member.

The Commission notes that the amendment to Section 1 of Article II of the Foundation Bylaws meets the requirements of Synod Bylaw 3.6.5.2.1, which requires that seven members of the Board of Trustees be appointed by the members of the Foundation. There is nothing in the Synod’s Bylaws that restricts the method of selection or the composition of the seven trustees appointed pursuant to the Foundation’s Bylaws. The amended bylaws call for the election of seven trustees by members as the method of appointing them. Therefore, as stated in the Commission’s previous Opinion 02-2248, “[s]ince the bylaws of the Synod do not restrict the manner of appointment, the Commission sees nothing that would prohibit the appointment through an election process as outlined in the amended Foundation bylaw.”

However, there is an inconsistency in Section 1. The addition of the parenthetical statement “(one ordained minister)” after the words “seven Trustees” in the second sentence is not consistent with the second sentence following which provides that one of the trustees elected by the members “shall be an ordained or commissioned minister.” To eliminate this inconsistency, the Commission requests that the parenthetical statement “(one ordained minister)” be removed from the second sentence. With this modification, the amendment to Section 1 of Article II is approved.

Section 2 of Article II has also been amended to provide for the commencement of the term of office for newly elected or appointed trustees in a manner consistent with the Foundation’s practice. However, the proposed amendment is not consistent with Synod Bylaw 3.2.4 (a), which provides that “members of all elected boards of the Synod shall assume office on September 1 following the convention.” The addition of the words “except for those trustees elected by the Synod in convention” at the end of the first sentence of Section 2 would eliminate the inconsistency. (The Commission also observes that the term of office for elected board members provided by Bylaw 3.2.4 (six years) is not consistent with Section 2 of Article II of the Foundation Bylaws, which provides for three-year terms of office for elected trustees.) The amendment to Section 2 of Article II is also approved with the suggested modification.

Section 3 of Article II governing the filling of vacancies has also been amended, requiring that a vacancy of a member-elected trustee shall be filled by election by the members. This amendment is also approved.

During the discussion of the proposed amendments, the Commission noted that proposals to recent conventions to adopt bylaws to govern the removal of members of boards had not received attention. It was agreed that this issue should again be brought to the attention of the Commission on Structure for its consideration.

Adopted Oct. 16–178, 2005

**Board for University Education Compliance
with 2004 Resolution 8-01A (05-2431)**

In a July 21, 2005 letter, an interim Executive Director of the Board for University Education asked the following question regarding 2004 Resolution 8-01A, “To Amend Bylaws on Ecclesiastical Supervision

and Dispute Resolution” and the particular resolve of the resolution that “in consultation with the Commission on Constitutional Matters, the Board for Higher Education shall develop and amend, as necessary, a *Standard Operating Procedures Manual* which will serve as a comprehensive procedures manual for this bylaw” (2004 *Proceedings*, p. 178).

Question: In light of Resolution 8-01A, what recommendations or suggestions does the CCM offer to University Education to be in compliance of this resolution?

Opinion: LCMS 2004 Resolution 8-01A amended the Bylaws of the Synod in regard to ecclesiastical supervision and dispute resolution, including Bylaw 3.8.3.8.9 under the Board for University Education. Paragraph (f) (4) of the bylaw refers to a *Standard Operating Procedures Manual*, stating: “All hearings shall be private, attended only by the parties and the witnesses who can substantiate the facts relevant to the matter in dispute. The Review Committee shall follow the procedures set forth in the *Standard Operating Procedures Manual* for this bylaw to be followed in the hearing and shall establish the relevancy of evidence so that each party shall be given an opportunity to present fully its respective position....”

The question that is asked refers to paragraph (j) which states: “In consultation with the Commission on Constitutional Matters, the Board for University Education shall maintain and amend, as necessary, a *Standard Operating Procedures Manual*, which shall serve as a comprehensive procedures manual for this bylaw.” Resolution 8-01A even more explicitly states that the Board is to develop such a manual and amend it as necessary. The Board for University Education is therefore required, in consultation with the Commission on Constitutional Matters, to develop and maintain a operating procedures manual that will set forth in detail a standard manner for carrying out the provisions of Bylaw 3.8.3.8.9 by any and all boards of regents of the Synod’s educational institutions, to be applied in all cases dealing with complaints arising out of Bylaw 3.8.3.8.5 and other such bylaws. This *Standard Operating Procedures Manual* is to be made available to and for the benefit of each board of regents, the president of each educational institution, the parties in a dispute, each Review Committee that is formed, and others as necessary or required.

The Commission recommends that the Board for University Education proceed to develop the required manual for Bylaw 3.8.3.8.9, referring for resource help to the standard operating procedures manuals already developed by the Commission and the Council of Presidents for Bylaw sections 1.10, 2.14, and 2.17. Upon its development, the Bylaw 3.8.3.8.9 manual should be submitted to the Commission on Constitutional Matters for review.

Adopted Oct. 16–18, 2005

Dissent by a Member Congregation of the Synod (05-2433)

In a letter dated July 26, 2005, a district president asked for an opinion regarding the manner in which a congregation may express its dissent to decisions of the Synod.

Question: If a congregation dissents, would Bylaw 1.8.2 of the 2004 LCMS *Handbook* apply and, if so, what steps would they follow to express their dissent? Who would be their peers, and where and how would they verbalize their dissent?

Opinion: The question is correct in recognizing that a congregation has the right of dissent based on its membership in the Synod (Article V of the Constitution). The right of brotherly dissent is granted to members of the Synod, including congregations, in Bylaw section 1.8.

Bylaw 1.8.2 is silent on the question of steps to be taken by congregations to express dissent, including who would be their peers and how they would verbalize their dissent. However, the following paragraph of a 1969 CCM opinion on dissenting groups, “An Opinion Regarding Dissenting Groups and Activities Within the Synod,” is helpful in understanding who may be included in the fellowship of peers:

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

Adopted Oct. 16–18, 2005

Reconsideration of Opinion 04-2409 (05-2434)

In a lengthy July 25, 2005 memorandum, two members of the Board of Directors speaking on behalf of the Board requested that the Commission review and reconsider its Opinion 04-2409, expressing the Board’s concerns in four parts, sections of which are quoted here following.

Question 1: The first issue involved in such reconsideration is the issue of the Board’s authority under Article XI F of the Constitution, posed by the Board’s memorandum as follows:

Article VI of the Constitution states that the Synod has legal power to purchase, hold, administer, and sell property of every description. This power of the Synod always remains, even when the Synod has delegated such authority as it has in Article XI. Thus it has been recognized since the formation of the Synod that the Synod through its delegate convention has overriding authority over the property it owns. However, since a convention of the synod is incapable of carrying out the day-to-day management of its property, it has delegated that responsibility to the Board of Directors in Article XI of the Constitution. But, to repeat, the granting of authority in Article XI has always been under the umbrella of Article IV. Hence, the question becomes, “what is the extent of the authority the Synod has delegated to the Board of Directors in Article XI?”

Opinion: It is impossible to precisely delineate the extent of the Board’s authority and responsibility in the abstract. The Board derives authority and responsibilities both from the Synod’s Constitution and from its Bylaws. The two documents together outline the framework of the Synod’s governance. Beyond this general framework, the Synod has also reserved the right to delegate further duties and authority by resolutions of the convention. Although the question as posed limits the inquiry to that authority granted under Article XI, a proper response to the question posed must make reference both to the Constitution and to the Bylaws of the Synod and even then could not fully explore the full extent and limits on the Board’s authority without considering the existence of resolutions not incorporated into the Constitution

and Bylaws. As a starting point, under Article XI, the Synod has identified the Board of Directors as both the Synod's legal representative and the custodian of the Synod's property. Each of those functions has separate duties and authority.

Legal Representative: A legal representative is someone authorized to act on behalf of another. West's Law Dictionary suggests that "the term in its broadest sense means one who stands in the place of, and represents the interests of, another." Examples of legal representatives include personal representatives and executors of estates, persons acting under a power of attorney, a guardian or conservator, or an elected official. A corporation or other business entity by definition must have a representative to interact with those outside the entity. As the Synod's legal representative, the Board's authority includes the right to interact with the secular world as the Synod's agent, and on its behalf is authorized to enter into and sign contracts, to buy and sell property in the name of the Synod, to open bank accounts, and to file reports with and respond to inquiries from federal, state, and other governmental agencies. As an agent of the Synod, the Board is to conduct itself as directed by its superior, the Synod itself.

The Board's authority as representative is limited both by implied and expressed limitations from the Synod. As with other officers of the Synod, the Board is expressly restricted by Article XI A 1, which declares that the officers of the Synod "must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod." Another expressed restriction is found in Bylaw 3.3.5.9, pursuant to which the Board may appoint vice-presidents not in line of succession, assistant officers, and other staff required from time to time to carry out the business and legal affairs of the Synod, but may only do so subject to the approval of the President of the Synod. Under current Bylaw 1.4.4, the Board's role as determined by the Synod in convention is described as follows:

The Board of Directors serves the Synod as its legal representative and as custodian of all property of the Synod, and upon it is incumbent the general management and supervision of the business affairs of the Synod, except to the extent that management authority and duties have been delegated by the Articles of Incorporation, Constitution, Bylaws, or resolutions of a convention of the Synod to other officers and agencies of the Synod or to separate corporate or trust entities (underline added).

Although the current language reflects some changes by the 2004 convention, the same conceptual limitations were contained in the previous language. For example, paragraph a of 2001 Bylaw 3.185 contained the language: "Except as otherwise provided in these Bylaws, it shall have such authority and responsibility with respect to the property of the Synod as is generally vested in and imposed upon a board of directors of a corporation, provided, however...." The general allocation of responsibilities as currently found in Bylaw 1.4.5 was further described in paragraph c of 2001 Bylaw 1.07 as follows:

The Board of Directors serves the Synod as its legal representative and as custodian of all property of the Synod, and upon it is incumbent the general management and supervision of the business affairs of the Synod. Each other board of directors, board of regents, and board of trustees also serves the Synod with respect to the property of the Synod, to the extent of its jurisdiction, as provided or authorized in these Bylaws. Upon each such board of the Synod is incumbent the general management and supervision of the business affairs of the Synod to the extent of its jurisdiction. Also, each board of directors, board of regents, and board of trustees shall, to the extent of its jurisdiction, between conventions and subject to advice or direction from any other appropriate board that has been given authority by these Bylaws or by convention resolution, (1) determine general operating policies, (2) approve program budgets, (3) allocate resources for such programs, (4) review program performance, and (5) coordinate the administration of

convention resolutions. Each board of directors shall also be empowered to settle disputes within that corporate entity. Each board shall report its activities and recommendations to the respective convention.

More often the limitations are implied rather than expressed. For example, a typical secular board of directors, as legal representative and agent of the shareholders, has authority to hire and fire all officers of the corporation, including its president. While not expressly stating that the Board may not discharge the President and select a replacement of its choosing, the Synod has provided that the Synod itself in convention or pursuant to the provisions of Bylaws 2.16 or 2.17 may remove its president from office. The authority granted under Article XI F does not include such powers.

Finally, it should be noted also that the Board is not the only representative of the Synod. There may be more than a single “legal representative” simultaneously. The President, for example, has been given the responsibility to represent the Synod at all meetings of the districts (Article XI B 6). Under Bylaw 3.3.1.1.2, it is also the President and not the Board who represents the Synod in official contacts with all partner churches and all other church bodies. Under Bylaw 3.8.4.2 the Board for Black Ministry Services is authorized to represent the interests of the Synod in black ministry throughout the Synod. Under Bylaw 4.4.2, a district president is also expressly identified as the representative of the Synod in his district.

Custodian of Property: This term similarly does not provide a clear definition of the authority of the Board but rather identifies one of the Board’s functions. A “custodian” may be defined as a person with whom some article is left, who is responsible for the safe return of the article to the owner. A custodian can include banks holding bonds, storage companies where furniture or files are deposited, a parking garage, or a kennel or horse ranch where an animal is boarded. The real issue here is the authority accompanying the role of “custodian.”

Article XI F designates the Board as the default entity holding the assets and funds of the Synod on its behalf. Article XI expressly authorizes the Board to delegate such authority to other agencies of the Synod. The Board exercises such delegation, for example, in the budgeting process under Bylaw 3.3.5.5, in the Board’s discretionary delegations of powers and duties to agencies of the Synod under Bylaw 3.3.5.5 (b), and in the Board’s mandatory delegations of authority to districts to buy and hold property in the district’s own name, as is required in Bylaw 3.3.5.7 (a).

The Antecedent of “It”: In the discussion that follows the Board’s question, the Board asks the Commission to consider the meaning or interpretation of the word “it” in the third sentence of Article XI F 2 of the Constitution and implies that the answer to that grammatical question answers the broader, more fundamental question posed. The Commission concedes that the most logical antecedent noun to which “it” applies is the Board itself and not the Synod (acting in convention). However, Opinion 04-2409 was not based upon an interpretation of the word “it.” That grammatical observation does not resolve the issue. Instead, as suggested above, there is no complete answer to the question posed, and recognizing the Board of Directors as the legal representative of the Synod and the custodian of its property does not resolve the matter. As will be discussed more fully below, the Board is the primary entity charged with management of the property and business affairs of the Synod. But the Synod is not organized primarily for business purposes, and the Synod has chosen to delegate to the Board property and business authority and not ecclesiastical authority. The Synod’s Board of Directors is the Synod’s agent, acting not under a corporate governance model but under a structure designed to fulfill business functions within a much broader structure designed to fulfill the Synod’s primarily ecclesiastical purposes.

The Commission appreciates the Board’s expressed recognition of the ultimate authority of the Synod in convention. The turmoil created in the Synod by those who during the last triennium suggested that only a

board of directors could lawfully hold such authority was a primary impetus for the consideration and adoption by the 2004 convention of many resolutions, including Resolution 7-21, which was the subject of Opinion 04-2409.

Question 2: As the Board's discussion in its memorandum continued, the issue of balance of authority was raised:

The structure of the Synod is unique, and the extent of the authority of the program boards and commissions is very often not clearly delineated. The Board of Directors has been given authority over the property and business affairs of the Synod. At the same time, program boards and commissions have been given policy and administrative duties in defined areas.

Policy and administration overlap with property and business affairs. Likewise, property and business affairs impact policy and administration. Thus there is not, nor can there be, a clear line of division between property and business affairs on the one hand and policy and administration on the other. Accordingly, there has developed over the years a gentle tension between the two, and in those instances where agreement has not been reached because there is a lack of clarity or a contradiction in the Bylaws, the Commission on Constitutional Matters has been called upon to be the arbiter. Many of the decisions referenced by the Commission in Opinion 04-2409 are of that nature and do not support Opinion 04-2409 as rendered.

Opinion: The Commission agrees that the structure of the Synod is unique and that there is and always has been a tension between the property and business affairs of the Synod on the one hand and the policy and administration on the other. Using the term "property and business" in this context, however, is not the same as using that term in a business setting where the acquisition and management of property for the purpose of generating a profit for the shareholders is the purpose of the organization. The Synod's purposes and objectives are detailed in Article III of the Constitution. The power of the Synod to hold and manage property (Article IV of the Constitution) is solely for the purposes of meeting the Synod's stated objectives, which may generally be described as ecclesiastical and not secular. In light of that context, the last comment in the Board's last referenced paragraph is in error. Opinion 04-2409 does not effect any change in the authority or responsibilities of the Board.

The business powers delegated to the Board on behalf of the Synod are generally described in Article IV of the Constitution:

The Synod shall have legal powers:

1. To purchase, hold, administer, and sell property of every description in the interest of the Synod.
2. To accept, hold, administer, and, if deemed advisable, dispose of legacies, donations, commercial papers, and legal documents of every description in the interest of its work.

These secular functions are identified as being limited to those "in the interest of the Synod" and "in the interest of its work," which objectives were identified in Article III of the Constitution. While the Board has no authority for ecclesiastical supervision, it serves the ecclesiastical functions of the Synod by its management of those business functions that have been delegated to it.

The fact that “business affairs” is understood in the Synod as a limited function and not as an all-encompassing recognition of authority and purpose is evidenced in Article XI B 8, the list of authorities granted to the President of the Synod. After identifying many specific duties, responsibilities, and authorities of the President, paragraph 8 imposes on the President and not the Board of Directors the duty and authority between conventions to submit business matters to a vote of the congregations of the Synod. That paragraph reads:

8. When matters arise between meetings of the Synod in convention which are of such a nature that action thereon cannot be delayed until the next convention, the President is authorized to submit them to a written vote of the member congregations of the Synod only after full and complete information regarding the matter has been sent to member congregations by presidential letter and has been published in an official periodical of the Synod. If such matters are related to the business affairs of the Synod, such a vote shall be conducted only after the President has consulted with the synodical Board of Directors (underline added). In all cases at least one-fourth of the member congregations must register their vote.

Note that only in the limited circumstance that the matter is related to “business affairs” must the President even consult with the Board of Directors.

In interpreting the Constitution and Bylaws of the Synod, the Synod’s primary purpose of serving its ecclesiastical purposes influences very strongly the balance that must be made and the factors that must be considered in determining whether an issue is truly one primarily of “property and business” concern for which the Board has primary responsibility or whether it is more accurately recognized as an ecclesiastical function, responsibility, and authority which is more likely to be delegated by the Synod to its ecclesiastical supervisors such as the President and district presidents or to one of its program boards or commissions. The language and grammar of a single sentence or phrase in one sentence or section of the Synod’s governing documents must also be considered in light of those documents as a whole and the governance structure of the Synod as a whole.

As implied in the Board’s question, the Synod has recognized that some person or group within the Synod must have the authority and responsibility for carrying out the day-to-day management of its property. That authority has been delegated to the Board of Directors, again subject to limitations. Expanding on the discussion above, for example, the Board must under Bylaw 3.3.5.5 “allocate available funds to the program boards, commissions, councils, and departments of corporate Synod and hold them responsible therefor.” Having allocated those funds and thereby delegated responsibility for the use and management of those funds, however, the Board has not been authorized to manage the day-to-day functioning of the boards, commissions, or other entities of the Synod to whom those funds are allocated. Rather, the Board continues to “have general oversight responsibility as set forth in the Bylaws.” Opinions 03-2357, 03-2358, 03-2359, and other prior opinions of the Commission cited in the challenged opinion support this position.

Question 3: The Board’s third question addressed the breadth of Opinion 04-2409:

The question presented to the Commission on Constitutional Matters in Opinion 04-2409 is whether a failure to pass Amendment A will impact the implementation or validity of any other resolutions passed by the 2004 convention of the Synod. This answer given by the Commission is “no.” By its answer the Commission infers that all other resolutions or changes to the Bylaws adopted by the 2004 convention are valid. This is contrary to the past practice of the Commission, which restricted its opinions to specific issues and specific resolutions as well as specific changes to the Constitution and Bylaws. In Opinion 04-2409

the Commission, with a broad statement, validates all resolutions and bylaw changes made by the 2004 convention which in any way relate to Article XII F 2 and, to some extent, forecloses itself from examining specific issues in the future which find their genesis in resolutions and bylaws adopted at the convention.

Opinion: The Board's concern is at least in part well taken. The answer provided in Opinion 04-2409 was broader than required and could have been more clearly drafted. The Commission cannot anticipate in advance every circumstance or challenge that might be raised as to the impact of each resolution of the 2004 convention, and certainly not without examining each individual resolution. It would be unmanageable to attempt in advance and without context to consider each of the more than forty resolutions in that regard. In a broad sense, the answer given in Opinion 04-2409 represents an acknowledgment that the Commission's prior opinions as referenced in Opinion 04-2409 do support the proposition that the passage or failure of Resolution 7-21 would not change those prior opinions, which opinions were expressly and vigorously challenged in overtures to the convention. None of the opinions of the Commission were overruled by the convention and continue to be binding as set forth in Bylaw 3.9.2.2 (b). However, the Commission must recognize the potential need to examine specific issues in the future that find their genesis in the resolutions and bylaws adopted by the convention. It would thus have been more proper had the last sentence of the opinion's first paragraph read as follows (underline indicates new wording):

As such, the answer to the question presented is that if the proposed Constitutional Amendment A entitled "To Amend Constitution Regarding Officer and Board Responsibilities" as set forth in Resolution 7-21 of the 2004 convention of the Synod is not passed by a two-thirds majority vote, ~~it would not effect the implementation or validity of any other resolutions or changes to the bylaws passed at the 2004 convention~~ the CCM has been unable to identify any resolution or change to the Bylaws by the 2004 convention whose validity or implementation would be prevented. Should concerns exist as to any particular resolution, a specific inquiry should be directed to the Commission for further study.

Opinion 04-2409 is so modified.

Question 4: The Board's final question expressed concern that the Commission's interpretation served to undo a grant of authority by the 1998 convention:

Article XI F was amended by the 1998 convention of the Synod to its present wording. Prior to that amendment, paragraph 2 of Article XI F read as follows:

The voting members of the Board of Directors are the legal representative of the Synod and the custodians of all property of the Synod, and upon them are incumbent the general management and supervision of all the business affairs of the Synod.

Relative to the proposed change to the present wording, the *Blue Ribbon Committee Report* to the convention states, "Takes account of need to delegate authority in a large organization," further demonstrating in the wording of its proposal that the "it" in question is intended to refer to the Board of Directors (1998 *Blue Ribbon Committee Report*, p. 57, lines 41–42—Exhibit A). The same comment, "Takes account of need to delegate authority in a large organization," also occurs in Resolution 8-03B as adopted by the convention (1998 *Proceedings*, p. 162—Exhibit B). Thus the Synod in amending paragraph 2 clearly stated its intention to allow the Board of Directors to delegate its

authority. This is consistent with the commentary provided by the Blue Ribbon Committee early in its report in a section entitled “Description of Committee Recommendations” where it is stated: “The heart of these changes is to retain the Board of Directors’ authority to supervise all the business affairs of corporate Synod, while limiting its authority with reference to separate corporate or trust entities to ‘general oversight’” (*Blue Ribbon Committee Report*, p. 13, paragraph 56—Exhibit C). Amendment A proposed to delete the very authority that was given to the Board of Directors in 1998. Therefore, for the Commission in Opinion 04-2409 to state that such proposed deletion stated more clearly what the paragraph adopted by the 1998 convention already meant is contrary to fact and warrants reconsideration by the Commission.

In summarizing its concerns, the Board of Directors indicated:

Therefore, in summary, it is requested that the Commission on Constitutional Matters reconsider Opinion 04-2409 for the reasons stated above and primarily because such opinion has the effect of nullifying the ability of the Board of Directors to delegate to agencies of the Synod its authority to exercise supervision over the property and business affairs of the Synod and thus brings into question the validity of previous and existing delegates of such authority.

Opinion: Prior to the 1998 convention action, the language of Article XI indicated that it was the voting members of the Board, rather than the Board as a whole, who served as custodians of the property of the Synod.

The 1998 amendments achieved at least two purposes. They made clear that it was the Board itself and not its individual members that was to fulfill the function of custodian of the Synod’s property. Secondly, they made clear that the Board could expressly delegate such custodial responsibilities to agencies of the Synod. That delegation authority, contrary to the suggestion of the Board’s inquiry, is unchanged by Opinion 04-2409. The authority to delegate to other agencies of the Synod is instead consistent with the actions and process of the Synod itself in making such delegations in the past, as reflected in the prior opinions of the Commission cited in Opinion 04-2409. It remains consistent with Bylaw 3.3.5.7 (b), which expressly grants to the Board the authority to “delegate to any agency of the Synod powers and duties with respect to property of the Synod for which such agency of the Synod has direct supervisory responsibility.”

Amendment A did not purport to delete any authority of the Board of Directors to delegate authority, which power is found in the second and not the third sentence of Article XI F 2: “It [the Board of Directors] is the custodian of all the property of the Synod, directly or by its delegation of such authority to an agency of the Synod.” Rather than read Opinion 04-2409 as a restriction on the Board’s authority to delegate, the opinion should instead be understood as an affirmation by the Commission of that historical practice of both the Synod as a whole and of the Board of Directors in its service function to the Synod.

Should the Board have particular concerns about limitations on that authority in particular circumstances, it is invited to submit additional inquiries to the Commission on Constitutional Matters.

Adopted Oct. 16–18, 2005

Number of Voting Members of Boards of Regents (05-2436)

In a memorandum dated September 8, 2005, a pastor of the Synod submitted the following question regarding the number of voting members on boards of regents of schools of the Synod.

Question: Bylaw 3.8.3.6.2 states “the board of regents for each college and university shall consist of 13 voting members.” Does this mean that only 13 board of regents members may serve on the board as voting members? Or can this also be interpreted that at least 13 board of regent members are to serve as voting members?

Opinion: Bylaw 3.8.3.6.2 directs that each board of regents shall consist of 13 voting members. It does not provide for any nonvoting members. Although there have been overtures and resolutions submitted to the various conventions of the Synod over the years advocating change, Bylaw 3.8.3.6.2 establishes the current makeup of the boards pursuant to the will of the conventions. Unless and until a convention changes the bylaw, a board of regents will consist solely of 13 voting members.

Adopted Oct. 16–18, 2005

Involvement of Districts in the Call Process of Mission Congregations (05-2437)

In a September 7, 2005 letter, a circuit counselor asked the following question regarding the role of the district in the calling process of a district-subsidized mission congregation.

Question: Can a district mission executive require a pastor to decline a properly issued call by revoking the mission subsidy promised to a congregation?

Opinion: At its March 5, 1982 meeting the Commission on Constitutional Matters addressed a related question from a congregation in the Central Illinois District (Ag. 1573): “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 responded: “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 a March 23, 2000 opinion (99-2171) the Commission, after referring to the above-referenced 1982 opinion, further stated: “In view of the above, the Commission concludes that the right to call a pastor rests solely with the congregation that the 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.”

Accordingly, the Commission responds as follows to the question at hand: If the congregation in question is a rostered member of the Synod, the Synod has assured the congregation in Article VII of its Constitution, “In its relation to its members the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the individual congregation’s right of self-government it is but an advisory body.” As a member of the Synod, the congregation has agreed, in accordance with Bylaws 2.5.1 and 2.5.2, to seek the counsel of its district president when calling a pastor and to call and be served only by LCMS-rostered ordained ministers.

Therefore, assuming that the congregation in question has sought the counsel of its district president during the calling process, a district (or one of its staff persons) may not coerce the congregation relative to the calling of its pastor nor may it coerce a pastor upon receipt of the congregation’s call, since the

right and responsibility to call the pastor rests solely with the calling congregation. Should a district threaten to withhold its financial support of the subsidized congregation unless the calling congregation and/or the called pastor adhere to the wishes of the district relative to the call of the 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.

Adopted Oct. 16–18, 2005

**Procedure for Filling Vacancies in Elected Positions
(05-2439; 05-2440; 05-2442)**

In a letter dated September 10, 2005, a pastor member of the Synod submitted a series of questions regarding the validity of actions by the Board of Directors during its August, 2005 meeting to fill vacant positions on the Board of Directors of Concordia Publishing House and the Synod's Board of Directors. Similar letters were received from another pastor of the Synod and from the chairman of the nominations committee of the Synod, asking whether the Board of Directors violated Bylaw 3.2.5 and 2004 convention Resolution 7-14.

These questions having been forwarded to the Board of Directors and Synod's legal counsel for consultation, the Commission considered the request from the Board that consideration of this and other questions be deferred because of the Board's inability to respond due to insufficient time. After discussion, the Commission decided to respond without delay out of concern for the consequences of a delay. During the discussion the Commission also noted the importance of being given the opportunity to review in advance any changes to regulations of the agencies of the Synod, as provided by Bylaw 3.9.2.2.4.

Question 1: Did the LCMS Board of Directors act in violation of Bylaw 3.2.5 when it filled vacancies on the CPH Board of Directors and on the LCMS Board of Directors with candidates who were nominated from the floor rather than from the list of candidates provided by the synodical nominating committee?

Opinion: 2004 convention Resolution 7-14 states:

WHEREAS, Bylaw 3.63 b [now Bylaw 3.2.5] requires that vacancies on synodically elected boards and commissions be filled by the Board of Directors of the Synod from a list of nominees determined by the Secretary of the Synod, the Director of Human Resources, and the chairman of the synodical nominating committee; and

WHEREAS, The Secretary of the Synod serves on the Board of Directors, and the Director of Human Resources is not an elected position; therefore be it

Resolved, That Bylaw 3.63 b be amended to read as follows:

PRESENT/PROPOSED WORDING

b. The Secretary of the Synod shall be responsible for gathering a list of nominees from the board or commission where the vacancy occurs, the synodical President, the District boards of directors, and the slate of candidates from the previous synodical convention within 90 days of notification of the vacancy. As list of at least three but no more than five candidates shall be submitted as soon as possible to the appropriate appointing body. This list shall be determined by the ~~Secretary of the Synod, the Director~~

of Human Resources, and the chairman of the synodical nominating committee chairman and two members of the synodical nominating committee as determined by the nominating committee. The Synod's Director of Human Resources shall be consulted in developing the candidate list.

The amended bylaw, now Bylaw 3.2.5 (2004 *Handbook*), therefore reads:

- (a) The Secretary of the Synod shall be responsible for gathering a list of nominees from the board or commission where the vacancy occurs, the President of the Synod, the district boards of directors, and the slate of candidates from the previous convention of the Synod within 90 days of notification of the vacancy.
- (b) A list of at least three but no more than five candidates shall be submitted as soon as possible to the appropriate appointing body.
- (c) This list shall be determined by the chairman and two members of the Committee for Convention Nominations of the Synod as determined by the committee. The Synod's Director of Human Resources shall be consulted in developing the candidate list.

The first whereas paragraph of Resolution 7-14 makes it very clear that the Board of Directors is required to fill the vacancies of boards and commissions elected by the Synod from the list provided by the nominations committee. Bylaw 3.2.5 does not make provision for nominations from the floor.

It is helpful to note that a whereas paragraph is an integral part of a resolution. Special Standing Rule #7 of the 2004 convention of the Synod reads, "The preface, preamble, rationale, and whereas sections shall be regarded as integral parts of resolutions and therefore subject to the same consideration and adoption as the main motion" (*Today's Business*, p. 9). The August, 1969 opinion of the Commission on Constitutional Matters, "An Opinion on the Constitutionality of Denver Resolution 3-15," also opined that "the entire document—'Preamble,' 'Whereases,' and 'Resolveds'—forms a complete unit."

The actions of the Board of Directors as recorded in the minutes of the Board (August 19–20, 2005—item 66) in the filling of the vacancies on the Board of Directors of the Synod and the Board of Directors of Concordia Publishing House are violations of Bylaw 3.2.5 and Resolution 7-14.

Question 2: If the LCMS Board of Directors acted in violation of Bylaw 3.2.5, should the election of Peter Cage to the CPH Board and Walter Brantz to the LCMS Board of Directors be declared null and void?

Opinion: Yes, any action or resolution by any officer, board, commission, district, or other agency of the Synod that is in violation of the Synod's Constitution and Bylaws is null and void. A June, 1974 Commission on Constitutional Matters opinion (Ag. 632) opined that all resolutions of districts that provide for action which is in conflict with the Synod are unconstitutional and therefore null and void. An August 13, 1976 opinion, "Opinion re Legality of District Conventions and Circuit Meetings Involving Ineligible Participants," also concluded that elections by illegally seated delegates are to be considered null and void. Therefore, the positions in question remain vacant.

Question 3: If the above elections are declared null and void, should the LCMS Board of Directors be required to fill the vacancies on these two boards with candidates provided by the nominations committee?

Opinion: Yes. Article XI A 1 of the Constitution of the Synod states, “The officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod.”

Bylaw 1.4.1 states in part:

The delegate convention of the Synod is the legislative assembly that ultimately legislates policy, program, and financial direction to carry on the Synod’s work on behalf of and in support of the member congregations. It reserves to itself the right to give direction to all officers and agencies of the Synod. Consequently, all officers and agencies, unless otherwise specified in the Bylaws, shall be accountable to the Synod for all their actions, and any concerns regarding the decisions of such officers or agencies may be brought to the attention of the Synod in convention for appropriate action.

And Bylaw 1.4.3 also states in part:

Elected officers of the Synod and its agencies serve in accordance with duties assigned to them or otherwise authorized by the Constitution and appropriate bylaws. Primary responsibility is given to each officer, to the extent of his jurisdiction, for implementing specific decisions of the appropriate conventions, boards, and commissions and for supervising and coordinating the day-to-day activities of the respective staffs.

For the appropriate procedure to be followed, see answer to question 1 above, which quotes Bylaw 3.2.5.

Question 4: Does the Board of Directors have the authority to flout the requirements of Bylaw 3.2.5 (c) on the basis of an appeal to *Robert’s Rules of Order*?

Opinion: No. While the Bylaws of the Synod refer to “accepted parliamentary rules,” such as Bylaw 1.5.2 (“All agencies shall organize themselves as to officers and subcommittees at the initial meeting after election or appointment and shall conduct business in accordance with accepted parliamentary rules.”) and Bylaw 3.1.9 (i) (3) (“The President shall conduct the sessions according to accepted parliamentary rules and make every effort to arrange the schedule of business so that the sessions do not exceed one week in duration.”), the Constitution, Bylaws, and resolutions of the Synod supersede any “accepted parliamentary rules.”

Question 5: If the Board does not have such authority, are any appointments made on such a basis valid and operative, or do the positions remain vacant until filled in accordance with the provisions of the Bylaws?

Opinion: See the response to question 2 above. The positions remain vacant.

Question 6: Can the Commission on Constitutional Matters inform and direct the Board of Directors that its former actions are null and void?

Opinion: The Commission on Constitutional Matters through this opinion has informed the Synod (including the Board of Directors) that the aforementioned appointments are null and void, but it does not have the responsibility to enforce the Constitution, Bylaws, and resolutions of the Synod or its opinions. Therefore the Commission cannot “direct” the Board of Directors concerning their action. The Commission only interprets, that is, explains and tells what the collective will of the Synod is as expressed in the Constitution, Bylaws, and resolutions of the Synod.

See also the answers to the above questions.

Adopted Oct. 16–18, 2005

Activity of Small Groups Within the Synod (05-2443)

In a letter dated September 19, 2005, three members of the Council of Presidents submitted a series of questions regarding the propriety of certain activities of small groups within the Synod.

Question 1: Is it in harmony with the Constitution and Bylaws (1.3, 1.4, 1.8, 1.10, 3.1.1, and 3.1.6.2) of the Synod for any member of the Synod or unofficial group within the Synod to engage in activities that seek to carry out the objectives of the Synod (Article III) that the Synod has reserved until itself, though such members or groups have not been given such responsibility by the Synod itself? (E.g.: *“Resolved, that we send our pastor and one layman to represent _____ Lutheran Church of _____ to form a coalition of other confessional congregations and pastors to formulate a united plan of action for marking and avoiding (Romans 16:1) those who hold to the above stated errors in doctrine and practice.”*)

Opinion: On October 16, 1969, the Commission on Constitutional Matters issued a landmark opinion on the subject of “Dissenting Groups and Activities Within the Synod.” A portion of that opinion speaks directly to the question above:

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

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

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

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

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

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

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

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

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

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

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

Accordingly, and in response to the question submitted to the Commission, it is not in harmony with the Constitution and Bylaws of the Synod for a member of the Synod or an unofficial group within the Synod to assume such responsibilities as the Synod has reserved for itself in its stated objectives, "which are the objectives of the members themselves" (Bylaw 1.3.4).

Question 2: Is it in harmony with the Constitution and above Bylaws of the Synod for any member of the Synod or any groups within the Synod to advocate the withholding of funds from the Synod?

Opinion: In an October, 1966 opinion, the Commission on Constitutional Matters, in response to an inquiry from the President of the Synod, stated:

It is the opinion of the Commission that a congregation which withholds funds from the Synod is subject to serious admonition for divisive and unbrotherly conduct which destroys the synodical concept itself of “a walking together.” If all efforts at admonition fail, such a congregation shall in due course be subject to suspension and to eventual expulsion.

In a second October, 1966 opinion in response to a second question from the President of the Synod, the Commission stated the following regarding the activities of a group that was receiving and disbursing funds for mission work:

Quite aside and apart from any legal rights which The State of the Church, Inc. may or may not have, such synodically-unauthorized receiving of funds raises suspicion in the minds of the members of the congregations of the Synod and is divisive. Furthermore, since the disbursement of such funds is on a selective basis, this likewise is divisive. The Commission therefore holds that such activities can only militate against the essential unity implied and involved in a synodical structure (“a walking together”).

Accordingly, in response to the current question, a member of the Synod or any groups within the Synod that advocate the withholding of funds from the Synod are subject to admonition for activities that militate against the essential unity intended by the structure of the Synod as provided in its Constitution and Bylaws.

Question 3: Is it in harmony with the Constitution and above bylaws of the Synod for any member of the Synod or any groups within the Synod to teach publicly, publicly advocate, or promote any position contrary to the position of the Synod?

Opinion: Again, the above-referenced 1969 opinion (see response to question 1 above) speaks to this issue:

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

All members of the Synod and of its congregations are to beware of the danger of groups and activities which divide and splinter the Synod. Synodical and district officers and board and commission members have a special responsibility to identify divisive and

subversive movements and to avoid them. By their example and advice they are to conserve and promote the unity of the true faith and the oneness of the Synod.

Accordingly, it is not in harmony with the Constitution and Bylaws of the Synod for any member of the Synod or any groups within the Synod to teach publicly, publicly advocate, or promote any position contrary to the position of the Synod. Dissent activities are to be governed by section 1.8 of the Bylaws of the Synod to which members have “commit[ted] themselves to act in accordance with” and “under which they have agreed to live and work together” (Bylaw 1.3.4).

Adopted Oct. 16–18, 2005

Implementation of Circuit Realignment (05-2447)

In a letter dated October 5, 2005, a district president asked the Commission to review a proposal of his district’s Circuit Realignment Committee that establishes a schedule for implementation of the realignment of circuits in his district should proposed actions to that effect be adopted by the 2006 district convention.

Question: Is the proposed schedule for the implementation of circuit realignment as stipulated in the enclosed resolution acceptable? As you will note, because of the schedule of the conventions of the district and the Synod, we are proposing that circuits be realigned so that the new configuration of circuits takes effect for the 2007 convention of the Synod and for the 2009 convention of the district.

Opinion: Article XII 3 c gives responsibility to districts to establish visitation circuits by including among district officers “as many circuit counselors as each district may determine upon.” Bylaw 1.3.2 expands upon that understanding: “The Synod divides itself into districts and authorizes the districts to create circuits.” Accordingly, Bylaw 4.3.1 includes “a circuit counselor for each circuit established by the district” in a list of officers to be elected by each district, with Bylaw 5.2.2 providing the process to be used for such elections.

The Bylaws also authorize the creation of a second kind of circuit. While Bylaw 5.1.1 establishes the criteria for creating the visitation circuits provided for above, Bylaw 3.1.2 establishes the criteria for creating electoral circuits from those existing visitation circuits to provide delegates to conventions of the Synod. In both cases, the Constitution and Bylaws of the Synod are silent regarding the manner in which the implementation of these bylaw requirements is to take place.

The implementation schedule proposed by the district’s Circuit Realignment Committee, advocating that the electoral circuits in question be realigned for the 2007 Synod convention with the realignment of visitation circuits waiting until the 2009 district convention is not workable, given the requirement of the Synod’s Bylaws that the establishment of electoral circuits depends upon existing visitation circuits. To change electoral circuit configurations prior to changing visitation circuit configurations is not possible or appropriate, since visitation circuits are the building blocks by which electoral circuits are constituted (paragraph (a) of Bylaw 3.1.2).

The question of how best to introduce circuit realignments when district convention action is required therefore remains, especially given bylaw requirements for the election of circuit counselors by a process that involves a detailed pre-convention process that necessarily involves existing circuit alignments. The Commission offers the following two options that are consistent with existing constitutional and bylaw requirements.

Option 1: Postpone implementation of any realignment decided by the convention until the next following district convention (in this case, 2009), electing current circuit counselors according to the existing alignment of circuits and authorizing that the circuit counselor nominations process provided by Bylaw 5.2.2 be applied according to the new realignment when preparing for the following convention. In the meanwhile, electoral circuits for the following year's Synod convention (in this case, 2007) would continue to be formed from the existing circuit configuration according to the requirements of Bylaw 3.1.2. After the implementation of the realignment (in this case, 2009), the formation of electoral circuits would be carried out according to the new circuit configuration in preparation for the following year's Synod convention (in this case, 2010).

Option 2: Provide for implementation of the realignment effective immediately (in this case, 2006), electing circuit counselors according to the new alignment of circuits and allowing for the formation of electoral circuits for the coming year's Synod convention according to the new configuration. Under this option, the election of circuit counselors would become more involved, since the nominations process outlined by Bylaw 5.2.2 in preparation for the convention would of necessity have been carried out according to the then-existing circuit configuration. Bylaw 5.2.2 (f) makes clear, however, that the election of circuit counselors is not final until the slate provided by the nominations process has been ratified by the convention. As part of that process, Bylaw 5.2.2 (c) and (d) provide for the holding of a caucus of the pastors and lay delegates of a circuit at the time of the convention, thereby to act on behalf of the circuit's congregations to resolve any issues regarding a circuit counselor nomination. In this case, such caucusing would allow the delegates from the congregations of visitation circuits affected by the realignment to meet prior to final ratification by the convention of the slate of nominees for circuit counselor (Bylaw 5.2.2 (f) and to nominate to that slate a pastor of their newly formed circuit to serve as counselor. Use of this option should be accompanied by clear notice to the congregations of the district of its process and consequences.

Adopted Oct. 16–18, 2005

Authority of the Board of Directors (05-2438)

A pastor member of the Synod in a letter dated September 10, 2005, after calling attention to several bylaws describing the authority of the Board of Directors and of the President of the Synod, asked a series of questions regarding the following action of the Board of Directors during its August, 2005 meeting:

WHEREAS, It is most important that all activities sponsored by and/or conducted under the auspices of The Lutheran Church—Missouri Synod are in accordance with the doctrine and practice of our Synod; and

WHEREAS, Concerns have been expressed regarding the theological positions or articulations of some of the presenters at past LCMS National Youth Gatherings; therefore be it

Resolved, That the Board of Directors evangelically encourage the Board for District and Congregational Services of the Synod, in consultation with the Office of the President, to evaluate carefully and thoroughly all presenters invited to future National Youth Gatherings to ensure that they are faithful to the doctrine and practice of The Lutheran Church—Missouri Synod; and be it further

Resolved, That the Board of Directors express its concerns regarding potential liability or adverse financial consequences connected with future National Youth Gatherings; and be it finally

Resolved, That the Board of Directors requests the Board for District and Congregational Services to report to the Board of Directors at its February, 2006 meeting the progress that is being made in addressing and resolving the issues that have been discussed between the Board of Directors and the Board for District and Congregational Services regarding the LCMS National Youth Gathering.

After noting the repeated references in the resolution to “doctrine and practice” and to “theological positions or articulations,” the questioner asked:

Question 1: In light of Bylaw 3.3.5.4, by what authority did the Board of Directors pass a resolution dealing with “doctrine and practice” and “theological positions or articulations”?

Question 2: In light of Bylaws 3.3.1.1 and 3.3.1.1.1, did the Board of Directors usurp the authority of the synodical President?

Question 3: If the Board of Directors did in fact usurp the authority of the synodical President, should the resolution adopted by the Board of Directors be declared null and void?

Opinion:

Ecclesiastical Authority of the Board of Directors

As reflected in Opinion 05-2434 (see minutes of the Commission’s October, 2005 meeting), the precise limits of the authority of the Board of Directors cannot be delineated in the abstract. As suggested in that opinion, the primary responsibilities of the Board are in the areas of business, property, and legal affairs, including general oversight responsibility for all the business and property of the Synod.

According to Bylaw 3.3.5.4: “The Board of Directors shall be responsible for the general management of the business and legal affairs of the Synod...” Bylaw 3.3.1.1 states: “As the chief ecclesiastical officer of the Synod, the President shall supervise the doctrine taught and practiced in the Synod, including all synodwide corporate entities.” And Bylaw 3.3.1.1.1 states: “The President of the Synod has ecclesiastical supervision of all officers of the Synod and its agencies, the individual districts of the Synod, and all district presidents.”

Essentially, the basic issue raised in these three questions is whether the Board of Directors has responsibility and authority with regard to ecclesiastical matters. If it has any such authority, such authority does not derive from Article XI F of the Constitution, under which the Board has been delegated authority with respect to property and business affairs of the Synod. The Bylaws of the Synod are similarly not the source of any such authority or responsibility. The authority granted under Bylaw 3.3.5, the general grant of authority to the Board of Directors, again imposes responsibilities with respect to the general business affairs of the Synod but does not provide any general grant of ecclesiastical authority. Rather, the Bylaws give different measures of the ecclesiastical authority and/or responsibility to many others, including the President under Bylaws 3.3.1.1 and 3.3.1.3, the district presidents under Bylaw section 4.4, and those involved in the termination of membership processes described in Bylaw sections 2.13 through 2.17. Various ecclesiastical purposes of the church are also assigned to some of the Synod’s program boards and commissions including, for example, the Board for Pastoral Education, the Board for Communication Services, the Commission on Doctrinal Review, and the Commission on Theology and Church Relations.

The Synod also delegates authority through resolutions of its conventions. In adopting such resolutions, the Synod has often recognized the distinction between business issues and those of an ecclesiastical nature. For example, as recognized in Opinion 02-2259, 2001 Resolution 7-03C charged the President and Board of Directors with specific responsibilities to see to it that the Constitution and Bylaws of the Synod are observed but directed that, when a failure to comply with the Constitution and Bylaws is discovered, the President or Board of Directors, whichever is charged with supervision or oversight, shall act to correct such failure to comply as quickly as possible. Here, any failure of the Board for District and Congregational Services regarding doctrinal issues would fall under the responsibility of the President.

Analysis of the Challenged Resolution

It is not the responsibility or authority of the Commission on Constitutional Matters in general to review resolutions of the Board of Directors. The question presented, however, asks the Commission to interpret the Constitution, Bylaws, and resolutions of the Synod to evaluate whether an action of the Board of Directors is consistent with them. Unfortunately, the resolution of the Board is fairly brief. Both whereas clauses refer to doctrine and practice and to theological positions or articulations. If there are concerns regarding theological issues relating to the LCMS National Youth Gatherings or, for that matter, any of the other programs operated by the various boards and commissions of the Synod, those issues must be addressed by the appropriate ecclesiastical supervisors and those charged by the Synod with the responsibility for assuring faithfulness in doctrine and practice. While as individual members of the Board of Directors each member may find it appropriate to express concern to the appropriate ecclesiastical supervisor and to the involved board or commission itself, it is not appropriate for the Board of Directors to supervise or critique the doctrine and practice or the theological positions or articulations of such boards or commissions.

Having made those general observations, however, the inquiry is not complete. Bylaw 3.3.5.5 (a) (2) allows the Board of Directors to call up for review the action or policy of any program board, commission, or counsel, except opinions of the Commission on Constitutional Matters. However, that authority to call up for review is conditioned by paragraph (a) of that bylaw: "To the extent of its responsibilities relative to the general management of and supervision of the business and legal affairs of the Synod..." In the Board resolution in question, the whereas clauses express concern regarding doctrine and practice together with theological positions and articulations. Those concerns do not fall within the "general management and supervision of the business and legal affairs" of the Synod. Rather than adopting such a resolution regarding theological concerns, it would have been more appropriate for the members of the Board of Directors to have communicated their individual concerns to the Board for District and Congregational Services and to the President of the Synod (to exercise his responsibilities under Article XI B of the Constitution and Bylaw 3.3.1.1.1) rather than to handle the matter through a formal resolution outside the Board's area of responsibility. Insofar as the subject resolution requires the Board for District and Congregational Services to report to the Board of Directors regarding theological matters, the resolution exceeds the authority of the Board of Directors.

Financial Concerns of the Board of Directors

The second resolve of the Board's resolution expresses concerns regarding the potential liability or adverse financial consequences connected with the future National Youth Gathering. Unfortunately, nothing in the whereas clauses articulates a basis for this resolve. The Board of Directors is properly concerned with potential liability and adverse financial consequences that may occur by reason of the conduct of agencies of the Synod. In considering that issue, however, it should be recognized that not all issues having a fiscal impact upon the Synod are within the Board's area of authority.

For example, it is the President of the Synod who articulates in a public fashion the positions of the Synod with respect to ecclesiastical issues. While there may be a reduction in contributions to the Synod or to individual churches of the Synod by reason of a public statement regarding the church's position on abortion, the role of women in the church, the inappropriateness of various fraternal organizations, and many other topics, it is entirely outside of the Board of Directors' authority to restrict the President's communications in such areas. Similarly, the Commission on Theology and Church Relations is charged with the responsibility of assisting in maintaining doctrinal unity within the Synod and suggesting to the Synod studies of contemporary issues, including current social issues as they affect the church and as the church may affect such social issues. Certainly, a number of those studies and activities of the Commission can have the effect of causing some persons to leave the membership of the church or to choose not to become associated with the church. In the same sense, the responsibilities of the Board for District and Congregational Services, including the National Youth Gathering, are a program function of the church delegated specifically to that Board. The Board for District and Congregational Services is expressly charged by the Synod under Bylaw 3.8.6 with the responsibility to determine the number and nature of ministry areas necessary to meet expressed district and congregational needs, to arrange and carry out a comprehensive and effective program of Christian education (particularly as it relates to the Synod's children and youth), as well as to provide input to assist those within the Synod that includes proper scriptural motivation in all gift programs.

Relationship of the Board of Directors and the Board for District and Congregational Services

The Board of Directors is not authorized to interfere with the Board for District and Congregational Services in the performance of those functions delegated to it by the Synod in convention. The final resolve of the resolution in question requests that the Board for District and Congregational Services report to the February, 2006 meeting of the Board of Directors. The Board of Directors is, under Bylaw 3.3.5.5, certainly responsible to hold the program boards of the Synod responsible for funds allocated to them by the Board. To the extent of its responsibilities relative to the general management and supervision of the business and legal affairs of the Synod, the Board of Directors may also receive such reports as it requests on the operations and policies of the program boards, commissions, and councils. To the extent that the Board's resolution attempts to seek input from the Board for District and Congregational Services with respect to those fiscal functions, the resolution is appropriate. To the extent that it seeks to challenge the judgment of the Board for District and Congregational Services as to the theological appropriateness of the program or presenters of the LCMS National Youth Gatherings, such a request would exceed the jurisdiction of the Board of Directors. Nothing in the resolve suggests that the Board of Directors, in this resolve, is attempting to influence or control the program decisions, doctrine and practice, or theological positions or articulations of the Board for District and Congregational Services.

Effect of the Resolution

In summary, the Board of Directors does not have the authority to pass resolutions dealing with "doctrine and practice" and "theological positions or articulations." It is the responsibility of the President of the Synod, together with all others to whom ecclesiastical responsibility has been delegated, to address concerns regarding the doctrine and practice and theological positions or articulations taken by the Board for District and Congregational Services as a whole or in its implementation and development of program and presentation for the National Youth Gathering. The Board of Directors does have responsibility to review fiscal functions of the Board for District and Congregational Services and to request appropriate reports under Bylaw 3.3.5.5.

Adopted Nov. 28–29, 2005

**Procedure for Filling Vacancies in Elected Positions, Revisited
(05-2439; 05-2440; 05-2442)**

As reflected in its November 18, 2005 minutes, the Commission on Constitutional Matters determined to revisit its Opinion 05-2439; 05-2440; 05-2442: “Procedure for Filling Vacancies in Elected Positions,” giving consideration to input from the Board of Directors and the Synod’s legal counsel that was not available at the time of the issuance of the opinion, despite the timely request for such input. While the question presented is not one which pertains primarily to business, legal, finance, civil rights, or property matters and therefore required to be submitted to either the Board of Directors or the Synod’s legal counsel pursuant to Bylaw 3.9.2.2 (b), the Commission chose to solicit that input, as it has always been able to do. The current issue relates to filling vacancies on elected board positions of the Synod. While this issue may qualify under a very broad definition of “legal,” by that definition almost every issue to come before the CCM is legal. Surely this was not the intention of the Synod. It is ultimately the responsibility of the Commission on Constitutional Matters and not the Synod’s legal counsel or the Board of Directors to interpret the governing documents of the Synod. The Synod has chosen the Commission on Constitutional Matters and not the Synod’s legal counsel, the Board of Directors, or the civil courts to interpret the Synod’s Constitution, Bylaws, and resolutions. The Commission appreciates the input provided. It trusts that such input serves to focus and refine its analysis and to provide the best service possible to the Synod.

Each of the questions submitted is properly within the scope of the responsibilities assigned to the Commission under Bylaw 3.9.2.2, and each requires the Commission to consider the Constitution, Bylaws, and resolutions of the Synod. In fulfilling that function and considering the issue properly presented, the Commission must consider whether particular actions of the Board of Directors are consistent with those governing documents. While the Commission has no enforcement authority, its opinions are of binding effect on all within the Synod unless and until overturned by the Synod in convention. No opinion can simply be ignored within the Synod or treated as having no force and effect. It is the responsibility of the President and others with supervisory responsibility, and not the Commission on Constitutional Matters, to see to it that those within the Synod abide by the opinions of the Commission.

The Commission reaffirms that Resolution 7-14 makes it very clear that the Board of Directors (as well as all other entities filling vacancies pursuant to the provisions of Bylaw 3.2.5) is required to fill the vacancies of boards and commissions elected by the Synod from the list provided by the nominations committee. This interpretation is consistent with the past practice of the Synod and the express language of Resolution 7-14, which recited: “Bylaw 3.63 b [current Bylaw 3.2.5] requires that vacancies on synodically elected boards and commissions be filled by the Board of Directors of the Synod from a list of nominees...” This requirement applies to both of the specific appointments raised in the question presented, i.e., a replacement on the Concordia Publishing House Board of Directors and on the Board of Directors of the Synod. Bylaw 3.2.5 does not make provision for nominations from the floor. Instead, the Bylaws provide a detailed procedure for gathering a list of nominees and the submission of a list of three to five names off of that list as “candidates” to the Board of Directors. The clear intent of this detailed procedure in the bylaw is that the vacancy can be filled only from among the three to five candidates (or nominees). Otherwise, this detailed procedure is at best a “hollow” exercise.

The Board of Directors (or, for that matter, any other entity filling a vacancy under Bylaw 3.2.5) does have opportunity to provide input regarding possible nominees/candidates. Each provision of a bylaw or resolution must, if possible, be given some reasonable meaning. No word, clause, or sentence should unnecessarily be rendered meaningless or superfluous. This is applicable when filling a vacancy on the Board of Directors under Bylaw 3.2.5. The bylaw provides that the source of a list of nominees shall be secured from, among others, the board where the vacancy occurs. Thus, the Board of Directors has input

into the selection process for the list of nominees for the vacancy on the Board of Directors. If the Board of Directors thereafter has the right to make floor nominations to the list of candidates prepared in the prescribed manner, the candidate selection process set forth in Bylaw 3.2.5 is meaningless. Although nominees are sought from sources other than the Board of Directors and a separate selection committee chooses a list of three to five nominees, floor nominations by the Board of Directors would result in the nominee of the Board of Directors being elected and the interim steps of selecting candidates would be superfluous.

Having considered the additional input, the Commission reaffirms prior Opinion 05-2439; 05-2440; 05-2442.

Adopted Nov. 28–29, 2005

Proper Dissent and Dispute by Members of the Synod_(05-2444)

In a letter dated September 9, 2005, a series of questions were addressed to the Commission by five district presidents and two vice-presidents of the Synod regarding whether or not the Synod's Constitution and Bylaws provide actions available to persons who have conflict with various actions taken by the Synod in convention or by duly elected officers of the Synod other than by filing a lawsuit against the Synod and/or by the use of other avenues that are in violation of the Constitution and Bylaws of the Synod.

Question 1: Is it in harmony with the Constitution and Bylaws (1.3, 1.4.1, 1.7, 1.8, 1.10, 3.1.1, and 3.1.6.2) of the Synod for any member of the Synod or any group within the Synod as an avenue or form of dissent or dispute to engage in promoting non-compliance with the resolutions of the Synod and making charges against the Synod, the President, and others of the Synod by use of lawsuits, publications, letters, or meetings and conferences that are not in keeping with the polity of the Synod as set forth in the Constitution and Bylaws?

Opinion: No, every member of the Synod (individual and congregation) joins the Synod voluntarily and in doing so agrees to relate to, live, and serve together with one another (“walk together”) in harmony with the Constitution and Bylaws:

In joining the Synod, congregations and other members obligate themselves to fulfill such requirements and to diligently and earnestly promote the purposes of the Synod by word and deed. 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 Constitution and Bylaws of the Synod 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 1.3.4) (Emphasis added)

DISSENT

I. “While retaining the right of brotherly dissent, members of the Synod are expected as part of the life together within the fellowship of the Synod to honor and uphold the resolutions of the Synod” (Bylaw 1.8.1).

In their agreement to live and work together in harmony (in harmony with the Constitution and Bylaws) the members of the Synod, when and where dissent exists, have agreed to and encourage the right of

brotherly dissent. Dissent that is “brotherly” will always regard another as a brother or being in a “brotherhood” (Cf. reference to “brotherhood” in Bylaw 1.10.1.1) and will treat and relate to others in the “fellowship” as brothers.

1971 convention Resolution 2-21 explains: “To honor and uphold (emphasis added) means not merely to examine and study them, but to support, act, and teach in accordance with them until they have been shown to be contrary to God’s Word.” Honoring and upholding the resolutions of the Synod means that the dissenter is not to preach, teach, disseminate, or promote any position contrary to the position of the Synod nor engage in loveless public criticism nor to degrade, belittle, or depreciate the position of the Synod while dissenting.” In regard to violation of then-Bylaw 2.39 c (current Bylaw 1.8.1), a 1993 Commission on Constitutional Matters opinion (Ag. 1956) regarding doctrinal dissent stated: “Doctrinal discipline must be exercised in the case of the pastor who teaches contrary to the position of the Synod...” And in a Commission opinion of October 23, 1996 (Ag. 2048):

...the dissenter is not free to teach the dissenting view...to so teach publicly that the position of the Synod is contrary to the Scriptures would be to elevate a matter of human opinion to the level of Scriptural doctrine—which from the viewpoint of the Synod would be contrary to the Scriptures...If permitted to do so, every member of the Synod would have the right to determine which of the positions of the Synod in similar matters it wished to accept and which to reject.

II. “Dissent from doctrinal resolutions and statements is to be expressed first within the fellowship of peers and 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” (Bylaw 1.8.2).

The “dissent from doctrinal resolutions and statements” is first of all expressed within the “fellowship of peers.” A 1969 Commission opinion on “dissenting groups” is helpful in understanding a partial background of the current bylaw:

The Synod has provided for forums in which such differences can be discussed and evaluated beyond the confines of the local congregation. The pastors and teachers conferences; the circuit meetings; the synodical and district board, commission, and committee meetings; the doctrinal supervision and appeals procedures; and above all the conventions of the districts and of the Synod provide the proper channels through which the issues of opinion and judgment are to be discussed and decided...If additional channels for discussion are needed the Synod can provide for the same in its Bylaws through appropriate convention action.

In a report of the Commission on Theology and Church Relations, November, 1973, “Guiding Principles for the Use of ‘A Statement of Scriptural and Confessional Principles’ with Special Reference to the Expression of Dissent,” the “fellowship of peers” is explained this way:

The Synod’s established procedures for registering dissent with its doctrinal statements include the following: a. “That we call upon those who teach publicly in the church (pastors, teachers, and professors) to test their findings and opinions with their peer groups before presenting them to the church at large and to refrain in brotherly love from disseminating doctrinal positions in such manner and in such situations as will cause confusion and offense in the church” (1965 Resolution 2-08, *Proceedings*, p. 96). It is expected that pastors and teachers will discuss their objections and concerns in their conferences, that professors will discuss such matters with their teaching and

administrative colleagues, and that staff members will discuss their objections with their boards and other staff persons.

Then the dissent is brought to the attention of “the Commission on Theology and Church Relations” before finding expression as “an overture to the convention.” This, together with the expression of dissent within the fellowship of peers, gives the dissenter the privilege and responsibility to advise and persuade or convince the “fellowship of the Synod” on the basis of the power of the Word of God and in an orderly harmonious way.

Brotherly and formal dissent should not be confused with the wholesome need to discuss differing viewpoints, to have frank and open discussions, and to always examine and review all positions and resolutions of the Synod. A 1969 Commission opinion (“Dissenting Groups”) stated:

In this opinion the Commission is not attempting to limit the right of individuals to speak their own minds. Before and after the passage or rejection of synodical resolutions individuals must be free to express their concerns, especially for their peers. Frank and open discussion, carried on in a spirit of Christian love and forbearance, must be part of our life together in the Synod. It can be proper and salutary....It is within the context of the Synod—the forums, channels, and procedures which the Synod itself establishes—that differing viewpoints need to be discussed and an issue finally decided. Continuing dialogue beyond the point of decision must also be carried on within the same synodically agreed upon framework and in deference to the majority will. (Emphasis added)

More recently, the Commission’s Opinion 03-2328 also addressed the subject:

As a part of life together in the Synod, members have the responsibility to continually examine and reexamine their confession (symbols, doctrinal statements, and resolutions) to determine if they are faithful to the Holy Scriptures. Members have a never-ending task of testing everything that the Synod believes, teaches, and practices to see if they are in accordance with the Word of God. If there are issues that need to be readdressed or issues that are considered by the members of the Synod that have not yet been addressed, any action is to be governed by the procedures set forth in the Bylaws, particularly Bylaws 1.09 and 2.39 [now Bylaws 1.6, 1.7, and 1.8].

“The collective will of the Synod” (Bylaw 1.8.2) is established and expressed through the Synod in convention and not by individuals or groups within or outside of the Synod, nor through the courts or unofficial publications, letters, meetings, and conferences:

The delegate convention of the Synod is the legislative assembly that ultimately legislates policy, program, and financial direction to carry on the Synod’s work on behalf of and in support of the member congregations. (Bylaw 1.4.1)

[The convention] is the principal legislative assembly, which amends the Constitution and Bylaws, considers and takes action on reports and overtures, and handles appropriate appeals. It establishes general positions and policies of the Synod, provides overall program direction and priorities, and evaluates all such positions, programs, policies, directions, and priorities in order to provide responsible service for and on behalf of its members. (Bylaw 3.1.1)

Bylaw 3.1.6.2 sets forth how overtures may be submitted to the convention so that the collective will of the Synod can be established and expressed.

DISPUTE

In their agreement to live and work together in harmony (in harmony with the Constitution and Bylaws) the members of the Synod, when and where disputes exist, are required, subject to limited exceptions, to use the avenue provided by the Synod to settle disputes, as set forth in Bylaw section 1.10, "Dispute Resolution of the Synod," which in part states:

The Holy Scriptures (1 Cor. 6:1-7) urge Christians to settle their differences by laying them before the "members of the brotherhood." Therefore, the Synod in the spirit of 1 Corinthians 6 calls upon all parties to a disagreement, accusation, controversy, or disciplinary action to rely exclusively and fully on the Synod's system of reconciliation and conflict resolution. The use of the Synod's conflict resolution procedures shall be the exclusive and final remedy for those who are in dispute. Fitness for ministry and other theological matters must be determined within the church. Parties are urged, in matters of a doctrinal nature, to follow the procedures as outlined in Bylaw section 1.8. (Bylaw 1.10.1.1) (Emphasis added)

The procedure set forth in the Synod's dispute resolution process can involve or include as parties any member 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 (Bylaw 1.10.2). Procedures for expulsion of membership under Article XIII of the Constitution are set forth in Bylaws 2.14–2.17.

Therefore, all members of the Synod are required to resolve all matters of dissent or all disputes by the avenues and structures available to them as set forth in the Constitution and Bylaws of the Synod without resorting to secular courts and without resorting to avenues, means, structures, or communications that are foreign or contrary to the synodical agreements and which are not in harmony with the polity of the Synod. "We appeal once again to all members of the Synod to use the channels which the Constitution, Bylaws, and resolutions of the Synod provide for resolving our differences without resorting to the organization and continuation of separate groups" (Opinion Ag. 484, 484A; November, 1973).

Question 2: Does the dissent process set forth in Bylaw 1.8 (Cf. Bylaw 1.6.2) and/or the dispute resolution process set forth in Bylaw 1.10 allow dissent or disputes regarding "syncretism and unionism," "the role and authority of women in the church," synodical governance issues (such as the use of Matthew 18:15 in Bylaws 1.10 and 2.14, the selection of floor committee members, the dispute process set forth in Bylaw 1.10, "close communion issues and practices," and the "lay minister issue"?

Opinion: Members of the Synod in all those issues identified and in all areas of disagreement and dissent are bound by the provisions of Bylaw section 1.8. Similarly, members of the Synod in disputing such issues are bound by the provisions of Bylaw section 1.10.

The dispute resolution procedure as set forth in Bylaw section 1.10 may precisely be used in such disputes:

This procedure is established to resolve, in a God-pleasing manner, disputes that involve as parties, (1) members of the Synod, (2) the Synod itself, (3) a district or an organization owned and controlled by the Synod, (4) persons involved in excommunication, or (5) 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. It shall be the exclusive remedy to resolve such disputes that involve theological, doctrinal, or ecclesiastical issues except those covered under Bylaw sections 2.14–2.17 and except as provided in Bylaw 1.10.3. It is applicable whether the dispute involves only a difference of opinion without personal animosity or is one that involves ill will and sin that requires repentance and forgiveness. (Bylaw 1.10.2)

Bylaw 1.10.3 does set forth some exceptions, none of which are applicable to the question asked, as follows:

This chapter provides evangelical procedures to remedy disputes only and does not set forth procedures for expulsion from membership (Constitution Art. XIII and Bylaw sections 2.14–2.17) nor does it set forth procedures for board of regents' supervision of faculty and administration as specified in Bylaws 3.8.2.7.5–3.8.2.7.9 and 3.8.3.8.5–3.8.3.8.9...this chapter does not provide an exclusive remedy for the following matters, unless such matters involve theological, doctrinal, or ecclesiastical issues, including those arising under the divine call of a member of the Synod:

- (a) Disputes concerning property rights (e.g., real estate agreements, mortgages, fraud, or embezzlement); and
- (b) Disputes arising under contractual arrangements of all kinds (e.g., contracts for goods, services, or employment benefits).

It must be noted in regard to dissent and disputes in the Synod that the procedures set forth for brotherly dissent (Bylaw section 1.8) and dispute (Bylaw section 1.10) are for the purpose of carrying out the objectives of the Synod (Constitution Art. III), especially objectives 1 and 6:

1. Conserve and promote the unity of the true faith (Eph. 4:3 – 6; 1 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;
6. Aid congregations by providing a variety of resources and opportunities for recognizing, promoting, expressing, conserving, and defending their confessional unity in the true faith.

Question 3: Does the dispute resolution process set forth in Bylaw 1.10 allow disputes regarding any alleged wrongdoings by any officer, board, or commission of the Synod or allow disputes regarding an[y] alleged violations of the Synod's Constitution and Bylaws by any officer, board, or commission?

Opinion: Bylaw 1.10 not only allows but requires all members to use the avenue provided by the Synod to settle disputes as set forth in Bylaw section 1.10, with the exceptions as set forth in Bylaw 1.10.3. See the answers to both questions one and two above.

Question 4: Do the provisions set forth in Bylaw 3.1 (National Conventions) allow for correction of any alleged irregularities or violations of the Synod's Constitution and Bylaws by the Synod in convention itself, the convention floor committees, or by any officer, board, or commission?

Opinion: Any and all alleged irregularities or violations of the Synod's Constitution and Bylaws committed by the Synod in convention itself, the convention floor committees, or by any officer, board, or commission can be addressed for correction by the Synod in convention. Bylaw 3.1.1 states:

The national convention of the Synod shall afford an opportunity for worship, nurture, inspiration, fellowship, and the communication of vital information. It is the principal legislative assembly, which amends the Constitution and Bylaws, considers and takes action on reports and overtures, and handles appropriate appeals. It establishes general positions and policies of the Synod, provides overall program direction and priorities, and evaluates all such positions, programs, policies, directions, and priorities in order to provide responsible service for and on behalf of its members...

The broader context of the Constitution and Bylaws also provides the foundation for the answer to the question asked. Example:

1. The officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod.
 2. The Synod at all times has the right to call its officers to account and, if circumstances require it, to remove them from office in accordance with Christian procedure.
 3. The Synod reserves the right to abolish any office it has established. (Art. XI A) (Emphasis added)
2. It is the President's duty to see to it that all the aforementioned act in accordance with the Synod's Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod. (Art. XI B) (Emphasis added)

The delegate convention of the Synod is the legislative assembly that ultimately legislates policy, program, and financial direction to carry on the Synod's work on behalf of and in support of the member congregations. It reserves to itself the right to give direction to all officers and agencies of the Synod. Consequently, all officers and agencies, unless otherwise specified in the Bylaws, shall be accountable to the Synod for all their actions, and any concerns regarding the decisions of such officers or agencies may be brought to the attention of the Synod in convention for appropriate action. (Bylaw 1.4.1) (Emphasis added)

Dissent from doctrinal resolutions and statements is to be expressed first within the fellowship of peers and 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... (Bylaw 1.8.2) (Emphasis added)

(c) He shall call up for review any action by an individual officer, executive, or agency that, in his view, may be in violation of the Constitution, Bylaws, and resolutions of the Synod.

- (1) If he deems appropriate, he shall request that such action be altered or reversed.

(2) If the matter cannot be resolved, he shall refer it to the Board of Directors, the Commission on Constitutional Matters, and/or the Synod in convention as he deems appropriate for the issues and party/parties involved.

(3) This provision in no way alters the President's constitutional duty to report to the Synod those who do not act in accordance with the Constitution and do not heed his admonition, as prescribed in Art. XI B 2 of the Constitution. (paragraph (c) of Bylaw 3.3.1.2) (Emphasis added)

Question 5: Is it in harmony with the Constitution and above Bylaws of the Synod for any member of the Synod to engage in dissenting (or promoting non-compliance) against the Synod by use of a lawsuit, when such members have not used the avenues of dissent as set forth in Bylaw 1.8 of the Synod?

Opinion: No. A lawsuit is not a legitimate avenue of dissent. In the agreement to live and work together, a member of the Synod is required to follow the avenue of dissent as set forth in Bylaw section 1.8, including honoring and upholding the resolutions of the Synod. While a lawsuit may be an appropriate process in which to resolve a dispute in the secular world, members of the Synod are governed by Bylaw section 1.8 as the required, exclusive, and agreed-to avenue of dissent and Bylaw section 1.10 as the required, exclusive, and agreed-to method of dispute resolution. See the answers to questions 1 and 2 above.

Question 6: Is it in harmony with the Constitution and above Bylaws of the Synod for any member of the Synod to engage in dispute against the President of the Synod or the Synod itself by use of a lawsuit, when such members have not used the avenue of dispute as set forth in Bylaw 1.10 of the Synod?

Opinion: No. In the agreement to live and work together, a member of the Synod is required to rely exclusively and fully on the Synod's system of reconciliation and conflict resolution. Unless the dispute is one concerning property rights or contract arrangements under Bylaw 1.10.3 (a) or (b), such suit would be a gross violation of the process of Bylaw section 1.10 and the covenants which bind members together in the Synod. The use of the Synod's conflict resolution procedures is the exclusive and final remedy for those who are in dispute (Bylaw section 1.10). See the answers to questions 1, 2, and 5 above.

Question 7: If any of the above is not in harmony with the Constitution and Bylaws of the Synod, what remedy does the Constitution and Bylaws of the Synod provide?

Opinion: The Constitution and Bylaws of the Synod provide disciplinary measures against any member who violates the Constitution and Bylaws of the Synod. Such provisions include Bylaw section 1.10, "Dispute Resolution of the Synod": "The use of the Synod's conflict resolution procedures shall be the exclusive and final remedy for those who are in dispute" (Bylaw 1.10.1) and Article XIII of the Constitution, "Expulsion from the Synod," and its procedures as set forth in Bylaw sections 2.13–2.16:

The only remedy available to the Synod in response to improper activities in the life of such a member of the Synod is, as is true with respect to violations of other conditions of membership or is otherwise appropriate under the Constitution or these Bylaws, and following the procedures set forth in these Bylaws, to take such action as may lead to termination of that membership and the attendant rights and privileges. (Bylaw 2.13.2)

The ecclesiastical supervisors (the President of the Synod and the district presidents) have disciplinary responsibilities such as stated in Articles XI B and XII of the Constitution:

2. It is the President's duty to see to it that all the aforementioned act in accordance with the Synod's Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod.
3. The President has and always shall have the power to advise, admonish, and reprove. He shall conscientiously use all means at his command to promote and maintain unity of doctrine and practice in all the districts of the Synod. (Art. XI B)
7. The district presidents shall, moreover, especially exercise supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers of their district and acquaint themselves with the religious conditions of the congregations of their district. To this end they shall visit and, according as they deem it necessary, hold investigations in the congregations. Their assistants in this work are the circuit counselors, who therefore shall regularly make their reports to the district president.
8. 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. (Art. XII)

The ecclesiastical and administrative powers and duties of the President of the Synod provide remedy for the matter as set forth in Bylaws 3.3.1.1, 3.3.1.2, and 3.3.1.3, as do the duties of the district president as set forth especially in Bylaws 4.4.4–4.4.6.

Adopted Nov. 28–29, 2005

Clarification of Bylaw 1.10.2, “Involved in Excommunication” (05-2449)

In a letter dated October 14, 2005, a district president requested an opinion concerning the phrase “persons involved in excommunication” in Bylaw 1.10.2. He explained that the phrase is understood by some to entitle individual members of congregations to invoke the Synod's dispute resolution process “at some point before the final vote of the assembly.”

Question: At what stage of discipline is an individual non-member of the Synod sufficiently “involved in excommunication” to invoke the Synod's process of dispute resolution contained in Bylaw 1.10?

Opinion: While Bylaw 1.10.1.2 does make a reference to church discipline involving a congregation, that bylaw and Bylaw 1.10.2 do not address the congregation's process of church discipline or the stages of discipline or at what stage a person is sufficiently “involved in excommunication” to invoke the Synod's process for dispute resolution.

It is implied in the questioner's letter that the Commission is being asked to interpret “persons involved in excommunication.” Bylaw 1.10.2 in part states, “This procedure is established to resolve, in a God-pleasing manner, disputes that involve as parties... (4) persons involved in excommunication...” The Commission opines that such “persons” in fact occupy or are in possession of the circumstance, condition, or consequence of “excommunication.” This means that the congregation has in fact already made its judgment or given its verdict of excommunication after which one may invoke the Synod's dispute resolution process.

However, it must be noted that prior to invoking the formal dispute resolution process of the Synod, the party in dispute must first seek to settle the dispute face-to-face with the congregation. This attempt may include the informal use of a district reconciler. Bylaw 1.10.5 sets forth the process: “Before any matter is submitted to the formal reconciliation process, the parties involved in a dispute must meet together, face-to-face, in a good faith attempt to settle their dispute according to the scriptural mandate of Matthew 18:15 and may involve the informal use of a reconciler.” (Emphasis added)

It must also be noted that only “procedural questions involved in excommunication cases” can be addressed by the Synod’s dispute resolution process under Bylaw section 1.10. “Relative to... ‘persons involved in excommunication,’ Bylaw 8.13 b 1 [current Bylaw 1.10.10.2 (a)] 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...” (Opinion 99-2157, September 14, 1999).

If there is a controversy or unresolved problem concerning the matter at issue in the congregation prior to the verdict of excommunication, Bylaw 4.4.6 sets forth a procedure for the district president to arrange for a visit or an investigation in a congregation: “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 or practice.”

Adopted Nov. 28–29, 2005

Procedure for Dissent (05-2451)

In a letter dated November 7, 2005, a series of questions were addressed to the Commission by a district president of the Synod regarding how an individual should proceed with issues of dissent after he has discussed the matter with his peers and forwarded them on to the Commission on Theology and Church Relations.

Question 1: Is a pastor in the process of dissent according to Bylaw 1.8 of the 2004 *Handbook* of The Lutheran Church—Missouri Synod required to wait for a response from the Commission on Theology and Church Relations before developing an overture with his congregation to be presented at a convention of the Synod?

Opinion: No. Bylaw 1.8.2 states:

Dissent from doctrinal resolutions and statements is to be expressed first within the fellowship of peers and then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention called 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.

There is no requirement in the Bylaws that requires a pastor to wait for a response from the Commission on Theology and Church Relations before proceeding to develop an overture with his congregation. The only requirement in the Bylaws is that, before an overture is submitted to the convention calling for revision or rescision, the dissent will have previously been brought to the attention of the Commission on Theology and Church Relations.

Question 2: When a pastor is in the process of dissent from doctrinal resolutions and statements, what are the bylaw provisions for a pastor to submit “an overture to the convention calling for revision or rescission? (Bylaw 1.8.2)

Bylaw 3.1.6.2 states:

Overtures to a convention of the Synod may be submitted only by a member congregation of the Synod; a convention or board of directors of a district; an official district conference of ordained and/or commissioned ministers; the faculty of an educational institution of the Synod; the Board of Directors of the Synod; a board or commission of the Synod listed in Bylaws 3.2.2, 3.2.2.1, 3.2.3, and 3.2.3.1; a committee established by a prior convention; or a forum of a circuit.

There are no bylaw provisions allowing a pastor or a circuit pastoral conference to submit an overture to a convention. Only entities identified in Bylaw 3.1.6.2 are allowed to submit overtures to a convention. While under Bylaw section 1.8 any member of the Synod may express dissent from doctrinal resolutions and statements in a manner prescribed by Bylaw 1.8.2, only those entities listed in Bylaw 3.1.6.2 may present an overture to a convention of the Synod.

Question 3: Is a pastor who is in the process of dissent according to Bylaw 1.8 of the 2004 *Handbook* of The Lutheran Church—Missouri Synod in conflict with the Constitution of The Lutheran Church—Missouri Synod if he discusses his issues of dissent with anyone except his peers? If it is in violation of the Constitution to do so, how does he discuss this matter with his congregation to encourage them to write an overture to present to the floor committee of the district or Synod for the purpose of it becoming a resolution? If it is not in violation, how is it appropriate for him to discuss this matter with his congregation and still be in compliance with Bylaw 1.7 of the *Handbook*?

Opinion: A pastor who is in the process of dissent according to Bylaw section 1.8 is not in conflict with the Synod’s Constitution and Bylaws if he discusses his issues of dissent with his congregation. The formal process of dissent should be considered separate and distinct from the right or privilege to discuss different viewpoints with his congregation. As stated in the October 16, 1969 opinion of the Commission on Constitutional Matters, “An Opinion Regarding Dissenting Groups and Activities Within the Synod”:

Christians as well as non-Christians expect differences of opinion and judgment to arise when people walk together. The Synod has provided for forums in which such differences can be discussed and evaluated beyond the confines of the local congregation... When the majority has been determined it must be respected. Otherwise life together (synod) becomes all but impossible. Discussion may indeed continue; but it needs to be carried on with full respect for the majority will and within the forums established by the Synod for the preservation of synodical unity... In this opinion the Commission is not attempting to limit the right of individuals to speak their own minds. Before and after the passage or rejection of synodical resolutions individuals must be free to express their concerns, especially to their peers. Frank and open discussion carried on in a spirit of Christian love and forbearance must be a part of our life together in the Synod... (Emphasis added)

Opinion 03-2328 of the Commission states in addition:

As part of life together in the Synod, members have the responsibility to continually examine and reexamine their confession (symbols, doctrinal statements, and resolutions)

to determine if they are faithful to Holy Scriptures. Members have a never-ending task of testing everything that the Synod believes, teaches, and practices to see if they are in accordance with the Word of God. If there are issues that need to be addressed or issues that are considered by the members of the Synod that have not yet been addressed, any action is to be governed by the procedures set forth in the Bylaws, particularly Bylaws 1.09 and 2.39 [current Bylaws 1.6, 1.7, 1.8].

Therefore, a pastor in the process of doctrinal dissent does not violate his obligation to “honor and uphold the resolutions of the Synod” (Bylaw 1.8.1) by discussing a doctrinal issue with members of his congregation in preparation of an overture to be submitted to a convention. While a dissenter is not “free to teach the dissenting view...” (see Opinion Ag. 2048, October 23, 1996), he is free to “have frank and open discussions and to always examine and review all positions and resolutions of the Synod” (see Opinion 05-2444), especially with members of his congregation. There is a distinction between discussion of doctrinal issues and the teaching of doctrine contrary to the position of the Synod. While there is freedom to discuss doctrinal issues, “[a] member dissenting... must follow the doctrine of the Synod and its doctrinal resolutions pending the outcome of the process... A member who dissents according to the procedures outlined... may not be charged with false doctrine while such procedures are being followed” (see Opinion 00-2203).

And further, while it is appropriate and responsible for a pastor to discuss the issues or the matter with his congregation as well as together consider, prepare, and submit an overture to the convention of the Synod, it is expected that, in doing so, both the pastor and the congregation “honor and uphold the resolutions of the Synod,” respect the “consciences of others,” and respect the “collective will of the Synod” in word and deed, in keeping with Bylaw sections 1.7 and 1.8. In this regard, see also Opinion 05-2444, also rendered at the time of this opinion.

Adopted Nov. 28–29, 2005

Clarification of Bylaw 1.5.9 Term “Agency” (05-2426)

In a memo to the Secretary of the Synod dated May 23, 2005, the Executive Director of the Synod’s Department of Human Resources asked the Commission for a clarification of Bylaw 1.5.9 and its use of the term “agency.”

Question: Bylaw 1.5.9 (2004 *Handbook*) reads: “Every agency of the Synod shall operate under the human resources policies of the Synod. Such policies may recognize the unique character of the operations of each.” This bylaw substitutes the word “agency” for the wording “board, commission, and synodwide corporate entity” of its predecessor Bylaw 3.69 e (2001 *Handbook*). Does this change represent an expanded meaning and applicability of this bylaw?

Opinion: Upon examination of the history of this bylaw, the recommendation of the *Pro Tem* Commission on Structure to the 2004 convention, and the action of the 2004 convention (Res. 7-04A), the Commission concludes that the word “agency” (as defined by paragraph (a) (1) of Bylaw 1.2.1) when used in the 2004 version of Bylaw 1.5.9, while it accurately reflects the verbiage of its predecessor bylaw (2001 Bylaw 3.69 e), fails to take into account the action taken by the 2004 convention of the Synod (Res. 7-04A) which adopted wording for this bylaw that is consistent with a prior application and understanding of Bylaw 3.69 e: “Every entity of corporate Synod and every synodwide corporate entity shall operate under synodical human resources policies. Such policies may recognize the unique character of the operations of each” (Res. 7-04A).

Recognizing that the term “agency” as defined in Bylaw 1.2.1 (a) (1) is broader than the intention of the 2004 convention for application of this bylaw, the Commission herewith opines that the current wording of Bylaw 1.5.9 and its use of the term “agency” be understood to be that of the intention of the 2004 convention, and that the term “agency” in the case of this bylaw alone be understood to have the meaning: “entity of corporate Synod and every synodwide corporate entity.” Further, the Commission requests that the Synod’s Commission on Structure give attention to the use of the word “agency” in the current Bylaw 1.5.9 and recommend an appropriate action to the 2007 convention of the Synod to clarify the bylaw’s verbiage, taking into account the history of this bylaw, the recommendation of the *Pro Tem* Commission on Structure to the 2004 convention, the action of the 2004 convention, and this opinion of the Commission on Constitutional Matters.

Adopted Jan. 31—Feb. 1, 2006

Human Resources Policies of the Synod (05-2430)

The President of the Synod, in memoranda dated July 22 and August 15, 2005, submitted a series of questions relating to human resources policies of the Synod. He noted the receipt by the LCMS Board for Human Resources of a June 16, 2005 letter from the LCMS Board of Directors through the Office of the Secretary of the Synod that communicated the Board’s perception that a recent decision of the Board for Human Resources was inappropriate. He stated that he recognized the desire of both boards to be responsible in all their decisions and actions but asked opinions of the Commission on the following questions.

Question 1: Are the policies of the Board for Human Resources, specifically policies 3.25 and 3.30 including the amendments in question, in harmony with the Constitution, Bylaws, and resolutions of the Synod, especially since such policies relate to, among other constitutional and bylaw references, Bylaws 1.5.9 and 3.11?

Opinion: In addition to the Commission’s responsibility under Bylaw 3.9.2.2 generally to interpret the Synod’s Constitution, Bylaws, and resolutions upon written request of a member, the question properly recognizes the Commission’s additional responsibility and authority under Bylaw 3.9.2.2.4 which reads: “The Commission on Constitutional Matters shall examine in advance the articles of incorporation and the bylaws or regulations of every agency of the Synod and all proposed amendments of such documents to ascertain whether they are in harmony with the Constitution, Bylaws, and resolutions of the Synod.”

The Board for Human Resources is certainly an agency of the Synod, and its guidelines 3.25 and 3.30 are therefore appropriately reviewable by the Commission to determine whether they are in fact in harmony with the Constitution, Bylaws, and resolutions of the Synod. In fulfilling its responsibility, the Commission must determine whether the governing documents of an agency of the Synod attempt to allow some activity proscribed by the Synod’s governing documents or to prohibit some activity mandated by the governing documents of the Synod. In this case, the Board for Human Resources adopted policies which required that all candidates for Synod positions requiring a called minister be filled in consultation with and mutual concurrence of the President of the Synod, subject to all appropriate provisions of the Constitution, Bylaws, and other policies which apply. Human resources guideline 3.25 specifically applied to senior staff of program boards and commissions, and guideline 3.30 to Synod corporate agencies calling and appointing staff to positions requiring an ordained or commissioned minister of religion.

The Board for Human Resources of the Synod, although an agency of long standing referenced in various resolutions of the Synod, was an agency created by the Board of Directors of the Synod and not by action of the Synod in convention. Subsequent to the submission of this series of questions, the Board of

Directors in its August, 2005 meeting (page 100 of the Board's minutes) dissolved the Board for Human Resources, and the amendments to the Board for Human Resources guidelines 3.25 and 3.30, which are the subject of the question submitted, were set aside to the extent that they require a concurrence of the President of the Synod of a list of candidates. Because of the actions of the Board of Directors, the question submitted is now no more than hypothetical. The Commission therefore believes that it would be inappropriate to answer further this question at this time.

Question 2: Are the pertinent sections (chapters) of the Board of Directors policies, specifically policies 3.2 and 4.8, in harmony with the Constitution, Bylaws, and resolutions of the Synod, especially as such policies relate to, among other constitutional and bylaw references, Bylaws 1.5.9 and 3.11?

Opinion: The Board of Directors policy manual section 3.2 which was supplied by the Secretary of the Synod includes a broad range of subjects identifying matters generally which require Board action. These areas include budgets, accounting, financial transactions, audits, property, human resources, administrative policies, and legal and governmental issues. The Board of Directors policy manual section 4.8 addresses the Board of Directors' executive limitation on human resources. These policies may be found on the Synod's Web page in the document found at: http://www.lcms.org/graphics/assets/media/Board_of_Directors/Policyman05.pdf.

Given the scope particularly of Board of Directors policy 3.2, it is difficult to answer the question as broadly as it has been submitted. If there are particular details that need to be clarified, the Commission would request that the question be resubmitted with a more narrow focus. In general, Board of Directors policy section 4.8 places limitations on the Board for Human Resources. Since that entity has now been dissolved, as referenced above, presumably that policy will be eliminated.

Assuming that the question presented was intended to deal with human resources issues and not the other areas covered by board policy section 3.2, the Commission has examined specifically policy 3.2.6. Policy 3.2.6.1 addresses changes in salary classification and ranges for corporate Synod. That is certainly within the constitutional and bylaw authority of the Board of Directors. Policy 3.2.6.2 reserves to the Board consideration of changes in the salary of officers of the Synod and the Chief Administrative Officer of the Board. Again, that is within the authority of the Board of Directors. Finally, policy 3.2.6.3 addresses changes in the membership of the Board for Human Resources. As indicated above, the Board for Human Resources was a creation of the Board of Directors and not an entity created by the Synod itself. The Board of Directors is within its authority and responsibility to control the membership (and even the existence) of the Board for Human Resources.

Question 3: In the area of human resources issues, in the event of a conflict between the policies of an agency of the Synod and the policies of the Synod's Board for Human Resources, which policy takes precedence?

Opinion: In general, the policies of an agency of the Synod as well as the policies of the Board for Human Resources must both be consistent with the Constitution, Bylaws, and resolutions of the Synod. Because Bylaw 1.5.9 requires that every agency of the Synod operate under the human resources policies of the Synod, the Synod's Board for Human Resources, prior to its being disbanded by the Board of Directors in August, 2005, was tasked with responsibility to adopt the human resources policies of the Synod. To the extent that an applicable agency of the Synod (see Opinion 05-2426) had policies inconsistent with the human resources policies of the Synod, the human resources policies of the Synod would take precedence. To the extent that an applicable agency of the Synod has policies inconsistent with the human resources policies of the Synod now managed by the Board of Directors, the human resources policies of the Synod would take precedence.

Question 4: The Synod's 2004 convention Res. 7-04A (2004 *Proceedings*, p. 153) referenced the fact that the *Pro Tem* Commission on Structure had taken care to make no substantive change in the Bylaws of the Synod while reordering the content to make it user-friendly.

The 2001 *Handbook* in Bylaw 3.69 e states, "Every board, commission, and synodwide corporate entity shall operate under synodical human resources policies. Such policies may recognize the unique character of the operations of each board, commission, and synodwide corporate entity. Every board, commission, and synodwide corporate entity may create officer and executive staff positions and fill the same in accordance with such policies" (emphasis added).

The 2004 *Handbook* in Bylaw 1.5.9 states, "Every agency of the Synod shall operate under the human resources policies of the Synod. Such policies may recognize the unique character of the operations of each. (a) Every agency may create officer and executive staff positions and fill the same in accordance with its policies" (emphasis added).

Since the underlined words above appear to be a significant change from the 2001 *Handbook* to the 2004 *Handbook* (which was to contain no substantive changes in its reordering), is not 2001 Bylaw 3.69 e, as underlined, still the bylaw in force rather than that amended part of 2004 *Handbook* Bylaw 1.5.9 (a)?

Opinion: As correctly pointed out, 2004 convention Res. 7-04A intended to make no substantive change to the Bylaws of the Synod, while reordering the content to make it user-friendly. The issues and standards for these revisions are more fully discussed in Opinion 05-2426, also issued today.

In 2004 *Handbook* Bylaw 1.5.9 (a), grammatically "its" must refer back to "every agency" at the start of that subparagraph, whereas in the 2001 *Handbook* Bylaw 3.69 e, the policies which every agency was required to follow in the creation of officer and executive staff positions, and the filling of the same, were clearly the human resources policies of the Synod as opposed to policies of each individual agency. Were an agency of the Synod able to avoid the human resources policies of the Synod, this would in fact be a significant change. However, since all agencies of the Synod must follow the Synod's human resources policies, any human resources policies adopted by an individual agency by definition cannot violate the Synod's policies. 2004 Res. 7-04A therefore allows the change, since it substantively preserves the requirements of the pre-existing bylaws.

Question 5: Does the President of the Synod have any responsibility to see to it that the policies of the boards and commissions of the Synod are in harmony with the Constitution, Bylaws, and resolutions of the Synod? Does the President of the Synod have any responsibility to see that such policies of boards and commissions are carried out? If so, under which specific constitutional article(s) and/or bylaw(s) are these responsibilities articulated?

Opinion: The President of the Synod does have responsibility to see to it that the policies of the boards and commissions of the Synod are in harmony with the Constitution, Bylaws, and resolutions of the Synod. Under Art. XI B of the Constitution, the President is tasked with supervision not only of the doctrine but also the administration of all officers of the Synod and all such as are employed by the Synod. The article expressly directs that it is the President's duty to see to it that all the aforementioned act in accordance with the Synod Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod. Subsection 4 further expressly directs the President to see to it that the resolutions of the Synod are carried out.

Bylaw 3.3.1 further details his responsibilities in these areas. The initial directive of Bylaw 3.3.1.2 requires: “The President shall oversee the activities of all officers, executives, and agencies of the Synod to see to it that they are acting in accordance with the Constitution, Bylaws, and resolutions of the Synod.”

Under Bylaw 1.2.1 (a), every board or commission created either by the Synod itself or by the Board of Directors is an agency of the Synod. The Synod has created a number of boards and commissions, tasking each with particular duties and responsibilities. The Synod also provides direction to those boards and commissions by adopting resolutions. Where such boards and commissions adopt policies to carry out their delegated responsibilities under the Constitution, Bylaws, and resolutions of the Synod, fulfillment of the President’s duties under Art. XI B and Bylaw 3.3.1.2 requires that he see to it that in adopting such policies they are acting in accordance with the Constitution, Bylaws, and resolutions of the Synod. Allowing the adoption of policies inconsistent with the Constitution, Bylaws, and resolutions of the Synod would be an abdication of these responsibilities.

The second question is more difficult to answer. While some policies derive from mandates or proscriptions contained in the Constitution, Bylaws, and resolutions of the Synod, others do not. To the extent that a policy is so derived, the President’s duties include the responsibility to see that the policies are followed.

In the context of the series of questions posed, the Commission understands the issue to focus specifically on the President’s duty to see to it that the agencies of the Synod follow the policies of the Board for Human Resources. Since Bylaw 1.5.9 requires that every applicable agency of the Synod operate under the human resources policies of the Synod, and, during its existence, the Board for Human Resources was the agency charged with the adoption of those policies, the President’s duties did include the responsibility to see that those policies were followed.

Question 6: Given the provisions of LCMS Bylaw 3.8.5.2.3 (c), which lists the “Director of News and Information Services” as “executive editor of the Synod’s official periodicals” (underlining added), which staffing provisions of Bylaws 1.4.6, 1.5.9, 3.11 and/or other bylaws, if any, are applicable to the “executive editor of the Synod’s official periodicals” and/or any other staff position which occupant is charged or authorized by the Board for Communication Services with making significant executive decisions regarding the Synod’s official periodicals? Specifically:

(a) How does Bylaw 1.5.9 (e) (“In the event of a vacancy, the appropriate governing board and the President of the Synod shall act expeditiously to fill the vacancy. The board shall present its list of candidates to the President.”) apply to the vacant position of the Director of News and Information Services, who also serves as executive editor of the Synod’s official periodicals or to any other staff person making executive decisions?

(b) How does Bylaw 1.5.9 (f) (“The slate of candidates for the initial appointment of the executive officer of an agency shall be selected by the board or commission in consultation and mutual concurrence with the President of the Synod.”) apply in filling the vacant position of the Director of News and Information Services, who also serves as executive editor of the Synod’s official periodicals or to any other staff person making executive decisions?

(c) How does Bylaw 1.5.9 (g) (“Any interim appointments of an executive officer shall be processed in a similar manner. Such appointee must be approved by the President of the Synod, may not serve more than 18 months without the concurrence of the President of the Synod, and shall be ineligible to serve on a permanent basis without the concurrence of the President of the Synod.”) apply to the interim appointment of the Director of News and

Information Services, who also serves as executive editor of the Synod's official periodicals or to any other staff person making executive decisions?

Opinion: The provisions of Bylaw 1.5.9 (e), (f), and (g) do not apply to the position of the Director of News and Information Services. The language of former Bylaw 3.69 e, now contained in Bylaw 1.5.9 (a)–(h), uses in different subsections the terms “officer,” “executive officer,” “executive staff,” “chief executive,” and “executive.” Analyzing both the historical roots of the bylaw as well as the actual practice of the Synod, it is clear that the terms “executive officer,” “chief executive,” and “executive” are used interchangeably and are distinct from the term “executive staff.” Even before the 1998 convention's amendments to former Bylaw 3.69, which added former subsection (d) to impose a five-year term limit unless the governing board specifically continued the person in office, the Commission was asked in Opinion Ag. 2094 to interpret the former bylaw references and concluded that a board or commission, regardless of the titles applied to its staff, could only have one principal executive officer to which the provisions of the bylaw applied. The same interpretation and application were made in Opinion 00-2204, where term limit provisions were applied to a single executive of the hiring authority (board, commission, and synodwide corporate entity), including those already in office, referencing the similar treatment of college, university, and seminary presidents.

The position of Director of News and Information Services is a position created not by the Board for Communication Services but by the Synod itself in Bylaw 3.8.5.2.3. Subsection (c) of the bylaw describes the position and also directs the selection method of that person as follows: “The Director of News and Information Services, who also serves as executive editor of the Synod's official periodicals, shall be appointed by the Board for Communication Services from a list prepared by the board and approved by the Council of Presidents.” In this instance, the Council of Presidents must approve the list. The President will be a part of the process of approving the list under Bylaw 3.8.5.2.3.

Adopted Jan. 31—Feb. 1, 2006

Board of Directors/Board Chairman Communications re Convention Action (05-2432)

A pastor of the Synod in a letter dated July 11, 2005, asked a series of questions regarding communications by the Board of Directors and the chairman of the Board of Directors regarding 2004 Res. 7-21 and its submission of a proposed constitutional amendment to the congregations of the Synod.

Question 1: Following the adoption of 2004 convention Res. 7-21, the matter was submitted pursuant to the bylaws for vote of the congregations of the Synod. During the period of the voting, the Board of Directors (or a subcommittee thereof) published a communication to the Synod which concluded with a recommendation that the constitutional amendment not be adopted. The communication concluded: “This is probably not the time for the congregations of the Synod to affirm a change to the Constitution of the Synod.” (See the letter, which remained at the time of submission of this question on the Synod's Web page, at: <http://www.lcms.org/graphics/assets/media/boardofdirectors/kuhnletterdec.pdf>)

Is the Board of Directors, as an officer of the Synod, authorized to issue a communication which directly opposes the will of the Synod as expressed in a resolution adopted by the convention? If the answer is in the negative, does the President of the Synod have responsibility under Art. XI B of the Constitution to admonish those involved?

Question 2: Is such a communication a violation of the responsibilities of officers under Art. XI A 1 of the Constitution? If the answer is in the positive, does the President of the Synod have responsibility under Art. XI B of the Constitution to admonish those involved?

Opinion: Individual members of the Board of Directors are elected by the Synod in convention. They are expected to bring to the Board of Directors their individual points of view, talents, and insights in order that the Board of Directors as a whole might better serve the church.

The Board of Directors as a whole, however, is an officer of the Synod, as was discussed in Opinion 03-2376. As with any other officer, it is responsible to support and uphold the Constitution and Bylaws of the Synod, as well as its resolutions. While it might be permissible for an individual member of the Board of Directors, speaking in that individual's capacity, to express an opinion contrary to the expressed will and rule of the convention, the Board of Directors, as an officer of the Synod, must consider carefully its right to issue a communication which directly opposes the will of the Synod as expressed in a resolution adopted by the convention. Ultimately, the issue is more generally one of possible violation of duties to the Synod, initial consideration of which is first the responsibility of the President and not for consideration by the Commission on Constitutional Matters.

The Synod must ultimately look to its leaders to lead. The answer to the first question posed herein would be as applicable to a communication by any officer of the Synod, including the President of the Synod, as well as other boards, commissions, and agencies of the Synod. Resolutions adopted by one convention are subject to change or refinement at the next. Even the Constitution, Bylaws, and Articles of Incorporation may be changed. To suggest that officers of the Synod may never speak against such changes would deprive the Synod of the leadership it expects.

Where, as here, the Synod has spoken in convention, and the action of an officer of the Synod is in direct opposition to an action just adopted, the right of the Board of Directors or any other officer to speak in opposition is a much closer question. Those in attendance are representative of the member congregations, but only member congregations themselves may adopt amendments to the Synod's Constitution. The Synod, through the process of floor committees, reports, and consideration by the convention itself, adopted and chose a course of action. The Board of Directors, through the processes of the convention, had opportunity to provide their input and insight and to provide its leadership and input on the question. Whether the Board's communication was helpful and informative to the members or an attempt to circumvent the will of the convention is not an issue for the Commission's consideration. The Commission declines to opine that the communication was beyond the jurisdiction of the Board or a violation of its responsibilities under Bylaws 1.4.3 and 1.5.6 (a), but it strongly encourages the Board and other officers to carefully consider the appropriateness of communications directly opposing the expressed will of the Synod as stated in resolutions adopted at conventions recommending that congregations approve an amendment to the Synod's Constitution.

With respect to the President's responsibilities under Art. XI B 1, the President of the Synod has supervision regarding the doctrine and administration of all officers of the Synod, including the Board of Directors. As legal representative of the Synod, the Board is obligated to represent the will of the Synod as expressed in resolutions adopted at conventions of the Synod. While the Board is expected to provide leadership and guidance to the members of the Synod, it is not free to ignore the directives of the Synod. Therefore it has no authority under XI F 2 to act contrary to the will and directives of the Synod as stated in Synod convention-adopted resolutions. As an agent of the Synod, the Board is to conduct itself as directed by its superior, the Synod itself.

Art. XI B of the Constitution provides: "It is the President's duty to see to it that all the aforementioned act in accordance with the Synod's Constitution, to admonish all who in any way depart from it, and, if

such admonition is not heeded, to report such cases to the Synod.” To the extent that the President of the Synod, in his supervisory role, believes that the Board of Directors or any other officer or agency of the Synod has usurped the will of the Synod as expressed in its Constitution, Bylaws, and resolutions, he has the responsibility under Art. XI B 2 to admonish those involved and, if such admonition is not heeded, to report such to the Synod.

Question 3: Dr. Kuhn, Chairman of the Board of Directors, was quoted in an address to a congregation earlier this year (with audio tape available as of the time of submission of this question at: http://trinity-lutheran.com/files/kuhn_q_and_a.mp3, indicating “but when it comes to filing a suit, friendly suit, against the Synod in order to get a judge to make a decision that we would know where we are, I’m in a conundrum. I don’t know what to do. I don’t know if that answers your question totally, but that’s about as far as I can go. If you want to pursue it, go ahead.” May Dr. Kuhn continue to serve as a member or chairman of the Board of Directors while actively failing to affirm the will of the convention?

Opinion: It is unclear from the question as presented whether Dr. Kuhn was making a presentation as chairman of the Board of Directors or as an individual member of the Synod. As an individual member of the Synod, Dr. Kuhn is entitled to express his opinion regarding any issue. If his comments were made as a member (and particularly as the chairman) of the Board of Directors, the comments quoted would be highly inappropriate and would at least subject him to the admonition of the President. While the chairman, as with any member of the Board of Directors, is entitled and encouraged to speak his or her mind in the deliberations of the Board, under the Synod’s Constitution and Bylaws the Board as a whole, and all those speaking on its behalf, are bound to support the actions of the Synod and not to encourage litigation against it. Primary responsibility for determining the appropriate response to the actions described belongs to the Board of Directors itself and to the President. It is the President under Art. XI B 4 who is required to see to it that the resolutions of the Synod are carried out.

Question 4: Is the described conduct of Dr. Kuhn and the Board subject to either the dispute resolution process under Bylaw [sic 1.09] 1.10 or, based on repeated offensive conduct, the provisions of Bylaw 2.14?

Opinion: Bylaw 2.14 addresses the issue of expulsion of a congregation or individual from membership in the Synod and is therefore inapplicable to the Board of Directors as an officer of the Synod. Expulsion from the Synod is governed by Art. XIII of the Constitution and may occur only where a member acts contrary to the confession laid down in Art. II and the conditions of membership laid down in Art. VI or persists in offensive conduct. It is not the responsibility or authority of the Commission on Constitutional Matters but rather of the member’s ecclesiastical supervisor under Bylaw 2.14 to make an initial determination whether the fact scenario described would meet such standard, and only pursuant to the processes described in that bylaw.

With respect to the possible applicability of the dispute resolution process under Bylaw section 1.10, that bylaw section identifies the persons and issues which may be dealt with under that process. As a member of the Synod, Dr. Kuhn would be a person to whom the bylaw applies, and it would similarly apply to members of the Board of Directors either as individual members of the Synod or as lay members of a congregation of the Synod holding a position within the Synod (Bylaw 1.10.2). To the extent that the dispute involves theological, doctrinal, or ecclesiastical issues (other than expulsion) the bylaw is the exclusive remedy to resolve such dispute between members of the Synod. To the extent that there continues to be a dispute between Dr. Kuhn or other members of the Board of Directors and another qualifying party under Bylaw 1.10.2 that is based on theological, doctrinal, or ecclesiastical issues, the dispute resolution process contained in Bylaw section 1.10 would apply.

Adopted Jan. 31—Feb. 1, 2006

**Congregational Hosting of Auxiliary's Worship Service
with Holy Communion (05-2454)**

In a letter addressed to the Commission dated December 13, 2005, an ordained minister of the Synod serving on the 2006 International Lutheran Laymen's League (ILLL) convention committee asked a series of questions regarding how a former Commission on Constitutional Matters opinion concerning a circuit conference communion service (Ag. 1323, December, 1978) pertains to the authority of an auxiliary such as the ILLL.

Question 1: Does the board of governors have the authority to demand that communion be part of the international convention?

Opinion: Commission on Constitutional Matters Opinion Ag. 1323, issued December 8, 1978, addressed a similar issue. Thus, just as a circuit conference of the Synod can make no demand that a congregation celebrate Holy Communion for the conference and prescribe to the congregation who could or could not be admitted to that celebration (Ag. 1323), an auxiliary of the Synod (including its governing board) cannot make such a demand. Article VII of the Constitution of the Synod spells out the relation of the Synod to its members:

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.

Question 2: Let's say that a couple of years before an ILLL convention a congregation agrees to host a communion worship service at a convention. The pastor is called elsewhere. A new pastor is called. The new pastor expresses reservations about the appropriateness of hosting such a communion worship service. Does the congregation have the freedom to remove communion from the service?

Opinion: Yes. See the answer to question #1 above. Should the ILLL no longer wish to have the congregation serve as host, it may respond accordingly.

Question 3: Is the ILLL telling the host congregation who can and who cannot be admitted to Communion?

Opinion: The Commission does not interpret what the ILLL might be communicating to a congregation. If the question is, "Can the ILLL tell the host congregation who can and who cannot be admitted to Communion?" the answer is "no." See the answer to question #1 above.

Question 4: May a congregation host a communion worship service at a convention in another district without the district president's approval?

Opinion: There is no requirement that a congregation obtain approval from a district president before hosting worship with Holy Communion. The congregation as a member of the Synod will recognize, honor, and respect the Office of District President and the fact that the Synod has divided itself into districts and circuits especially for the sake of responsible ecclesiastical supervision by the appropriate

ecclesiastical supervisors. For instance, a district president may exercise ecclesiastical supervision in regard to the activity of the local convention committee (which normally includes local pastors) occurring in his area of jurisdiction.

Question 5: Must the pastor from the host congregation be present for the hosted Communion worship service?

Opinion: The Commission suggests that this question be asked of the Commission on Theology and Church Relations.

Question 6: Must any other member of the host congregation be present for the hosted Communion worship service?

Opinion: The Commission suggests that this question be asked of the Commission on Theology and Church Relations.

Due to the theological implications in all of the above questions, the Commission suggests consulting with the Commission on Theology and Church Relations as well as its 1983 report, *Theology and Practice of the Lord's Supper*. In Res. 3-12, the 1983 convention of the Synod encouraged broad and comprehensive study of this document by the members of the Synod. On pages 23 and 24 of this document, the subject of "extracongregational services" is addressed.

Adopted Jan. 31—Feb. 1, 2005

Interpretation of 1998 Res. 3-04A re Use of General Creeds (05-2455)

In a letter dated December 20, 2005, a pastor of the Synod asked for clarification of the single resolve of 1998 convention Res. 3-04A ("To Maintain Use of General Creeds"): "That we beseech one another in the mercies of God not to substitute informal statements of faith for the regular use of the three general creeds of the church in our public worship services."

Question 1: By being adopted is Resolution 3-04A currently the official position of the LCMS?... Since the 1998 convention, has the Synod adopted any additional resolutions altering or rescinding Resolution 3-04A?

Opinion: By the adoption of Res. 3-04A, the Synod stated its position on the subject while respecting the autonomy of local congregations. Because there have been no subsequent resolutions adopted by the Synod on the subject addressed by Res. 3-04A, the stated position stands.

Question 2: Are "informal statements of faith" not to be used in any LCMS worship service?

Opinion: The wording of the resolution states that the members of the Synod are to "beseech one another in the mercies of God not to substitute informal statements of faith for the regular use of the three general creeds of the church" in public worship services. This is not the same as prohibiting the use of informal statements of faith.

Question 3: If such informal statements of faith are applicable, what would be the worship occasion? For example, in a congregational Contemporary or Praise Lutheran worship is it permissible to use a creedal statement other than one of the three general creeds? May district-sponsored worship services use alternate statements of faith?

Opinion: The resolution in question does not prohibit the use of informal statements of faith in public worship services, whatever their description or occasion. However, in its whereas section the resolution does caution that “informal statements of faith are subject to an imprecise and even erroneous confession of faith,” leading to the exhortation that the members of the Synod “beseech one another...for the regular use of the three general creeds.” This caution and exhortation is consistent with Article VI 4 of the Synod’s Constitution that calls for “exclusive use of doctrinally pure agenda, hymnbooks, and catechisms in church and school.”

Adopted Jan. 31—Feb. 1, 2006

Interpretation of Bylaw 3.12.3.7 (b) re Floor Nominations (05-2456)

In a letter to the Secretary of the Synod dated December 23, 2005, the committee charged with the given responsibility in Res. 7-22 of the 2004 Synod convention asked the Commission for a clarification of Bylaw 3.12.3.7 (b).

Question: Please give us an opinion on Bylaw 3.12.3.7 (b): “Floor nominations shall be brought individually before the convention for approval before being added to the ballot.” Our question concerns the words “individually” and “approval.” Does this mean that every individual nomination from the floor has to be acted upon as it is presented? Does this require a simple majority vote of the convention for a name to be added to the ballot? Is this any different from past procedures?

Opinion: Bylaw 3.12.3.7 (b) sets forth how a convention may amend a slate by nominations from the floor. The bylaw provision for floor nominations is that each nomination must be brought before the convention for action and approved singularly in order to be added to the ballot. In other words, each floor nomination is to be acted upon separately by a convention vote. When the convention approves the receipt of each nomination, one by one, by an affirmative vote of the assembly according to accepted parliamentary rules (paragraph (i) (3) of Bylaw 3.1.9), this constitutes an amendment of the slate.

For the slate to be amended by nominations from the floor and/or for a nomination to be added to the ballot, bylaw provisions set forth in Bylaws 3.12.3.7 (b), (c), and (d) are also required.

Past procedures, which differed from Bylaw 3.12.3.7 (b), were based upon Bylaw 3.985 (2001 *Handbook*) which read:

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 the written pertinent information concerning the nominee as detailed in Bylaw 3.983 e.

However, the above bylaw (2001 Bylaw 3.985) and the past procedures do not reflect the mandate of 1992 convention Res. 9-01, which was still in force for the 2004 convention:

WHEREAS, The LCMS *Handbook* clearly establishes a procedure for the timely submission of candidates for the various synodical offices, commissions, and Boards of Regents (Bylaw 3.945); and

WHEREAS, Floor nominations of persons *not* submitted per Bylaw 3.945 require convention approval and since Bylaw 3.949 a does not state whether this approval is *carte blanche* or requires approval for *each* candidate not previously submitted; and

WHEREAS, The floor nomination of candidates not previously submitted precludes the voting delegates from reviewing and evaluating candidate qualifications and experience; and

WHEREAS, *Carte blanche* approval or approval of board or commission by board or commission nominations would appear to undermine the intention of the delegates in adopting the provision contained in 3.949 a; therefore be it

Resolved, That *each* candidate nominated from the floor, whose name had not been previously submitted in accordance with Bylaw 3.945, requires the approval of the convention as well as the written consent of the nominee and pertinent written information concerning the person as designated in Bylaw 3.947 e.

Adopted Jan. 31—Feb. 1, 2006

“Guidelines for the Constitution and Bylaws of a Lutheran Congregation” (04-2412)

The Commission gave final attention to the revised “Guidelines for the Constitution and Bylaws of a Lutheran Congregation,” taking into consideration input received from its February 2–3, 2006 meeting with district constitution committee chairmen. The guidelines were approved as printed in Appendix A of these minutes.

After giving final attention to the guidelines and after further discussion, it was agreed that hard copies of the guidelines would be provided to district presidents and district constitution committee chairmen, after which the document will be made available via the internet and printed copies will be available from the office of the Secretary of the Synod. A letter of appreciation will also be sent to the district chairmen and constitution committee representatives who provided input for the review process.

Appendix A

GUIDELINES FOR CONSTITUTIONS AND BYLAWS OF LUTHERAN CONGREGATIONS

May, 2006

PREFACE

Congregations, the basic units of The Lutheran Church—Missouri Synod, join together to form the Synod and relate to one another through it (Bylaw 1.3.1)ⁱ. Together they establish the requirements of membership in the Synod (Constitution, Art. VI)ⁱⁱ and obligate themselves to fulfill not only membership requirements but to act in accordance with the entire Constitution and Bylaws of the Synod (Bylaw 1.3.4)ⁱⁱⁱ.

Because a degree of uniformity in the constitutions and bylaws of member congregations of the Synod is desirable, the Commission on Constitutional Matters has from time to time issued guidelines for the

preparation and review of such documents. This fifth revised edition of the guidelines has been prompted by recurring questions and issues raised by district constitution committees and by recent convention actions.

The Holy Scriptures do not prescribe a form of polity for a local congregation. Congregations are free to structure themselves in such manner that they believe will be most effective for carrying out the Great Commission of our Lord in a manner that is in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod. In determining a congregation’s polity, much will depend upon its size, ethnic background, sociological setting—whether rural, urban, or suburban—and other pertinent factors.

Because of its unique needs or setting, a congregation may decide to consider alternate forms of organization. However, in those cases in which a congregation decides to adopt a different type of organization than that described in the following guidelines, the topics that are referenced should still be given serious consideration.

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I. GENERAL PRINCIPLES

A. Because member congregations share in the mission of the Synod articulated in its mission statement, “In grateful response to God’s grace and empowered by the Holy Spirit through Word and Sacraments, the mission of The Lutheran Church—Missouri Synod is vigorously to make known the love of Christ by word and deed within our churches, communities, and world,” it is beneficial that congregations organize themselves and their ministries in an effective manner as provided in their constitutions and bylaws.

B. Among the responsibilities of membership, the Constitution (VI 5^{iv}) and Bylaws of the Synod require member congregations to submit their constitutions and bylaws for review by their district’s constitution committee when applying for membership in the Synod (Bylaw 2.2.1)^v and also when revising their constitutions and bylaws at a later time (Bylaw 2.4.1)^{vi}. Submission and approval of new and/or revised constitutions and bylaws is a condition of membership and a requirement before the new or revised documents may be used.

C. While uniformity in these documents is desirable, such differences exist between the congregations of the Synod in size, opportunity, location, and other factors that any attempt to formulate a single example of a constitution and bylaws to suit the needs of every congregation would be ill-advised. For the most part, the organization of a congregation is a matter of self-determination, so long as its constitution and bylaws are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod and are not in violation of governmental laws for not-for-profit charitable organizations.

D. When evaluating constitutions and bylaws, district constitution committees will judge whether the documents honor those basic principles for constitutions and bylaws that are enumerated in these guidelines. When appropriate, the wording of the Constitution and Bylaws of the Synod should be advocated for the sake of promoting unity and harmony in the Synod. Congregations may note that under Bylaw 2.3.1 (a)^{vii}, constitutions of member congregations are not to deny membership or other congregational privileges to any Christian because of race or ethnic origin. It may also be wise to include a statement prohibiting sexual harassment.

E. While these guidelines intend to foster unity in the Synod, it is understood that such unity is grounded primarily in the common confession and mission of the Synod (Constitution, Art. II; Bylaw 1.1.1)^{viii} and in the mutually agreed-upon conditions of membership and objectives of the Synod (Constitution, Art. VI; Bylaw 1.3.4)^{ix}.

II. FORMAT OF THESE GUIDELINES

A. No section regarding the articles of incorporation of member congregations is included in these guidelines. Suffice it to say that these articles should be brief, including only the essential subjects required by the laws of the state in which a congregation is located. An attorney familiar with such matters should be consulted. If necessary, names of attorneys can be obtained from district officials.

B. In the third section of these guidelines, subjects are identified that ordinarily should be addressed in the constitutions of member congregations of The Lutheran Church—Missouri Synod. Instructive comments are offered under each subject, followed by one or more sample paragraphs.

C. In the fourth section of these guidelines, subjects are identified that may be addressed in the bylaws of member congregations of The Lutheran Church—Missouri Synod. Instructive comments are offered under each subject, followed by one or more sample paragraphs. More latitude is granted to congregations in their bylaws to allow for differences in size, location, and other circumstances.

D. “Brief but adequate” should be the watchword when congregations develop or amend their constitutions and bylaws. Brevity enables congregations later to develop additional structures and programs (*e.g.*, *ad hoc* committees) to meet specific needs and goals without the need repeatedly to go through the time-consuming process of amending their governing instruments.

E. It is the goal of this process and the hope of the Commission in providing these guidelines that congregations of our beloved Synod will be assisted in carrying out ever more effectively the great mission which our Lord Jesus Christ has given to His church on earth: to make disciples of all nations, sharing with their communities and the world the good news of salvation and teaching them to observe all that He has commanded.

III. GUIDELINES FOR CONSTITUTIONS

The following are subjects that ordinarily should be addressed in a congregation's constitution. Instructive comments are provided together with sample paragraphs. For ease of reference, a numeral and decimal numbering system is also recommended.

1.0 NAME

Legal counsel should be consulted to make certain that this paragraph follows the requirements for ecclesiastical corporations established by the state in which the congregation is located. In addition, 1995 Synod convention Resolution 3-13A resolved that “all congregations and mission stations in our Synod boldly profess in their official title and/or name that they are ‘Lutheran.’”^x

Example:

The name of this congregation shall be [Name] Lutheran Church of [City,] [County,] [State].

2.0 MISSION

In the constitution of a Christian congregation it is desirable to state the mission or purpose for which it exists. Such a paragraph should contain the fundamental purposes included in the following example.

Example:

The purpose of this congregation shall be to give honor and glory to the Triune God, to carry out His will, to proclaim the Gospel of Jesus Christ to all the world, to manifest the unity of our faith in Jesus Christ as God and Savior, to foster Christian fellowship and love, to extend a helping hand to human need, and to achieve its objectives by the preaching of the Word of God, by the administration of the sacraments, and by the religious instruction of all its members according to the confessional standard of the Evangelical Lutheran Church.

3.0 CONFESSIONAL STANDARD

The Lutheran Church—Missouri Synod requires that its member congregations accept the confessional standard of the Synod. It is recommended that Article II of the Synod's Constitution be adapted for inclusion in congregations' constitutions. A congregation's confessional standard must not go beyond that of the Synod.¹

Example:

This congregation accepts without reservation:

¹ Historically, *The Treatise on the Power and Primacy of the Pope*, not listed in Article II, has often been considered to be included in the *Smalcald Articles*.

- 3.1 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.
- 3.2 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.

4.0 SYNODICAL MEMBERSHIP

Although not essential, since membership in the Synod is not determined by a statement in a congregation's constitution, congregations are advised to designate their membership in the Synod.

Example:

This congregation shall be a member of The Lutheran Church–Missouri Synod as long as the Synod conforms to the congregation's confessional standards as set forth in this constitution.

5.0 MEMBERSHIP

Synod congregations often distinguish between three types of congregational membership²: baptized, communicant, and voting.³ Voting membership may be open to all communicant members but may also be limited to males only⁴. Care should be taken that the age at which individuals may hold voting membership conforms to any requirements of state law. Many congregations restrict voting membership to persons who have reached the age of legal majority. This is especially important when decisions involving contracts and other legal matters are made. Again, membership in organizations whose principles and conduct conflict with the Word of God shall be prohibited (Bylaw 3.9.6.3.1 [a])^{xi}. Also, congregations are not to deny membership or other congregational privileges to any Christian because of race or ethnic origin (Bylaw 2.3.1 [a])^{xii}.

Example:

This congregation distinguishes between three types of congregational membership

5.1 The membership of this congregation includes the following:

5.1.1 *Baptized* members are all who have been baptized in the name of the Triune God and who are under the spiritual care of the pastor of this congregation, including the children who have not yet been confirmed into communicant membership.

5.1.2 *Communicant* members are those baptized members who have been instructed and are familiar with the contents of *Luther's Small Catechism*, have been confirmed in the Lutheran faith, and accept the confessional standard of Section _____ of this Constitution.

5.1.3 *Voting* members are communicant members who have reached the age of _____ years.

5.2 The members of this congregation are received in the following manner:

5.2.1 Baptized members are received through the Sacrament of Holy Baptism or through the consent of one or both parents in the case of children who have been baptized in another Christian congregation.

² Some congregations include a fourth category: "*Guest* members. 1989 Synod Convention Resolution 5-19 encouraged such a category for congregations with many seasonal members, "which could include such basic rights and privileges as reception of the sacraments, pastoral care, congregational concern, use of their time, talents, and treasures in the service of the Lord, and attendance and participation in voters' assemblies as advisory or associate members" (1989 *Convention Proceedings*, p. 140).

³ Variations often occur in the last two categories. Some congregations distinguish between communicant and confirmed members due to the practice of early communion, in which case further definitions will be necessary.

⁴ 1969 Synod Resolution 2-17 concluded that "Scripture does not prohibit women from exercising the franchise in congregational or synodical assemblies," at the same time concluding that "the Synod itself and the congregations of the Synod are at liberty to alter their policies and practices in regard to women's involvement in the work of the church" (1969 *Convention Proceedings*, p. 88).

- 5.2.2 Adult members are received through the rite of confirmation and Sacrament of Holy Baptism as appropriate, through transfer from a sister congregation, or through profession of faith or reaffirmation of faith.
- 5.2.3 Eligible communicant members may be received as voting members upon application for such privilege upon approval of the voters assembly.
- 5.3 Members of this congregation shall conform their entire lives to the authority of God's Word and to that end shall make diligent use of the means of grace, exercise faithful stewardship of God's many gifts and talents, impart and accept fraternal admonition as the need of such admonition becomes apparent, and be readily available for service in the kingdom of Christ within and beyond the congregation. Membership in organizations whose principles and conduct conflict with the Word of God is prohibited.
- 5.4 Membership in this congregation shall be terminated as follows:
- 5.4.1 Membership shall be terminated by transfer to a sister congregation, by joining a congregation outside the fellowship of this congregation, by excommunication or self-exclusion, or by death.
- 5.4.2 Communicant members who conduct themselves in an un-Christian manner shall be admonished according to Matthew 18:15–20 and the congregation's stated and adopted guidelines.⁵ If they remain impenitent after proper admonition, they shall be excommunicated. Each case of excommunication or self-exclusion shall be presented to the voters assembly for a decision. A two-thirds majority vote of the voters assembly shall be required.

6.0 CALLED CHURCH WORKERS

Member congregations of the Synod are required to call and be served only by ordained ministers who are members of the Synod (Bylaw 2.5.2)^{xiii}. They may also only call commissioned workers who are members of the Synod⁶ (Bylaw 2.5.3)^{xiv}. This article establishes how the congregation extends such calls and should indicate who is eligible to be called, the manner of removal from office, and how vacancies in called positions are to be handled (Bylaw 2.5.1)^{xv}.

Example:

The voters assembly of this congregation shall have the exclusive right to call ordained ministers. The right to call commissioned ministers also belongs to the congregation and ordinarily shall not be delegated to a smaller body and never to an individual.

- 6.1 The pastoral office shall be conferred only upon pastors or candidates who profess and adhere to the confessional standard set forth in this constitution, who are qualified for the work of the ministry, and who have been endorsed by and are members of The Lutheran Church—Missouri Synod.

⁵ The matter of termination of membership is of great importance since it involves the larger subject of Church Discipline. It is therefore advisable that congregations prepare and adopt separate guidelines to address this topic, especially keeping in mind the following:

1. Be consistent in applying discipline.
2. Carefully follow disciplinary guidelines.
3. Do not allow unsubstantiated charges to be circulated by the church.
4. Base decisions on clearly stated biblical grounds.
5. Guidelines should state the desired outcome of church discipline, to call a fellow Christian to repentance.

⁶ Ordained and commissioned ministers include pastors and all other church workers rostered by The Lutheran Church—Missouri Synod. Commissioned ministers include teachers, directors of Christian education, directors of Christian outreach, directors of family life ministry, directors of parish music, deaconesses, parish assistants, and certified lay ministers.

- 6.2 Only those commissioned ministers shall receive a call who adhere to the confessional standard set forth in this constitution, who are qualified for the work of the ministry to which they are called, and who have been endorsed by and are members of The Lutheran Church—Missouri Synod.
- 6.3 The right of calling ordained or commissioned ministers shall be vested in the voters assembly and shall not be delegated otherwise.
- 6.4 Called ordained or commissioned ministers may be removed from office in Christian and lawful order by a two-thirds majority ballot vote of the voters assembly for one of the following reasons: persistent adherence to false doctrine, scandalous life, willful neglect of the duties of office, or the inability to perform those duties.
- 6.5 When a vacancy occurs in an office of an ordained or commissioned minister, the congregation shall notify the president of the district to receive assistance in temporarily filling the vacancy and to receive his counsel in calling a new pastor, teacher, or other church worker (Bylaw 2.5.1).

7.0 AUTHORITY OF AND WITHIN THE CONGREGATION

At times there is lack of clarity in a congregation regarding the extent of the authority within the congregation to make certain decisions. It is therefore wise to include an article that will obviate this difficulty. The following is one possible model.

Example:

The voters assembly shall be the governing body of this congregation and shall be empowered to administer and manage all its affairs.

- 7.1 The establishment and conduct of all organizations and societies within the congregation or related directly to the congregation shall be subject to the overall authority and general oversight of the voters assembly.
- 7.2 All matters before the voters assembly shall be decided by a majority vote unless otherwise specified by this constitution or bylaws. Matters of doctrine and conscience shall be decided only on the basis of the Word of God.

8.0 MEETINGS

Constitutions of congregations should establish how the meetings of the voters assembly or governing entities will be called and how a quorum will be determined. Not requiring a specific number of voting members in attendance permits a meeting to be valid so long as it has been properly called.

Example:

- Meetings of the voters assembly shall be held as determined in the bylaws.
- 8.1 Announcements of regular meetings shall be made in the services of the two previous Sundays.
- 8.2 Announcements of special meetings shall be made in the services of the two previous Sundays or in the services of the previous Sunday when accompanied by notification by mail. Such special meetings may be called at the request of the pastor, chairman, church council, or ten (10) voting members.
- 8.3 All voting members present at a properly called meeting shall constitute a quorum.

9.0 OFFICERS AND BOARDS

Congregations are at liberty to determine their own organizational and operational structures consistent with local and state requirements for not-for-profit corporations. Constitutions should establish only those offices, boards, and other committees that form the essential framework of the congregation. (The Synod encourages every congregation to include in its organizational structure a board or committee for stewardship (Bylaw 2.2.1 [a] [1])^{xvi}. Description of duties in the constitution should be limited to basic responsibilities, with detail to be provided in the bylaws or in job descriptions. This will allow congregations or other authorized entities within congregations to create (and to dissolve) additional offices and committees and determine their responsibilities as necessary. As previously noted, many organizational structures are possible. Two examples, one involving a coordinating church council and the second that of a board of directors, are provided.

Example:

This congregation shall have the following officers and boards in addition to any which the congregation shall establish from time to time. The officers and the chairpersons of the boards, and the pastor as an advisory member, shall constitute the membership of the church council. Those officers identified by state law shall serve as legal representatives of the congregation.

- 9.1 The officers of this congregation shall be:
 - 9.1.1 A chairman, who shall conduct the meetings of the voters assembly, . . .
 - 9.1.2 A vice-chairman, who shall serve in the chairman's absence or inability to act, . . .
 - 9.1.3 A secretary, who shall keep the minutes of the voters' meetings, . . .
 - 9.1.4 A treasurer, who shall be responsible for the financial records of the congregation, . . .
 - 9.1.5 A financial secretary, who shall be responsible for the receipt of all contributions and shall deposit the same in an account established in the name of the congregation.
- 9.2 The boards of this congregation shall be:
 - 9.2.1 A board of elders, consisting of . . ., which shall assist the pastor in the spiritual life of the congregation.

- 9.2.2 A board of trustees, consisting of . . ., which shall be responsible for the physical properties of the congregation.
- 9.2.3 A board for Christian education, consisting of . . ., which shall be responsible for the nurture and Christian growth of the members of the congregation.
- 9.2.4 A board for evangelism, consisting of . . ., which shall lead the members of the congregation in outreach into the community.
- 9.2.5 A board for stewardship, consisting of . . ., which shall be charged with the teaching and promoting proper stewardship of time, talents, and treasures.
- 9.2.6 . . .
- 9.3 Any officer or board member who fails to carry out his or her duties of office or who fails to perform the responsibilities of confirmed membership (see paragraph 5.3 above) may be removed from office by the voters assembly by a two-thirds majority ballot vote, in Christian and lawful order. Matthew 18 should be followed under such circumstances.

— or —

Example:

This congregation shall have the following officers, board, and committees in addition to any which the congregation shall establish from time to time.

- 9.1 The voters assembly shall elect a president, a vice-president, a secretary, and a treasurer, who shall be the officers of the congregation. The voters assembly shall also elect three other voting members, who with the four officers and the senior pastor shall comprise the board of directors of the congregation. [The pastor may be a non-voting, *ex officio*, member of the board.] The nomination and election of officers and board members shall be as specified in this constitution and accompanying bylaws.
- 9.2 The board of directors shall have the authority to develop and implement policies, procedures, and ministries as necessary to execute the vision and plans approved by the voters assembly.
- 9.3 The officers of the congregation shall serve as the executive committee of the board of directors.
- 9.4 This congregation shall have such committees as are necessary to assist the called workers, elected leaders, and members of the congregation in carrying out its mission and ministry. Committees of the congregation may include the following.
 - 9.4.1 A shepherding committee to assist and support the work of the pastor, consisting of . . .
 - 9.4.2 An education committee to assist and support the work of the teaching staff of the congregation, consisting of . . .
 - 9.4.3 A stewardship committee to carry on an on-going stewardship program for the congregation, consisting of . . .
 - 9.4.4 An evangelism and outreach committee to assist the congregation in carrying out the mission of the congregation, consisting of . . .
 - 9.4.5 An annually convened nominating committee consisting of . . .
 - 9.4.6 A long range planning committee consisting of at least . . .
 - 9.4.7 A call committee, convened as necessary, consisting of . . .

9.4.8 Such other committees as are necessary to assist the called workers, elected leaders, and members of the congregation in carrying out its mission and ministry.

9.5 Any officer or board or committee member who fails to perform the duties of office or the responsibilities of confirmed membership may be removed from office by the voters assembly by a two-thirds majority ballot vote, in Christian and lawful order. Matthew 18 should be followed under such circumstances.

10.0 LIMITATIONS ON HOLDING OFFICE

A paragraph may be included to make clear the extent to which women are permitted to vote and/or hold office in the congregation. Congregations that have women's suffrage and wish to permit women to hold offices should include the following paragraph in their constitutions in keeping with the position of The Lutheran Church—Missouri Synod⁷. The age given in the paragraph should reflect state law requirements. The list provided at the end of the paragraph should identify those positions or offices that call for their holders to carry out the specific functions of the pastoral office.

Example:

Women who have reached the age of ____ may serve as officers and as members of boards and committees of this congregation which do not call upon them to carry out the specific functions of the pastoral office (preaching in or serving as the leader of the public worship service, the public administration of the sacraments, the public exercise of church discipline). Accordingly, a woman shall not serve as pastor of this congregation or as _____.

11.0 DIVISION

It is an unhappy fact of life that disagreements occur in Christian congregations, and that at times the end result is not reconciliation but a parting of the ways. It is best to set down the principles far in advance that will govern such a situation if it should occur. Congregations should consult with local and state laws when making decision regarding disposal of properties. While the following example suggests reversion of properties to the district, the congregation is at liberty to determine the recipients of its properties.

Example:

If at any time a division of the congregation should take place for any reason, the following principles will govern.

11.1 The property of the congregation and all benefits connected therewith shall remain with those communicant members who continue to adhere in confession and practice to the confessional standards set forth in this constitution.

11.2 In the event that the congregation dissolves, all property shall be disposed of by the final voters assembly for the payment of debts and all just claims against the congregation, and any and all surplus and all rights connected therewith shall be conveyed to and become the property of the _____ District of The Lutheran Church—Missouri Synod.

12.0 AMENDMENTS

⁷ Suggested paragraph is quoted from the "Guidelines for Congregations" provided in the document "The Service of Women in Congregational and Synodical Offices" prepared by the President's Task Force, p. 21, in response to 2004 convention Resolution 3-08A.

Constitutions should provide a method for their own amendment. A device called an "unalterable article" has been used in the past, but legally there are no unalterable articles. There can be, however, articles in congregations' constitutions that are more difficult to amend. Congregations may therefore wish to provide for two separate procedures for amending.

Example:

This constitution may be amended in the following manner.

- 12.1 Amendments to the provisions of this constitution not identified in the following paragraph shall be submitted in writing at a meeting of the voters assembly and announced to the congregation by public posting and/or mail to all communicant members prior to the meeting at which the proposed amendment will be acted upon. A two-thirds affirmative vote of the voters present shall be required for adoption.
- 12.2 Amendments to Articles _____ shall not destroy their essential meaning. Amendments shall be submitted in writing at a meeting of the voters assembly and made public to the congregation by public posting and/or by mail to all communicant members. Notice of the discussion of such amendments shall be given prior to two regular voters assemblies when the proposed action will be discussed. Notice that action will be taken on proposed amendments shall be provided to all voting members prior to the meeting when a vote will be taken. The date of approval shall be referenced in any amendment adopted.
- 12.3 The revised constitution shall, as a condition of continued membership in The Lutheran Church—Missouri Synod, be submitted to the president of the district for review by the district's constitution committee and favorable action by the district's board of directors before being implemented by the congregation.

IV. GUIDELINES FOR BYLAWS

The following are subjects that ordinarily can be addressed in a congregation's bylaws. Instructive comments are provided together with sample paragraphs.

13.0 PROCEDURES FOR CALLING MINISTERS OF RELIGION

Congregations should be specific in setting forth in their bylaws the procedures to be followed when calling ordained and commissioned ministers.

Example:

When this congregation calls a minister of religion, ordained or commissioned, the following procedure shall be followed:

- 13.1 When a pastor or commissioned minister is to be called, every member of the congregation shall be provided opportunity to suggest one or more names for consideration.
- 13.2 A call committee shall be appointed [or an existing board or committee designated] to serve as a screening committee and shall submit all suggested names to the district president for information and evaluation. The committee shall then present to the congregation by public announcement its proposed list of candidates and their biographical sketches.
- 13.3 At a voters meeting called for the purpose of calling a new pastor or commissioned minister, the proposed list may be amended by a two-thirds vote of the assembly. When possible, information regarding additional candidates

shall be provided by the district president and/or his representative at the meeting.

- 13.4 Ballot voting shall continue until a majority [or two-thirds] vote determines the disposition of the call.

14.0 CHURCH COUNCIL OR BOARD OF DIRECTORS

Even though it is not absolutely necessary for congregations to have a church council or board of directors, as the case may be, experience has shown this to be beneficial. The makeup and responsibilities of this leadership group are decided by each congregation. Two examples are provided.

Example:

The church council shall provide direction to the congregation on behalf of the voters assembly.

- 14.1 The church council shall consist of the congregation's president, vice-president, secretary, treasurer, financial secretary, and the chairmen of its boards. [The pastor may be an advisory or voting member.] The chairman and secretary of the congregation shall also serve as the chairman and secretary of the church council.
- 14.2 The church council shall meet a minimum of four times a year. Special meetings may be called by the chairman, the pastor, or any three members of the council by providing notice at least 24 hours prior to the meeting. A majority of the voting members of the council shall constitute a quorum.
- 14.3 The principal duty of the church council shall be to coordinate the program and activities of the various departments of the congregation. It shall also have the power to act on behalf of the congregation between meetings of the voters assembly within limitations established by the voters assembly, which actions shall be reported to the next meeting of the voters assembly.

— or —

Example:

The officers of the congregation along with three other elected at-large members and the administrative pastor (who shall be a non-voting member) shall comprise the board of directors, which shall provide direction to the congregation on behalf of the voters assembly.

- 14.1 The board of directors shall have the authority to develop and implement policies, procedures, and ministries as necessary to execute the vision and plans approved by the voters assembly. Written policies and procedures shall be made available to voting members upon request. The board of directors shall have no authority beyond that which has been conferred upon it by the constitution, its bylaws, or the voters assembly, and authority delegated to the board of directors may at any time be altered or revoked by the voters assembly. The board of directors shall normally meet in regular session at least quarterly.
- 14.2 The officers of the congregation shall serve as the executive committee of the board of directors, which shall have the authority to administer all property

belonging to the congregation, make contracts, accept and receive grants and bequests, sign documents, appear in court, review the constitution and bylaws, report to the congregation when appropriate, and take other such action as may be authorized by the church council. The committee shall meet at least monthly.

- 14.3 This congregation shall have such committees as are necessary to assist the called workers, elected leaders, and members of the congregation in carrying out its mission and ministry. These committees may be authorized or created by staff members subject to review by the board of directors, unless a different method of authorization and/or membership selection is required by action of the voters assembly. The committees shall meet on an as needed basis.

15.0 NOMINATIONS, ELECTIONS, AND TERMS OF OFFICE

Specific procedures for the nomination and election of officers and board members should be included in the bylaws. Provisions and procedures should also be provided for the appointment of additional officers and board members. Congregations may or may not wish to include provisions restricting the holding of more than one office, providing for term limits, avoiding conflicts of interest, and/or providing for or prohibiting absentee ballots.

Example:

The procedure for the nomination and election of elected and appointed officers and board members shall be as follows.

- 15.1 A nominating committee appointed by the church council (or board of directors) shall present a slate of candidates for each elected and appointed office. The slate shall normally provide two names [or: one name] for each office. In the case of elected positions, additional nominations may be made from the floor. No person shall be nominated without his or her consent.
- 15.2 A majority of the votes cast shall be required for all elections. Candidates receiving the lowest number of votes shall be eliminated in each succeeding ballot.
- 15.3 All officers shall be elected for a term of _____. Other members of the church council and of boards and committees shall be elected or appointed for a term of _____.
- 15.4 Officers and board members shall be inducted into office in a public service of the congregation.
- 15.5 In case of a vacancy in an elective office, the voters assembly shall elect [or: the church council shall appoint] a successor to fill the unexpired term from a list of candidates provided by the nominating committee. Service for more than one-half of a term shall constitute a full term.

16.0 OFFICIAL DUTIES

In addition to the basic duties provided in the constitution, the congregation may want to detail responsibilities further in the bylaws or in policy manuals, which must be in harmony with the Constitution and Bylaws of the Synod. Congregations may wish to include provisions regarding the following: retention of the minutes and records of the secretary as property of the congregation; bonding of the treasurer; some form of financial review or audit; and the release of mailing lists. The *Treasurer's Manual* provided to all congregations of the Synod is a helpful resource. If such details are not included in the bylaws, provision may be made for such in job descriptions developed by the church council or board of directors and, if desired, approved by the voters assembly. In such case, a paragraph such as the following would be helpful in the bylaws.

Example:

Officers and members of boards and committees shall perform the duties as provided in the constitution. The congregation shall also have the right to detail and expand upon those responsibilities by the development of job descriptions developed by the church council [board of directors] and approved by the voters assembly.

17.0 MEETINGS

The frequency and any other expectations of the meetings of the voters assembly should be specified in the bylaws of the congregation. Many states require at least one such meeting annually.

Example:

The voters assembly shall meet . . .

18.0 RULES OF ORDER

In order that all things may be done decently and in order, the rules governing the conduct of the meetings should be established in the bylaws.

Example:

In addition to principles laid down in Scripture and in the constitution and bylaws of this congregation, accepted parliamentary procedures such as Robert's Rules of Order shall be followed.

19.0 AMENDMENTS

It is essential that provision be made in the bylaws for amending the bylaws.

Example:

These bylaws may be amended in a properly convened meeting of the voters assembly.

19.1 Amendments shall be adopted by a majority of all votes cast, provided the proposed change has been announced in a previous meeting or has been submitted in writing at least two weeks prior to the meeting to all communicant members.

19.2 The revised bylaws shall, as a condition of continued membership in The Lutheran Church—Missouri Synod, be submitted to the president of the district for review by the district's constitution committee and favorable action by the district's board of directors before being placed into practice by the congregation.

Voting Rights of Vacancy Pastors (06-2461)

In a February 27, 2006 letter, a district president requested an opinion from the Commission regarding the right of vacancy pastors to serve as voting delegates for and otherwise officially represent the vacant congregations they are serving.

Question: Can an ordained minister, whether he is an "active member" (Bylaw 2.11.1) or an "inactive member" (Bylaws 2.11.2–2.11.2.3), serve as a voting delegate ("representing" the vacant congregation) to the circuit forum for the election of the circuit delegates to the convention of the Synod or serve as a voting delegate ("representing" the vacant congregation) to the district convention or be elected as the circuit delegate to a convention of the Synod?

Opinion: The Constitution of the Synod under Article V, Membership, states: “All organized congregations that have joined the Synod hold voting membership. At the meetings of the districts of the Synod every congregation or parish is entitled to two votes, one of which is to be cast by the pastor and the other by the lay delegate. At the meetings of the Synod a number of congregations shall form a group which shall be represented by two voting delegates, one a pastor and one a lay delegate.” In this same article’s designation of advisory members, the list includes “3. Ministers not in charge of congregations” (emphases added).

Article VI, Conditions of Membership, refers to the “regular call” of pastors. Bylaw 2.11.1 sets forth the requirements to be an active member, including “(a) An ordained minister serving a congregation of the Synod.” The following Bylaw 2.11.2 sets forth the inactive members of the Synod as “advisory members of the Synod.” These fall into the categories of emeritus, candidate, and non-candidate (emphases added).

Any ordained minister who is an “active member” of the Synod serving as vacancy (interim) pastor who does not have a “regular call” to that congregation is ineligible to serve as a voting pastoral delegate of that congregation to a district convention, Synod convention, or circuit forum (caucus). Any ordained minister who is an “inactive member” of the Synod and, as such, “advisory,” and who is serving as a vacancy pastor, does not have a “regular call” to that congregation and is ineligible to serve as a voting pastoral delegate of that congregation to a district convention, Synod convention, or circuit forum (caucus).

This is consistent with previous Commission opinions:

- “When the Bylaws refer to the pastor of a congregation the reference is to the regularly called pastor whose installation had been authorized by the district president” (Ag. 366 – September, 1972).
- “On the basis of many previous rulings vacancy pastors were not permitted to serve as voting delegates to a convention” (Ag. 931; 932 – March, 1976).
- “A pastor's right to vote in a circuit meeting or at a district convention ceases when he has formally accepted a call to another parish, that from that point on he is strictly speaking serving as a vacancy pastor” (Ag. 1316 – September, 1978).
- “To be a ‘parish pastor’ in the constitutional sense, an individual must have a call” (Ag. 1371 – July, 1979).
- “Emeritus pastors have also been considered ineligible to vote since, as retired persons, they are not considered to be pastors in charge of congregations” (Ag. 1835 – May, 1988).
- “Emeritus status is inconsistent with being in charge of a congregation and thus inconsistent with exercising voting rights at a district or Synod convention or circuit forum” (Ag. 2078 A – July, 1997).
- “The phrase ‘serving a congregation of the Synod’ pertains exclusively to called positions. The words ‘regular basis’ in Bylaw 2.19 presume the existence of a regular call (Constitution, Art. VI 3) for a worker to be categorized under Bylaw 2.15...” (00-2192 – May, 2000).

Therefore, a vacancy pastor, not having a regular call from the vacant congregation he serves, is not eligible to be a voting representative of that congregation.

Adopted May 1–2, 2006

Authority of President in the Hiring of Synod Employees (06-2462)

In a March 4, 2006 letter to the Commission, the President of the Synod asked three questions regarding the authority of the President in the hiring of Synod employees:

Question 1: May an individual, whether or not an individual member of the Synod or a member of a congregation of the Synod, be called to, contracted for, or employed in a staff position of the corporate Synod or an agency of the Synod not requiring the mutual concurrence of the President, if such individual

- is an officer or member of a group whose theological position is contrary to that of the Synod;
- publicly subscribes to the theological positions of such a group; or
- has publicly taught, written, or spoken, without public retraction, contrary to the theological positions of the Synod?

Question 2: May an individual, whether or not an individual member of the Synod or a member of a congregation of the Synod, be called to, contracted for, or employed in a staff position of the corporate Synod or an agency of the Synod not requiring the mutual concurrence of the President, which position requires responsibility for upholding the Constitution, Bylaws, and/or resolutions of the Synod, if such individual

- is an officer or member of a group that publicly proclaims opposition to or criticism of portions of the Constitution, Bylaws, and/or resolutions of the Synod;
- publicly proclaims opposition to or criticism of any part of the Constitution, Bylaws, and/or resolutions of the Synod; or
- has publicly communicated, verbally or in writing, without public retraction, opposition to or criticism of any part of the Constitution, Bylaws, and/or resolutions of the Synod?

Question 3: What provisions under the Constitution and Bylaws of the Synod does the President have that enable him to provide supervision and oversight in order to “see to it” that the “resolutions of the Synod are carried out” by preventing the calling, contracting, or employing of an individual fitting the description in questions 1 and 2 above, especially when he has concerns about whether the individual will uphold and honor the theological positions and the Constitution, Bylaws, and resolutions of the Synod?

Opinion: (A) Questions 1 and 2 can be answered together. In order to answer these questions, reference should be made to the appropriate bylaws. Bylaw 3.11.1 states: “Unless otherwise specified by the board of directors of the respective agency, all employees shall serve at the pleasure of the appointing authorities.” Furthermore, Bylaw 1.4.6 states: “Each staff develops procedures, recommends and reviews programs and ministries, manages programs, and recommends policy and program modifications. It implements decisions in accordance with approved policy. (a) It is responsible to the Synod at the national or district level in accordance with the Constitution and Bylaws of the Synod at the national or district level, resolutions of the respective convention, and the policies of a district or any other agency to which it is responsible... (c) A staff at the national level through its executive officer shall... (5) make day-to-day operating decisions in the administration of adopted programs in accordance with approved policies... (12) propose staffing levels and review staff performance....” Furthermore, Bylaw 1.4.6 (d) states: “Each executive officer shall report on staff activities and recommendations to the national Synod, district, or agency to which that officer is responsible and, as requested, to the president of the district or of the Synod.” There is no specific directive of the Synod dealing with the Bylaws requiring the mutual

concurrence of the President for a staff position appointment with the exception of the chief executive officer.

Based upon the above, it is clear that the calling, contracting, or employing of staff is the responsibility of the respective Synod agency. There is no provision in the Constitution or Bylaws prohibiting the calling, contracting, or employing of an individual relating to his prior activities, including group membership, or prior proclamations or teachings.

While agencies may offer contracts or calls to individuals regardless of their histories, it should be pointed out that prior to acceptance of a position, potential staff members will be required to sign statements that they have received, understand, and agree to abide by the conflict of interest provisions of Bylaw 1.5.12.1 (see Bylaw 1.5.12.2). Presumably individuals as identified in the questions, in order to fulfill their responsibilities in a manner reflecting the highest degree of integrity and honesty consistent with the Scriptures and in order not to enter into activities detrimental to the interests of the Synod, will have determined, in advance of acceptance, no longer to associate with groups whose theological positions are contrary to the Synod, to publicly subscribe to theological positions of such groups, or to publicly speak, teach, or write in a manner inconsistent with the theological positions of the Synod or to take any other actions which may be detrimental to the interests of the Synod or its agencies. If inappropriate activity continues, the position must be vacated pursuant to Bylaw 1.5.12.1 (b) (5).

(B) In answering question 3, reference should be made to the appropriate constitution and bylaw provisions, together with prior opinions of the Commission on Constitutional Matters. Please note the following constitutional provisions that are applicable:

- Constitution, Art. XI A 1: “The officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod.”
- Constitution, Art. XI B: “1. The President has the supervision regarding the doctrine and the administration of...b. All such as are employed by the Synod;...2. It is the President’s duty to see to it that all the aforementioned act in accordance with the Synod’s Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod. 3. The President has and always shall have the power to advise, admonish, and reprove. He shall conscientiously use all means at his command to promote and maintain unity of doctrine and practice in all the districts of the Synod. 4. The President shall see to it that the resolutions of the Synod are carried out....”

Reference should also be made to appropriate sections of the Bylaws:

- Bylaw 3.3.1.1: “As the chief ecclesiastical officer of the Synod, the President shall supervise the doctrine taught and practiced in the Synod, including all synodwide corporate entities.”
- Bylaw 3.3.1.1.1: “The President of the Synod has ecclesiastical supervision of all officers of the Synod and its agencies....”
- Bylaw 3.3.1.2: “The President shall oversee the activities of all officers, executives, and agencies of the Synod to see to it that they are acting in accordance with the Constitution, Bylaws, and resolutions of the Synod... (c) He shall call up for review any action by an individual officer, executive, or agency that, in his view, may be in violation of the Constitution, Bylaws, and resolutions of the Synod. (1) If he deems appropriate, he shall request that such action be altered or reversed. (2) If the matter cannot be resolved, he shall refer it to the Synod’s Board of

Directors, the Commission on Constitutional Matters, and/or the Synod in convention as he deems appropriate to the issues and party/parties involved.”

- Bylaw 3.3.1.3: “The President shall have powers and duties that are both ecclesiastical and administrative... (j) He shall exercise executive power when the affairs of the Synod demand it and when he has been expressly invested with such power by the Synod in convention. (k) He shall 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 of the 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....”

In discussing the authority of the President to act, the Commission on Constitutional Matters has rendered a number of prior opinions. In discussing presidential authority, the Commission in September of 1972, in dealing with an issue regarding the President’s authority to affect a decision of a board of the Synod, stated:

(1) That it is the opinion of the Commission on Constitutional Matters that the Constitution and the Bylaws of The Lutheran Church—Missouri Synod give to the President of the Synod exceptionally broad responsibilities and correspondingly broad authority. (2) That while the ordinary day to day responsibility not only for administration but also for doctrine rests also with other officials, boards, and commissions created in the course of time by the Synod, the Synod has never repealed the broad responsibility and authority vested in the presidential office, but instead the Synod appears to have increased those powers from time to time. It is therefore conceivable that the President, acting in accordance with the appropriate articles of the Constitution and Bylaws of The Lutheran Church—Missouri Synod, may exercise his pastoral judgment to intervene in situations which, in his estimation, are so important that the exercise of his ultimate constitutional responsibility is required. (3) That when a synodical President feels impelled to exercise that responsibility, it is clearly understood that his action is always subject not only to the regular appeals procedures involving the commissions of adjudication and Board of Appeals, but also to the approval or disapproval, to ratification or rescission, by the convention of the Synod. (Ag. 330, 340, *et.al.*)

In dealing with presidential power as it relates to censorship of printed material, the Commission stated the following in a June 25, 1977 opinion:

Specific enabling language mandates presidential authority in the areas of doctrine and practice. He has authority over administration of the officers and employees of the Synod. He is expressly identified as the CEO of the Synod. The President is mandated to be responsible to the Synod for the supervision of doctrine. While a President is prohibited from exercising powers that have not been expressly conferred upon him, he may exercise executive powers within framework provided by the Constitution and Bylaws. The President may, for example, exercise broad power under the express language granting him responsibility for doctrinal supervision. The Bylaws need not articulate every heresy, or aberrant doctrine that might trigger executive action. It is implicit in the express grant of authority in the Constitution and Bylaws to supervise doctrine... Prohibiting or directing items for publication in the official periodicals of the Synod should be done by the President of the Synod only in exceptional circumstances... Bylaw 12.01 indicates what the Synod expects of its official periodicals. Any limitation on such expectations through an exercise of executive power should be done only on those occasions when the affairs of the Synod so require... (Ag. 2073, A, B, C, D, E, F)

See also Opinion 02-2259, which in reference to the above opinion further explains:

[This] opinion found authority for actions which might be considered censorship on the part of the President, but recognized extreme limitations on that authority. The Commission found that, to the extent that such authority exists, it flows from his general authority under Article XI B 1 which indicates “the President has the supervision regarding the doctrine and administration...” and Bylaw 3.101 c 11 which authorizes the exercise of executive power where there is no specific directive of the Synod and action is required. As applied to the issue of censorship, the opinion observed that “prohibiting or directing items for publication in the official periodicals of the Synod should be done by the President of the Synod only in exceptional circumstances.”

The Constitution and Bylaws as interpreted by the Commission on Constitutional Matters confirm that the President of the Synod has at least the following responsibilities and authority:

- (1) The President supervises the doctrine and administration of all Synod employees (Constitution, Art. XI B 1);
- (2) The President is responsible to see that all Synod employees act in accordance with the Constitution of the Synod (Constitution, Art. XI B 2);
- (3) The President is to admonish all employees who act in a manner that is inconsistent with the Constitution and to report to the Synod if an employee refuses to alter his conduct as advised by the President (Constitution, Art. XI B 2);
- (4) The President may “advise, admonish, and reprove” all employees that in his opinion are acting in an improper manner especially regarding doctrine (Constitution, Art. XI B 3 (Also, Bylaw 3.3.1.1.1 provides that the President has ecclesiastical supervision over all officers and agencies of the Synod and as defined in Bylaw definition 1.2.1 (f) may in exercising supervision visit, encourage, support, care, protect, counsel, advise, admonish and when necessary take appropriate disciplinary measures to ensure that the Constitution, Bylaws, and resolutions of the Synod are implemented.);
- (5) The President is responsible to see to it that Synod employees carry out Synod resolutions (Constitution, Art. XI B 4) and may advise, admonish, or reprove those acting in a manner inconsistent with the same;
- (6) The President may request the appropriate executive officer to report on particular staff activities (Bylaw 1.4.6 [d]);
- (7) The President may request that an officer, executive, or agency reverse a decision that he believes violates the Constitution, Bylaws, or resolutions of the Synod (Bylaw 3.3.1.2 [c] [2]);
- (8) The President may refer to the Synod’s Board of Directors, Commission on Constitutional Matters, and/or the Synod in convention any situation where an officer, executive, or agency refuses to alter/reverse an action that he believes violates the Constitution, Bylaws, or resolutions of the Synod (Bylaw 3.3.1.2 [c] [2]);
- (9) The President has executive power to act if specifically given such power by a Synod convention if affairs of the Synod require it (Bylaw 3.3.1.3 [j]);
- (10) The President may exercise executive power in the absence of a specific directive of the Synod should affairs of the Synod require it in his opinion after appropriate consultation with the vice-presidents, Board of Directors, or Council of Presidents of the Synod (Bylaw 3.3.1.3 [k]).

Therefore, under specific directives of the Constitution and Bylaws of the Synod, the President has authority to advise/request that an agency or staff executive not appoint someone he believes would not

serve the best interests of the Synod. He may also ask that an agency or executive reverse a decision he believes to be improper if made. Beyond these authorized avenues of action, the President of the Synod, after appropriate consultation, has innate executive power to act in areas of doctrine and administration if he believes that the affairs of the Synod require it (Bylaw 3.3.1.3 [k]). As the Commission has advised in a prior opinion, such an “ultimate constitutional responsibility” in situations where the day to day administration rests with other staff or agencies of the Synod should only be exercised if a matter is “so important” that action is “required” for the health, welfare, and integrity of the Synod (Ag. 330, quoted above). As in the exercise of censorship, such exercise of executive power should be done “only in exceptional circumstances...on those occasions when the affairs of the Synod so require...” (Ag. 2073, quoted above).

Adopted May 1–2, 2006

Authority of the Board of Directors (06-2463)

In a March 6, 2006 letter, a parish pastor asked questions related to the “litigation process which is now taking place in our Synod at this time,” explaining that such questions are “a matter of great concern to me and many others in The Lutheran Church—Missouri Synod.”

Question 1: Does the Synod’s Board of Directors, as legal representative of the Synod, have the authority to enter into a legal agreement to vacate the election of the President, Vice-President, or any other office elected by the Synod in its 2004 convention?

Opinion: No. The duties and responsibilities of the Board of Directors of the Synod are as outlined in Article XI F of the Constitution and Bylaws 1.4.4 and 3.3.5. As with all officers of the Synod, the Board of Directors as a whole, according to Constitution Art. XI A 1, “must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod.” Under Bylaw 3.3.5.4, the Board of Directors has been authorized to take, on behalf of the Synod, actions related to the business and legal affairs of the Synod which have not been expressly delegated by the Constitution, Bylaws, and resolutions of the Synod to other officers or agencies of the Synod.

The conduct of the convention, including the election of the President, Vice-President, and all other offices subject to election at the convention, is governed by the Bylaws. That responsibility and authority has been retained by the Synod in convention and has not been delegated to the Board of Directors. It would be beyond the authority of the Board of Directors to enter into an agreement or take such steps as would cause the overturning or vacating of the elections conducted by the Synod in convention. The processes for delegate selection have also been determined by the Synod in its Bylaws, particularly Bylaw 3.1.2. Challenges to delegate selection and certification, including challenges to delegates from circuits approved under the process provided by Bylaw 3.1.2 (b), are handled ultimately by the convention itself. Any challenge to the exceptions granted by the President as to delegates seated at the 2004 convention had to have been made at that time, and no such challenge was made. Subject to the Synod’s governing documents, the conduct of the convention is ultimately within the control of the delegates themselves, subject to the Constitution and Bylaws of the Synod.

Question 2: Does the Synod’s Board of Directors, as legal representative of the Synod, have the authority to enter into a settlement of litigation in a civil court, the effect of which would be to amend the Bylaws of the Synod, to vacate or render of no effect opinions of the Commission which were not vacated by a convention of the Synod, or would affect the method of selection of the ecclesiastical leaders of the Synod?

Opinion: No. The powers of the Board of Directors are those granted by the Synod, as discussed above. Amendments to the Constitution of the Synod are governed by Constitution Art. XIV. The exclusive method to amend the Constitution requires consideration and referral by the Synod assembled in convention and ratification by a vote submitted to each voting congregation of the Synod on an official ballot following the process contained in the Constitution.

Amendments to the Bylaws of the Synod are governed by Chapter 7 of the Bylaws. Two methods are provided. In the first, amendments may be made by the Synod itself in convention. The process for such an amendment is contained in Bylaw 7.1.1. The Bylaws also provide for amendments made by two-thirds majority of the Board of Directors under Bylaw 7.1.2, which reads:

7.1.2 In exceptional circumstances and upon the express direction of a convention of the Synod, amendments may be made by a two-thirds majority of the Board of Directors.

(a) Such amendments to the Bylaws shall be necessary to implement resolutions adopted by a convention of the Synod.

(b) Such Amendments shall be drafted by the Secretary of the Synod and shall be reviewed by the Commission on Constitutional Matters.

In order for the Board of Directors to have authority under Bylaw 7.1.2, the Board of Directors must have express, prior direction from a convention of the Synod to make the amendments proposed. Such amendments to the Bylaws can only be made when necessary to implement resolutions adopted by a convention of the Synod. Such amendments must be drafted by the Secretary of the Synod and must be reviewed by the Commission on Constitutional Matters prior to implementation.

With respect to opinions of the Commission on Constitutional Matters, the Synod has delegated to the Commission certain authority and responsibility as set forth in Bylaw 3.9.2. The opinions of the Commission are binding under Bylaw 3.9.2.2 (b) unless and until overturned by the Synod itself in convention. Various opinions have been challenged in the past, as also occurred at the 2004 convention. Overtures were submitted seeking to overturn specific opinions during the last triennium. The convention did not approve any such overtures. The Board of Directors is not authorized to take any action, including settlement of civil litigation, the effect of which would be the overturning of opinions which only the Synod itself may do, or the amendment of Bylaw 3.9.2.2 (b), without the processes provided in Bylaw 7.1.2 having been followed.

The Synod as a church body has determined the governance structure it believes, consistent with the Scriptures, is most appropriate for carrying out the work of the church. The identification and selection of its ecclesiastical leaders is perhaps one of the most critical components of that structure. Only the Synod itself, pursuant to the processes under Bylaw 7.1.2, can effect any change in the selection of the ecclesiastical leaders of the Synod.

Adopted May 1–2, 2006

Overture to District Convention Advocating Division of the Synod (06-2464)

A district president in a letter dated March 9, 2006, provided a copy of an overture submitted to his district convention advocating a “respectful separation” because of factions within the Synod. The overture advocates that the district “affirm the desire to seek and promote a respectful and fair separation” of the Synod and the appointment of a “bipartisan” committee to investigate the possibility of such a separation.

Question: Is it in violation of the Constitution and Bylaws of The Lutheran Church—Missouri Synod for a district in convention to consider a memorial that deals with the division of the Synod, including the division of the Synod’s properties and assets as indicated by the attached memorial?

Opinion: According to Constitution Art. XII B 12: “12. The districts are independent in the administration of affairs which concern their district only, it being understood, however, that such administration shall always serve the interests of the Synod.” In addition, Bylaw 4.1.5 states: “Jurisdiction with respect to everything that is administered by or for the entire Synod resides in the national Synod itself.” Therefore, it is in violation of the Constitution and Bylaws of The Lutheran Church—Missouri Synod for a district in convention to consider a memorial that promotes a division of the Synod, given the synodwide consequence of such a proposal.

Adopted May 1–2, 2006

Authority of the President of the Synod (06-2465)

In a letter received on March 13, 2006, the Board for Communication Services asked a series of nine questions regarding the authority of the President of the Synod relating to Bylaw 3.3.1.3 (k). The questions have been modified by the Commission to facilitate a response.

Question 1: Does the President of the Synod have the authority under Bylaw 3.3.1.3 (k) to direct an agency of the Synod to hold in abeyance or to refrain from taking action until certain questions are answered by the Commission on Constitutional Matters?

Opinion: Yes. Under Bylaw 3.3.1.3 (k) and its requirements, the President of the Synod has the authority to direct an agency of the Synod to hold in abeyance or to refrain from taking action until certain questions are answered by the Commission.

The President of the Synod is authorized by the Synod to exercise executive power when, in his judgment, the affairs of the Synod require the exercise of executive power and for a purpose for which there is no specific directive of the Synod. Such power, however, cannot be exercised until after consultation with the vice-presidents, the Board of Directors of the Synod, or the Council of Presidents, whichever in his judgment is most appropriate. Bylaw 3.3.1.3 (k) states:

(k) He shall 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 of the 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. The Lutheran Church Extension Fund—Missouri Synod is exempt from this bylaw.

Question 2: Does the Commission on Constitutional Matters have the authority to determine the conditions under which an agency’s policies may recognize the unique character of that agency’s action in creating staff positions which are below the executive officer and executive staff level, or does that determination lie solely with the Synod’s Board of Directors?

Opinion: The Synod has charged the Commission on Constitutional Matters with the responsibility for interpreting the Synod's Constitution, Bylaws, and resolutions as its primary responsibility (Bylaws 3.9.2 to 3.9.2.2.4), such as interpreting Bylaws 1.4.6, 3.11.1, and 1.5.9, including the phrase, "Every agency may create officer and executive staff positions and fill the same in accordance with its policies."

Concerning the authority to "determine the conditions," Bylaw 1.5.9 does not use that phrase. However, the authority of the Commission does not include "recognizing," as the question suggests, "the unique character of the operations of each [agency]." That authority is given to the Board of Directors, which approves the human resources policies of the Synod (Bylaw 1.5.9).

Question 3: If an appeal is made to the Commission on Constitutional Matters under Bylaw 3.3.1.3 (k) of the President's exercise of his executive powers, asserting that he has overstepped his constitutional authority, is the Commission's function during such an appeal limited to the interpretation of the Synod's Constitution, Bylaws, and resolutions as stipulated in Bylaw 3.9.2.2? Or is there some stipulation in the *Handbook* of the Synod that authorizes the Commission to determine whether or not a situation actually required the exercise of executive power or to determine whether the use of executive power was justified?

Opinion: The authority of the Commission on Constitutional Matters is limited to the provisions set forth in Bylaw 3.9.2 to 3.9.2.2.4. If and when questions concerning "executive power" and "constitutional authority" are within the purview of the Commission, it must carry out its responsibility given by the Synod.

Question 4: If an appeal is made to the Synod in convention under Bylaw 3.3.1.3 (k), does the "right to appeal" mean that the member or agency of the Synod has the right to have the appeal presented to the convention, or can the appeal be dismissed or impeded from being presented to the convention?

Opinion: The national convention "is the principal legislative assembly, which amends the Constitution and Bylaws, considers and takes action on reports and overtures, and handles appropriate appeals" (Bylaw 3.1.1). Appeals are presented to a convention or handled by means of an overture to a convention of the Synod. The provisions for overtures must comply with Bylaw 3.1.6.2, which sets forth who may submit overtures as well as the form of an overture (3.1.6.2 [a]) and its limitations (3.1.6.2 [b] and [c]). It is only on the basis of Bylaw 3.1.6.2 (b) and (c) that an overture (including an overture that is an appeal) will not be accepted for convention consideration or will be withdrawn from convention consideration (note that the bylaw does not use the term "dismiss").

All overtures that are accepted by the President in accordance with Bylaw 3.1.6.2 must also be referred by him to convention committees (Bylaw 3.1.7). The convention itself retains ultimate control of the conduct and business of the convention.

Question 5: Does any article of the Synod's Constitution or its Bylaws give authority to the President of the Synod to interfere with an authorized, solemn and divine call that has been properly issued?

Opinion: Various agencies of the Synod have been authorized to issue divine calls on behalf of the Synod. Bylaw 3.11.1 (c) requires that all positions of the Synod requiring called ministers shall be filled in consultation with the President of the Synod.

It is the Synod that has commanded the President to carry out such authority (Constitution Art. XI B 1-4):

1. The President has the supervision regarding the doctrine and the administration of
 - a. All officers of the Synod;
 - b. All such as are employed by the Synod;
 - c. The individual districts of the Synod;
 - d. All district presidents.
2. It is the President's duty to see to it that all the aforementioned act in accordance with the Synod's Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod.
3. The President has and always shall have the power to advise, admonish, and reprove. He shall conscientiously use all means at his command to promote and maintain unity of doctrine and practice in all the districts of the Synod.
4. The President shall see to it that the resolutions of the Synod are carried out.

Since the Synod has given the President such authority and such supervisory powers in the Constitution, as well as the authority of ecclesiastical and administrative powers and duties in the Bylaws (3.3.1–3.3.1.3), including Bylaw 3.3.1.3 (k) cited above under question 1, the President has the authority to intervene in the official duties and functions of all officers of the Synod, all such as are employed by the Synod, all district presidents, and all agencies of the Synod.

In September, 1972, the Commission on Constitutional Matters issued an opinion on “Presidential Authority” (Ag. 330, 340, *et al.*) which applies to the current questions being asked of the Commission. The 1972 opinion states:

1. That it is the opinion of the Commission on Constitutional Matters that the Constitution and Bylaws of The Lutheran Church—Missouri Synod give to the President of the Synod exceptionally broad responsibilities and correspondingly broad authority.
2. That while the ordinary day to day responsibility not only for administration but also for doctrine rests also with other officials, boards, and commissions created in the course of time by the Synod, the Synod has never repealed the broad responsibility and authority vested in the presidential office, but instead the Synod appears to have increased those powers from time to time. It is therefore conceivable that the President, acting in accordance with the appropriate articles of the Constitution and Bylaws of The Lutheran Church—Missouri Synod, may exercise his pastoral judgment to intervene in situations which, in his estimation, are so important that the exercise of his ultimate constitutional responsibility is required (emphasis added).
3. That when a synodical President feels impelled to exercise that responsibility it is clearly understood that his action is always subject not only to the regular appeals procedures involving the commissions of adjudication and the Board of Appeals, but also to approval or disapproval, to ratification or rescission, by the convention of the Synod.

Question 6: When there is a specific directive of the Synod or the Synod’s Board of Directors—and when that specific directive has been assigned to a program board—has not Synod determined that the authority of the President of the Synod is limited?

Opinion: Bylaw 3.3.1.3 (k) reads, “[The President] shall 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 (emphasis added). Note that the Synod’s Board of Directors is not included in the bylaw phrase “specific directive of the Synod” (emphasis added).

For the answer to this question see also section B of the Commission’s Opinion 06-2462, also issued on this date.

Question 7: If the President of the Synod elects to use his executive power and that, in turn, has the effect of interfering with the ability of an entity of the Synod to carry out its legitimate and specific directives, does that not constitute an improper use of his executive power or an improper interference with the rights and responsibilities that an agency of the Synod has to carry out its duties in a faithful and timely manner?

Opinion: If and when the President, in his judgment, elects to use his executive power, and such use is in compliance with the Constitution and Bylaws, including Bylaw 3.3.1.3 (k), it is a proper use of his executive power unless determined otherwise through the appeal processes provided.

Question 8: If the Board for Communication Services is not directly answerable to the President in facilitating his communications responsibilities—which facilitation includes content, media, and personnel, does not then any attempt to cause the Board for Communications Services to hold anything in abeyance or to refrain from taking action represent a disregard of the limitations placed upon the President of the Synod and constitute an illegitimate use of executive power and a direct contravention of Opinion 02-2259 of the Commission on Constitutional Matters?

Opinion: The Board for Communication Services is directly responsible to the Synod in convention. However, the President has supervisory responsibilities as set forth in Bylaws 3.3.1–3.3.1.3.

To the first part of this question, “does not then any attempt to cause the Board for Communications Services to hold anything in abeyance or to refrain from taking action represent a disregard of the limitations placed upon the President of the Synod and constitute an illegitimate use of executive power,” the answer is “no” as long as the action(s) of the President is consistent with the Constitution and Bylaws of the Synod.

To the second part of this question, “constitute... a direct contravention of Opinion 02-2259 of the Commission on Constitutional Matters,” the answer also is “no.” Opinion 02-2259 correctly states:

...the Board for Communication Services is an independent board not directly answerable to the Board of Directors. Similarly, while the President influences the Board for Communication Services through his ecclesiastical role and as a primary recipient of the services of the Board for Communication Services in facilitating his communication responsibilities, the Board for Communication Services is not directly answerable to the President.

But the opinion also refers to the authority of the President under Constitution Art. XI B and Bylaw 3.101 (2004 *Handbook* Bylaws 3.3.1 – 3.3.1.3). The Constitution and Bylaws of the Synod define the duties of the President and impose on and grant to him the ecclesiastical supervision of the Synod. No board, including the Board of Directors, may control his ecclesiastical purposes or restrict his ecclesiastical power (Cf. Opinion 02-2259).

Question 9: What is the relationship between Bylaw 3.3.1.2 (c), which authorizes the President of the Synod to call up for review any action by an individual officer (requesting that such action be altered or reversed and reporting it to the Synod if necessary) and Bylaws 3.3.1.3 (j) and

3.3.1.3 (k), which authorize the President of the Synod to exercise power when the affairs of the Synod demand and require it?

Opinion: Each of these bylaws provides a means (together with other bylaws) for the President to carry out his constitutional duties (Constitution Art. XI B). Bylaw 3.3.1.2 (c) does not limit or restrict the exercise of Bylaws 3.3.1.3 (j) and 3.3.1.3 (k) and these two bylaws do not limit or restrict the exercise of Bylaw 3.3.1.2 (c).

Bylaw 3.3.1.2 (c) states: “He shall call up for review any action by an individual officer, executive, or agency that, in his view, may be a violation of the Constitution, Bylaws, and resolutions of the Synod.” The title given to this bylaw is “Powers and Duties—Administrative,” with the lead sentence of the section stating, “The President shall oversee the activities of all officers, executives, and agencies of the Synod to see to it that they are acting in accordance with the Constitution, Bylaws, and resolutions of the Synod.” The President’s authority, with which this bylaw specifically deals, pertains to actions or activities that in the President’s view may be in violation of the Constitution, Bylaws, and resolutions of the Synod.

The title given to Bylaw 3.3.1.3 is “Powers and Duties—Ecclesiastical and Administrative,” with the lead sentence stating: “The President shall have powers and duties that are both ecclesiastical and administrative.” Whether ecclesiastical or administrative, the President is also authorized to exercise executive power under the limitations imposed in paragraphs (j) and (k) of Bylaw 3.3.1.3. These paragraphs may be exercised regardless of whether or not Bylaw 3.3.1.2 (c) is exercised and may very well be in addition to the exercise of Bylaw 3.3.1.2 (c).

The provision in Bylaw 3.3.1.3 (j) which is a basis for the President’s judgment is “when the affairs of the Synod demand it and when he has been expressly invested with such power by the Synod in convention.” And the provision in Bylaw 3.3.1.3 (k) which is a basis for the President’s judgment is “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 of the Synod, or the Council of Presidents, whichever in his judgment is most appropriate.”

Concerning the executive power of the President of the Synod, Opinion 03-2376 of the Commission on Constitutional Matters, rendered on January 28, 2004, is also helpful. The summary paragraph of the opinion states:

Were all eventualities and potential problems foreseeable, the Synod could adopt bylaws and policies to address all issues in advance, and the question posed could be answered with greater specificity. However, the Synod has recognized that there are circumstances that it may not have foreseen or for which it may not have made direct provision. For those reasons, the Synod has therefore invested the President with very broad powers to address those circumstances that it did not foresee or for which it made no other provision. For the same reason, the Commission cannot define in advance the ultimate boundaries of that power.

The Commission also calls attention to Opinion 06-2462 issued on this date.

Adopted May 1–2, 2006

Conflicts of Interest (06-2467)

A pastor of the Synod in a letter received March 20, 2006, asked a series of questions regarding conflicts of interest, introducing his questions with the following background information:

Background Part A:

A board of the Synod is managing a legal defense against a lawsuit—making decisions about a relevant legal strategy and even now is involved with mediation towards a resolution. The plaintiffs of the lawsuit are members of the Synod, and a few just so happen to be also family members, relatives, pastors, congregations, acquaintances, and friends of members of that particular board. Also, members of that board introduced and a few even voted for (Yes) in supporting a lawsuit against the Synod and months later are now defending the Synod against the same lawsuit. Possible and numerous potential “conflicts of interest” may be present in this situation?

Background Part B:

Bylaw 1.5.12 states: “Every board, commission...shall avoid conflicts of interest as described in this bylaw.” These are then specifically mentioned in Bylaw 1.5.12.1 (a) (1) and (2). In addition, Bylaw 1.5.12.1 mentions that each governing board “shall maintain and monitor a conflict-of-interest policy” that includes the provisions that follow, including that of Bylaw 1.5.12.1 (a): “Each board or commission shall disclose to the chairman...any potential conflicts of interest. Each chairman...shall disclose personal potential conflicts of interest to the governing board.” Is it the intent of the Bylaws that just a narrow range of specific “conflicts of interest” are to be avoided, or is the intent for there to be a much broader range of “any potential conflicts of interest” to be avoided?

Question 1: Is the intent of the Bylaws that every board, commission, officer, and staff member of the Synod “avoid conflicts of interest as described in this bylaw” as the only ones mentioned in Bylaw 1.5.12 [then specifically detailed in Bylaw 1.5.12.1 (a) (1) and (2)], or is the intent that they should avoid a much broader range of “any potential conflicts of interest” as found in the phrasing of Bylaw 1.5.12.1 (a)?

Opinion: First, it should be noted that by repeating the factual background asserted by the questioner, the Commission on Constitutional Matters is not making a judgment as to the correctness or completeness of the facts asserted. However, in order that the questions presented can be kept in context, the background asserted as a predicate to the questions has been repeated.

Bylaw 1.5.12 regarding conflict of interest reads as follows:

Disclosure of Conflict of Interest

1.5.12 Every board, commission, officer, and staff member of the Synod and every agency of the Synod shall avoid conflicts of interest as described in this bylaw.

1.5.12.1 Each governing board shall maintain and monitor a conflict-of-interest policy which shall be applicable to the boards, commissions, officers, and executive staff operating under the respective agency. Each policy shall include the following provisions:

(a) Each board or commission member shall disclose to the chairman of the agency and each staff person shall disclose to the executive officer of the agency any potential

conflicts of interest. Each chairman or executive officer shall disclose personal potential conflicts of interest to the governing board.

(1) Such disclosures shall include board membership on, a substantial interest in, or employment of the individual or a relative by any organization doing business with the Synod or any of its agencies.

(2) Board members or staff persons who receive honoraria or payments for any sales or services rendered to the Synod or its agencies shall disclose such information.

(3) All such disclosures shall be reported to the respective board or commission or its designated representative(s), who shall determine whether an inappropriate interest exists.

(b) Responsibilities shall be conducted in a manner reflecting the highest degree of integrity and honesty consistent with the Scriptures, the Lutheran Confessions, the *Handbook* of the Synod, board policies, and civil laws.

(1) Activities shall not be entered into which may be detrimental to the interests of the Synod and its agencies.

(2) Information acquired in the course of carrying out duties of the Synod shall not knowingly be used in any way that would be detrimental to the welfare of the Synod and its agencies.

(3) No board or commission member and/or staff or executive officer of the Synod or its agencies shall vote on any transaction in which the individual shall receive a direct or indirect financial gain.

(4) Gifts, entertainment, or favors in excess of \$100 per person per year from any individual or outside concern which does or is seeking to do business with the Synod or its agencies shall not be accepted.

(5) Any inappropriate activity shall cease or the position will be vacated.

1.5.12.2 Individuals, prior to accepting elected or appointed office or staff positions, shall sign statements that they have received, understand, and agree to abide by this bylaw and the conflict of interest policy of the respective corporation. Each shall also sign annually a "Statement of Compliance" with the bylaw and policy.

While one can attempt to delineate at great length the activities which are not to occur, the spirit and essence of the bylaw is contained in Bylaw 1.5.12.1 (b) as follows: "Responsibilities shall be conducted in a manner reflecting the highest degree of integrity and honesty consistent with the Scriptures, the Lutheran Confessions, the *Handbook* of the Synod, board policies, and civil laws."

The bylaw does not prohibit an individual from service based on a potential conflict of interest, but rather requires that all potential conflicts of interest be disclosed to the chairman, executive officer, or governing board, as may be appropriate. The advance disclosure is intended to assist the member and the entity of the Synod in avoiding actual conflicts of interest, and in striving to reflect the integrity and honesty expected of God's servants. For example, a prospective member of the Concordia Publishing House Board of Directors who owns, or whose family owns, a business supplying ink to the publishing house would want to disclose that relationship as a potential conflict of interest, but would not be precluded from serving on the Concordia Publishing House board. Should the publishing house board consider a

contract involving supplies that might come from that member's company, however, that member certainly would not participate in discussions or vote.

Question 2: What is meant by the phrase "any potential conflicts of interest" as found in Bylaw 1.5.12.1 (a)? Does it mean to include avoiding in discussions and/or deciding resolutions involving family relationships, relatives, acquaintances, congregational membership, etc.? Does it mean to include avoiding in participating in the defense of the Synod against a lawsuit when members of that respective board either introduced and/or supported a resolution to file a like-minded lawsuit earlier?

Opinion: A potential conflict of interest exists when one may be influenced by factors other than service to the Synod in the deliberative or decision-making process. While attention is often given to the conflict created by financial considerations, other factors interfering with independent judgment are also capable of creating a conflict of interest (see Bylaw 1.5.4). Prior opinions of the Commission on Constitutional Matters have referenced discussions of conflicts not only involving financial issues, but also those arising from serving on a board responsible for supervision of one's employer (becoming both master and servant) and voluntary recusals based upon an appearance of conflict. The primary focus, again, is to conduct the Synod's business in a manner reflecting the highest degree of integrity and honesty. In doing so, those who serve the Synod are expected to avoid conflicts and improprieties, and even the appearance of impropriety should be avoided. The likelihood that an actual conflict of interest exists is certainly magnified by discussions or resolutions involving family relationships, relatives, acquaintances, congregational membership, and such other relationships as may influence the independent judgment of a member.

Members of the Board of Directors have a fiduciary responsibility to the Synod and an obligation to follow the directions of their superior, the Synod itself acting in convention. Without further facts, the last sub-question is too vague to allow any other appropriate response.

Question 3: After a board or commission member discloses a "conflict of interest" to the chairman of a board or commission, should he alone make a decision whether a conflict of interest exists or not? Or, should that chairman report the "conflict of interest" to the respective board and then the whole board should determine by a vote whether an inappropriate interest exists or not?

Opinion: As discussed above, the existence of a potential conflict of interest must be disclosed to the chairman. Should either the member or the chairman have concern that the potential conflict is an actual conflict or raises the appearance of impropriety, that issue should be brought to the attention of the governing board as a whole. If the member individually, or the board or commission as a whole, determines that there is an actual conflict, the member should not participate as to the issue for which the conflict exists. All potential conflict disclosures are to be reported to the respective board or commission under Bylaw 1.5.12.1 (a) (3), which further indicates that it is the entire board or commission that shall determine whether an inappropriate interest exists and, if the member has not voluntarily recused himself, that a concern still exists.

Question 4: What is meant by the phrase "whether an inappropriate interest exists" as found in Bylaw 1.5.12.1 (a) (3)?

Opinion: An inappropriate interest exists when there is an actual conflict of interest.

Question 5: If a member feels that he/she has a "conflict of interest," or if the respective board has determined that "an inappropriate interest exists," what action(s) should then be taken?

Opinion: If a member feels that he or she has a conflict of interest or believes that participation in a particular matter would raise an appearance of impropriety or conflict inconsistent with the Synod's expectation that the member reflect the highest degree of integrity and honesty, that member should volunteer to recuse himself or herself from further consideration of the issues involved in the conflict. If the board or commission has determined that an inappropriate interest exists, contrary to the position of the member, the member will not be allowed to participate in the consideration of that issue for which the conflict exists in any event.

It should be noted that in order to maintain the high degree of integrity and honesty expected of members of the Synod, including the avoidance of an appearance of impropriety, there are many examples of individuals declining to participate in consideration of particular matters simply to maintain that integrity and to assure not only actual propriety but also the appearance of propriety. For example, in the February 1, 1985 minutes of the Commission (Ag. 107), the Secretary of the Synod refrained from voting on all matters relating to questions involving Concordia Theological Seminary, Fort Wayne because of "a possible conflict of interest."

In 1998 Opinion Ag. 2119, the Commission discussed the importance of avoiding potential conflicts of interest or the appearance of impropriety and steps which could be taken to effect that goal. The reader may also wish to refer back to the Commission's more recent Opinion 02-2313.

Adopted May 1-2, 2006

Clarification of Bylaw 3.2.5 re Process for Filling Vacancies (06-2469)

Following a challenge to the list of candidates submitted for filling a vacancy on the Board of Directors, the secretary of the Committee for Convention Nominations submitted on behalf of the committee the following question regarding the process involved in filling a vacancy on the Synod's Board of Directors.

Question: Since the Committee for Convention Nominations is a creation for the triennium, can the committee consider for its deliberation and submission all nominations for a given position submitted from throughout the Synod?

Opinion: Vacancies on the Synod's Board of Directors are to be filled pursuant to Bylaw 3.2.5 (a) and (b), which read as follows:

- (a) The Secretary of the Synod shall be responsible for gathering a list of nominees from the board or commission where the vacancy occurs, the President of the Synod, the district boards of directors, and the slate of candidates from the previous convention of the Synod within 90 days of notification of the vacancy.
- (b) A list of at least three but no more than five candidates shall be submitted as soon as possible to the appropriate appointing body.

Although there are currently two vacancies, the process for filling each vacancy is independent of the other, and separate lists of candidates must be generated as described above as to each position.

Not all persons originally nominated for the now vacant position would have been on the list of candidates submitted to the convention, or added by the convention pursuant to Bylaw 3.12.3.7. The slate of candidates from the previous convention are those who were identified by the Committee for Convention Nominations under Bylaw 3.12.3.6 (b) for the position now to be filled, together with nominations added to the slate from the floor of the convention pursuant to Bylaw 3.12.3.7 (a). If a person was not on the convention's slate of candidates for the vacant position (in this instance the Synod's Board

of Directors), a name may not be considered for the vacancy unless, within 90 days of notice of the vacancy, the name was submitted by the Synod's Board of Directors, the President of the Synod, or one of the districts' boards of directors.

Following the gathering of the list of nominees for the vacancy, Bylaw 3.2.5 (b) requires the narrowing of the list of possible nominees from the four sources listed to create a list of three to five candidates. If a candidate has been proposed who fails to meet this process, those charged to submit the list of candidates for the vacancy should determine whether to add a replacement name to the list, or, if at least three candidates remain, to resubmit the existing list with the remaining names.

Adopted May 1–2, 2006

District Convention Resolution re CCM “Guidelines” (06-2477)

In a letter dated July 2, 2006, a district president questioned the validity of a district convention resolution in light of the Constitution and Bylaws of the Synod.

Question: Can a district of the LCMS, meeting in convention, instruct the district's Constitution Committee to ignore the *Guidelines for the Constitution and Bylaws of a Lutheran Congregation* prepared for all districts to follow or to work contrary to such guidelines. The resolves in the district convention resolution read as follows:

RESOLVED, That the Committee on Constitutions of the PSW District cease altogether forcing congregations, new or old, to refrain from using descriptive, orthodox words regarding Scripture, such as “inspired,” “inerrant,” or “revealed” in the “Confessional Subscription” section of their constitutions; and be it further

RESOLVED, That the Committee on Constitutions of the PSW District joyfully encourage congregations of our district to retain said language; and be it further

RESOLVED, That the PSW District make public this misunderstanding and its correction in order to ensure no lingering ill effects;...

Opinion: District constitution committees are created by the Bylaws of the Synod (Bylaws 2.2.1 [a]; 2.4.1 [b]) and not by action of districts. A district convention does not have the authority, therefore, to instruct that district's constitution committee to ignore the duties and responsibilities imposed upon them by the Synod.

It is the Constitution and Bylaws of the Synod that authorize and instruct a district's constitution committee and board of directors concerning the matter of the constitutions and bylaws of district congregations (membership eligibility and continuing eligibility of congregations). A district constitution committee is required by the Bylaws of the Synod to examine new or revised constitutions and bylaws of congregations to ascertain “that they are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod in order that any necessary changes may be made by the congregation before the application is acted upon” (Bylaws 2.2.1 [b]; see also 2.4.1 [b]). District boards of directors are authorized to act upon and approve new constitutions and bylaws (application for membership in the Synod) or to determine if revised constitutions and bylaws are acceptable to the Synod (Bylaws 2.2.1 [c] and 2.4.1 [c]).

The *Guidelines for Constitutions and Bylaws of Lutheran Congregations*, which is provided by the Commission on Constitutional Matters of the Synod as an aid and service to congregations and district constitution committees and which may be used at their discretion, must also be in harmony with Holy

Scripture, the Confessions, and the teachings and practices of the Synod. The *Guidelines* recognize that differences exist between congregations and that, for the most part, the organization of a congregation is a matter of self-determination. However, the *Guidelines* also set forth the basic principles and/or requirements for the constitutions and bylaws of a congregation and therefore provide a valuable resource for the users.

One such requirement of the constitution and bylaws of congregations, reflected in the *Guidelines*, is an article on “confessional subscription.” In enumerating conditions of membership in the Synod, Article VI of the Synod’s Constitution states: “Conditions for acquiring and holding membership in the Synod are the following: 1. Acceptance of the confessional basis of Article II.” Referring to the confessional position of the Synod, Bylaw 1.6.1 states: “The confessional position of the Synod is set forth in Article II of its Constitution, to which all who wish to be and remain members of the Synod shall subscribe.” Accordingly, Bylaw 1.7.1 states: “The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.” And both Article II and Article VI are referenced in Article XIII: “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.” Therefore, *Guidelines for Constitutions and Bylaws of Lutheran Congregations* states (emphasis added): “A congregation’s confessional standard must not go beyond that of the Synod” (CCM opinions 04-2412; 98-2135).

Prior CCM opinions refer to this requirement. In an October 26–28, 1966 opinion, the CCM opined “that congregations are not permitted to include subscription to the *Brief Statement* in an obligatory article of their constitution,” and in a March 7–8, 1968 opinion the CCM stated: “The Commission on Constitutional Matters holds that Article VI, 1 ‘Conditions of Membership’ of the Synod’s Constitution requires nothing more and nothing less than the acceptance of the confessional basis of Article II,” also stating in reference to the 1966 opinion, “The Commission holds the same opinion in regard to any other doctrinal statement not listed in Article II of the Synod’s Constitution.” In a more recent August 15–16, 2003 opinion (03-2352), the Commission opined:

Members of the Synod are required to accept without reservation and subscribe to the Synod’s confessional position as set forth in Article II of its Constitution (Bylaw 1.03 [1.6.1]). Although the Synod has provided for itself the right to adopt doctrinal resolutions and statements (Bylaw 1.09 [1.6.2]), even these are not to be regarded as additions to the confessional basis for membership provided in Article II. Accordingly, individuals or congregations may not add to or remove items from Article II...

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

In evaluating the constitutions and bylaws of congregations, it is the responsibility of district constitution committees to judge whether the documents are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod. If a district board of directors has denied an application for membership and the congregation has asked for reconsideration, only then does a district convention have authority. Such authority is limited only to granting the application or affirming the denial (Bylaw 2.3.1 [c]). In doing either, however, the district convention must not violate the Constitution and Bylaws of the

Synod (cf. Art. XII 2). This appeal provision in the Synod's Bylaws (2.3.1) does not apply to revisions of constitutions and bylaws of congregations.

Adopted Sept. 7–8, 2006

Questions Regarding Circuit Forum Delegate Election Process (06-2483)

In a memorandum dated September 8, 2006, the Secretary of the Synod requested a response from the Commission to questions that repeatedly surface regarding the conduct of circuit forums to elect delegates to a Synod convention.

Question 1: Who may represent a congregation at a circuit forum? May a non-rostered "lay minister" or a "licensed deacon" serve as a congregation's lay or pastoral delegate to a circuit forum or an elected delegate to the Synod convention? May a retired ordained or commissioned minister resign from the roster of the Synod in order to serve as a lay delegate and then reapply for roster membership after the convention?

Opinion: Circuit forums are to consist of "a pastor of each congregation and one member of each congregation designated from each congregation" (Bylaw 5.3.2). They shall have been "selected in a manner prescribed by the congregation" (Bylaw 3.1.2.1 [c]). Congregations with more than one called pastor must decide which of their pastors will represent them. Pastors serving congregations on other than a called basis may not represent the congregation as its "pastor" (see also CCM Opinion 06-2461). By providing that congregations may select their representatives to a circuit forum in the manner prescribed by the congregation, the Synod does not impose any restrictions for lay representatives of congregations.

All persons not rostered by the Synod as ordained or commissioned ministers are regarded as lay persons and may represent their congregation as such at circuit forums. They may also be elected to serve as lay delegates to conventions of the Synod. This includes lay ministers and licensed deacons insofar as they are not rostered by the Synod. Also, although they may conduct Word and Sacrament ministries, lay ministers and licensed deacons may not be considered for delegate positions requiring a pastor because they are not rostered as such.

Rostered emeritus pastors and other rostered church workers may not be regarded as lay persons. While it may technically be possible for an emeritus church worker to resign from the roster of the Synod in order to serve as a lay representative or delegate with the intention of returning to the roster afterwards, this is not advisable (application for reinstatement requires a 75% favorable vote of the Council of Presidents) nor does it ring true to a spirit of honest representation at conventions of the Synod.

Question 2: What constitutes a quorum for a circuit forum? Is it appropriate for a circuit forum to be conducted in any other manner than by a face-to-face meeting of the representatives of the congregations of the circuit?

Opinion: The Bylaws of the Synod are silent regarding a quorum requirement for circuit forum meetings. Therefore those physically present constitute a quorum. Bylaw 3.1.2.1 (a) only requires that circuits "shall meet at the call of the counselor(s)." It behooves circuit counselors, therefore, to exercise care in selecting dates and to clearly announce circuit forums well in advance to allow for the greatest possible participation.

While modern technology might make possible any number of alternative methods for circuit forums to meet and conduct elections of delegates (e.g., E-mail, conference calls) and while local conditions may favor other manner of meetings or voting processes (e.g., separate meetings in different locations, proxy

or absentia ballots), no such provisions exist in the current Bylaws of the Synod. The Bylaws speak of the circuit forum as a “group” (Bylaw 5.3.1) that “meet[s]” (Bylaw 5.3.3) for the purposes stated in Bylaw section 5.3 of the *Handbook*, including the election of circuit delegates to the national convention.

These issues regarding quorum requirements and possible alternative methods for circuit forums to meet are herewith referred by the Commission on Constitutional Matters to the Commission on Structure for review and possible recommendations for change.

Question 3: How does a circuit forum proceed if there are insufficient nominations of laypersons by circuit congregations for lay delegate positions? What constitutes a proper election by a circuit forum?

Opinion: Bylaw 3.1.2.1 makes clear that “each congregation may nominate one layperson, either from its congregation or from the circuit” for the lay delegate and alternate positions, these names to “be submitted to the circuit counselor prior to the day of the circuit meeting.” They alone “shall constitute the slate of candidates.” If insufficient nominations are submitted in a timely manner by circuit congregations, these positions cannot be filled. Furthermore, the Bylaws of the Synod include no provision for filling these positions in another manner. In the absence of a proper election, the circuit will not be represented by a lay delegate, since Bylaw 3.1.2.1 (j) applies only to positions already properly filled.

The process for proper elections at circuit meetings is outlined in detail in paragraph (d) of Bylaw 3.1.2.1, including the use of written ballots (voice votes are not valid) and a requirement of a majority vote of all votes cast. Circuit counselors are well advised to review the entire delegate election process to assure compliance with the bylaw process and to correct any deficiencies before the final deadline for delegate selection. Failure to follow the appropriate bylaw provisions for selection of delegates may result, if challenged, in an invalidation of the circuit’s elections, causing the circuit to have no representation at the Synod convention.

[Note: Due to the time-sensitive and urgent nature of this opinion, the Secretary was asked to provide electronic copies to all district presidents immediately and to prepare sufficient printed copies for distribution to all attending the National Circuit Counselors Conference the following week.]

Adopted Sept. 7–8, 2006

Participation in Legal Actions by Members of the Board of Directors (06-2480A)

A pastor of the Synod in an August 18, 2006 E-mailed letter submitted two related questions regarding the meaning and application of Bylaw 1.5.12.1 (b) (5).

Question 1: Do the provisions of Bylaw 1.5.12.1 (b) (5) providing for the vacating of a position in the event of a continued inappropriate activity by a member of a board allow said board to remove such member and create this vacancy?

Opinion: The Commission notes initially that Bylaw 1.5.12.1 (b) (5), providing that “[a]ny inappropriate activity shall cease or the position will be vacated” is contained in a section dealing with conflict of interest disclosures defined in Bylaw 1.5.12.1 (a) and with prohibited activities cited in Bylaw 1.5.12.1 (b) (1–4). Bylaw 1.5.12.1 (b) (5) clearly is meant to apply only in the context of a conflict of interest violation. The provision does not specify the manner in which a position is to be vacated in the event of the continuation of a conflict of interest violation, nor does it specify who is empowered to make such a determination. Constitution Article XI A 2 states: “The Synod at all times has the right to call its officers

to account and, if circumstances require it, to remove them from office in accordance with Christian procedure.” That said, there is no provision in the Constitution or Bylaws that provides the specific method to be used if a position is to be vacated by a board or by the Synod itself if inappropriate activity does not “cease.”

Question 2: If not, if a board adopts a resolution providing the reason for vacating of the position of one of its members serving on such board pursuant to Bylaw 1.5.12.1 (b) (5), such member having engaged and continues to engage in inappropriate action detrimental to the Synod and its agencies, may the President, pursuant to Bylaw 3.3.1.3, after consultation with the Board of Directors and/or the Council of Presidents, and/or the vice-presidents, exercise his executive power to effect the vacating of the position on the board held by such member?

Opinion: Bylaw 3.3.1.3(k), in discussing the powers of the President, states:

He shall 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 after consultation with the vice-presidents, the Board of Directors of the 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.

Bylaw 3.3.1.2 requires that the President oversee the activities of all officers, executives and agencies of the Synod to see to it that they are acting in accordance with the Constitution, Bylaws and resolutions of the Synod. The Commission has previously held that, in fulfilling these responsibilities, “[t]he President may exercise executive power in the absence of a specific directive of the Synod should affairs of the Synod require it in his opinion after appropriate consultation with the vice-presidents, Board of Directors, or Council of Presidents of the Synod” (06-2462). In the absence of other provisions to carry out the terms of vacating an office under Bylaw 1.5.12.1, should a board pass a resolution identifying the reasons for the vacating of a position of one of its members serving on such board pursuant to Bylaw 1.5.12.1(b) (5), appropriately documenting that such member engaged and continues to engage in inappropriate action detrimental to the Synod and its agencies, the President pursuant to Bylaw 3.3.1.3, after consultation with the Board of Directors and/or the Council of Presidents, and/or the vice presidents, may choose to exercise his executive power to vacate the position on the board held by such member.

It should also be noted that, in lieu of exercising such authority, a President may instead choose to exercise his constitutional authority under Article XI B in supervising the administration of officers of the Synod by submitting appropriate matters between conventions of the Synod to a written vote of its member congregations as provided in Article XI B 8:

When matters arise between meetings of the Synod in convention which are of such a nature that action thereon cannot be delayed until the next convention, the President is authorized to submit them to a written vote of the member congregations of the Synod only after full and complete information regarding the matter has been sent to member congregations by presidential letter and has been published in an official publication of the Synod. If such matters are related to the business affairs of the Synod, such a vote shall be conducted only after the President has consulted with the synodical Board of Directors. In all cases at least one-fourth of the member congregations must register their vote.

Adopted Feb. 2, 2007

Bylaw 1.10.1.1 and Conflict Resolution Procedures (06-2482)

A member of the Synod in an E-mailed letter dated August 24, 2006, submitted the following series of questions to the Commission regarding Bylaw 1.10.1.1: "The Synod, in the spirit of 1 Corinthians 6, calls upon all parties to a disagreement, accusation, controversy, or disciplinary action to rely exclusively and fully on the Synod's system of reconciliation and conflict resolution. The use of the Synod's conflict resolution procedures shall be the exclusive and final remedy for those who are in dispute."

Question 1A: Can a member of a congregation of the LCMS holding a position within the Synod itself avail and/or be subject to the dispute resolution process of the Synod?

Opinion: Bylaw 1.10.2 indicates that the dispute resolution process is the exclusive process, subject to the exceptions provided by Bylaw 1.10.3, to resolve disputes involving as parties "(1) members of the Synod, (2) the Synod itself, (3) a district or an organization owned and controlled by the Synod, (4) persons involved in excommunication, or (5) 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." A member of a congregation of the LCMS holding a position within the Synod is expressly included within the list of those who may avail themselves of and/or are subject to the provisions of Bylaw section 1.10, to the extent that the dispute relates to the position of service with the Synod.

Question 1B: If so, can a member of the Board of Directors of the Synod both avail and be subject to the dispute resolution process of the Synod?

Opinion: Yes, a member of the Board of Directors of the Synod may both avail himself/herself of as well as be subject to the dispute resolution process of the Synod so long as the issue relates to the position held.

Question 1C: If 1B above is so, is a member of the Board of Directors of the Synod obligated pursuant to the Constitution and Bylaws of the Synod to avail himself or herself of the dispute resolution process if faced with an unresolved dispute relating to matters pertaining to the Synod and/or its members?

Opinion: Bylaw 1.10.2 includes the provision, "It shall be the exclusive remedy to resolve such disputes that involve theological, doctrinal, or ecclesiastical issues except those covered under Bylaw sections 2.14–2.17 and except as provided in Bylaw 1.10.3." Bylaw 1.10.3 exempts from the dispute resolution process expulsion from membership under Bylaw sections 2.14–2.17 and board of regents' supervision of faculty and administration under Bylaws 3.8.2.7.5–3.8.2.7.9 and 3.8.3.8.5–3.8.3.8.9, and also exempts "(a) Disputes concerning property rights (e.g., real estate agreements, mortgages, fraud, or embezzlement); and (b) Disputes arising under contractual arrangements of all kinds (e.g., contracts for goods, services or employment benefits)." So long as the issue in consideration does not fall within one of the exceptions provided in the bylaw, the dispute resolution process of the Synod is the exclusive remedy for resolving such issues.

Question 2A: Is a member of the Board of Directors, whether or not such member is a member of the Synod, in wishing to express dissent with a synodical resolution (for example, 7-02A from the 2004 convention), required to follow the provisions of the Constitution and Bylaws of Synod?

Opinion: The dissent provisions of Bylaw section 1.8 are applicable only to members of the Synod. If a member of the Board of Directors is a member of the Synod, those provisions are applicable. If a member of the Board of Directors is not a member of the Synod, that member's conduct is not governed

by the dissent provisions of Bylaw section 1.8. A further description of duties and responsibilities as well as restrictions on the behavior of members of the Board of Directors who are not members of the Synod is discussed in Bylaw 3.3.5.

Question 2B: If not, is a member of the Synod, while serving as a member of the Board of Directors, in wishing to express dissent with a synodical resolution, required to follow the provisions of the Constitution and Bylaws of Synod?

Opinion: A member of the Synod is at all times bound by the provisions of the Constitution and Bylaws of the Synod, including during service on a board or commission or as an officer of the Synod.

Question 2C: If they are so required to follow the provisions of the Constitution and Bylaws of the Synod, is such expression of dissent to a resolution of the Synod restricted to the provisions of the Constitution and Bylaws of the Synod?

Opinion: Yes. If a member of the Board of Directors is a member of the Synod, the dissent provisions of Bylaw section 1.8 apply to any such expression of dissent.

Question 2D: What remedies exist in the Constitution and Bylaws of the Synod in the event that the manner of dissent to a synodical resolution exceeds that which is provided in the Constitution and Bylaws of the Synod?

Opinion: Bylaw section 1.10, detailing the dispute resolution process of the Synod, would generally apply to an assertion that a member is in violation of the dissent provisions of the Constitution and/or Bylaws of the Synod. If such conduct were sufficiently egregious or repetitive so as to implicate the expulsion provisions of Article XIII of the Constitution, Bylaw section 2.14 would also be applicable. See also Opinion 05-2444 for a discussion of dissent.

Adopted Feb. 2, 2007

Formal Written Complaints, Public Rebuke, and Face-to-Face Meetings (06-2484)

In a September 27, 2006 letter to the Commission, a pastor of the Synod asked a series of questions regarding the meaning of Bylaw 2.14.3, specifically the meaning of “any formal written complaint or accusation,” public rebuke of public sin, and the Matthew 18:15 face-to-face provision.

Question 1: Do the words “complaint” and “accusation” mean essentially the same thing? Do they or can they refer to different things?

Opinion: In the context of the bylaw, while the words “complaint” or “accusation” are clearly synonymous, essentially it is formal “allegations” or “information” (Cf. 2.14.3 and 2.14.4) that can lead to the expulsion of a member from the Synod under Article XIII (2.13.1; 2.14.1; 2.14.3; 2.14.4).

Question 2: In this bylaw, do the adjectives “formal” and “written” modify an “accusation” as well as a “complaint”? In other words, can this accusation be informal and/or unwritten?

Opinion: If it has been determined that Bylaw section 2.14 is the appropriate bylaw section and if an action is to be commenced, this bylaw section, which prescribes the procedure for expulsion from membership in the Synod, requires in Bylaw 2.14.4 “a formal written complaint or accusation made by a member of the Synod who has carried out the above provision (Bylaw 2.14.3)” unless the district president becomes aware of information that could lead to expulsion by his own personal knowledge

(emphasis added).

Question 3: Can the noun “complaint” or the noun “accusation” refer to an expression that occurs outside the process for expelling a member from the Synod, such as a public rebuke of public sin?

Opinion: Although the words "complaint" and "accusation" are used elsewhere in the Bylaws, the Constitution, Bylaws, and resolutions of the Synod do not address this question.

Question 4: Does this bylaw forbid any member of the Synod from publicly rebuking another member for public sin such as false doctrine prior to i.) the rebuker consulting with the appropriate district president (i.e., the consultation mentioned in this bylaw) and/or ii.) the process for expulsion which follows upon this consultation?

Opinion: The bylaw in question deals only with the process of expulsion from membership. The provisions and processes of the bylaw (expulsion from membership) do not prohibit any Christian from following biblical and confessional principles in rebuking a Christian brother or sister so long as the constitutional responsibilities for ecclesiastical supervision are not being assumed and so long as the member will also abide by the bylaw when and if it is determined that Bylaw section 2.14 applies.

Commission Opinion 04-2401 opined: “This bylaw [2.14.3] and related bylaws do not apply to a person who has not entered a formal complaint.” Opinion 05-2422 also addressed this matter:

The question posed assumes that the person who wishes to speak out has become an accuser under Bylaw section 2.14. Should a member of the Synod choose to initiate the Bylaw section 2.14 process, that person must abide by the provisions of that process, including the prohibition of publicity under Bylaw 2.14.7.7 (g). In an earlier opinion (01-2243), the Commission offered definition of such publicity:

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

Members of the Synod walk together according to the covenants that they have mutually agreed upon by such membership, as delineated in the Synod’s Constitution, Bylaws, and resolutions. One of those covenants is provided in Bylaw 2.14.3 (c), which details how members of the Synod have agreed to respond “even if the alleged violation of Article XIII of the Constitution is considered to be ‘public.’” In such case Matthew 18:15 is still followed.

For further help, see Opinions 04-2401 (October, 2004) and 05-2422 (April, 2005) in their entirety.

Question 5: Does this point of the Bylaw [2.14.3 (c)] forbid any member of the Synod from publicly rebuking another member for public sin such as false doctrine prior to i.) the rebuker consulting with the appropriate district president (i.e., the consultation mentioned in Bylaw 2.14.3) and/or ii.) the process for expulsion which follows upon this consultation?

Opinion: The answer to question four applies.

Question 6: May a member of the Synod (member *Alpha*) be prohibited from bringing to the appropriate district president a matter which could lead to another member's (member *Beta*'s) expulsion from the Synod on the grounds that member *Alpha* has previously publicly rebuked member *Beta* for a public sin such as false doctrine?

Opinion: Bylaw section 2.14 and the related bylaws have no such prohibition.

Question 7: May a member of the Synod (member *Gamma*) be prohibited from publicly rebuking another member of the Synod (member *Delta*) for a public sin such as false doctrine on the grounds that member *Gamma* has not yet engaged in steps enumerated in Bylaw 2.14.3ff. such as a face-to-face rebuke and/or communication with the appropriate District President?

Opinion: Bylaw section 2.14 and the related bylaws have no such prohibition. The answer to question four applies.

Question 8: Do the words in the bylaw, "this provision of Matthew 18:15 shall be followed," make the following of this provision incumbent upon members of the Synod by reason of the fact that the provision is in Matthew 18:15? If so, why? If not, why not?

Opinion: The *Standard Operating Procedures Manual* that serves as a comprehensive procedures manual for the provisions set forth in Bylaw section 2.14, states, "Matthew 18 and the Eighth Commandment undergird the bylaws that set forth this Bylaw 2.14 process for expulsion of membership from the Synod. While Matthew 18 provides the basis for church discipline in a local congregation, it also provides guidance and a pattern for all Christians and, along with the Eighth Commandment, is to be observed in this procedure as applicable. The reputations of the accused and accuser are to be protected." And further it states, "The primary purpose of Bylaw section 2.14 and the procedure in this manual is not for the expulsion of a member from the Synod but for repentance and reconciliation, to win and restore the brother or sister or sister congregation (Matt. 18:15–20; Gal. 6:1–5; Cf. Bylaws 1.10.1–1.10.1.6)..."

Finally, the Commission encourages the questioner to review the May, 2006 report of the Commission on Theology and Church Relations (CTCR) entitled, *Public Rebuke of Public Sin*, which is applicable and helpful.

Adopted Feb. 2, 2007

ⁱ "Individual Christians are joined together in a worshipping and serving community, the congregation. Congregations, the basic units of the Synod, have joined together to form the Synod and relate to one another through it" (Bylaw 1.3.1).

ⁱⁱ "Conditions for acquiring and holding membership in the Synod are the following:

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.
 - c. Participating in heterodox tract and missionary activities.
3. Regular call of pastors, teachers, directors of Christian education, directors of Christian outreach, directors of family life ministry, directors of parish music, deaconesses, certified lay ministers, and parish assistants and regular election of lay delegates by the congregations, as also the blamelessness of the life of such.

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4. Exclusive use of doctrinally pure agenda, hymnbooks, and catechisms in church and school.
 5. A congregation shall be received into membership only after the Synod has convinced itself that the constitution of the congregation, which must be submitted for examination, contains nothing contrary to the Scriptures or the Confessions.
 6. Pastors, teachers, directors of Christian education, directors of Christian outreach, directors of family life ministry, directors of parish music, deaconesses, certified lay ministers, or candidates for these offices not coming from recognized orthodox church bodies must submit to a colloquium before being received.
 7. Congregations and individuals shall be received into membership at such time and manner, and according to such procedures, as shall be set forth in the Bylaws to this Constitution” (Constitution, Art. VI).

ⁱⁱⁱ “Congregations together establish the requirements of membership in the Synod (Constitution, Art. VI). In joining the Synod, congregations and other members obligate themselves to fulfill such requirements and to diligently and earnestly promote the purposes of the Synod by word and deed. Members agree to uphold the confessional position of the Synod (Constitution, Art. II) and to assist in carrying out the objectives of the Synod (Constitution, Art. III), which are the objectives of the members themselves. Thus, while congregations of the Synod are self-governing (Constitution, Art. VII), they, and also individual members, commit themselves as members of the Synod to act in accordance with the Constitution and Bylaws of the Synod 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 1.3.4).

^{iv} “A congregation shall be received into membership only after the Synod has convinced itself that the constitution of the congregation, which must be submitted for examination, contains nothing contrary to the Scriptures or the Confessions” (Constitution, Art. VI 5).

^v “To apply for membership in the Synod a congregation shall have an approved constitution and bylaws. (a) The congregation shall submit its constitution and bylaws to the appropriate district president, who shall refer such to the standing committee of the district....(b) The Constitution Committee shall examine the constitution and bylaws to ascertain that they are in harmony with Holy Scriptures, the Confessions, and the teachings and practices of the Synod in order that any necessary changes may be made by the congregation before the application is acted upon” (Bylaw 2.2.1).

^{vi} “A congregation desiring to retain membership in The Lutheran Church—Missouri Synod shall continue to have a constitution and bylaws approved by the Synod. (a) A member congregation which revises its constitution or bylaws or adopts a new constitution or bylaws shall, as a condition to continued eligibility as a member of the Synod, submit such revised or new constitution and/or bylaws to the district president....(d) Upon favorable action by the district board of directors, the congregation shall be notified that the changes are acceptable to the Synod and that the congregation is entitled to continue to function as a member of the Synod in good standing under the new or changed constitution or bylaws” (Bylaw 2.4.1).

^{vii} “(a) It shall be the policy of the Synod to decline membership to congregations whose constitutions deny membership or other congregational privileges to any Christian because of race or ethnic origin” (Bylaw 2.3.1).

^{viii} “Committed to a common confession and mission, congregations of The Lutheran Church—Missouri Synod join with one another in the Synod to support one another and to work together in carrying out their commonly adopted objectives....” (Bylaw 1.1.1).

^{ix} “Congregations together establish the requirements of membership in the Synod (Constitution, Art. VI). In joining the Synod, congregations and other members obligate themselves to fulfill such requirements and to diligently and earnestly promote the purposes of the Synod by word and deed. Members agree to uphold the confessional position of the Synod (Constitution, Art. II) and to assist in carrying out the objectives of the Synod (Constitution, Art. III), which are the objectives of the members themselves. Thus, while congregations of the Synod are self-governing (Constitution, Art. VII), they, and also individual members,

commit themselves as members of the Synod to act in accordance with the Constitution and Bylaws of the Synod 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 1.3.4).

^x “WHEREAS, We have been called Lutheran since the formation of our Synod (and since reformation times) and are thankful for our doctrinal background and heritage; and WHEREAS, The name *Lutheran* clearly identifies what the member congregations and The Lutheran Church—Missouri Synod believe, teach and confess; and WHEREAS, Basic Christian honesty and integrity require that no deception of any sort be used in declaring the truth of the Gospel before all the world, as St. Paul declares: ‘Rather we have renounced secret and shameful ways; we do not use deception, nor do we distort the Word of God. On the contrary, by setting forth the truth plainly we commend ourselves to every man’s conscience in the sight of God’ (2 Cor. 4:2); therefore be it *Resolved*, That all congregations and mission stations in our Synod boldly profess in their official title and/or name that they are ‘Lutheran’; and be it further *Resolved*, That all congregations and mission stations of our Synod state in their materials (bulletins, newsletters, etc.) that they belong to The Lutheran Church—Missouri Synod; and be it finally *Resolved*, That all LCMS congregations gladly proclaim our great doctrinal heritage to a world that needs the clear proclamation of the truth” (1995 Res. 3-13A, “To Use the Name *Lutheran*”).

^{xi} “(a) Pastors and congregations alike must avoid membership or participation in any organization that in its objectives, ceremonies, or practices is inimical to the Gospel of Jesus Christ or the faith and life of the Christian church....” (Bylaw 3.9.6.3.1).

^{xii} “(a) It shall be the policy of the Synod to decline membership to congregations whose constitutions deny membership or other congregational privileges to any Christian because of race or ethnic origin” (Bylaw 2.3.1 [a]).

^{xiii} “Congregations that are members of the Synod shall call and be served only by ordained ministers who have been admitted to their respective ministries in accordance with the rules and regulations set forth in these Bylaws and have thereby become members of the Synod” (Bylaw 2.5.2).

^{xiv} “Congregations that are members of the Synod shall call only commissioned ministers who have been admitted to their ministries in accordance with the rules and regulations set forth in these Bylaws and have thereby become members of the Synod” (Bylaw 2.5.3).

^{xv} “Congregations shall seek the counsel of their respective district presidents when calling ordained or commissioned ministers” (Bylaw 2.5.1).

^{xvi} “(1) Every congregation is encouraged to include in its organizational structure an elected or appointed board or committee for stewardship. (2) This board or committee shall be responsible for carrying on an adequate stewardship program in a manner prescribed by the congregation” (Bylaw 2.2.1 [a]).