#### **MINUTES**

# COMMISSION ON CONSTITUTIONAL MATTERS LCMS International Center November 2–4, 2012

## 164. Call to Order and Opening Prayer

[Note: The entire first day of the commission's meeting was held jointly with the Commission on Handbook and members of the staff of the President's Office. The meeting was requested by the Commission on Constitutional Matters to discuss solutions to bylaw issues remaining from the restructuring decisions of the 2010 LCMS convention.]

Chairman Wilbert Sohns called the joint meeting to order. Participating from the Commission on Constitutional Matters (CCM), in addition to the chairman, were: Daniel Lorenz, Philip Esala, George Gude, Neely Owen, and Raymond Hartwig; from the Commission on Handbook (COH): Gordon Tresch, Walter Rosin, Richard Nuffer, Albert Marcis, Marvin Temme, Wilbert Sohns, Ronald Schultz, and Raymond Hartwig; Ronald Schultz, also as Chief Administrative Officer; Gregory Williamson, Chief Mission Officer; and Barbara Below from the President's Office.

After commenting on the "historic" nature of the meeting, Chairman Sohns called on Secretary Raymond Hartwig, who served as chaplain for the CCM meeting, to provide an opening prayer.

# 165. Joint Discussion of Handbook-Related Issues

Chairman Sohns called on each member of the CCM to present a portion of the business of the meeting:

- Dan Lorenz provided general introduction and background information. Referring to CCM Opinion 11-2600 and its content, he noted that lines-of-authority decisions of the 2010 convention, intended by the Blue Ribbon Task Force on Synod Structure and Governance to make the Synod better organized and efficient (already discussed in a November, 2011 joint meeting of the CCM with the President of the Synod and his staff) beg further discussion, clarification, and convention consideration.
- George Gude addressed Bylaw 1.2.1 issues (paragraphs [h], [l], [n], [o], [t], and [u]) regarding definitions for "executive director," "mission board," "oversight," "supervision," and "operating boards," in light of related Bylaws 1.5.5.1, 3.3.1.3, 3.4.3.1, 3.8.2.3, 3.8.3.3, 3.8.2.4, and 3.8.3.4.
- Raymond Hartwig introduced discussion of issues related specifically to Bylaws 3.3.4.5 (allocation of funds by the Board of Directors), 3.8.2 (responsibility of the Board for National Mission), and 3.8.2.7 and 3.8.3.6 (granting of Recognized Service Organization status).
- Neely Owen called attention to relationship and definition issues currently present in Bylaws 3.4.3–3.4.3.1, 3.4.3.3–3.4.3.4, and 1.2.1 (b).
- Wilbert Sohns led a lengthy discussion of the relationship between supervision and ecclesiastical supervision as these terms are used in Bylaws 3.3.1–3.3.1.3; 3.8.2.1, 3.8.3.1, and other related bylaws.
- Philip Esala provided a "general/philosophical" summary to wrap up the presentations and discussions.

During each portion of the CCM presentation, possible solutions arrived at by consensus were offered to the Commission on Handbook for its use in developing 2013 convention bylaw amendment actions to address these and other issues discussed. More detailed minutes of the joint meeting (provided in the minutes of the Commission on Handbook) are attached to the protocol copy of these minutes.

# 166. <u>Bylaws 3.10.4.7.9 and 3.10.5.6.9 Revisions (Review of LCMS Seminary, College, and University</u> Complaint/Dispute Resolution *Standard Operating Procedures Manuals*)

Secretary Raymond Hartwig presented drafts of the *Standard Operating Procedures Manuals* to accompany the Bylaw 3.10.4.7.9 and 3.10.5.6.9 processes for receiving and deciding complaints against members of seminary, college, and university faculties and administrations. The commission reviewed and approved the documents (attached to the protocol copy of these minutes) for use by the seminaries (Bylaw 3.10.4.7.9 [j]) and Concordia University System (Bylaw 3.10.5.6.9 [j]) as appropriate.

# 167. Texas District Convention Bylaw Revisions (12-2640 [B])

With an April 25, 2012 email, the president of the Texas District submitted a series of proposed bylaw amendment resolutions, already reviewed and responded to by the commission during its May 2012 meeting. During the review, the commission also made recommendations for existing district bylaws to bring them into compliance with Synod Bylaws.

Upon review of the Texas District Bylaws following changes made by the 2012 district convention, the commission noted that not all of its recommendations were followed and that additional changes were made, the latter mostly editorial. The commission again surfaces the following issues for the district's attention:

- Regarding 2012 district convention Res. 03-05-12, the district did not restore the words "in writing" in two places as previously advised by the commission. The commission again states that the words "in writing" must be restored to mirror Synod Bylaw 3.12.2.1 (a) which specifically uses those words. The commission also notes that the district's old bylaw, which does include the words "in writing," is therefore still in operation until the next district convention, when these words will need to be incorporated in the new version of the pertinent district bylaws. The commission again also notes that "in writing" can refer to documentation that is communicated electronically.
- The recommendations made by the commission in Opinion 12-2640 with regard to existing bylaws apparently were not acted upon, presumably due to the press of time leading up to the district convention. It will be necessary for the district, therefore, to give the commission's comments attention leading up to its 2015 convention.
- The input provided by the commission in regard to the district's Preamble to the Bylaws were also not addressed and will need to be given attention leading up to the 2015 convention.

To facilitate the district's response to these ongoing concerns, a copy of Opinion 12-2640 will be attached to this Opinion 12-2640 (B).

## 168. Rocky Mountain District Convention Bylaw Revisions (12-2655)

With an August 28, 2012 email, the president of the Rocky Mountain District provided a copy of district convention Res. 2012-3b-07 which amended district Bylaw 1.01 governing the counties to be included in the various geographic areas of the district. The commission gave its approval to the change, thereby authorizing the district to function according to the amended bylaw, also reminding the district to provide the complete set of Bylaws as amended along with copies of the district's Articles of Incorporation and Policy and Administration Manual.

## 169. Wyoming District Convention Bylaw Revisions (12-2656)

The president of the Wyoming District with a September 24, 2012 email provided electronic copies of his district's 2012 convention resolutions showing revisions to the district's Bylaws. Upon final review, the commission noted that the following will require additional attention at the next following district convention:

- The final sentence of paragraph c of Bylaw 3.29 will either need to be restored to its entirety (the convention deleted the final phrase) or deleted in its entirety. Until this is done, the pertinent bylaws of the Synod will need to be followed.
- The new paragraph d of Bylaw 3.29 includes the parenthetical "(pastor)" which will need to be deleted since the term "pastor" is not sufficiently comprehensive to cover inactive ordained ministers. As used by the Synod in its Bylaws, "pastor" refers specifically to called pastors of congregations.

## 170. North Wisconsin District Camp Articles of Incorporation and Bylaws (12-2657)

With an October 19, 2012 email, the North Wisconsin District Board of Directors submitted Restated Articles of Incorporation and Amended Bylaws for Camp Luther, Inc. for review by the commission. Upon review, the commission concluded that the Camp Luther documents as submitted are in harmony with the Constitution, Bylaws, and resolutions of the Synod.

## 171. Gemeinnützige Concordia International GmbH Corporate Documents (12-2658)

With an October 23, 2012 email, the LCMS Board of Directors submitted the Bylaws of a German entity, the Gemeinnützige Concordia International GmbH for review by the commission. Before it completes its review, the commission requests a copy of the Articles of Incorporation of this organization for review, as well as information regarding the involvement of the Concordia Asia Educational Foundation and a copy of the latter's corporate documents for review.

## 172. Fairness and Due Process Questions Received from Final Hearing Panel (12-2659)

Pursuant to Bylaw 2.14.7.8 (k), a Final Hearing Panel submitted a series of questions to the Commission on Constitutional Matters (CCM). Immediately after receipt of these questions, the accused member submitted a lengthy history and background raising three "points" or arguments the member wanted to be considered. It is unclear whether the member intended the communication to be a request for an opinion under Bylaw 3.9.2.2. At least one of the "points" is accompanied by a heading, "Procedural Questions to the CCM." To the extent that the issues presented by the member are relevant to the pending proceeding, the panel itself must process the questions pursuant to Bylaw 2.14.7.8 (k). In this opinion, the member's submission will be treated as background material rather than as a question under Bylaw 3.9.2.2.

Question 1: In a matter arising under Bylaw section 2.14, is a final hearing panel concerned only with the issues raised by the request for a final hearing, or is the panel to review any issues of fairness, due process, or possible procedural infractions that have occurred throughout the entire process? If the latter, does that include matters relating to the procedures of a special hearing panel and the actions or inactions of the administrator relating to the special hearing panel?

Opinion: In performing its function on behalf of the Synod, while the issues raised by the request for a final hearing are its primary and ultimate focus, a Final Hearing Panel must always be concerned about issues of fairness, due process, or possible procedural infractions. The integrity of the Synod itself is dependent upon its commitment, willingness, and ability to follow the rules and covenants the membership itself has established, both as the basis of joining in our walking together as well as the grounds and process for involuntary removal.

In an overview of membership issues, Bylaw 2.1.1 states:

Included in the objectives of the Synod as stated in its Constitution are, under Scripture and the Lutheran Confessions, to "provide evangelical supervision, counsel, and care for pastors, teachers, and other professional church workers in the performance of their official duties" and to "provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights" (Article III 8, 9). In view of this, it is clear that membership in The Lutheran Church—Missouri Synod, whether individual or congregational, is viewed as a valuable asset to be carefully monitored and managed. In order for this to occur, it is necessary for standards to be developed and maintained for the benefit of all members so that its value is not diminished or destroyed. Consequently, it is important for the Synod to establish the standards and qualifications it believes necessary for acquiring and maintaining the status of membership as well as procedures for protecting those who attain it (emphasis added).

Although directed to a dispute resolution process issue rather than an expulsion, the following comments of the CCM in Opinion 08-2514A apply here as well:

Question 7: May the Dispute Resolution Panel in its proceedings consider issues raised by the parties pertaining to the total process of dispute resolution?

Opinion: The goal of the entire dispute resolution process is reconciliation. Any action which might assist in that process should be considered by the panel. It is the responsibility of each participant in the process to maintain and assure the integrity of the process. As the panel works toward a final decision, it should consider and resolve any issue raised pertaining to the process of dispute resolution.

The process of expulsion from the Synod is a very serious matter, and the goal of the process is always reconciliation. The Synod has spent considerable time and resources establishing and refining the process of expulsion, which process always begins with concerted efforts at reconciliation, and only where that has failed moves on to formal consideration of removal under Constitution Article XIII. Fairness and due process are fundamental keys, not just to protect each member but to maintain the purposes and mutual covenants which are the foundation of the Synod.

With respect to the final question, the answer is "yes." The responsibility of the Final Hearing Panel includes all matters leading to the possibility of expulsion, including matters relating to all steps leading toward expulsion, including the procedures of a special hearing panel when used, as well as the actions or inactions of the Secretary of the Synod as administrator relating to such special hearing panel. The real question, as discussed below, is how the panel should proceed based on its analysis and findings as to those matters.

Question 2: Section 4.5 (k) of the Guidelines for Section 2.14, second sentence, states: "If it involves questions of constitution or bylaw interpretation, each party shall have a right to an interpretation from the Commission on Constitutional Matters (CCM)." Paragraph 4.5 (k) (1) states: "The request for an opinion must be made through the panel, which shall determine the wording of the question(s)." May a hearing panel decide to not submit

questions to the CCM that are requested by a party if the hearing panel determines that the questions are not relevant to the issues before the panel?

Opinion: Every member may submit questions to the CCM under Bylaw 3.9.2.2 and an answer will be provided in due course. However, such answers may not be issued before a pending hearing has been concluded, will be of general application for future guidance, and may not be available in time to provide any guidance to a pending panel. Because of the urgency and time limitations involved in a Bylaw section 2.14 matter, the Synod has provided a separate mechanism for the submission and resolution of questions which may be important to the determination of such proceedings. Questions must be submitted through the hearing panels themselves. A 30-day deadline is established in which a member may submit questions to the panel as a matter of right, and all such questions must be processed by the panel as provided by Bylaw 2.14.7.8 (k). The panel is allowed to determine the final language of the question, allowing the panel to reconcile conflicting questions from the parties and allowing the panel to assure that issues it believes will assist its consideration of the matter are clearly presented. A 30-day deadline is additionally imposed on the CCM to issue its opinion, assuring that the matter is not unduly delayed.

The Bylaw Section 2.14 *Standard Operating Procedures Manual (SOPM)* simply quotes Bylaw 2.14.7.8 (k) which reads:

(k) If any part of the dispute involves a specific question of doctrine or doctrinal application, each party shall have the right to an opinion from the Commission on Theology and Church Relations (CTCR). If it involves questions of constitution or bylaw interpretation, each party shall have the right to an interpretation from the Commission on Constitutional Matters (CCM).

In determining whether to submit a question to the CCM, the panel may therefore first determine if any part of the dispute involves a question of interpretation of the Constitution or Bylaws. If the panel finds that any part of the dispute involves such an issue, substantive or procedural, it must under this bylaw submit or pass along a question fairly raising the questions presented to it by either party. If the panel finds that the issue raised cannot possibly be relevant to the outcome of the proceeding, it may decline to submit a question.

Question 3: If the scope of the Final Hearing Panel's inquiry includes fairness throughout the entire Bylaw section 2.14 process, including matters relating to the procedures of a special hearing panel, what would be the consequence of noncompliance with the *SOPM*, or any other perceived lack of fairness, at a previous stage in the process?

Opinion: As described above, a hearing panel must always assure fairness in a Bylaw section 2.14 process. A few examples of the Synod's insistence on fairness, and even the avoidance of the appearance of unfairness, may be helpful. Members of hearing panels and hearing facilitators must be chosen by a witnessed blind draw as provided by Bylaws 2.14.2 (j) and 2.14.7.2 (c). As required in Bylaw 2.14.7.8:

- All hearings are held privately, attended only by the persons involved and necessary witnesses.
- The panel is required to assure that each party involved will be given an opportunity fully to present its respective position.
- Any member of the Synod, officer of a congregation, or officer of any organization owned or controlled by the Synod is required, when called upon by the panel to do so, to testify or produce records related to the matter.
- No party to the matter or anyone on the party's behalf is allowed to communicate either directly or indirectly with the panel or any member of the panel without the full knowledge of the other party to the matter.

• While the matter is pending, no party or panel member may publicize the matter.

The seriousness of the need to maintain fairness is also reflected in disqualification of individuals in both the dispute resolution process of the Synod and the expulsion process, not merely for actual partiality but even the appearance of partiality. See Bylaw 1.10.16 and *SOPM* general regulation "N," as well as CCM Opinion 12-2651.

There are many ways in which either fairness or due process concerns may arise in a Bylaw section 2.14 proceeding, and even more ways in which some detail of *SOPM* regulations may be breached. As with any human endeavor, errors occur. While every effort should be made to avoid unfairness or procedural error, not every error or breach or unfairness will have the same impact on the process. To the extent that corrections can be made, they should be acknowledged and corrected promptly. Until and unless the Synod provides specific remedies or consequences for such errors, that is a responsibility of the panel itself. To the extent that an error cannot be corrected or an unfairness remedied, it is incumbent on the panel itself to consider an appropriate remedy. This may involve consideration of whether the parties were aware of and timely raised objections as provided in Bylaw 2.14.9.2 <sup>1</sup>, or expressly waived such defect after it was brought to the party's attention <sup>2</sup>. It must take into consideration both the seriousness of the underlying issue and the seriousness of the breach. It may involve consideration of whether the error was a single, unintentional, and isolated breach or whether breaches were repeated, systematic, fundamental, or even intentional. The panel may need to consider whether the unfairness rises to the level of undermining the integrity of the Synod itself, on whose behalf the panel is acting.

The Bylaws and the *SOPM* generally provide no absolute remedies. The panel itself must make that determination. Under some circumstances, errors may be rendered moot by subsequent events. Sometimes a remedy may involve simply an acknowledgement and request for forgiveness. When warranted, the remedy may involve dismissal of a single panel member or a request for the replacement of the Secretary of the Synod as administrator. Where circumstances warrant, the panel itself may initiate or suggest the initiation by others of a Bylaw section 1.10 dispute resolution process. But where a panel deems proper, where an error or series of compounding errors are serious enough or unfairness great enough, a panel may in good conscience and fairness need to terminate the current process entirely. If a member's ongoing actions warrant, the initiation of a new proceeding raising ongoing issues would be in order. In the meantime, the Synod's integrity is maintained, the benefit of the doubt inures to the member, and the opportunity for reconciliation continues.

## 173. Commission on Constitutional Matters Internal Governing Policies

Taking into consideration discussion that took place during its February 2011 meeting, the commission revised its internal governing policies to read as follows:

#### **Commission on Constitutional Matters**

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<sup>&</sup>lt;sup>1</sup> Bylaw 2.14.9.2: "Any member participating in this bylaw procedure that violates any of the requirements or procedures in this bylaw or is persistent in accusations is subject to the same disciplinary measures as set forth in this bylaw. Violations of the prohibition against publicity while a matter is still undecided or while an appeal is contemplated or pending (Bylaw 2.14.7.8 [g]) above) by any of the persons involved are specifically included as violations subject to the same disciplinary measures set forth in this bylaw."

<sup>&</sup>lt;sup>2</sup> Please note also that if an objection is timely raised, *SOPM* general regulation "U" requires: "Issues raised in a timely manner are to be considered and resolved by the appropriate panel."

## **Governing Policy**

- 1. The Commission on Constitutional Matters (CCM) exists to interpret the Constitution, Bylaws, and resolutions of the Synod and to insure that the governing documents of the Synod and its agencies are in accord with the Constitution and Bylaws of the Synod (Bylaw 3.9.2). [Cf. Appendix A]
- 2. The voting members of the Commission on Constitutional Matters consist of three ordained ministers and two lawyers. The Secretary of the Synod is a nonvoting member of the commission and serves as its secretary (Bylaw 3.9.2.1).
- 3. The Commission on Constitutional Matters may submit overtures to a convention of the Synod (Bylaw 3.1.6.2).
- 4. The Commission on Constitutional Matters shall be represented at the meetings of national convention floor committees considering constitution and bylaw matters to ensure that they are in accord with the Constitution, Bylaws, and resolutions of the Synod (Bylaw 3.9.2.2.2). Some questions submitted to the commission at convention floor committee meetings may not be in writing until after the opinion has been rendered. While attending floor committee meetings, the commission or individual members thereof may be requested to provide information to assist the floor committees in their work. Such comments are not formal opinions of the commission, and such information does not constitute a binding opinion unless reduced to a formal written opinion and published as such.
- 5. All questions are to be submitted to the Commission on Constitutional Matters in writing by a member (congregation, ordained or commissioned minister), official, board, commission, or agency of the Synod (Bylaw 3.9.2.2). An exception has been questions submitted to the commission at conventions of the Synod, some of which were not produced in writing until after the opinion was rendered. Questions may also be submitted as authorized under Bylaw sections 1.10 and 2.14-2.17 and Bylaws 3.10.4.7.9 and 3.10.5.6.9. A request for an opinion may be accompanied by a request for an appearance before the commission (Bylaw 3.9.2.2 [a]).
- 6. The Commission on Constitutional Matters shall examine all reports, overtures, and resolutions to the Synod asking for amendments to the Constitution and Bylaws of the Synod or which in any manner affect the Constitution and Bylaws to determine their agreement in content with the Constitution, Bylaws, and resolutions of the Synod (Bylaw 3.9.2.2.1). During the course of a convention of the Synod, the commission is expected to review all proposed amendments or substitute resolutions to ensure that they are in agreement with the Constitution, Bylaws, and resolutions of the Synod. Such amendments are printed in *Today's Business*. Commission members are expected to attend all sessions of the conventions of the Synod. In this role as advisory representatives, the commission or members of the commission may be requested to provide information to assist the convention. Such comments are not formal opinions of the commission unless reduced to a formal written opinion and published as such.
- 7. The Commission on Constitutional Matters is required to notify an officer or agency of the Synod if a request for an opinion involves an activity of that officer or agency to allow the officer/agency to submit in writing <u>information</u> regarding the matter at issue (Bylaw 3.9.2.2 [b]). All input received from an officer or agency as a result of this notification will be kept confidential by the commission and will not be published, unless the information provided is a publicly known fact. All letters of notification allowing for such input from an officer or agency will state assurance that the commission will keep confidential any responses received and will only use the information as confidential background in assisting the commission in reaching its opinion. The commission is not

limited by this or any other bylaw or policy from requesting input from anyone (written or otherwise), if the commission so desires.

- 8. An opinion rendered by the Commission on Constitutional Matters shall be binding on the question decided unless and until it is overturned by a convention of the Synod (Bylaw 3.9.2.2 [c]). When an opinion pertains to business, legal, or property matters, and the Board of Directors of the Synod concludes that the opinion of the commission is contrary to the laws of the State of Missouri, the board and the commission or their representatives shall meet jointly to discuss the issue(s) and seek resolution. If an agreement cannot be reached on whether the matter is governed by the laws of the State of Missouri, the questions shall be presented to a five-member panel consisting of three hearing facilitators (Bylaw 1.10.12) chosen by blind draw by the Executive Director of Internal Audit of the Synod from the pool of hearing facilitators; one person appointed by the commission; and one person appointed by the board. At least one of the hearing facilitators must be an attorney, and the appointees of the commission and board cannot be members of the groups that appointed them. The decision of the panel in support of the commission or the board shall be binding on the issue unless and until it is overruled by a convention of the Synod (Bylaw 3.9.2.2).
- 9. Overtures to a convention seeking to overrule an opinion of the Commission on Constitutional Matters must support the proposed action with substantive rationale from the Constitution, Bylaws, and resolutions of the Synod. All overtures must be assigned to a floor committee and must be included in a specific report to the convention, with recommendations for appropriate action (Bylaw 3.9.2.2 [c]). [Cf. Appendix B]
- 10. All legal opinions received and considered by the Commission on Constitutional Matters are shared with the Board of Directors after the related opinion has been rendered. (See Bylaw 3.3.4.4.) All discussions with legal counsel and all opinions from legal counsel will be kept confidential by the commission and will not be published.
- 11. The Commission on Constitutional Matters will select one of its voting members to serve as an advisory member to the Commission on Handbook (Bylaw 3.9.4.1 [1]). The commission will make itself available to the Commission on Handbook for consultation immediately after each convention regarding revisions to the *Handbook* of the Synod necessary to bring it into harmony with the resolutions and changes adopted by the convention (Bylaw 3.9.4.2 [b]).
- 12. The Commission on Constitutional Matters also responds with due diligence to all assignments given to it by the conventions of the Synod.
- 13. The Commission on Constitutional Matters is responsible to examine the Articles of Incorporation, Bylaws, and policy manuals of every agency of the Synod, examining changes to articles and bylaws in advance. The commission is to ascertain whether the documents and changes are in harmony with the Constitution, Bylaws, and resolutions of the Synod (Bylaw 3.9.2.2.3). The commission seeks to coordinate its responsibility with the responsibility of the Board of Directors of the Synod (see Bylaw 3.3.4.3 and 3.3.4.5 [a] [2]). The commission is also required to maintain a file of the Articles of Incorporation, Bylaws, and policy manuals of all agencies of the Synod (Bylaw 3.9.2.2.3 [b]).
- 14. The Bylaws of the Synod require the Commission on Constitutional Matters to provide comprehensive procedures manuals for Synod's dispute resolution and expulsion from membership processes. Accordingly, *Standard Operating Procedures Manuals* have been prepared for Bylaw sections 1.10, 2.14, 2.15, 2.16, and 2.17. In consultation with the Secretary of the Synod and the

Council of Presidents, the commission shall amend as necessary the *Standard Operating Procedures Manual* that serves as the comprehensive procedures manual for Bylaw section 1.10 (Bylaw 1.10.18.1 [j]). In consultation with the Secretary of the Synod and with the concurrence of the Council of Presidents, the commission shall amend as necessary the *Standard Operating Procedures Manuals* that serve as the comprehensive procedures manuals for Bylaw sections 2.14, 2.15, 2.16 and 2.17 (Bylaws 2.14.9.3, 2.15.9.3, 2.16.10.4 and 2.17.9.3).

- 15. The Commission on Constitutional Matters will make itself available for consultation with the boards of regents of the seminaries for the maintenance of a *Standard Operating Procedures Manual* for removal of its faculty members (Bylaw 3.10.4.7.9[j]). The commission will also make itself available for consultation with the Board of Directors of Concordia University System for the maintenance of a *Standard Operating Procedures Manual* for removal of its faculty members (Bylaw 3.10.5.6.9[j]).
- 16. In its review of agency documents, the Commission on Constitutional Matters has noted a frequency of instances of minor departures from the norm of how the Synod prepares documents, as in its Bylaws and the commission's documents. Rather than call attention to each of these details individually and repeatedly, the commission has prepared a checklist of these "Frequently Noted Concerns and Aberrations" to alert document preparers and editors. In this manner the commission promotes and facilitates uniformity of language and grammar usage in bylaw and policy documents throughout the Synod.
- 17. Congregations become members of The Lutheran Church—Missouri Synod only after their constitutions and bylaws have been approved by a constitution committee of one of the Synod's 35 districts. Similarly, congregations which revise their constitutions and bylaws must also submit these proposed changes for review by their district's constitution committee (Bylaw 2.4.1). Upon favorable action by the district board of directors, the congregation shall be notified that the changes are acceptable to the Synod, and the congregation may proceed with formal adoption of the revised constitution and/or bylaws, and remain a member in good standing of the Synod. In order to assist congregations in the development and preparation of their constitutions and bylaws by the inclusion of the requirements necessary for the preparation and review of such documents, the Commission on Constitutional Matters has from time to time issued guidelines for the proper composition of congregations' constitutions and bylaws.
- 18. Meeting dates of the Commission on Constitutional Matters are announced in advance. This information is provided in its meeting minutes and on the Synod's Web site calendar. (See Bylaw 1.5.3)
- 19. All substantive opinions of the Commission on Constitutional Matters from that triennium are published every three years in the *Convention Workbook*.
- 20. Minutes of Commission on Constitutional Matters meetings are made available on the Synod's Web site for at least three years, subject to the addition of other opinions relating to frequently asked questions. In addition, some opinions older than three years related to frequently asked questions may also be included. The date on which an opinion was decided is now included at the bottom of each opinion.
- 21. The Commission on Constitutional Matters may publish on the Synod Web site other documents relating to the commission's work that it determines may be helpful to the Synod.

22. All questions/submissions to the Commission on Constitutional Matters are provided to its members in both electronic and hard copy, as requested by each member. The Secretary of the Synod also provides the chairman of the commission with copies of all letters mailed on its behalf.

## 23. Additional Commission on Constitutional Matters policies:

- The commission may meet by either video/teleconference or in person. It is required to meet four times per year. The commission's position has been that it should hold face-to-face meetings at least two times per year.
- Commission meetings begin with prayer. Each member may be called upon to provide the prayer and/or an opening devotion.
- The agenda for each commission meeting is provided to members in advance, identifying the
  questions for which opinions are requested. While the chair makes assignments in advance of
  meetings, any member of the commission is free to write an opinion in answer to a specific
  question. The commission then works to reach a consensus at the meeting. Most questions
  have been resolved by consensus, but voting is permitted, if necessary, after discussion of
  issues.
- Historically, while most of the commission's opinions have been unanimous, in the event a decision is not unanimous, no minority opinion is to be published. (See Bylaw 1.5.6)
- The commission speaks as one primarily through its opinions and secondarily through its chairman. All communication between commission members relating to commission business (agenda items) is privileged, confidential and private, is work product, is not to be produced or made available to any outside parties, is not discoverable in a legal proceeding and is not to be produced, even to a court of law, except by decision of the commission itself.
- The commission responds to questions asked in writing, and its opinions are based on the Constitution, Bylaws, and resolutions of the Synod. If a question relates to a theological issue, the questioner may be directed to the Commission on Theology and Church Relations (CTCR) for counsel, or the commission itself may consult with the CTCR before rendering an opinion.
- During the course of its work, the commission may encounter concerns to be addressed by the Commission on Handbook, whose responsibility it is to respond to requests from agencies of the Synod to propose new provisions to address such specific handbook-related issues that surface between conventions (Bylaw 3.9.4.2 [e]).
- No opinion is to be shared outside the commission until the minutes of the meeting that include the opinion have been issued. An exception may be made in cases in which the Secretary of the Synod has been moved by time constraints to ask for an exception so that he may notify parties involved.
- Draft minutes are provided by email to the commission's members, and time is allowed for suggested revisions. When minutes are adopted, they are provided to commission members by email and also in hard copy as requested by each member.

[Revised 11/07/10	): minor editing	2/18-20/2011	; revised 11/3/2012]

[Appendix A]

COMMISSION ON CONSTITUTIONAL MATTERS PRIMARY BYLAWS (2010 Handbook)

- 3.9.2 The Commission on Constitutional Matters exists to interpret the Constitution, Bylaws, and resolutions of the Synod and ensure that the governing instruments of the Synod and its agencies are in accord with the Constitution and Bylaws of the Synod.
- 3.9.2.1 The Commission on Constitutional Matters shall consist of:
  - 1. Five voting members, whose terms shall be for six years renewable once, three of whom shall be ordained ministers and two shall be lawyers
  - 2. The Secretary of the Synod, who shall serve as a nonvoting member of the commission and its secretary
- 3.9.2.1.1 The Commission on Constitutional Matters shall be appointed in the following manner:
  - (a) Candidates shall be nominated only by the district boards of directors and shall be presented to the Council of Presidents through the Office of the Secretary.
  - (b) The Council of Presidents shall select five candidates for each vacant position and present them through the office of the Secretary of the Synod to the President of the Synod.
  - (c) The President of the Synod, in consultation with the vice-presidents of the Synod, shall appoint the members of the commission from the list presented by the Council of Presidents.
  - (d) Thereafter the appointments shall become effective upon ratification by a majority vote of the members of the Council of Presidents.
  - (e) Vacancies in appointed positions shall be filled by following the procedure set forth above.
- 3.9.2.2 The Commission on Constitutional Matters shall interpret the Synod's Constitution, Bylaws, and resolutions upon the written request of a member (congregation, ordained or commissioned minister), official, board, commission, or agency of the Synod.
  - (a) A request for an opinion may be accompanied by a request for an appearance before the commission.
  - (b) The commission shall notify an officer or agency of the Synod if a request for an opinion involves an activity of that officer or agency and shall allow that officer or agency to submit in writing information regarding the matter(s) at issue.
  - (c) An opinion rendered by the commission shall be binding on the question decided unless and until it is overruled by a convention of the Synod. Overtures to a convention that seek to overrule an opinion of the commission shall support the proposed action with substantive rationale from the Constitution, Bylaws, and resolutions of the Synod. All such overtures shall be considered by the floor committee to which they have been assigned and shall be included in a specific report to the convention with recommendations for appropriate action.

When an opinion pertains to business, legal, or property matters and the Board of Directors of the Synod concludes that such opinion of the commission is contrary to the laws of the State of Missouri, the board and the commission, or their respective representatives, shall meet jointly to discuss the issue(s) and seek resolution thereof. If agreement cannot be reached on whether the matter is governed by the laws of the state of Missouri, that question shall be presented to a five-member panel consisting of three hearing facilitators (Bylaw 1.10.12) chosen by blind draw by the Executive Director of Internal Audit of the Synod from the pool of hearing facilitators; one person appointed by the Commission on Constitutional Matters; and one person appointed by the Board of Directors. At least one of the hearing facilitators shall be an attorney, and the appointees of the commission and board shall not be members of the groups that appointed them. The decision of the panel in support of the Commission on Constitutional Matters or the Board of Directors shall be binding on the issue(s) unless and until it is overruled by a convention of the Synod.

3.9.2.2.1 The Commission on Constitutional Matters shall examine all reports, overtures, and resolutions to the Synod asking for amendments to the Constitution and Bylaws of the Synod or which in any manner

affect the Constitution and Bylaws, to determine their agreement in content with the Constitution and Bylaws of the Synod.

- 3.9.2.2.2 The Commission on Constitutional Matters shall be represented at the meetings of national convention floor committees considering constitution and bylaw matters to ensure that they are in accord with the Constitution, Bylaws, and resolutions of the Synod.
- 3.9.2.2.3 The Commission on Constitutional Matters shall examine the articles of incorporation, bylaws, and policy manuals of every agency of the Synod to ascertain whether they are in harmony with the Constitution, Bylaws, and resolutions of the Synod.
  - (a) Agencies intending to make amendments to articles of incorporation or bylaws shall make such intentions known and receive approval from the commission in advance.
  - (b) The commission shall maintain a file of the articles of incorporation, bylaws, and policy manuals of all agencies of the Synod.

### [Appendix B]

#### **BYLAW 3.9.2.2 (c) GUIDELINES**

Overtures may be submitted to a convention of the Synod requesting the overturn of a formal opinion of the Commission on Constitutional Matters. Floor committees assigned such overtures must consider them in light of the provisions set forth in Bylaw 3.9.2.2 (c):

(c) An opinion rendered by the commission shall be binding on the question decided unless and until it is overruled by a convention of the Synod. Overtures to a convention that seek to overrule an opinion of the commission shall support the proposed action with substantive rationale from the Constitution, Bylaws, and resolutions of the Synod. All such overtures shall be considered by the floor committee to which they have been assigned and shall be included in a specific report to the convention with recommendations for appropriate action.

In order to assist floor committees receiving overtures seeking to overrule an opinion of the commission, the commission respectfully offers the following background and information outlining how, based on substantive rationale, the commission arrives at its opinions.

## 1. Understanding the Role of the Commission on Constitutional Matters and its Responsibility for Interpretation

Dr. C.F.W. Walther stated in his 1879 essay, "Duties of an Evangelical Lutheran Synod," presented to the first Iowa District convention: "Therefore, anyone who joins a synod knows in advance: 'I am now becoming a member of an organization that is charged with the responsibility of supervising church affairs; I am also joining an organization that operates with a specific system of regulations [*Ordnung*], for without regulations it could not exist" (*Essays for the Church, C.F.W. Walther*, Vol. II, CPH, 1992).

Through the delegation of responsibilities, the members of the Synod carry out what they themselves decide, which is expressed and set forth in the Synod's Constitution, Bylaws, and resolutions. Historically, the Commission on Constitutional Matters (CCM) has been responsible for providing the important service of interpretation of the Synod's Constitution, Bylaws, and resolutions, thereby assisting the members of the Synod in carrying out in a fitting and orderly manner the Synod's "church affairs" through its "system of regulations."

The commission does not develop policies or programs, nor does it supervise their implementation. The commission does not see to it that the Constitution, Bylaws, and resolutions of the Synod are carried out, nor does it interpret the Scriptures. Through its opinions, however, the commission does carry out its particular responsibility to interpret (between conventions) the collective will of the Synod as specified in the

<u>Constitution</u>, <u>Bylaws</u>, and <u>resolutions</u> of the <u>Synod</u>. And while having no authority over any officer, board, or commission, the commission does state through its opinions/interpretations precisely what authority this Synod of self-governing congregations has reserved unto itself alone and what the Synod has delegated specifically to others.

In the commission's important function of <u>interpreting</u>, it thereby assists in the clarification and understanding of the Constitution, Bylaws, and resolutions for the members of the Synod, thereby helping to promote harmony and to prevent self-will, self-ambition, controversy, dissension, and division. This function of <u>interpretation</u> is stressed in the Bylaws of the Synod:

The Commission on Constitutional Matters exists to <u>interpret</u> the Constitution, Bylaws, and resolutions of the Synod and ensure that the governing instruments of the Synod and its agencies are in accord with the Constitution and Bylaws of the Synod. (Bylaw 3.9.2; see also Bylaw 3.9.2.2.3)

The Commission on Constitutional Matters shall <u>interpret</u> the Synod's Constitution, Bylaws, and resolutions upon the written request of a member (congregation, ordained or commissioned minister), official, board, commission, or agency of the Synod. (Bylaw 3.9.2.2)

The Commission on Constitutional Matters shall examine all reports and overtures to the Synod asking for amendments to the Constitution and Bylaws of the Synod or which in any manner affect the Constitution and Bylaws, to <u>determine their agreement</u> in content and language with the Constitution and Bylaws of the Synod. (Bylaw 3.9.2.2.1)

[Amendments to bylaws] shall be examined by the Commission on Constitutional Matters prior to presentation to the convention to <u>determine that they are not in conflict</u> with the Constitution and Bylaws of the Synod. (Bylaw 7.1.1 [c])

Underscored words and phrases in the preceding paragraphs [emphasis added] call attention to the need for <u>interpretation</u> to "ensure that the governing documents of the Synod and its agencies are in accord," to "determine their agreement in content and language," and to "determine that [amendments] are not in conflict" with the Synod's Constitution, Bylaws, and resolutions.

# 2. <u>Understanding the Rules and Principles of Interpretation Used by the Commission on Constitutional Matters in Carrying Out its Responsibility for Interpretation</u>

The commission, whose opinions substantially are based upon interpretation, follows rules or principles of interpretation to arrive at its opinions, including the following:

- Grammatical exegesis (deriving the meaning of a text), looking at the text as a literary document with a literary context and historical setting. Grammar, logical discourse, word meaning, and word usage are of utmost importance.
- <u>Intended sense</u>, recognizing that the author intended one, simple, seminal, certain, literal, ordinary, natural sense—not several meanings.
- <u>Immediate context</u>, noting the "passages," titles, subtitles, and section(s) immediately surrounding the text.
- Broader context, taking into consideration the entire chapter and/or document and its interrelationship with the text in question.
- <u>Self-interpretation</u>, allowing the governing document to interpret itself and its parts.
- <u>Unity</u>, recognizing the overall polity of the Constitution, Bylaws, and resolutions of the Synod and their unity of authorship, content, function, and purpose.
- <u>Constitutional priority</u>, allowing the Constitution of the Synod to control and supersede the Bylaws (Article XIV and Bylaw 7.1) and all other rules and regulations, and allowing the Bylaws to control and supersede all other rules and regulations.

- <u>Clarity</u>, granting that a text's <u>clarity</u> or lack thereof may be due to the blindness of the interpreter ("The sun is not less bright because a blind man cannot see it"—Gerhard).
- <u>History</u>, taking into consideration the <u>genesis and historical context</u> of a passage from the Constitution, Bylaws, or resolutions of the Synod.

## 3. Understanding the Use of Research by the Commission before Arriving at an Opinion/Interpretation

The commission is careful to utilize, as much as possible, basic and thorough research before arriving at its opinions. Such research includes in every case:

- The handbooks of the Synod, past and present. The first English language *Handbook* was produced and published in 1924. A collection of handbooks is maintained in the Office of the Secretary and is consulted regularly. Each commission member is given electronic copies of those handbooks.
- Convention workbooks and proceedings to study resolutions past and present—their origin and
  intended purpose. A collection of workbooks and proceedings is maintained in the Office of the
  Secretary and is consulted regularly. Each commission member is given electronic copies of
  convention proceedings.
- All relevant CCM opinions from 1947 to the present, honoring their binding nature while noting
  relevant constitution and bylaw changes/amendments since they were issued. Those opinions are
  maintained in the Office of the Secretary and are consulted regularly. Each commission member is
  given electronic copies of these CCM opinions.

[Revised 11/2012]

#### [Appendix C]

# A BRIEF HISTORY OF THE COMMISSION ON CONSTITUTIONAL MATTERS

#### Introduction:

A Synodical Survey Commission, which had been authorized by the 1956 convention of the Synod, gave its first report to the 1959 convention. It then gave a comprehensive report with recommendations to the 1962 convention (1962 *Convention Workbook*, pp. 228-268. The Commission on Constitutional Matters is referred to in this report on pp. 257-258). In order to be thorough in its work, the Survey Commission engaged Dr. August Suelflow as Research Secretary. He produced a historical document in 1961 entitled "The Development of the Formal Administrative Structure of the LCMS from 1897 to 1961."

The following historical notes on the history of the Commission on Constitutional Matters covering the period from prior to 1923 through 1961 are gleaned from this document, with other research and documentary assistance provided by former Concordia Historical Institute Associate Director Marvin Huggins and Synod Secretary Raymond Hartwig.

<u>Prior to 1923</u>, an *ad hoc* committee elected by a convention of the Synod handled constitutional matters. The committee was usually comprised of three members. The Synod did much of its business until this time by *ad hoc* committees.

<u>In 1923</u>, a standing Committee on Constitutional Matters was created by convention resolution. It was to consist of three members and was to be represented at the meeting of the convention floor committee on constitutional matters.

<u>In 1932</u>, the Synod adopted a resolution instructing that all proposals seeking changes to the Constitution and Bylaws first be submitted to the Committee on Constitutional Matters.

<u>In 1935</u>, the Committee on Constitutional Matters was called on to investigate the existing appeals procedure with a view toward eliminating confusion. That same year, the committee issued an opinion on Constitution Article VII in *The Lutheran Witness*.

<u>In 1941</u>, when responding to a request from the Board of Directors of the Southern California District, the committee determined that it didn't have enough time to study Article VII and offer a response. The convention authorized a special *ad hoc* committee for this purpose.

<u>In 1947</u>, the Committee on Constitutional Matters, until this time elected by the convention, became a presidential appointment committee. The Secretary of the Synod was made an *ex officio* member.

<u>In 1949</u>, the Committee on Constitutional Matters was made responsible for amending the *Handbook* of the Synod after conventions.

<u>In 1962</u>, the functions of the Committee on Constitutional Matters were largely changed and enlarged to the current commission's responsibilities (cf. Bylaws 2.11 b and 2.113, 1963 Handbook). Membership consisted of two pastors, two laymen, and the Secretary of the Synod, appointed by the President in consultation with the vice-presidents of the Synod. One vice-president served as an advisory member. For the first time, committee's opinions were to be considered binding unless and until the Synod overruled them. The 1962 Convention Workbook states: "that [the committee] be charged with the responsibility of rendering an interpretation on the synodical resolutions in the event differences of opinion exist" (p. 257). The Bylaw adopted in 1962 states "The committee...shall interpret the Constitution, Bylaws and resolutions of the Synod in cases of controversy. Its opinions shall be binding unless and until the Synod overrules them" (cf. Synodical Survey Commission Report, 1962 Convention Workbook, pp. 257-258, and Res. 6-04 in the 1962 Convention Proceedings, p. 124).

<u>In 1965</u>, the role and duties of the "Commission on Constitutional Matters" were further described and supported (Res. 5-41, 1965 *Convention Proceedings*, p. 136).

<u>In 1973</u>, the appointment of the commission by the President was changed to include consultation with the Board of Directors. The commission now consisted of two pastors, two laymen (at least one of whom was to be an attorney), and the Secretary of the Synod. A vice-president was to be appointed by the President to serve as an advisory member (Res. 5-24, 1973 *Convention Proceedings*, p. 171).

<u>In 1977</u>, to address a concern that the commission was being unduly influenced by the Synod's administration, terms of office were lengthened to eight years, with only one member appointed every two years (Res. 5-07, 1977 *Convention Proceedings*, p. 161).

<u>In 1992</u>, the current method of nominating and appointing the commission was adopted (nominations only by district boards of directors acting singly, with five candidates from the nominations list elected by the Council of Presidents for each vacant position, presentation of the list to the President of the Synod, and appointment by the President of the Synod in consultation with the vice-presidents (cf. 2010 Bylaw 3.9.2.1.1) of the four appointive positions, the appointments to "become effective upon ratification by the Council of Presidents through a majority vote." The Secretary continued to serve as a voting member (Res. 5-04, 1992 *Convention Proceedings*, pp. 149–150).

<u>In 1995</u>, the Secretary of the Synod was made a non-voting member of the commission, it now also consisting of five voting members: three ordained ministers and two lawyers (Res. 7-15A, 1995 *Convention Proceedings*, p. 155).

<u>In 2001</u>, the Council of Presidents ratification requirement initiated by the 1992 convention (see above) was eliminated from the Bylaws (Res. 8-05, 2001 *Convention Proceedings*, pp. 183–184).

<u>In 2004</u>, Article V of the Articles of Incorporation were amended as follows (Res. 7-02A, 2004 *Convention Proceedings*, p. 152): "The management authority and duties of the Board of Directors of the Synod shall be limited to the extent such authority and duties are delegated by the Constitution and Bylaws of The Lutheran Church—Missouri Synod to other officers and agencies of the Synod. The management authority and duties of the Board of Directors and such other officers and agencies shall be defined in the Constitution and Bylaws, and

each of them shall be responsible to the Synod for the proper and prudent fulfillment of the authority and duties so delegated to them. In the case of any conflict or uncertainty in determining the authority and duties of the Board of Directors and such other officers and agencies, the opinions of the Commission on Constitutional Matters interpreting the Constitution and Bylaws of The Lutheran Church—Missouri Synod shall be binding, unless and until overruled by a synodical convention." The Bylaws were also amended as follows (2004 *Convention Proceedings*, p. 153): "It shall have the right to call up for review and criticism, and to request modification or revocation of, any action or policy of a program board, commission, or council, except opinions of the Commission on Constitutional Matters" (Bylaw 3.3.5.5.[a] [2]) and "When opinions pertain primarily to business, legal, finance, civil rights, contracts, or property matters, the commission shall first consult with the Board of Directors and/or the Synod's legal counsel" (Bylaw 3.9.2.2 [b]).

<u>In 2007</u>, the word "regulations" was amended to read "governing instruments" in Bylaw 3.9.2.2.4 (Res. 7-06A, 2007 Convention Proceedings). The appointments to the commission are now once again ratified by the Council of Presidents (see the 1992 and 2001 postings above and amended Bylaw 3.9.2.1.1). Bylaw 3.9.2.2 was amended to require the commission to notify an officer or agency of the Synod if a request for an opinion involves an activity of that officer or agency, that overtures to a convention that seek to overrule an opinion of the commission shall support the proposed action with substantive rationale from the Constitution, Bylaws, and resolutions of the Synod and that any issues relative to the applicability of the laws of the State of Missouri shall be resolved in accord with specific provisions including a joint meeting of Board of Directors and commission representatives and if necessary, a five-member panel (2007 Convention Proceedings, Res. 8-01).

In 2010, the Bylaw provisions requiring the commission to revise the *Handbook* of the Synod immediately after each convention of the Synod to bring it into harmony with the resolutions or changes adopted by the convention and to maintain a complete file of succeeding handbooks so that a comparison can be made between current regulations and those immediately preceding (Bylaw 3.9.2.2.3, 2007 *Handbook*) was delegated to the Commission on Handbook (Bylaw 3.9.4.2. [b] and [c], 2010 *Handbook*) with the provision that the Commission on Handbook revise the *Handbook* after each convention in consultation with the Commission on Constitutional Matters. While there were no substantive changes made, 2007 *Handbook* Bylaws 3.9.2.2.1, 3.9.2.2.2 and 3.9.2.2.4 were revised for clarification (2010 *Handbook* Bylaws 3.9.2.2.1 - 3.9.2.2.3). However, the Commission on Handbook is now given the responsibility to assist convention floor committees when developing bylaw proposals asking for amendments to the Constitution, Bylaws, and Articles of Incorporation of the Synod or which in any manner affect the Constitution, Bylaws, and Articles of Incorporation to determine their agreement in language (terminology) with the current *Handbook*, thereby to maintain *Handbook* integrity and good order (2010 *Handbook*, Bylaw 3.9.4.2 [a]).

[Revised 11/07/10]

## 174. Revision of "Guidelines for Constitutions and Bylaws of Lutheran Congregations"

Six years having gone by since the last revision of its "Guidelines for Constitutions and Bylaws of Lutheran Congregations" and prompted by recurring questions and issues raised by district constitution committees and recent convention actions, the commission reviewed the existing document and approved the following revision to assist congregations in developing or revising their constitutions and bylaws.

GUIDELINES FOR CONSTITUTIONS AND BYLAWS OF LUTHERAN CONGREGATIONS

**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)<sup>3</sup>. Together they establish the requirements of membership in the Synod (Constitution Art. VI)<sup>4</sup>. Thus, while congregations of the Synod are self-governing (Art. VII), they commit themselves to fulfill not only membership requirements but to act in accordance with the entire Constitution and Bylaws of the Synod, under which they have agreed to live and work and which the congregations alone have the authority to amend through conventions (Bylaws 1.3.4 and 1.3.4.1)<sup>5</sup>.

In order to assist congregations in the development and preparation of their constitutions and bylaws by the inclusion of the requirements necessary for membership in The Lutheran Church—Missouri Synod, the Commission on Constitutional Matters has from time to time issued guidelines for the preparation and review of such documents. This sixth 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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<sup>4</sup> "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.
- 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).

<sup>&</sup>lt;sup>3</sup> "Individual Christians are joined together in a worshiping 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).

<sup>&</sup>lt;sup>5</sup> "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" (Bylaws 1.3.4 & 1.3.4.1).

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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)<sup>6</sup> 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)<sup>7</sup>. Congregations which revise their constitutions and bylaws must also submit these proposed changes for review by their district's constitution committee (Bylaw 2.4.1)<sup>8</sup>. Upon favorable action by the district board of directors, the congregation shall be

<sup>6</sup> "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).

To apply for membership in the Synod a congregation shall have an approved constitution and bylaws.

<sup>(</sup>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....

<sup>(</sup>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).

<sup>&</sup>lt;sup>8</sup> "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).

notified that the changes are acceptable to the Synod, and the congregation may proceed with formal adoption of the revised constitution and/or bylaws, and remain a member in good standing of the Synod.

- C. While the requirements for membership in the Synod are established by the Synod for all congregations, 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. As long as the constitution and bylaws of a congregation do not contradict the Constitution, Bylaws, and Resolutions of the Synod, the congregation is free to organize as it wishes. Therefore, in general 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 examining constitutions and bylaws, district constitution committees will ascertain 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)<sup>9</sup>, 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)<sup>10</sup> and in the mutually agreed-upon conditions of membership and objectives of the Synod (Constitution, Art. VI; Bylaw 1.3.4)<sup>11</sup>.

#### 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

<sup>&</sup>lt;sup>9</sup> "(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).

<sup>&</sup>lt;sup>10</sup> "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).

<sup>&</sup>lt;sup>11</sup> See footnote 5.

and the world the good news of salvation and to nurture the faith of those who already believe, by 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 Res. 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.'"

#### 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 nurture the faith of its members, 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 cannot go beyond that of the Synod. <sup>13</sup>

#### Example:

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<sup>&</sup>quot;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")

Historically, The Treatise on the Power and Primacy of the Pope is not listed in Article II of Synod's constitution, but it is included in the Book of Concord of 1580, and is therefore one of the confessional writings of the Synod. Because it is not listed separately in Synod's constitution, it does not have to been listed separately by a congregation, but a congregation may chose to do so.

"This congregation accepts without reservation:

- 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 Smalladd 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 may wish to include mention of their membership in the Synod. If a congregation wishes to include mention of membership in the Synod the following may be used.

#### 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 membership<sup>14</sup>: baptized, communicant, and voting <sup>15</sup>. Voting membership may be open to all communicant members but may also be limited to males only<sup>16</sup>. 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])<sup>17</sup>. 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])<sup>18</sup>.

#### 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.

<sup>14</sup> Some congregations include a fourth category: "Guest Members." 1989 Res. 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).

<sup>15</sup> 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.

<sup>&</sup>lt;sup>16</sup> 1969 Res. 2-17 concluded that "Scripture does not prohibit women from exercising the franchise in congregational and 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).

<sup>17 &</sup>quot;(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 3.9.5.3.1).

<sup>&</sup>lt;sup>18</sup> "(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]).

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.
  - 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.
  - 5.2.3 (Alternate) All communicant members who have reached the age of \_\_\_\_\_ are voting members.
- 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<sup>19</sup>. 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, candidates for the pastoral ministry who have satisfied the qualifications and requirements for assignment of first calls by Synod, or ordained ministers who are members in good standing of church bodies that have been formally recognized to be in altar and pulpit fellowship with the Synod when agreements for such calls are in place (Bylaw 2.5.2)<sup>20</sup>. They may also only call commissioned workers who are members of the Synod, candidates of LCMS colleges and universities who have satisfied the qualifications and requirements for assignment of first calls by the Council of Presidents, commissioned ministers who are members in good standing of church bodies that have been formally recognized to be in altar and pulpit

2. Carefully follow disciplinary guidelines.

<sup>&</sup>lt;sup>19</sup> 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:

<sup>1.</sup> Be consistent in applying discipline.

<sup>3.</sup> Do not allow unsubstantiated charges to be circulated by the church.

<sup>4.</sup> Base decisions on clearly stated biblical grounds.

<sup>5.</sup> Guidelines should state the desired outcome of church discipline, to call a fellow Christian to repentance.

<sup>&</sup>lt;sup>20</sup> "Congregations that are members of the Synod shall call and be served only by (1) 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; (2) candidates for the pastoral ministry who have satisfied the qualifications and requirements for assignment of first calls by the Council of Presidents acting as the Board of Assignments; or (3) ordained ministers who are members in good standing of church bodies that have been formally recognized to be in altar and pulpit fellowship with the Synod when agreements for such calls are in place." (Bylaw 2.5.2)

fellowship with the Synod when agreements for such calls are in place<sup>21</sup> (Bylaw 2.5.3)<sup>22</sup>. 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)<sup>23</sup>. The example below reflects the way this is done in most congregations.

#### 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 ordained ministers who are members of The Lutheran Church—Missouri Synod, candidates for the pastoral ministry who have satisfied the qualifications and requirements for assignment of first calls by Synod, or ordained ministers who are members in good standing of church bodies that have been formally recognized to be in altar and pulpit fellowship with the Synod when agreements for such calls are in place.
- 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, who are candidates of LCMS colleges and universities who have satisfied the qualifications and requirements for assignment of first calls, and who are commissioned ministers in good standing from church bodies that are in altar and pulpit fellowship with 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, the inability to perform those duties, or domineering in office.
- 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:

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"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.

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.

<sup>&</sup>quot;Congregations that are members of the Synod shall call only (1) 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; (2) candidates of LCMS colleges and universities who have satisfied the qualifications and requirements for assignment of first calls by the Council of Presidents acting as the Board of Assignments; and (3) commissioned ministers (or those holding positions comparable to commissioned ministers) who are members in good standing of church bodies that have been formally recognized to be in altar and pulpit fellowship with the Synod when agreements for such calls are in place." (Bylaw 2.5.3)

"Congregations shall seek the counsel of their respective district presidents when calling ordained or commissioned

<sup>&</sup>quot;Congregations shall seek the counsel of their respective district presidents when calling ordained or commissioned ministers" (Bylaw 2.5.1).

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)])<sup>24</sup>.

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.

In accordance with the teachings of The Lutheran Church—Missouri Synod women are not to be placed in offices which call upon them to carry out the specific functions of the pastoral office.

#### 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:

"(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]).

- 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  $\dots$ , which shall be charged with the teaching and promoting proper stewardship of time, talents, and treasures.
- 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 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.

- 10.1 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.
- 10.2 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."

#### 11.0 AMENDMENTS

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.

Congregations which revise their constitutions must submit these proposed changes for review by their district's constitution committee. Upon favorable action by the district board of directors, the congregation shall be notified that the changes are acceptable to the Synod, and the congregation may proceed with formal adoption of the revised constitution and remain a member in good standing of the Synod.

#### Example:

"This constitution may be amended in the following manner.

- 11.1 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.
- 11.2 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.
- 11.3 The revised constitution shall, as a condition of continued membership in good standing 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 adopted 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.

#### 1.0 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:

- 1.1 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.
- 1.2 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.
- 1.3 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.
- 1.4 Ballot voting shall continue until a majority [or two-thirds] vote determines the disposition of the call."

#### 2.0 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.

- 2.1 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.
- 2.2 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.
- 2.3 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.

- 2.1 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.
- 2.2 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.
- 2.3 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."

#### 3.0 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.

- 3.1 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.
- 3.2 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.
- 3.3 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 \_\_\_\_\_.
- 3.4 Officers and board members shall be inducted into office in a public service of the congregation.
- 3.5 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."

#### 4.0 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."

#### 5.0 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 . . ."

#### 6.0 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."

#### 7.0 AMENDMENTS

It is essential that provision be made in the bylaws for amending the bylaws. Congregations which revise their bylaws must also submit these proposed changes for review by their district's constitution committee. Upon favorable action by the district board of directors, the congregation shall be notified that the changes are acceptable to the Synod, and the congregation may proceed with formal adoption of the revised bylaws, and remain a member in good standing of the Synod.

#### Example:

"These bylaws may be amended in a properly convened meeting of the voters assembly.

- 7.1 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.
- 7.2 The revised bylaws shall, as a condition of continued membership in good standing of The Lutheran Church—Missouri Synod, must 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 adopted by the congregation."

# 175. <u>District Articles of Incorporation Template</u>

The commission continued its work on a template for use by districts in reviewing their articles of incorporation. The commission has delayed its own review of district articles of incorporation pending final preparation of the template.

## 176. Other Agenda Items

Chairman Sohns led the commission in a review and discussion of other items listed on the agenda of the meeting, as follows.

- A request for an opinion regarding "close" v. "closed" communion has been deferred and awaits further input from the pastor making the request (12-2654).
- A request for an opinion regarding "women's service in congregations" was removed from pending business given the lack of response to requests for further input.
- The commission reviewed inaccuracies found in the 2010 *Handbook*, already corrected or in the process of being corrected on the Synod's Internet site.
- The commission discussed its 2013 convention report and will be making suggestions regarding its content to Chairman Sohns.
- The commission discussed carrying out its responsibility for reviewing reports, overtures, and resolutions before the 2013 convention.
- Secretary Hartwig reported that work continues on the Council of Presidents Policy Manual, which will be submitted to the commission for its review as work on portions of the manual is completed.
- Chairman Sohns provided a report of the activity of the Commission on Handbook, of which he is a member as the representative of the Commission on Constitutional Matters.
- The commission briefly discussed future revisions of the dispute resolution and expulsion standard operating procedures manuals in light of its recent opinions.
- Chairman Sohns provided a brief progress report of the work of the Res. 8-07 Task Force which is looking into possible district realignment.

## 177. Pending Agenda Items

• Concordia Historical Institute Policy Manual Review [08-2523]

- Article VI and Heterodox Congregations [09-2544]
- Southern District Church Extension Fund Operations Manual [11-2605 (C)]
- English District Operations Manual and Employees Handbook [11-2613 (B)]
- Ohio District Governance Policies [12-2630 (B)]
- Montana District Policy Manual [12-2632]
- Texas District Policy Manuals [12-2648]
- District Articles of Incorporation template, on which waits the commission's review of district articles of incorporation, including Indiana [11-2619 (B)], Midsouth [including policy manual] [11-2624 (B)], New England [12-2633 (A)], Pacific Southwest [12-2637 (B)], and Texas [12-2640 (A)].
- CCM "Frequently Noted Concerns and Aberrations" Document Review
- CCM's LCMS Website Review
- Status of Agency Governing Document Reviews and Files

# 178. Future Meetings

February 1–3, 2013 May 16–20, 2013 (in conjunction with 2013 convention Floor Committee Weekend) July 18–25, 2013 (in conjunction with 2013 Synod convention) August 9–11, 2013 November 8–10, 2013

## 179. Adjournment

With allotted time having expired, the meeting was closed with words of benediction.

Raymond L. Hartwig, Secretary