

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS St. Louis Airport Crowne Plaza Hotel April 21–22, 2007

184. Call to Order and Opening Devotion

The meeting was called to order by Chairman Albert Marcis with all members of the Commission present. He also provided an opening devotion that included a meditation on the story of Jesus' post-resurrection appearance to the two disciples on the road to Emmaus (Luke 24: 13ff).

185. Resolution 7-02A Committee Report

Also present at the start of the meeting was Walter Tesch, chairman of the Resolution 7-02A Committee, who had requested opportunity to meet with the Commission and discuss his committee's final report to the 2007 convention. Each section of the report with its recommended bylaw changes was discussed. The Commission thanked the 7-02A Committee's chairman for being present to share the report and commended the committee for its work.

186. Board of Directors Confidentiality Matter

Prior to its February meeting the Commission had expressed concern to the Board of Directors that an item that it had forwarded to the board that was intended to remain confidential had become known outside the board and commission and had been widely circulated. The commission had requested that the board investigate and resolve the matter.

The secretary of the Commission reported that the Board of Directors discussed the Commission's concern at its most recent meeting and directed its Policy Review Committee to bring to its May meeting a policy proposal that will satisfy the concern of the Commission. The Commission asked the secretary to express its appreciation to the board for its intention to develop a policy that will govern its handling of materials received from the commission in a manner that will honor the commission's interest in the confidentiality of those materials.

187. Board for University Education *Standard Operating Procedures Manual* (06-2466)

A latest draft of the *Standard Operating Procedures Manual* required by Bylaw 3.8.3.8.9 (j), to be developed by the Board for University Education in consultation with the Commission, was briefly reviewed. It was agreed that the secretary of the Commission will continue to work with the executive director of the board to produce a final draft for review by the Commission at its May 2007 meeting.

188. Program Board Policy Manuals

Policy manuals have been received upon request by the Commission from the Board for Communication Services, the Board for Pastoral Education, the Board for University Education, the Board for Black Ministry Services, the Board for Human Care Ministry, the Board for Mission Services, and the Board for District and Congregational Services. Given its other responsibilities, especially those related to the upcoming convention, the Commission was again unable to begin its formal review process and will set aside time at its next meeting for this

purpose. It was agreed that the Commission will share the results of its review with the Board of Directors, since the board also has been given policy manual responsibilities by the Bylaws of the Synod.

189. Review of Southeastern District Bylaws (06-2478)

Bylaw 3.9.2.2.4 requires all agencies of the Synod to submit to the Commission in advance all proposed amendments to articles of incorporation and bylaws for its examination to ascertain that they are in harmony with the Constitution, Bylaws, and resolutions of the Synod. Although a number of amendments were already approved by its 2006 Southeastern District convention, the Commission reviewed the changes and offers the following responses.

In the following case, the Commission finds the amendment to be contrary to the Constitution, Bylaws, and resolutions of the Synod and therefore should not be considered in force until appropriate changes have been made and approved by a convention of the district:

- In the Preamble section to the Bylaws, line 31, the Commission notes that the provision to support Recognized Services Organizations in their mission and ministry is placed on the same level as support to congregations of the district. This is contrary to the Bylaws of the Synod where it is clear that such organizations are recognized for *their support* of the mission and ministry of the Synod and not vice versa (Bylaw 6.2.1) and where it is clear that it is the purpose of the Synod to support *above all* its member congregations (Bylaw 1.1.1 [a]). Therefore, while supporting ministries of recognized service organizations is a good thing, such support is not intended to rise to the level advocated in the district's document.

In the following cases, the Commission has noticed statements in newly amended or already existing sections of the district's Bylaws for which additional attention by the district is recommended:

- In the Preamble section, line 42, although this is not one of the newly amended paragraphs, the statement that the district "is a voluntary association of congregations..." is not entirely accurate. Congregations voluntarily join and retain membership in the Synod, and it is the Synod that is the voluntary association of congregations. Congregations belong to the Synod, and such membership is held through a district, which is the Synod in that place.
- Under Article IV, lines 130ff., the Commission has noted inconsistency in statements regarding number of directors, sometimes said to be "seven," but in this article potentially eight. The district may also want to give further consideration to the terminology in its provision for "an ethnic member" on its board of directors, it being unclear what is intended since all persons are "ethnic" in the strict sense of the word.
- Under Article V, lines 206 and 209, the proper terminology for commissioned ministers is "ministers of religion-commissioned."
- Under Article VI, line 290, the Commission suggests that by providing that vice-presidents are required to perform duties as requested by the board of directors, while this may be technically appropriate, the clear lines the Synod tries to maintain between ecclesiastical responsibilities (the usual bailiwick of vice-presidents in our Synod structure) and business responsibilities (reserved to a large extent to boards of directors and not usually included in the duties of vice-presidents) may be blurred.

- Under Article VIII, line 404, the district may wish to give further thought to who it is that actually extends calls to district workers in the context of our Synod’s understanding of the call. The congregations of a district collectively are the calling body. District boards of directors may be authorized to act on behalf of the congregations, but it is the congregations that actually extend such calls to the workers.
- For the sake of consistency and good order, the district is encouraged to approximate as closely as possible in its official documents the terminology and rules of grammar, especially capitalization, that the Synod uses in its *Handbook*.

190. Synod Governance Issues (07-2486)

In a letter received January 5, 2007, a pastor of the Synod asked a series of questions regarding Synod governance issues. The first specifically relate to Bylaw 1.2.1 (c) (3), which states: “The Lutheran Church—Missouri Synod, in referencing the laws of the State of Missouri in these Bylaws and in the Synod’s Articles of Incorporation, intends to acknowledge its responsibility to be subject to civil authority. In all such references, however, the Synod intends to retain all authority and autonomy allowed a church under the laws and Constitution of the United States and the State of Missouri.”

[Note: Along with his questions the pastor provided a background memorandum regarding constitutional 1st Amendment issues, referencing quotations from various United States Supreme Court opinions as well as State of Missouri Nonprofit Corporation Law Section 355.316 (2).]

Question 1: (a) If the Synod wishes “to retain all authority and autonomy allowed a church” under various laws, what laws should the Synod more closely observe, especially if there is a conflict between the laws and Constitution of the U.S. granting “free exercise” and the non-profit laws of the State of Missouri? (b) What then takes greater priority for the Synod’s Board of Directors to follow? The non-profit laws of the State of Missouri, or the “free exercise” rights as ruled by the U.S. Supreme Court in order “to retain all authority and autonomy allowed a church under the laws and Constitution of the United States”?

Opinion: The role and responsibility of the Commission on Constitutional Matters under Bylaw 3.9.2.2 includes the interpretation of the Synod’s Constitution, Bylaws, and resolutions. The Commission does not have the authority to interpret the laws and Constitution of the United States or the State of Missouri. The Commission does certainly attempt, however, to be cognizant of that constitution and those laws. For example, where two reasonable interpretations of a resolution of the Synod would be possible, one of which would clearly violate state or federal law and one of which would not, a fundamental rule of interpretation that is assumed is that the Synod intended to follow a lawful course of conduct rather than one which is unlawful.

In fulfilling its specific service function to the Synod, the Board of Directors is required to follow the directions of the Synod in convention. Presumably in doing so, to the extent some challenge whether actions of the Synod are contrary to Missouri state law, the Board of Directors will inquire, through legal counsel, whether or not the Synod can legitimately and in good faith urge that the rights granted under the state and federal constitution supersede or preempt an apparent conflict with non-profit laws of the State of Missouri. To the extent considered necessary or appropriate, the board may choose to interact with secular authorities to assure that the State of Missouri recognizes the validity of the governance model chosen by the Synod.

Question 2: Bylaw 3.3.5.2 states: “The Board of Directors shall have the powers and duties that have been accorded to it by the Articles of Incorporation, Constitution, Bylaws, and resolutions of the Synod, and the laws of the State of Missouri. If there is a conflict between the “governing” documents of the Synod and “the laws of Missouri,” should the Synod’s Board of Directors, as the Synod’s legal representative, defend the Synod’s right to govern itself (granted under its First Amendment rights) or turn over the governance of the Synod’s ecclesiastical and secular business to a “secular” state government’s directives (laws)?

Opinion: See the answer to question 1.

[Note: After again referencing Bylaw 1.2.1 (c) (3) and Bylaw 3.3.5.2, as well as sections of the Missouri Religious Freedom Restoration Act, the writer referenced excerpts from section 175 of the November 2006 Board of Directors minutes:

The chair ruled that the motion was in order because it was not included in the previous action. After discussion, the resolution was adopted as follows (Yes: 7; No: 6):

Resolved, That in consideration of the Board’s discussions of its authority held on November 16, 2006, the Board reaffirms its responsibility to abide by civil law, recognized in Bylaw 1.2.1 (c) (3).]

Question 3: (a) In addition to honoring the non-profit laws of the State of Missouri (Chapter 355), would not the Board of Directors also have to protect the rights of the Synod as granted in Missouri Law as found in Section 1.303, 1.307, and 1.020 (11)? (b) Even if Missouri’s non-profit laws are considered “laws of general applicability,” would the laws of the State of Missouri’s own Religious Freedom Restoration Act (as found in the Missouri Code Section 1.302 [and 1.307]) serve to maintain the Synod’s “authority and autonomy”?

Opinion: In response to part (a) of this question, the Synod has expressed clearly in Bylaw 1.2.1 that it intends to retain all authority and autonomy allowed a church under the laws and Constitution of the United States and the State of Missouri. It is the responsibility of the Board of Directors to carry out that bylaw. Regarding part (b) of this question, again, the Commission is not charged with the responsibility for interpretation of the laws of the state of Missouri.

[Note: The questioner here quotes in part Bylaw 3.9.2.2 of the Synod’s Bylaws: “The Commission on Constitutional Matters shall interpret the Synod’s Constitution, Bylaws, and resolutions upon the written request of a member...of the Synod.” He then notes that the “Brief Statement” was adopted in a resolution by the Synod in 1932 and quotes from it:

Accordingly we condemn the policy of those who would have the power of the State employed “in the interest of the Church” and who thus turn the Church into a secular dominion; as also of those who, aiming to govern the State by the Word of God, seek to turn the State into a Church.]

Question 4: What is meant in Chapter 34 of the “Brief Statement” by the phrase “turn the Church into a secular dominion,” as in the statement: “Accordingly, we condemn the policy of those who would have the power of the State employed ‘in the interest of the Church’ and who thus turn the Church into a secular dominion”?

Opinion: The full text of the referenced section of the “Brief Statement” reads:

34. Although both Church and State are ordinances of God, yet they must not be commingled. Church and State have entirely different aims. By the Church, God would save men, for which reason the Church is called the "mother" of believers Gal. 4:26. By

the State, God would maintain external order among men, "that we may lead a quiet and peaceable life in all godliness and honesty," 1 Tim. 2:2. It follows that the means which the Church and State employ to gain their ends are entirely different. The Church may not employ any other means than the preaching of the Word of God, John 18:11, 36; 2 Cor. 10:4. The State, on the other hand, makes laws bearing on civil matters and is empowered to employ for their execution also the sword and other corporal punishments, Rom. 13:4.

Accordingly we condemn the policy of those who would have the power of the State employed "in the interest of the Church" and who thus turn the Church into a secular dominion; as also of those who, aiming to govern the State by the Word of God, seek to turn the State into a Church.

In the abstract, it would be impossible for us to discuss or delineate all of the implications of this section of the "Brief Statement." Fundamentally, the Synod recognizes that the church is ordained by God to save men, and the state is ordained by God to maintain civil order among men. The questioned reference is to those who would have the state assume the responsibilities and functions of the church, and attempt to make the functions of the church the functions of the state.

Question 5: After making further references to excerpts from the October 30, 2006 and November 15-17, 2006 minutes of the Board of Directors regarding motions made and not adopted, the questioner raised issues regarding the potential applicability of the earlier quoted section from the "Brief Statement" to the action proposed and defeated.

Opinion: Because the motions from the minutes of the Board of Directors quoted by the questioner were defeated and therefore never adopted by the board, the commission believes that it would be unhelpful to the Synod to comment on such failed motions.

[Note: The questioner here quotes from Synod Constitution Art. XI, Section A, line 1: "Officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod," and from the minutes of the October 30, 2006 and November 15-17, 2006 Board of Directors meetings: "This can be accomplished by a declaration of the board explicitly stating that it will at all times and in all respects follow Missouri Law and not allow the CCM to usurp the legal authority of the Board of Directors" (sections 162 and 172 of the minutes). The questioner then adds that this specific request was made in the minutes by a member of the Board of Directors seemingly to restructure the Synod and more specifically to restructure the authority of the Commission on Constitutional Matters supposedly to comply with Missouri non-profit law without convention approval.]

Question 6: (a) Since the Synod's structure was established by the convention of the Synod, is this particular request by a member of the Board of Directors to restructure the Synod an exceeding of its authority and responsibility as granted to the board by the Synod? (b) Does the Board of Directors of the Synod have constitutional authority as found in the Synod's organizational documents (Articles of Incorporation, Constitution, or Bylaws) to even demand such a change in the Synod's structure and disavow rulings of the Commission on Constitutional Matters without Synod convention approval? (c) Is this proposed request and/or motion of the Board of Directors also in direct violation of Bylaw 3.3.5.5 (a) (2), and possibly 3.9.2.2 (b), and even more so Article V of the Articles of Incorporation? And (d) Can the Synod's Board of Directors restructure the Synod's governance without the approval of the Synod in convention?

Opinion: Again, the Commission on Constitutional Matters believes it would be unhelpful to the Synod to comment on such a failed motion, the board majority having rejected the proposed restructuring.

Question 7: Bylaw 1.4.1 states: “The delegate convention of the Synod is the legislative assembly that ultimately legislates policy, program, and financial direction to carry on the Synod’s work on behalf of and in support of the member congregations. It reserves to itself the right to give directions to all officers and agencies of the Synod.” (a) Is there a specific reason(s) that the Synod is structured in such a manner with no individual officer or board having “ultimate authority or control” and all being accountable to the Synod in convention? (b) Does the Synod’s Board of Directors have “sole authority” in even “secular or legal matters” or should it still be subject to the opinions of the Commission on Constitutional Matters and ultimately answerable to the convention of the Synod? (c) What course of action should be employed by the Synod if an officer and/or a board of the Synod presumes, on its own, to rewrite the Synod’s structure and governance? And (d) What would be a more correct and appropriate constitutional procedure if an officer or a board of the Synod wished to change the Synod’s structure of governance?

Opinion: (a) It is not the authority or responsibility of the Commission on Constitutional Matters to speculate as to why the Synod has chosen to structure itself in the manner it has. (b) The Synod in convention chooses its governance model and determines whether or not the Synod’s Board of Directors should have “sole authority” even in “secular or legal matters.” Under the Synod’s current governance model, the Board of Directors is to be subject to the opinions of the Commission on Constitutional Matters and ultimately answerable to the Synod in convention. (c) No officer and/or board of the Synod is authorized to rewrite the Synod’s structure and governance. It remains the responsibility of the President, who has supervision regarding the doctrine and administration of all officers of the Synod, as well as all such who are employed by the Synod, to assure that such actions are not taken. Actions taken by a board or officer of the Synod are ultimately subject to the review of the Synod in convention, which ultimately has the authority to declare any such action taken beyond the authority of an officer or board as null and of no fact. (d) Amendments to the Constitution of the Synod may be made pursuant to Article XIV and the processes described therein. Amendments to the Bylaws may be made pursuant to Chapter VII of the Bylaws and the processes described therein.

191. Clarification of Opinion 06-2477, “District Convention Resolution re CCM ‘Guidelines’” (07-2487)

The Commission on Constitutional Matters has been made aware of confusion resulting from its Opinion 06-2477, “District Convention Resolution re CCM Guidelines.” In the opinion, the Commission called attention to its statement in its *Guidelines for Constitutions and Bylaws of Lutheran Congregations*, “A congregation’s confessional standard must not go beyond that of the Synod.” It also restated an earlier commission opinion (August 2003 Opinion 03-2352) that “individual members or congregational members of the Synod may not add to or remove items from Article II [of the Synod’s Constitution]” and that “other confessional statements, confessions of faith, or common confessions may in fact be correct interpretations of our Lord’s teaching and may be used for a variety of purposes, but such other confessions may not be used as a condition for acquiring and holding membership in the Synod.” The Commission recognizes that imprecise use of terminology has caused the confusion that has resulted from Opinion 06-2477 and therefore offers this clarification.

When a congregation becomes a member of the Synod and thereby subscribes to the Synod's Constitution, it also subscribes to the confessional basis of the Synod as articulated in the Synod's Constitution, Article II (see Constitution Art. V, "who confess and accept the confessional basis of Article II," and Article VI [1], "Acceptance of the confessional basis of Article II"). In Bylaw 1.6.1, the same is referred to as the "confessional position of the Synod [as] set forth in Article II of the Constitution, to which all who wish to be and remain members of the Synod shall subscribe." In Bylaw 1.3.4, the same is again referred to as the "confessional position of the Synod." The intent of Opinion 06-2477 was to reiterate from prior commission opinions the important point that this confessional "basis" or "position" may not be added to or subtracted from by a member congregation. Subscription to Article II of the Synod's Constitution is a condition of membership in the Synod.

If, therefore, a congregation wishes to restate this "confessional basis" in its own Constitution, it should do so (as the Commission's guidelines suggest) by staying as close as possible to the language of the Synod's "Article II Confession," so that its confessional basis is demonstrated to be the same as that of the Synod. There is, however, no essential need for the congregation to reiterate this confessional basis, since this is already established by its membership in the Synod.

Congregations may and often wish to, however, include in their official documents a confessional statement of their own, perhaps using words like "inspired" and "inerrant" to emphasize important aspects of their confession. This is appropriate so long as such statements, as well as all of the content of their Constitutions and Bylaws "are in harmony with the Holy Scriptures, the Confessions, and the teachings and practices of the Synod" (Bylaws 2.2.1 [b]; 2.4.1 [b]). Care should therefore be taken in congregational documents that terminology used properly differentiates between a confessional "basis" paragraph which may be included and which mirrors the Synod's Article II and confessional "statement" paragraphs that may be included to emphasize certain aspects of the confession of the congregation but must be in harmony with the Holy Scriptures, the Confessions, and the teachings and practices of the Synod.

It is the responsibility of district constitution committees to review constitutions and bylaws when a congregation initially applies for membership (Bylaw 2.2.1) and when a congregation revises its official documents (Bylaw 2.2.1). The committees should pay careful attention to terminology that is used, to differentiate between "confessional basis" paragraphs and "confessional statement" paragraphs, and to advise congregations accordingly as part of their review process.

For its part, the Commission recognizes the need to revise its *Guidelines for Constitutions and Bylaws of a Lutheran Congregation* as follows:

3.0 CONFESSIONAL BASIS OR STATEMENT

The Lutheran Church—Missouri Synod requires that its member congregations accept the confessional basis of the Synod. Congregations do so when they become members of the Synod, which includes subscription to the Synod's Constitution (Constitution Art. V and VI [1]; Bylaws 1.3.4 and 1.6.1). If a congregation chooses to reflect this confessional basis in its own constitution, it is recommended that Article II of the Synod's Constitution be adopted for inclusion in congregations' constitutions. A congregation's confessional *basis* must not go beyond that of the Synod.

Example:

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 Smalcald Articles, the Large Catechism of Luther, the Small Catechism of Luther, and the Formula of Concord.

If a congregation chooses to do so, it may also include confessional *statements*, even when it does not restate its confessional basis. Should a congregation do so, it is the responsibility of the district constitution committee to assure that such confessional *statements* are in harmony with the Holy Scriptures, the Confessions, and the teachings and practices of the Synod.

192. Review of Concordia Historical Institute Articles of Incorporation (07-2488)

The Director of Concordia Historical Institute, in a letter dated February 8, 2007, requested that the commission review the Institute's Articles of Incorporation "to see if they are in compliance with [2004 convention] Resolution 4-11."

Bylaw 3.9.2.2.4 does provide for the examination by the Commission of articles of incorporation of agencies of the Synod "to ascertain whether they are in harmony with the Constitution, Bylaws, and resolutions of the Synod." The Commission therefore has examined the Institute's articles of incorporation in light of 2004 convention Resolution 4-11 and finds them in compliance with the expectations of the resolution.

Resolution 4-11 resolved that every incorporated agency of the Synod (such as Concordia Historical Institute) include the following provisions in its Articles of Incorporation to promote the unity and to safeguard the interests of the Synod:

1. This corporation, as part of The Lutheran Church—Missouri Synod (the Synod), acknowledges its allegiance to the Synod and to the convention of the Synod (the convention).
2. It submits to the authority of the Synod and the convention.
3. It accedes to, recognizes, and accepts the doctrine taught and practiced in the Synod (Art. II) and the Articles of Incorporation, Constitution, and Bylaws of the Synod, as currently in effect and as may hereafter be amended from time to time.
4. In the event of any conflict or inconsistency between the organizational documents of this corporation and the Articles of Incorporation, Constitution, or Bylaws of the Synod, as may hereafter be amended from time to time, the Articles, Constitution, or Bylaws of the Synod shall control and govern.
5. In the event this corporation is dissolved or its existence otherwise terminates or is terminated, all right, title, and interest in and to its property, whether tangible or intangible or whether real or personal, shall thereupon automatically vest in the Synod, and this corporation covenants and agrees to execute and deliver to the Synod such documents and instruments and to take such other and further actions as the Synod may deem reasonably necessary or desirable, in order to evidence and give full effect to the foregoing.

6. The above provisions may not be altered or deleted without the written consent of the Synod.

After review of the Articles of Incorporation of Concordia Historical Institute, the Commission concludes that the six numbered requirements of 2004 Resolution 4-11, while not quoted verbatim, are nonetheless incorporated into the Institute's articles as follows:

1. Article III A acknowledges allegiance to the Synod and its convention by stating that Institute is "an agency of The Lutheran Church—Missouri Synod and shall be subject to the Constitution and Bylaws of The Lutheran Church—Missouri Synod," adding that "the Board of Governors of the Corporation, its officers, employees, agents, and all of its activities shall be subject to the duly enacted Bylaws...and resolutions duly enacted by The Lutheran Church—Missouri Synod, assembled in convention.... to the same extent as if all of those individuals and activities were directly those of The Lutheran Church—Missouri Synod."
2. With Article III A, the Institute also submits to the authority of the Synod and its convention by subjecting its officers, employees, agents, and activities to the Synod's Bylaws and resolutions "to the same extent as if all of those individuals and activities were directly those of The Lutheran Church—Missouri Synod."
3. The Institute accedes to, recognizes, and accepts the doctrine taught and practiced in the Synod by its consistent subjection to the Constitution and Bylaws of the Synod (Art. III A; Art. VII), which necessarily includes "Article II Confession" of the Constitution of the Synod.
4. In the event that there is conflict or inconsistency between the organizational documents of the corporation and the Articles of Incorporation, Constitution, or Bylaws of the Synod, the Institute states that the Synod's documents shall control, declaring that nothing in its documents "shall be inconsistent with" the documents of the Synod (Art. III A) and that the Bylaws it establishes shall be consistent with the Constitution and Bylaws of the Synod (Art. VII).
5. The Institute clearly states that upon its own dissolution and liquidation, "all assets of the corporation remaining after all liabilities and obligations of the corporation have been paid, satisfied, and discharged...shall be transferred, conveyed, and distributed to The Lutheran Church—Missouri Synod or its corporate successors...." (Art. VIII).
6. The Institute's Article IX requires that any changes to its Articles of Incorporation or Bylaws "shall, prior to approval by the members, have previously been reviewed and approved by the Board of Directors of The Lutheran Church—Missouri Synod and the Commission on Constitutional Matters of The Lutheran Church—Missouri Synod."

193. Gender of University Provost (07-2489)

In a letter dated February 26, 2007, a chairman of a board of regents of a university of the Synod, after quoting several bylaws of the Synod, concluded that the provost of the school must be male given that position's responsibility to serve as acting and/or interim president when the president is unable to serve. He asked the Commission for its opinion, stating his intention to provide the response of the Commission to the Provost Search Committee of the school.

Opinion: In a March 16, 1984 opinion, the Commission on Constitutional Matters stated:

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

When asked to reconsider this opinion, the Commission on April 6, 1984, reaffirmed its previous decision, stating “that when Bylaw 6.15 designates the president as the “spiritual head” of the institution, service in the position of president by a woman would be in conflict with the position of the Synod as stated in Resolution 2-17 of the 1969 Denver convention, and reaffirmed in conventions which followed.” This opinion was reaffirmed by a later commission in a September 14, 1999 opinion (99-2160), which stated in part:

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

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

Noting these earlier commission opinions, and noting that a president of an educational institution continues to “serve as the spiritual, academic, and administrative head of the institution” (Bylaw 3.8.3.7), remains “responsible for the provision of spiritual care and nurture for every student” (Bylaw 3.8.3.7 [h]), and “shall carefully watch over the spiritual welfare...of the students and in general exercise such Christian discipline, instruction, and supervision as may be expected at a Christian educational institution” (Bylaw 3.8.3.7 [i]), the Commission concludes that it continues to be necessary for a university president to be male. And given the fact that the job description of the position in question (provost) requires that person to serve as acting and/or interim president when the president is unable to serve, the Commission further concludes that this position (provost) must also be held by a male, since the responsibilities of the position remain with the position, even were they to be delegated to another person for a period of time.

The Commission notes that the above response pertains to the matter as it stands, with the provost serving as “acting or interim president” during a vacancy in the office of president. It is conceivable that the responsibilities of a provost during a vacancy in the office of president could be defined/described in such manner as would avoid using the terms “acting or interim president,” instead specifying certain functions of the office of president to be carried out by the provost while excluding those particular functions of the office that exercise authority over men

in spiritual matters and assigning them to a male member of the administration or faculty during a vacancy.

It may also be helpful, given developments in the Synod pertaining to the service of women, to request counsel also from the Commission on Theology and Church Relations.

194. Calling a Special Convention of the Synod (07-2490)

In a letter dated February 16, 2007, a district president asked a series of questions related to the calling of a special convention of the Synod, especially in light of Constitution Article VIII and Bylaw section 3.1.

Question 1: Is “the Synod” in convention authorized by the Constitution to call a special session?

Opinion: Yes. Constitution Article VIII B 1 states: “The Synod may under circumstances call a special session if two-thirds of the voting representatives so decide” (emphasis added). In referring to the regular meetings of the Synod, Article VIII A 1 uses the same term: “The Synod convenes every three years for its regular meeting” (emphasis added). And Bylaw 3.1.1, in setting forth the provisions for a national convention, states:

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

Question 2: Is there any definition of the “circumstances” necessary for calling a special session of the Synod?

Opinion: No. The Constitution and Bylaws of the Synod are silent with respect to the definition of “circumstances” in this Article VIII B 1. Thus, the Synod in convention determines the conditions that affect the calling of a special session.

Question 3: Is “a special session” of the Synod the same as or different from a convention of the Synod?

Opinion: The only difference is terminology. In one case the term used is a “regular meeting” (Art. VIII A 1) and in another a “special session” which can be called in different ways (Art. VIII B). Whether a “regular meeting” or a “special session,” either one is a convention of the Synod, and the appropriate provisions under Constitution Art. V, VIII, and IX and Bylaw section 3.1 apply to both in the same way.

Question 4: Do the existing bylaws (3.1.2–3.1.5.2; 3.1.6–3.1.10.1; 5.3.3) provide for the implementation of Article VIII B?

Opinion: Yes. See the answer to question #3 above.

Question 5: As long as any amendments to the Bylaws are in harmony with Constitution Art. VIII B 1, Art. IX, Art. V, may bylaws be added or amended in order to provide for the implementation of “special sessions of the Synod” only?

Opinion: Yes. However, the amendment process must be in accord with Chapter VII of the Bylaws, “Amendments to Bylaws” (Cf. 2004 *Handbook*, pp. 202–203).

Question 6: Is any specific process delineated to appoint delegates or representatives to a “special session” of the Synod?

Opinion: No. Bylaw 3.1.2.2 states that “voting delegates shall serve a three-year term...” The delegates elected to attend the convention at the beginning of a triennium continue to serve as needed throughout their three years of service.

Question 7: Do the existing bylaws call for the election of “new” delegates for a special session of the Synod or do they require the delegates from the “previous” convention to be the delegates to a special session of the Synod?

Opinion: No, the existing bylaws do not call for the election of new delegates. See the answer to question #6 above.

Question 8: If circumstances warrant, would it be possible to elect different voting delegates to the special session?

Opinion: There is no such provision under the current Constitution and Bylaws of the Synod.

Question 9: If so, what would the process be?

Opinion: If the convention desired to develop a procedure to elect new voting delegates for a special session of the Synod, this would require the adoption of the necessary amendments to the Constitution and/or Bylaws of the Synod.

Question 10: Could that process include the election by district conventions of voting delegates to the special session?

Opinion: Yes, such an election would be possible if a process were adopted by a convention of the Synod that would be consistent with the Constitution of the Synod, specifically Articles V, VIII, and IX, and with all applicable bylaws.

195. Status of “Visiting Faculty” (07-2491)

In a February 2, 2007 E-mailed letter, a professor from one of the Synod’s educational institutions noted that some members of the faculty on which he serves are termed “visiting faculty” but have not received “initial level appointments” according to Bylaw 3.8.3.8.2. He asked a series of questions regarding the responsibilities of such faculty members.

After discussion, the Commission asked the Secretary of the Synod to consult with the executive director of the Board for University Education before it proceeds with providing a response to the questions.

196. Vote Needed for Excommunication (07-2492)

A pastor of the Synod in a letter dated April 9, 2007, called into question a paragraph in the Commission on Constitutional Matters’ *Guidelines for a Constitution and Bylaws of a Lutheran*

Congregation regarding excommunications of church members. Because this question was received by the Commission only a short time before its meeting, it was agreed to address this request for an opinion at the Commission's next meeting.

197. Adjournment

Time for the meeting having elapsed, Chairman Marcis closed the meeting with words of benediction.

Raymond L. Hartwig, Secretary