

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS Saint Louis Airport Crown Plaza Hotel February 2, 2007

169. Call to Order and Opening Prayer

Chairman Albert Marcis called the meeting to order. Gordon Tresch provided an opening prayer and a devotion on Christian leadership, diversity, and tension based in part on 1 Corinthians 14.

170. Resolution 7-02A Committee Consultation

The Commission discussed the consultation with the chairman and representatives of the 7-02A Committee scheduled later in the meeting per the committee's request.

171. Policy Manuals

Review of the following policy manuals was deferred due to the shortness of time for proper consideration:

- **06-2457** – Board for Communication Services Policy Manual
- **06-2471** – Board for Pastoral Education Policy Manual and Campus Policy Manual
- **06-2472** – Board for University Education Policy Manual and Campus Policy Manual
- **06-2473** – Board for Black Ministry Services Policy Manual
- **06-2474** – Board for World Relief/Human Care Ministries Policy Manual
- **06-2475** – Board for Mission Services Policy Manual
- **06-2476** – Board for District and Congregational Services Policy Manual

In general discussion of the policy manuals currently being reviewed, the Commission noted that reference in a manual had been made to the document "For the Sake of Christ's Commission: The Report of the Church Growth Study Committee" (authorized by 1995 St. Louis convention Res. 3-09 "To Address the Church Growth Movement"). It was determined that, in order for the Commission to be able to review that manual appropriately, a request should be submitted to the Commission on Theology and Church Relations for a review of the referenced report to evaluate whether the theological position of that report is consistent with the adopted theological positions of the Synod.

172. Board of Directors Consultation

The Commission discussed the consultation with the Synod's Board of Directors scheduled for Saturday, February 3, 2007, at the Board's request.

173. Communication Regarding Opinion 06-2477

The Commission discussed a letter from a member of the Synod regarding Opinion 06-2477. The Secretary will assign a number to this request. The chairman assigned the request to a member of the Commission for the preparation of a draft response.

174. Communications re Inappropriate Dissemination of Information re Matters Under Consideration

The Commission reviewed communications and responses from the Board of Directors regarding the publication of a letter provided by the Commission to the Board for input under Bylaw 3.9.2.2 (b). It was decided that until the Board adopts appropriate procedures to assure the confidentiality of such communications, the Commission will exercise its option to consult only with the Synod's legal counsel. The Commission was advised that this issue was under consideration by the Board of Directors and that action might be taken by the Board prior to the publication of these minutes.

175. Standard Operating Procedures Manual for Concordia University System (06-2466)

The Commission discussed the draft *Bylaw 3.8.3.8.9 Standard Operating Procedures Manual* and directed that a phone consultation take place to include Secretary Raymond Hartwig, Gordon Tresch, and Board for University Education Executive Director Kurt Krueger. Dr. Krueger will also be asked to assure that his board and the presidents of each of the colleges and universities have reviewed the draft and have been provided opportunity for input.

176. Commission on Constitutional Matters Report to Convention (06-2479)

The Commission reviewed an initial draft of its report to the 2007 convention. After receiving additional input, the chairman was directed to submit the final report to the Synod.

177. Participation in Legal Actions by Members of the Board of Directors (06-2480A)

A pastor of the Synod in an August 18, 2006 E-mailed letter submitted two related questions regarding the meaning and application of Bylaw 1.5.12.1 (b) (5).

Question 1: Do the provisions of Bylaw 1.5.12.1 (b) (5) providing for the vacating of a position in the event of a continued inappropriate activity by a member of a board allow said board to remove such member and create this vacancy?

Opinion: The Commission notes initially that Bylaw 1.5.12.1 (b) (5), providing that “[a]ny inappropriate activity shall cease or the position will be vacated” is contained in a section dealing with conflict of interest disclosures defined in Bylaw 1.5.12.1 (a) and with prohibited activities cited in Bylaw 1.5.12.1 (b) (1–4). Bylaw 1.5.12.1 (b) (5) clearly is meant to apply only in the context of a conflict of interest violation. The provision does not specify the manner in which a position is to be vacated in the event of the continuation of a conflict of interest violation, nor does it specify who is empowered to make such a determination. Constitution Article XI A 2 states: “The Synod at all times has the right to call its officers to account and, if circumstances require it, to remove them from office in accordance with Christian procedure.” That said, there is no provision in the Constitution or Bylaws that provides the specific method to be used if a position is to be vacated by a board or by the Synod itself if inappropriate activity does not “cease.”

Question 2: If not, if a board adopts a resolution providing the reason for vacating of the position of one of its members serving on such board pursuant to Bylaw 1.5.12.1 (b) (5), such member having engaged and continues to engage in inappropriate action detrimental to the Synod and its agencies, may the President, pursuant to Bylaw 3.3.1.3, after consultation with the Board of Directors and/or the Council of Presidents, and/or the vice-presidents, exercise his executive power to effect the vacating of the position on the board held by such member?

Opinion: Bylaw 3.3.1.3(k), in discussing the powers of the President, states:

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

Bylaw 3.3.1.2 requires that the President oversee the activities of all officers, executives and agencies of the Synod to see to it that they are acting in accordance with the Constitution, Bylaws and resolutions of the Synod. The Commission has previously held that, in fulfilling these responsibilities, “[t]he President may exercise executive power in the absence of a specific directive of the Synod should affairs of the Synod require it in his opinion after appropriate consultation with the vice-presidents, Board of Directors, or Council of Presidents of the Synod” (06-2462). In the absence of other provisions to carry out the terms of vacating an office under Bylaw 1.5.12.1, should a board pass a resolution identifying the reasons for the vacating of a position of one of its members serving on such board pursuant to Bylaw 1.5.12.1(b) (5), appropriately documenting that such member engaged and continues to engage in inappropriate action detrimental to the Synod and its agencies, the President pursuant to Bylaw 3.3.1.3, after consultation with the Board of Directors and/or the Council of Presidents, and/or the vice presidents, may choose to exercise his executive power to vacate the position on the board held by such member.

It should also be noted that, in lieu of exercising such authority, a President may instead choose to exercise his constitutional authority under Article XI B in supervising the administration of officers of the Synod by submitting appropriate matters between conventions of the Synod to a written vote of its member congregations as provided in Article XI B 8:

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

178. Bylaw 1.10.1.1 and Conflict Resolution Procedures (06-2482)

A member of the Synod in an E-mailed letter dated August 24, 2006, submitted the following series of questions to the Commission regarding Bylaw 1.10.1.1: "The Synod, in the spirit of 1 Corinthians 6, calls upon all parties to a disagreement, accusation, controversy, or disciplinary action to rely exclusively and fully on the Synod's system of reconciliation and conflict resolution. The use of the Synod's conflict resolution procedures shall be the exclusive and final remedy for those who are in dispute."

Question 1A: Can a member of a congregation of the LCMS holding a position within the Synod itself avail and/or be subject to the dispute resolution process of the Synod?

Opinion: Bylaw 1.10.2 indicates that the dispute resolution process is the exclusive process, subject to the exceptions provided by Bylaw 1.10.3, to resolve disputes involving as parties “(1) members of the Synod, (2) the Synod itself, (3) a district or an organization owned and controlled by the Synod, (4) persons

involved in excommunication, or (5) lay members of congregations of the Synod holding positions with the Synod itself or with districts or other organizations owned and controlled by the Synod.” A member of a congregation of the LCMS holding a position within the Synod is expressly included within the list of those who may avail themselves of and/or are subject to the provisions of Bylaw section 1.10, to the extent that the dispute relates to the position of service with the Synod.

Question 1B: If so, can a member of the Board of Directors of the Synod both avail and be subject to the dispute resolution process of the Synod?

Opinion: Yes, a member of the Board of Directors of the Synod may both avail himself/herself of as well as be subject to the dispute resolution process of the Synod so long as the issue relates to the position held.

Question 1C: If 1B above is so, is a member of the Board of Directors of the Synod obligated pursuant to the Constitution and Bylaws of the Synod to avail himself or herself of the dispute resolution process if faced with an unresolved dispute relating to matters pertaining to the Synod and/or its members?

Opinion: Bylaw 1.10.2 includes the provision, “It shall be the exclusive remedy to resolve such disputes that involve theological, doctrinal, or ecclesiastical issues except those covered under Bylaw sections 2.14–2.17 and except as provided in Bylaw 1.10.3.” Bylaw 1.10.3 exempts from the dispute resolution process expulsion from membership under Bylaw sections 2.14–2.17 and board of regents’ supervision of faculty and administration under Bylaws 3.8.2.7.5–3.8.2.7.9 and 3.8.3.8.5–3.8.3.8.9, and also exempts “(a) Disputes concerning property rights (e.g., real estate agreements, mortgages, fraud, or embezzlement); and (b) Disputes arising under contractual arrangements of all kinds (e.g., contracts for goods, services or employment benefits).” So long as the issue in consideration does not fall within one of the exceptions provided in the bylaw, the dispute resolution process of the Synod is the exclusive remedy for resolving such issues.

Question 2A: Is a member of the Board of Directors, whether or not such member is a member of the Synod, in wishing to express dissent with a synodical resolution (for example, 7-02A from the 2004 convention), required to follow the provisions of the Constitution and Bylaws of Synod?

Opinion: The dissent provisions of Bylaw section 1.8 are applicable only to members of the Synod. If a member of the Board of Directors is a member of the Synod, those provisions are applicable. If a member of the Board of Directors is not a member of the Synod, that member’s conduct is not governed by the dissent provisions of Bylaw section 1.8. A further description of duties and responsibilities as well as restrictions on the behavior of members of the Board of Directors who are not members of the Synod is discussed in Bylaw 3.3.5.

Question 2B: If not, is a member of the Synod, while serving as a member of the Board of Directors, in wishing to express dissent with a synodical resolution, required to follow the provisions of the Constitution and Bylaws of Synod?

Opinion: A member of the Synod is at all times bound by the provisions of the Constitution and Bylaws of the Synod, including during service on a board or commission or as an officer of the Synod.

Question 2C: If they are so required to follow the provisions of the Constitution and Bylaws of the Synod, is such expression of dissent to a resolution of the Synod restricted to the provisions of the Constitution and Bylaws of the Synod?

Opinion: Yes. If a member of the Board of Directors is a member of the Synod, the dissent provisions of Bylaw section 1.8 apply to any such expression of dissent.

Question 2D: What remedies exist in the Constitution and Bylaws of the Synod in the event that the manner of dissent to a synodical resolution exceeds that which is provided in the Constitution and Bylaws of the Synod?

Opinion: Bylaw section 1.10, detailing the dispute resolution process of the Synod, would generally apply to an assertion that a member is in violation of the dissent provisions of the Constitution and/or Bylaws of the Synod. If such conduct were sufficiently egregious or repetitive so as to implicate the expulsion provisions of Article XIII of the Constitution, Bylaw section 2.14 would also be applicable. See also Opinion 05-2444 for a discussion of dissent.

179. Formal Written Complaints, Public Rebuke, and Face-to-Face Meetings (06-2484)

In a September 27, 2006 letter to the Commission, a pastor of the Synod asked a series of questions regarding the meaning of Bylaw 2.14.3, specifically the meaning of “any formal written complaint or accusation,” public rebuke of public sin, and the Matthew 18:15 face-to-face provision.

Question 1: Do the words “complaint” and “accusation” mean essentially the same thing? Do they or can they refer to different things?

Opinion: In the context of the bylaw, while the words “complaint” or “accusation” are clearly synonymous, essentially it is formal “allegations” or “information” (Cf. 2.14.3 and 2.14.4) that can lead to the expulsion of a member from the Synod under Article XIII (2.13.1; 2.14.1; 2.14.3; 2.14.4).

Question 2: In this bylaw, do the adjectives “formal” and “written” modify an “accusation” as well as a “complaint”? In other words, can this accusation be informal and/or unwritten?

Opinion: If it has been determined that Bylaw section 2.14 is the appropriate bylaw section and if an action is to be commenced, this bylaw section, which prescribes the procedure for expulsion from membership in the Synod, requires in Bylaw 2.14.4 “a formal written complaint or accusation made by a member of the Synod who has carried out the above provision (Bylaw 2.14.3)” unless the district president becomes aware of information that could lead to expulsion by his own personal knowledge (emphasis added).

Question 3: Can the noun “complaint” or the noun “accusation” refer to an expression that occurs outside the process for expelling a member from the Synod, such as a public rebuke of public sin?

Opinion: Although the words “complaint” and “accusation” are used elsewhere in the Bylaws, the Constitution, Bylaws, and resolutions of the Synod do not address this question.

Question 4: Does this bylaw forbid any member of the Synod from publicly rebuking another member for public sin such as false doctrine prior to i.) the rebuker consulting with the appropriate district president (i.e., the consultation mentioned in this bylaw) and/or ii.) the process for expulsion which follows upon this consultation?

Opinion: The bylaw in question deals only with the process of expulsion from membership. The provisions and processes of the bylaw (expulsion from membership) do not prohibit any Christian from following biblical and confessional principles in rebuking a Christian brother or sister so long as the

constitutional responsibilities for ecclesiastical supervision are not being assumed and so long as the member will also abide by the bylaw when and if it is determined that Bylaw section 2.14 applies.

Commission Opinion 04-2401 opined: “This bylaw [2.14.3] and related bylaws do not apply to a person who has not entered a formal complaint.” Opinion 05-2422 also addressed this matter:

The question posed assumes that the person who wishes to speak out has become an accuser under Bylaw section 2.14. Should a member of the Synod choose to initiate the Bylaw section 2.14 process, that person must abide by the provisions of that process, including the prohibition of publicity under Bylaw 2.14.7.7 (g). In an earlier opinion (01-2243), the Commission offered definition of such publicity:

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

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

For further help, see Opinions 04-2401 (October, 2004) and 05-2422 (April, 2005) in their entirety.

Question 5: Does this point of the Bylaw [2.14.3 (c)] forbid any member of the Synod from publicly rebuking another member for public sin such as false doctrine prior to i.) the rebuker consulting with the appropriate district president (i.e., the consultation mentioned in Bylaw 2.14.3) and/or ii.) the process for expulsion which follows upon this consultation?

Opinion: The answer to question four applies.

Question 6: May a member of the Synod (member *Alpha*) be prohibited from bringing to the appropriate district president a matter which could lead to another member’s (member *Beta*’s) expulsion from the Synod on the grounds that member *Alpha* has previously publicly rebuked member *Beta* for a public sin such as false doctrine?

Opinion: Bylaw section 2.14 and the related bylaws have no such prohibition.

Question 7: May a member of the Synod (member *Gamma*) be prohibited from publicly rebuking another member of the Synod (member *Delta*) for a public sin such as false doctrine on the grounds that member *Gamma* has not yet engaged in steps enumerated in Bylaw 2.14.3ff. such as a face-to-face rebuke and/or communication with the appropriate District President?

Opinion: Bylaw section 2.14 and the related bylaws have no such prohibition. The answer to question four applies.

Question 8: Do the words in the bylaw, “this provision of Matthew 18:15 shall be followed,” make the following of this provision incumbent upon members of the Synod by reason of the fact that the provision is in Matthew 18:15? If so, why? If not, why not?

Opinion: The *Standard Operating Procedures Manual* that serves as a comprehensive procedures manual for the provisions set forth in Bylaw section 2.14, states, “Matthew 18 and the Eighth Commandment undergird the bylaws that set forth this Bylaw 2.14 process for expulsion of membership from the Synod. While Matthew 18 provides the basis for church discipline in a local congregation, it also provides guidance and a pattern for all Christians and, along with the Eighth Commandment, is to be observed in this procedure as applicable. The reputations of the accused and accuser are to be protected.” And further it states, “The primary purpose of Bylaw section 2.14 and the procedure in this manual is not for the expulsion of a member from the Synod but for repentance and reconciliation, to win and restore the brother or sister or sister congregation (Matt. 18:15–20; Gal. 6:1–5; Cf. Bylaws 1.10.1–1.10.1.6)...”

Finally, the Commission encourages the questioner to review the May, 2006 report of the Commission on Theology and Church Relations (CTCR) entitled, *Public Rebuke of Public Sin*, which is applicable and helpful.

180. South Wisconsin District Bylaws (06-2485)

With a letter dated December 13, 2006, the secretary of the South Wisconsin District forwarded to the Commission for review the district’s Articles of Incorporation and Bylaws as amended by the district’s June 2006 convention. The documents as amended were reviewed and the following revisions are suggested.

- For the sake of consistency in official documents throughout the Synod, the grammar and capitalization principles followed by the Synod in its *Handbook*, e.g., using capitalization only for proper nouns, avoidance of the non-word “synodical,” etc., are encouraged to be followed.
- Bylaw 1.01 (p. 3): This bylaw is unclear and does not immediately correspond well to Synod Constitution Art. XII 1; Bylaws 1.3.2, 4.1.1, 4.1.1.3 (a); *et al.*—unless what is intended is the development of a proposal to a national convention of the Synod or the Board of Directors of the Synod encouraging their submission of the proposal to the President of the Synod as referenced in Bylaw 4.1.1.3 (b), since those are the only two entities eligible to submit such a proposal.
- Bylaw 1.02 (p. 3): Delegate representation at meetings of the districts of the Synod, as determined by Article V of the Synod’s Constitution, is to be one pastor and one lay delegate for each congregation or parish, not “one lay delegate from each congregation.” Where parishes of two or more congregations are concerned, those congregations share the lay delegate vote.
- Bylaw 1.09 a (p. 4): Synod Bylaw 3.1.6.1 provides a wider range of opportunity for reports to a convention than only those “authorized by the president or board of directors.” Synod Bylaw 4.2.1 (a) requires that “conventions of the districts shall be governed by the bylaws adopted by the Synod for its conventions, insofar as these may be applicable.”
- Bylaw 1.10 (p. 4): This bylaw makes the president of the district the editor of the convention workbook, whereas the editor of the national convention workbook is named in Synod Bylaw 3.1.8 as being the Secretary of the Synod, subject to the approval of the President. Since district Bylaw 1.38 on p. 8 provides that the duties of the district secretary are to be those of the Synod Secretary, the district secretary should be the editor of the district convention workbook.
- Bylaw 1.12 (p. 4): Since provision is made for daily minutes distribution, an additional provision for the approval and distribution of the final day’s minutes would be helpful.

- Bylaw 1.20 (p. 5): Definitions for “conference,” “council,” and “department” (paragraphs c, d, e) define terms that are never again used in the Bylaws. In addition, “conference” is already used and defined differently in the Bylaws of the Synod (Bylaw 4.8.2).
- Bylaw 1.22 (p. 5): Since there is only one board, this bylaw would better be titled “Board of Directors” rather than “Boards.”
- Bylaws 1.26 a (p. 6), 1.37 (p. 8), and 1.67 e (p. 13): An inconsistency exists regarding how a vacancy in a vice-presidency is to be filled.
- Bylaw 1.41 (p. 8): The listing of the First Vice-President, a non-voting member of the Board of Directors, in the list of voting members is unusual and confusing. Better if the reference to him under current paragraph a were made the first sentence of current paragraph b.
- Bylaw 1.43 c (p. 9): The provision for reinstatement of an officer or director is inconsistent with the Bylaws of the Synod.
- Bylaw 1.50 (p. 10): While quite detailed, the description of the functions of the district Committee on Constitutional Matters does not include those functions required by Synod Bylaws 2.2.1 (b) and 2.4.1 (b). Instead, a questionable function is described under paragraph d in that the Synod’s Bylaws do not grant district constitution committees the authority to review existing documents of member congregations unless a congregation is proposing change.
- Bylaw 2.01 (p. 14): Paragraph a of this bylaw suggests that the national Synod is the entity that changes district bylaws, also offering a Synod *Handbook* reference that is unclear. Paragraph b offers Synod bylaw references that need to be updated to “Synod Bylaws 4.1.1.2 and 3.9.2.2.4.” Item 1 under paragraph b should be clarified to indicate that it is the Constitution “of the Synod” that is being referenced.

181. Synod Governance (06-2486)

With a letter dated January 3, 2007, a parish pastor of the Synod submitted a series of questions regarding the non-profit laws of the State of Missouri and the Constitution of the United States. Commission member Dan Lorenz was asked to submit this inquiry to the legal counsel of the Synod for input.

182. Meeting with Representatives of the 7-02A Committee

According to prior arrangement, the Friday evening session of the meeting included a joint conference with the chairman and representatives of the 7-02A Committee.

183. Adjournment

According to prior arrangement, the Saturday morning session of the commission included a joint conference with the Synod’s Board of Directors. Following the joint conference, allotted time having elapsed, the chairman closed the meeting with words of benediction.

Raymond L. Hartwig, Secretary