

LCMS

Commission on Constitutional Matters Minutes – 2010

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MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS Telephone Conference Meeting January 18, 2010

132. Call to Order

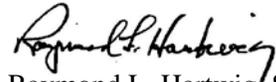
Chairman Albert Marcis called the conference call meeting to order with all commission members participating. Philip Esala opened the meeting with prayer, also remembering the plight of the people of Haiti.

133. Agenda and Discussion

After Chairman Marcis reviewed the subjects to be covered during the meeting, the commission discussed its role in the floor committee process, continued its review of the Blue Ribbon Task Force on Synod Structure and Governance Report (Bylaw 3.9.2.2.1), and discussed a series of questions submitted by the vice-chairman of convention Floor Committee 8 in preparation for discussion during the January 23 meeting with floor committee and task force leaders in Boston.

134. Adjournment

The allotted 90 minutes of meeting time having elapsed, the meeting was closed with words of benediction by Philip Esala.


Raymond L. Hartwig, Secretary

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS Hyatt Harborside Hotel, Boston MA January 23-24, 2010

(Prior to the commission meeting and at the request of the chairman and vice-chairman of Floor Committee 8 for the 2010 Synod convention, the Commission on Constitutional Matters met with floor committee and Blue Ribbon Task Force on Synod Structure and Governance representatives to discuss matters pertaining to the task force report.)

135. Call to Order, Devotion, and Agenda

Chairman Albert Marcis called the meeting of the Commission on Constitutional Matters to order. Philip Esala provided an opening devotion based on the John 2 account of the wedding at Cana, applying the biblical narrative to the post-earthquake situation in Haiti and his personal experiences in that country.

Chairman Marcis led the commission in a review of all pending business before the commission, first addressing long-standing agenda items as follows:

- 08-2517 (Review of Handbook for Doctrinal Reviewers) – With no handbook to review, the Secretary was asked to make the President of the Synod aware that the commission was removing this item from its agenda.
- 08-2523 (Review of CHI Policy Manual) – The Secretary was asked to determine whether the commission is in possession of all policy documents.
- 08-2521 (Board of Directors Policy Manual) – The Secretary was asked to send a letter to the Board of Directors thanking them for their consideration of the commission's suggestions and their modification of their policy manual accordingly.
- 08-2526 (Review of Concordia Plan Services Policies) – This will be on the agenda of the commission's next meeting in February.
- 08-2530 (LCEF Policy Manual and Corporate Documents Review) – The Secretary was asked to ascertain that all LCEF documents are now available for review during the commission's February meeting.
- 08-2536 (Oklahoma District Bylaws Review) – The Secretary was asked to send a reminder to the district president that the district has unfinished business with its Bylaws, checking on progress being made.
- 09-2544 (Article VI and Heterodox Congregations) – The Secretary was asked to obtain a progress report from the Commission on Theology and Church Relations.
- 09-2549 (North Dakota District Bylaw Amendments) – Materials having been received, this item will appear on the agenda for the February meeting.
- 09-2552 (Concordia University, Ann Arbor Bylaws) – The Secretary will provide a progress report to the commission. The Secretary will also provide the Bylaw proposal for removal of board members that is being drafted by the Commission on Structure for discussion at the February meeting.
- 09-2559 (Review of CPH Articles, Bylaws, and Policies) – With all materials now in hand, the commission will review these documents at its February meeting.
- 09-2562 (Florida-Georgia District Bylaw Amendments) – The commission will review these documents at its February meeting.
- 09-2563 (Council of Presidents Policy Manual) – Chairman Marcis will assign portions of the manual to commission members prior to the February meeting.

The commission also reviewed a draft of the minutes of its January 18, 2010 telephone conference call meeting and offered suggestions for changes to be made prior to general distribution.

135.1 Interpretation of “Another Capacity” in Bylaw 3.8.3.8.7 (b) (09-2565)

In a letter dated September 14, 2009, a member of the Synod who was terminated from her position pursuant to Bylaw 3.8.3.8.7 (reduction in force) asked the commission whether Bylaw 3.8.3.8.7 (b) requires that such a terminated faculty member must be offered another position for which that terminated faculty member has credentials and qualifications, whether that position is part-time, full-time, or considered to be an adjunct position.

Question: Does Bylaw 3.8.3.8.7 (b) refer to any position, or only a full-time position? Does it apply to part-time or adjunct positions?”

Opinion: Bylaw 3.8.3.8.7 (b) states: “The opportunity to serve the college or university in another capacity for which the terminated faculty member has credentials and qualifications shall be offered the terminated faculty member if such a vacancy exists at the time of termination or becomes available within two academic years.”

In response to a question regarding reductions in force (RIF) on February 18, 1998 (Ag. 2093), the commission stated: “Neither Bylaw 6.44 c, or 6.44 e [2007 Bylaw 3.8.3.8.7 (b) and (d)] are violated if full-time faculty positions are terminated under a RIF policy and then replaced with part-time adjunct faculty in the same academic field.” In that same opinion, the commission also stated: “Bylaws 6.44 c and 6.44 e [2007 Bylaw 3.8.3.8.7 (b) and (d)] are violated if, under the circumstances described, former full-time faculty members are not offered the opportunity to teach as many of the new part-time adjunct courses available for which former faculty members are qualified and eligible to teach.”

The answer to the question therefore is “yes” under the circumstances presented. Whether the position is considered part-time, full-time, or adjunct, the position must be offered to the terminated faculty member so long as the terminated faculty member is qualified for the position and the position has become available within two years from the time of that faculty member’s termination.

136. Application of Bylaw 3.8.8.2.2 to Recognized Service Organizations (09-2568)

In a letter dated September 26, 2009, a pastor of the Synod requested an opinion of the commission regarding the application of the Board for Mission Services Bylaw 3.8.8.2.2 to Recognized Service Organizations of the Synod. He asked the commission to take into consideration Bylaws 1.2.1 (a) and (d) and 6.2.1.

Question: Does Bylaw 3.8.8.2.2 in the Board for Mission Services section of the “Program and Service Boards” section of the 2007 *Handbook* of The Lutheran Church—Missouri Synod apply to Recognized Service Organizations of the Synod?

Opinion: Bylaw 3.8.8.2.2 states that the Board for Mission Services “shall serve as the only sending agency through which workers and funds are sent to the foreign mission areas across the Synod.” This includes calling, appointing, assigning, withdrawing, and releasing “missionaries and other workers for the ministries and areas within its direct responsibility” (paragraph [a]). This also includes “serv[ing] as the sending agency even though programs are supported by districts or other agencies” (paragraph [b]).

The question posed is whether a Recognized Service Organization (RSO) is one of the “other agencies” mentioned in the bylaw.

In 1993 the commission responded to a similar question, *i.e.*, whether then-Bylaw 3.809 c (2007 Bylaw 3.8.8.2.2) applied to “organizations independent of the Synod, such as the Association of Loyal Lutheran[s], Northwest, inc.,” an organization consisting of persons who were members of Missouri Synod congregations. The commission responded as follows:

It is obvious that the Synod cannot control the actions of individual members of member congregations of the Synod. The Synod can, however, expect congregations and pastors to act in conformity with the bylaw.

With this in mind, the commission concludes that while it is not specifically contrary to the Bylaws for individuals or organizations made up of individual members of member congregations of the Synod (other than rostered church workers who are members of the Synod) to send missionaries, it is entirely contrary to the spirit of the bylaw. However, the bylaw does apply to organizations or entities, whether or not related to or sponsored by Synod, whose membership includes members of the Synod, *i.e.*, rostered church workers of LCMS congregations. This conclusion is indicated by Bylaw 2.39 a–c [2007 Bylaw sections 1.7 and 1.8].

It should finally be noted that there is nothing which prevents actions being taken by groups such as those referred to above if those actions are coordinated through the Board for Mission Services which then, in effect, becomes the sending agency.

(The commission notes that while the bylaw in question has been re-numbered, the language of the bylaw has not changed and the above-quoted opinion has not been overruled by a convention of the Synod.)

Synod Bylaw 2.11.1 (k) gives a Recognized Service Organization the right to call rostered workers and gives such workers the right to remain on the roster of the Synod. At the same time, Bylaw 3.8.8.2.2 requires that the Board for Mission Services “serve as the only sending agency through which workers and funds are sent to the foreign mission areas of the Synod.” To honor these bylaw rights and responsibilities, the Board for Mission Services, acting under Bylaw 6.2.1 (c) which allows it to adopt additional policy, requires a commitment from the governing boards of its RSOs that before an RSO calls rostered workers into foreign service, that RSO must consult with and receive approval from the Executive Director of LCMS World Mission. This is entirely in keeping with the Bylaws of the Synod and the spirit of former CCM Opinion Ag. 1969. The answer to the current question, therefore, is “yes,” Bylaw 3.8.8.2.2 does apply to Recognized Service Organizations of the Synod.

137. Review and Summary of Former CCM Opinions Re Ecclesiastical Supervision (09-2570)

The President of the Synod in a November 5, 2009 letter made the following request of the commission:

As you are aware, CCM Opinion 02-2309 has been questioned by numerous individuals and in resolutions adopted at a number of district conventions. While many are also aware of additional CCM opinions that clarify Opinion 02-2309, others are either unaware of or see as insufficient or unsatisfactory these clarifying opinions....

Accordingly, I respectfully request that the commission prepare a succinct yet comprehensive review and summary of the topics addressed by CCM Opinions 02-2309 and any subsequent opinions, reports, resolutions, or other documents that pertain thereto.

Although Opinion 02-2309 was issued over seven years ago and has been reviewed by two subsequent conventions of the Synod, the fact that it continues to attract attention and misunderstanding warrants this further review and summary. As noted, this subject has also been periodically addressed in prior Opinions 02-2296, 02-2320, and 03-2338 A–C.

Opinion: In forming the Synod, the founding members established both the conditions and requirements for joining and the circumstances under which membership could be removed against a member’s will. For the protection of its members and in order to avoid unintended, unwarranted, or arbitrary attempts to terminate membership, the Synod also established as part of its initial formation a system of ecclesiastical supervision, and imposed upon the supervisors it selected the responsibility on behalf of the Synod itself to keep members apprised of those actions which might place membership in jeopardy.¹

Article XIII 1² of the Synod’s Constitution protects members from unwitting loss of membership by requiring prior futile admonition before expulsion. The term “admonition” by definition suggests that one is advised of the appropriateness or inappropriateness of a course of action. Admonition cannot by definition be futile until given and subsequently ignored or rejected. The Synod’s theological positions are determined by the collective understanding of the Synod as expressed in convention, not by the individual understanding of ecclesiastical supervisors. Opinion 02-2309 is not an expression of our theology, but rather of our ecclesiastical polity. As a Synod it grants that a member can look to the ecclesiastical supervisors provided by the Synod for such counsel, advice, and admonition as may be necessary to avoid taking actions which might result in one’s unintended expulsion.

The Synod and all its members have acknowledged the joint confession contained in Article II of the Constitution³ and the conditions of membership as set forth in Article VI.⁴ A necessary corollary to the

¹ Constitution, Article III Objectives

The Synod, under Scripture and the Lutheran Confessions, shall—...

8. Provide evangelical supervision, counsel, and care for pastors, teachers, and other professional church workers of the Synod in the performance of their official duties;
9. Provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights;....

² Constitution, Article XIII Expulsion from the Synod

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

³ Constitution, Article II Confession

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

1. The Scriptures of the Old and the New Testament as the written Word of God and the only rule and norm of faith and of practice;
2. All the Symbolical Books of the Evangelical Lutheran Church as a true and unadulterated statement and exposition of the Word of God, to wit: the three Ecumenical Creeds (the Apostles' Creed, the Nicene Creed, the Athanasian Creed), the Unaltered Augsburg Confession, the Apology of the Augsburg Confession, the Smalcald Articles, the Large Catechism of Luther, the Small Catechism of Luther, and the Formula of Concord.

discussion above recognizes the duties, responsibilities, and implications for ecclesiastical supervisors. Neither the Synod itself nor its chosen ecclesiastical supervisors may grant anyone the right to violate the Scriptures with impunity. The Synod through its ecclesiastical supervisors provides counsel and advice—not immunity, approval, or permission, much less license. To the extent that an ecclesiastical supervisor’s counsel and advice is contrary to Holy Scripture, such supervisor must himself be held accountable. And to the extent that the Synod becomes aware that one of its chosen and delegated ecclesiastical supervisors has given erroneous advice which has been relied upon by a member, the Synod must provide that member with corrected advice and give the member the opportunity to take corrective steps before expelling such member.

138. Dispute Resolution Process Appeal Panel Decision (09-2571)

In a letter dated November 16, 2009, a member of the Synod recently involved in the dispute resolution process submitted a series of questions to the commission regarding the final decision rendered by the panel. Commission member Philip Esala and Secretary Raymond Hartwig, both of whom served as administrators during said dispute resolution process, excused themselves from participation in the discussion of the questions or the decision reached by the commission. The minutes for this portion of the meeting were kept by commission member Daniel Lorenz.

Question 1: If the *Standard Operating Procedures Manual (SOPM)* rule of directly contacting the Appeals Panel were violated by one side of the dispute during the Appeal Panel deliberations, do the Bylaws permit that Appeal Panel be declared invalid? And do the Bylaws permit that another Appeal Panel be formed? And by whom?

⁴ Constitution, Article VI Conditions of Membership

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.

Opinion: There is no provision in the Bylaws providing that an Appeal Panel be declared invalid or a new panel formed should a party directly communicate with members of an Appeal Panel without the knowledge of the other party in the dispute in violation of Bylaw 1.10.18.1 (c), which states that “[n]o party and/or parties to the dispute nor anyone on the party’s behalf shall either directly or indirectly communicate with the reconciler, the hearing facilitator, or any member of the Dispute Resolution Panel, the Appeal Panel, or the Review Panel without the full knowledge of the other party to the dispute.” Any member of the Appeal Panel so contacted should promptly notify all other members of the panel, the other parties involved, and the administrator to report the contact. Paragraph 4.2 of the *Standard Operating Procedures Manual* states, in part, that “[i]f the request for reconsideration is not granted, the decision of the Dispute Resolution Panel shall be regarded as final and binding upon the parties to the dispute.”

Question 2: If the *SOPM* rules of directly contacting the Appeal Panel were violated by one side of the dispute, and a final decision is rendered by the Appeal Panel, do the Bylaws permit that the decision of that Appeal Panel be declared invalid? And by whom?

Opinion: There is no provision in the Bylaws providing that an Appeal Panel decision is to be declared invalid because Bylaw 1.10.18.1(c) was violated by one of the parties to the dispute.

Question 3: If the *SOPM* rules of directly contacting the Appeal Panel were violated by one side of the dispute, and the content of the message is construed as disparaging to the process or towards the other party (in other words, taints the overall process), do the Bylaws allow that Appeal Panel to be declared invalid, and do they allow that the decision of that Appeal Panel be declared invalid? And by whom?

Opinion: There is no provision in the Bylaws that provides that an Appeal Panel is to be declared invalid if a party communicates with panel members in violation of Bylaw 1.10.18.1(c). Should an individual member of the panel determine that the inappropriate contact has tainted the individual’s ability to fairly carry out his responsibilities, the member may recuse himself, and the matter determined by the balance of the panel as described in *SOPM* section IV paragraph Q⁵ Should an Appeal Panel find that improper communication has tainted its ability to fairly carry out its responsibility, the panel itself may disband and request the formation of a new panel.

Question 4: If the *SOPM* rules of directly submitting additional new evidence to the Appeal Panel and not through the administrator were violated by one side of the dispute during the Appeal Panel deliberations, do the Bylaws permit that Appeal Panel be declared invalid? And do the Bylaws permit that another panel be formed? And by whom?

Opinion: There is no provision in the Bylaws that provides that an Appeal Panel is to be declared invalid or that permits a new panel to be formed should a party violate a provision of the *SOPM*. The panel itself retains responsibility for maintaining the integrity of the process and addressing any violation or attempted violation of the *SOPM*.

Question 5: If the *SOPM* rules of directly submitting additional new evidence to the Appeal Panel and not through the administrator were violated by one side of the dispute during the Appeal Panel

⁵ Q. Inability of Panel Members to Serve: If a panel member withdraws or is unable to perform required duties after a panel has begun its work, the remaining panel members shall continue without filling the vacancy.

deliberations, and a final decision is rendered by the Appeal Panel, do the Bylaws permit that the decision of that Appeal Panel be declared invalid? And by whom?

Opinion: No. See above. Please also note Bylaw 1.10.18.1(i):

Any member participating in this bylaw procedure who intentionally and materially violates any of the requirements in this Bylaw...is subject to the disciplinary measures as set forth in the appropriate Bylaw Sections 2.14 - 2.17. Any member of the Synod who has personal factual knowledge of the violation shall inform the appropriate district president as the ecclesiastical supervisor.”

139. Responsibilities of Appeal Panels in Dispute Resolution Process (09-2572)

With a letter dated November 19, 2009, a pastor of the Synod asked a series of questions regarding the responsibilities of an Appeal Panel in the dispute resolution process in light of Bylaw 1.10.18.1 (a) and a statement in the *Standard Operating Procedures Manual* accompanying the process which states, “The panel shall make its decision on the basis of the minutes and written decision of the Dispute Resolution Panel and any documentary evidence that was received and reviewed.”

Question 1: Does Bylaw 1.10.18.1 (a) (*Handbook*, p. 48) which allows not only a Dispute Resolution Panel and Review Panel for witnesses to testify and review records and documents related to a dispute, also allow for an Appeal Panel to have witnesses testify before it, and review records and documents related to a dispute?

Opinion: Bylaw 1.10.18.1 (a) provides that “any member of the Synod, officer of a congregation, or officer of any organization owned or controlled by the Synod shall, when called upon” by one of the three panels, including an Appeal Panel, must testify or produce records related to the dispute.

Question 2: Should the rules and procedures that are developed by a smaller group of officials in the *Standard Operating Procedures Manual (SOPM)* of the dispute resolution process, as granted in Bylaw 1.10.18.1 (j), override and/or conflict with any other bylaws as found elsewhere in the dispute resolution section or any other bylaws approved by the Synod?

Opinion: The *Standard Operating Procedures Manual*, “a comprehensive procedures manual for Bylaw section 1.10,” (Bylaw 1.10.18.1 [j]), does not override and should not conflict with any bylaws approved by the Synod.

Question 3: (a) Does not the rules and procedures of the *Standard Operating Procedures Manual* (of the dispute resolution process as granted in Bylaw 1.10.18.1 (j) in which section 4.1 states:
The panel shall make its decision on the basis of the minutes and written decision of the Dispute Resolution Panel and any documentary evidence that was received and reviewed.

greatly curtail the Appeal Panel Process in that it can only make its decision solely on the minutes and decision of the original Dispute Resolution Panel and only on any documentary evidence that was received and reviewed by the first panel, even though Bylaw 1.10.18.1 (a) may grant the Appeal Panel other sources of witnesses and/or records related to the dispute?

(b) Does not Bylaw 1.10.18.1 (a) allow an Appeal Panel not only to look at the written record of the Dispute Resolution Panel, but in spite of the *SOPM* rules/procedures, it may

also call its own witnesses to testify and review any records/documentary evidence that is related to the dispute in order to seek the truth, and thus render its final decision?
(c) Should not the procedures/rules as found in the *SOPM* section 4.1 (Nov 2008) be revised to conform to the stated intent of Bylaw 1.10.18.1 (a)?

Opinion: The questioner is correct that the *Standard Operating Procedures Manual* could more clearly reflect the provision of Bylaw 1.10.18.1 (a) that allows an Appeal Panel to obtain testimony directly from members of the Synod, officers of congregations, or officers of any organization owned and controlled by the Synod, such to be included in a proper understanding of the words of the bylaw, “any documentary evidence that was received and reviewed.” On the rare occasion (given the 30-day requirement) that an Appeal Panel is not able to arrive at its decision regarding the granting of a reconsideration of the earlier panel’s decision without additional testimony or records, Bylaw 1.10.18.1 (a) does grant that opportunity. This lack of clarity in the *Standard Operating Procedures Manual* will be taken into consideration when the manual is next reviewed by the commission (Bylaw 1.18.18.1 (j)).

140. Reconsideration of CCM Opinion 99-2157 (09-2373)

Omnibus Res. A of the 2007 convention referred Overture 8-44 “To Request CCM Reconsideration of Opinion 99-2157 re Art. VII” to the Commission on Constitutional Matters (2007 *Proceedings*, p. 169; 2007 *Convention Workbook*, p. 275). After discussion, the commission agreed to postpone further consideration until its next meeting.

141. Other Business

The commission discussed its presentation to the Board of Directors when it meets with the board on February 26, 2010, in St. Louis. The commission also finalized plans for the remainder of its meeting after the session with the Board of Directors, when it will meet until noon of February 28. Looking ahead, the commission finalized plans for its participation in floor committee meetings, May 21–24, 2010, and discussed its participation in the July Synod convention in Houston.

142. Adjournment

With all business on the agenda having been addressed, the meeting was closed with prayer and words of benediction.


Raymond L. Hartwig, Secretary

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS St. Louis Crowne Plaza Airport Hotel February 26–28, 2010

143. Call to Order and Opening Prayer

Chairman Albert Marcis called the meeting to order. The meeting was opened with prayer. Due to a schedule conflict, Secretary Raymond Hartwig was unable to be present for the first portion of the meeting. Daniel Lorenz served as secretary *pro tem* (agenda items 143–147).

144. Meeting with Board of Directors

Prior to its meeting with the Board of Directors relating to question 09-2564, the commission moved into executive session to prepare for the meeting.

After exiting executive session, the commission participated in a joint meeting with the Board of Directors, for which both entities went into executive session to discuss issues relative to question 09-2564.

145. Concordia Plan Services (CPS) Governance Guidelines and Policies

1. With respect to the expression of the Plan's purposes as expressed in its introductory section, the CCM suggests that CPS add references to or use the language from the first paragraph of Bylaws 3.7.1.1 and 3.7.1.2 in addition to the reference to Article III 10 of the Constitution of the Synod.
2. Regarding page 2, items 3–5, these sections need to be revised to reflect the current Bylaws of the Synod. In particular, #7 of Synod Bylaw 3.2.2.1 identifies the Board of Trustees—Concordia Plans also as the Board of Directors of Concordia Plans Services; Bylaw 3.2.4 provides that terms of office of all elected members of boards and commissions are six years and terms of office commence on September 1 following each regular meeting of the Synod in convention; Bylaw 3.2.4.2 provides terms limits of two six-year terms if elected and three three-year terms if appointed or elected; Bylaw 3.2.5 provides for filling elected board vacancies and Bylaw 3.2.5.1 provides for appointment of appointed board vacancies; Bylaw 3.7.1.3 provides that the board of directors of Concordia Plan Services and the board of trustees of Concordia Plans shall consist of 13 voting members and the Vice-President–Finance—Treasurer as a nonvoting member; and Bylaw 3.7.1.4 provides that amendment to plan responsibility is ultimately vested in the Synod's Board of Directors, the Concordia Plan Services board required to report any changes to the Synod's Board of Directors for approval.
3. Under the "Management Review and Responsibility" section, page 6, item 3, the emergency governance plan needs to be updated consistent with the current Board of Directors Policy Manual.
4. On page 7, "Qualifications for Lay Nominees," this policy section ought to reflect more clearly either that these policies are an express exercise of the authority of Concordia Plan Services to impose greater restrictions for those individuals they will recommend for appointment by the Board of Directors of the Synod than those required by Synod Bylaw 3.7.1.3.3, or it should be amended to reflect only those required qualifications imposed by the Synod's bylaw.

146. LCEF Governing Documents (08-2530)

The commission having finished its review of the LCEF Policy Manual, it will address the LCEF Articles of Incorporation and Bylaws when they are received. The secretary will provide copies of the documents to the members of the commission.

147. North Dakota District Bylaws (09-2549)

The commission examined proposed Res. 2-12 to the North Dakota District convention and noted that, instead of simply suggesting that the district president is responsible to no one, it should have noted that while district Bylaw 2.11 may state that he is not responsible to anyone for his actions relating to fiscal, legal, and business matters, he is responsible to the district and the convention under Synod Bylaw 4.4.1 and to the President of the Synod under Bylaw 4.4.2 (b).

With respect to the district Bylaws as they currently exist, the commission makes the following suggestions:

1. In Bylaw 1.02 a where reference is made to pastors, teachers, professors, and candidates, such reference should be to “ministers of religion—ordained” and “ministers of religion—commissioned.” This occurs in a number of locations throughout the Bylaws.
2. In Bylaw 2.02, circuit counselors need to be recognized as officers of the district, pursuant to Synod Bylaw 4.3.1.
3. Bylaw 2.39 a needs to reflect Article XII 9 d of the Synod’s Constitution. The district secretary may sign official papers in addition to the president but not in lieu thereof. District Bylaw 2.11 g should also be reviewed for consistency. The problem may be resolved by adding such language as “when required, sign the official papers”
4. Bylaw 2.59 should make reference to Synod Bylaw 5.2.2.1.
5. On page 13, the commission cautions against the use of the term “executive director” (of the board of directors) in view of the confusion that might arise, given the fact that Synod Bylaw 4.4.1 names the district president as “chief executive” of the district. An alternate descriptive title may be in order.
6. On page 18 there is another set of bylaws which ought to reflect the terms “ministers of religion—ordained” and “minister of religion—commissioned” in the title and throughout the Bylaws.
7. Bylaw 5.05 4 ought to reflect implementation of a district-wide strategy for assisting members of the LCMS, as opposed to members of congregations of the LCMS, to be clear regarding whom it is intending to assist.
8. The last line of Bylaw 7.03 ought to reflect district programs relating to ministerial growth and health, and not simply ministerial health.
9. Bylaw 10.02.3 1 ought to reflect duties to review not only revised constitutions but also new constitutions and should begin: “1. Review new and revised constitutions”
10. Bylaw 12.01 1 d ought to reflect that the Bylaws need to be submitted to the Commission on Constitutional Matters of the Synod (not the district) for review and approval (not clearance) prior to presentation to the convention (see Synod Bylaws 3.9.2.2.4 and 4.1.1.2 [b]).

148. Governing Documents of Concordia Publishing House (09-2559)

1. The Articles of Incorporation appear to be in order.
2. The commission notes the following changes to the Bylaws will be necessary:
 - Bylaw 1.03 (b) should properly use the Synod’s nomenclature of “Vice-President–Finance—Treasurer” rather than “Chief Financial Officer,” although this may be changed by the 2010 convention to “Chief Financial Officer.”
 - Bylaw 1.03 (e) allows for removal of the directors. This issue was addressed in connection with earlier reviews of other governing documents, such as Opinion 07-2509. Until addressed by the Synod in convention, these provisions should be deleted but reviewed again following the 2010

Synod convention, since the Commission on Structure is proposing the addition of a bylaw section to govern the removal of board members. If adopted, the new bylaw will need to be reflected in the governing documents of all agencies of the Synod.

- In Bylaw 1.03 (f) where “or otherwise” is used in connection with vacancies, this implies the potential for removal under Bylaw 1.03 (e). This section may also need to be addressed consistent with the previous comment.
 - Bylaw 1.25 (c) ought to use the terms “minister of religion—ordained” and “minister of religion—commissioned” instead of “pastors” and “teachers.”
3. The commission notes the following regarding the Policies:
- On page 4 of 14, second to last policy, it appears that the policy manual has been revised to reflect bullets instead of numbers, and there is no paragraph 7 to which reference is being made. The reference probably reflects the next bullet item. This section should be updated.
 - On page 8 of 14, reference is made in three places to “1998 *Handbook* of The Lutheran Church—Missouri Synod: 3.301 b” and should be updated to read “2007 *Handbook* of The Lutheran Church—Missouri Synod: Bylaw 3.6.3.”

149. Review of CHI Articles of Incorporation, Bylaws, and Policy Manual (08-2523)

Upon review of the Articles of Incorporation of Concordia Historical Institute, the commission offers the following recommendations:

- In Art. III A, add the words “and resolutions” in the first and second sentences after the first and third occurrences of the word “Bylaws,” as required by LCMS Bylaw 3.6.1.7 (b).
- Also in Art. III A, add the words “or the governing instruments” after the second occurrence of the word “Bylaws.”
- In Art. III B, to be fully consistent with Synod Bylaw 3.6.2, the sentence should read: “As the official Department of Archives and History of The Lutheran Church—Missouri Synod.”
- In Art. III B 1, the title of the Synod’s Treasurer is “Vice-President–Finance—Treasurer,” though this may be changed by the 2010 Synod convention to “Chief Financial Officer.”
- While Art. VI, which states that the Board of Governors “presently consists of eleven governors,” is contrary to Synod Bylaw 3.6.2.1.1 requiring CHI to have nine members, the earlier statement that the board must not be constituted in such numbers and manner that is “inconsistent with the Constitution and Bylaws of the Synod” satisfies this concern. CHI may, however, wish to change the wording of Art. VI to comply with the Synod’s bylaw expectations.
- Article VI should also include the provision required by Synod Bylaw 3.6.1.7 (a): “Each governing instrument shall include the provision that every member of the governing board shall be a member of a congregation that is a member of the Synod.”

Since it will be advantageous for CHI to make the recommended changes to its Articles of Incorporation, the commission offers these additional suggestions:

- The Institute will do well to note the grammatical suggestions provided on the commission’s “Frequently Noted Aberrations” sheet in order to provide greater uniformity of spelling and grammar in the official documents of all Synod agencies.
- References in CHI documents to “independent status,” while understandable, are misleading, given the fact that CHI is a synodwide corporate entity, subject to the Constitution, Bylaws, and resolutions of the Synod.
- The commission recommends that the Synod’s Bylaws regarding CHI (3.6.2ff.) and those offering “General Principles for Synodwide Corporate Entities” (3.6.1ff.) be mirrored in the Institute’s governing instruments. The commission notes that some of these general principles are not reflected in CHI’s articles (e.g., chief executive policies under 3.6.1.4).

- The commission strongly encourages CHI to develop those other documents that should accompany the Articles of Incorporation (Bylaw 1.5.3.5).

150. Review of Oklahoma District Bylaws (08-2536)

The secretary of the commission shared a letter from the secretary of the Oklahoma District in which the latter referenced a 2009 district convention action charging the 2009–2012 district board of directors “to continue to [review and] update the new Handbook so that those additions might be brought to the 2012 convention.” He added that “in order to accomplish this task, the board of directors meeting on March 6 will appoint a committee to address ‘the Handbook.’”

The commission acknowledged receipt of the letter and will anticipate a report from the Oklahoma District board of directors prior to the next district convention to allow opportunity for the commission to carry out its Bylaw 3.9.2.2.4 responsibilities.

151. Article VI and Heterodox Congregations (09-2544)

The secretary reported on a conversation with the executive director of the Commission on Theology and Church Relations, who reported that the CTCR has taken up the matter and will be moving forward with a response. As agreed, the commission will continue to await the input from the CTCR before providing its own response to the questions submitted.

152. Review of Concordia University Ann Arbor Bylaws (09-2552)

The secretary recalled that the remaining issue with the Concordia Ann Arbor Bylaws is the question of the removal of board members. He suggested reviewing the matter following the 2010 Synod convention, since the Commission on Structure is again proposing the addition of a bylaw section to govern the removal of board members. If adopted, the new bylaw will need to be reflected in the governing documents of all agencies of the Synod.

153. Florida-Georgia District Bylaw Changes (09-2562)

Due to lack of available time, this item will remain on the commission’s agenda until another meeting.

154. Review of Council of Presidents Policy Manual (09-2563)

Although portions of the manual had been assigned to members of the commission for review, this item will remain on the commission’s agenda until another meeting due to lack of available time.

155. Authority re Sale of Synod Assets (09-2564)

In an August 11, 2009 letter, a member of the Synod submitted a series of questions relating to information that was then beginning to be made public about a potential sale of the KFUE radio station or one of its licenses. The member identified some of the prior decisions of the CCM, including CCM Opinion 03-2357, which addressed issues relating specifically to KFUE and the involvement of the Board of Directors (BOD).

Following receipt of the questions, the CCM, pursuant to Bylaw 3.9.2.2 (b), notified both the chairman of the BOD and the chairman of the Board for Communication Services (BCS) of the questions submitted. A response and input was received from both the BOD and the chairman of the BCS. In addition, following the commission’s August 29–30 meeting, during which public announcements began to be made through

the Synod's news and information services about a potential sale, the CCM notified the Synod's legal counsel of the questions before the commission and received her input. Members of the BOD and the CCM were also able to meet and discuss the issues during recent overlapping meetings.

Question 1: Does the BOD have the authority to sell the KFUE station licenses?

Opinion: The simple answer to the question is "yes," the BOD does have the authority to sell the KFUE FM license. Article XI F 2 of the Synod's Constitution defines the general authority of the BOD as follows:

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

This authority is mirrored in Bylaws 1.4.4¹ and 3.3.5. While 1986 Res. 1-12 delegated responsibility and authority to the BCS (through its Standing Committee on Broadcast) to "manage and operate the business and affairs of broadcast facilities owned by the Synod," neither that nor any other resolution of the Synod has restricted the authority of the BOD to sell the license in question.

Question 2: Does the Board for Communication Services (BCS) have any input or authority in such a decision?

Opinion: The Board for Communication Services has input in such a decision, but not authority. The BCS has those responsibilities and that authority granted under Bylaw 3.8.5ff. and as described for each program board under Bylaw 1.2.1 (o), authority for "developing policies and programs for an operating function of the Synod and supervising their implementation." In Opinion 98-2094, the CCM previously recognized that the concept of parallel management structure of the Synod prevented the BOD from assuming the management responsibility of the "production facilities" of the Synod, which the Synod in convention placed under the supervision of the BCS, a position that was reasserted in Opinion 03-2358. The same analysis would apply to the management of the FM license in question. As the BOD performs its mandated review, coordination, and consultation functions under Bylaws 3.3.5.3² and 3.3.5.5 (a) (2)³,

¹ "The Board of Directors serves the Synod as its legal representative and as custodian of all property of the Synod, and upon it is incumbent the general management and supervision of the business affairs of the Synod, except to the extent that management authority and duties have been delegated by the Articles of Incorporation, Constitution, Bylaws, or resolutions of a convention of the Synod to other officers and agencies of the Synod or to separate corporate or trust entities. Each other board of directors, board of regents, and board of trustees also serves the Synod with respect to the property of the Synod, to the extent of its jurisdiction, as provided or authorized in these Bylaws. Upon each such board of the Synod is incumbent the general management and supervision of the business affairs of the Synod to the extent of its jurisdiction. Any issues relative to the applicability of the laws of the State of Missouri shall be resolved in accord with the provisions in the Constitution and Bylaws of the Synod." (Bylaw 1.4.4)

² "The Board of Directors shall provide for the review and coordination of the policies and directives of the Synod authorized by the Constitution, Bylaws, and resolutions of the Synod, evaluating plans and policies and communicating to the appropriate boards and commissions suggestions for improvement, and, in the case of program boards and commissions, require changes for compliance with Board of Directors' policies within the sphere of its responsibility." (Bylaw 3.3.5.3)

it will of necessity consider the input of the BCS board and others on the ability of that agency to fulfill its mandated functions without an asset currently being managed and operated by that agency.

Question 3: Should a decision to sell an “instrument of delivery” used by the BCS to carry out a “designated function” be a decision of a convention of the Synod, since it was the Synod in convention that approved the following directive:

3.8.5.2 The Board for Communication Services shall provide resources to the various boards, commissions, congregations, and other agencies of the Synod ... (a) It shall provide creative ideas and information along with program, production facilities, and other assistance for print and electronic media. (Emphasis added by questioner)

While the decision may be submitted to the Synod in convention, unless the Synod reserves to itself or otherwise restricts the right to sell an asset, the Board of Directors as legal representative of the Synod has that power. Whether the FM license of KFUE is an asset which is sold or continues to be managed by the BCS, the BCS will continue to have the responsibility to fulfill the duties assigned by the quoted bylaw. The continued ability of an agency to fulfill its convention-mandated responsibilities without an asset whose management has been entrusted to that agency by the Synod in convention is a necessary issue which the BOD, in its fiduciary responsibility to honor the will of the Synod, must consider in exercising its discretion to sell any asset, including the license in question.

(The secretary was instructed by the commission to send early copies of Opinion 09-2564 to the President of the Synod, the chairmen of the Board of Directors and the Board for Communication Services, the member of the Synod who submitted the questions, and legal counsel of the Synod.)

156. Application of Bylaw 3.8.8.2.2 to Recognized Service Organizations (09-2568)

Given questions that have surfaced regarding this opinion, the secretary of the commission was asked to follow up on the matter, requesting a formal response from the Synod’s legal counsel.

157. Reconsideration of Response to Second Question of Former Opinion 99-2157 (09-2573)

Omnibus Res. A of the 2007 convention referred Overture 8-44 “To Request CCM Reconsideration of Opinion 99-2157 re Art. VII” to the Commission on Constitutional Matters (cf. 2007 *Proceedings*, p. 169; 2007 *Convention Workbook*, p. 275). Opinion 99-2157, “Questions re Rights of Individuals and Congregations” (Sept. 14, 1999), responded to seven questions submitted by a Dispute Resolution Panel.

This reconsideration of Opinion 99-2157 addresses the commission’s response to the second question: “What does the phrase ‘inexpedient as far as the condition of a congregation is concerned’ mean, and how is it applied to matters relating to the right of self-government of LCMS congregations?” The commission responded to that question with the following two paragraphs:

What then is meant by a “congregation’s right of self-government”? Since 1854, conventions of the Synod have refused to adopt resolutions which were thought to interfere with the “self-government” of the local parish, explaining that the Synod “is an advisory body.” Historically, four areas of self-government have been recognized: (a) the calling

³ “(a) [The Board of Directors] shall have the right to request review of any action or policy of a program board, commission, or council which primarily relates to business, property, and/or legal matters and, after consultation with the agency involved and when deemed necessary, require modification or revocation thereof, except opinions of the Commission on Constitutional Matters.” (Bylaw 3.3.5.5 [a] [2])

of pastors, teachers, etc., from a list of those accredited by the Synod itself; (b) the owning and maintaining of congregational property without granting any rights of it to the Synod; (c) church discipline; and (d) the administration of a congregation's programming and financial affairs.

Thus, in answer to the question to the commission, the phrase "inexpedient as far as the condition of the congregation is concerned" does not refer to the Constitution and Bylaws of the Synod and is restricted to resolutions adopted by a convention of the Synod which are non-doctrinal in nature. [For the complete text of the commission's response, see *Appendix I.*]

The fourth "whereas" paragraph of Ov. 8-44 states the reason for the reconsideration request: "*Whereas, Opinion 99-2157 of the CCM, namely, 'In answer to the question to the commission, the phrase "inexpedient as far as the condition of a congregation is concerned" does not refer to the Constitution and Bylaws of the Synod and is restricted to resolutions adopted by a convention of the Synod which are non-doctrinal in nature' exceeds the intent of the Constitution as it limits the second of the dual consequences mentioned above to what is not doctrinal.*" (Emphasis added) [Note: The "second of the dual consequences" referred to is the second sentence of Article VII, the first sentence of Article VII being the first of the "dual consequences."]

The phrase in question is taken from Article VII of the Constitution of the Synod, which reads:

Article VII Relation of the Synod to Its Members

1. In its relation to its members the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the individual congregation's right of self-government it is but an advisory body. Accordingly, no resolution of the Synod imposing anything upon the individual congregation is of binding force if it is not in accordance with the Word of God or if it appears to be inexpedient as far as the condition of a congregation is concerned.

Focus on Article VII

At times it is said or implied that Article VII maintains that the Synod is not an ecclesiastical government, or that it does not exercise legislative powers, or that it is only an advisory body. However, such statements do not reflect what Article VII says. It states that the Synod is not an ecclesiastical government exercising legislative or coercive powers "in its relation to its members," and that the Synod is but an advisory body "with respect to the individual congregation's right of self-government." (Emphasis added)

Not every action taken by the Synod deals with its relation to its members or with matters that a congregation decides in the course of governing itself. Many actions of the Synod pertain to the direction, management, and position of the Synod as an association of congregations, such as those resolutions directed toward its districts, officers, boards, commissions, staffs, conventions, employees, other church bodies or church organizations, or the general public. When the Synod takes such actions, it is not acting merely as an advisory body, but it is acting properly as an ecclesiastical government exercising legislative and, at times, coercive powers.

However, as its title implies, the focus of Article VII, including the phrase addressed in this opinion, is on the Synod's relation to its members, especially its congregational members. As such, Article VII is intended to assure its members that the Synod is not an organization that forces its collective will upon its congregations and ministers, but rather that it employs the power of the Word of God as it advises,

encourages, and assists them to do what they have voluntarily promised to do when they became members of the Synod by signing its Constitution. Note that the word “accordingly” at the beginning of the second sentence of Article VII provides a strong link between the above emphases and the “inexpedient” concept stated in the second sentence of Article VII.

Congregational Self-Government

With respect to “the right of self-government of LCMS congregations,” the Synod understands that congregations are divinely instituted and possess all spiritual authority (cf. 1851 convention resolution that adopted *Church and Ministry*, reaffirmed by 2001 Res. 7-17A). Such self-governing congregations are the basic unit of the Synod (Bylaw 1.3.1). While there is a common understanding that a congregation exercises its self-government in calling pastors and other church workers, in owning and maintaining property, and in carrying out church discipline and its own ministry programs and financial affairs, Article VII and Bylaw 1.7.2 do not restrict the areas of self-government. While CCM Opinion 99-2157 listed four historic areas of self-government, the commission wishes to clarify that this list is not exhaustive. A report of the Survey Commission in the 1962 convention’s *Reports and Memorials* listed six areas of self-government (p. 232). And in the 1990 CCM opinion Ag. 1905, the commission included this area: “Consequently, the congregation has a right to organize itself as it wishes to in carrying out its mission.” No article of the Constitution, bylaw, or resolution of the Synod limits the areas of a congregation’s self-government.

It should also be noted that it is an act of congregational self-governance when a congregation elects to join the Synod. In exercising its self-government, a congregation which voluntarily joins the Synod and subscribes to its Constitution thereby agrees to be bound by all the provisions of the Synod’s Constitution as long as it retains its membership in the Synod. The congregation thereby limits or subordinates the subsequent exercise of its intrinsic right of self-government, if necessary, in all matters explicitly addressed by the Synod’s Constitution.

Since the self-governing congregations of the Synod recognize the authority of the state as God’s servant in His temporal kingdom, they will also accept and obey the laws of the state unless they are contrary to scriptural principles, conscience, or the constitutions of the congregation and the Synod. In so doing, congregations do not surrender their right of self-governance to the state (cf. thesis 34 of the *Brief Statement* adopted by the 1932 convention).

Meaning of “Inexpedient”

In answer to the question of the meaning of “inexpedient as far as the condition of the congregation is concerned,” it is important to understand the meaning of the word “inexpedient” as used in this sentence of Article VII.

In Opinion Ag. 1833 (Feb. 5, 1988), the commission noted “first, that the term ‘inexpedient’ is no longer used in the 1986 *Handbook* but has been replaced with the word ‘applicability,’ a term which is more properly the translation of the word *uneigentlich*, the word which occurs in the German language in which the Constitution was originally written.” (Emphasis added)

Thus, reflecting the 1986 Bylaws, 2007 Bylaw 1.7.2 reads,

- 1.7.2 The Synod expects every member congregation of the Synod to respect its resolutions and to consider them of binding force if they are in accordance with the Word of God and if they appear applicable as far as the condition of the congregation is concerned. The Synod, being an advisory body, recognizes the right of a congregation to be the

judge of the applicability of the resolution to its local condition. However, in exercising such judgment, a congregation must not act arbitrarily, but in accordance with the principles of Christian love and charity. (Emphasis added)

While the word “inexpedient” had not been revised in Constitution Art. VII, it is recognized that the Bylaws, such as Bylaw 1.7.2 above, while subordinate to the Constitution, elucidate, clarify, and “flesh out the basic principles” (CCM Opinion Ag. 1826, Nov. 6–7, 1987), and explain the meaning of the Constitution.

To understand properly the meaning and use of “inexpedient” constitutionally and historically in the Synod, it is important to realize that the German word *ungeeignet* in the 1854 Constitution was properly translated “unsuited” into the English (cf. *Moving Frontiers*, p. 151). An editorial committee in 1923, not the convention of the Synod, changed the word to “inexpedient.” The original word *ungeeignet* meant “unsuited, not suited for, does not fit.” Therefore it should be noted that the use of the word “inexpedient” in our contemporary culture appears to have a different connotation such as “not advantageous, not profitable, inconvenient.”

It is the congregation itself, not the Synod, that may decide that a given resolution is not suited for the congregation’s condition. The language of this article in the 1854 Constitution made this very clear when it stated: “Should a congregation find a synodical resolution not in conformity with the Word of God or unsuited for its circumstances, it has the right to disregard, that is, reject it” (*Moving Frontiers*, p. 152). Likewise, the 1920 English text of Article VII states that no congregation shall be bound by any resolution of the Synod “that to such congregation appears unsuited to its condition” (*The Lutheran Witness*, XXXVI 20). Therefore, the congregation and not the Synod may assess the congregation’s condition and judge the applicability of any resolution of the Synod. The congregation, not the Synod, determines whether or not a resolution is unsuited. “The Synod, being an advisory body, recognizes the right of a congregation to be the judge of the applicability of the resolution to its local condition” (Bylaw 1.7.2, emphasis added).

Following Dissent Procedures and Honoring and Upholding the Resolutions of the Synod

A resolution of the Synod lacks binding force when a congregation determines that the resolution “is not in accordance with the Word of God or if it appears to be inexpedient [unsuited] as far as the condition of a congregation is concerned” (Article VII). If, in exercising its self-government, the congregation has determined that a resolution of the Synod is not in accordance with God’s Word, the congregation, in joining the Synod, has also retained the right of brotherly dissent and in exercising that dissent (to the extent that it wishes to do so) has bound itself to the provisions set forth in the Bylaws (Bylaw section 1.8). If, in exercising its self-government, the congregation has determined that a resolution of the Synod is not “applicable” as far as the condition of the congregation is concerned, the congregation, in joining the Synod, has also agreed to honor and uphold the collective will of the Synod as expressed in its Constitution, Bylaws, and convention resolutions, and pledged its active involvement and support of the Synod’s efforts to carry out its mission and purpose (cf. *Appendix II*).

“Non-Doctrinal” Resolutions

CCM Opinion 99-2157 states that the “inexpedient” phrase of Article VII is “restricted to resolutions adopted by a convention of the Synod which are non-doctrinal in nature.” Many of the concerns submitted to the 2001, 2004, and 2007 conventions of the Synod regarding Opinion 99-2157 have focused on this statement, including the overture to the 2007 convention which has led to this reconsideration of the response to the second question in that opinion.

The Synod has long held that doctrine is determined by and drawn only from God's Word, and that it is not established either by a decree or by a majority vote of the self-governing congregation or an association of such congregations. Article VIII of the Synod's Constitution makes this very clear when it states: "All matters of doctrine and conscience shall be decided only by the Word of God." It is also the Synod's conviction that "doctrine may not be accepted or rejected upon the basis of considerations of expediency" (1971 Res. 2-21).⁴ The current CCM recognizes that the phrase in question in Opinion 99-2157 seeks to express this understanding.

The terms "doctrinal" and "non-doctrinal" have caused uncertainty or confusion in certain contexts, including their use to identify certain resolutions. Conventions have struggled to find a consensus definition of what is a doctrine (cf. 1964 CTCR report, *What Is a Doctrine?* with its reference to 1944, 1953, and 1962 convention resolutions; also the May 2004 study document, "CONGREGATIONS AND SYNOD—Background Materials on the Advisory Nature of the LCMS"). For example, some resolutions simply restate biblical and confessional teaching, while others apply that teaching to certain circumstances or situations. Are both types "doctrinal," or is the latter "non-doctrinal"? Is a resolution on practical or programmatic matters that simply cites one or more Bible passages in the "whereas" paragraphs to be considered a "doctrinal" resolution on that account, or is it "non-doctrinal," or is it both? Are resolutions dealing with social or ethical issues or expressing moral judgments to be considered "doctrinal" on that account, even if they contain no biblical or confessional references? Such questions and many others like them can easily lead to disagreement and even discord within the Synod. Therefore, because of terminological ambiguities, because Article II simply says "no resolution of the Synod," and because Bylaw 1.7.2 simply says "its resolutions" and "the resolution," the commission withdraws this formulation (non-doctrinal) and replaces it with the language found in this revised opinion.

Conclusion

In response to the question under consideration, the commission also states that the Article VII phrase "inexpedient as far as the condition of a congregation is concerned"—

⁴ The quote from 1971 Res. 2-21 in its immediate context:

The Synod, in stating the *circumstances* under which a member is not obligated to adhere to the general rule that "the Synod expects every member congregation to respect its resolutions and to consider them of binding force" (Bylaw 1.09 b [2007 Bylaw 1.7.2]), grants exceptions only with respect to such resolutions as may be accepted or rejected as a matter of *expediency* depending upon a congregation's *condition* and *locality*, as well as such resolutions that affect a congregation in the area of *self-government* (Constitution, Article VII). That the Synod does not intend the exceptions to apply to doctrinal resolutions is evident from the fact that doctrine does not properly belong to the area of self-government, and from the fact that doctrine may not be accepted or rejected upon the basis of considerations of expediency.

The provision that allows a member to reject a doctrinal resolution of the Synod is that such a resolution is "not in accordance with the Word of God" (Article VII of the Constitution). The Synod, therefore, holds that every member, by virtue of his agreement when he *voluntarily* joined the Synod and *freely* placed himself under the provisions of the Synod's Constitution and Bylaws, is bound by the Word of God expressed in the Synod's resolutions until it can be demonstrated that a resolution is *in fact* "not in accordance with the Word of God." Otherwise the Synod holds that its resolutions are to be considered "of binding force if they are in accordance with the Word of God" (Bylaw 1.09 b [2007 Bylaw 1.7.2]), and the Synod permits no member to teach or practice in violation of a resolution simply on the grounds that he does not agree with it or that it is in conflict with his private persuasion.

- is applicable only to resolutions that are adopted by the Synod, not to its Constitution (and, by implication, its Bylaws), which all members have accepted as a condition of membership. Because the second sentence of Article VII says, “no resolution of the Synod” (cf. also Bylaw 1.7.2), no limitation should be placed on the type or category of resolution that a congregation may wish to consider under this provision. However, because all congregations of the Synod have accepted Article II of the Constitution and thereby have pledged their acceptance of Holy Scripture and the Lutheran Confessions, the Article VII phrase in question may not be applied by congregations to resolutions of the Synod that consist primarily of citations from Holy Scripture or the Lutheran Confessions or simply restate the clear teaching of Holy Scripture and the Lutheran Confessions (cf. also Bylaw 1.6.2 quoted in *Appendix II*). Similarly, since all congregations of the Synod, in becoming members of the Synod, have subscribed to the Constitution of the Synod, the Article VII phrase in question may not be applied by a member congregation to resolutions of the Synod that are primarily explicit reaffirmations of other constitutional positions or provisions;
- deals only with resolutions of the Synod “imposing anything upon the individual congregation” (Article VII). The many resolutions of the Synod that deal with the management and direction of the Synod and its component parts, as distinguished from resolutions that are addressed to its member congregations (see above), are not included in this provision. Moreover, taking the language of this phrase quite literally, it must be said that very few resolutions of the Synod intend to “impose” anything upon its member congregations, inasmuch as the Synod does not exercise “legislative or coercive powers” (Article VII) in relation to its members and clearly recognizes the congregation’s right of self-government; and
- is limited to a congregation’s judgment that a resolution is unsuited or inapplicable to the “condition of the congregation” (Bylaw 1.7.2). The Synod has not limited in any way what a congregation might consider to be such a condition (whether it be a lack of resources, tension within the congregation, or some other important factor).

If a congregation determines that a resolution of the Synod is unsuited or inapplicable as far as the condition of the congregation is concerned, the congregation has also committed itself to “not act arbitrarily, but in accordance with the principles of Christian love and charity” (Bylaw 1.7.2), as well as to respect the collective will of the Synod as expressed in its resolutions (cf. Bylaws 1.7.2 and 1.8.2).

The commission also notes that Article VII states that no resolution of the Synod imposing anything upon the individual congregation is of binding force “if it is not in accordance with the Word of God.” Should a congregation reach this conclusion about any resolution of the Synod, it should also realize that, by becoming a member of the Synod, it has bound itself (to the extent the congregation wishes to carry out the right of brotherly dissent) to express and deal with its dissent according to the provisions of the Bylaws of the Synod.

Appendix I – Response of Opinion 99-2157 to Question 2

Question 2: What does the phrase “inexpedient as far as the condition of the congregation is concerned” mean, and how is it applied in matters relating to the right of self-government of LCMS congregations?

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

In its relation to its members the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the individual congregation’s right of self-government it is but an advisory body. Accordingly, no resolution of the Synod imposing anything upon the individual congregation is of binding

force if it is not in accordance with the Word of God or if it appears to be inexpedient as far as the condition of the congregation is concerned.

It should be noted that the second sentence of Article VII states, "...no resolution of the Synod..." (Emphasis added) It does not speak of the Constitution or Bylaws of the Synod. "The right of a congregation to exercise the right of expediency (Bylaw 1.09b [2007 *Handbook* 1.7.2]) applies only to resolutions of the Synod and not to the Constitution and Bylaws" (1969 Res. 5-23).

Bylaw 1.05, d [2007 *Handbook* 1.3.4] elaborates on the principle set forth in Article VII:

Congregations together establish the requirements of membership in the Synod (Art. VI). In joining the Synod, congregations and other members obligate themselves to fulfill such requirements. Members agree to uphold the confessional position of the Synod (Art. II) and to assist in carrying out the objectives of the Synod (Art. III), which are the objectives of the members themselves. Thus, while congregations of the Synod are self governing (Art. VII), they, and also individual members, commit themselves as members of the Synod to act in accordance with the synodical Constitution and Bylaws under which they have agreed to live and work together and which the congregations alone have the authority to adopt or amend through conventions.

Bylaw 1.09 [2007 *Handbook* 1.6.2], addressing the topic of doctrinal resolutions and statements, provides:

The Synod, in seeking to clarify its witness or to settle doctrinal controversy, so that all who seek to participate in the relationships that exist within and through the Synod may benefit and may act to benefit others, shall have the right to adopt doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions.

Regarding such doctrinal resolutions, Bylaw 1.09, b [2007 *Handbook* 1.6.2 (a)], states, "Such resolutions come into being in the same manner as any other resolutions of a synodical convention and are to be honored and upheld until such time as the Synod amends or repeals them." As to doctrinal statements, Bylaw 1.09 c 7 [2007 *Handbook* 1.6.2 (b)(7)] states, "They shall be honored and upheld ("to abide by, act, and teach in accordance with" [1971 Res. 2-21]) until such time as the Synod amends or repeals them."

This relation of the Synod to its members, where its resolutions are concerned, is further defined in Bylaw 2.39 a-c [2007 Bylaw sections 1.7 and 1.8]:

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

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

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

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

Thus, in answer to the question to the commission, the phrase “inexpedient as far as the condition of a congregation is concerned” does not refer to the Constitution and Bylaws of the Synod and is restricted to resolutions adopted by a convention of the Synod which are non-doctrinal in nature.” (Emphasis is added due to the concern expressed in 2007 Overture 8-44 requesting reconsideration.)

Appendix II – Selected Article and Bylaw Citations re Resolutions of the Synod

The following phrases from the Constitution and Bylaws of the Synod help to understand both the meaning and the application of Article VII in the life of the Synod:

- Article VIII C All matters of doctrine and of conscience shall be decided only by the Word of God. All other matters shall be decided by a majority vote. In case of a tie vote the President may cast the deciding vote.
- Bylaw 1.7.1 The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.
- Bylaw 1.7.2 The Synod expects every member congregation of the Synod to respect its resolutions and to consider them of binding force if they are in accordance with the Word of God and if they appear applicable as far as the condition of the congregation is concerned. The Synod, being an advisory body, recognizes the right of a congregation to be the judge of the applicability of the resolution to its local condition. However, in exercising such judgment, a congregation must not act arbitrarily, but in accordance with the principles of Christian love and charity.
- Bylaw 1.8.1 While retaining the right of brotherly dissent, members of the Synod are expected as part of the life together within the fellowship of the Synod to honor and uphold the resolutions of the Synod.
- Bylaw 1.8.2 Dissent from doctrinal resolutions and statements is to be expressed first within the fellowship of peers and then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or rescision. While the conscience of the dissenter shall be respected, the consciences of others, as well as the collective will of the Synod, shall also be respected.
- Bylaw 1.6.1 The confessional position of the Synod is set forth in Article II of its Constitution, to which all who wish to be and remain members of the Synod shall subscribe.
- Bylaw 1.6.2 The Synod, in seeking to clarify its witness or to settle doctrinal controversy, so that all who seek to participate in the relationships that exist within and through the Synod may benefit and may act to benefit others, shall have the right to adopt doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions. (Emphasis added)
- (a) Doctrinal resolutions may be adopted for the information, counsel, and guidance of the membership. They shall conform to the confessional position of the Synod as set forth in Article II of its Constitution and shall ordinarily cite the pertinent passages of the Scriptures, the Lutheran Confessions, and any previously adopted official doctrinal statements and resolutions of the Synod. Such resolutions come into being in the same manner as any other resolutions of a convention of the Synod and are to be honored and upheld until such time as the Synod amends or repeals them. (Emphasis added)
- (b) Doctrinal statements set forth in greater detail the position of the Synod especially in controverted matters. A proposed statement or a proposal for the development of such a statement shall be ...

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

Bylaw 1.3.4 Congregations together establish the requirements of membership in the Synod (Art. VI). In joining the Synod, congregations and other members obligate themselves to fulfill such requirements and to diligently and earnestly promote the purposes of the Synod by word and deed. Members agree to uphold the confessional position of the Synod (Art. II) and to assist in carrying out the objectives of the Synod (Art. III), which are objectives of the members themselves. Thus, while congregations of the Synod are self-governing (Art. VII), they, and also individual members, commit themselves as members of the Synod to act in accordance with the Constitution and Bylaws of the Synod under which they have agreed to live and work together and which the congregations alone have the authority to adopt or amend through conventions. (Emphasis added)

[Following preparation of the opinion, a motion was introduced and carried “to share the draft with the President of the Synod prior to its finalization, pursuant to Bylaw 3.9.2.2 (b).”]

158. Review of Bylaws and Handbook of Operations of Rocky Mountain District (09-2574)

Upon review of the Bylaws of the Rocky Mountain District, the commission makes the following recommendations:

- Art. I, 1.06, paragraph A: The final authority of the district shall be the “member congregations,” not the “membership” as currently stated.
- Art. I, 1.06, paragraph B would better read: “The Board of Directors is the body of the district responsible for managing the business and legal affairs of the district between conventions.”
- Art. II, the title to 2.02 “Officers” might more clearly read “Elected Officers” since 2.06 speaks of “Appointed Officers.”
- Art. II, 2.03 will need to be amended to agree with Synod Constitution Art. XII 9 (d) which gives this responsibility solely to the president of the district.
- Art. III, 3.01, paragraph A 3: The first sentence should note that the election of a member of the Synod’s Committee for Convention Nominations takes place every other convention at the direction of the Secretary of the Synod according to the Synod’s Bylaws.
- Art. IV, 4.02: The second-last paragraph should be changed to read “A multiple-congregation parish shall elect one lay delegate...”
- Art IV, 4.03, paragraph D: Synod Bylaw 4.2.1 (a) requires conventions of districts to be governed by the bylaws adopted by the Synod for its conventions. Bylaw 3.1.6 (a) makes it the responsibility of a committee consisting of the president, first vice-president, and secretary to determine how late overtures will be regarded.
- Art. V, 5.01, paragraph A: This entire section requires reconsideration in light of Synod Bylaw section 4.8, which limits “official conferences” to “all ordained and commissioned ministers on the respective rosters” meeting “in plenary sessions.”
- Art. VI, 6.01: This paragraph should include the provision that all amendments to the district’s Bylaws must be examined in advance by the Synod’s Commission on Constitutional Matters “to ascertain whether they are in harmony with the Constitution, Bylaws, and resolutions of the Synod.”

Upon review of the Handbook of the Rocky Mountain District, the commission recommends the following:

- The title to Article I should reflect that it includes the duties of officers of the district as well.
- Article II, 8.01, paragraphs A and D: Mention might also be made that duties include also those prescribed by the district.
- Art. II, 8.01, paragraph E 4: Wording will need to be changed to agree with Synod Constitution Art. XII 9 (d) which gives this responsibility solely to the president of the district.
- Art. II, 8.01, paragraph G 1: Technically incorrect, wording could be changed to advocate the president being “pastoral.”
- Art. II, 8.03, paragraph C: Attention should be given to reflect existing Synod bylaws governing the reception of new members (Bylaws 2.3.2 and 2.10.2 [d]).
- Art. VI, 21.01: Should read “reconcilers.”

159. Constitution Review Request from Kansas District (10-2575)

The secretary of the Kansas District in a letter received February 22, 2010, forwarded a resolution from the district board of directors asking the commission to examine and provide an opinion regarding the constitution of a congregation reviewed by the district’s constitution committee.

Response: This request falls outside the responsibilities of the Commission on Constitutional Matters as provided by Bylaws 3.9.2ff. While the commission has provided guidelines for constitutions and bylaws of congregations as a service to the Synod, it does not have the responsibility to examine and opine regarding individual congregations’ documents. Such responsibility clearly is given to district constitution committees (Bylaws 2.2.1 [b]; 2.4.1 [b–c]).

160. Women as Presidents of LCMS Colleges and Universities (10-2576)

In a letter dated February 22, 2010, the Synod’s Director of University Education submitted on behalf of the Concordia University System two questions for response from the commission. The questions were accompanied by extensive background information and a bylaw amendment proposal.

Question 1: Do the LCMS Bylaws prohibit women from serving as the president of an LCMS college or university, apart from Bylaw 3.8.3.7?

Opinion: Outside of Bylaw 3.8.3.7, there are no current bylaws that specifically prohibit women from serving as president of an LCMS college or university. However, care will need to be taken to locate and make changes to any other bylaws with pronouns referring to the office of college or university president that are not gender-neutral (as in Bylaw 3.8.3.7.1 [b]).

Question 2: Is the attached draft memorial to the 2010 LCMS convention consistent with the LCMS *Handbook*, apart from Bylaw 3.8.3.7?

Opinion: Any bylaw amendment(s) intended to allow women to serve as president of an LCMS college or university will need to address spiritual versus gender dimensions associated with the expectations and duties of this office and satisfy the concerns articulated in prior CCM opinions, as in Opinion 07-2489:

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.

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.

It is the opinion of the commission that the proposed draft does satisfy the concerns previously articulated by the commission, amending Bylaw 3.8.3.7 in a manner that is consistent with the *Handbook* of the Synod, so long as care is also taken, perhaps delegated to the Commission on Constitutional Matters as it prepares the 2010 edition of the *Handbook*, to locate and make changes to any other bylaws with pronouns referring to the office of college or university president that are not gender-neutral (as in Bylaw 3.8.3.7.1 [b]).

161. Questions re District Overtures to Synod Conventions (10-2577)

With a February 27, 2010 e-mailed letter, the President of the Synod submitted a series of questions related to overtures and memorials received for consideration by the 2010 convention. After reviewing pertinent constitutional and bylaw passages, he requested the following opinions.

Question 1: May a district of the Synod adopt a resolution rejecting a resolution of the Synod? What would be the effect of such a resolution?

Opinion: A district may not adopt a resolution rejecting a resolution of the Synod, and any attempt to do so should be considered null and void. This issue has been touched on in a number of prior CCM opinions. In Opinion 00-2212, the CCM addressed the question, “Since a district of the Synod is in reality ‘Synod in that place,’ may a district take official action to file an expression of dissent to a doctrine or practice of the Synod? Members of the Synod have the privilege of doing so, but a district is not a member of the Synod.” The commission responded as follows:

Bylaw 2.39 c [2007 Bylaw section 1.8] describes the procedure for dissent to doctrinal resolutions of the Synod by members of the Synod. Districts are not members of the Synod but are divisions of the Synod, “the geographical boundaries of which are determined by the Synod and altered by it according to circumstances” (Article XII 1). “The Synod establishes districts in order more effectively to achieve its [objectives] and carry on its activities” (Bylaw 4.01 [2007 Bylaw 4.1.1]). As such, districts “as component parts of the Synod are obligated to carry out the resolutions of the Synod” (Bylaw 1.05 f [2007 Bylaw 1.3.6]). An official action by a district, therefore, to file an expression of dissent to the Synod regarding a doctrine taught and practiced by the Synod is out of order and, therefore, null and void.

This issue was most recently and even more directly addressed in CCM Opinion 09-2556, which discussed the nature of districts and indicated, in part:

With respect to districts as agencies of the Synod, districts hold a special relationship to the Synod. As indicated in Bylaw 4.1.1, “The Synod is not merely an advisory body in relation to a district, but establishes districts in order more effectively to achieve its objectives and carry on its activities.” Bylaw 4.1.1.1 is even more explicit as it relates to districts: “A district is the Synod itself performing the functions of the Synod. Resolutions of the Synod are binding upon the districts.” Bylaw 1.3.6 makes clear a district’s responsibility over against resolutions of the Synod: “Districts and circuits as component parts of the Synod are obligated to carry out resolutions of the Synod and are structures for congregations to review decisions of the Synod, to motivate one another to action, and to shape and suggest new directions....

To the extent that a resolution of the Synod establishes an initiative directing action or participation by an agency of the Synod, whether a district or other agency, it is not the prerogative of the agency to determine whether it wants to participate. Rather, it is required as part of its covenant with the Synod to do so. The refusal of an agency of the Synod, including a district, to follow or accept the resolutions of the Synod is without authority and should be considered null and void.

The Bylaws of the Synod are also the primary bylaws of a district (Bylaw 4.1.1.2), and the district president under Bylaw 3.1.6.2 also has a duty to refuse consideration of an overture in violation of the Bylaws of the Synod:

3.1.6.2 (c) The President of the Synod shall determine if any overture contains information which is materially in error or contains any apparent misrepresentations of truth or of character. He shall not approve inclusion of any such overture in the *Convention Workbook* and shall refer any such overture to the district president who has ecclesiastical supervision over the entity submitting the overture for action. If any unpublished overture or resolution is found to be materially in error or contains a misrepresentation of truth or of character, it shall be withdrawn from convention consideration and referred by the President of the Synod to the appropriate district president for action.

The President of the Synod under Article XI B of the Constitution has the duty to see to it that district presidents refuse to allow attempts to engage in such improper actions and the duty to admonish a failure to do so.

Question 2: May a district of the Synod adopt a resolution redirecting its congregations not to abide by, honor, or uphold a resolution of the Synod? What would be the effect of such a resolution?

Opinion: For the same reasons, a district is prohibited from adopting a resolution directing or even suggesting that congregations should not abide by, honor, or uphold a resolution of the Synod, and any such resolution is null and void.

Question 3: May a district of the Synod adopt a resolution directing its president not to abide by, honor, or uphold a resolution of the Synod? What would be the effect of such a resolution?

Opinion: For the same reasons, a district is prohibited from considering, much less adopting, a resolution directing or even suggesting that a district president or anyone else should not abide by, honor, or uphold a resolution of the Synod, and any such resolution is null and void.

Question 4: Is there a distinction between an overture submitted by a district that seeks to revise or rescind a resolution of the Synod and an overture that rejects a resolution of the Synod? If so, what is the distinction?

Opinion: Yes, there is such a distinction. While a district may not reject a resolution of the Synod, it may always request that the Synod in convention reconsider and review a prior resolution. That right was reaffirmed by the first “resolved” of 2001 Res. 7-22A: “*Resolved*, That the Synod assembled in convention affirm the right of a district delegate convention to submit overtures, including recommendations to reconsider and review doctrinal resolutions of the Synod, and to make other requests to the Synod assembled in convention.”

Question 5: Would an overture submitted to a convention of the Synod in the form of a resolution adopted by a convention of a district that rejects a resolution previously adopted by a convention of the Synod be considered to be “materially in error (Bylaw 3.1.6.2 [c])? Would such an overture be considered to contain a “misrepresentation of truth”? Shall the President of the Synod include such a resolution in the *Convention Workbook*?

Opinion: As discussed above, such a resolution is null and void, and as such it is materially in error under the terms of Bylaw 3.1.6.2 (c) and should not be published. It would therefore be irrelevant whether any of the “whereas” or “resolved” paragraphs of the overture contained material representations of truth and therefore a separate reason to withdraw it from consideration by the convention. Such a district resolution must not be included in the *Convention Workbook* and should be “referred by the President of the Synod to the appropriate district president for action.”

Question 6: May a district of the Synod adopt a resolution that rejects an opinion of the Commission on Constitutional Matters and/or declares such opinion not of binding force on the congregations and pastors of its district? What would be the effect of such a resolution?

Opinion: While a district may challenge a decision of the CCM and submit an overture seeking to overrule a decision of the CCM, as provided by Bylaw 3.9.2.2 (c), a decision of the CCM is “binding on the question unless and until it is overruled by a convention of the Synod.” Such a resolution of a district, rejecting rather than seeking to have a convention of the Synod overrule a decision of the CCM, is improper and out of order and therefore null and void.

Question 7: Would such a [district] resolution [that rejects a CCM opinion], if submitted as an overture to the Synod in convention, be considered to be “materially in error” or a “misrepresentation of truth”? Shall the President of the Synod print such a resolution in the *Convention Workbook*?

Opinion: For the reasons discussed above, such a resolution would also be null and void and, as such, is materially in error under the terms of Bylaw 3.9.2.2 (c), should not be published in the *Convention Workbook*, and should be “referred by the President of the Synod to the appropriate district president for action” (Bylaw 3.1.6.2 [c]). It would therefore be irrelevant whether any of the “whereas” or “resolved” paragraphs of the overture would also be considered a material misrepresentation of truth and therefore a separate reason to withdraw the overture from consideration by the convention.

162. Other Business

A. Report to the Convention

After discussion of a draft provided by Chairman Marcis, it was agreed that the following would constitute the commission’s report to the 2010 convention:

Commission on Constitutional Matters

During the past triennium, the Commission on Constitutional Matters (CCM) has carried out the functions assigned to it by the Synod in Bylaws 3.9.2–3.9.2.2.4. Bylaw 3.9.2.2 states that the commission “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.” The CCM does not have a directive to interpret the Scriptures or the Synod’s Articles of Incorporation. Matters of theology are, as deemed necessary, referred to the Commission on Theology and Church Relations. Matters involving changes to the Constitution and Bylaws are referred to the Commission on Structure, also as deemed necessary. Still other matters may be directed to another commission or board.

The CCM consists of five voting members: three ordained ministers and two lawyers. The Secretary of the Synod serves as a non-voting member as well as the secretary of the commission. The five voting members serve six-year terms, renewable once. At present, the membership of the commission includes its chairman, Albert Marcis; Secretary Raymond Hartwig; clergy members Philip Esala and Wilbert Sohns; and attorneys Daniel Lorenz and Gordon Tresch.

The method of appointing the voting members of the commission is set forth in Bylaw 3.9.2.1.1. Briefly stated, the procedure is as follows: candidates are nominated by district boards of directors and submitted to the Council of Presidents through the Secretary of the Synod; the council selects five candidates to fill each vacant position; those names are forwarded to the President of the Synod by the Secretary; the President consults with the vice-presidents of the Synod and makes an appointment for each vacant position from the list of names; and the appointments become effective upon ratification by a majority vote of the Council of Presidents.

The Synod has stated since the inception of the CCM that 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” (Bylaw 3.9.2.2 [c]). Since a process for such an action was not previously set forth in the Bylaws, additional procedure was added to Bylaw 3.9.2.2 by the 2007 convention. Bylaw 3.9.2.2 (c) states: “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.” The floor committee is to view CCM opinions in the same manner in which the CCM renders those opinions, by carefully interpreting the Synod’s Constitution, Bylaws, and resolutions.

The commission has also followed the directive given in Bylaw 3.9.2.2 (b) which requires: “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.” This bylaw has proven to be helpful, but it has also required more time to issue opinions. The commission has submitted questions to officers, agencies, and legal counsel for information and has allowed time for responses before issuing its opinions.

The CCM continues to work as necessary on amending the *Standard Operating Procedures Manual (SOPM)* for Bylaw sections 1.10 and 2.14–2.17, as well as Bylaws 3.8.2.7.5ff. and

3.8.3.8.5ff. of the *Handbook*. As of the time of this report, the *SOPMs* for Bylaw sections 2.15 and 2.16 remain on the commission's agenda.

The CCM has spent much time over the past year reviewing the material and bylaw change recommendations of the Blue Ribbon Task Force on Synod Structure and Governance "to determine their agreement in content and language with the Constitution and Bylaws of the Synod" (Bylaw 3.9.2.2.1). The commission will also be represented at the meetings of all floor committees for the 2010 convention of the Synod that are considering constitutional and bylaw matters. Prior to the meetings of the floor committees in May, the commission will have examined all reports and overtures asking for amendments to the Constitution and Bylaws.

Following the 2007 convention, the CCM spent time carrying out Bylaw 3.9.2.2.3 which directs 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."

In addition to carrying out its responsibility to interpret the Synod's Constitution, Bylaws, and resolutions, the commission has spent time in carrying out the responsibilities set forth in Bylaws 3.9.2 and 3.9.2.2.4 that call on the CCM to "insure 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). The commission continues to review and approve proposed revisions to constitutions, bylaws, and other governing instruments of the districts and other agencies of the Synod. It has also, through its secretary, requested from the various agencies copies of their policy manuals and is presently moving forward in an attempt to evaluate all of them. Due to the time that was required to examine the proposed changes to the structure of the Synod, time will be needed following the 2010 convention to complete this task.

The CCM has been represented on the Commission on Structure for the past three years by its chairman Albert Marcis. Commission members Wilbert Sohns and Raymond Hartwig served as members of the Blue Ribbon Task Force on Synod Structure and Governance. Philip Esala has served on the Res. 8-06 Task Force mandated by the 2007 convention.

Each meeting of the Commission on Constitutional Matters begins with devotional time led by one of its members, asking the Lord to bless its efforts in serving our Synod. During the past triennium, the CCM met 16 times and addressed nearly 160 agenda items. Its opinions in response to requests received, as well as several former opinions of particular interest to the convention, are published in Appendix I of this *Convention Workbook*.

B. Thank You Letter

The commission asked the Secretary to write a letter to Chief Administrative Officer Ron Schultz and his administrative assistant Brenda Wilson for their efforts to create and make available to the commission electronic copies of many of the Synod's important documents from past years.

C. BRTFSSG Proposal #18

The commission spent several hours of the meeting reviewing bylaw change proposals as a result of its meeting with leaders and representatives of 2010 Floor Committee 8 and the Blue Ribbon Task Force on Synod Structure and Governance.

163. Adjournment

Meeting time having elapsed, the meeting was adjourned with prayer.

Daniel C. Lorenz, Secretary *pro tem*
Raymond L. Hartwig, Secretary

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS Telephone Conference Meeting May 17, 2010

164. Call to Order

Chairman Albert Marcis called the meeting to order and opened with prayer. All members of the commission participated in the conference call.

165. Questions Submitted by Review Panel (10-2579)

In a letter received via e-mail on May 5, 2010, the hearing facilitator of a dispute resolution Review Panel submitted on behalf of the panel (Bylaw 1.10.18 [h]) two questions for response by the commission.

Question 1: Is it mandated that an LCMS congregation go through the reconciliation process of the Synod before the removal of a servant from his divine call?

Opinion: The Constitution and Bylaws of the Synod do not require a congregation to go through the “reconciliation process” before the removal of a called worker (“servant”) from a divine call. This subject is not addressed in either the Constitution or the Bylaws. Bylaw 1.10.9 states in part: “The congregation’s right of self-government shall be recognized. However, when a decision of a congregation is at issue [*i.e.*, already made], a Dispute Resolution Panel may review the decision of the congregation according to the Holy Scriptures and shall either uphold the action of the congregation or advise the congregation to review and revise its decision.” The purpose of the dispute resolution process is not to give advice prior to the making of a decision but rather to assist in resolving or reviewing disputes involving decisions or actions of parties after decisions have been made and/or actions taken.

Question 2: Does the Synod’s Constitution, Bylaws, or procedures provide guidelines for the removal of a called worker while he/she is on medical disability?

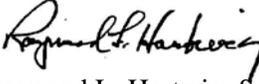
Opinion: The Synod’s Constitution, Bylaws, and *Standard Operating Procedures Manual* for Bylaw section 1.10 do not provide guidelines (requirements) for a process of removal of a called worker on medical disability.

166. Blue Ribbon Task Force on Synod Structure and Governance Proposals

The commission completed its evaluation and discussion of recommendations of the Blue Ribbon Task Force on Synod Structure and Governance and related proposals being considered by the convention floor committee assigned the task force report and related overtures.

167. Adjournment

After brief discussion of assignments for Floor Committee Weekend and other convention-related matters, the meeting was closed by Chairman Marcis with words of benediction. The commission next will meet in conjunction with Floor Committee Weekend, May 21–24, in St. Louis.


Raymond L. Hartwig, Secretary

COMMISSION ON CONSTITUTIONAL MATTERS
Teleconference Call Meeting
June 18, 2010

168. Call to Order, Opening Prayer

Chairman Albert Marcis called the meeting to order with all members of the commission participating in the telephone conference call. He called on Raymond Hartwig to open the meeting with prayer.

169. Circuit Representation at National Conventions (10-2580)

In a June 1, 2010 e-mailed letter to the chairman of the commission, a district president submitted two questions regarding circuit representation at national conventions:

Question 1: Bylaw 3.1.2.1 (a) states, “Each electoral circuit shall meet at the call of the counselor(s) to elect its delegates not later than nine months prior to the opening day of the convention.”

If a circuit meets and elects its delegates after the deadline (in this specific instance, about one week after the deadline) and immediately reports its election to the district secretary according to Bylaw 3.1.2.1 (i), and if the provisions in Bylaw 3.1.3.2 were met, and if the reporting deadline set by the Secretary of the Synod to report delegates to his office is met, are the elected delegates eligible to serve?

Opinion: Bylaw 3.1.2.1 contains a series of requirements for the valid election of delegates to a national convention of the Synod. Prior opinions of the CCM have affirmed that an election failing to follow any of the requirements, including the time restrictions, is ineffective in the election of a delegate. One of the requirements for election of a delegate is that such election take place not later than nine (9) months prior to the opening day of the convention. An attempted election after the time deadline is therefore ineffective to elect a delegate.

As noted in the question, Bylaw 3.1.2.1(i) directs the circuit counselor to report the results of the election to the secretary of the district in writing immediately after the election, and Bylaw 3.1.3.2 then requires the secretary of the district to certify those elected to the Secretary of the Synod before the announced registration deadline, which deadline is not specified in the Bylaws. As such, the fact that the certification went to the secretary of the Synod by the arbitrary deadline set by him does not affect the validity or invalidity of the circuit’s election. Rather, the validity of the election is dependent on compliance with the provisions of Bylaw 3.1.2.1.

Bylaw 3.1.2.1(j) allows appointment by a district president in some instances of defective elections. However, in each of those prior instances considered by the CCM where that right was recognized, an election was held in a timely manner, but was defective in some other respect. In those instances where an election was not even held before the deadline, no “vacancy” has been previously recognized, and in fact a number of prior opinions reflect an express recognition that forfeiture of representation would be the natural result of failure to hold the timely election.

The failure to call the circuit meeting necessary to elect delegates is the responsibility of the circuit counselor and may be beyond the control of an individual congregation. However, each congregation should also be aware of the time deadlines set forth in the Bylaws, and, in order to assure its representation through the circuit, it is incumbent upon a congregation to encourage and cooperate with its circuit counselor to act in a timely fashion. While the Synod has covenanted with each congregation to allow representation through the process as set forth in the Bylaws, it is expected that member congregations will fulfill their obligations in order to preserve that representation.

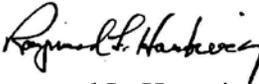
Question 2: Bylaw 3.1.2.1(j) states, “If neither the delegate nor the alternate (pastoral or lay) can serve, the vacancy shall be filled by the district president in consultation with the respective circuit counselor(s).”

If the delegates mentioned above are not able to serve due to the late election (the failure of the counselor to carry out the provision of Bylaw 3.1.2.1 [a] in a timely fashion), does the district president have the right to appoint (fill the vacancy) under Bylaw 3.1.2.1(j)? If not, what alternative does the circuit have for representation?

Opinion: As discussed above, the Bylaws provide no direct remedy, and representation may be forfeit. The Synod in convention operates under accepted parliamentary rules, and the Committee for Registration, Credentials, and Elections is charged to review the credentials of delegates. Should a circuit not have properly credentialed delegates, any remedy is under the rules of parliamentary procedure, not the Bylaws themselves. In 1971, for example, when the SELC joined the LCMS after the deadline for selecting convention delegates, the issue of representation of the newly joined congregations was addressed by special resolution at the start of the convention.

170. Adjournment

The commission having responded to the request for an opinion for which the meeting was called, the conference call was ended with words of benediction by Raymond Hartwig.


Raymond L. Hartwig, Secretary

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS Houston Convention July 10–17, 2010

168. Call to Order and Opening Prayer

Chairman Albert Marcis called the meeting to order in conjunction with the 64th Regular Convention of The Lutheran Church—Missouri Synod.

169. Floor Committee Meetings

The commission was represented regularly at floor committee meetings, thus fulfilling its responsibilities pursuant to Bylaw 3.9.2.2.2. Additionally, the commission was represented at floor committee open hearings as requested by the chairmen of the committees.

170. Referral to Commission on Structure

Based upon ongoing confusion and awkwardness of the election process and, particularly, the process of floor nominations, and after consultation with the convention parliamentarian, the commission recommends a comprehensive review of the Synod's election processes by the Commission on Handbook.

171. Nominations Issues

During the Wednesday afternoon session (Session 8), questions arose regarding the appropriateness of floor nominations of individuals to positions for which the Synod in convention does not now have information with which to confirm the nominees' qualifications to serve. The issue was further complicated by the fact that the qualifications at issue were matters of civil law and not the Synod's bylaws.

At the time the issue surfaced, upon assertion by the Lutheran Church Extension Fund (LCEF) that it is required by regulations of the 50 states to do formal criminal and other regulatory related background checks on all members of its board of directors, Bylaw 1.2.1 (d) was read by the a member of the commission, which states in part: "(4) 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."

Bylaw 3.12.3.6 (2007 *Handbook*, pp. 183f.) requires that the Committee for Convention Nominations publish a list of qualifications for each office. On page 45 of the committee's report, "Biographical Synopses and Statements of Nominees," the qualifications for the LCEF Board of Directors were provided. The background checks required for board positions were not included. Furthermore, the need for such checks was not communicated to the Secretary of the Synod or to the Committee for Convention Nominations. In fact, none of the names submitted by the committee for convention consideration underwent the required examination.

While it is the opinion of the Commission on Constitutional Matters that no candidacy for any office is proper unless the information provided to the convention confirms that the candidate in fact meets all

qualifications for office, it is now clear that all qualifications for LCEF Board of Directors members were not disclosed in advance to the convention, and even those placed on the slate for board positions were not fully vetted (they were not submitted to a background check). Accordingly, should any candidate ultimately elected by the convention fail to pass the required regulatory checks, that person will not be allowed to assume office, and the Synod's process for filling vacancies will necessarily be used to fill that position.

The commission has met with LCEF representatives, the Committee for Convention Nominations, and the two delegates who placed two names in nomination from the floor to discuss this situation. The nominations committee and the LCEF will need to update the description of the qualifications for this and any other such positions for use by future conventions, as required by Bylaw 3.12.3.8 (*Handbook*, p. 184).

Based on these circumstances as described, the Commission on Constitutional Matters suggests that the assembly revisit the two nominations from the floor in question from Session 8.

172. Question from Member of Board of Directors

A question received by the commission from a member of the Synod's Board of Directors was withdrawn by the member before publication of the commission's opinion.

173. Convention Issue re Bylaw Amendments

An issue was raised during the course of the convention as to the appropriateness of amendments from the floor. During Session 12, the commission provided the following statement to the convention:

Reverend Chairman, a member of the Commission on Constitutional Matters earlier read to the convention the provisions of Bylaw 7.1.1, found on page 201 of the *Handbook*, regarding the process for amending our Bylaws. After consultation between the President, the parliamentarian, and the commission, it is clear that a number of amendments to resolutions of the floor committees have been allowed without written submission to the convention, without prior review by the affected floor committee, and without prior review by the Commission on Constitutional Matters to determine that such amendment is not in conflict with the Constitution and Bylaws of the Synod. The most recent opinion of the commission regarding these requirements may be found in Opinion 07-2505, found on page 263 of the *Convention Workbook*.

The commission and the floor committees have been asked to review all such amendments previously made, and the commission has found them not to be in conflict with our Constitution and Bylaws. The convention is therefore now asked to acknowledge the earlier violations of this process, to reaffirm all existing work of the convention, and to recognize that any such issues will be dealt with under Res. 8-12A adopted earlier this morning.

The commission notes that by a vote of 973 to 60, the assembly agreed to the commission's conclusions, thereby acknowledging the earlier violations of the bylaw amendment process, reaffirming all existing work of the convention, and recognizing that any remaining issues will be dealt with under Res. 8-12A adopted during Session 11 of the convention.

174. Convention Arrangements and Participation

During the course of the convention, the President, the members of the commission, delegates, and others expressed concern and areas of concern or possible suggested improvements for future conventions be communicated to the appropriate person or entity for consideration before the next convention. Such areas of concern included:

- The election process as it relates to nominations from the floor.
- Allowing an individual stand for election to two positions which cannot be held at the same time without requiring the individual to make a choice between the positions in such timely fashion as will allow the convention to consider another person and thereby avoid a possible immediate vacancy.
- As reflected in the commission's minutes following the 2007 convention, the absence of a requirement in Bylaw 3.9.2.2.1 for the commission to examine floor amendments to the Constitution.
- A question whether Bylaw 3.9.2.2 (c) allows amendments from the floor.
- Bylaw 7.1.1 requirements for presentation of proposed bylaw amendments in writing for consideration by floor committees and examination by the commission prior to presentation to the convention resulted in confusion on several occasions during the 2007 convention. A motion was introduced and carried "to direct the Secretary to write a letter to the President suggesting that a rule be added to the Standing Rules for future conventions requiring that proposed bylaw amendments be printed in *Today's Business* prior to presentation to the convention." It was also suggested that a procedure be developed to inform the commission of all such proposals at each day's deadline for submission of business to *Today's Business*.
- Near the end of the convention and at the suggestion of the First Vice-President, the commission was seated at the front of the section set aside for district presidents and special advisory delegates so that the commission could more readily be found by delegates as needed and so that the commission could more readily be available to respond to inquiries from the floor.
- Whether motions, nominations, or proposed amendments by advisory delegates are matters of bylaw or solely matters of parliamentary interpretation.

175. Adjournment

The business of the commission was concluded when the final session of the convention was adjourned.

Respectfully submitted,
Daniel Lorenz, *Acting Secretary*

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS

Buffalo, New York

August 30–31, 2010

1. Call to Order/Opening Devotion

Chairman Albert Marcis called the meeting to order with all members present except Philip Esala, absent for medical reasons. Raymond Hartwig provided an opening devotion for this and the following day's sessions.

2. Review and Interpretation of Convention Actions and Bylaw Changes

In light of its responsibility in general for interpretation of the Synod's Constitution, Bylaws, and resolutions and at the request of the Secretary of the Synod, the commission spent the entire first and most of the second days' sessions reviewing a draft of the 2010 Constitution and Bylaws of the Synod in light of resolutions adopted by the Synod's 2010 convention. Numerous details in the draft were noted, discussed, and decided in working toward a next draft to be presented to the Commission on Handbook. The most consequential of the decisions made by the commission were the following:

- Res. 1-07A: The resolve paragraphs of Res. 1-07A rise to the level of a bylaw requirement. The commission advocates to the Commission on Handbook that it include the resolution's resolve language as new bylaw content and language in the 2010 *Handbook*.
- Res. 4-05 and 8-16A: According to the principle announced by the Secretary of the Synod during Session 11 of the convention (*i.e.*, when conflict exists between actions taken by the convention, "those resolutions whose primary and specific interest is the bylaw changes in question" will trump those resolutions whose rationale does not specifically support those bylaw changes"), the commission determined that where provisions of Res. 4-05 regarding the Synod's election process conflict with changes determined by Res. 8-16A, the latter (8-16A) trumps the former (4-05). The changes determined by Res. 8-16A are therefore to be incorporated into the 2010 *Handbook*.
- Res. 4-07, 8-13, and 8-17: According to the principle detailed in the second bullet above, changes advocated in Res. 4-07 regarding the nominations and elections processes that are not consistent with those determined by such resolutions as Res. 8-13 and 8-17 are trumped by the latter, the changes determined by such resolutions as Res. 8-13 and 8-17 therefore to be incorporated into the 2010 *Handbook*.
- Res. 5-06A and 8-08A: According to the principle detailed in the second bullet above, changes to the election process for college and university presidents determined by Res. 5-06A (adopted during Session 10) trump the changes advocated by Res. 8-08A due to the fact that the former are more specific and were adopted after the more general Res. 8-08A (adopted during Session 3).
- Res. 8-02A: The commission clarified that Res. 8-02A, which provided a new paragraph for Bylaw 5.1.1 and added a new Bylaw 5.1.2, also intended to delete the existing three paragraphs of Bylaw 5.1.1 (2007 *Handbook*, p. 194).
- Res. 8-10: The commission gave consideration to what is to be included in the "accordingly" of the resolve paragraph of Res. 8-10 in light of Res. 8-39 and other convention actions. Accordingly, reference to the Vice-President–Finance—Treasurer in Article X of the Constitution and all such reference in Article XI will be deleted if ratified by the congregations of the Synod, such change to take effect upon ratification. The Commission also determined that certain bylaw changes to the composition of the Board of Directors adopted by the convention will necessarily

be affected by whether related constitutional changes were adopted by the convention, the final version of affected bylaws to reflect any such changes.

- Bylaws 1.5.5.1 and Bylaw section 3.8: After extensive discussion of the relationship of the new mission boards to mission offices, mission executive directors, and the Chief Mission Officer (new Bylaw section 3.8), the commission concluded that while the Chief Mission Officer determines the need for any executive directors, it is the responsibility of the mission boards to fill such positions according to current Bylaw 1.5.5.1.
- Bylaw 2.5.3: The commission approved adding the wording “(or those holding positions comparable to commissioned ministers)” after “(3) commissioned ministers” in the new language adopted by the convention for current Bylaw 2.5.3.
- Bylaw sections 2.14, 2.15, and 2.17: The commission approved modifications to current Bylaw sections 2.14, 2.15, and 2.17 in addition to those specifically adopted by the convention, this to accomplish what was intended by the adoption of Res. 7-04A. The commission clarified that the hearing facilitator is not to be considered a member of the panels.
- New Bylaw 3.2.1.1: Noting the pertinent resolutions and the need to honor the content of current Bylaw section 3.2 as announced in its heading, the commission agreed to suggest to the Commission on Handbook that a new Bylaw 3.2.1.1 be created to list the three appointed officers included in Bylaw section 3.4.
- Bylaw 3.3.4.1: The commission determined that this new bylaw as adopted by the convention, listing the members of the Board of Directors, would need to be changed to include the Secretary of the Synod as a voting member of the board. It also clarified that the Chief Financial Officer continues to serve as a non-voting member of the board under its old composition, and that the requirement that “[n]o more than one member from each category and no more than two members total may be elected from any one district” is to continue to be understood not to include the President and Secretary, as is the current practice.
- Bylaw 3.6.5.2.1: Following the rubric of most logical replacement when determining how duties associated with former boards should be carried on within the new structure, the commission determined that the logical replacement for the chairman of the former Board for District and Congregational Services on the Board of Trustees of the LCMS Foundation (current Bylaw 3.6.5.2.1) will be the chairman of the Board for National Mission.
- Bylaw 3.12.2.3: The commission noted the need for the inclusion in new Bylaw 3.12.2.3 the following additional language proposed by Floor Committee 8 to resolve situations in which one or both delegates to the prior district convention are no longer available to participate in the balloting for President of the Synod that will precede future national conventions, that language to read: “If one or both delegates are unavailable, congregations shall be provided opportunity to select substitute voters. The Secretary shall, with the approval of the Board of Directors of the Synod, obtain the assistance necessary to accomplish the task.”

After concluding its review of the new handbook draft, the commission continued its discussion of ramifications of the convention’s actions for (1) transitioning to the new national office operations structure, (2) the role of the new mission boards, (3) the need for conceptual change from program to policy boards, (4) the role of the Council of Presidents in the new structure, (5) the function of the new mission boards, and (6) the expanded role of the districts, visitation circuits, circuit forums, and convocations. The commission gave consideration and offered input to a diagram intended to provide assistance to the new administration of the Synod for carrying out its responsibilities for transition to the new structure.

3. Approval of Minutes

After minor changes, the commission approved the minutes describing its activities and decisions during the 2010 LCMS Convention, July 10–17.

4. Review of Internal CCM Document

The commission reviewed its document, “CCM Procedures – May 2008,” in light of the beginning of the new triennium and its anticipated change to the membership of the commission. Discussion of the document will be continued at the next regular meeting.

5. Adjournment

The meeting was adjourned with words of prayer and benediction by Chairman Albert Marcis.


Raymond L. Hartwig, Secretary

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS Conference Call Special Meeting September 7, 2010

6. Call to Order and Prayer

Chairman Albert Marcis called the special conference call meeting to order and called on Wilbert Sohns for an opening prayer. All members of the commission participated in the meeting. Sherri Strand of Thompson Coburn LLP, LCMS legal counsel, also participated in a portion of the meeting.

7. Executive Session

After Chairman Marcis stated the purpose of the special meeting, a motion was introduced and carried to move into executive session to discuss with legal counsel a matter of concern. After legal counsel discontinued her participation in the meeting, a motion was introduced and carried to move out of executive session, after which the commission moved on to the business for which the special conference call meeting was called.

The commission discussed at length its response to the following request for an opinion, agreeing to the following final version of its opinion via an exchange of e-mail communications following the meeting.

8. Ecclesiastical Supervisory Responsibilities of a District President (10-2581)

In a September 4, 2010 e-mail, a district president submitted the following questions to the commission, also providing a brief background.

Question 1: The Synod's Bylaws state that I [as a district president] "shall supervise the doctrine, the life, and the official administration" of the ordained or commissioned ministers in my district (Bylaw 4.4.5). What ecclesiastical supervisory responsibilities do I hold regarding a congregation's doctrine and practice?

Opinion: Regarding the authority and responsibility of a district president, Article XII 7 of the Synod's Constitution directs:

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

Ecclesiastical supervision within The Lutheran Church—Missouri Synod is defined in Bylaw 1.2.1 (g) as follows:

(g) *Ecclesiastical Supervision:* The responsibility, primarily of the President of the Synod and district presidents, to supervise on behalf of the Synod the doctrine, life, and administration of its members, officers, and agencies. Such supervision, subject to the provisions of the Synod's Constitution, Bylaws, and resolutions, includes visitation, evangelical encouragement and support, care, protection, counsel, advice, admonition, and, when necessary, appropriate disciplinary measures to assure that the Constitution, Bylaws, and resolutions of the Synod are followed and implemented. Thus, ecclesiastical supervision is also the presenting, interpreting,

and applying of the collective will of the Synod's congregations. Ecclesiastical supervision does not include the responsibility to observe, monitor, control, or direct the day-to-day activities of individual members of the Synod, whether in the conduct of their work or in their private lives [cf. Bylaw 2.14.1 (a)]. Further, those constitutional articles and bylaws pertaining to ecclesiastical supervision shall determine the full definition of ecclesiastical supervision.

As the ecclesiastical supervisor of all members within his district—both individual and congregational members (see Constitution Art. V and Bylaw sections 2.3 and 2.6)—not only does a district president have supervision over the doctrine, life, and official administration of the ordained or commissioned ministers in his district under Bylaw 4.4.5, he has similar responsibilities with respect to member congregations. Bylaw 4.4.4 includes the following duties and authority:

The district president shall, in accordance with the Constitution of the Synod, in his ministry of ecclesiastical supervision visit the congregations of the district.

(a) He shall arrange in advance for an official visit to each congregation of his district.

....

(e) In his visits he shall include fraternal discussion in regard to worship and Communion attendance; participation by the congregation in missions and the work of the church at large; the congregation's evangelism and education endeavors; its cultivation of sound stewardship principles; all aspects of compensation for professional church workers; the need for maintenance of purity of doctrine; the strengthening of the bond of Christian fellowship; and the provision of resources, opportunities, and assistance so God's people can grow in their faith, hope, and love.

When a controversy exists within a congregation, Bylaw 4.4.6 grants further authority:

The district president, even without formal request therefor, may through the proper channels arrange for an official visit or investigation when a controversy arises in a congregation or between two or more congregations of the district or when there is evidence of a continuing unresolved problem in doctrine and practice.

(a) He shall ask for a full report on the case in order that he may have a clear understanding of the situation.

(b) If he authorizes anyone to represent him in such matters, his representative shall be accorded the same rights as the district president.

Further discussion of the authority and role of the district president in such internal disputes is discussed under question 2 below.

Beyond these specifically enumerated responsibilities of a district president, it should be noted that the Constitution of the Synod is also the constitution of each district. As set forth in Bylaw 4.1.1.2, "The Constitution of the Synod is also the constitution of each district. The Bylaws of the Synod shall be primarily the bylaws of the district." In that regard, the ecclesiastical supervision duties of the President of the Synod as regards the Synod as a whole are also the ecclesiastical supervision duties of a district president in his district. Article XI B of the Constitution includes these duties and authority:

B. Duties of the President

....

3. The President has and always shall have the power to advise, admonish, and reprove. He shall conscientiously use all means at his command to promote and maintain unity of doctrine and practice in all the districts of the Synod.

4. The President shall see to it that the resolutions of the Synod are carried out.

A district president has primary responsibility to supervise the doctrine and practice of the congregations in his district, to advise and admonish, and, if necessary, to take action to discipline up to and including expulsion of a member under his supervision, whether individual or a congregation.

Question 2: Article VII 1 of the Synod’s Constitution notes that “the Synod is not an ecclesiastical government exercising legislative or coercive powers” and with respect to the right of self-government of the individual congregation “it is but an advisory body.” Does the Synod, then, have an ecclesiastical authority with which to oversee the doctrine and practice of its member congregations? If so, what is that authority and how is it exercised?

Opinion: Yes, for such authority see the answer to question 1. Regarding the relationship of the congregation and the Synod, Article VII 1 provides:

1. In its relation to its members the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the individual congregation’s right of self-government it is but an advisory body. Accordingly, no resolution of the Synod imposing anything upon the individual congregation is of binding force if it is not in accordance with the Word of God or if it appears to be inexpedient as far as the condition of a congregation is concerned.

The following demonstrates how it is exercised with respect to the congregation’s right of self-government. While a congregation is not required to do so as a condition of membership, it may place other restrictions on its own internal governance and may relinquish further authority to the Synod voluntarily. While no congregation is required as a condition of membership to do so, a congregation even has the right and power in forming and governing itself to prohibit its own future voluntary withdrawal from the Synod. It would be contrary to the spirit of its polity for the Synod even to suggest that such a provision should be considered by congregations, but it would be similarly improper to reject such a provision.

While retaining the right to dissent and even to withdraw from membership in the Synod, each congregation until such withdrawal covenants and agrees to act in accordance with the Constitution, Bylaws, and resolutions of the Synod. As the Bylaws of the Synod state:

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 (Art. II) and to assist in carrying out the objectives of the Synod (Art. III¹), which are the objectives of the members themselves. Thus, while congregations of the Synod are self-governing (Art. VII), they, and also individual members, commit themselves as members of the Synod to act in accordance with the Constitution and Bylaws of the Synod under which they have agreed to live and work together and which the congregations alone have the authority to adopt or amend through conventions. (Bylaw 1.3.4)

The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregation and individual members of the Synod. (Bylaw 1.7.1)

The Synod expects every member congregation of the Synod to respect its resolutions and to consider them of binding force if they are in accordance with the Word of God and if they appear applicable as far as the condition of the congregation is concerned. The Synod, being an advisory body, recognizes the right of a congregation to be the judge of the applicability of the resolution to its local condition. However, in exercising

¹ Article III 9 of the Constitution identifies as one of the “Objectives” of the Synod to “[p]rovide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights.” Among the district president’s responsibilities in carrying out ecclesiastical supervision with congregations is to allow lay members of LCMS congregations to be assured that actions of their congregation will not jeopardize the congregation’s membership in the Synod and to give counsel and advice as necessary so as not to have that unintended result and unintended forfeiture of rights.

such judgment, a congregation must not act arbitrarily, but in accordance with the principles of Christian love and charity. (Bylaw 1.7.2)

The Synod and its congregations recognize that disagreements exist. The Synod (and thereby also its congregations) honors the right of all members to dissent, but requires as part of the mutual covenants of love that such dissent occur as provided in Bylaw section 1.8, “Dissent”:

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

Dissent from doctrinal resolutions and statements is to be expressed first within the fellowship of peers and then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or rescission. While the conscience of the dissenter shall be respected, the consciences of others, as well as the collective will of the Synod, shall also be respected. (Bylaw 1.8.2)

One fundamental aspect of these covenants, reaffirmed repeatedly in resolutions of the Synod, is the requirement that a congregation be served only by a pastor who is a ministry of religion – ordained of The Lutheran Church—Missouri Synod, as required by Bylaws 2.5.2 and 2.5.4:

Congregations that are members of the Synod shall call and be served only by ordained ministers who have been admitted to their respective ministries in accordance with the rules and regulations set forth in these Bylaws and have thereby become members of the Synod. (Bylaw 2.5.2)

Congregations that violate these requirements and persist in such violation shall, after due admonition, forfeit their membership in the Synod. (Bylaw 2.5.4)

The employment of a person to serve the congregation as pastor when the individual does not meet these qualifications is a clear violation of the covenants made by members of the Synod. The district president has a duty to admonish and reprove and, if not corrected, take appropriate disciplinary action up to and including expulsion.

Although a congregation is not required as a condition of membership in the Synod to do so, a congregation may in its own governing documents, deeds, agreements, or other writings establish for itself how its future disputes—including theological disputes—will be resolved. It may even restrict or prohibit the right of the congregation to disaffiliate from the LCMS. When a congregation has failed to provide an alternate mechanism, by joining and remaining a member of the Synod it has chosen to relinquish aspects of its rights of self-governance and to use the Synod’s dispute resolution processes to avoid the need to resort to the civil courts. As indicated in Opinion 09-2573 of this Commission on Constitutional Matters of the Synod:

It should also be noted that it is an act of congregational self-governance when a congregation elects to join the Synod. In exercising its self-government, a congregation which voluntarily joins the Synod and subscribes to its Constitution thereby agrees to be bound by all the provisions of the Synod’s Constitution as long as it retains its membership in the Synod. The congregation thereby limits or subordinates the subsequent exercise of its intrinsic right of self-government, if necessary, in all matters explicitly addressed by the Synod’s Constitution.

The specific issue of internal disputes in a congregation is an area expressly dealt with in the Synod’s covenants of walking together. The Synod and its individual congregations have recognized that the civil courts, using “neutral principles of law” analyses, are unable to resolve internal disputes on doctrinal grounds, and that neither a pure “congregational” nor pure “hierarchical” Synod structure exists. The Synod and its member congregations have attempted over the years to provide mechanisms to resolve

such internal disputes in a God-pleasing manner. Attached to this opinion is a copy of 1983 convention Resolution 5-10A and the commentary published by action of the convention regarding the resolution. The two provisions of that resolution most applicable here are as follows:

Resolved, That the Synod acknowledges that under the definition and application of the word “hierarchical” in civil law there are aspects in the relationships within the Synod between and among congregations (e.g., Article II, Confession; the calling of certified and endorsed pastors only; agreements to abide by adjudicatory procedures and their final determinations) which under civil law may imply, express, or evidence what the courts regard as hierarchical dimensions; and be it further

Resolved, That, believing that Scripture (1 Cor. 6) requires that we make every effort to avoid disputes or to resolve them internally when they do arise, of the two constitutional methods for resolving church disputes by the civil courts, the Synod favors the “neutral principles of law” method whenever it can be applied, and that when neutral principles cannot be applied to resolve a particular controversy, the Synod declares that it is able and willing to resolve disputes internally.

It is in this context that the authority of a district president to investigate internal congregational disputes under Bylaw 4.4.6 quoted above must be understood. A congregation may in advance provide its own chosen method of resolving internal disputes, thereby limiting the authority of the district president to that of advice, admonishment, and, if necessary, discipline. But where it has chosen not to do so, its agreement as a member of the Synod is that such dispute will be resolved using the Synod’s own processes, especially as to disputes in the areas of Article II Confession, the calling of certified and endorsed pastors only, and agreements to abide by adjudicatory procedures and their final determinations. The dispute resolution processes of the Synod include that described in Bylaw 4.4.6 and the involvement of the district president as provided in this bylaw. As part of his ecclesiastical supervision, he may study, counsel, and advise how a dispute should be settled consistent with the Constitution, Bylaws, and resolutions of the Synod, thereby settling the dispute or conflict by presenting, interpreting, and applying the collective will of the Synod’s congregations.

In becoming a member of the Synod, a congregation also has a right to disagree with the advice and even direction of its ecclesiastical supervisor and invoke the dispute resolution protections of Bylaw section 1.10. Insofar as the dispute resolution processes of the Synod are concerned, the highest adjudicatory body in the Synod as to specific questions of doctrine and practice (short of the Synod itself in convention) is the Commission on Theology and Church Relations. The highest adjudicatory body in the Synod as to specific questions of interpretation of the Synod’s Constitution, Bylaws, and resolutions (short of the Synod itself in convention) is the Commission on Constitutional Matters, whose opinions are binding on the question unless and until overturned by a convention of the Synod, as indicated by Bylaw 3.9.2.2 (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.” In challenging the actions of a district president through the dispute resolution process under Bylaw 1.10, participants are given the right to request and obtain from either or both of these bodies binding opinions on issues within their areas of responsibility. Because of the importance of the church’s witness to the world by the way it resolves its disputes, the results of this process are final and binding.

The Synod has not made the Commission on Constitutional Matters a trier of facts. Instead, the Synod has provided alternative methods for addressing factual investigations necessary for the resolution of disputes in the Synod or within congregations. Depending on the nature of the dispute, alternatives may include dispute resolution and fact-finding under Bylaw sections 1.10 and 2.14–2.17, Bylaws 3.8.2.7.5–3.8.2.7.9 and 3.8.3.8.5–3.8.3.8.9, as well as those circumstances where the President of the Synod or a district president, as in Bylaw 4.4.6, may have that responsibility and authority.

Question 3: Bylaw 4.4.6 states that in the exercise of ecclesiastical supervision of congregations I may arrange for an official visit or investigation when a controversy arises in a congregation. What authority or powers within my responsibility to investigate such matters (particularly when they involve doctrinal issues) do I have to adjudicate doctrinal issues or disputes within the congregation?

Opinion: Please refer to the answer to question 2 above. Of necessity, a district president must be able to determine who, on behalf of the congregation, properly speaks for the congregation in the congregation's relationship to the Synod. When internal disputes arise and the congregation has provided an internal method for dispute resolution, the authority of the president is limited to visitation, investigation, obtaining reports and information, and then advising, admonishing, and conveying the collective will of the Synod and, if necessary, bringing appropriate disciplinary measures to assure that the Constitution, Bylaws, and resolutions of the Synod are followed and implemented. When, however, the congregation has not provided in advance another mechanism for the resolution of such internal disputes, his authority is more extensive. He has the authority to investigate and review such information as may be necessary to settle the dispute, as covenanted in 1983 Res. 5-10A. He has the authority to study, counsel, and advise how the dispute should be settled consistent with the Constitution, Bylaws, and resolutions of the Synod, thereby settling the dispute by presenting, interpreting, and applying the collective will of the Synod's congregations. The authority of a district president does not include the right to excommunicate members of a congregation, to "call" a pastor to serve a congregation, or to generally control the internal governance of a congregation, and, as discussed above, his actions are subject to appeal by the congregation pursuant to the Bylaw section 1.10 processes.

7. Adjournment

With all business to come before the commission at this meeting having been addressed, the meeting was closed with words of benediction by Chairman Albert Marcis.


Raymond L. Hartwig, *Secretary*

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS St. Louis Airport Crowne Plaza November 6–7, 2010

8. Call to Order, Opening Devotions, and Prayers

Chairman Albert Marcis called the meeting to order with all members of the commission present. Wilbert Sohns provided opening devotions (Hebrews 12:1-4) for both days' sessions and prayers throughout the meeting.

9. Draft of 2010 Handbook

Secretary Raymond Hartwig walked the commission through the latest (seventh) draft version of the 2010 *Handbook*, noting the most recent changes advocated during the most recent meetings of the Commission on Constitution Matters and the Commission on Handbook. The commission agreed upon several final changes to the draft document, specifically:

- The return of the inclusion of former Bylaw 3.9.2.2.1 to the responsibilities of the Commission on Constitutional Matters, deleting the words “and language” from the 2007 version of the bylaw, thereby differentiating the work of the Commission on Constitutional Matters from that of the Commission on Handbook, the latter’s delineation of duties including the responsibility “to determine “agreement in language (terminology)” without reference to content (Bylaw 3.9.4.2 [a]), which remains the responsibility of the Commission on Constitutional Matters.
- Clarification of bylaws speaking of duties of the hearing facilitator in dispute resolution and expulsion processes by deleting the word “conduct” and replacing it with “administrate” to more accurately describe his function during panel hearings (Bylaws 1.10.13.3; 1.10.15.3; 2.14.7.2 [e]; 2.15.7.2 [e]; and 2.17.7.2 [e]).
- Restoration of the wording of the draft version of Bylaw 3.12.2.3 as proposed in the pre-convention issue of *Today’s Business* and adopted by the convention (Res. 8-17), resolving issues that prompted discussion of the need for an additional bylaw change by the Board of Directors as authorized by Res. 8-12A.
- Dispensing with contemplated changes to Bylaw section 3.11 as not necessary in light of time-honored practice.

Secretary Hartwig also reviewed possible Res. 8-12A amendments to the Bylaws of the Synod by the Board of Directors to address unresolved bylaw issues remaining from actions taken by the 2010 convention. After careful review by the commission of each proposal, the Secretary agreed that the following proposals warrant consideration and approval by the board and will present them to the board during its upcoming meeting:

- 2007 Handbook Bylaw 3.1.4.1 (b) lists standing exceptions to the provision that boards and commissions of the Synod are to be represented at conventions of the Synod. The Board of Directors will be asked to consider adding the Commission on Handbook to the list of groups “who may be represented by as many of their membership as they deem necessary,” given the commission’s assigned responsibilities as a result of convention restructuring.
- 2007 *Handbook* Bylaws 3.1.10 and 3.1.10.1 addressing post-convention publicity and publications warrant amendment in keeping with changes made by the convention to bylaws governing the distribution of other official convention publications by allowing use of the

Internet to reduce printing and mailing costs. The Board of Directors will be asked to approve parallel bylaw changes.

- 2010 Res. 1-07A provided direction regarding the expansion of Gospel outreach across district lines by congregations. The Board of Directors will be asked to approve the addition of a new Bylaw 4.1.6.2 that places into the Bylaws of the Synod the substance of the resolution's resolve paragraphs.

10. LCEF Documents Review (08-2530)

The commission reviewed the Articles of Incorporation and Bylaws of Lutheran Church Extension Fund—Missouri Synod and recommends the following changes to its Articles of Incorporation:

- In paragraph “Seventh” of the Articles of Incorporation, mention of being “subject to the Constitution of The Lutheran Church—Missouri Synod” should also make mention of the Bylaws of the Synod.
- In paragraph “Eighth,” reference to the “Treasurer/Chief Financial Officer” should now be changed solely to “Chief Financial Officer” following such action by the 2010 convention, a correction that should be made consistently throughout the Articles and Bylaws.
- In paragraph “Ninth,” mention should be made of the requirement of Synod Bylaw 3.9.2.2.3 (a) that all proposed amendments to governing instruments of Synod agencies must be examined by the Commission on Constitutional Matters “to ascertain that they are in harmony with the Constitution, Bylaws, and resolutions of the Synod.”
- The Bylaws of LCEF would be well served by an introductory section defining its relationship to the Synod as a synodwide corporate entity.
- Changes to Article I, Section 1 and related paragraphs will be necessary to reflect properly the provisions of Synod Bylaw 3.6.4.2.1, such changes to include removal of the President and Chief Financial Officer from “members at large” category, making term limits consistent with Synod bylaws, etc.
- In Article II of the Bylaws, mention made of “pastors and called teachers” should be updated to agree with terminology used by the Synod and conform to Synod Bylaw 3.6.4.3.
- Article II, Section 2, Subsection B may be an appropriate place for mention of required background checks for board members and communication of such information to the Committee for Convention Nominations of the Synod, an issue which caused consternation for the Synod's 2010 convention.
- Article II, Section 3 will require change to reflect the provisions for removal of board members adopted by the Synod's 2010 convention (new Synod Bylaw 1.5.7).
- Article VI should be brought into harmony with Synod Bylaws 3.6.4 (a) and (b) and 3.9.2.2.3 governing amendments to bylaws of agencies of the Synod.

The commission noted that changes it recommended to the LCEF policy manual in July of 2009 are not yet reflected in the latest version of the manual, received in August of 2010. The commission asks that it receive a clean copy of all three governing documents with changes in place as soon as they are available.

11. Florida-Georgia District Bylaw Changes (09-2562)

The commission reviewed bylaw changes adopted by the 2009 convention of the Florida-Georgia District and noted no concerns with the amendments. The commission asked the Secretary to request a clean copy of the district's Bylaws with changes in place for final review, noting that many Synod agencies will need to review their official documents in light of 2010 convention constitution and bylaw changes.

12. English District Bylaws (10-2578)

The commission noted that its review of the English District's Bylaws adopted in June 2009 will be aided by receipt of a copy of the district's immediately preceding Bylaws. The Secretary was asked to obtain a copy of the district's Bylaws leading up to its 2009 convention, and also a copy of the district's "Corporate Operations Manual" referred to in the Bylaws received for review.

13. Minnesota North District Bylaw and Constitution Committee Minutes Review (10-2582)

With an October 15, 2010 e-mail, the secretary of the Minnesota North District submitted the responses of the district's Bylaw and Constitution Commission to questions it had received, as well as proposed amendments to the district's Bylaws for review by the Commission on Constitutional Matters. As already noted by the district secretary, the responses of the district commission are not subject to review by the Commission on Constitutional Matters. The commission did, however, give attention to the proposed bylaw amendments. After discussion, the commission asked the Secretary to obtain from the district secretary a copy of the district's current Bylaws to assist the commission in its review of the proposed amendments.

14. Constitutional Amendment Ratification Process (10-2583)

In a letter dated October 19, 2010, a pastor of the Synod questioned whether the requirement for submission of constitutional amendments to the congregations of the Synod "by means of three announcements in the official periodical within three months after the close of the convention" (Constitution, Art. XIV 3) was followed in the ratification process of 2010 convention constitutional amendments. He questioned the interpretation of the Secretary of the Synod that *Reporter* and *Reporter Online* may be used to satisfy the constitutional requirement, not only because such interpretation may be wrong but also because it may "be robbing our members of a good opportunity for informed decision making."

Question 1: Is Constitution Art. XIV, which at the time of its adoption according to Secretary Hartwig's September 23, 2010 letter referred solely to *The Lutheran Witness*, now to be interpreted by Bylaw 3.8.5.2.3 (2007 *Handbook*) to include also *Reporter*, even though the Constitution speaks of a singular publication?

Opinion: For many years *Der Lutheraner* and its English counterpart *The Lutheran Witness* were considered the "official organs" or "official synodical organs" or "official publications" of the Synod. The 1966 *Handbook* (Bylaw 11.81) added for the first time: "Official reports and notices shall be published in *The Lutheran Witness Reporter*."

Additional changes were made in the 1971 *Handbook*, as described in its "Foreward" by Secretary Herbert Mueller:

The convention authorized certain language changes in the Constitution with the stated provision that these changes are not to be regarded as constitutional amendments. The singular verb in Article VIII A 2 was therefore changed to plural; "official organs" and "official publications" were changed to "official periodicals in Article XI B 9 and Article XIV, 3 and 4"; and the definite article "the" was uniformly inserted before the word "Synod" in 82 instances. [emphasis added]

The 1971 *Handbook* then lists as the “Official Periodicals” of the Synod “*The Lutheran Witness*, the *Lutheran Witness Reporter*, and *Der Lutheraner*” (Bylaw 11.81). The bylaw also repeats the statement: “Official reports and notices shall be published in the *Lutheran Witness Reporter*.”

In the “Foreward” to the 1975 *Handbook*, Secretary Mueller, after noting the many changes made by the 1975 convention, states: “Perhaps it should be stated that the Commission on Constitutional Matters felt obligated, in view of the convention action with reference to the official periodicals, to change the plural to the singular in Constitution Article XIV, paragraphs 3 and 4.” This was prompted by one of the changes made by 1975 convention, naming only *The Lutheran Witness* as “the official periodical of the Synod.” *The Lutheran Witness* was now to “include official reports and notices” (Bylaw 11.81). When, however, the 1977 (and subsequent) handbooks again named *The Lutheran Witness* and *Reporter* as the Synod’s official periodicals, paragraphs 3 and 4 of Constitution Art. XIV were not updated and continue to read in the singular to this day: “in the official periodical.” Article XIV should have been updated to the plural at that time like all of the other mentions of the periodicals of the Synod in the *Handbook*, which included Constitution Art. XI 8.

It is clear, therefore, that Constitution Art. XIV, while it speaks of “the official periodical” in the singular, is to be interpreted to speak in the plural, given the listing of periodicals in 2007 Bylaw 3.8.5.2.3 (2010 *Handbook* Bylaw 3.4.3.7) where *The Lutheran Witness* and *Reporter* are both named.

Question 2: Is *Reporter Online* to be considered from this time forth to be the equivalent of *Reporter* for constitutional and bylaw purposes?

Opinion: *Reporter Online* is now and has been since its implementation an official periodical of the Synod. As early as 1966, *Reporter* was considered such an official periodical, to be used to publish official reports and notices. This has been and continues to be the case, except for a brief period of time following actions taken by the 1975 convention of the Synod, as already noted in #1 above. *Reporter Online* is *Reporter* using current technology to expedite carrying out its purposes, one of which is to publish official reports and notices. Therefore, yes, *Reporter Online* is to be considered the equivalent of *Reporter* for constitutional and bylaw purposes. Rather than robbing the members of the Synod of an opportunity for informed decision-making, its use broadens the circulation of official notices of the Synod, reaching a new and significant audience and thereby enhancing the opportunity for informed decision-making.

Question 3: If the announcements required by the Constitution of the Synod have not been made according to the requirements plainly listed there (the deadline, October 17, is now past), then what becomes of the proposed constitutional amendments?

Opinion: This question is moot. The use of *The Lutheran Witness*, *Reporter*, and *Reporter Online* was appropriate (see #s 1 and 2 above), and the three notices required by Constitution Art. XIV were thereby published and distributed in advance of the October 17 deadline.

(Adopted 11/6/10)

15. Dispute Resolution Process Advisors (10-2584)

In an e-mail dated October 23, 2010, a hearing facilitator in a dispute resolution process, pursuant to Bylaw section 1.10, asked the commission the following question regarding the submission of a written statement of evidence by an advisor to a party to the dispute:

Question: Parties involved in a Dispute Resolution Panel hearing have the privilege of choosing and having an advisor with them during the hearing. The *Standard Operation Procedures Manual* states that the advisor shall not address the panel or directly participate in the discussions during the hearing. When a party to a dispute resolution process chooses an advisor, may that advisor, at the request of the party, submit a written statement of evidence, transmitted to the panel members through the Secretary of the Synod prior to the hearing, to be considered alongside all of the other witness given?

Opinion: The question submitted is unclear to the commission. If “a written statement of evidence” means an affidavit in lieu of live testimony as a witness, the affidavit cannot be submitted as evidence unless the other party does not object (a waiver to object), as the witness would then not be available for questioning by the other party to the matter, as is required by Bylaw 1.10.18.1 (f) and Bylaws section 1.10 *SOPM* General Regulation F (b).

If “a written statement of evidence,” means a written summary of all the expected evidence presented in the matter, then the summary is being submitted to the panel by the party to the matter, aided and assisted by his/her advisor. If the advisor prepares this kind of summary, it is still being submitted by the party and not the advisor.

Bylaw 1.10.4 (q) defines a “witness” as follows: “A person called to give testimony regarding facts to a dispute before a Dispute Resolution Panel...” [emphasis added].

Bylaws section 1.10 *SOPM* General Regulation F (b) also indicates: “Witnesses who can substantiate the facts relevant to the matter in dispute may be called before and address the panel. Unless otherwise determined by the panel for good cause, witnesses shall attend hearings only during the time that they are giving their own testimony” [emphasis added].

A witness may also be an advisor to a party, but since “witnesses shall attend hearings only during the time that they are giving their own testimony,” then that person is not permitted to be present at the hearing other than during the time he/she is giving his/her own testimony, absent agreement of the parties and concurrence of the panel or a finding by the panel of good cause to allow such presence.

(Adopted 11/7/10)

16. Testimony by Secretary of the Synod in Dispute Resolution Process (10-2585)

The Secretary of the Synod, as administrator of the dispute resolution process under Bylaw 1.10, submitted a series of questions regarding a pending matter, as follows:

Question: As administrator of a dispute resolution process under Bylaw section 1.10, I regularly receive and distribute on behalf of the parties various documents submitted in advance of a hearing. In a case that has been pending for more than a year, I have recently received and forwarded pre-hearing information that indicates that a party to the dispute intends to offer testimony regarding his recollection of a telephone conversation between himself and myself that took place prior to the beginning of the dispute resolution process, a conversation that briefly alluded to a matter that the party believes important to the matter in dispute.

Although the Bylaws allow for the appointment of an alternate administrator when the Secretary of the Synod “is a party to the matter in dispute, has a conflict of interest, or serves as a witness” (Bylaw 1.10.6), there was no indication until receipt of the recent information

that I would need to recuse myself and ask for the appointment of another administrator. This was true throughout the reconciliation and panel selection processes until now, only days before a scheduled Dispute Resolution Panel hearing.

My concern is that if this recollection of a conversation involving me as administrator of the dispute resolution process is allowed to be submitted, I will not have opportunity to clarify the content of that conversation nor will the opposing party be able to question me in its regard. My questions therefore are these: “Do I continue to serve as administrator of this dispute resolution process? Is the testimony that has been proffered proper testimony? May I be called as a witness in the hearing?”

Opinion: The Bylaws provide that when the Secretary of the Synod is involved personally in a dispute, whether as a party, a witness, or someone who has a direct interest in the outcome, an alternate administrator should be appointed. Bylaw 1.10.6 reads in part,

If the secretary of the Synod or a district is a party to the matter in dispute, has a conflict of interest, or serves as a witness, then the President of the Synod or the district president, as appropriate, shall appoint an administrator of the process in the matter.

In order to protect the neutrality of the process, Bylaw 1.10.7.4 also provides in part,

The administrator of the process shall not attend the hearing or serve as a witness.

These provisions of the Bylaws are intended to maintain the integrity of the dispute resolution process. Should there be any suggestion that a dispute resolution process administrator might be subject to such disqualification, an alternate administrator should be selected. In order to allow such alternate to be appointed in a timely fashion early in the process, parties are provided with information regarding the applicable bylaws and *Standard Operating Procedures Manual*, including those provisions which prevent an administrator of the dispute resolution process from participating as a witness. If a party intends to present testimony or evidence which would necessarily suggest the potential need for a dispute resolution process administrator to become a witness, such issue must be raised in a timely manner so that the administrator can recuse himself and a replacement administrator can be appointed in a manner that will not interfere with the process or unduly delay resolution of the matter in dispute. It would be a perversion of the process and inappropriate to raise such an issue immediately prior to a hearing.

While a Dispute Resolution Panel is not bound by “hearsay,” and other strict rules of evidence are not applicable to a dispute resolution process hearing, evidence proffered at the last minute which would require the disqualification of an administrator in order to allow his testimony on an issue known by the party to be likely to be contested should be ruled out of order and inadmissible and disregarded by the hearing facilitator and/or hearing panel. Even should the administrator desire at such a late point in the process to offer testimony, the failure to seek his early disqualification exposes him to information as administrator which could impermissibly impact his testimony.

Therefore, absent agreement by the parties, the hearing panel, and its administrator, a party may not subvert the process by interjecting such evidence in an untimely manner. The administrator in such circumstances should complete his responsibilities in the case and not be replaced. He should not be allowed to be called as a witness in the matter, and the controverted evidence or testimony which would necessarily require that the administrator be called in order to rebut such evidence or testimony should be ruled out of order and inadmissible and be disregarded by the hearing panel to the extent seen or heard by the members of the panel.

(Adopted 11/7/10)

17. CCM Policy/Operations Review

During its recent meetings, the commission has been reviewing its own internal governing documents for use in orientation of new commission members and to provide information to the Synod in general regarding how it goes about the fulfilling of its responsibilities. The following document will therefore be made generally available in printed form and on the Internet.

COMMISSION ON CONSTITUTIONAL MATTERS Internal Governing Documents

Commission on Constitutional Matters Procedures (as of November 2010)

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 (Bylaw 3.9.2.1).
3. 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 other agency of the Synod (Bylaw 3.9.2.2). One 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. A request for an opinion may be accompanied by a request for an appearance before the commission (Bylaw 3.9.2.2 [a]).
4. Some questions submitted to the Commission on Constitutional Matters at convention floor committee meetings also 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. The Commission on Constitutional Matters is expected, during the course of a convention of the Synod, to review all proposed amendments or substitute resolutions to ensure that they are in agreement with the Constitution, Bylaws, and resolutions of the Synod. Ordinarily 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.
6. 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, this to allow the officer/agency to submit in writing information regarding the matter at issue (Bylaw 3.9.2.2 [b]).

7. 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. 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 on Constitutional Matters or the Board of Directors shall be binding on the issue unless and until it is overruled by a convention of the Synod.
8. 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*]
9. The Commission on Constitutional Matters 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]).
10. The Commission on Constitutional Matters also responds with due diligence to all assignments given to it by the conventions of the Synod.
11. 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 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]).
12. All legal opinions sought by the Commission on Constitutional Matters are shared with the Board of Directors after the related opinion has been rendered.
13. Meeting dates of the Commission on Constitutional Matters are announced in advance, this information provided in its meeting minutes and/or on the Synod's Website calendar.
14. All substantive opinions of the Commission on Constitutional Matters are published every three years in the *Convention Workbook*.
15. Minutes of Commission on Constitutional Matters meetings are made available in the Synod's Website for at least three years, subject to the addition of other opinions relating to frequently asked questions. The date on which an opinion was decided is now included at the bottom of each opinion.

16. All questions/submissions to the Commission on Constitutional Matters are provided to its members in both electronic and hard copy. The Secretary of the Synod also provides the commission with copies of all letters mailed on its behalf.

17. General Commission on Constitutional Matters procedures include:

- The commission may meet by either video/teleconference or in person. It is required to meet four times per year. In the past, the commission's position has been that it should hold face-to-face meetings at least two times a year.
- The commission's 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 after discussion of issues if necessary.
- 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. The commission speaks as one through its opinions or through its chairman. All communication between commission members relating to commission business (agenda items) is privileged and private.
- 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.
- Ordinarily, no opinion is to be shared outside the commission until the minutes of the meeting that include the opinion have been issued. An exception has been 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 e-mail to the commission's members, and time is allowed for suggested revisions. When minutes are adopted, they are provided to commission members by e-mail and in hard copy.

[Revised 11/07/10]

[Appendix A]

COMMISSION ON CONSTITUTIONAL MATTERS 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 such assignments, 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 Constitution, Bylaws, and resolutions of the Synod. 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 interpreting, 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 interpretation is stressed in the Bylaws of the Synod:

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. [Bylaw 3.9.2; see also Bylaw 3.9.2.2.3]

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. [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 determine their agreement 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 determine that they are not in conflict 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 interpretation 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. Understanding the Rules and Principles of Interpretation Used by the Commission on Constitutional Matters in Carrying Out its Responsibility for Interpretation

The commission, whose opinions substantially are or 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.
- Intended sense, recognizing that the author intended one, simple, seminal, certain, literal, ordinary, natural sense—not several meanings.
- Immediate context, 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.
- Self-interpretation, allowing the governing document to interpret itself and its parts.
- Unity, recognizing the overall polity of the Constitution, Bylaws, and resolutions of the Synod and their unity of authorship, content, function, and purpose.
- Constitutional priority, allowing the Constitution of the Synod to control and supersede the Bylaws and all other rules and regulations, and allowing the Bylaws to control and supersede all other rules and regulations.
- Clarity, granting that a text's clarity 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).
- History, taking into consideration the genesis and historical context 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.
- 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.
- All relevant CCM opinions from 1965 to the present, honoring their binding nature while noting relevant constitution and bylaw changes/amendments since they were issued.

[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.

Prior to 1923, 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.

In 1923, 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.

In 1932, 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.

In 1935, 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*.

In 1941, 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.

In 1947, 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.

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

In 1962, 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, commission 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).

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

In 1973, 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).

In 1977, 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).

In 1992, 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)

In 1995, 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).

In 2001, 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).

In 2004, 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]).

In 2007, 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)

18. Miscellaneous Matters

In the time remaining for the meeting, the commission covered a number of subjects and discussion items, including:

- **Convention issues:** The Secretary of the Synod provided a progress report regarding the six subjects reported in the minutes of the commission’s August 30–31 meeting, including the transition to the Synod’s new structure, the role of the two mission boards, the change from

program to policy boards, the role of the Council of Presidents in the new structure, the function of the two mission boards, and the expanded role of districts, circuits, circuit forums, and convocations. The policy responsibility of the Board for National Mission over against districts was discussed at greater length.

- Convention-Mandated Responsibilities: The commission's assignments as a result of specific convention actions were reviewed, as noted in a report of such assignments to all Synod agencies compiled by the Secretary. Copies of this report will be supplied to the commission. The discussion prompted the inclusion of an additional subject, "respond to convention assignments," in the CCM Policy/Operations Review document (see above).
- A letter from a pastor raising concerns and suggesting changes to the *Standard Operating Procedures Manual* that accompanies the Synod's dispute resolution process was discussed in detail, his comments to be borne in mind as the commission undertakes its post-2010 convention review of the manual in consultation with the Council of Presidents in coming months.
- Future meeting dates and the importance of contact with the Board of Directors were discussed. The Secretary was asked to pursue the possibility of overlapping meeting dates with the February 2011 Board of Directors meeting, thereby to provide opportunity for the two groups to become acquainted with the one another's new members.
- With the appointment of new commission members likely to take place within the next weeks, ending the service of Chairman Albert Marcis after two full terms as a member of the commission, a motion was introduced and carried "to name Wilbert Sohns the commission's acting chairman." Albert Marcis and Gordon Tresch abstained from voting on this motion.

19. Next Meeting

The date for the next meeting of the commission will be determined by the acting chairman and publicized on the Synod's calendar.

20. Adjournment

With no time remaining for additional business, Chairman Marcis closed the meeting with words of benediction.


Raymond L. Hartwig, *Secretary*