

2010 CONVENTION WORKBOOK – APPENDIX I

OPINIONS OF COMMISSION ON CONSTITUTIONAL MATTERS

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

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

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

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

Adopted Jan. 20–21, 2003

Ecclesiastical Supervision and Conflict of Interest (02-2309)

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

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

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

“Committed to a common confession and mission, congregations of The Lutheran Church—Missouri Synod join with one another in the Synod to support one another and work together in carrying out their

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

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

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

Ecclesiastical supervision intrinsically includes all of the following: “supervision regarding the doctrine and the administration” of all officers, employees, Districts, and District Presidents (Art. XI B 1); “to admonish all who in any way depart from [the Synod’s Constitution], and, if such admonition is not heeded, to report such cases to the Synod” (Art. XI B 2); “power to advise, admonish, and reprove” (Art. XI B 3); to “see to it that the resolutions of the Synod are carried out” (Art. XI B 4); “supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers...visit and, according as they deem it necessary, hold investigations” (Art. XII 7); “supervise the doctrine taught and practiced in the Synod...officially visit or cause to be visited all the educational institutions of the Synod...meet regularly with the Council of Presidents...to see to it that they are in accordance with Article II of the Constitution, synodically adopted doctrinal statements, and doctrinal resolutions of the Synod” (Bylaw 3.101 A); and such other constitutional terminology as “counsel,” “care,” and “protection” (Art. III 8 and 9).

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

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

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

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

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

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

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

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

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

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

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

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

Opinion: There is no such constitutional provision.

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

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

Question 8: Is it a conflict of interest when a District President and/or synodical President are carrying out their duties of ecclesiastical supervision and seeing to it that the resolutions of the Synod are being carried out? If the answer is “yes” in what sense is it a “conflict of interest” and how is conflict of interest then defined.

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

A Bylaw 2.27 action against a District President falls within the provisions of Bylaw 2.27 g, and the synodical President becomes the investigating officer. Disqualification of the President of the Synod, as with the District President, occurs where he is a party to the matter in dispute, has a conflict of interest, or is otherwise unable to act. The fact that the investigating officer, whether a synodical or District President, has been involved in performing his ecclesiastical responsibilities in supervising the accused party is in and of itself not a basis for disqualification. In fact, the Constitution of the Synod presupposes that since or when there is prior supervision, advice, or futile admonition regarding the activity giving rise to a charge, the synodically-designated ecclesiastical supervisor would have been involved in that advice or admonition. Carrying out such responsibility does not make the ecclesiastical supervisor a party to the

matter in dispute nor give rise to a conflict of interest. Rather, the duty to investigate flows from and is a natural outgrowth of the District or synodical President's ecclesiastical supervisory responsibility.

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

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

Adopted Jan. 20–21, 2003

Concerns re Opinion 02-2309 (03-2338B)

In a March 3, 2003 letter, a pastor of the Synod expressed concern regarding an opinion of the CCM which he believes "has an unnecessarily pejorative spin to it" when it states that "implementation of the dispute resolution process should never be intended or allowed to disrupt, hamper, or harass the President as he carries out the duties and responsibilities of his office, including those of ecclesiastical supervision" (02-2309 response to question #3). He asked the Commission to "show specific proof from Scripture, the Confessions, and the Constitution and Bylaws" that the opinion is justified, or, if that cannot be done, to modify the opinion.

Opinion: The Commission notes that in its response to question #3 of Opinion 02-2309 it repeated the words of the question to which it was responding when it used the words "disrupt, hamper, or harass." It was not the intent of the Commission to disparage the questioner or to discourage proper use of the dispute resolution process. In fact, in the same response to question #3 the Commission acknowledges that there may be occasions when the use of Chapter VIII of the Bylaws is appropriate.

The Commission has never opined that one brother should be denied the right or responsibility to admonish another brother over matters of the soul. However, when it comes to ecclesiastical supervision by the Synod, such supervision is to be provided by those whom the Synod has given that responsibility in its Constitution and Bylaws.

Adopted Aug. 15–16, 2003

Reconsideration of Opinions re Ecclesiastical Supervision (03-2338, 03-2338A, 03-2338C)

In a letter received February 27, 2003, a pastor of the Synod encouraged the Commission to reconsider its decision regarding "Ecclesiastical Supervision." The stated reason for encouraging the reconsideration was that for him the decision leaves the impression that no one can be held responsible for his actions when he has received prior permission from his ecclesiastical supervisor, that everyone must give an account of his actions before the throne of God and that no one can claim as an excuse that an ecclesiastical supervisor condoned his action. He further asked these questions: "Should not the Scriptures

supersede any interpretation of the Bylaws? Is a decision of the CCM valid when it contradicts the Word of God? Can the church allow them (ecclesiastical supervisors) to be considered above accountability? Can those who follow approval by their ecclesiastical supervisor claim this same immunity from challenge to their action?"

Secondly, in a letter received March 1, 2003, a pastor of the Synod encouraged the Commission to reconsider its January 20-21, 2003 decisions regarding "Consequences of Actions Taken Upon Approval of Ecclesiastical Supervisor" (02-2296; 02-2320) and all others in any way pertaining to ecclesiastical supervisors. He stated: "In some cases, I fear ecclesiastical supervision may even exceed the boundaries of the Holy Scriptures."

Thirdly, in a letter received April 7, 2003, a voters assembly of a member congregation of the Synod offered "An Appeal to the [Commission] on Constitutional Matters of The Lutheran Church—Missouri Synod to Declare Invalid Opinions 02-2296; 02-2320; and 02-2309," expressing concern that these opinions leave the supervised member or an officer of the Synod free from responsibility or accountability and thereby change the public nature of the Synod. The congregation stated, "In this way the Synod, then, can hold no individual under such supervision accountable."

And finally, input that came as a result of the Commission's invitation expressed: "One effect of the CCM opinion is to preclude the Synod from expelling one of its members that engages in offensive conduct (also referred to in the same communication as 'unacceptable conduct' and 'scandalous conduct')...if that member acted with the advice or counsel of the member's ecclesiastical supervisor," and also, "CCM Opinion 02-2309 will certainly be used as a defense to members of Synod who may be charged with scandalous behavior."

Although the above letters were received by the Commission in March and April, 2003, as indicated, and a draft response was considered at the Commission's June 23, 2003 meeting, publication of a response was delayed because of the Commission's invitation to the Board of Directors to provide "information, if any, related to the issues that have been raised" (CCM Minutes, June 23, 2003, agenda item #161). That information was provided at the Commission's meeting August 15-16, 2003, as reflected in those minutes (Agenda item # 180). Having considered the questions, the communications, and the additional input, the Commission on October 30, 2003 drafted its response to the requests for reconsideration and the matters presented, and now issues it on this date, December 13, 2003, upon a scheduled conference call.

Opinion: Opinion 02-2309 (cf. Opinions 02-2296 and 02-2320) concluded that the Synod, having promised evangelical supervision and counsel to its members, is precluded from taking any action to terminate the membership of its member who, when performing his/her official duties, follows the advice and counsel of the ecclesiastical supervisor designated by the Synod. In other words, the opinion addressed the fact that a member of the Synod had the right to rely on the advice and counsel of his/her ecclesiastical supervisor in taking official actions without fear of being expelled from the Synod.

After prayerful consideration and for the following reasons, the Commission reaffirms its prior opinions 02-2296, 02-2309, and 02-2320. In reviewing the nature and function of Synod, the Synod, which is "collectively...an... association of self-governing Lutheran congregations" (Bylaw 3.51 a)¹ expresses its collective understanding (and interpretation) of the Scriptures and the Lutheran Confessions through its

¹ "The term Synod refers collectively to the association of self-governing Lutheran congregations initially incorporated on July 3, 1894, and presently named The Lutheran Church—Missouri Synod, and all agencies of the Synod as defined in Bylaw 3.51 a. Synod, as defined herein, is not a civil-law entity."

doctrinal resolutions and statements in convention (Bylaw 1.09 a)² and also expresses its collective will through its Constitution, Bylaws and other resolutions (Bylaw 3.01)³.

On the basis of the Synod's Constitution and Bylaws, if the Constitution and Bylaws or resolutions of the Synod contradict God's unchangeable Word or exceed the boundaries of Holy Scripture, "the only rule and norm of faith and of practice" (Article II), it is incumbent upon the Synod in convention to amend or repeal such. And any action or decision of officers, boards or commissions may be appealed to the Synod in convention (Bylaw 3.73).⁴

As set forth in Bylaw 3.905 d, the Commission on Constitutional Matters is charged with the duty to "interpret the Synod's Constitution, Bylaws, and resolutions." It does not interpret the Scriptures. Thus the Synod has limited the Commission in its responses to the specific provisions of the Constitution, Bylaws and resolutions of the Synod. The Synod has reserved unto itself the right to determine whether a decision of the Commission is valid or in error or if it contradicts the Synod's Constitution and Bylaws. Bylaw 3.905 d provides that "an opinion rendered by the commission shall be binding on the question decided unless and until it is overruled by a synodical convention."

Further, regarding the issues of evangelical and ecclesiastical supervision, responsibility, and accountability, the Commission calls attention to the following: In the formation of our synodical union, "the Synod, under Scriptures and the Lutheran Confessions" established various objectives including "evangelical supervision, counsel, and care for pastors, teachers, and other professional church workers of the Synod in the performance of their official duties" and "protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights" (Article III 8 and 9). [Emphasis added]

Bylaw 3.51 k defines ecclesiastical supervision as follows: "...ecclesiastical supervision shall be determined exclusively by those Bylaws pertaining to ecclesiastical supervision." Among the bylaws that primarily address this issue are Bylaw 3.101 which relates to the President of the Synod and Bylaws 4.71–4.75 which relate to District Presidents. Both segments of the Bylaws indicate that the President of the Synod and a District President have the duty to "supervise the doctrine" and "see to it that" the Constitution and Bylaws and resolutions of the Synod are carried out as part of their respective areas of responsibility (cf. Constitution Article XI b and Article XII 7 & 8).

Therefore, this Synod-provided ecclesiastical supervision, which is neither a matter of giving permission nor exercising legislative control or coercive power (Article VII) but is one of giving advice and counsel, is circumscribed and exercised not by the will of the ecclesiastical supervisor, not by individual interpretation, and not by public opinion or by groups within or outside of Synod but by the collective will of the congregations of the Synod in convention. This also holds true in administering the supervisory and disciplinary provisions of the Bylaws in carrying out Article XIII of the Constitution. Under the authority of the Synod, the ecclesiastical supervisor does what he has been authorized and directed to do on behalf of the Synod and is accountable to the Synod in convention.

2 "The Synod, in seeking to clarify its witness or to settle doctrinal controversy... shall have the right to adopt doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions."

3 "...It is the principal legislative assembly, which amends the Constitution and Bylaws, considers and takes action on reports and overtures, and handles appropriate appeals. It establishes general synodical positions and policies, provides overall program direction and priorities, and evaluates all such positions, programs, policies, directions, and priorities in order to provide responsible service for and on behalf of its members."

4 "All officers, boards, and commissions shall be accountable to the Synod for all their actions, and any decision of such officers, boards, and commissions may be appealed to the national convention of the Synod."

Thus, Opinion 02-2309 opined that in the forming of the Synod, one of the objectives and protections of the Synod itself was that the Synod was to provide for ecclesiastical supervisors, and inherent in such supervision is that those so supervised can reasonably rely on the counsel and advice in the performance of their official duties without having to fear that actions taken in accord therewith will place their very membership in the Synod at risk. That is not to say, however, that the advice will always be correct and that therefore the member's action is correct. It is noted in Opinion 02-2309 "that when an ecclesiastical supervisor discovers error in his counsel, it is incumbent upon that supervisor to correct or amend it. The member should then be held to consider the corrected counsel." The protections of the Synod as expressed in Opinion 02-2309 are protections of one's membership in the Synod and not a protection from the duty and responsibility to constantly consider the appropriateness of one's actions in view of the Word of God. No one is immune from responsible, God-pleasing conduct and behavior or personal accountability before God.

The Commission also calls attention to the language of Opinion 02-2309. Both in the second to last paragraph of the answer to Question 1 and in answer to Question 2, the opinion specifically references official duty and action, not personal offensive conduct. The opinion notes in Question 1 that "the Synod has promised its individual members supervision and counsel when the member is performing his/her official duties." The answer to Question 2 concludes that "the Synod is precluded from taking any action to terminate the membership of its member who, when performing his/her official duties, follows the advice and counsel of the ecclesiastical supervisor designated by the Synod" (emphases added). Thus, personal offensive conduct or conduct that is illegal or criminal can certainly not be included in the context of the quoted prior opinion.

In addressing accountability of the District President and the President of the Synod, Article XII 7 of the Constitution provides that "the District President shall, moreover, especially exercise supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers of their District" Who then exercises ecclesiastical supervision over a District President? Bylaw 3.101 A 1 provides, "The President of the Synod has ecclesiastical supervision of all officers of the Synod and its agencies, the individual Districts of the Synod, and all District Presidents." Who then has ecclesiastical supervision of the President of The Synod? Neither the Constitution nor the Bylaws provide a specific answer to that question. However, in 1992 the Commission issued an opinion (Ag. 1915), which has not been overruled by any subsequent convention of the Synod. That opinion provided in part as follows: The Synod has a right to call its officers to account and to remove them from office in accordance with Christian procedure (Article XI 2). The Commission then commented, "It would seem that the only recourse is an appeal to the convention of the Synod...."

Adopted Dec. 13, 2003

Authority of the Board of Directors re Radio Station KFUE (03-2357)

In a letter received June 9, 2003, a District President questioned the right of the Board of Directors of the Synod to assume direct responsibility for the operation of KFUE radio in light of past convention actions. He also inquired regarding the possibility of a similar action by the Board of Directors over against entities owned by Districts, such as a radio station or resource center.

Question 1: Since 1986 Resolution 1-12 explicitly delegated responsibility for the management of KFUE to the Board for Communication Services, may the Board of Directors of the Synod reverse that delegation and assume direct control of the administration of KFUE under Bylaw 3.183 c?

Opinion: A general discussion of authority as between the Board of Directors and various agencies and boards of the Synod is set forth in Opinion 03-2358. The specific functions of the Board for Communication Services are set forth in Bylaw 3.813. Those functions may be expanded by synodical resolution, as in the case of 1986 Resolution 1-12. Where an express delegation of authority has been made by bylaw or resolution of the convention, the general authority of the Board of Directors under Bylaw 3.183 c (the Board is “authorized to take on behalf of the Synod any action related to such business and legal affairs which has not been expressly delegated...to other officers and agencies of the Synod”) is inapplicable. Rather, the authority of the Board of Directors in such circumstances is under Bylaw 3.183 d 2, “to call up for review, criticism, modification, or revocation any action or policy of a program board, commission, or council,” and under Bylaw 3.183 b, to “communicate to the appropriate boards and commissions suggestions for improvement.” Absent a voluntary relinquishment of authority from the Board for Communication Services to the Board of Directors, the Board of Directors may not reverse the delegation of authority as described.

Question 2: If the Board of Directors is able to do this, may it also take over responsibilities for entities owned by the various Districts (such as our radio station and resource center)?

Opinion: The division of the Synod into Districts was established by Article XII of the Constitution. The procedure for the formation and realignment of Districts is the subject of Bylaw 4.03. Bylaw 4.07 sets forth the relationship between the Synod and the Districts, including the manner in which the Synod exercises its authority over the Districts. Bylaw 3.185 a 1 directs the Board of Directors to “delegate to District boards of directors the authority to buy, sell, and encumber real and personal property in the ordinary course of performing the functions which the District carries on for the Synod in accord with general policies (which shall be applicable to all Districts) established from time to time by itself or the Synod in convention.” With respect to entities owned by a District, the Bylaws provide in Bylaw 4.07 d that “upon dissolution of a District, all property and assets to which the District holds title or over which it has control shall be transferred forthwith to the Synod or to the Synod’s nominee. Upon dissolution of a corporation controlled by a District, the assets of such corporation shall be distributed to the District.” Article XII 12 indicates that “the Districts are independent in the administration of affairs which concern their District only, it being understood, however, that such administration shall always serve the interests of the Synod.” As such, the Board of Directors may not take over responsibility for entities owned by the various Districts.

See also the answer to Question 1.

Adopted September 30, 2003

Authority of Board of Directors to Direct Allocation of Funds (03-2358)

In a letter received May 28, 2003, the Executive Director of the Board for Higher Education/Concordia University System asked whether the Board of Directors has the authority to require the Board for Higher Education/Concordia University System to distribute a specified amount of allocated unrestricted dollars to other entities under the direct supervision and oversight of the BHE/CUS Board.

Question: Does the Synod’s Board of Directors have authority to “require” the Board for Higher Education/Concordia University System to distribute a specified amount of allocated, unrestricted dollars to other entities under direct supervision and oversight of the BHE/CUS Board (cf. Bylaws 3.183 d and 3.409 e)?

Opinion: In fulfilling its ecclesiastical purposes, the Synod in convention has identified the authority of the Board of Directors of the Synod in Article XI F of the Constitution and Bylaw 3.183. With respect to

the financial affairs of the Synod and its entities, that authority includes, under Bylaw 3.183 c, the responsibility for the general management of the business and legal affairs of the Synod and, under Bylaw 3.183 d, responsibility to allocate available funds to the program boards, commissions, councils, and departments of corporate Synod and to hold them accountable therefor. To perform its function, the Board has the authority under Bylaw 3.183 d 2 to call up for review, criticism, modification, or revocation any action or policy of a program board, commission, or council, except opinions of the Commission on Constitutional Matters. Bylaw 3.183 f also provides the Board the responsibility to assure itself that audits are performed by internal auditors or independent certified public accountants for the synodwide corporate entities, colleges and universities, seminaries, Districts, and Worker Benefit Plans.

The Lutheran Church—Missouri Synod is a church body, entitled to the fullest autonomy allowed under the Constitution of the United States. Historically, in order to hold title to property and conduct civil affairs in a secular society, churches have been required in many states to have a civil status as well as a religious status. To further its primarily ecclesiastical functions, our Synod authorized the formation of a civil entity known as The Lutheran Church—Missouri Synod, incorporated under the civil laws of the State of Missouri. The Articles of Incorporation of The Lutheran Church—Missouri Synod reference the Bylaws and Constitution of the Synod no less than seven times each and identify the purpose of the corporation, to “unite in a corporate body the congregations of the Evangelical Lutheran Church....”

While the Synod could have adopted for its governance a corporate model, with power concentrated in a board of directors, subject only to election or reelection every three years, the Synod instead chose as its church governance structure a system which places ultimate authority in its members in convention assembled, very much consistent with the pre-incorporation polity of the Synod. In fulfilling its function as “church,” the Synod has determined in convention to establish boards and commissions as the best way to carry out various church purposes and functions, as it reserved the right to do in Article VII of the Articles of Incorporation. Bylaw 3.01 indicates that the Synod in convention “establishes general synodical positions and policies, provides overall program direction and priorities, and evaluates all such positions, programs, policies, directions, and priorities in order to provide responsible service for and on behalf of its members.” The Synod has chosen to allocate duties, powers, and responsibilities among various officers, boards (including the Board of Directors of the Synod), and commissions, holding each ultimately responsible to the national convention of the Synod (Bylaw 3.73).

The Synod in convention has chosen to retain authority to identify and elect those persons whom it, as a church body and under the guidance of the Holy Spirit, believes will most effectively carry out its mission and ministry. The Synod in convention has identified specific mechanisms for the selection of others to be called into the service of the church. In specialized areas of ministry, it has created program boards. Bylaw 3.51 h defines a program board as “an officially established group of persons elected or appointed as prescribed in the Bylaws, charged with developing policies and programs for an operating function of the Synod and supervising their implementation.” The Board for Higher Education is one such program board.

Historically, because of the ecclesiastical nature of The Lutheran Church—Missouri Synod, it has operated as “church” and not simply as a non-profit entity. It has reserved in its governance structure the right through the Synod in convention to control itself, delegating pursuant to its historic procedures the authority and responsibility of church functions between conventions. Because of its primary identity as a church and not simply a non-profit corporation, the Synod has authority and autonomy to limit the authority of the Board of Directors of The Lutheran Church—Missouri Synod in ways which directors of secular non-profit corporations may not be limited. Even a secular non-profit corporation may limit the power of its board of directors with detailed limitations in the Articles of Incorporation themselves.

In fulfilling its ecclesiastical purposes, the Synod in convention has identified in its bylaws the duties and responsibilities of each of the separate boards and commissions of the Synod, as well as synodwide corporate entities. With respect to the Board for Higher Education/Concordia University System, those duties and responsibilities are described in Bylaws 3.401 through 3.415. With respect to fiscal issues, the Board for Higher Education/Concordia University System has specific responsibility under Bylaw 3.409 e to “establish policy guidelines involving distribution of synodical subsidy and efforts for securing additional financial support from other sources,” and under Bylaw 3.409 i to “approve capital projects in terms of constituency priorities and system and institutional needs in accordance with campus property-management agreements.”

The issue of balancing responsibilities between the Board of Directors and the responsibilities of program boards and commissions has been dealt with in past opinions of the Commission. For example, Opinion 02-2315, after reviewing the general balance of responsibilities, observed:

The Commission concludes that the Board of Directors has been given “general oversight responsibility” over the colleges, universities, and seminaries of the Synod as its agencies (see CCM Opinion 02-2259). As part of this general oversight, the Board has a legitimate interest in any contemplated action of an agency which results in the spending of funds beyond those currently budgeted or which will obligate future spending. By a request for such information, the Board exercises its right to call up an action for review, but this request is to be made, in this case, to the BHE/CUS Board. The role of the BHE/CUS Board and its staff will be to provide the requested information to the Board of Directors through its chairman and chief executive officer.

The issue of balancing responsibility between the Board of Directors, charged with overall fiscal responsibility of the Synod, and the responsibility of program boards, commissions, councils, and departments of corporate Synod, charged with use of those allocated funds, has also been dealt with in past opinions of the Commission. A series of opinions dating back to 1976 involving implementation of New Orleans Resolution 6-31 (Ag. 591, Ag. 591A-B, Ag. 927, Ag. 9-27A, Ag. 934, and Ag. 934B-J) recognize that the Synod in convention is the highest legislative authority of the Synod, both as to program and fiscal matters. Later, in Opinion Ag. 1934 (December 5, 1992), the Commission wrote:

Bylaw 3.183 dealing with the authority of the Board of Directors states among other things, the Board of Directors shall...be authorized to take, on behalf of the Synod, any actions not expressly or by reasonable implication delegated to other officers, boards, or commissions. When, for fiscal reasons, an action such as the transfer of the editorial functions and the editors is deemed necessary, there appears to be no other officer or group which would have the authority to take such action. In addition, Bylaw 3.189 c states that the Board of Directors makes the final determination if conflicts develop in the plans and policies of two or more boards or commissions of the Synod.

The Board of Directors is required to act in a fiscally responsible and prudent manner. Included in that responsibility is the establishment of a budget as outlined in Bylaw 9.55 which includes the adoption of a final budget by the Board of Directors. That final budget may involve the allocation of limited funds in such a way that it would be impossible for a Board to carry out a specific function or at least to do so following the normal procedure which may have been followed for many years.

In further review of the issue, the Commission was asked in 1998 to review the effort of the Board of Directors to move the video studio of the Synod from the Board for Communication Services to General Services. In Opinion Ag. 2094 (May 22, 1998) the Commission ruled:

Bylaw 3.817 sets forth the functions of the Board for Communication Services (BCS). Subsection “g” thereof states that the BCS shall “serve as a resource...by providing...production facilities, and other assistance for...electronic media.” Therefore, if operation of the video studio is part of the “production facilities,” it is one of the designated functions of the BCS and cannot be removed from the BCS without a change of the bylaw by a convention of the Synod.

Later in that same opinion the Commission noted:

Each board or commission is solely responsible for the organization of its own staff. The Board of Directors of the Synod does allocate available funds to the respective boards and commissions (Bylaw 3.191, d) but the usage of such funds is the responsibility of the governing board of each board or commission.

Given the specific question presented, under the present bylaws, without consideration of emergency issues arising during the execution of a fiscal year’s budget and consistent with the prior opinions of the Commission, the Board of Directors does not have authority to “require” that allocated unrestricted dollars be spent in a particular fashion. It is certainly anticipated that the Board of Directors will communicate its suggestions and the priorities it perceives within the overall programs of the Synod, as is recognized as its authority under Bylaw 3.183 b, to “communicate to the appropriate boards and commissions suggestions for improvement.” While a particular board or entity is responsible to determine the use of allocated funds, each board must keep in mind its responsibility to consider input from the Board of Directors, the responsibility of the Board of Directors to call up for review and modification any action it takes, and ultimately the authority of the Board of Directors to make allocations in future years based on its perception of the stewardship of given boards in prior years.

Adopted September 30, 2003

**Authority of Board of Directors to Direct Use of Funds (Board for Communication Services)
(03-2359)**

The chairman of the Board for Communication Services, in a letter received June 9, 2003, submitted a series of questions based upon the following background:

In the recent allocation of restricted funds to the various synodical program boards, commissions, councils, and departments, the Synod’s Board of Directors (BOD) included a requirement that the Synod’s Board for Communication Services (BCS) maintain the monthly REPORTER newspaper at “current levels”—i.e., that circulation and frequency of publication stay the same and that REPORTER remain both a paper publication as well as an electronic one. At the same time, the BOD reduced the BCS allocation of unrestricted funds by more than \$150,000 from current-year levels, which means that BCS staff and programs not related to REPORTER must be cut or eliminated. The effect is that the Board of Directors, rather than the BCS, is determining the communication-program priorities of the Synod.

There seems to be a lack of clarity between the role of the Board of Directors and that of the BCS regarding the management and prioritization of BCS activities, including oversight of REPORTER. While the Synod’s Bylaws direct the Board of Directors to “allocate available funds to the program boards, commissions, councils, and departments

of corporate Synod and hold them accountable therefore” (3.183 d), those same Bylaws direct the Board for Communication Services to:

“organize the communications activities of the church...” (3.183 a);
“authorize and supervise the production of the necessary print and broadcast materials for the church and its publics” (3.813 b); and
“have responsibility for the official periodicals of the Synod” (3.813 c).

The questions submitted to the Commission were as follows.

Question 1: Does the Synod’s Board of Directors have the authority to hold a program board “accountable” to the extent that it, the BOD, can dictate how the unrestricted funds allocated to that program board specifically are to be spent?

Opinion: See Opinion 03-2358. The Board of Directors may suggest priorities in the use of funds and ultimately has responsibility for the allocation of available funds. However, the Board of Directors may not mandate specific use of funds allocated to a program board or commission where the Synod in convention has given responsibility for carrying out a particular function of the Synod to a particular program board or commission.

Question 2: Does the Board of Director’s action usurp the prerogatives of the Synod acting in convention to make bylaws delegating responsibility for the management of synodical programs to synodical program boards?

Opinion: The responsibilities of the Board of Directors as described in Bylaw 3.183 have been discussed in other opinions (see Opinions 03-2357 and 03-2358). With respect to the general authority of various boards and commissions, Bylaw 1.07 d states: “Each board and commission or other agency that serves the Synod or a District in a specific area of program or ministry in accordance with the Synod’s Constitution and applicable Bylaws adopts programs in its assigned area of responsibility; administers the programs and resources as provided or authorized by the Constitution and applicable Bylaws, or as assigned by the respective convention or agency; and proposes modifications thereto. It also provides program policies, as well as directions, for its staff and shall establish, together with staff, evaluation criteria for its programs.

An action of the Board of Directors dictating, as opposed to suggesting, how the unrestricted funds allocated to a program board specifically are to be spent would be a usurpation of the prerogatives of the Synod acting in convention to make bylaws designed to achieve its primarily ecclesiastical purposes by delegating responsibility for management of synodical programs to synodical program boards created by the Synod in convention to achieve the convention’s stated goals.

Question 3: May the Board of Directors in the exercise of its constitutional mandate to supervise the business affairs of the Synod “micro-manage” the policy, program, and other day-to-day decisions of the program boards to which the Synod in convention has delegated such responsibilities?

Opinion: While the Board of Directors is responsible to hold others accountable under Bylaw 3.183, the Board of Directors is not authorized to “micro-manage” the policy, program, and other day-to-day decisions of the program boards to which the Synod in convention has delegated such responsibilities.

Question 4: May the Board of Directors require what in effect are unfounded mandates of the program boards by not providing along with its requirements the funds to carry out those

requirements? Is this, in effect, order the same number of bricks but without providing any straw (Ex. 5:6-8)?

Opinion: Please refer to the answers above.

Adopted September 30, 2003

Synod Governance Issues (07-2486)

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

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

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

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

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

Question 2: Bylaw 3.3.5.2 states: “The Board of Directors shall have the powers and duties that have been accorded to it by the Articles of Incorporation, Constitution, Bylaws, and resolutions of the Synod, and the laws of the State of Missouri. If there is a conflict between the “governing” documents of the Synod and “the laws of Missouri,” should the Synod’s Board of Directors, as the Synod’s legal representative, defend the Synod’s right to govern itself

(granted under its First Amendment rights) or turn over the governance of the Synod's ecclesiastical and secular business to a "secular" state government's directives (laws)?

Opinion: See the answer to question 1.

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

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

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

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

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

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

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

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

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

34. Although both Church and State are ordinances of God, yet they must not be commingled. Church and State have entirely different aims. By the Church, God would save men, for which reason the Church is called the "mother" of believers Gal. 4:26. By the State, God would maintain external order among men, "that we may lead a quiet and peaceable life in all godliness and honesty," 1 Tim. 2:2. It follows that the means which the Church and State employ to gain their ends are entirely different. The Church may not employ any other means than the preaching of the Word of God, John 18:11, 36; 2 Cor. 10:4. The State, on the other hand, makes laws bearing

on civil matters and is empowered to employ for their execution also the sword and other corporal punishments, Rom. 13:4.

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

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

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

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

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

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

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

Question 7: Bylaw 1.4.1 states: "The delegate convention of the Synod is the legislative assembly that ultimately legislates policy, program, and financial direction to carry on the Synod's work on behalf of and in support of the member congregations. It reserves to itself the right to give directions to all officers and agencies of the Synod." (a) Is there a specific reason(s)

that the Synod is structured in such a manner with no individual officer or board having “ultimate authority or control” and all being accountable to the Synod in convention? (b) Does the Synod’s Board of Directors have “sole authority” in even “secular or legal matters” or should it still be subject to the opinions of the Commission on Constitutional Matters and ultimately answerable to the convention of the Synod? (c) What course of action should be employed by the Synod if an officer and/or a board of the Synod presumes, on its own, to rewrite the Synod’s structure and governance? And (d) What would be a more correct and appropriate constitutional procedure if an officer or a board of the Synod wished to change the Synod’s structure of governance?

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

Adopted April 21–22, 2007

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

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

When a congregation becomes a member of the Synod and thereby subscribes to the Synod’s Constitution, it also subscribes to the confessional basis of the Synod as articulated in the Synod’s Constitution, Article II (see Constitution Art. V, “who confess and accept the confessional basis of Article II,” and Article VI [1], “Acceptance of the confessional basis of Article II”). In Bylaw 1.6.1, the same is referred to as the “confessional position of the Synod [as] set forth in Article II of the Constitution, to which all who wish to be and remain members of the Synod shall subscribe.” In Bylaw 1.3.4, the same is again referred to as the “confessional position of the Synod.” The intent of Opinion 06-2477 was to reiterate from prior commission opinions the important point that this confessional “basis” or “position”

may not be added to or subtracted from by a member congregation. Subscription to Article II of the Synod's Constitution is a condition of membership in the Synod.

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

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

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

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

3.0 CONFESSIONAL BASIS OR STATEMENT

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

Example:

This congregation accepts without reservation:

3.1 The Scriptures of the Old and the New Testament as the written Word of God and the only rule and norm of faith and practice.

3.2 All the Symbolical Books of the Evangelical Lutheran Church as a true and unadulterated statement and exposition of the Word of God, to wit: the three Ecumenical Creeds (the Apostles' Creed, the Nicene Creed, the Athanasian Creed), the Unaltered Augsburg Confession, the Apology of the Augsburg Confession, the Smalcald Articles, the Large Catechism of Luther, the Small Catechism of Luther, and the Formula of Concord.

If a congregation chooses to do so, it may also include confessional *statements*, even when it does not restate its confessional basis. Should a congregation do so, it is the responsibility of the district

constitution committee to assure that such confessional *statements* are in harmony with the Holy Scriptures, the Confessions, and the teachings and practices of the Synod.

Adopted April 21–22, 2007

Gender of University Provost (07-2489)

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

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

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

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

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

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

Noting these earlier commission opinions, and noting that a president of an educational institution continues to "serve as the spiritual, academic, and administrative head of the institution" (Bylaw 3.8.3.7), remains "responsible for the provision of spiritual care and nurture for every student" (Bylaw 3.8.3.7 [h]), and "shall carefully watch over the spiritual welfare...of the students and in general exercise such Christian discipline, instruction, and supervision as may be expected at a Christian educational institution" (Bylaw 3.8.3.7 [i]), the Commission concludes that it continues to be necessary for a university president to be male. And given the fact that the job description of the position in question

(provost) requires that person to serve as acting and/or interim president when the president is unable to serve, the Commission further concludes that this position (provost) must also be held by a male, since the responsibilities of the position remain with the position, even were they to be delegated to another person for a period of time.

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

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

Adopted April 21–22, 2007

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Adopted April 21–22, 2007

Status of “Visiting Faculty” (07-2491)

In a February 2, 2007 E-mailed letter, a professor of one of the Synod’s educational institutions noted that some members of the faculty on which he serves are termed “Visiting Faculty” and, because they have

not received “initial level appointments” (Bylaw 3.8.3.8.2), do not enjoy some of the rights that are granted to faculty members with such appointments.

Question: For the purposes of Bylaw 3.8.3.8 (b), are these “Visiting Faculty” temporary faculty members, and therefore ineligible to vote in faculty matters during the time that they do not hold an initial level appointment? Or to put the question another way, is the university free to classify faculty members as non-temporary, even if they do not hold an initial level appointment, or do the bylaws require that they be classified as temporary faculty members until such time as they receive an initial level appointment? If these faculty members who do not hold initial level appointment are not considered temporary according to synodical bylaws, are they eligible to serve on faculty committees that certify church worker students for the roster of the Synod?

Opinion: Bylaw 3.8.3.8 provides two categories for the faculty of colleges and universities of the Synod, “the full-time faculty and the part-time faculty.” Paragraph (a) of the bylaw further defines the sub-categories to be included under “part time or temporary faculty members” including those who are distinguished by the prefix or suffix “visiting.” Paragraph (b) makes clear that all such part-time or temporary faculty members “hold nonvoting membership on the faculty.”

The Commission concludes that the “Visiting Faculty” referred to in the question are therefore referenced in Bylaw 3.8.3.8 (a) when it speaks of “visiting” with reference to “part-time or temporary faculty members.” They are therefore to be regarded as such and, according to Bylaw 3.8.3.8 (b), hold nonvoting membership on the faculty until such time as they receive an initial level full-time appointment. In view of their nonvoting status, they are not eligible to serve on faculty committees that certify church worker students for the roster of the Synod under Bylaw section 2.7.

Adopted May 18–20, 2007

Calling a Special Convention of the Synod (07-2494)

During floor committee meetings for the 2007 convention of the Synod, a member of the Synod serving on a floor committee submitted the following question regarding the calling of special conventions of the Synod.

Question: If the Synod in convention adopts an enabling resolution encouraging the President of the Synod and the Council of Presidents (Constitution Art. VIII B 2) to call a special convention of the Synod if all necessary preparations have been completed, can it do so by simple majority or does it require a two-thirds vote?

Opinion: Article VIII B regarding “Special Sessions of the Synod” reads as follows:

1. The Synod may under circumstances call a special session if two-thirds of the voting representatives present so decide.
2. In cases of urgent necessity a special session may be called by the President with the consent of two-thirds of the district presidents or by three-fourths of the district presidents without the consent of the President; however, all congregations and other members of the Synod must be notified 30 days in advance and told for what purpose this extra meeting is being convened.

This article provides methods for the calling of a special session of the Synod. Under the first, the Synod itself—that is to say, the Synod in convention—may call a special session if two-thirds of the delegates so decide. In doing so, the convention itself may decide the circumstances under which such a special session is to be convened. If the convention were to identify that a special session will be held at a particular time, subject to certain circumstances having been met in advance, it may do so by two-thirds vote. Circumstances may include, for example, the concurrence of the President, the Council of Presidents, the Board of Directors, the receipt by a certain deadline of a report from a particular group, or any other condition the convention itself deems prudent.

A second method described for the calling of a special session is for the President, under cases of urgent necessity, to call a special session with the concurrence of two-thirds of the district presidents. While the convention may by majority vote adopt a resolution encouraging the President to call a special session and suggest that he should find “urgent necessity” under circumstances the convention describes, Article VIII B 2 would nonetheless require the President himself to concur that such urgency exists, and the President could then call a special session only with the concurrence of two-thirds of the district presidents.

Adopted May 18–20, 2007

Attendance at Special Sessions of the Synod (07-2495)

On May 21, 2007, a member of a convention floor committee asked a series of four questions regarding attendees of a special convention of the Synod if one were to be called.

Question 1: With reference to Article VIII, Article IX, Bylaw 3.1ff and any other pertinent articles or bylaws, in the calling of a special session of the Synod, who would be required to be in attendance in addition to voting delegates?

Opinion: The Commission on Constitutional Matters in Opinion 07-2490 has stated in answer to the question: “Is a ‘special session’ of the Synod the same as or different from a convention of the Synod?” Opinion: “The only difference is terminology. In one case the term used is a ‘regular meeting’ (Art. VIII A 1) and in another a ‘special session’ which can be called in different ways (Art. VIII B). Whether a ‘regular meeting’ or a ‘special session,’ either one is a convention of the Synod, and the appropriate provisions under Constitution Art. V, VIII, and IX and Bylaw section 3.1 apply to both in the same way.” All of those required to attend a regular meeting would also be required to attend a special session. (Art. IX 1–3.)

Question 2: In the case that nonvoting, advisory delegates are to be in attendance at a special session of the Synod, would they be the same delegates from the prior regular convention of the Synod as the voting delegates selected by their electoral circuits who serve a three-year term would be?

Opinion: The Bylaws are silent on this question. Voting delegates have a specific function to carry out after the regular meeting as set forth in Bylaw 3.1.2.2, and that same bylaw specifically identifies their term as three years. No mention is made in the Bylaws concerning such a responsibility or term of service for advisory delegates. By way of clarification the attendance of advisory delegates at a convention is not determined by an election of the circuit.

Question 3: If nonvoting, advisory delegates do not serve the three-year term as voting delegates do, would it be up to the individual district’s determination in the course of time between the regular convention and the special session who would represent their advisory members?

Opinion: Advisory delegates and representatives are selected by various entities or serve by reason of their office according to Bylaws 3.1.3.1–3.1.4.5. This would also be the case for a special session of the Synod.

Question 4: According to the Constitution and Bylaws, is it possible that any advisory delegates from the districts or national leadership may be excluded from attendance, as a cost reduction for the special session?

Opinion: The same representation required for a regular meeting of the Synod is also required for a special session (Art. IX). See opinion to question 1.

Adopted July 13–19, 2007

Voting Delegate and Restricted Status (07-2497)

On June 13, 2007, the Commission on Constitutional Matters received a request from the President of the Synod with respect to a pastor on restricted status serving as a voting delegate to a Synod convention.

Question: Does such restricted status, imposed after the pastor was duly elected to be a voting delegate, affect his status as a voting delegate to the convention?

Opinion: Under the provision of *Restricted Status*, Bylaw 2.13.3.2 states:

An individual member of the Synod on restricted status is ineligible to
(a) perform functions of ministry except in the position of service, if any, held at the inception of restricted status and otherwise only if approved by the district president; and
(b) accept a call to any other position of service in the Synod.

This provision (Bylaw 2.13.3.2), unlike the provision under *Suspended Status* (Bylaw 2.13.5.2), does not explicitly relieve an individual member of the Synod of one's membership duties (e.g., as a delegate to a district or Synod convention or as a member of any district or Synod board or commission).

Thus restricted status does not affect one's status as a voting delegate to a convention of the district or national Synod.

Adopted July 13–19, 2007

Specific Ministry Pastor Program (07-2499)

A pastor of the Synod, in a letter dated July 9, 2007, asked a question regarding the proposed Specific Ministry Pastor Program to come before the 2007 convention. After introductory comments regarding the status of specific ministry pastors and their relationship with other pastors, he asked the following question.

Question: In view of the foregoing, would not the implementation of the Specific Ministry Pastor Program require a change of the Synod's Constitution, and would that not require a two-thirds majority approval of the congregations of the Synod after the convention?

Opinion: The implementation of the program will not require a change of the Synod's Constitution and therefore will not require a two-thirds majority approval of the congregations of the Synod after the convention.

Adopted July 13–19, 2007

Specific Ministry Pastor Program (07-2500)

A pastor of the Synod, in a letter dated July 9, 2007, asked the following question regarding the proposed Specific Ministry Pastor Program to come before the 2007 convention.

Question: Should not the specific ministry pastor have to be listed in Article V B of the Constitution? Simply changing Bylaw 2.13 to accommodate this new category of pastor would seem to be very contrary to the purpose of Article V—namely, to list every sort of member of the Synod that there can be. The proposed Specific Ministry Pastor Program pastors are not envisioned as an existing category of pastor put on restricted status (the purpose of Bylaw section 2.13) but a wholly new category of pastor. Therefore, wouldn't amending Article V B to add a new category of pastor be necessary? And thus, wouldn't avoiding amending Article V B by trying to fit the Specific Ministry Pastor Program into Bylaw 2.13 in fact be unconstitutional?

Opinion: All specific ministry pastors would be ordained and their relative placement under Constitution Art. V A or B would depend upon their ministry role. If in charge of a congregation, they will fall within Article V A; if not, they will fall under Article V B in one of the categories listed.

Adopted July 13–19, 2007

Amendments for Specific Provisions of Special Sessions of the Synod (07-2501)

In a letter received July 9, 2007, a member of the Blue Ribbon Task Force on Structure and Governance submitted the following question regarding possible bylaw changes governing special sessions of the Synod.

Question: Is it in harmony with the Constitution and Bylaws of the Synod to add or amend bylaws which establish specific provisions (such as the provisions set forth in Bylaws 3.1.6–3.1.10.1) for the implementation of a special session (convention) of the Synod?

Opinion: Yes, it is in harmony with the Constitution and Bylaws of the Synod to add or amend the Bylaws to establish specific provisions for implementation of a special session of the Synod. Article VIII of the Constitution does not specify the manner in which special sessions are to be held or conducted. The specifics of Synod conventions are left to the provisions of the Bylaws.

Any amendment to the Bylaws must be presented to and examined by the Commission on Constitutional Matters prior to presentation to the convention to determine that it is not in conflict with the Constitution and Bylaws of the Synod, as required by Bylaw 7.1.1 (c).

Adopted July 13–19, 2007

Certification of Voting Delegates (07-2502)

In a letter dated July 10, 2007, the President of the Synod submitted a series of questions regarding the certification process for voting delegates to Synod conventions.

Question: Does Bylaw 3.1.3.2 constitute the entirety of the process of certification of all voting and nonvoting delegates to a convention of the Synod who are duly elected in accordance with Bylaws 3.1.2, 3.1.2.1, 3.1.3.1, and 3.1.4ff.?

Opinion: Yes. Bylaw 3.1.3.2 states,

All district voting and nonvoting advisory delegates and representatives and their alternates shall be certified before attending a convention of the Synod.

(a) The names and addresses of all voting and nonvoting advisory delegates and representatives and their alternates shall be forwarded by the district secretary before the announced registration deadline to the Secretary of the Synod on registration forms provided by the latter.

(b) This procedure shall constitute certification.

This is the sole provision for and completes the certification of convention delegates.

Question 2: Would it be a violation of the Constitution or Bylaws of the Synod for a convention of the Synod to declare ineligible or in any other way to challenge or remove the certification of any delegate elected in accordance with the bylaws referenced in question #1 above and certified by the process defined in Bylaw 3.1.3.2 or in any other bylaw of the Synod?

Opinion: Once a delegate is certified pursuant to Bylaw 3.1.3.2, there is no express provision in the Synod's Constitution and Bylaws to challenge said certification at a convention. In the absence of such a provision, accepted parliamentary procedure applies. Bylaw 3.1.9 (i) (3) requires the President to "conduct the sessions according to accepted parliamentary rules."

Question 3: May a convention of the Synod violate the Constitution or Bylaws of The Lutheran Church— Missouri Synod?

Opinion: No, a convention may not violate the Constitution or Bylaws of the Synod.

Adopted July 13–19, 2007

Elections Restrictions (07-2503)

During the course of the 2007 convention, a member of the Commission on Constitutional Matters reported that the chairman of Committee 9: Registration, Credentials, and Elections had requested opinions regarding the following election issues:

Question 1: Based on the election of a candidate to become a member of the Synod's Board of Directors, may another candidate from the same district remain on the ballot or be elected?

Opinion: No. Bylaw 3.3.5.1 (1) precludes the election of more than one elected member of the Board of Directors from any one district. The election of one member from a district renders ineligible any other candidate from the same district. Other candidates from that district must be removed from the ballot as ineligible.

Question 2: If the number of candidates remaining eligible for election to a category (i.e., ordained, commissioned, or lay) on the Synod's Board of Directors is less than two times the number

of positions to be elected because of the prior election of another candidate from the same district, must additional nominations be added before the election?

Opinion: No. Bylaw 3.12.3.6 (a) requires the Committee for Convention Nominations to make initial nominations of at least two candidates for each such position. Once those candidates have been nominated at the convention, that bylaw has been fulfilled. Should a candidate become ineligible, withdraw, or in some other manner the number of candidates is narrowed before balloting, there is no provision in the Constitution or Bylaws which requires or allows the nominations committee to add additional names.

Question 3: In what order should the election of members to the Synod's Board of Directors take place?

Opinion: Bylaw 3.12.4 (c) provides: "The committee shall be empowered to adopt procedures and methods that will insure efficiency and accuracy, including the use of mechanical, electronic, or other methods of casting, recording, or tabulating votes." The Committee on Elections must therefore determine the order in which it chooses to present the slate for election.

Adopted July 13–19, 2007

Convention Presidential Elections Procedure (07-2504)

During the course of the 2007 Synod convention, the chairman of the convention requested clarification of an earlier opinion of the Commission.

Question: What is the reason why the Commission on Constitutional Matters previously opined that a motion from the floor to require 10 minute presentations by presidential candidates would be inconsistent with the bylaws, but that requiring disclosure of whether a floor nominee was plaintiff in litigation against the Synod is consistent with the Bylaws. The Commission responded as follows:

Opinion: The proposal to require a 10 minute presentation by candidates for President would change the process directed by the Bylaws for election, as described in CCM Opinion 04-2396. The request for information requiring disclosure as to whether a potential nominee was a plaintiff in the lawsuit is a request for information regarding qualifications and does not change the process of elections. Bylaw 3.12.3.6 (c) requires the Committee for Convention Nominations to provide information such as age, occupation, etc. Nothing precludes the convention from requesting or requiring additional information to be supplied as a condition of their consideration of floor nominations.

Adopted July 13–19, 2007

Amendments to the Bylaws of the Synod (07-2505)

The following questions were submitted by the President of the Synod during the course of the 2007 convention of the Synod.

Question 1: To which sorts, kinds, or types of amendments to the Bylaws of the Synod do the provisions of Bylaw 7.1.1 apply?

Opinion: Bylaw 7.1.1 applies to all amendments to the Bylaws. The Synod has long recognized the importance of careful consideration of changes to its governing documents. At least as early as 1966, the

Bylaws required that amendments be “submitted to the Commission on Constitutional Matters for clearance prior to presentation to the convention.”

During the 1983 convention, the issue arose regarding proposed bylaws establishing a Board of Theological Education and a separate Commission on Church Literature. The opinion included the following:

In the case of the proposal for a Board of Theological Education, the Commission ruled that these proposed bylaws had not been submitted to the Commission on Constitutional Matters for clearance prior to presentation to the convention (Bylaw 14.01 d) and could not therefore properly be brought before the convention.

In the case of the proposed Commission on Church Literature, the Commission ruled that since the proposal and the proposed bylaws had not been submitted to the President of the Synod no less than sixteen weeks prior to the opening date of the convention, it could not properly come before the convention unless it were adjudged a matter of overriding importance and urgency and had been accepted for convention consideration by the committee consisting of the President, First Vice-President, and Secretary of the Synod (Bylaw 2.19 2 b). Furthermore, the Commission ruled that it could not be properly considered because it had not been submitted to the Commission on Constitutional Matters for clearance prior to presentation to the convention (Bylaw 14.01 d).

In 1997, the bylaw now numbered 7.1.1 (d) was considered as the basis for a proposed special standing rule which read:

The chair shall require written or oral certification that proposed constitutional or bylaw amendments have been examined by the Commission on Constitutional Matters and found not to be in conflict with the Constitution and Bylaws of the Synod.

The process required for amending the Bylaws is contained in Bylaw 7.1.1 (a) which requires that said amendments be presented in writing to the convention. Paragraph (b) requires that such bylaw changes are specifically identified as bylaw amendments, and that they be considered by a convention floor committee. Bylaw 3.1.7 (f) then requires the floor committee to consider the proposed amendment and report its findings and recommendations to the convention. Next, Bylaw 7.1.1 (c) requires that such amendments must be considered by the Commission on Constitutional Matters prior to presentation to a convention.

Question 2: May a convention of the Synod consider a minor amendment to a proposed amendment to the bylaws (which proposed amendment has been moved by the Synod in compliance with Bylaw 7.1.1) without following the provisions of Bylaw 7.1.1?

Opinion: All amendments to the Bylaws must follow the process of Bylaw 7.1.1. No exception has been made in the bylaw for “minor” amendments. However, if the “minor” amendment is considered by the floor committee as fairly within the scope of that which the floor committee considered prior to bringing the matter to the floor, and is within the scope of what the Commission on Constitutional Matters examined in advance and found not to be in conflict with the Constitution and Bylaws, no separate referral need be made.

Adopted July 13–17, 2007

Res. 8-07S Requirement for Consultation by the President of Synod

Chairman Marcis called attention to the purpose of the meeting, to continue consideration of an earlier conference call discussion with the President of the Synod (August 15, 2007) in response to 2007 convention Resolution 8-07S, which directed the President to consult with, among others, the Commission on Constitutional Matters regarding the calling of a special convention.

After discussion, the commission agreed to provide the following response to the President of the Synod:

- The Commission on Constitutional Matters (CCM) again affirms the constitutionality of special conventions, verifies that the requirement of Resolution 8-07S for consultation by the President with the commission has been met, and reaffirms its availability to respond to questions that may arise regarding such special conventions.
- While the commission recognizes that the current structure and governance of the Synod has developed over the past 150 years in a patchwork manner without the benefit of comprehensive study of the whole picture of the Synod's work, and while the commission further recognizes the role that CCM opinions have sometimes played in that process, it also recognizes that its responsibilities do not include advising regarding the "urgent necessity" (Constitution, Art. VIII B 2) of holding a special session of the Synod.
- While the commission does not view its role as to advocate any particular changes, it does, based on the commission's experiences in fulfilling its assigned responsibilities, recognize the following potential benefits:
 1. Restructuring in order to be better organized to work more effectively in support of and on behalf of congregations, to assist them in carrying out their ministries as they seek to serve our Lord Jesus Christ, the members of His body, and the world which stands in need of the Word and the impact of His redeeming love.
 2. Restructuring in order to simplify and clarify responsibility and accountability.
 3. Restructuring in order to empower and enable those given responsibility (officers, agencies, etc) for the benefit of the mission.
 4. Restructuring for the best use of all the resources available to the Synod.
- The decision whether the current "circumstances" (Constitution, Article VIII B 1) satisfy the urgent necessity requirement for calling a special session of the Synod (Constitution, Article VIII B 2) rightly belongs to the President and district presidents of the Synod.

Adopted Aug. 22, 2007

"Close(d) Communion" as a Constitutional Requirement (07-2508)

In a letter received September 14, 2007, a pastor of the Synod, after introductory comments, asked whether it is a constitutional requirement to practice close(d) communion in order to maintain status in the Synod. The letter was accompanied by an essay authored by the questioner, "A R[e]examination of Admission to the Lord's Supper[:] Another Look at Some of the Biblical and Confessional Texts."

Question: Does a pastor or congregation on the roster of the Synod have to practice close(d) Communion as a constitutional requirement for maintaining proper status in the Synod, or is this not set in cement and the members are asked merely to honor the position?

Opinion: The Constitution of the Synod does not address "close(d) Communion." However, the Synod affirmed in 1986 convention Res. 3-08 and reaffirmed in 1995 convention Res. 3-08 "that the pastors and congregations of The Lutheran Church—Missouri Synod continue to abide by the practice of close Communion, which includes the necessity of exercising responsible pastoral care in extraordinary situations and circumstances" (1998 Res. 3-05—emphasis added). In the same resolution, the Synod

resolved that it “pleads with its members by the mercies of God to abide by the historic practice of the church and The Lutheran Church—Missouri Synod concerning admission to the Lord’s Supper” (emphasis added).

Among the conditions for acquiring and holding membership in the Synod is “1. Acceptance of the confessional basis of Article II” (Constitution Art. VI). While doctrinal resolutions of the Synod are not the basis for acquiring and holding membership in the Synod, under Article II the Synod, in seeking to clarify its witness or to settle doctrinal controversy, understands that it has the right to adopt doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions (Cf. Bylaw 1.6.2 and 1973 convention Res. 2-12). 1973 Res. 2-12 also resolved that the Synod “reaffirm its position (Milwaukee *Proceedings*, Res. 2-21 and 5-24) that such [doctrinal] statements, insofar as they are in accord with the Scriptures and the pattern of doctrine set forth in the Lutheran Symbols, are, pursuant to Article II of the Synod’s Constitution, binding upon all its members (Cf. also Article VII)” (emphasis added). On April 18-19, 1974, the Commission on Constitutional Matters addressed positively the constitutionality of 1973 Res. 2-12.

According to 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.” In joining the Synod, the members voluntarily agree that “[t]he Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod” (Bylaw 1.7.1).

The Synod does provide for brotherly dissent, which does not put one’s membership or status in jeopardy. However, those who join the Synod agree that “[w]hile 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). Referring to 1971 convention Res. 2-21, Bylaw 1.6.2 (b) (7) defines “honor and upheld” as “to abide by, act, and teach in accordance with” (emphasis added). It is also agreed that “[w]hile the conscience of the dissenter shall be respected, the conscience of others, as well as the collective will of the Synod, shall also be respected” (Bylaw 1.8.2—emphasis added).

1995 convention Res. 3-08 concludes, “*Resolved*, That because we are ‘eager to maintain the unity of the Spirit in the bond of peace’ (Eph. 4:3), any members of the Synod who advocate a different practice of Holy Communion be fraternally reminded of the commitment all members of the Synod make to one another by subscribing to the Constitution of the Synod to honor and uphold its doctrine and practice and, where there is disagreement, to follow the proper channels of dissent as outlined in synodical Bylaw 2.39 c [2007 Bylaw 1.8]” (emphasis added). The Bylaws of the Synod call upon us to “honor and uphold” the resolutions of the Synod and not, in the words of the questioner, “merely honor.”

Therefore, in response to the question asked, yes, members of the Synod are expected to honor and uphold the resolutions of the Synod, including those regarding Communion practice. The Synod has resolved that its members abide by the practice of close(d) Communion, exercising responsible pastoral care in extraordinary situations and circumstances.

Adopted Nov. 15–16, 2007

Congregational Polity (07-2511)

In a letter dated October 10, 2007, the chairman of a district's constitution committee asked whether a district is required to examine a congregation's documents if they are policy-based governance documents rather than the usual constitutions and bylaws.

Question: Since the Constitution and Bylaws of the Synod only reference constitutions and bylaws of member congregations, does their new policy-based governance document fall under the same review process as their former Bylaws? Also, when a member congregation places items that could be included in bylaws into a policy manual, does the policy manual fall under the same review process as a constitution and/or bylaws?

Opinion: Bylaw 2.2.1 states as follows:

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

(a) The congregation shall submit its constitution and bylaws to the appropriate district president, who shall refer such to the standing constitution committee of the district. . . .

(b) The Constitution Committee shall examine the constitution and bylaws to ascertain that they are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod in order that any necessary changes may be made by the congregation before the application is acted upon. . . .

Furthermore, Bylaw 2.4.1 states:

2.4.1 A congregation desiring to retain membership in The Lutheran Church—Missouri Synod shall continue to have a constitution and bylaws approved by the Synod.

(a) A member congregation which revises its constitution or bylaws or adopts a new constitution or bylaws shall, as a condition to continued eligibility as a member of the Synod, submit such revised or new constitution and/or bylaws to the district president.

(b) The district president shall refer such to the district's constitution committee for review to ascertain that the provisions are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod. . . .

Nowhere in the Constitution or Bylaws of the Synod is the term “bylaws” defined. The *Merriam Webster Collegiate Dictionary—10th Edition* (2000) defines “bylaw” as follows: “a rule adopted by an organization chiefly for the government of its members and the regulation of its affairs.” Likewise, the *American Heritage Dictionary—3rd Edition* (1994) defines “bylaw” as “a law or rule governing the internal affairs of an organization.”

If in the opinion of a district constitution committee a specific policy manual or policy-based governance document performs the function of bylaws as commonly defined, the district constitution committee has the same responsibility to review these documents as it does those specifically denominated “constitution” or “bylaws.” It is the function of the document, not its specific title, which determines whether it shall be reviewed by the district constitution committee.

The Secretary of the Synod was asked to incorporate into his orientation materials for district constitution committees a discussion of the responsibilities of the committees as discussed in this opinion.

Adopted Nov. 15–16, 2007

Application of “Guidelines for Constitutions and Bylaws of Lutheran Congregations” (07-2512)

In a letter received October 18, 2007, a member of the Synod asked a series of questions regarding application of the commission’s “Guidelines for Constitutions and Bylaws of Lutheran Congregations,” specifically paragraphs 4.0 and 12.3:

4.0 Synod Membership

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

Example:

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

12.3 The revised constitution shall, as a condition of continued membership in The Lutheran Church—Missouri Synod, be submitted to the president of the district for review by the district’s constitution committee and favorable action by the district’s board of directors before being implemented by the congregation.

Question 1: If a congregation included the above two sections in its constitution, could it terminate its membership in The Lutheran Church—Missouri Synod without the consent of the district’s constitution committee and the district’s board of directors?

Opinion: The answer to this question is “yes.” The congregation’s decision to terminate its membership in the Synod, which would necessarily include the changing of its bylaws to remove the two paragraphs in question, would render moot the Synod’s requirements for membership, including its requirement that constitution and bylaw changes first be submitted for review and approval.

Question 2: If the answer to question 1 is “no,” does this change the voluntary nature of the Synod and can a congregation be required to include it in their constitution by the district?

Opinion: The answer to question 1 was “yes.”

Question 3: My district committee that reviews constitutions has made the following request before approving our congregation’s Constitution and Bylaws:

Constitution, Article XII

(Please add.) C. Review

Any amendments to the constitution must be submitted to the NID Polity Commission for review, and then to the NID Board of Directors for approval. Amendments are not to be placed into practice in the congregation until they are reviewed and approved by the district.

Bylaws, Article XII

(Please add.) Any amendments to the bylaws must be submitted to the NID Polity Commission for review, and then to the NID Board of Directors for approval. Amendments are not to be placed into practice until they are reviewed and approved by the district.

Does the wording above from the district in any way change the answers to questions 1 and 2?

Opinion: These paragraphs requested by the district committee do not change the answers to questions 1 and 2. The language suggested by the district's committee assumes continued membership in the Synod and correctly points out that a congregation has covenanted with the Synod not to implement changes to its governing documents until approved by the district, as provided in paragraph (d) of Bylaw 2.4.1:

(d) Upon favorable action by the district board of directors, the congregation shall be notified that the changes are acceptable to the Synod and that the congregation is entitled to continue to function as a member of the Synod in good standing under the new or changed constitution or bylaws.

The suggested language could be construed to require district approval before withdrawal of membership, and the specific language could have binding effect under state law to that effect. A congregation is not required by the Synod to do so. Should the members of a congregation desire to include such a provision voluntarily, limiting the possibilities of withdrawal by future members, it may certainly do so.

Adopted Nov. 15–16, 2007

CCM Model Constitution re Excommunication Vote (07-2492)

A pastor of the Synod in an April 9, 2007 letter raised an issue regarding paragraph 5.4.2 of the commission's 2006 *Guidelines for Constitutions and Bylaws of Lutheran Congregations* pertaining to standards for excommunication, *i.e.*, whether a unanimous vote of the congregation is required for an excommunication. He judged that "the model constitution...provided by [the] Synod contradicts [the] Synod's position on excommunication under Article II of [the] Synod's Constitution" and suggests that "the model constitution" be revised and congregations be advised to revise their constitutions to reflect the "Synod's doctrinal position."

Question: [Does] the model constitution provided by the Synod contradict the Synod's position on excommunication under Article II of the Synod's Constitution?

Opinion: While the pastor did not formally request an opinion from the Commission on Constitutional Matters (Bylaw 3.9.2.2), the commission regards the communication with having the intention to ask the above question.

The Commission on Constitutional Matters regards the 2006 *Guidelines* to be consistent and in harmony with Article II of the Synod's Constitution, including the Synod's position on excommunication under Article II. The 2006 *Guidelines* state:

Communicant members who conduct themselves in an un-Christian manner shall be admonished according to Matthew 18:15–20 and the congregation's stated and adopted guidelines. If they remain impenitent after proper admonition, they shall be excommunicated. Each case of excommunication or self-exclusion shall be presented to the voters assembly for a decision. A two-thirds majority vote of the voters assembly shall be required.

The "two-thirds majority vote" reflects concern by the commission that excommunication not occur by a simple majority vote because of the gravity and great importance of the matter.

Historically, the 1956 and 1963 *Guidelines for Constitutions and Bylaws of Lutheran Congregations* do suggest a "unanimous vote" by the voters assembly for excommunication. However, the 1985 and 2000 *Guidelines* do not suggest what the vote should be, stating: "Each case shall be presented individually to the voters assembly for a decision."

It should be noted that the *Guidelines for Constitutions and Bylaws of Lutheran Congregations* are indeed “guidelines” only and should not be regarded as a “model constitution.” Constitutional polity has traditionally been considered an adiaphoron by the Synod.

In preparation for its response to the April 9, 2007 communication referenced above, the commission requested input from the Commission on Theology and Church Relations (CTCR). The response of the CTCR follows:

CTCR Response

The CTCR has previously provided “input” regarding this issue in its 1985 report *Church Discipline in the Christian Congregation*. In response to the question “Does excommunication have to be unanimous?” the CTCR says:

Our synodical fathers argued in the affirmative, pointing out that since such a verdict, reached on the basis of a clear Word of God and representing God’s own judgment on the sinner, must be accepted by every Christian and that any who might vote against such action be dealt with (if necessary, excommunicated themselves) before the matter in question is resolved. Although ideally all members will see the justice of what has been resolved (assuming that the congregation has acted on the basis of the Word of God, and the lack of repentance on the part of the one being dealt with is evident), we believe that excommunication may be carried out without unanimous vote. Shall the ignorance and/or weakness of any dissenting member invalidate either the verdict of the Lord through His church or their own eternal salvation? In all such instances, of course, those not in agreement should be dealt with evangelically in the hope of persuading them that the action of the congregation was truly Scriptural. And if it is evident that a congregation is not sufficiently instructed, with the result that a considerable number would at the time not be ready to favor excommunication in any case, the action should be postponed until such instruction can have its good effect. (p. 22)

The CTCR does not believe that the position taken in the response quoted above (“that excommunication may be carried out without unanimous vote”) contradicts the doctrinal position of the Synod. As Walther himself maintained in defending an unconditional (*quia*) subscription to the Lutheran Confessions, complete agreement with the *doctrinal content* of the Confessions does not imply or necessitate complete agreement with every line of argumentation or every exegetical interpretation employed in support of a specific doctrinal position.¹ This principle also applies to doctrinal statements and resolutions adopted by the Synod.

In *Church and Ministry* Walther sets forth the theological principle that “the minister must not tyrannize the church. He has no authority to introduce new laws or arbitrarily to establish adiaphora or ceremonies. He has no right to inflict and carry out excommunication without his having first informed the whole congregation.”² Walther goes on to share his view that, according to Matthew 18:15–18, a verdict of excommunication is to be pronounced by the pastor “only when the congregation has *unanimously* decided to excommunicate” the unrepentant sinner.³ However, Matthew 18:15–18 does not specifically address the issue of congregational “unanimity” in matters of excommunication. Despite Walther’s personal views regarding this matter,

A unanimous ballot does not appear to be a Biblical requirement, though it may check impetuous action...Unanimity does not seem to be a Biblical requirement. When evidence of sin and impenitence are indisputable, the congregation is not bound to that traditional rubric.⁴

In its report on *Church Discipline in the Christian Congregation*, the CTCR also responds to the question, “Is it proper for the congregation to delegate to the elders, to the church council, and/or to the pastor the authority to excommunicate?” Whether it is wise to do this may well depend on the circumstances, says the Commission, but “it is no doubt within the power of the congregation to ask the Board of Elders and/or pastor to act in its behalf.” (p. 25) The CTCR notes in this connection that “a kind of delegation has already taken place when the voters’ assembly, as is generally the case, is authorized to act in the name of ‘the church.’” (p. 25) This principle seems relevant in view of the pastor’s claim that “Synod’s position under Article II states that...there must be unanimity not only of the voters but there must be unanimity of the congregation.” In other words, the position taken by the pastor (which he claims to be “the Synod’s position under Article II”) would not give the congregation itself the power to delegate to others—even to the voters’ assembly—the authority to carry out excommunication on its behalf.

The CTCR shares this input with the CCM in support of the view that one can affirm the doctrinal position set forth by Walther in Thesis IX of *Church and Ministry* regarding congregational consent in cases of excommunication without necessarily agreeing with the view that Matthew 18:15–18 implies or requires a “unanimous” decision on the part of the congregation.

¹ “Why Should Our Pastors, Teachers and Professors Subscribe Unconditionally to the Symbolical Writings of Our Church,” reprinted in the *Concordia Journal* (July, 1989: 274-284).

² Thesis IX “Concerning the Holy Ministry,” *Church and Ministry*, trans. J. T. Mueller (St. Louis: Concordia Publishing House, 1987): 303.

³ *Church and Ministry*, 322.

⁴ *Pastoral Theology*, ed. Norbert H. Mueller and George Kraus (St. Louis: Concordia Publishing House, 1990): 183.

Adopted April 4–5, 2008

Dispute Resolution Process (08-2514A)

A series of questions related to Opinion 08-2514 was submitted by the Secretary of the Synod as follows:

Question 1: When a congregation removes a church worker and the worker requests the appointment of a reconciler, are the decision of the congregation and any related actions to be considered placed “on hold” until the Synod’s dispute resolution process has produced a final decision regarding the propriety of the congregation’s action, as suggested by CCM opinion 02-2308?

Opinion: The action of a congregation in removing a minister of religion—ordained or a minister of religion—commissioned is effective upon such date as determined by the action of the congregation. The initiation of a dispute resolution process under Bylaw section 1.10 does not change that action or its effective date. The position previously held by the worker is vacated, and the worker is eligible for candidate status and a further call. By requesting the dispute resolution process, the worker would be asking the Synod to review the appropriateness of the action of the congregation and asking that the Synod through the dispute resolution process recommend that the congregation review and revise its completed action.

This issue was dealt with, at least in part, in prior CCM Opinion 02-2308. The opinion in the matter was as follows:

Question: When the formal dispute resolution process of Chapter VIII of the Bylaws of the Synod has begun, are related matters placed on hold until reconciliation or a final decision is reached?”

Opinion: By accepting membership in the Synod, members have committed to be governed by the Constitution and Bylaws of the Synod, including the use of the dispute resolution process outlined in Chapter VIII of the Bylaws. Members have agreed that they will be bound by the process even to the extent that “no person or entity to whom or to which the provisions of this chapter are applicable because such person, entity or agency is a member of the Synod may render the provisions of this chapter inapplicable by terminating that membership” (Bylaw 8.01).

In cases in which a pastor has challenged the termination of his call and has initiated the dispute resolution process under Chapter VIII, the pastor and the congregation, both being members of the Synod, are committed to resolving that dispute according to the process provided for in the Bylaws. While Bylaw 8.11 recognizes the congregation’s right of self-government, which includes the discharge of a pastor, it also includes the expectation that the congregation will honor and act upon the decision of a Dispute Resolution Panel, which is final only after all opportunities for request for review have been exhausted.

Were a congregation to act upon a decision of a Dispute Resolution Panel prior to the completion of the appeal process, and were an Appeal Panel to grant reconsideration of that decision by a Review Panel, and were the Review Panel to arrive at a different final decision, confusion would result due to the congregation’s action on the basis of the earlier decision. Congregations therefore are advised to place on hold matters related to the underlying dispute and to defer any actions that might prevent the effective implementation of the final decision from the dispute resolution process.

The purpose of advising that a congregation not replace the worker pending a dispute resolution process decision is not to suggest that the action of the congregation is incomplete or on hold. Rather, in our walking together, it is simply a recognition that replacing the worker before the dispute resolution process is complete may effectively limit or prevent the congregation from meaningfully reviewing and, if they choose to do so, revising the action disputed.

Question 2: When a reconciler prepares his written report in a dispute case, does the administrator of the dispute resolution process have the responsibility or authority to find fault with and override the reconciler’s report other than to make certain that the report contains “the actions of the reconciler, the issues that were resolved, the issues that remain unresolved, and whether reconciliation was achieved” (Bylaw 1.10.6.5)?

Opinion: The role of the administrator of the dispute resolution process is described in Bylaw 1.10.4 (a) as one who “...manages the dispute resolution process but who does not take leadership, declare judgments, advise, or become involved in the matter in dispute.” The administrator is not a fact-finder as to the underlying dispute, but rather is charged to review the report of the reconciler to determine that it complies with the procedural requirements of the bylaw. This includes the requirement to assure that the report contains the actions of the reconciler, the issues that were resolved, the issues that remain unresolved, and whether reconciliation was achieved. As Bylaw 1.10.6.5 further indicates, he is also to assure that the report contains as an attachment to the report (a) the statement of the complainant as to informal reconciliation efforts, (b) the statement of the matter in dispute, and (c) any reply by the respondent. The administrator is also charged with responsibility to see to it that “[t]he report and the attachments shall be forwarded to the parties to the dispute and the secretary of the Synod or district as appropriate.”

Question 3: When a party to a dispute submits questions to the Commission on Constitutional Matters during the pre-panel stages of the dispute resolution process, do the time limitation provisions of Bylaw 1.10.18.1 (h) apply?

Opinion: The timelines dictated by the dispute resolution process, beginning with Bylaw 1.10.8, do not provide for or allow the process to be postponed by submission of a question to the Commission on Constitutional Matters or the Commission on Theology and Church Relations prior to the formation of a Dispute Resolution Panel. Rather, should such questions be submitted through the panel during the pendency of a Dispute Resolution Panel as provided by Bylaw 1.10.18.1 (h), the time limitations then existing at that stage of the proceedings do not apply until the requested opinion is rendered. The bylaw reads, “When an opinion has been requested, the time limitations will not apply until the opinion has been received by the parties.”

Question 4: What is the status of the decision of the congregation when its decision or a decision of the dispute resolution process has been appealed?

The status of the decision of the congregation is within its authority to decide. Please see the answer to Question 1.

Question 5: What is the status of a minister of religion—ordained or a minister of religion—commissioned who has been removed from office when that decision and action of the congregation is submitted to the dispute resolution process pursuant to Bylaw section 1.10?

Opinion: As discussed above, the action of the congregation is complete once taken by the congregation. A worker may continue to hold membership in the Synod by application for candidate or non-candidate status under Bylaws 2.11.2.2 or 2.11.2.3, unless otherwise qualifying as an active member by reason of another call or other responsibilities as described in Bylaw 2.11.1.

Question 6: When must the face-to-face meeting required by Bylaw 1.10.5 take place in order to fulfill the requirements of the dispute resolution process, and who represents the congregation in that process?

Opinion: Since the purpose of the meeting is to resolve the dispute prior to submission to a formal dispute resolution process, the face-to-face meeting can happen only after the action which is the subject of the dispute has occurred. If the dispute is to a worker’s dismissal, that meeting cannot occur until the dismissal has occurred. As described in Bylaw 1.10.5, it is the responsibility of the district president to see to it that this meeting occurs before allowing the matter to proceed to appointment of a reconciler. Upon appointment, the reconciler is further required under Bylaw 1.10.6.2 to assure that such a meeting has occurred, and further determine whether additional informal efforts should be made. Only when the reconciler is satisfied that informal efforts did not resolve the matter may the reconciler direct the respondent to submit to the reconciler and the complainant a written reply to the statement of the matter in dispute, and simultaneously move into a formal dispute resolution process as described in Bylaw 1.10.6.3.

Where it is an action of a congregation which is subject to a dispute resolution process, the congregation itself is the respondent. While it might be beneficial for face-to-face meetings with multiple parties or constituencies within a congregation in an attempt to resolve a conflict with the congregation, the process ultimately contemplates that a single representative of the congregation represent it in the dispute resolution process, including the face-to-face meeting required. As the *Standard Operating Procedures Manual* for the dispute resolution process indicates in Section V:

D. Parties to the Matter: If a party is a member of the Synod and not an individual, it shall be represented by its chairman or a designated member. If a party is a board or commission of the Synod or its districts, it shall be represented by its chairman or designated member.

The *Standard Operating Procedures Manual* was prepared by the Commission on Constitutional Matters in consultation with the Council of Presidents and the Secretary of the Synod as mandated by the Synod under Bylaw 1.10.18.1 (j). Thus, for the purposes of the dispute resolution process, the congregation is to be represented by the chairman of the congregation unless the congregation designates another member of the congregation.

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

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

Adopted April 4–5, 2008

Definition of Term: “Operating Board” (08-2515)

In a March 28, 2008 memorandum, the Commission on Structure requested an opinion from the Commission on Constitutional Matters regarding the use of the term “operating board” in Bylaw 6.2.1. At the commission’s April 2008 meeting, it was agreed that this question should be submitted to the Board of Directors and to legal counsel for their input (Bylaw 3.9.2.2 [b]) prior to a response from the commission.

The Secretary reported on research that he provided to the Board of Directors, including a history of the board’s involvement in the recognition of service organizations over the past 30 years and a history of terminology associated with the recognition process, a report adopted by the board as its own statement of record. He also reported that legal counsel responded positively to the results of the research.

After discussion of the results of the research, the commission determined its response to the question submitted by the Commission on Structure.

Question: How is the use of the term “operating board” in Bylaw 6.2.1 to be understood and to whom does it apply?

Opinion: The term “operating board” occurred for the first time in the 1995 *Handbook* of the Synod in place of the term “program board” in the 1992 *Handbook*. The 1995 *Handbook*, after listing the Synod’s Board of Directors and the boards of the synodwide corporate entities, listed as “Other Operating Boards” those boards that essentially are today the program boards of the Synod. The 1995 *Handbook* for the first time also used the term “operating board” in Bylaw 14.03 d, what is today Bylaw 6.2.1.

The 1998 *Handbook* reverted back to the use of the term “Program Boards” as the title for these boards, but it also retained the term “operating board” in Bylaw 14.03 d (2007 Bylaw 6.2.1). It is the opinion of the commission that the term “operating board” as it appears today in Bylaw 6.2.1 is therefore to be applied accordingly. The term “operating board” is to be understood to apply to the Board of Directors and the boards of the synodwide corporate entities (including Concordia Plan Services) and to the program boards. Today’s synodwide corporate entities and program boards are listed in current Bylaw 1.2.1, paragraphs (o) and (u).

Adopted June 6–7, 2008

District Constitution Committee Responsibilities (08-2516)

In a letter dated April 8, 2008, a pastor member of the Synod serving as a member of a district's constitution committee asked whether a committee has the right to mandate that a congregation include a clause in its constitution requiring it to submit revisions to the district committee.

Question: Can a [district board of directors] and its [constitution committee] mandate that the congregation include a clause in its constitution that requires the [congregation] to submit its revisions to the [constitution committee]?

Opinion: The judgment and responsibility to determine what is acceptable in a congregation's constitution and bylaws has been given by the Synod only to a district board of directors, upon recommendation of the district president and upon the advice of the district constitution committee. With respect to retaining membership in The Lutheran Church—Missouri Synod, Bylaw 2.4.1 (c) states:

(c) Upon advice of the constitution committee and recommendation by the district president, the district board of directors shall determine if the changes are acceptable to the Synod.

The Constitution and Bylaws of the Synod do not mandate a clause in a congregation's constitution and/or bylaws that requires the congregation to submit its revisions to the constitution committee. However, the document, "Guidelines for Constitutions and Bylaws of Lutheran Congregations" (which is just that: "guidelines"), does suggest wording for the congregation's constitution and bylaws for the sake of unity and harmony, for benefiting the congregation in its responsibilities and in its relationship to the Synod, and for the sake of avoiding any potential future conflict or potential legal difficulties.

When determining what changes are acceptable concerning the provisions in a congregation's constitution, a district board of directors must follow no more than the criteria set forth in the Bylaws of the Synod, which state:

The district president shall refer such to the district's constitution committee for review to ascertain that the provisions are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod (Bylaw 2.4.1 [b]).

It should be noted that even if the clause in question is not in the congregation's constitution, a member congregation is required to submit a revised or new constitution and/or bylaws for continued membership in The Lutheran Church—Missouri Synod. The Bylaws of the Synod clearly state in Bylaw 2.4.1:

A congregation desiring to retain membership in The Lutheran Church—Missouri Synod shall continue to have a constitution and bylaws approved by the Synod.

(a) A member congregation which revises its constitution or bylaws or adopts a new constitution or bylaws shall, as a condition to continued eligibility as a member of the Synod, submit such revised or new constitution and/or bylaws to the district president.

Adopted June 6–7, 2008

Congregations' Right to Suspend Bylaws (08-2519)

As a result of the proposed congregation transformation process that is currently underway in some districts and is being considered by several more, a number of district presidents, in an e-mailed June 2, 2008 letter following their participation in a training session, raised a series of questions regarding some

of the recommendations proposed as part of the revitalization process. Included with the questions was the following paragraph providing background regarding said process:

The revitalization process recommends that congregations suspend those portions of their bylaws that address election, officers, and governance structures. All other bylaws and, of course, the Constitution and/or Articles of Incorporation remain intact. The intent is to put the pastor, not a committee, in a position of responsibility and authority for the congregation to pursue a new vision for mission and ministry.

Also included with the questions were the following comments from the questioners:

Since part of the Synod's *Ablaze!* initiative includes the revitalization of 2,000 congregations, the Transforming Congregations Network was put together. It stems from a process begun by Dwight Marable, President of Missions International. It comes primarily from a Baptist background and has a different polity behind it, enabling it to perhaps do things the LCMS is not able to do, or at least may not be able to do as easily. The intent of the above paragraph is to enable a congregation to implement an "accountable leadership model" of governance for an interim period. If it proves successful, then a congregation may choose to adopt that model as a more permanent structure for mission and ministry. Please note that it calls for the suspension of only certain bylaws, not the entire set of bylaws.

Question 1: May a congregation of the Synod suspend or hold in abeyance some of their bylaws, specifically those dealing with elections, officers, and governance structure, in order to pursue a new vision for mission and ministry?

Opinion: The Commission on Constitutional Matters is allowed to give opinions only regarding issues arising under the Constitution, Bylaws, and resolutions of the Synod. The conditions for membership in the Synod are contained in Article VI of the Constitution and Bylaws 2.2 through 2.4. Assuming the constitution and bylaws of an individual congregation allow the suspension or holding in abeyance of some of its bylaws, then so long as a congregation does not seek to suspend or hold in abeyance those bylaws necessary for membership in the Synod, the Constitution and Bylaws of the Synod do not prohibit such holding in abeyance or a temporary suspension. Should the congregation determine to amend its bylaws or constitution, however, the proposed constitution and/or bylaw changes would need to be submitted for approval as required by Bylaw 2.4.1 (a).

In the more likely situation where there is no provision in the existing governing documents allowing for such suspension or holding in abeyance, no matter how well intended and no matter how "short term" the suspension is intended to last, such action would result effectively in an amendment of those governing documents. Bylaw 2.4.1 (a) requires such amendments to be submitted to the district president, who in turn is required to refer the proposed amendments to the district's constitution committee for review and to provide a recommendation to the district's board of directors for final action under Bylaw 2.4.1 (c).

This is not to say, should it determine that the proposed experimentation is to be encouraged, that the district could not adopt an expedited procedure to facilitate a speedy review of such proposed governance changes.

Question 2: If a congregation were to suspend or hold in abeyance select bylaws, would this have a negative impact on its 501 (c) (3) status?

Opinion: The answer to this question is not dependent upon the Constitution, Bylaws, and resolutions of the Synod. Questions regarding this issue should be addressed to local legal counsel or the Internal Revenue Service.

Question 3: If a congregation were to suspend or hold in abeyance select bylaws, would this have a negative impact on its membership in the Synod?

Opinion: As described above, so long as the congregation honors the conditions of membership as set forth in Article VI of the Constitution of the Synod and the eligibility requirements of Bylaws 2.2 through 2.4, a congregation's action to suspend or hold in abeyance select bylaws would not have a negative impact on a congregation's membership in the Synod.

Question 4: Is it legal in the eyes of the state, which has granted nonprofit corporation status, for a congregation to suspend or hold in abeyance select bylaws?

Opinion: This question is again a matter of state law and not an issue under the Constitution, Bylaws, and resolutions of the Synod. Questions should be submitted to local legal counsel or the state corporation governing body.

Adopted June 6–7, 2008

2004 Res. 3-05A “To Affirm Marriage as Union of One Man and One Woman” (08-2524)

In a letter dated June 10, 2008, a district president asked the commission to interpret 2004 convention Res. 3-05A (“To Affirm Marriage as the Union of One Man and One Woman”) as it relates to the California Supreme Court decision overturning the California ban on same sex unions and as it relates to the implications for ecclesiastical supervision as required by the Constitution and Bylaws of the Synod.

- Questions:
1. Please share with me your interpretation of Resolution 3-05A, “To Affirm Marriage as Union of One Man and One Woman” (2004 *Proceedings*, p. 130). What is the authority of this resolution and its implications for ecclesiastical supervision?
 2. Given your definition and interpretation of Res. 3-05A, what do the Constitution and Bylaws of the Synod describe as the remedies on the part of a district president if a pastor in the district should perform a “marriage” for a same sex couple?

Opinion: With respect to the society demanding legal recognition of same-sex unions as “marriages” (cf. the Supreme Court of the State of Massachusetts Feb. 4, 2004 decision and the California Supreme Court 2008 decision), 2004 LCMS convention Res. 3-05A declares “homophile behavior as intrinsically sinful” and that “homosexual behavior is prohibited in the Old and New Testaments (Lev. 18:22, 24; 20:13; 1 Cor. 6:9–20; 1 Tim. 1:10) as contrary to the Creator’s design (Rom. 1:26–27).” The resolution urged the Synod’s members “to give a public witness from Scripture against the social acceptance and legal recognition of homosexual ‘marriage’” and resolved “[t]hat the LCMS, in convention, affirm, on the basis of Scripture, marriage as the lifelong union of one man and one woman (Gen. 2:2 – 24; Matt. 19:5 – 6).”

Under the assumption that 2004 Res. 3-05A is in accordance with the Word of God, the Synod expects every member congregation of the Synod to respect the resolution and consider it of binding force (Cf. Bylaw 1.7.2). Bylaw 1.6.2 (a) states, “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; cf. also Bylaw 1.8.1). And Bylaw 1.7.1 further states, “The

Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.”

1971 convention Res. 2-21 confirmed the binding nature of such resolutions: “[P]rovided a doctrinal resolution is in fact in harmony with the Word of God, which is ‘the *only* rule and norm of doctrine,’ the content of such a resolution is *intrinsic* to the Synod’s confessional basis....It is fully in accord with Article II of the Constitution to insist that such a resolution has binding force for all members, and in accord with Article XIII to deal with those who refuse to honor such a resolution as ‘members who act contrary to the Confessions laid down in Article II...’” (1971 *Proceedings*, p. 118).

With respect to the congregation’s right of self-government and the matter of expediency as far as the condition of the congregation is concerned (Constitution Art. VII), 1971 Res. 2-21 also declared “[t]hat 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).” See also the CCM Opinion 05-2444, “Proper Dissent and Dispute by Members of the Synod.”

Resolution 3-05A, together with all of the resolutions of the Synod, has implications for ecclesiastical supervision. This responsibility, primarily of the President of the Synod and district presidents, is 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 (Bylaw 1.2.1 [g]).

In ministering to the pastor (and/or congregation) that performs or sanctions a “marriage” for a same sex couple, the district president will want to carry out the guidance and spirit of Res. 3-05A, which encouraged the church’s proper evangelical work to proclaim the reconciliation of the sinner to God in the death of Jesus Christ (2 Cor. 5:18-19) and to minister to homosexuals and their families in a spirit of compassion and humility, recognizing that all have sinned and fall short of the glory of God, and are justified freely by His grace, through the redemption that came by Christ Jesus (Rom. 3:23-24), and which encouraged that the members of the Synod deal with sexual sins with the same love and concern as all other sins, calling for repentance and offering forgiveness in the Good News of Jesus Christ when there is repentance.

If a pastor or congregation should, after appropriate admonition, fail to honor and uphold a doctrinal resolution of the Synod, the district president shall act under Constitution Art. XIII 1, which states, “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.” Article XII empowers district presidents “to suspend from membership ordained and commissioned ministers for persistently adhering to false doctrine or for having given offense by an ungodly life, in accordance with such procedure as shall be set forth in the Bylaws of the Synod.” Bylaws 2.13.2–2.13.2.4 (restricted status), 2.13.4–2.13.4.3 (suspended status), and 2.14 (expulsion of congregations or individuals from membership in the Synod) provide the “remedies” or provisions with respect to a district president’s ecclesiastical supervision.

Adopted Aug. 18, 2008

Interpretation of “Position of Service” in Bylaw 2.13.2.2 (a) (08-2528)

In an August 18, 2008 letter, a district president asked for an interpretation of the words “position of service” in Bylaw 2.13.2.2 (a) as it pertains to pastors serving congregations with pastoral vacancies.

Question 1: Under Bylaw 2.13.2.2 (a), does “position of service” regularly reference a called position filled by a member on the “active” roster of the Synod?

Opinion: Bylaws 2.13.2.2 (b) and 2.13.4.2 (c) associate the term “position of service” with a call by speaking of eligibility to “accept a call.” In addition, Bylaw 2.11.1, which governs the “active” roster of church workers of our Synod, uses “serving” and “call” terminology interchangeably, indicating that “active” members of the Synod, including ordained ministers “serving a congregation of the Synod” (paragraph [a]), must also be “regularly performing duties” of service, thereby assuming the existence of a regular call. Further, only ordained ministers “who have been duly called to a position of full-time service shall be installed upon authorization by the appropriate district president” (Bylaw 4.4.3 [e]) and rostered accordingly (Bylaw 4.4.7). Therefore, yes, “position of service” in Bylaw 2.13.2.2 (a) references a regularly called full-time position filled by a member on the “active” roster of the Synod.

Question 2: Does “position of service” also reference a congregation’s pastoral vacancy being filled by a member on the “inactive” roster of the Synod—emeritus, candidate, or non-candidate?

No, a pastoral vacancy is not a “position of service” referenced in Bylaw 2.13.2.2 (a). If a pastor filling a pastoral vacancy does not qualify for “active” membership under Bylaw 2.11.1 due to the lack of a regular call to regularly perform the duties of one of the bylaw’s listed categories, he may make application to be placed on one of the “inactive” rosters of the Synod (Bylaws 2.11.2ff). While the service that a pastor provides during a pastoral vacancy is valuable service, it is not a “position of service” that qualifies a pastor for “active” roster status.

Question 3: Can a pastor on candidate status serving a vacancy, if he is placed on restricted status by his district president, not be granted approval for such service and thus not be eligible to continue as vacancy pastor?

Opinion: Because a pastor on candidate status who serves a vacancy does not thereby hold one of the positions of service listed under Bylaw 2.11.1, such vacancy service, should he be placed on restricted status by his district president, is not to be included under the general exception granted for “position[s] of service” by Bylaw 2.13.2.2 (a). His district president may approve his continued performance of such “functions of ministry,” but without such approval he is ineligible to continue to serve as a vacancy pastor.

Adopted Aug. 18, 2008

District President Authority During Appeal Process (08-2520)

In a letter dated June 11, 2008, a pastor member of the Synod asked for an opinion from the commission regarding the authority of a district president to restrict the activities of a pastor of a congregation during Bylaw section 2.14 or 2.17 expulsion processes.

Question: When a district president suspends a pastor for allegations of sexual misconduct (or otherwise), after a proper investigation of the situation(s), does the district president have the authority to restrict the activity of a parish pastor in the congregation prior to completion of the full appeal process?

Opinion: According to paragraph 8 of Article XII of the Constitution of the Synod, district presidents are empowered to suspend ordained and commissioned ministers from membership in the Synod “for persistently adhering to false doctrine or for having given offense by an ungodly life.” The suspension must be in accordance with procedures set forth in the Bylaws of the Synod.

When formal proceedings are commenced under the procedures set forth in Bylaw sections 2.14–2.17, the accused member has suspended status (Bylaws 2.13.4; 2.14.6 [a]; *et al.*), which continues until the formal proceedings are completed or until membership is duly terminated. A suspended member continues to hold all rights under the Constitution and Bylaws of the Synod except, according to the provisions of Bylaw 2.13.4.2 (a–c): (a) the member is relieved of duties as a member of the Synod; (b) the member is relieved of any duties and responsibilities with the Synod, the district, or another agency of the Synod; and (c) the member is ineligible to accept a call to another position of service in the Synod.

Under the suspended status provision of the Bylaws, a district president does not have the authority, either under Article XII or Bylaw 2.13.4.1, to limit the activities of the pastor of a congregation in that member congregation. Bylaw 2.13.4.3 states: “The member on suspended status shall continue to be eligible to perform those duties and responsibilities of any other position which such member held at the time when placed on suspended status, including a position with a member congregation.”

Under the provision, a district president must also advise the congregation being served by the suspended member to take appropriate action so that the rights of both the member and the congregation are preserved (Bylaw 2.13.4.3 [a] [3]).

Adopted Nov. 20–21, 2008

Face-to-Face Meeting Requirement (08-2527; 08-2529; 08-2529A)

In letters dated July 31, August 20, and September 9, 2008, a pastor of the Synod asked a series of questions related to the initiation and processing of an action which could result in the expulsion of a member from the Synod. Pursuant to the provision of Bylaw 3.9.2.2 (b), the commission advised the questioner’s ecclesiastical supervisor of the submission of the questions and provided opportunity to submit information believed to be important for the commission to know in providing its response. This input clarified that the questions were purely hypothetical, that no action under Bylaw section 2.14 had been initiated, and that the ecclesiastical supervisor, in an attempt to avoid the need to initiate such action, had requested that the member come to his office to discuss an issue of concern regarding information that was being published by the member concerning the ecclesiastical supervisor. The commission responded to the questions that were submitted as follows.

Question 1: Does a privately or publicly stated personal opinion concerning the actions of a district president constitute a basis for the initiation of an action which may result in the expulsion of a member from the Synod?

Opinion: The grounds for expulsion from the Synod under Article XIII of the Constitution are provided by paragraph 1 of the article:

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.

A personal opinion concerning the actions of a district president, whether privately or publicly stated, may only form the basis of the initiation of an action for a removal from membership if it meets one of the grounds as stated in Article XIII, paragraph 1.

Question 2: In accord with Bylaw 2.14.2 (e), does a failure on the part of a district president (the accuser) to hold a face-to-face meeting with an accused member of the Synod within the specified 30 day limit result in the dismissal of the complaint if the accused has repeatedly affirmed his desire to meet with the district president regarding a matter in a manner described in Matthew 18:15?

Opinion: Bylaw 2.14.2 (e) defines a face-to-face meeting as follows:

(e) **Face-to-face:** A face-to-face meeting in person between the accuser and the accused in the manner described in Matthew 18:15. E-mail, regular mail, fax, or telephone call (or any combination thereof) does not satisfy this requirement. (Note: Failure to conduct a face-to-face meeting within 30 days or within such extension as may be established by the involved ecclesiastical supervisors shall result in dismissal if the fault lies with the accuser or movement to the next stage if the fault lies with the accused.)

As indicated in the bylaw, failure to conduct a face-to-face meeting within 30 days, if the accuser is responsible for the failure, results in dismissal unless the 30-day period has been extended by the involved ecclesiastical supervisor(s). Since no Bylaw section 2.14 action has been initiated in the questioner's case, this question is, of course, hypothetical at present.

Question 3: If a district president is the accuser in a matter which may result in the expulsion of a member of the Synod, and if the district president is requesting a face-to-face meeting in a manner not described in Matthew 18:15, but demands that the brother whom he believes has wronged him appear in the district president's office without any assurance the district president will meet just between the two of them as brothers, and if the accused desires to challenge this arrangement as an abridgement of the manner described in Matthew 18:15 in order to fulfill Bylaw 2.14.2 (e) and Bylaw 2.14.3 (c), and also referenced in Bylaws 2.14.7.1 and 2.14.7.6, in what way can the accused challenge the accusing district president and ask for clarification that Matthew 18:15 be carried out in the manner actually described in that passage (that is, that the brother who believes himself to be wronged goes to the brother whom he believes has wronged him and that such a meeting would only be between the two of them)?

Opinion: Under Bylaw 2.14.4, the district president may commence an action which could lead to the expulsion of a member, either by becoming aware of such information by his own personal knowledge or when a complaint has been initiated by a member congregation or individual member of the Synod pursuant to Bylaw 2.14.3. In the latter circumstance, where the complaint is brought by a member congregation or individual member of the Synod, the district president is required to assure that the complaining member follows the requirements of Bylaw 2.14.3, including assuring, under Bylaw 2.14.3 (c), that the accuser has met face-to-face with the accused in the manner described in Matthew 18:15. Where the district president initiates the action based on his own personal knowledge and is both accuser and district president, he must as district president assure that he as accuser has complied with Bylaw 2.14.2 (e) and that a face-to-face meeting has occurred.

The face-to-face meeting required by Bylaw 2.14.2 (e) is to occur within 30 days or within such extension as may be established by the involved ecclesiastical supervisors. Failure to conduct the face-to-face

meeting within that 30-day period, or such period as may be extended by the involved ecclesiastical supervisor(s), would result in dismissal of the complaint.

If the matter is not yet a formal Bylaw section 2.14 action, the ecclesiastical supervisor is, in his judgment, free to request such face-to-face or other meetings as he deems appropriate within the scope of his ecclesiastical supervision.

Question 4: If such a matter which may result in the expulsion of a member of the Synod must comply with the bylaw requirement that first a face-to-face meeting in person between the accuser and the accused must take place in the manner described in Matthew 18:15 (Bylaw 2.14.2 [e]), and that "...the district president shall ensure that the accuser has met face-to-face with the accused in the manner described in Matthew 18:15" (Bylaw 2.14.3 [c]), and it is also necessary that the chairman of the Council of Presidents agree that there "...was compliance with the guidelines provided in Matthew 18:15–16..." (Bylaw 2.14.7.1), then the manner described in Matthew 18:15 must be clearly defined and understood in order for an accusation to go forward. I am seeking the assurance provided by our Constitution and Bylaws which ensure that such an action actually is completed in a manner described in Matthew 18:15.

Opinion: See the answer to question 3.

Adopted Nov. 20–21, 2008

Final Hearing Panel Procedure (08-2534)

The secretary of a Final Hearing Panel, in accordance with Bylaw 2.14.7.7 (k) ["If any part of the dispute involvesquestions of constitution or bylaw interpretation, each party shall have a right to an interpretation from the Commission on Constitutional Matters (CCM)"], submitted two questions in an October 8, 2008 letter to the commission.

Question 1: Is a Final Hearing Panel required to conduct a *de novo* hearing in which the matter is heard anew as if it had not been previously heard and as if no decision had previously been made by the initial Hearing Panel?

Opinion: The answer to this question is "no." While the bylaws assume that the Final Hearing Panel will conduct a hearing (e.g., Bylaw 2.14.8.2), Bylaw 2.14.8.1 (b) provides: "The procedures for the final hearing shall be the same as prescribed in Bylaws 2.14.7.5–2.14.7.7." There is no provision for any *de novo* hearing in these bylaws. Rather, Bylaw 2.14.7.7 (i) provides: "The panel shall determine the number of witnesses necessary for a full and complete understanding of the facts involved in the matter." Also, Bylaw 2.14.8.1 (c) states: "The chairman of the Hearing Panel shall provide the Final Hearing Panel with a written statement of the matter and the Hearing Panel's report, minutes, records, and proceedings." This is the material to be reviewed by the Final Hearing Panel unless it feels the need to hear from additional witnesses. The Final Hearing Panel therefore is to determine for itself what further information, if any, it needs to acquire in order to have a complete understanding of the facts at issue. It is up to the panel to determine if it needs to hear from any additional witnesses in order to fulfill its bylaw responsibilities.

Question 2: May the parties call hostile/adverse witnesses during a hearing before a Final Hearing Panel?

Opinion: The answer to this question is founded upon the understanding of the bylaws reviewed in the answer to the previous question. It is up to the judgment of the panel whether it needs to hear from any

witnesses. While the bylaws provide that “each party involved shall be given an opportunity fully to present its respective position” (Bylaw 2.14.7.7 [c]), the parties may not automatically call any witness, hostile/adverse or otherwise, during a hearing before a Final Hearing Panel unless the panel has indicated that it wants to hear from said witness.

Adopted Nov. 20–21, 2008

Time Requirements for Dispute Resolution Process (08-2535)

In an e-mailed letter dated October 30, 2008, a congregation of the Synod involved in dispute resolution submitted the following question regarding the right of the Secretary of the Synod as administrator of the dispute resolution process to allow a Dispute Resolution Panel to exceed the 60-day time limit for providing its decision.

Question: In view of the fact that the Dispute Resolution Panel failed to make a decision for 60 days as required by the LCMS bylaw, what LCMS bylaw allows the LCMS Secretary or any LCMS official to suspend Bylaw 1.10.7.4 (b) and give an extension for that decision without any agreement from the respondent? As stated another way, do the LCMS Bylaws allow any official or even the CCM without bylaw authority to accept a Dispute Resolution Panel decision after the panel has failed to make a decision within 60 days, and if so, what bylaw can be interpreted to allow that exception?

Opinion: Bylaw 1.10.7.4 (b) requires: “Within 60 days after the final hearing, the panel shall issue a written decision that shall state the facts determined by the panel and the reasons for its decision.” There is no provision in the Bylaws for a suspension or extension of the 60-day obligation to issue a decision, and no provision for any official of the Synod to grant such suspension or extension. Should the panel fail to render its decision within that time frame, it would be appropriate to bring that issue to the attention of the administrator of the proceeding.

Bylaw 1.10.4 (a) identifies the administrator to be:

(a) **Administrator:** The secretary of a district or of the Synod or an appointee (Bylaw 1.10.6) who manages the dispute resolution process but who does not take leadership, declare judgments, advise, or become involved in the matter in dispute.

The administrator would be expected to make inquiry as to the reason for the failure, and to encourage the panel to fulfill its responsibility. Should the administrator believe that the panel is neglecting its duties, and the panel continues to fail to issue its decision, the administrator should bring the matter to the attention of the President of the Synod.

It should be noted that a failure of the panel to issue its decision within the time prescribed does not terminate the proceedings or prohibit the reception of a decision not timely rendered. Unlike the process set forth in Bylaw 2.14.2 (e), for example, which can result in dismissal of a proceeding should the accuser fail to meet the accused face-to-face within 30 days, the Synod has imposed no such requirement for the delayed issuance of a decision as described in the question submitted.

Adopted Nov. 20–21, 2008

Continuation of Candidate Status (08-2537)

The Secretary of the Synod, in a memorandum dated November 21, 2008, requested clarification of Bylaw 2.11.2.2 (a) regarding candidate status for church workers.

Question: Bylaw 2.11.2.2 (a) authorizes a district president to continue a candidate on the roster for a period not to exceed four years. Does the bylaw allow the district president to extend that status of such candidate member beyond four years?

Opinion: No. Bylaw 2.11.2.2 describes who is eligible for placement on “candidate” status, *i.e.*, a rostered member of the Synod who is eligible to perform the duties of an active member of the Synod in one of the offices of ministry specified in Bylaw 2.11.1 but who is not currently an active member or an emeritus member. Paragraph (b) provides that such a candidate member is required to file an annual report by January 31 of each year. Based on that report and the district president’s evaluation of the criteria identified under paragraph (c), the district president may, under paragraph (a), continue the candidate status for a period not to exceed four years.

If no longer qualifying for candidate status, a member may, if eligible, be continued on the roster as a non-candidate member pursuant to Bylaw 2.11.2.3.

Adopted Nov. 20–21, 2008

Voting Rights of Congregations (09-2545)

In a January 18, 2009 e-mailed letter, a parish pastor requested an opinion with respect to the representation of a four-congregation partnership (a multiple parish) at a district convention.

Question: Four congregations have formed a partnership. They each have called the two pastors who serve this partnership. Can each of the four congregations send a lay delegate to our district convention which is in June? Also, what is the status of the two pastors in regards to being the pastoral delegate or delegates to the district convention?

Opinion: The four-congregation partnership is entitled to two votes, that of a pastor who serves the four-congregation partnership and a lay delegate, both chosen by the four-congregation partnership.

Article V of the Synod’s Constitution states: “At the meetings of the districts of the Synod every congregation or parish is entitled to two votes, one of which is to be cast by the pastor and the other by the lay delegate.”

In its Opinion 03-2327 (January 20-21, 2003) the Commission on Constitutional Matters opined with respect to Article V the opinion, “Voting Rights of Congregations,” included the definition of the term “parish” and addressed a multiple-congregation arrangement:

In the May 3–4, 1985 ruling (Ag. 1748), the commission ratified an opinion that had been offered by the Secretary of the Synod regarding the voting rights of congregations at district conventions when several congregations form a dual or multiple parish, namely, “that a multiple parish has only two votes, that of the pastor who serves the parish and a lay delegate chosen by the parish.”

This opinion took into consideration earlier versions of the *Handbook* that had provided a definition of the term “parish,” e.g., “If a pastor serves two or more congregations, these shall be regarded as one parish and shall be entitled to only one lay vote” (1963 *Handbook*, Bylaw 3.09). The term [parish] therefore refers to a dual or multiple congregation arrangement served by the same pastor and is not synonymous with “congregation.” As such, two or more congregations served by one

pastor share the right of representation by one lay delegate and one pastoral delegate to a district convention.”

The four-congregation partnership constitutes one “parish” as defined above.

Other opinions of the commission are also helpful to understand the representation provision of the Synod. In an October 1–2, 1970 opinion (item 226 in the minutes), the commission stated that the matter of “two or more congregations served by one pastor shall be regarded as one parish entitled to only one set of delegates” is not contrary to the Constitution (see also Opinions Ag. 1275A, B [June 9, 1978]; Ag. 1734 [Feb. 1, 1985]; Ag. 1809 [March 27, 1987]; Ag. 2104 [May 22, 1998]). And in a review of a district’s proposed bylaw changes (02-2321 [Jan. 20–21, 2003], the commission noted that a proposed change does not appear to clarify voting status as intended. In the case of a dual parish served by two called pastors, the proposed bylaw would seem to allow each congregation to have both a lay delegate and a pastoral delegate. Please note Article V of the Synod’s Constitution: “At the meetings of the districts of the Synod every congregation or parish is entitled to two votes, one of which is to be cast by the pastor and the other by the lay delegate.” (See also Opinion 03-2327.)

Adopted Feb. 7–8, 2009

Eligibility to Receive a Call While on Non-Candidate Status (09-2546)

In a letter received January 26, 2009, a district president asked follow-up questions to the commission’s Opinion 08-2537 which clarified that candidate status cannot be extended beyond four years (Bylaw 2.11.2.2 [a]).

Question 1: Is it the opinion of the CCM that placement on non-candidate status in all cases means that the worker is not eligible to receive a call?

Opinion: No. A church worker on non-candidate status is eligible to receive a call. A church worker on non-candidate status is “eligible to perform the duties of any of the offices of ministry specified in Bylaw section 2.11” (Bylaw 2.11.2.3). In every case, the rostered church worker on non-candidate status remains a member of the Synod and, like all rostered church workers, is eligible to receive a call or appointment to any of the offices of ministry identified in Bylaw 2.11.1. The guidelines established by the Council of Presidents of the Synod for non-candidate members of the Synod (Bylaw 2.11.2.3 [c]) should reflect this eligibility.

Question 2: What specific remedy does the commission find in the Bylaws for a situation in which a worker has exhausted four years of candidate status, does not wish to voluntarily choose non-candidate status or to resign from the roster, and wishes to be eligible to receive a regular call to active service and has not received such a call?

Opinion: If a rostered church worker has exhausted four years of candidate status, does not wish to resign from the roster of the Synod, and is not eligible for emeritus status (Bylaw 2.11.2.1), he or she must request to be placed on non-candidate status in order to remain eligible to receive a regular call to active service (Bylaw 2.11.2 [b]). The Bylaws of the Synod do not limit eligibility to receive a call to a particular roster status. Congregations (as well as other calling and appointing entities) may call and be served by any minister of religion, ordained and commissioned, who has been admitted to his or her respective ministry in accord with the rules and regulations set forth in the Synod’s Bylaws and remains a rostered member of the Synod (Bylaws 2.5.2 and 2.5.3).

Adopted Feb. 7–8, 2009

Agency Resolutions and Synod Actions (09-2556)

A pastor of the Synod, in an e-mailed March 18, 2009 letter, asked the following questions regarding an agency's possible negative response to an action taken by the Synod.

Question 1: May an agency of the Synod (such as a district), by defeating a resolution to participate in a Synod initiative or action (or by any other means) opt not to participate in an initiative or action passed by the Synod in convention? What would be the effect of an agency's resolution to participate in an initiative or action passed by a resolution of the Synod in convention, which is defeated by the agency? How should the members of the Synod regard an agency's resolution to participate in an initiative or action passed by a resolution of the Synod in convention, which is defeated by the agency? How should the officers of the national Synod and/or the various districts of the Synod regard such a resolution?

Question 2: May an agency of the Synod (such as a district), by passing a resolution not to participate in a Synod initiative or action (or by any other means) opt not to participate in an initiative or action passed by the Synod in convention? What would be the effect of an agency's resolution not to participate in an initiative or action passed by the Synod in convention? How should the members of the Synod regard an agency's resolution not to participate in an initiative or action passed by the Synod in convention? How should the officers of the national Synod and/or the various districts of the Synod regard such a resolution?

Opinion: An agency of the Synod is defined in Bylaw 1.2.1 as follows:

(a) **Agency:** An instrumentality other than a congregation, whether or not separately incorporated, which the Synod in convention or its Board of Directors has caused or authorized to be formed to further the Synod's objectives.

(1) Agencies include each board, commission, council, seminary, university, college, district, Concordia Plan Services, and each synodwide corporate entity.

As defined, an agency is an instrumentality authorized, formed, or created by the Synod in order to fulfill or further the Synod's objectives. As suggested by the questions, a district is certainly an agency of the Synod.

Bylaw 1.4.1 describes the relationship of the Synod to all of its officers and agencies:

The delegate convention of the Synod is the legislative assembly that ultimately legislates policy, program, and financial direction to carry on the Synod's work on behalf of and in support of the member congregations. **It reserves to itself the right to give direction to all officers and agencies of the Synod** [emphasis added]. Consequently, all officers and agencies, unless otherwise specified in the Bylaws, shall be accountable to the Synod for all their actions, and any concerns regarding the decisions of such officers or agencies may be brought to the attention of the Synod in convention for appropriate action. This provision does not apply to specific member appeals to the Concordia Plans, which has its own appeal process for such cases.

Certain agencies of the Synod, including districts, have particular authority to make recommendations to the Synod through its national convention. In doing so, however, agencies of the Synod, including districts, are not allowed to ignore or overrule the decisions of the Synod, but rather to influence or seek to influence the Synod through its conventions. Bylaw 1.4.2 reads as follows:

The delegate convention of each district of the Synod receives reports and counsel from the national Synod, makes recommendations thereto, assists in implementing decisions of the Synod, and adopts or authorizes programs to meet the unique needs of the district.

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.”

Some resolutions of the Synod are intended to require participation by every agency of the Synod. Others are intended to encourage, but not require, participation by agencies of the Synod. Yet others may identify specific goals or objectives of the Synod, leaving to agencies of the Synod to determine whether or not the initiative falls within their area of expertise or responsibility.

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.

This issue has been raised in the past. For example, in Ag. 632 (1974) the Commission on Constitutional Matters opined: “All resolutions of districts which provide for district action which is in conflict with the above are unconstitutional and therefore null and void (Article XII, 2; Bylaw 3.07). Districts and district presidents are obligated to carry out the resolutions of the Synod (Article XII, 9, a; Bylaw 3.07, a).” [The referenced Bylaw 3.07 is now Bylaws 4.1.1 and 4.1.1.1 in the 2007 *Handbook*.]

Similarly, with respect to doctrine taught and practiced by the Synod through its resolutions, the issue has previously been raised in Opinion 00-2212, as follows:

Bylaw 2.39, c [2007 *Handbook* 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 are 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 practices by the Synod is out of order and, therefore, null and void.

In circumstances where the Synod has adopted a resolution calling for action or participation by a specific agency of the Synod, or by all its agencies, the agency is not at liberty to ignore that resolution. Any attempt by the agency to pass a resolution calling for the agency’s disobedience of such resolution is without authority and thus should be considered null and void. Under such circumstances, the matter should be brought to the attention of the President of the Synod, who is charged under Bylaw 3.3.1.2: “The President shall oversee the activities of all officers, executives, and agencies of the Synod to see to it that they are acting in accordance with the Constitution, Bylaws, and resolutions of the Synod.”

Adopted April 3–4, 2009

Binding Force Resolutions (08-2542)

Referencing CCM Opinion 08-2524, which referred to 2004 Res. 3-05A, “To Affirm Marriage as Union of One Man and One Woman,” a pastor of the Synod in a letter dated December 30, 2008, asked the commission whether other resolutions in the same category were equally binding with similar attending disciplinary action.

Question: I would appreciate your opinion on other convention resolutions and whether they are to be considered in the same category, *i.e.*, equally binding; in addition, I request that your opinion include similar disciplinary action as given in 08-2524, as well as directions for district presidents (and circuit counselors) in monitoring and supervising parish pastors and other rostered ministers and minimum standards for doing so, with attending disciplinary action for district presidents who do not follow such direction.

Opinion: Opinion 08-2524 is not only applicable to the matter of 2004 convention resolution 3-05A but to all resolutions, as already stated in the bylaw quotations included in the opinion:

Under the assumption that 2004 Res. 3-05A is in accordance with the Word of God, the Synod expects every member congregation of the Synod to respect the resolution and consider it of binding force (Cf. Bylaw 1.7.2). Bylaw 1.6.2 states, “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; cf. also Bylaw 1.8.1). Bylaw 1.7.1 further states, “The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.”

Opinion 08-2524 also referenced 1971 Res. 2-21 which confirmed the binding nature of such resolutions. In addition to the pertinent quotes from the 1971 resolution in the above opinion, the convention resolution also stated, “Meanwhile every member of the synod is held to abide by, act, and teach in accordance with the Synod’s resolutions. . . .the Synod has repeatedly declared that all members should ‘honor and uphold’ its resolutions (cf.: 1962, 3-17; 1965, 2-08; 1967, 2-04; 1969, 2-27). . . .To ‘honor and uphold’ means not merely to examine and study them, but to support, act, and teach in accordance with them until they have been shown to be contrary to God’s Word” (1971 *Convention Proceedings*, p. 119).

Ecclesiastical supervision by the President of the Synod or by the district presidents, including any needed disciplinary measures, as indicated in the CCM opinion (08-2524), is not limited to 2004 Res. 3-05A: “Resolution 3-05A, together with all of the resolutions of the Synod, has implications for ecclesiastical supervision” (emphasis added). The provisions for such ecclesiastical supervision (Bylaw 1.2.1 [g]) are set forth in Articles XI, XII, and XIII of the Constitution as well as in the Bylaws of the Synod, including but not limited to Bylaw section 2.1; Bylaws 2.14.1 and 3.3.1–3.3.1.3, and Bylaw section 4.4 (Synod *Handbook*, pp. 50, 62–62, 101–104, and 189–191).

Any district president who fails to carry out his responsibility of ecclesiastical supervision is subject to the measures of Constitution Art. XI B and Bylaw sections 1.10 and 2.15 (*Handbook*, pp. 15–16, 37ff., and 71ff.).

Adopted April 29–30, 2009

Bylaw 3.9.2.2 (c) Implementation Guidelines

A draft guidelines document to help those convention floor committees assigned overtures proposing the overturn of CCM opinions to understand how the commission carries out its responsibility for interpretation of the Constitution, Bylaws, and resolutions of the Synod was reviewed. After discussion, the following guidelines document was adopted, to be provided to convention floor committees as appropriate and appended to the internal governing documents of the commission.

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 3.9.2.2.4)

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.
- 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. Members of the CCM have access to an electronic collection of CCM minutes from 1965 to the present.

Adopted Oct. 31–Nov. 1, 2009

Interpretation of Constitution Article XIV re Proposing Amendments (09-2566)

In a September 24, 2009 e-mailed letter, the chairman of the Blue Ribbon Task Force on Synod Structure and Governance, speaking on behalf of the task force, requested an interpretation of the words “each proposed change shall be voted on separately” in paragraph 2 of Article XIV of the Constitution of the Synod.

Question: Since the task force has several constitutional changes which it will be presenting to the 2010 convention, and some of those related, does each change, no matter how small, have to be presented and voted on separately?

Opinion: Amendments to the Constitution are governed by Article XIV, paragraphs 2 and 3:

2. All proposed changes and amendments must be submitted in writing to the Synod assembled in convention, and each proposed change shall be voted on separately. A two-thirds majority of all votes cast shall be necessary for adoption.
3. After adoption by the convention, such amendments shall be submitted to the congregations of the Synod by means of three announcements in the official periodical within three months after the close of the convention.

In researching past opinions of the Commission on Constitutional Matters, the commission noted that the issue raised by this question has never been previously considered. Prior to 1917, the Constitution of the Synod allowed amendments without reference to the phrase under consideration. Therefore, the commission has looked at the practice of the Synod since 1917, such practice reflecting the sense and intent of the Synod since that time.

As recently as the 2004 convention, the Synod considered and acted on two constitutional amendments. Resolution 7-21 sought to amend a single article of the Constitution, Article XI F 2. The second, Resolution 5-04A, sought to add directors of family life ministry to the list of those eligible for membership in the Synod. In doing so, the resolution called for amendments in Articles V, VI, and XII.

In view of the foregoing, the commission finds that the phrase “each proposed change shall be voted on separately” may be properly interpreted in at least two ways. First, all changes to a single article can be submitted as a single change. Because, by reason of the structure of the Constitution, each article intentionally deals with a single subject, all amendments to a single article may always be considered a single change.

Second, as with 2004 Res. 5-04A, changes in multiple articles reflecting a single thematic change may also be considered a single change.

Adopted Oct. 31–Nov. 1, 2009

Reductions in Force (09-2567)

In an e-mailed letter dated October 19, 2009, a Dispute Resolution Panel submitted the following request for an opinion.

Question: Could the provisions of Bylaw 3.8.3.8.7 of the LCMS be used as a model throughout the Synod in implementing reductions in force?

Opinion: Bylaw 3.8.3.8.7, like Bylaw 3.8.2.7.7, lists “reduction of the size of staff in order to maintain financial viability in compliance with policies concerning fiscal viability” as an allowable cause for the termination of faculty positions by the boards of regents of the Synod’s institutions of higher education.

The intention of these bylaws is stated in the 1989 convention action that introduced “reduction in force” into the Bylaws of the synod, that is, to provide “guidance to boards of regents regarding termination of faculty or staff positions at synodical colleges and seminaries because of external institutional circumstances which do not reflect on the competency or faithfulness of individuals holding the positions” (1989 Res. 6-10 “To Add Bylaw 6.44 re Termination of Position”).

The provisions of Bylaw 3.8.3.8.7 (and 3.8.2.7.7) were not specifically intended to be used as a model throughout the Synod in implementing reductions in force. However, the Synod has recognized the right of other entities to eliminate positions no longer deemed necessary by the hiring entity.

Adopted Oct. 31–Nov. 1, 2009

Regional Gatherings (09-2569)

In an e-mailed letter dated October 21, 2009, a pastor of the Synod requested “an expedited opinion” on a series of questions regarding “the proposed special meetings the Synod President has called prior to the 2010 convention.

Question 1: Are the proposed regional “gatherings” in regards to the work of the Blue Ribbon Task Force on Synod Structure and Governance to be considered “special sessions of the Synod,” as defined/explained in Article VIII B of the Synod’s Constitution? Or are they something else? If not “special sessions of the Synod,” under what section of the Constitution or Bylaws does the President of the Synod call these meetings? If these meetings do not fall under the category of a regular Synod convention, or a special session of the Synod, by what authority are the districts assessing their circuits for the cost of these meetings?

Opinion: These are not “special sessions of the Synod” as defined in the Synod’s Constitution. Nor are they early “sessions” of the 2010 convention. These are informational meetings to be attended by those invited, especially the elected voting delegates to the 2010 convention. Synod Bylaw 3.1.9 places the responsibility “for the overall organization and operations of the conventions of the Synod” on the President of the Synod. If he determines that convention business is of such significance and/or complexity that it will require pre-convention informational meetings, calling and arranging such meetings is his prerogative.

Question 2: May informational meetings designed to assist delegates understand the issues, such as these are described, preclude alternate delegates or interested visitors from attendance? If so, based upon what part of the Constitution or Bylaws? Are advisory delegates allowed to attend these meetings and have voice, as they would at a convention?

Opinion: It is the commission’s understanding that a two-way flow of information is intended at these meetings. Those in attendance will receive a presentation regarding the final report of the task force. They will also be provided opportunity to respond to the chairman and vice-chairman of the convention floor committee to which the task force report will be assigned. The President may invite whom he chooses to accomplish these purposes.

Question 3: Bylaw 3.1.2.2 says that delegates begin their term “with the convention.” Would these meetings conflict with that by moving the start of their terms to these regional meetings?

Opinion: The commission notes that it is not unusual for delegates to be involved in convention activity prior to the official opening of a convention, e.g., when they are appointed to serve on convention floor committees.

Adopted Oct. 31–Nov. 1, 2009

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.

Adopted January 23-24, 2010

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 (ordained and commissioned ministers) 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.

Adopted Jan. 23–24, 2010

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

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

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 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.

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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.

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.

Adopted Jan. 23–24, 2010

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.¹

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?

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 a 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, Appeal Panel, or 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, the matter then determined by the balance of the panel as described in *SOPM* section IV paragraph Q² Should an Appeal Panel find that improper

¹ Although he did not serve as administrator of the Dispute Resolution Process in the particular matter underlying this question, the Secretary of the Synod recused himself from consideration of this matter. Another member of the commission had been designated as administrator for this matter and also recused himself from participation in the opinion. The minutes for this portion of the meeting were kept by commission member Daniel Lorenz.

² 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 the vacancy being filled.

communication has tainted its ability to carry out its responsibility in a fair manner, 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 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.”

Adopted Jan. 23–24, 2010

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)).

Adopted Jan. 23–24, 2010

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 KFUO station licenses?

Opinion: The simple answer to the question is “yes,” the BOD does have the authority to sell the KFUO 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 1.4.4³ 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 3.3.5.3⁴ and 3.3.5.5 (a) (2)⁵,

³ “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)

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])

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.)

Adopted February 26-28, 2010

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 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).⁶ 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"—

- 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

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.

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 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 1.6.1 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)

Adopted February 26-28, 2010

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]).

Adopted February 26-28, 2010

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.

Adopted February 26-28, 2010