

## MINUTES

### COMMISSION ON CONSTITUTIONAL MATTERS

November 11–13, 2011

St. Louis Crowne Plaza Hotel

#### **62. Call to Order, Opening Devotion, and Review of Agenda**

Chairman Wilbert Sohns called the meeting to order with all members of the commission present. He called on Neely Owens (who served as the chaplain for the entire meeting) for the first of his devotions.

#### **64. “Consultation” with the President of the Synod and His Staff**

After providing a brief oral history and discussion of matters to be addressed, Chairman Sohns welcomed President Matthew Harrison, Barbara Below and Jon Vieker from his staff, and Chief Administrative Officer Ron Schultz to the meeting. After a presentation by members of the commission, matters associated with agenda item 11-2600 were discussed at length. Following the consultation, the commission continued its own discussion of related issues before moving on to other business.

#### **65. Review of Oklahoma District Bylaw Revisions (08-2536A)**

Following the commission’s September 3–4 review of the Articles of Incorporation and Bylaws of the Oklahoma District, the district committee incorporated the suggestions and recommendations for additional changes provided by the commission and returned the documents for final review. The secretary of the district also reported that several new revisions were being submitted. Upon its further review, the commission offered the following recommendations to the district prior to submission of the documents to the 2012 district convention for approval.

- Article III, paragraph 1 b: The provision that the second vice-president’s duty is to “oversee” the training and education of circuit counselors would better state that he will “assist with” such training, since the officer primarily responsible for such training and education is the district president (Synod Bylaw 5.2.3 [k]).
- Article III, paragraph 4 a: The words “restricted or” must be deleted from the third-last sentence of the paragraph, as restricted status does not remove called workers from the roster. The correct bylaw reference at the end of the second-last sentence should be Synod Bylaw 2.13.2.2.
- Article III, paragraph 7: Synod bylaws allow nominations for district offices from throughout the Synod. Therefore the words “be nominated” in the first sentence must be deleted. Upon election, however, a nominee must “be and remain a member in good standing of a congregation of the district.
- Article III, paragraph 8: The district is advised to refer to and/or quote the actual wording of Synod Bylaw 1.5.1.2 as the simplest way to communicate the content of the Synod bylaw and avoid confusion.
- Article IV, paragraph 2: The final sentence should speak of the “selection” of circuit counselors (Synod Bylaw 5.2.2 [c]) and the ratification of their selection by their district conventions, so as to read more accurately: “The individuals selected will then have their names submitted to the district convention for ratification, which shall constitute election.”
- Article IV, paragraph 3: The final sentence regarding the election of members of the Board of Directors would do well to reflect the process described in the preceding paragraph’s final sentence, to read: “The individuals selected will then have their names submitted to the district convention for ratification, which shall constitute election.”

- Article V, paragraph 2 f: The reference to “consecrated ministers” is a term that is foreign to the Synod’s bylaws governing membership. The sentence would better read: “All ordained and commissioned ministers on the district roster...”
- Appendix E, “9 Months Prior” paragraph: The reference in the final sentence to the “election” process should instead refer to “involvement in the nominations process.”
- Appendix E, third paragraph of the “8 Months Prior” paragraph: The list of offices outside the responsibility of the nominations committee are “the offices of president, first vice-president, and circuit counselors.”

## **65. Review of North Dakota District Bylaw Revisions (09-2549A)**

Following the commission’s September 3–4 review of the Bylaws of the North Dakota District, the district committee incorporated the suggestions and recommendations for additional changes provided by the commission into the district’s documents. As a result and upon final review, the commission offers the following recommendations to the district for inclusion in its documents prior to their submission to the 2012 district convention.

- Bylaw 2.07, new paragraph b: The reference to “all other elected district officers” should be clarified, perhaps if only to determine whether this phrase is necessary.
- Bylaw 2.10, paragraph a: While references to the district have regularly been deleted as superfluous throughout much of the bylaws document, in this paragraph these references appear to be necessary and should be retained for the paragraph to make sense.
- Bylaw 2.39, paragraph a: This provision must be changed to honor the provision of Synod Constitution Art. XII 9 d, which gives the authority to sign official papers and documents to the president of the district.
- Bylaw 2.39, paragraph c: To make the secretary of the district the secretary of the nominations committee fails to mirror the caution exercised in the Synod’s Bylaws, which prevent having the secretary closely involved in the work of the committee (Synod Bylaw 3.12.3.5 [a]).
- Bylaw 2.88, new paragraph c: The second word is clearly intended to read “consultation” rather than “consolation.”
- Bylaw 2.88, new paragraph u: This paragraph and others around it should be looked at again, since the validity of some of the deletions is uncertain.
- Bylaw 2.92: The deleted words “and secretary” will need to be retained, as it will not be appropriate for the secretary of the district to be so closely involved as to serve as secretary of the committee.
- Bylaw 2.97, paragraph a 1: According to the bylaws of the Synod governing the nomination of district vice-presidents (Bylaw 4.3.1), voting congregations are entitled to nominate pastors from the entire clergy roster of the Synod, also for regional positions. Any pastor nominated will need to provide, along with his consent to serve, assurance that he will reside within the region for which he would be elected by the time of his installation into office.
- Section III “Pastors and Teachers” should be changed to more appropriate bylaw language: “Ordained and Commissioned Ministers.”
- Bylaw 3.01, paragraph a: The title to this bylaw (and also Bylaw 3.11) should be changed to the more appropriate bylaw language “Ordained and Commissioned Ministers.” In addition, this paragraph’s effort to restate the content of Bylaws 2.5.2 and 2.5.3 fails to honor all of the provisions included in those bylaws. The commission recommends either restating the Synod bylaws or referencing them to underscore the district’s intentions to honor them.
- Bylaw 10.02.3: The references to the district throughout this bylaw are essential to proper understanding and should be retained.

- Bylaw 11.03.3: The extra word “in” will need to be deleted.
- Bylaw 12.01, paragraph 1 D: The word “clearance” in the existing wording should be changed to “approval” in keeping with the wording of Synod Bylaw 3.9.2.2.3 (a).
- Bylaw 12.01, paragraph 2: The reference to district board of directors’ approval should be followed by the words “and upon review and approval by the Commission on Constitutional Matters of the Synod.”

## **66. District Church Extension Fund Use of Dispute Resolution Process (11-2591)**

A congregation of the Synod has been in dispute with one of the seven district church extension funds that operate separate from and independent of the Lutheran Church Extension Fund—Missouri Synod. The Lutheran Church Extension Fund—Missouri Synod exists pursuant to Bylaws 3.6.4ff and is operated by its members and board of directors. The separate district church extension funds are subject to the supervision of the Board for Church Extension which exists under Bylaws 3.10.6 and 3.10.6.1.

The congregation has requested that its district’s separately incorporated district church extension fund enter into a Bylaw section 1.10 dispute resolution process, which the church extension fund has declined to do. As a result, the congregation submitted to the commission an extensive letter with multiple questions and sub-questions.

Among the questions and concerns expressed by the congregation are some issues and concerns outside the authority and responsibility of the commission to address, because they do not involve interpretation of the Synod’s Constitution, Bylaws, and resolutions. These issues may more appropriately be raised with ecclesiastical supervisors. The congregation is urged to submit such concerns to its ecclesiastical supervisor, and as necessary through the Synod’s process of ecclesiastical supervision.

**Question 1:** What are the meanings of the terms “exclusive” and “exclusively” in the context of the preamble, purposes, and exception clauses to the dispute resolution process found in Bylaws 1.10.1–1.10.3?

**Opinion:** The terms “exclusive” or “exclusively” appear four times in Bylaws 1.10.1–1.10.3 and are highlighted in the quotations below. Bylaw 1.10.1.1 reads:

The Holy Scriptures (1 Cor. 6:1–7) urge Christians to settle their differences by laying them before the “members of the brotherhood.” Therefore, the Synod in the spirit of 1 Corinthians 6 calls upon all parties to a disagreement, accusation, controversy, or disciplinary action to rely exclusively and fully on the Synod’s system of reconciliation and conflict resolution. The use of the Synod’s conflict resolution procedures shall be the exclusive and final remedy for those who are in dispute. Fitness for ministry and other theological matters must be determined within the church. Parties are urged, in matters of a doctrinal nature, to follow the procedures as outline in Bylaw section 1.8 [emphasis added].

Bylaw 1.10.2, after listing those parties who are to participate in the Synod’s dispute resolution process, continues as follows:

...It shall be the exclusive remedy to resolve such disputes that involve theological, doctrinal, or ecclesiastical issues except those covered under Bylaw sections 2.14–2.17 and except as provided in Bylaw 1.10.3. It is applicable whether the dispute involves only a difference of opinion without personal animosity or is one that involves ill will and sin that requires repentance and forgiveness. No person or agency to whom or to which the provisions of this dispute resolution process are applicable because such person or agency is a member of the Synod may render these provisions inapplicable by terminating that membership [emphasis added].

Finally, the term appears in the exceptions paragraph, Bylaw 1.10.3, as follows:

This chapter provides evangelical procedures to remedy disputes only and does not set forth procedures for expulsion from membership (Constitution, Art. XIII and Bylaw sections 2.14–2.17); nor does it set forth procedures for board of regents’ supervision of faculty and administration as specified in Bylaws 3.10.4.7.5–3.10.4.7.9 and 3.10.5.6.5–3.10.5.6.9. While Christians are encouraged to seek to resolve all their disputes without resorting to secular courts, this chapter does not provide an exclusive remedy for the following matters, unless such matters involve theological, doctrinal, or ecclesiastical issues, including those arising under the divine call of a member of the Synod [emphasis added]:

- (a) Disputes concerning property rights (e.g., real estate agreements, mortgages, fraud, or embezzlement)
- (b) Disputes arising under contractual arrangements of all kinds (e.g., contracts for goods, services, or employment benefits)

As a public expression to all Christians, the Synod recognizes that the biblical reconciliation of persons in conflict begins with God’s truth that all Christians are sinners, that all Christians have been reconciled to God through the death and resurrection of Christ Jesus, and that Christ’s ministry of reconciliation is one of the church’s foremost priorities.

The first sentence of Bylaw 1.10.1 is based on the understanding of Scripture that all members of the body of Christ who are parties to a disagreement should rely on a God-pleasing system of reconciliation and conflict resolution without resort to the secular courts. The first use of the word “exclusively” is a call by the Synod upon all of its members to do so. The Synod implores its members, as well as the lay members of member congregations of the Synod, to recognize their responsibilities for conflict resolution as set forth in the Preamble, urging them to settle their differences by laying them before the “members of the brotherhood,” using the guidance of Matthew chapter 18 and recognizing that at the heart and center of Christian conflict resolution is the grace of Jesus Christ. The next use of that term in Bylaw 1.10.1 specifically declares the Synod’s process to be the exclusive, which is to say the only, remedy for those members of the Synod who are in dispute.

In Bylaw 1.10.2, the explanation of the purpose of the Synod’s dispute resolution process, the Synod has declared with respect to the specific participants named in that bylaw that the Synod’s process will be the one and only remedy to resolve disputes among those named where the issues involve theological, doctrinal, or ecclesiastical issues, and except for those covered by Bylaw sections 2.14–2.17 and Bylaws 3.10.4.7.9, 3.10.5.6.9, and 1.10.3. The binding nature of this exclusive remedy as to such issues is honored and recognized even in the secular courts of the United States. At the same time, the Synod is acknowledging that in areas other than theological, doctrinal, and ecclesiastical, its authority can be limited by civil authority.

Finally, the exceptions paragraph (Bylaw 1.10.3) makes clear that disputes involving property rights, including real estate agreements and mortgages, insofar as such may be involved in the case at hand, are not subject to the exclusive remedy of the dispute resolution process. In this respect, the phrase “this chapter does not provide an exclusive remedy for the following matters” does not mean that the dispute resolution process cannot be voluntarily used by the parties defined in Bylaw 1.10.2 and does not preclude those parties from voluntarily agreeing to engage in the dispute resolution process of the Synod rather than resorting to other dispute resolution processes, including the secular courts. Rather, the bylaw recognizes that in such matters, the participants need not agree to participate in the Synod’s process nor be involuntarily bound by that process. The language of Bylaw 1.10.3 allows persons involved in disputes concerning property rights or contractual arrangements not to subject themselves to the binding processes of the Synod but rather to rely on other remedies and forums.

Question 2: What specifically precipitated the addition of the “exception clause” contained in Bylaw 1.10.3?

Opinion: The current version of Bylaw 1.10.3 was originally found in former Bylaw 8.02. While amended by 2004 convention Res. 8-01A, the process in which the current dispute resolution process is based was originally adopted by 1992 Res. 5-01B as a result of a task force effort to review and revise the entire dispute resolution process of the Synod as it had previously existed. The exception clause was not an addition but rather an integral part of an overall formulation of dispute resolution, recognizing the limits of the authority of the church in a secular society.

The exception clause of 1.10.3 is certainly recognition of the reality that, due to the fallen nature of our world, even within the church itself there will be conflicts which may fail to be resolved within the church, and may ultimately need to be resolved outside the church, even within the secular courts. In our society, our secular government has asserted exclusive jurisdiction over some types of issues, often involving contract law, employment duties and responsibilities, environmental regulation, and similar issues. While Christians may desire to have those issues resolved within the Christian community rather than through the use of secular means involving either the courts or other processes, a Christian may not have that choice. On the other hand, the Constitution of the United States recognizes that in certain issues relating to theological matters, churches such as the LCMS may retain exclusive jurisdiction regarding such issues, even to the exclusion of the secular courts. The Synod has historically chosen to do so, at least to the extent provided in its Constitution and Bylaws.

As part of our living in the secular world, one of the issues which the Synod does not control is the issue of ownership of property and contract rights. The Synod does not register deeds or titles to vehicles, register mortgages or security interest, or otherwise become involved or have binding jurisdiction over such issues.

Question 3: Is an entity/agency subject to participation in the Synod’s dispute resolution process whose complete governing control is provided for by either Synod- or district-level appointment?

Opinion: The Synod’s dispute resolution process applies to an entity/agency created and controlled by the Synod or one of its component parts, its districts. The letter of the congregation expresses its understanding and desire, shared by the Synod itself, that all disputes, disagreements, and offenses which arise among members of the body of Christ are a matter of grave concern for the whole church. That concept is contained in the first sentence of the Preamble to the Synod’s dispute resolution process, Bylaw 1.10.1, quoted above. While the Synod has expressed as a matter of policy its recognition that it is desirable that all such conflicts be resolved within the body of Christ and consistent with the Holy Scriptures, the Synod has also recognized in its bylaws that it has no authority to impose its dispute resolution process on those who are not members of the Synod. As such, Bylaw 1.10.2 identifies the scope of the dispute resolution process provided in Bylaw 1.10, to apply to “(1) members of the Synod, (2) the Synod itself, (3) a district or an organization owned and controlled by the Synod, (4) persons involved in excommunication, or (5) lay members of congregations of the Synod holding positions with the Synod itself or with districts or other organizations owned and controlled by the Synod.”

Only those parties identified in Bylaw 1.10.1.2 are entitled or required to use the Synod’s dispute resolution processes as an exclusive remedy to resolve a dispute. The third category listed, a district or an organization owned and controlled by the Synod, requires further discussion. A district is “Synod” in that place. An organization owned and controlled by a district is an organization owned and controlled by the Synod itself. A prior iteration of this bylaw included a definition of “organizations owned and controlled by the Synod” as including any board, commission, committee, or council of the Synod, Radio Station

KFUO, the synodwide corporate entities, all educational institutions owned and maintained by the Synod, and also “all districts and incorporated church extension funds.”<sup>1</sup>

That language was stricken from a later iteration of the bylaws, which was apparently a reflection of a general understanding that continued inclusion was superfluous, and not a change of policy. This is reflected particularly in the actions of the 1981 convention. At that convention, the district CEF involved in the question was specifically authorized by Res. 5-06A. The same convention, in Res. 5-07, made clear that the Synod considered all corporations formed by its districts to be ultimately owned and controlled by the Synod itself.<sup>2</sup> Thus, a district CEF is subject to the provisions of the Synod’s dispute resolution

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<sup>1</sup> See 1989 Synod Bylaw 8.03 (b).

<sup>2</sup> 1981 Resolution 5-07:

WHEREAS, The Commission on Constitutional Matters has reported "uncertainty, possible contradictions, conflicts, complexities, and definite lack of clarity, together with the possibility of legal ramifications" in the Bylaws of the Synod pertaining to the rights of Districts and agencies of the Synod to form additional corporations for the promotion of their work under Bylaws 3.07c and 2.87; and

WHEREAS, The CCM has urged the Board of Directors of the Synod to propose legislation it deems necessary to the Synod assembled in convention, for definite procedures and policies for the establishment of additional corporations within the Synod; and

WHEREAS, The Synod's Board of Directors has responded to this request and has provided a proposal according to which such questions may be resolved, especially in order that church extension work, both at the District and synodical level, can be advanced; and

WHEREAS, This proposal provides safeguards for the whole Synod while at the same time considering the rights of Districts, seminaries, colleges, and other corporations constituting a part of the Synod; therefore be it

*Resolved*, That Districts, seminaries, colleges, and all other corporations constituting a part of the Synod and seeking to establish or utilize another or added corporations for the purpose of carrying on their prescribed activities and responsibilities shall first obtain authorization from the Synod in convention or from the Synod's Board of Directors; and be it further

*Resolved*, That such request for authorization shall be considered when the District, seminary, college, or other corporation constituting a part of the Synod follows the procedures outlined, namely:

1. The petitioning agency shall submit a copy of the proposed articles of incorporation and bylaws of the proposed new corporation together with the date when such new corporation will begin to function. The petitioning agency shall also describe the way in which this new corporation will aid in carrying out the petitioning agency's responsibilities. All assumptions pertaining to legal matters shall be accompanied by a legal opinion.
2. The District, seminary, college, or other corporation of the Synod or the Board of Directors of any such agency shall be the sole member(s) of the new corporation.
3. The articles of incorporation of such new corporation shall provide that the Synod in convention may determine at any time that the new corporation be terminated and its assets, subject to its liabilities, restored to the appropriate District, seminary or college, or other corporation of the Synod, or, if that corporation of the Synod is no longer in existence, to the general Synod. The articles of incorporation shall also provide that in the event of dissolution other than by direction from the Synod in convention, the assets of such new corporation, subject to its liabilities, shall be restored to the appropriate District, seminary or college, or other corporation of the Synod, or, if such other corporation is not then in existence, to the general Synod.
4. The articles of incorporation of the new corporation shall provide that the Constitution of The Lutheran Church—Missouri Synod is the constitution of that new corporation, that all provisions of its articles of incorporation and bylaws are subordinate to the provisions of the Synod's Constitution, and that the provisions of the Synod's Constitution as interpreted by the CCM shall govern in any case of conflict.
5. The bylaws of the new corporation shall provide that the Board of Directors, officers, and all employees and agents of the corporation and also the activities of the corporation are subject to the Bylaws of The Lutheran Church—Missouri Synod and resolutions adopted by the Synod in convention, and that all of the provisions of the Synod's Bylaws and resolutions as to supervision or coordination of personnel or activities will be applicable to the new corporation to the same extent as if the Board of Directors, officers, employees and agents, and activities of the new corporation, were directly those of the appropriate District, seminary or college, or other corporation of the Synod [emphasis added].
6. The bylaws of the new corporation shall provide that its assets are "property of the Synod" as that term is defined in, and to the extent and for the purposes established in, the Bylaws of The Lutheran Church—Missouri Synod, as the same may be changed from time to time.

process for matters involving theological, doctrinal, or ecclesiastical issues, but would not be required to acquiesce in that process in situations involving the exceptions described in Bylaw 1.10.3, including property disputes such as mortgage issues.

Question 4: If an agency which is governed by Synod or district employees becomes a party involved in a conflict with a member of the LCMS, does the Synod or governing district also need to be included in the dispute resolution process?

Opinion: No. The Bylaws of the Synod make no such provision or requirement.

## **67. Review of Montana District Bylaws (11-2593)**

With a June 10, 2011 emailed letter, the president of the Montana District submitted his district's revised Bylaws for review and approval by the commission. The commission will provide a copy of its "Frequently Noted Concerns and Aberrations Document" for consideration by the district when it gives final attention to its bylaws document to be submitted to its convention. In addition, upon its careful review, the commission made the following recommendations (all bylaw references will use new bylaw numbers):

- Page 2, deleted former outline of contents: The commission notes the deletion of "~~IV. Bylaws for the Montana District Foundation Fund~~" and questions what has happened to these bylaws, as they also are subject to review.
- Bylaw 1.1: The Articles of Incorporation of the district are referenced but were not included in the document for review. The commission requests that a copy be provided.
- Bylaw 1.2: The commission noted that there is no reference here or elsewhere to the role of the Constitution and Bylaws of the Synod in the work of the district (see Synod Bylaw 4.5.1). It would also be more correct to replace "or" in the last line of the paragraph with "and/or."
- Bylaw 1.3.2: In numerous occurrences where the document contains reference to a Nominations and Elections Panel," it would be helpful and more accurate to use the terminology of the Bylaws of the Synod, which refer to this group as a "committee" (Synod Bylaw 4.7.2).
- Bylaw 1.3.2, paragraph k 2: This sentence would read better with the omission of the word "as."
- Bylaw 1.3.2, paragraph n: This paragraph correctly refers to the "selection" of circuit counselors by circuit forums. It should also make reference to the ratification of the slate of selected circuit counselors by the district convention, which constitutes election.
- Bylaw 1.3.2, paragraph q: The location of this paragraph is out of place, as the election of advisory delegates to Synod conventions takes place in another manner. It could better be located under Bylaw 1.3.3, since the election of advisory delegates most often happens at district ordained and commissioned minister conferences.

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7. The bylaws of the new corporation shall provide that minutes of its Board of Directors or other governing board, and regular independently audited financial statements, shall be promptly furnished to the Board of Directors of the appropriate District, seminary or college, or other corporation of the Synod. The bylaws of the District, seminary or college, or other corporation of the Synod shall require its Board of Directors to review and to appropriately respond to the content of those minutes and financial statements;

and be it further

*Resolved,* That failure to comply with the above procedures and to receive permission to establish or utilize new corporations from the Synod in convention or from the Board of Directors will cause such new and unauthorized corporations to be treated as not a part of the Synod for legal and tax purposes; and be it finally

*Resolved,* That this resolution be considered in no way as a challenge to or a weakening of the rights assured under the Synod's Constitution, Bylaws, and convention resolutions to each district, seminary, college, or other corporation constituting a part of the Synod.

- Bylaw 1.3.3, a: References should be to ordained minister and commissioned minister conferences (Synod Bylaw 4.8.2).
- Bylaw 2.1.1: The list of elected officers must also include the circuit counselors of the district.
- Bylaw 2.1.2: The list of members of the board of directors should mention that these are the “voting members” of the board. Also, as currently worded, the “one pastor” (rather than “one ordained minister”) signifies that this be a parish pastor (according to Synod *Handbook* usage)—and will need to be changed to “one ordained minister” if “parish pastor” is not the intention of the district in this bylaw.
- Bylaw 2.1.3.4: The reference to “District Constitution Directors” should rather read “district constitution committee” as in Synod Bylaws 2.2.1(a) and 2.4.1 (b).
- Bylaw 2.1.4.1 b: The listing of officers of the district must also include the treasurer and circuit counselors (Synod Bylaws 4.3.1 and 4.3.2).
- Bylaw 2.1.4.4 b: After the “Nominations and Elections Panel” terminology of Bylaw 1.3.2 is changed to “committee” (see fourth bullet above), this paragraph b must exclude that committee from this bylaw provision.
- Bylaw 2.2.1.3 a: The inclusion of “refusal to act” must be removed from this paragraph, as any such situation would need to be addressed by the process provided by Synod Bylaw section 2.15.
- Bylaw 2.2.6.1: The second vice-president of the district should also be listed as a non-voting member of the board. Care should also be taken that the ordained minister member of the board is intended to be a “parish pastor,” as the listing now indicates by the use of the word “pastor.”
- Bylaw 2.2.6.3 b: The provision for meetings using electronic media should include reference to the policies for such meetings provided by the Synod’s Board of Directors, as required by Synod Bylaw 1.5.3.
- Bylaw 2.2.6.5 e: Mention of the district’s “Standard Operating Procedures Manual” calls attention to the need to provide this manual to the Commission on Constitutional Matters for review (Synod Bylaw 3.9.2.2.3).
- Bylaw 2.2.6.6 c: The reference to the district board of directors as an “agency” contradicts the use of that word by the Synod (Synod Bylaw 1.2.1 [a]) and should be replaced with “body” or another such word.
- Bylaw 2.2.6.7 a: The fiscal duties of the board of directors may not simply be delegated *en Toto* to a smaller group such as a sub-committee.

## **68. Review of Michigan District Bylaws (11-2594)**

Following the commission’s 2009 review of the Bylaws of the Michigan District, the district committee took the suggestions and recommendations for additional changes provided by the commission and incorporated them into their district’s documents. It has also proposed additional changes largely as a result of changes adopted by the 2010 Synod convention. Upon review of the documents provided by the secretary of the district, including review of the several late changes made by the district after submission of its Bylaws, the commission offers the following recommendations for change to the district prior to consideration of the proposed bylaw changes by its 2012 convention.

- Bylaw 2.3 b: The parenthetical reference to the Constitution of the Synod would better read: “(Constitution, Art. V B),” the Constitution of the Synod being also the constitution of the district.
- Bylaw 5.12 a: Mention of the district in this paragraph is unnecessary, as district vice-presidents are to be elected from the clergy roster of the Synod, which includes the district (Synod Bylaw 4.3.1).

## **69. Review of Southern District Articles of Incorporation and Bylaws (11-2595)**

With a June 26, 2011 letter, the secretary of the Southern District submitted his district's Articles of Incorporation and Bylaws to the commission for final review prior to their submission to the district convention. Upon review, the commission offered the following recommendations:

- Article of Incorporation VIII: The final sentence regarding the calling of special meetings will need to be revised, taking into consideration Synod Constitution, Art. XII 15, which requires "consent of at least a majority of the voting members of the district after having informed them and the President of the Synod of the purpose of the intended special session."
- Article of Incorporation X: The word "or" after reference to "Articles II and III of this corporation" should be replaced with "and."
- Bylaw Article II A: Mention should also be made that the Bylaws of the Synod are also the primary bylaws of the district (Synod Bylaw 4.1.1.2).
- Bylaw Article II E: Reference should also be made to the Constitution of the Synod along with its Bylaws as governing district conventions.
- Bylaw Article II G: The referenced district "*Handbook of Operations*" prompts a request from the commission that it also be submitted to the commission for review, as required by Synod Bylaw 3.9.2.2.3.
- Bylaw Article III A 1: The word "election" in the second sentence should be replaced with "assuming office," since an officer elected from outside the district should not be expected to already hold membership in the district at the time of his election.
- Bylaw Article IV C: In the final sentence, the exception that provides for the decision of doubtful cases by the district president when only district offices are involved will need to be removed, since this contradicts Synod Bylaw 1.5.1.2 (b).
- Bylaw Article IV E: The title of this paragraph would better serve by more accurately reflecting its content, *i.e.*, "Removal from Board or Commission Membership." It must also take into consideration the new bylaw provisions for removal of individual members from board or commission membership adopted by the 2010 Synod convention (Synod Bylaw 1.5.7).
- Bylaw Article IV G 1: The reference to the president as an *ex officio* member of all standing committees of the board includes his right to vote. The commission assumes that this is the intention of the bylaw but calls this to the district's attention in case this assumption is not correct.
- Bylaw Article IV G 2: The commission calls attention to Synod Constitution Art. XII 9 d, which gives the responsibility to sign all official papers and documents of the district to the district president and not, as provided in this bylaw, to the secretary of the district.
- Bylaw Article V C 2: The reference to "each position" of the board would better read "each remaining position."
- Bylaw Article V C 3: This paragraph must be changed to stipulate the election of "two (2) laypersons" to the Concordia Selma Board of Regents (Synod Bylaw 3.10.5.2 [1]).
- Bylaw Article V D 2: This paragraph should include, along with mention of the Constitution of the Synod, also the Bylaws of the Synod regarding the duties of the committee.
- Bylaw Article V D 3 b: This paragraph will properly reflect the terminology of the Synod's bylaw by replacing the word "nominated" with "selected" (Synod Bylaw 5.2.2 [c]).
- Bylaw Article VII: Mention must be made in this paragraph to the review and approval of district bylaw amendments by the Commission on Constitutional Matters prior to the convention.

## **70. Implementation of New Synod Structure (11-2600)**

In a letter received July 21, 2011, a member of the Synod submitted a series of questions regarding the restructuring that was taking place following the 2010 convention of the Synod, questions prompted by articles in the Synod's *Reporter*.

Question 1: The June 2011 issue of *Reporter* on page 3 indicates that Rev. John Barton Day “will join the Synod staff...as executive director of the church body’s new Life Together department,” and later the article states, “The executive director of Life Together is one of two new executive-level positions created to support the LCMS churchwide emphasis of WITNESS, MERCY, LIFE TOGETHER,” and the article further states, “The other position, executive director of Witness and Mercy—yet to be filled—will oversee international missions.” Is this (the above) in harmony with the Bylaws and resolutions of the 2010 Lutheran Church—Missouri Synod convention?

Opinion: The Synod has historically recognized and has variously defined “departments.” For example, corporate Synod includes in Bylaw 1.2.1 (d) “...the departments operating under the supervision of the Board of Directors...” Bylaw 1.5.4 recognizes an “accounting department” while not specifically creating that entity. The board of directors under Bylaw 3.3.4.5 is authorized to allocate available funds to the “...mission boards, commissions, councils, offices, and departments of corporate Synod...” Concordia Historical Institute, under Bylaw 3.6.2, is declared to be the “official department of archives and history of the Synod,” and the Bylaws recognize that colleges and universities will have various departments. Bylaw 4.1.1.3 contemplates the existence of a “Department of Planning and Research,” and Bylaw 4.6.1 (a) contemplates a “Department of Stewardship.” While the Synod itself has not created a “Life Together Department” and nothing in the Constitution or Bylaws of the Synod provides for the creation of a new “Life Together Department,” the creation of such a department is not expressly prohibited.

At its 2010 convention, the Synod created two new offices—the Office of National Mission and the Office of International Mission. Based upon information provided by LCMS President Matthew Harrison, Rev. Bart Day will head the Office of National Mission. With respect to the use of the title “executive director,” Bylaw 1.2.1 (h) defines such a position as the “top staff administrator of a mission board or commission of corporate Synod.” The term has also been employed in other contexts, however, consistent with the human resources policies of the Synod. As head of the Office of National Mission, it is not inappropriate to use that title for Rev. Day.

With respect to the focus and emphasis of the Offices of National Mission and International Mission, Bylaws 3.8.2.4 and 3.8.3.4 allocate responsibility for establishing that focus:

3.8.2.4 In carrying out its mission responsibilities, the Office of National Mission shall receive its primary focus from the mission and ministry emphases developed triennially by the national Synod in convention and from the policies developed and determined by the Board for National Mission....

3.8.3.4 In carrying out its mission responsibilities, the Office of International Mission shall receive its primary focus from the mission and ministry emphases developed triennially by the national Synod in convention and from the policies developed and determined by the Board for International Mission....

It appears that the referenced *Reporter* article may have misunderstood the source and scope of an emphasis on WITNESS, MERCY, and LIFE TOGETHER. The triennial emphasis for the Synod, as well as for the Boards and Offices of National and International Mission, must originate from a process which

begins with congregations and circuits and is to be finally determined by conventions of the Synod. Because the 2010 convention adopted the structural changes described in this opinion without having adopted a triennial emphasis before adjournment, and because the newly established mission boards had not yet had opportunity to organize themselves, the President of the Synod took the lead in attempting to formulate for and on behalf of the Synod such an emphasis for the national office for the current triennium. Because of the responsibility of the two mission boards, it is incumbent on the mission boards to take the lead in developing a current mission emphasis, from which goals will be established for the National and International Mission Offices, and from which the mission boards will formulate policies embracing the triennial emphases until the next convention has opportunity to develop new mission and ministry emphases for the following triennium.

Question 2: The July 2011 issue of *Reporter* on page 3 speaks of Rev. John Barton Day as “[the one who] will head the Office of National Mission” and later in the article uses the words “until a head is appointed” and then the article goes on to speak of “leading the unit.” Are these terms and references in harmony with the Bylaws of The Lutheran Church—Missouri Synod?

Opinion: As discussed above, it would be appropriate to refer to Rev. Day as the executive director of the Office of National Mission.

Question 3: What is the correct title for the two top staff positions for the Office of National Mission and the Office of International Mission according to the Bylaws of The Lutheran Church—Missouri Synod?

Opinion: As described above, the top staff positions for the Office of National Mission and the Office of International Mission may be designated as the Executive Director of the Office of National Mission and the Executive Director of the Office of International Mission.

Question 4: The above cited issues of *Reporter* seem to indicate that the appointment of Rev. John Barton Day to the Office (“Department”? “Unit”?) of National Mission and that the appointment, yet to be made, to the Office (“Department”? “Unit”?) of International Mission was and will be made by the President of the Synod. Does the President of the Synod have the authority to NOT create or NOT recognize an Office of National Mission (and Office of International Mission) and, rather, create a “department” or “unit” to take on the responsibilities of that office? Who has the authority to appoint/call these two positions (executive directors of the two offices) according to the Bylaws of The Lutheran Church—Missouri Synod? Does anyone other than the Board for International Mission and the Board for National Mission have the authority, according to the Bylaws of The Lutheran Church—Missouri Synod, to make these appointments?

Opinion: Neither the President nor anyone else in the Synod has authority to disregard or overrule actions of the convention. The Office of National Mission and the Office of International Mission were created by convention action. The President is charged with the responsibility for seeing to it that the resolutions of the Synod are carried out (Constitution, Art. XI B 4; Bylaw 3.3.1.1.1). This includes the creation of the Office of National Mission and the Office of International Mission by 2010 Res. 8-08A. He may not supplant or frustrate this action of the convention or do away with the offices themselves.

Bylaw 3.3.1.2 also gives the President the responsibility to oversee the activities of all officers, executives and agencies of the Synod. The issue of to whom authority has been delegated to appoint the head of these two offices has resulted in confusion, particularly among those most intimately involved. During the

work of the Blue Ribbon Task Force on Synod Structure and Governance and the deliberations of the floor committee charged with evaluating and presenting the results of that work to the convention, members of the Commission on Constitutional Matters informally advised that the elimination of all program boards, the concentration in the office of the President the responsibility for the carrying out of those functions, and the resulting amassing and centralization of power without appropriate checks and balances as had historically been in place was neither wise nor constitutionally permissible without an amendment to the Constitution. Discussions ensued regarding methods to avoid perceived constitutional problems and continued up to the floor committee presentation to the convention. However, no formal opinion was ever requested from or issued by the commission on this important issue. As an example of the scope of the discussions, if the goal was the creation of a policy-based governance model, consideration was given to a possible requirement that the President might be made accountable to the Board of Directors in all his duties—a result that conflicted with his ecclesiastical responsibilities.

The task force, and ultimately the floor committee, moved away from the concept of creating two advisory commissions to that of creating two fully functioning policy boards, which many of those involved, including the Commission on Constitutional Matters, understood to be fully functioning operating boards. The proposed and adopted changes to the Bylaws included definitions which support that interpretation (Bylaws 1.2.1 [l] and [n]). The convention updated Bylaw 1.2.1 (h) defining an executive director to include the top staff administrator of a mission board, yet a purely “policy” board would have no staff administrator. Bylaw 1.2.1 (n) was also updated to expressly include the mission boards within the definition of an “operating board.”

Leading up to the 2010 convention, many delegates and members of the Synod expressed concerns to the task force and floor committee similar to those expressed by the commission. Now, in the aftermath of the convention, the above question has been submitted to the commission requiring a formal and binding opinion. Despite its continuing concern in light of a clear and consistent understanding of historical Synod polity and practice, and despite continuing serious reservations about the lack of appropriate checks and balances, a dispassionate analysis of the actual explicit language of the Constitution reveals no prohibition of the elimination of all program boards. Likewise, the language of the Constitution does not prohibit the vesting of authority for control of all programmatic functions of the Synod directly or indirectly in the office of the President. Despite the references in Bylaw 1.2.1 discussed above, which suggest a different intent, a dispassionate analysis of the actual, explicit language of the entirety of the bylaws as amended by the 2010 convention indicates that the convention in fact eliminated all program boards and vested authority for all programmatic functions directly or indirectly in the office of the President.

Given the confusion which has followed the convention’s actions, given the commission’s ongoing and serious concerns, and recognizing that the results of the convention’s actions as described in this opinion may not have been that which was actually intended by the convention delegates, the commission will refer this issue to the Commission on Handbook for appropriate consideration.

Finally, with respect to the issue of the selection of the executive directors of the two mission offices (the Office of National Mission and the Office of International Mission), the commission finds that such appointments cannot be made until the President of the Synod, as required by Bylaw 3.3.1.3 (e),<sup>3</sup> consults with and receives the concurrence of the appropriate mission board on a slate of candidates before a person is appointed to that position. With respect to the appointment of the Executive Director of the

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<sup>3</sup> Bylaw 3.3.1.3 (e): “He shall engage in consultation with each mission board, commission, and the governing board of each synodwide corporate entity to reach mutual concurrence on a slate of candidates for the position of chief executive or executive director.”

Office of National Mission, that process was not followed and the appointment was not proper. In consultation with the President, however, he has acknowledged this oversight and has assured the commission that he will act promptly to correct that error.

#### **71. Review of Southeastern District Bylaws (11-2601)**

With a July 27, 2011 email, the Southeastern District Bylaws Committee submitted the district Bylaws and its proposed amendments for review by the commission. Upon careful review, the commission provided the following recommendations to the committee for additional changes prior to consideration by the district convention.

- Preamble, second-last bulleted paragraph: Reference to the requirements of membership in the Constitution of the Synod should also include mention of the “Bylaws and resolutions” of the Synod.
- Preamble, final paragraph: Reference to the Constitution and Bylaws of the Synod as having been “hereby adopted” would better read “hereby reaffirmed,” since districts do not adopt the Synod’s official documents as they already are the district’s documents since the district is the Synod itself.
- Article III, paragraph 3: Here and each time “Directors” is used to refer to the functions of the board of directors, “board of directors” should be used in every case, since directors (members of the board of directors) do not function apart from the board.
- Article V, paragraph 2 a: Given the requirement of the Synod’s Bylaws that nominations of officers may be made from the clergy roster of the entire Synod, the first statement will better read: “Each voting congregation of the District shall be entitled to nominate from the congregations of the Synod or district as appropriate two (2) candidates....”
- Article VII, paragraph 3: This paragraph would better read “Circuits shall meet at least twice triennially” and then also include in the list of purposes for meeting (in addition to those listed) the selection of circuit counselors and the consideration of proposed actions to district and national conventions.
- Article X: Mention should be included in this paragraph of the need to have amendments reviewed and approved by the Commission on Constitutional Matters prior to their consideration by the convention.

#### **72. Review of Southern Illinois District Article of Incorporation and Bylaws (11-2604)**

With an October 26, 2011 email, the secretary of the Southern Illinois District submitted a final draft of the district’s Articles of Incorporation and Bylaws for review and approval, having incorporated all earlier suggestions offered by the commission. Upon review, the commission approved the documents with the following minor additional recommendations.

- Article VII: The commission recommends adding the words “Constitution and” to the title to describe better the content of the article.
- Bylaw 2.75, paragraph c: This sentence would more accurately read, “The commission shall obtain from the secretary of the district the slate of candidates for circuit counselor selected by the circuit forums in accordance with the Bylaws of the Synod.”
- Bylaw 2.75, paragraph d: Circuit counselors should be added to this list of offices excluded from nomination by the Commission on Nominations and Elections.

- Bylaw section III: The title would better read “Ordained and Commissioned Ministers,” the use of the term “ordained minister” also continued throughout this section in place of “pastor” except where a parish pastor is specifically intended.

### **73. Review of Southern District CEF Articles of Incorporation and Bylaws (11-2605)**

With an August 8, 2011 email, the president of the Southern District submitted the Articles of Incorporation and Bylaws of the Southern District Church Extension Fund for review and approval. Upon review, the commission recommends the following changes:

- Article 5, paragraph 5.2: The reference to the Constitution of the LCMS should also include mention of the Synod’s Bylaws.
- Somewhere under Article 8.0, “Board of Directors,” mention should be made of the provisions of Synod Bylaws 3.10.6 and 3.10.6.1 requiring conformity with policies established by the Synod’s Board for Church Extension.
- Article 9: Reference should be included to Synod Bylaw 1.5.7 (Conflict of Interest).
- Article 12: The Commission on Constitutional Matters must be involved in the process of making, altering, amending, or repealing articles and bylaws prior to their submission to the convention (Synod Bylaw 3.9.2.2.3). In addition, the word “amends” in the final paragraph should be changed to “amendments.”
- The commission recommends the addition of a section 19 to the bylaws addressing how changes to the Bylaws are to be made, including review and approval by the Commission on Constitutional Matters prior to submission to the convention.

### **74. Review of Kansas District Articles of Incorporation and Bylaws (11-2606)**

With an August 9, 2011 email, the secretary of the Kansas District submitted the district’s Articles of Incorporation and Bylaws for review by the commission. After review, the commission recommends the following changes:

- Bylaws Article II, paragraph 1: This paragraph should also include mention of the Bylaws of the Synod as being the primary bylaws of the district.
- Bylaws Article II, paragraph 4: This paragraph should also include mention of being governed by the Constitution as well as the Bylaws of the Synod.
- Bylaws Article II, paragraph 7: The commission requests that this “District Operations Manual” be submitted for review, as provided by Synod Bylaw 3.9.2.2.3.
- Bylaws Article III, paragraph 1 (d): This paragraph should include the provision that the district treasurer “shall be a layman appointed by the Board of Directors.”
- Bylaws Article III, paragraph 1 (e): This paragraph will need to be changed to state that circuit counselors may be nominated and elected from the clergy roster of the Synod (Synod Bylaw 4.3.1).
- Bylaws Article III, section 2: This section would benefit from clarification to distinguish between elective and appointive offices. In addition, paragraph (b) IV should include reference to or content from Synod Bylaw section 4.6 regarding the responsibilities of the district’s Board for Stewardship.
- Bylaws Article III, section 5: Regarding holding more than one office, doubtful cases are to be decided by the President of the Synod, not the district president (Synod Bylaw 1.5.1.2 (b)).
- Bylaws Article V, section 2: Throughout this section, the terminology used regarding district conferences should mirror that used by the Synod in Bylaw section 4.8 regarding conferences for

“ordained and commissioned ministers.” In particular, the term “consecrated ministers” in paragraph (b) III is not a term used in the Bylaws of the Synod.

- Bylaws Article V, section 3: This paragraph will require attention to (a) reflect that circuits now must meet at least two times in a triennium—once to select circuit counselors and conduct other district convention-related business, and again as electoral circuits to elect delegates to Synod conventions; (2) make clear the differences between visitation and electoral circuits; and (3) include mention of the need to discuss and submit proposals to the district convention for Synod-wide mission and ministry emphases.
- Bylaws Article VI: Mention should be made that district bylaws and additions thereto are not to be contrary to the Bylaws as well as the Constitution of the Synod. Mention must also be made to the requirement of the Synod that all amendments to bylaws are to be submitted to the Commission on Constitutional Matters for review and approval prior to their submission to the district convention.
- Bylaws Article VII: Here again, review and approval by the Commission on Constitutional Matters is required.

### **75. Call of Missionaries for Service Outside of District (11-2607)**

An ordained minister of the Synod, via an August 10, 2011 email, submitted a question to the commission regarding the authority of a district to call members of the district to serve as missionaries outside the district. The commission responded as follows.

**Question:** Does a district of The Lutheran Church—Missouri Synod have the authority under the Constitution and Bylaws of The Lutheran Church—Missouri Synod to call members of their district as missionaries and place them in locations of service around the United States outside their district?

**Opinion:** No. The principles governing districts of The Lutheran Church—Missouri Synod are contained in Article XII of the Constitution as well as Bylaw 4.1. The Synod itself has retained exclusive jurisdiction with respect to the placement of foreign missionaries (Bylaws 4.4.3 [b]), 4.1.5, and 3.8.3). No express provision of the Constitution or Bylaws directly addresses the issue raised.

With respect to mission outreach which crosses district lines, the issue was addressed as to individual congregations by 2010 Res. 1-07A.<sup>4</sup> The Bylaws now expressly address the issue with respect to the efforts of an individual congregation. Bylaw 4.1.6.2 reads:

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<sup>4</sup> **2010 Resolution 1-07A “To Encourage Inter-District Dialogue in the Establishment of New Church Starts, Satellite Worship Sites, and Specialized Ministries across Geographic District Lines”**

WHEREAS, Psalm 133:1 states, “How good and pleasant it is when brothers live together in unity”; and  
WHEREAS, In response to this word of encouragement, the Council of Presidents, the Department of Rosters and Statistics, LCMS World Mission, and the Secretary of the Synod have agreed upon definitions for “new church starts,” “satellite worship sites,” and “specialized ministries”; and

WHEREAS, Congregations today continue to expand the kingdom of God through the establishment of new church starts, satellite worship sites, and specialized ministries; and

WHEREAS, Congregations on occasion have established such avenues for outreach across district lines without consulting with the geographical district or the local congregations where they have begun the new work; and

WHEREAS, Failure to do so can cause strained relations and impact work that is being planned for that area by local congregations or the geographical district; and

WHEREAS, The Synod places a high regard on geographical district boundaries, evidenced by Constitution Art. XII 1, 6, 7, & 12 and Bylaw 4.1.1.4; therefore be it

- 4.6.2 Congregations interested in expanding their Gospel outreach into an area that crosses district lines are encouraged first to discuss their intent with their own district officials, followed by discussion with the appropriate district officials and the local congregations impacted by such work.
- (a) Any such expansion of Gospel outreach into an area that crosses district lines shall require the concurrence of both the president of the receiving geographical district and the board or committee responsible for mission in that district.
- (b) The ecclesiastical supervision of a new church start, satellite worship site, or any ministry established by a congregation in another district shall be decided by the affected district presidents.

The Synod contains two non-geographic districts, the English District and the SELC District. There are no geographic limitations on the mission work which each undertakes, and any domestic mission of such districts will occur in the geographic area of another district. Even in this case, non-geographic districts are encouraged to consult with other districts.

With respect to the remaining districts (all defined by the Synod on a geographic basis), while there is no express limitation on one district calling a missionary to serve in a different district, it would be inconsistent with the concept that a district is the Synod in that place for one district to call a missionary to serve the people of a different district and different place. While there may be instances where a mission outreach effort in one district has crossover impact into another district, the very organizational structure of the Synod contemplates that each district will operate in its own geographical area.

## **76. Review of Missouri District Bylaws (11-2608)**

With an email dated August 10, 2011, the secretary of the Missouri District submitted his district's Bylaws and proposed amendments to the commission for review and approval. After careful review, the commission offers the following recommendations for additional change, using the line numbers provided with the submitted document:

- Line 11: The words “this constitution” should be changed to “these Bylaws” to recognize that the Constitution of the Synod is the constitution of its districts, leaving districts to develop bylaws to make application of the Constitution and Bylaws of the Synod according to their specific needs.
- Lines 77–80: This paragraph will need to be changed to reflect the requirement of Synod Bylaw 4.3.1 that nominations for these offices may be from the entire clergy roster of the Synod.
- Line 255: The intention of this provision needs to be clarified.
- Line 279: Reference to the district's “work program” appears to be antiquated language, as compared with Synod Bylaw 4.5.1 (c)—which, for the record, should reference Bylaw 3.3.4ff, not 3.3.5ff (error in 2010 *Handbook*).
- Line 310: The reference to Synod Bylaw 4.4 should also include reference to Synod Constitution Article XII.
- Line 366: Circuit counselors may appoint assistants, but approval by the district president should also be mentioned (Synod Bylaw 5.2.1 [c]).

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*Resolved*, That congregations interested in expanding their Gospel outreach into an area that crosses district lines be encouraged to discuss their intent first with their own district officials, followed by the appropriate district officials and the local congregations impacted by such work; and be if further

*Resolved*, That any such expansion of Gospel outreach across district lines shall require the concurrence of both the president of the receiving geographical district and the board or committee responsible for mission in that district; and be it finally

*Resolved*, That the ecclesiastical supervision of a new church start, satellite worship site, or any ministry established by a congregation in another district shall be decided by the affected district presidents.

- Lines 415–417, 428–430, 442–446, 457–459: Responsibility for implementation of convention resolutions belongs primarily to the officers of the district (Synod Bylaw 4.1.7) and specifically to the president of the district (Synod Bylaw 4.4.2 [a]). Boards of the district provide assistance.
- Lines 489–499: Use of the term “jurisdiction” in the title and text of this section is foreign to the Synod’s bylaws describing the duties of district reconcilers. The commission advises using the language of Synod Bylaws 1.10.10.2 and 1.10.10.3 to describe these duties, with the exception of lines 500–501, which should be retained, as their content is not found in the Bylaws of the Synod.
- Line 538: The commission asks to see and review the mentioned “elections manual” under its duties as provided in Synod Bylaw 3.9.2.2.3.
- Lines 544–546: The listing of the order of elections needs also to include mention of the board chairmen and Committee on Nominations, as listed in lines 504–506.

## **77. Review of Rocky Mountain District Revised Bylaws (11-2609)**

With an August 10, 2010 letter, the chairman of the Rocky Mountain District Bylaws Committee submitted the Bylaws of his district to the commission for review and approval, noting the long and thorough review process carried out by his committee. Upon review, the commission recommends the following additional changes prior to submission to the district convention. The commission will also provide its “Frequently Noted Concerns and Aberrations” document for the committee’s consideration in the interest of Synod-wide grammatical uniformity in the preparation of agency documents. The commission will also look forward to receiving the district’s “Policies and Administration Manual” when it is ready for review.

- Bylaw 1.05 A: The commission advises adding the following to the end of this paragraph for clarification: “...which are located within the geographical area of the Rocky Mountain District.”
- Bylaw 2.01 B 11: Circuit counselors should also be listed as exception to the provision of this paragraph (along with the Nominating Committee).
- Bylaw 2.01 C 1 e: The use of the term *ex officio* invites further clarification as to whether voting or non-voting membership on the commissions is intended. The same pertains to Bylaw 2.03 E 2.
- Bylaw 2.03 H 1: The Constitution and Bylaws of the Synod nowhere speak of the district president as pastor to pastors. Instead, he is referred to as their ecclesiastical supervisor. Use of the term “pastoral” with reference to his supervision would be more appropriate.
- Bylaw 2.05 H: This statement must be omitted or changed to reflect the method for selecting/electing circuit counselors adopted by the 2010 Synod convention (Synod Bylaw 5.2.2).
- Bylaw 2.11: The final phrase of the final sentence will more accurately read: “...the provisions of the Constitution and Bylaws of the Synod and the Bylaws of the district shall control.”
- Bylaw 3.01 A 2: It will be helpful to add to the end of this sentence mention of the need for congregations to provide their nominations for circuit counselor to the current circuit counselor prior to the circuit forum, along with biographical and consent-to-serve information.
- Bylaw 3.01 C 1 and 2: Nominations may be made from the ordained minister roster of the entire Synod (Synod Bylaw 4.3.1).
- Bylaw 3.01 E: This entire section will need to be changed to reflect Synod Bylaws 4.3.1 and 5.2.2.
- Bylaw 3.03 C 1: The final two words of this paragraph should be deleted, as the Bylaws of the Synod no longer include term limits for reconcilers.
- Bylaw 5.01 A 2: The commission assumes that the title “District Teachers Conference” is intended to be deleted.

- Bylaw 5.02 B: This section of the bylaw will now need to include mention of circuit counselor selection and mission and ministry emphases consideration—new responsibilities for circuit forums adopted by the 2010 convention of the Synod.
- Bylaw 5.02 B 6: As it currently reads, this paragraph assumes that there will never be a need to combine circuits to form an electoral circuit. Provision should be made in the wording to allow for electoral circuits formed by combining two adjacent visitation circuits (Synod Bylaw 3.1.2 [a]).

## **78. Fellowship Within the Synod (11-2610)**

In a letter dated August 17, 2011, a pastor of the Synod submitted three questions pertaining to fellowship with one another through membership in the Synod. The letter, which was also sent to the Commission on Theology and Church Relations (CTCR), contained some background material.

Question 1: Is it the self-understanding of the LCMS that all of its pastors and parishes are in fellowship with one another?

Opinion: Yes, it is the self-understanding of The Lutheran Church—Missouri Synod that all of its congregational members (congregations that have joined the Synod) and individual members (ministers of religion—ordained and ministers of religion—commissioned on the roster of the Synod) are in fellowship with one another.

First, the Synod’s Bylaws not only reflect such a self-understanding, but describe the agreements of the members and the requirements of the members’ fellowship with one another:

- 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 of the Synod, compelled by love for each other, accept the responsibility to support financially the work of the Synod and provide annual statistical information to enable the Synod to plan current and future ministry efforts based upon an accurate picture of the results of current ministries within its churches, communities, and world [emphasis added]. (Cf. also Bylaws 1.3.1 and 1.3.3)
- 1.3.4.1 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].
- 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 [emphasis added].
- 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 [emphasis added].
- 1.8.2 Dissent from doctrinal resolutions and statements is to be expressed first within the fellowship of peers and then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or rescision. While the conscience of the dissenter shall be respected, the consciences of others, as well as the collective will of the Synod, shall also be respected [emphasis added].

Second, the Constitution and Bylaws' use of the word "fellowship" (and other words such as "common," "unity," "association," "walk together" and "agree" that are synonymous with or define and describe "fellowship") is helpful to the self-understanding of the fellowship with one another in the Synod:

- 2010 Constitution, Article III 1: "Conserve and promote the unity [*i.e.*, 'oneness'; cf. *unus* ('one'), *unites* ('one, common')] of the true faith (Eph. 4:3 – 6; 1 Cor. 1:10), work through its official structure toward fellowship with other Christian church bodies, and provide a united defense against schism, sectarianism (Rom. 16:17), and heresy" [emphasis added; amended in 1979, effective 1980].
- 1847 Constitution: "The preservation and furthering of the unity [*Einheit* ('oneness')] of pure confession (Eph. 4: 3–6; 1 Cor. 1:10) and to provide common [*gemeinsame* ('common, held jointly, mutual')] defense against separatism and sectarianism (Rom. 16:17)."
- 1854 Constitution: "The conservation and promotion of the unity [*Einheit* ('oneness')] of the pure confession (Eph. 4: 3–6; 1 Cor. 1:10) and the common [*gemeinsame* ('common, held jointly, mutual')] defense against schism and sectarianism (Rom. 16:17)."
- 2010 *Handbook*: "...confessional unity" (Article III 6); "...common profession of faith" (Article III 7); "...common confession and mission, congregations of The Lutheran Church—Missouri Synod join with one another in the Synod to support one another and to work together in carrying out their commonly adopted objectives...in association with other member congregations through the Synod..." (Bylaw 1.1.1); "Synod...Refers collectively to the association of self-governing Lutheran congregations..." (Bylaw 1.2.1 [v]); "... the bond of Christian fellowship" (Bylaw 4.4.4 [e]); "...to strengthen the spirit of unity among circuit congregations to effect mission and ministry and shall seek to strengthen and support the spirit of fellowship..." (Bylaw 5.2.3.1[b]); "...network of congregations that 'walks together'..." (Bylaw 5.1.1) [emphasis added].

Third, resolutions of the Synod provide the Synod's self-understanding of "fellowship." The 1965 convention of the Synod adopted *Theology of Fellowship* as a Synod document for reference and guidance (Res. 2-13). It therefore serves the Synod's understanding of "fellowship" or *koinonia*. The following excerpts from this Synod-adopted document prove helpful:

Being in fellowship with the one, holy, catholic, and apostolic church entitled the layman to participate in the sacraments; it enabled one cleric to officiate in the parish of another, with proper permission. But above all things, *church* fellowship was *altar* fellowship. This understanding is still preserved centuries later by the prince of Lutheran dogmaticians, John Gerhard, when he says in his *Loci*:

"So there is a threefold *koinonia* (fellowship) laid down by the apostle: (1) the sacramental participation in Christ's body and blood, which takes place by way of the bread and wine that has been blessed, 1 Cor. 10:16; (2) the spiritual apprehension of the entire Christ and all His benefits, which takes place by true faith, 1 Cor. 11:26; (3) the fellowship of the church as a body (*communio corporis ecclesiae*), 1 Cor. 10:17: 'We many are one bread, one body, for we all partake of the one bread.' The first fellowship (*koinonia*) is the foundation of the others, because the spiritual participation in Christ and His benefits is confirmed and sealed in the believers through the sacramental fellowship (*koinonia*). The fellowship of the church as a body can, for the sake of teaching, be designated as twofold: namely, as external and as internal; the external fellowship exists among all who embrace the same doctrine and make use of the same sacraments; the internal fellowship exists among those only who truly believe, who have the Spirit of Christ. The external fellowship of the church as a body arises from the sacramental fellowship (*koinonia*); the internal, however, arises from the spiritual fellowship (*koinonia*)" (Volume V, Locus XXI, Cap. XI, ed. Preuss, p. 98).

The 1981 convention of the Synod commended *The Nature and Implications of the Concept of Fellowship* study of the CTCR along with its previously adopted *Theology of Fellowship* to the members

of the Synod for their study and guidance (Res. 3-10). This Synod-adopted commendation also serves the self-understanding of “fellowship” or *koinonia*. The following are pertinent excerpts:

## I. THE NATURE OF FELLOWSHIP

### A. THE SCRIPTURAL CONCEPT OF FELLOWSHIP

#### 1. Fellowship: Having Part in a Common Thing

In the New Testament the word *koinonia* (and its cognates), the Greek term for fellowship, appears in a number of places...

Without referring to every place where *koinonia* (and its cognates) appears in the New Testament, it can be concluded that this is a term which has as its root meaning “having part in a common thing.” It is with this meaning in mind that the New Testament writers use it to refer to a variety of relationships. Important in this discussion on the nature of fellowship in the context of inter-Christian relationships is the fact that *koinonia* most frequently appears in connection with that spiritual unity which exists in the body of Christ (e.g., 1 Cor. 1:9; 1 John 1:3), but it is also used at times to refer to the attempts of Christians to manifest this unity externally (e.g., Acts 2:42; Gal. 2:9). It dare not be overlooked, however, that the Scriptures also have much to say about each of these two distinct (but not separate) relationships without making specific use of the term *koinonia* at all. For example, this word appears neither in Paul's discussion of spiritual unity in the body of Christ in Eph. 4:1-6 [note this reference in Synod's Constitution] nor in Christ's High Priestly Prayer in John 17:20 f., nor is it used in many of those sections of Scripture which exhort Christians to guard the truth and to live together in the church in an external relationship of peace and love on the basis of agreement in God's Word (e.g., 1 Cor. 1:10 [note this reference in Synod's Constitution]; 2 Tim. 1:13-14) [emphasis added].

The implications of that which has just been stated are clear. This study on fellowship will have to be more than a mere word study on the meaning and usages of *koinonia* in the New Testament. If we are to be faithful to the Scriptural understanding of the nature of fellowship in the context of inter-Christian and inter-church relationships, then it will be necessary not only to examine those sections of the Scriptures where the word *koinonia* appears but also to take into account what God's Word has to say about the spiritual unity which is given with faith in Christ and to heed the guidance the Scriptures give to Christians regarding external unity in the church [pp. 8-9; emphasis added].

....

#### 3. Fellowship: An External Relationship to Be Manifested and Maintained

##### a. "Forbearing One Another in Love"

Since it is faith in the heart which binds believers together with Christ and with one another, no human eye can see this spiritual unity. But there is an inner dynamic to faith in Jesus Christ which works toward an external unity embracing all those who confess faith in Jesus Christ (1 Cor. 1:10) [emphasis added]. What the church *is* by God's design is what He wants the church to show itself to be—one—so that "the world may believe" (John 17:21).

The Scriptures, therefore, exhort Christians to manifest the unity which has already been given them by virtue of their incorporation into the body of Christ. St. Paul writes: "I therefore, a prisoner for the Lord, beg you to lead a life worthy of the calling to which you have been called, with all lowliness and meekness, with patience, *forbearing one another in love*, eager to maintain the unity of the Spirit in the bond of peace" (Eph. 4:1-3). Those who have been grafted into Him who is the true vine are to bear the fruit of the Spirit (Gal. 5:22). Having been incorporated by Baptism into the body of Christ, they should manifest love for the fellow members of His body. Love for the brethren, writes St. John, is evidence that we have "passed out of death into life" (1 John 3:14; cf. Eph. 5:2). This external unity, although involving human efforts, is also a gift from God [emphasis added].

To the extent that love controls their conduct, Christians seek fellow believers in Jesus Christ in order to build them up and to be built up by them (Rom. 1:11–12). Love rejoices with those who rejoice, it weeps those who weep (Rom. 12:15; 1 Cor. 12–13). It works to strengthen weak, encourage the strong, and admonish the erring (Gal.6: 1–2). Above all, it seeks to help fellow believers remain faithful to Christ and to His Word. This love may in certain situations lead members of the church to separate themselves from fellow Christians and even to exercise church discipline although it be with many tears (1 Cor. 5:5; 2 Cor. 2:4).

And finally, for an application of Synod’s fellowship with one another, Resolution 2-21 of the 1971 convention (1971 *Proceedings*, pp. 118–119) states in its Preamble:

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), 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.

The object of the Synod, as stated in Article III, 1, of the Constitution, is (1) to conserve and promote a unity in which all are “united in the same mind and the same judgment” (1 Cor.1:10), and (2) to avoid schism caused by contrary doctrine (Rom.16:17). This purpose of the Synod is defeated when individuals are permitted to teach in accordance with their private views, for then there can be no such thing as a synodical position, and a meaningful corporate confessional commitment is impossible. Formal commitment of the Synod to a confessional base is pointless unless the Synod has the right as a synod to apply its confessional base definitively to current issues and thus conserve and promote unity and resist an individualism which breeds schism...

If a member cannot for conscience’ sake accept a doctrinal resolution of the Synod, he has the obligation and opportunity through mutually approved procedure to challenge such a resolution with a view to effecting the changes he deems necessary. Failing in that, he is completely free by reason of his wholly voluntary association with the Synod to obey his conscience and disassociate himself from the Synod. Meanwhile every member of the Synod is held to abide by, act, and teach in accordance with the Synod’s resolutions” [Emphases added].

Question 2: Along with it: Has this always been the self-understanding of the LCMS?

Opinion: Yes. See answer to question 1.

It has always been the self-understanding of the LCMS that the members of the Synod (walking together) are in fellowship (*koinonia* and its cognates) with one another. The members of the Synod were and are “having part in a common thing.” The nature and concept of “fellowship” has also been described as association, one together, oneness, unity, agreement, participation, partaking, partnership, etc.

The members of the Synod joined with one another together to form a “walking together” union. As believers unite in a congregation, like-minded congregations band together to form a church body, a “Synod” united in the bond of love.

An October 16, 1969 opinion of the Commission on Constitutional Matters states in part:

The very nature and purpose of a synodical fellowship need to be restated once again. A synod is a “walking together.” The choice of the word “synod,” derived from the Greek, is significant because it emphasizes the idea of unity. For good reason our church body has chosen for itself the name: “The

Lutheran Church—Missouri Synod.” We are congregations, pastors, and teachers who have decided to join hands and to walk together.

The Preamble of the Constitution has the sub-heading: “Reason for the Forming of a Synodical Union.” Union was the major concern in effecting the organization of the Synod. The concepts of fellowship, togetherness, brotherhood, and “walking together” express the basic purpose of the Synod’s existence.

The reasons given in the Preamble for forming the union are “1. The example of the apostolic church, Acts: 15:1–31,” and “2. Our Lord’s will that the diversities of gifts should be for the common profit, 1 Cor. 12:4–31.” Once again the emphasis falls upon the idea of unity [emphases added].

United with Jesus Christ, the members of the Synod have bound themselves to oneness of doctrine and confession, and oneness of life, mission, purpose and support. The members have bound themselves together in common to the Word of God, which alone determines and establishes the doctrine and mission of the church. The members have bound themselves together in common to adopt doctrinal resolutions and doctrinal statements in order to determine and to declare its collective understanding of what the scriptures teach. The members have bound themselves together in common to convince and persuade one another by the power of God’s Word.

And as such, in joining together with one another, the members of the Synod have bound themselves together in common to the Constitution and Bylaws of the Synod and also its resolutions 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 members have bound themselves together in common to honor and uphold the collective will of Synod as expressed in its convention resolutions and to carry out any brotherly dissent or dispute resolution according to the provisions set forth by the fellowship of the Synod.

Question 3: Convinced that we really are in a declared state of fellowship with one another by virtue of our synodical membership, therefore, must we either accept our brethren as they are (and commune them and commune with them) and show that those brethren are in error, or depart from them, lest we break the unity of the synod?

Opinion: By virtue of having voluntarily “joined together to form the Synod and relate to one another through it” (Bylaw 1.3.1) and, therefore, by virtue of its fellowship being compelled by love for each other, members of the Synod accept the “brethren” (“brotherhood”) “as they are” (cf. above answers to questions 1 and 2, which reflect the implication of “members/membership” or “brethren”). Together with accepting the “brethren,” members of the Synod also accept the responsibility for carrying out the established provisions within the fellowship of the Synod to resolve brotherly dissent (Bylaw 1.8) and disputes (Bylaw 1.10) and to carry out any expulsion as set forth in the Bylaws (cf. Constitution, Art. XIII and Bylaw sections 2.14–2.17).

These provisions or avenues have been established by the members of the Synod to preserve and promote the unity of the Synod so that such unity may not wither, waste away, or progressively decline (cf. Article III, 1 and 6). In the same above-referenced 1969 CCM opinion (under question 2), it is stated:

Christians as well as non-Christians expect differences of opinion and judgment to arise when people walk together. The Synod has provided for forums in which such differences can be discussed and evaluated beyond the confines of the local congregation...When the majority will has been determined, it must be respected. Otherwise life together (synod) becomes all but impossible. Discussion may indeed continue; but it needs to be carried on with full respect for the majority will and within the forums established by the Synod for the preservation of the synodical unity. If additional channels for discussion are needed, the Synod can provide for the same in its Bylaws through appropriate convention action [emphasis added].

Disparate and alien avenues within the Synod such as withholding funds, shunning one another, failure to relate to one another (disassociate with, exclude one another) and failure to discuss disagreements and differences with one another as well as refusal to meet together, refusal to commune or commune with another while having no desire, decision, or action to carry out the mutually accepted provision of dispute/conflict resolution (Bylaw 1.10), are divisive, un-brotherly and are themselves destructive of the fellowship or a “walking together” and “militate against the essential unity intended by the structure of the Synod as provided in its Constitution and Bylaws” (cf. October, 1966 CCM Opinion).

Marking or characterizing its life together, the fellowship of the Synod has responsibly and lovingly provided an avenue of dissent (Bylaw 1.8) which is “brotherly,” expresses the dissent with the “fellowship” of peers and respects the “collective” will of the Synod. In referring to the Synod provision of “dissent,” November, 2005 CCM Opinion 05-2444 states: “Dissent that is “brotherly” will always regard another as a brother or being in a “brotherhood”” (cf. reference to “brotherhood” in Bylaw 1.10.1.1) and will treat and relate to others in the “fellowship” as “brothers” [emphasis added].

In the Synod bylaw provision of “Dispute Resolution” (Bylaw section 1.10), the Preamble states:

When disputes, disagreements, or offenses arise among members of the body of Christ, it is a matter of grave concern for the whole church. Conflicts that occur in the body should be resolved promptly (Matt. 5:23–24; Eph. 4:26–27). Parties are urged by the mercies of God to proceed with one another with “the same attitude that was in Christ Jesus” (Phil. 2:5). In so doing, individuals, congregations, and various agencies within the Synod are urged to reject a “win-lose” attitude that typifies secular conflict. For the sake of the Gospel, the church should spare no resource in providing assistance. (Bylaw 1.10.1)

Even the Synod’s “expulsion” provisions (Bylaws 2.14 – 2.17) reflect its state of and desire for fellowship even though the Synod may be required in a final step to “depart from” its “brethren,” “lest we break the unity of the Synod”:

Termination of membership in the Synod is a serious matter involving both the doctrine and life of those to whom it has been granted. Such action should only be taken as a final step when it is clear that those who are being terminated after previous futile admonition have acted contrary to the confession laid down in Article II or the conditions of membership laid down in Article VI or have persisted in offensive conduct (Constitution, Art. XIII 1). For this reason, the Synod establishes procedures for such action, including the identification of those who are responsible for ecclesiastical supervision of its members. Such supervision includes not only suspension or termination of membership but also advice, counsel, encouragement, and, when necessary, admonition regarding teaching and/or practice. Furthermore, the procedures that may lead to termination of membership also provide for the protection of members by including provisions for challenging the decisions of ecclesiastical supervisors in these matters as well as provisions for restoration of membership that has been suspended or terminated (Bylaw 2.14.1) [emphasis added].

Regarding the provisions the Synod has made to provide avenues essential to preserving the fellowship relationship of the Synod, a November, 1973 CCM opinion urges, “We appeal once again to all members of the Synod to use the channels which the Constitution, Bylaws, and resolutions of the Synod provide for resolving our differences....” A recent September 3–4, 2011 CCM opinion states: “For any member or organization of members to advocate disagreement with and unwillingness to use the Synod’s Bylaws without following the approved dissent procedures or dispute resolution procedures invites the member’s/members’ ecclesiastical supervisor(s) to use those same Synod-established procedures to discipline them....In summary, all Synod members, including organizations of Synod members, must follow the Synod’s bylaws regarding dissent, dispute resolution, and ecclesiastical supervision. To do

otherwise invites the member's/members' ecclesiastical supervisor(s) to use those same Synod-established procedures to discipline them" (CCM Opinion 11-2589).

Thus, fellowship with one another in the Synod is not a selective fellowship. And the fellowship of the Synod is not a cafeteria where members can pick and choose, *i.e.*, take what they want and leave the rest or serve themselves. The nature of fellowship with one another in the Synod is not marked by selective appropriation or elimination of certain constitutional and bylaw provisions and resolutions—much less the confessional basis, confessional position(s), and objectives of the Synod. As reflected in the Synod's Constitution, Bylaws and resolutions throughout its history, the members of the Synod are in fellowship with one another. For a further relevant treatment of the matter, the commission calls attention to the entire CCM Opinions 05-2443, 05-2444, and 11-2589.

### **79. Review of Wyoming District Bylaws (11-2611)**

With an email dated August 26, 2011, the commission received the Articles of Incorporation and Bylaws of the Wyoming District for review and approval. After careful review, the commission offered the following recommendations:

- Article II: Mention of the Constitution of the Synod in the third-last line should also add the words "and Bylaws."
- The commission recommends the creation of a new article to govern the process for amending the Articles of Incorporation.
- Bylaw Art. I: The commission recommends either deleting the word "ordinarily" in the second-last line or replacing it with the word "primarily" as in Synod Bylaw 4.1.1.2.
- Bylaw 3.03: The commission has begun advocating the consistent use of the term "multi-congregation parish" (instead of "multi-point") to clarify the intended meaning of the word "parish."
- Bylaw 3.11 b: The second sentence should be changed to reflect that this is a district bylaw by speaking of "a member congregation of the district, the district board of directors,..."
- Bylaw 3.11 c: The reference to the "Convention Planning Committee" should be changed to "a committee consisting of the president, first vice-president, and secretary," in keeping with Synod Bylaws 3.1.6 (a) and 4.2.1 (b).
- Bylaw 3.13 a: Included in the list of exceptions from the duty of the Nominations Committee should also be "circuit counselors," to be listed with the president and first vice-president in the paragraph.
- Bylaw 3.21 a: The word "officers" in the first line should be deleted to allow for the fact that not all who are listed in the paragraph (e.g., board members) are officers of the district.
- Bylaw 3.21 b: The words "a layman" should be inserted prior to the word "appointed" in the first line.
- Bylaw 3.21 c: The word "lay" should be deleted from the first line and replaced with the words "officers and."
- Bylaw 3.23 b: The words "all vacancies in consultation with the vice-presidents (except circuit counselors) of the district and" should be inserted after the word "fill" in the first line. (Synod Bylaw 5.2.2.1 no longer requires consultation with vice-presidents when filling circuit counselor vacancies.)
- Bylaw 3.27 c: The reference to the Synod's "Conference of Congregational Services" should be deleted, as that conference no longer exists in the Bylaws of the Synod.
- Bylaw 3.29 c: The final sentence should have the following phrase added: "unless he expresses his willingness to relocate to that region."

- Bylaw 3.353 c: The first sentence must exclude the president and vice-president from its reference to “officers” to the extent that ecclesiastical matters are involved. Where ecclesiastical matters are involved, the work of the district president is under the ecclesiastical supervision of the President of the Synod.
- Bylaw 3.40 a: The parenthetical reference “(Adjudication)” should be deleted (also in Bylaw 3.401 a), since the Synod no longer has an adjudication system. The same is true for Bylaw 3.401 a.
- Bylaw 3.401 e and h: References to “teachers” and “pastors” should be changed to “commissioned ministers” and “ordained ministers,” since “pastors” and “teachers” are narrow terms referring only to pastors of congregations and classroom teachers.
- Bylaws 4.03 and 4.05: Care needs to be taken to make certain terms used accomplish what is intended. “Pastors Conference” limits the conference to participation solely by parish pastors (4.03 a); listing “commissioned ministers” and teachers separately (4.03 b) is confusing in that teachers already are commissioned ministers (unless non-rostered teachers are being referenced; and the term “Teachers/Educators Conferences” (4.05 a and b) is confusing as to who is being referenced.
- Bylaw 4.03: Another 4.03 probably should be 4.06.
- Bylaw 5.01 a 1: This phrase should read: “1) not contrary to the Constitution and Bylaws of the Synod or the bylaws of the district.
- Bylaw 5.03: The first sentence should read “shall be examined and approved in advance by the Synod’s Commission on Constitutional Matters before final approval. In addition, if floor amendments are to be allowed, they also are not to go into effect until examined and approved by the commission.”

The commission also gave cursory consideration to the “Guidelines and Procedures for Pastors in Receipt of a Call,” “Pastoral Conference Guidelines,” “Worker Compensation Guidelines,” “Multiple Congregation Guidelines,” and “Conflict of Interest Policy” documents appended to the bylaws document. In brief, the commission noted the following:

- The district will want to take care that its use of the term “interim” in reference to pastors serving congregations corresponds with the use of the term by others in the Synod, especially the Council of Presidents.
- The district will want to use consistently the terms “commissioned ministers” and “ordained ministers” where appropriate.
- Consistent use of the term “multi-congregation” when speaking of two or more congregations being served by the same pastor will be helpful to clarify the Synod’s understanding of a “parish.”
- Article I 4 a of the “Guidelines for Articles of Agreement for Multi-Congregation Parishes” should be clarified to state that “only one lay voting delegate” (line 1) is permitted.

## **80. Review of Minnesota South District Articles of Incorporation and Bylaws (11-2615)**

With a September 14, 2011 letter, the secretary of the Minnesota South District submitted the district’s Articles of Incorporation and Bylaws and accompanying proposed changes to the commission for review and approval, noting the district’s intention to bring the proposed changes before the district convention in June 2012 for adoption. After thorough review of the entire documents, the commission offered the following recommendations:

- Article II, Section 3 (d): Inclusion of the words “and Bylaws” should accompany mention of the Synod’s Constitution in line 2.
- Article IV: This paragraph must include mention that amendments to the Articles of Incorporation must be submitted to the Commission on Constitutional Matters for review and approval prior to consideration by a meeting of the members of the corporation.
- Bylaw 1.12: The proposed changes to this bylaw should also include adding “Constitution and” in each instance in which the bylaw makes mention of the “Bylaws of the Synod,” including the bylaw title.
- Bylaw 2.20.8: This bylaw with its proposed change should either be replaced in its entirety by or reworked to mirror the wording of Synod Bylaws 2.13.2–2.13.4, also making mention of the fact that its provisions are subject to applicable laws.
- Bylaw 4.2.13 (b): The words “or chairman” at the end of the third line of the paragraph should be removed, as Synod Bylaw 4.2.1 requires the president of the district to conduct the sessions. In keeping with Synod Bylaw 4.2.1 (a), the duties of the president of the district mirror the duties of the President of the Synod, which includes managing the business of the convention.
- Bylaw 4.2.13.3 (b): The proposed change to paragraph (c) of this bylaw should also include in paragraph (b) the use of the term “multi-congregation parish” in place of “parish,” this as promoted by the commission for consistent use throughout the Synod to clarify what is intended with the use of the word “parish.”
- Bylaw 4.2.15.2 (a): This paragraph must be changed to agree with Synod Bylaws 4.3.1 and 4.3.3 allowing nominations of clergymen from the clergy roster of the Synod so long as they are members of district congregations at the time they assume office.
- Bylaw 4.2.15.2: Bylaw 4.2.15.1 lists “regional vice-presidents” as officers to be elected, but Bylaw 4.2.15.2 contains little information regarding their nominations and elections process, *i.e.*, is the nomination process regarded as an election process, and does Bylaw 4.2.15.3’s ranking process constitute also a ratification of their election by the regions, as is the case with circuit counselors? Clarification should be provided.
- Bylaw 4.2.15.6 (h): Mention of a “Convention Manual” at the end of the paragraph prompts the commission to request a copy of the manual for review, as required by Synod Bylaw 3.9.2.2.3.
- Bylaw 4.4.10 (a): Mention of the Constitution of the Synod should also include “and Bylaws” in the second line of the paragraph.
- Bylaw 4.4.10 (b): This paragraph should also include mention of the purposes and resolutions “of the Synod” as in Synod Bylaw 4.4.2 (a).
- Bylaw 4.4.11 (a): The commission recommends changing the preposition in the first line from “from” to “for,” since nominations for these positions may be made from the entire clergy roster of the Synod. Since vice-presidents are district officers, ratification by the district convention is recommended even if regionally elected, as is done in the case of circuit counselors.
- Bylaw 4.5.16: Reference should also be made to Synod Bylaw 1.5.7.
- Bylaw 4.5.18.1 (b): Mentions of congregational “constitutions” throughout this paragraph should also include “and bylaws,” as their bylaws also are to be considered by the district constitution committee (Synod Bylaw 2.2.1 [a]). The use of the word “regulations” in the second sentence should be replaced with the language of the Synod’s Bylaws 2.2.1 (b) and 2.4.1 (b), *i.e.*, “teachings and practices of the Synod.”
- Bylaw 4.11: This title “Other District Officers” leaves unclear who is being referenced, since the paragraphs that follow include such officers as the secretary and treasurer as well as others not specifically identified.
- Bylaw 4.11.3: The commission questions the use of the term “officers” (ordinarily applying to positions such as secretary or treasurer) with others who may fall under the category “executives” in the terminology of the Synod.

- Bylaw 7.2: The mention of approval by the Commission on Constitutional Matters should include at the end of item (4) the phrase “in advance of the convention.” If floor amendments to the Bylaws are to be allowed and subsequently are adopted by the convention, additional wording in this paragraph should make clear that such amendments go into effect only after approval by the Commission on Constitutional Matters.

### **81. Authority of a District President (11-2616)**

In a letter dated September 17, 2011, a pastor member of the Synod submitted a series of questions for response by the commission. Additional supplemental information was received on September 27.

[NOTE: In carrying out its duties, the commission is required by Bylaw 3.9.2.2 (b) to notify an officer or agency of the Synod, including the district president involved in this matter, if a request for an opinion involves an activity of that officer or agency, and to allow that officer or agency the opportunity to submit in writing information regarding the matter(s) at issue. While the commission is not a finder of facts and must rely on the information provided to it in questions submitted, the additional background information contemplated by Bylaw 3.9.2.2 (b) can often assist in understanding and responding to the questions presented.]

**Question 1:** In light of Article VII of the LCMS Constitution and 4.4.6 of the LCMS Bylaws and the Synod's recent action declaring that the LCMS Constitution takes precedence over LCMS Bylaws, under what circumstances, if any, may a District President write a letter on District letterhead, using a congregation's membership directory in his possession to mail said letter directly to the individual members of the congregation for the purpose of calling a Voters Assembly?

**Opinion:** The duties, responsibilities, and authority of a district president do not include the unilateral authority to call a business meeting of a congregation's voters' assembly. He does, however, have authority to assist a congregation as it may request, and the duty, responsibility, and authority to inquire as to the prevailing spiritual conditions of a congregation, as directed in Bylaw 4.4.5,<sup>5</sup> and may arrange

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<sup>5</sup> See, for example, Opinion 04-2387:

**Question Regarding the Relationship of the Circuit Counselor to Member Congregations (04-2387)**

In an e-mail sent April 30, 2004, an ordained member of the Synod submitted a question regarding the Circuit Counselor's relation to member congregations.

**Question:** Since the Bylaw [5.13 j] [2010 Bylaw 5.2.3.1(c)] envisions only visits with “congregation[s],” is it appropriate for the Circuit Counselor to meet with a dissident faction within a congregation to receive accusations against other members or the pastor of the congregation, and does meeting with a dissident faction within a congregation constitute such “extraordinary circumstances” that it is permissible for a Circuit Counselor to schedule such a meeting without prior consultation with the president or other officers of the congregation (much less the pastor), much less without ‘inviting’ them to be present to answer accusations against them?

**Opinion:** One of the functions of a District President is to inquire into the prevailing spiritual conditions of the congregations of his District and he may call upon the Circuit Counselor to assist him (Bylaw 4.73) [2010 Bylaw 4.4.5(b)]. Bylaw 4.75 [2010 Bylaw 4.4.6] states that a District President, even without a formal request therefor, may through the proper channels arrange for an (a) official visit or (b) investigation when a controversy arises in a congregation or when there is evidence of a continuing unresolved problem in doctrine or practice in order that the District President “may have a clear understanding of the situation.” The same bylaw further recognizes that a District President may authorize another person (such as the Circuit Counselor) to represent him in the matter. The Bylaws do not define the term “proper channels” and thus the procedure to be used in the investigation is chosen by the District President or his representative and does not necessarily require the initial contact or meeting to be with any particular person or group. In such an investigation, any meeting is to carry out the purposes as set forth in these Bylaws.

and conduct official visits or investigations as described in Bylaw 4.4.6. Article VII of Constitution reads as follows:

#### **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.
2. Membership of a congregation in the Synod gives the Synod no equity in the property of the congregation.

Bylaw 4.4.6 reads as follows:

- 4.4.6 The district president, even without formal request therefor, may through the proper channels arrange for an official visit or investigation when a controversy arises in a congregation or between two or more congregations of the district or when there is evidence of a continuing unresolved problem in doctrine or practice.
- (a) He shall ask for a full report on the case in order that he may have a clear understanding of the situation.
  - (b) If he authorizes anyone to represent him in such matters, his representative shall be accorded the same rights as the district president.

The responsibilities of a district president in this regard flow not only from the Bylaws, but also Article XII 7 of the Constitution:

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

In conducting an official visit or investigation, a district president or his representative may arrange for such meetings with a pastor, the leadership of a congregation, groups within a congregation, or the congregation itself as he deems necessary. Even such a meeting with the entire congregation, however, cannot properly be characterized as the calling of the voters' assembly unless the congregation itself chooses to convene such a meeting as part of its response to such visit or investigation.

Separate and apart from any such official visit or investigation, pastors and/or congregations often call upon a district president for guidance, assistance, and support in the conduct of their spiritual and other affairs. Where called upon by the recognized leaders of a congregation to do so, a district president might well use his letterhead and a membership list supplied by the congregational leaders to assist the

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Your attention is also directed to the provisions of Article XII 7 of the Constitution, which provides:

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

congregation's leaders in publicizing a voters' assembly business meeting authorized and called by the congregation's leaders as provided in the governing documents of that congregation, and at the congregation's invitation, use such a meeting to carry out the responsibilities described in Bylaws 4.4.5 and 4.4.6. Nothing in the Constitution or Bylaws of the Synod prohibit the providing of such assistance upon request. In fact, they encourage such support and assistance when appropriate.

As described in recent CCM Opinion 10-2581, there may be times when internal disagreement in a congregation results in the need for a district president, by specific provision in a congregation's governing documents or the absence of having been provided some other internal dispute resolution, to be involved in the resolution of a congregation's internal disputes.<sup>6</sup> In carrying out his responsibilities in such a circumstance, and in assisting the congregation's leaders in the conduct of their own affairs, a district president might be even more inclined to allow the use of district letterhead and the resources of the district office in the scheduling and coordination of a voters' assembly called by the leaders of the congregation itself. However, it should not be construed that the district president himself is calling a meeting of the voters' assembly of the congregation for the purpose of conducting congregational business but the congregation itself in accordance with its own governing documents.

While a district president may not call a meeting of the voters' assembly of a congregation, he or his designee may be present at such meeting for the purposes of carrying out the district president's responsibilities. He may certainly, in the exercise of his ecclesiastical supervision, request the opportunity to speak at such a meeting and give input, advice, encouragement, and if necessary, admonition, as he

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<sup>6</sup> Opinion 10-2581, Question 2 includes the following discussion:

The specific issue of internal disputes in a congregation is an area expressly dealt with in the Synod's covenants of walking together. The Synod and its individual congregations have recognized that the civil courts, using "neutral principles of law" analyses, are unable to resolve internal disputes on doctrinal grounds, and that neither a pure "congregational" nor pure "hierarchical" Synod structure exists. The Synod and its member congregations have attempted over the years to provide mechanisms to resolve such internal disputes in a God-pleasing manner. Attached to this opinion is a copy of 1983 convention Resolution 5-10A and the commentary published by action of the convention regarding the resolution. The two provisions of that resolution most applicable here are as follows:

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

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

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

deems appropriate. Ultimately, however, it is the responsibility of the voters' assembly itself to make decisions regarding the conduct of that congregation.

[NOTE: Questions not discussed in this opinion: The letter submitting Question 1 then continues with sub-questions A through W. Most of these address details which a district president may include in communication regarding the scheduling of a voters' assembly meeting, or topics which may be properly identified by him for discussion or action. As discussed above, a district president cannot on his own convene a voters' assembly or determine its agenda. Only at the request and concurrence of the proper, recognized leaders of a congregation as authorized under its own governing documents may a district president facilitate the calling of such a meeting, including the announcement of the scheduled time and the identification of the business to be considered, including consideration of any official visit or investigation.

Some of the additional questions address interpretation of a congregation's internal documents. Even if such governing documents were submitted to the commission, which they were not, the commission's role is to interpret the Synod's own documents and not those of an individual congregation. The additional sub-questions which the commission can address are discussed below.]

Question 2: Is it ever permissible for a district president to withhold district aid, help, and support, or to in any way pressure a congregation either to close or cede control of its property/assets to the district? If it is, is a district president's opinion that a particular congregation is "unhealthy" and/or unviable an adequate reason to withhold said aid, help, and support from a congregation?

Opinion: A district president is charged with providing ecclesiastical supervision and support for each member congregation of his district. Such supervision is not always welcome, particularly where dissension and factions exist in a congregation, where admonition is involved, where long-time members of a congregation face changes in membership and economics which raise the prospect of disbanding, or where the congregation is otherwise "unhealthy." As the circumstances of a congregation change, some congregations will ultimately become non-viable. Under such circumstances, a district president may be required to exercise his responsibility by providing counsel, encouragement, and advice which urges a congregation to merge, to become part of a multi-congregation parish, or even to disband and close. Such efforts may be considered "pressure" on a congregation, but "pressure" by definition may very well result from any good counsel, encouragement, advice, or admonition.

Should a congregation consider disbanding and closing, the district president may well be called upon to advise and encourage the congregation with respect to the disposition of its assets and property. The question submitted is unclear as to what kind of "aid, help, and support" is being referenced. If the aid, help, and support referenced are to the conversation, relationship, encouragement, admonition, or other aspects of ecclesiastical supervision, such aid, help, and support are to be provided by a district president until and unless the congregation disbands. If reference is being made to financial subsidy or support, it is the responsibility of not only the district president, but also the district board of directors or those otherwise charged with the stewardship of the district's resources, to determine whether or not a congregation is healthy or viable enough to justify the use of the district's resources for such support.

Question 3: If a congregation's leaders become frustrated with a district president, feeling as though he has been neglectful in helping them to provide adequate LCMS pastoral ministry to the congregation, are frustrated by what they view to be excessive district interference in the day-to-day operation of the congregation, and feel increasingly under pressure by the district to close the congregation and/or give control of the congregation's assets and property to the district, the frustration building to the point that one or more congregational leaders tell the district president that they may need to disassociate from the LCMS—is it ever appropriate for the district president to respond to these complaints by stating something like, "People

can vote to leave the Synod. But the congregation (its property and assets) remain with the one or more persons who vote to remain in the Synod”?

**Opinion:** While the question is somewhat argumentative, more importantly, it goes beyond the scope of the commission’s authority and responsibility. Determination of whether a congregation’s property and assets would remain with the one or more persons who vote to remain with the Synod is a question of the congregation’s governing documents, not the Synod. Since a congregation’s governing documents are filed with the district, a district president would be aware of such provisions and, if the issue of disassociation were to arise in discussion with members of the congregation, he ought to be prepared to candidly discuss the results and consequences of such action. In the event of disagreement within a congregation, if the language of the congregation’s own governing documents has delegated to the Synod, and ultimately to the district president, responsibility for determining which persons or faction within a congregation have remained true to the confessions of The Lutheran Church—Missouri Synod, such governing documents may well dictate the result suggested by the question.

## **82. Congregation Representation at Circuit Forums (11-2617)**

In an emailed letter dated October 4, 2011, a circuit counselor requested an opinion regarding the interpretation of Bylaws 5.2.2 (c), 5.3.2, and 3.1.2.1 (c) pertaining to representation at circuit forums from a dual parish that has two called pastors. He asked two questions:

1. In the case of a dual parish with two called pastors, may both pastors of this dual parish vote at the circuit forum to elect delegates to a convention of the national Synod, each pastor representing a different congregation (governed by Bylaw 3.1.2.1 [c])?
2. In the case of a dual parish with two called pastors, may both pastors of this dual parish vote at the circuit forum to select a circuit counselor, each pastor representing a different congregation (governed by Bylaws 5.2.2 [c] and 5.3.2)?

The bylaws pertinent to these questions are, as mentioned, the following:

- 3.1.2.1 (c) The privilege of voting shall be exercised by one pastor and one layperson from each member congregation of the circuit, both of whom shall have been selected in the manner prescribed by the congregation. Multiple parishes shall be entitled to a lay vote from each member congregation.
- 5.2.2 (c) Selection of the circuit counselor shall be by election by written ballot. The privilege of voting shall be exercised by the representatives from each member congregation of the circuit, who shall have been selected in the manner prescribed by the congregation (Bylaw 5.3.2).
- 5.3.2 The circuit forum consists of a pastor of each congregation and one member of each congregation designated by the congregation.

**Question 1:** In the case of a dual parish with two called pastors, may both pastors of this dual parish vote at the circuit forum to elect delegates to a convention of the national Synod, each pastor representing a different congregation (governed by Bylaw 3.1.2.1 [c])?

**Opinion:** No. In contrast to lay delegates who are affiliated with only one congregation, a pastor/pastors of a multiple-congregation parish is/are called by and serve the whole. Therefore, only one pastor would be eligible to represent the multiple-congregation parish at meetings of the circuit forum to elect delegates to a convention of the national Synod.

The commission observes that Article V of the Constitution of the Synod lays the foundation for the matter of franchise within the Synod. Paragraph A of Article V states:

A. Voting Members

All organized congregations that have joined the Synod hold voting membership. 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. At the meetings of the Synod, a number of congregations shall form a group which shall be represented by two voting delegates, one a pastor and one a lay delegate.

At district conventions, Article V A establishes that each congregation or multiple-congregation parish is entitled to two votes, one by a pastor and the other by a lay delegate representing the congregation. At its February 7–8, 2009 meeting, the provision that at district conventions a multiple parish was entitled to two votes, one by a pastor and the other by a lay delegate, was reexamined and affirmed by the Commission on Constitutional Matters:

79. 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-congregation 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 are 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.

Article V of the Constitution, however, does not specifically address the issue of voting at forums of circuits. Voting at the forums of circuits is addressed in the Bylaws. Bylaw 3.1.2.1 describes the policy

and process of voting at meetings of electoral circuits for the purpose of selecting the delegates of that circuit to conventions of the national Synod.

Bylaw 3.1.2.1 (c) delineates who has the privilege of voting in these electoral circuit meetings. It specifies that the vote is exercised by one pastor and one layperson from each member congregation of the circuit, who are selected in the manner prescribed by the congregation. A second sentence then continues and specifies that each congregation in a multiple-congregation parish is entitled to a lay vote. The second sentence was added to the *Handbook* in 1973 incorporating rulings from the Commission on Constitutional Matters in 1968 and 1970:

142. Right to Vote for Convention Delegates: The Secretary of the Southern District had phoned Sommermeyer asking whether each congregation is entitled to vote in the election of the delegate to a synodical convention or only each parish. The commission resolved to inform Secretary Kleinhans of its interpretation that each congregation in a multiple parish is entitled to a separate vote. (June 13 – 14, 1968 minutes of the Commission on Constitutional Matters)

115. Election of Convention Delegates, Bylaw 1.53: The commission formally ruled that each congregation in a multiple parish is entitled to a lay ballot in this matter but that a pastor of a dual or multiple parish should cast only one ballot.

The 1973 resolution adopting this insertion into the *Handbook* states in part:

WHEREAS, The bylaw on the election of delegates to synodical conventions is derived from the terms of the Constitution which explicitly describe the Synod to be a federation of congregations which alone possess the franchise and have the power to determine who shall exercise the pastoral and lay vote at synodical conventions.

Since the right to vote belongs to congregations, therefore at the circuit forum to elect delegates to the conventions of the national Synod, each congregation of a multiple-congregation parish is entitled to one vote from a lay member of that congregation as expressly allowed by Bylaw 3.1.2.1 (c).

In the case of the pastor/pastors in a multiple-congregation parish the situation is different. He/they are called by and serve the whole. In a multiple-congregation parish with more than one pastor, these pastors are still pastors of the entire multiple-congregation parish and not simply one of the congregations. Even if a pastor primarily serves one of the congregations, he remains a pastor of the whole. Therefore only one pastor would be eligible to represent the multiple-congregation parish at meetings of the circuit forum to elect delegates to a convention of the national Synod. The Bylaws do not grant pastors a similar exception as given for the laity.

Question 2: In the case of a dual parish with two called pastors, may both pastors of this dual parish vote at the circuit forum to select a circuit counselor, each pastor representing a different congregation (governed by Bylaws 5.2.2 [c] and 5.3.2)?

Opinion: No. In contrast to lay representatives to circuit forums who are affiliated with only one congregation, a pastor/pastors of a multiple-congregation parish is/are called by and serve the whole. Therefore only one pastor of a multiple-congregation parish that has more than one pastor is entitled to vote for the multiple-congregation parish at meetings of the circuit forum to select a circuit counselor.

In addressing question 2, it should be noted that while Bylaws 5.2.2 (c) and 5.3.2 make reference to voting and representatives of the congregations at circuit forums, they do not offer specific parameters.

Rather, the question of who votes is based on Bylaw 3.1.2.1 (c), which sets the parameters for voting at circuit forums.

Therefore, the same conclusions from question 1 also apply to question 2.

### **83. Congregation Representation at District Conventions (11-2618)**

In a letter dated October 14, 2011, a district president inquired regarding exceptions to the standard definition of a “parish” as “two or more congregations served by the same pastor” when representation to the district convention is being determined. In his letter he called attention to an August 30, 1990 opinion of the commission (Ag. 1898 “Pastoral Voting Eligibility”) in which a seminary professor was not granted voting privilege on behalf of a nearby congregation although he was serving the congregation on a regular basis. The district president wrote: “Since the CCM declared that a called pastor in one ministry (the seminary) could do Word and Sacrament ministry in a congregation (Trinity, Worden, Illinois) without a call to that congregation and declared the pastor was ‘not in the technical sense the pastor of Trinity, Worden, Illinois,’ could the CCM perceive additional situations where a congregation could enter into such an agreement?”

He then offered a series of “situations that might call for additional exceptions” to the definition of a parish and asked, “Can an exception be granted for any of the above or others that you perceive?” and, “Could the current interpretation force large congregations to forbid their pastors from serving small congregations which cannot afford a full-time pastor because they do not want to be recognized by the Synod as being a dual parish?”

The commission notes that the second question in the foregoing paragraph calls for speculation that is beyond the responsibility of the Commission on Constitutional Matters, which is to “interpret the Synod’s Constitution, Bylaws, and resolutions” (Bylaw 3.9.2.2). The commission will, however, provide a response to the first question in the foregoing paragraph regarding exceptions to the standard definition of a “parish.” The commission will then also respond to the questions associated with the series of “situations that might call for additional exceptions” described in the district president’s letter.

Question 1: Could the commission perceive of additional situations (other than that addressed in Ag. 1898) where a congregation could enter into such an agreement (one that would not constitute a “parish” situation)?

Response: Article V A of the Constitution of the Synod 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.” This requirement has taken on additional significance as a result of 2010 Res. 8-17 “To Elect the Synod President” and new Bylaw 3.12.2.3, which assign to the voting delegates to district conventions the responsibility to elect the President of the Synod prior to the national conventions.

Questions regarding the definition of the word “parish” were already submitted to the commission as early as 1970, when the *Handbook* of the Synod provided its definition and significance: “If a pastor serves two or more congregations, these shall be regarded as one parish and shall be entitled to only one lay vote” (Bylaw 3.17, 1969 *Handbook*, p. 81). The commission therefore ruled: “[I]n view of the language of the Constitution in Article V, A which speaks of ‘every congregation or parish,’ the bylaw which states that two or more congregations being served by one pastor shall be regarded as one parish entitled to only one set of delegates is not contrary to the Constitution” (Ag. 181).

At its May, 1972 meeting, the commission endorsed the counsel provided by the Secretary of the Synod that only when a congregation that is being served by a pastor “on the side” is a “bonafide vacancy” is that congregation entitled to its own lay delegate. Otherwise, if “it is in reality a dual parish,” it is not so entitled (Ag. 305). In a June, 1978 opinion the commission further clarified “that it is not necessary to actually participate in the calling of the pastor as long as the congregation is being served by a neighboring pastor in order to be regarded as a dual parish” (Ag. 1275 A, B).

Such has been the commission’s consistent response to questions regarding the intention of the word “parish,” leading up to 2003 Opinion 03-2327, which referenced a 1985 opinion of the commission (Ag. 1748):

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 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 August 30, 1990 opinion (Ag. 1898), introduced by the district president requesting this opinion, is no exception to the consistent response of the commission to this question. It offered no exception because the standard principle did not apply in the case being discussed. While the professor in question was indeed serving as the pastor of the congregation in question under an agreement reached between him and the congregation, Article V A regarding “parish” representation did not apply due to the fact that his call to the seminary, which made him an advisory member of the Synod, disqualified him from service as a voting delegate of the congregation.

In response to the first question articulated above, therefore, the principle stands without exception: Two or more congregations being served by the same pastor constitute a parish with the right of representation by one lay delegate and one pastoral delegate. This principle must therefore be applied to each of the circumstances described as follows.

Question 2: 1. A large congregation with a number of associate pastors which allows one of the associate pastors to do ongoing pulpit supply for a small congregation that cannot afford a full-time pastor. Does such action make the small congregation and the large congregation a dual parish with one lay vote and one pastor vote?

Opinion: For the purpose of determining district convention franchise in the Synod, “a parish is defined as a situation in which a pastor serves two or more congregations” in which “it is not necessary to actually participate in the calling of the pastor” in order to be regarded as a dual parish (Ag. 1275 A,B). If the congregations demonstrate the intent to continue in this manner in the foreseeable future, the small and large congregations therefore constitute a dual parish, their lay vote shared in a manner that presumably is fair and equitable for both congregations.

2. A small Spanish speaking congregation that is using the services of an associate pastor of a larger congregation who speaks Spanish. There are no other Spanish speaking pastors available to assist. Does the Spanish speaking congregation lose its own lay delegate at a district convention?

Opinion: In response to the contention that forming a dual parish “deprives one of the congregations of its constitutional right of suffrage,” the commission ruled in May, 1972 (Ag. 181) that “in view of the

language of the Constitution in Article V A which speaks of ‘every congregation or parish,’” the principle that “two or more congregations being served by one pastor shall be regarded as one parish entitled to only one set of delegates” is not contrary to the Constitution and does not cause a congregation to lose its lay delegate representation at a district convention. Rather, it shares its representation with the other congregation(s) in the parish, presumably in a fair and equitable manner.

3. A large congregation which does not need the financial support of any other congregation, allows their pastor to provide pulpit supply on Sunday afternoons for a small congregation which cannot afford a full-time pastor. There are no other pastors available in the area.

Opinion: The question speaks of “pulpit supply.” It also speaks of “a small congregation which cannot afford a full-time pastor.” Regardless of financial considerations, if the pastor is regarded by the small congregation as its pastor and speaks of him as its pastor, and if he provides Word and Sacrament ministry, ministers to the sick and dying, etc., this and the larger congregation are a dual parish being served by one pastor and, therefore, a parish to be represented at district conventions by the pastor and one lay delegate. Such lay representation will be shared in a manner that presumably is fair and equitable for both congregations.

4. Two congregations that are being served by one pastor (the pastor is called to a large congregation which does not need any financial help to support their pastor). The large congregation allows their pastor to provide pulpit supply on Sunday afternoons for the small congregation which cannot afford a full-time pastor, and where no other pastor is available. The large congregation is in one visitation circuit and the small congregation is in a different visitation circuit. Does each congregation have a lay vote at the respective circuit forum in electing (by a voting process) a circuit counselor? If so, how is this different from voting representation at a district convention? Does the small congregation, in effect, have to forfeit its lay vote to the district convention to receive word and sacrament service from the large congregation?

Opinion: This question again speaks of “pulpit supply” and a “small congregation which cannot afford a full-time pastor.” Again, if the pastor is regarded by the small congregation as its pastor and speaks of him as its pastor, and if he regularly provides Word and Sacrament ministry, ministers to the sick and dying, etc., this and the larger congregation are a dual parish according to the Synod’s definition, entitled to representation at district conventions by the pastor and one lay delegate. The fact that the congregations are in separate visitation circuits has no bearing on the requirement for one pastor and one lay delegate representation at district conventions.

Representation at circuit forums is another matter, such representation determined by Bylaw 5.3.2: “The circuit forum consists of a pastor of each congregation and one member of each congregation designated by the congregation.” In this case, each congregation sends a representative to its own circuit’s forum, the pastor serving as representative to the forum of the circuit of the congregation in which he holds membership.

Regarding whether the small congregation must “forfeit” its lay vote to the district convention in order to receive Word and Sacrament service by the pastor of the large congregation, here again it must be said that a parish arrangement does not cause either congregation to lose its lay delegate representation at a district convention. Rather, the congregations’ representation is shared—presumably through a fair and equitable arrangement.

5. Two congregations that are being served by one pastor in a dual arrangement (both congregations are needed to provide for a full-time pastor) where one congregation is in one district and the other in a different district. Does one congregation have to forfeit their lay vote at their district convention because they are in a dual parish arrangement?

**Opinion:** When a parish crosses district lines, it is nonetheless entitled to representation at district conventions by one pastor and one lay member. The pastor is a voting delegate to the convention of the district of which he is a member. The lay vote is shared by the congregations as in any other parish, presumably in a manner that is fair and equitable. The district membership of the congregation of the lay delegate determines the district convention that he/she will attend as a voting delegate.

#### **84. Review of Northern Illinois District Proposed Bylaw Amendments (11-2622)**

With an emailed November 10, 2011 letter, the commission received four proposed actions intended for submission to the 2012 Northern Illinois District convention advocating changes to the district's bylaws. A copy of the district's current Bylaws was also included. Upon review of the submitted bylaw change recommendations, the commission offered the following recommendations for change to the proposed overtures:

- Ov. 2-08: The recommendation for a new bylaw chapter governing amendments to the Bylaws should properly refer to the Synod's commission as the "Commission on Constitutional Matters."
- Ov. 2-01: Section A, paragraph 1 d must be changed to require the election of "two laypersons to the Board of Regents, Concordia University Chicago," as required by Synod Bylaw 3.10.5.2 [1].
- Ov. 2-01: Section B, paragraph 4 a must be changed to allow for nominations of ordained ministers for vice-president positions from the clergy roster of the entire Synod (Synod Bylaw 4.3.1).
- Ov. 2-01: Section B, paragraph 4 d must be changed to speak of the "selection of the circuit counselors by circuit forums."

As the commission reviewed the proposed bylaw changes within their context, the commission had opportunity also to review the existing Bylaws of the district and offers the following additional recommendations:

- Chapter I, paragraph A 3: This provision regarding circuit convocations might be better located elsewhere in the bylaws, perhaps within a discussion of circuits under paragraph C, which could then also include mention of circuit forums as well as circuit convocations.
- Chapter II, paragraph B 1 b: The commission asks whether the use of *ex officio* as stated is intended, as *ex officio* members are also voting members unless indicated otherwise.
- Chapter III, paragraph A 4 a: Mention of the development of a long-range plan should also include mention of the mission and ministry emphases resulting from actions taken by the 2010 Synod convention.
- Chapter III, paragraph D 1: The words "renewable once" at the end of the second sentence must be deleted since this provision was removed from the corresponding bylaw of the Synod.
- Chapter III, paragraph E 2 a: This would be an appropriate location for mention of the requirement that proposed amendments to the Bylaws of the district require prior review and approval by the Commission on Constitutional Matters.
- Chapter V, paragraph A 1 d: As noted in the review of the proposed overtures above, this paragraph must be changed to require the election of two laypersons to the board of regents (Bylaw 3.10.5.2 [1]).
- Chapter V, paragraph A 2: As noted in the review of the proposed overtures above, this paragraph should be changed by replacing the word "election" with the word "selection" to echo the wording of Synod Bylaw 5.2.2 (c).

- Chapter V, paragraph B 4 a: As noted in the review of the proposed overtures above, this paragraph must be changed to allow for nominations of ordained ministers for vice-president positions from the clergy roster of the entire Synod (Synod Bylaw 4.3.1).
- Chapter V, paragraph E 4 f.: The flow of these paragraphs is unclear and the provisions may be contradictory, warranting further consideration by the district.
- Chapter V, paragraph F 2: While the provision of this sentence is ordinarily the case, it does not take into consideration the possibility that a visitation circuit may not always be able to satisfy the numerical requirements of an electoral circuit.

### **85. Other Matters Discussed by the Commission**

During the course of the meeting, a number of other matters were surfaced and discussed by the commission, briefly noted as follows:

- Responses from the Lutheran Church Extension Fund—Missouri Synod (LCEF) and LCMS Foundation to the commission’s review of their Articles of Incorporation and/or Bylaws were reviewed. It was noted that although there continues to be concern with the commission’s expectation that Synod Bylaws 1.5.7–1.5.7.2 be referenced in the agencies’ bylaws, the LCEF and the Foundation have given assurance that they will conform to these bylaw expectations until their concerns can further be addressed by a convention of the Synod. The commission expressed appreciation for the agencies’ cooperation.
- The commission received a report on the progress of a historical study of Constitution Art. VI in light of the requests it has received for related opinions (09-2544; 11-2598) and discussed extending an invitation to the executive director of the Commission on Theology and Church Relations for a consultation on this subject and related matters when the commission next meets February 10–12, 2012.
- The commission received a brief report regarding editorial corrections that have been made to the electronic version of the 2010 *Handbook* that is posted on the Synod’s Website.
- The commission received a brief report from its representative on the Commission on Handbook regarding the subject matters that he will be taking to that commission for its attention during its December 16 – 17, 2011 meeting, to include the following:
  - Bylaw 3.1.2—electoral circuits formed by district boards of directors versus district conventions
  - Regional district vice-presidents ratified by district conventions (cf. circuit counselor process)
  - Regional district board of directors members ratified by district conventions (cf. circuit counselor process)
  - Clarification of Bylaw 2.4.1 re congregations’ use of constitution and bylaw changes prior to approval by district boards of directors
  - Circuit counselor nominations/elections process as provided in Bylaws 4.3.1, 5.2.2 (c), and 5.2.3.2 (a)
  - Clarification of Bylaws 5.3.2 and 5.2.2 (c) in light of Bylaw 3.1.2.1 and CCM Opinion 06-2483 regarding lay representation at circuit forums
  - Clarification of Bylaws 5.3.3 and 3.1.2 regarding meetings of circuit forums/electoral circuits
  - Clarification or expansion of Bylaws 3.12.2.5 (c) and 3.12.3.6 (c), e.g., mention of criminal background checks to satisfy LCEF requirements
  - Review of Bylaw section 4.6 “District Committees or Boards for Stewardship” and its relationship to new Synod structure

- Consider LCMS Foundation concern regarding bylaw expectation of three three-year terms for board members (Bylaws 3.2.4.2, 3.6.5.2.1, and 3.6.1.6)
- Consider exempting synodwide corporate entities from Bylaw 1.5.7ff expectations due to liability issues (cf. Bylaw 3.6.1.6 [b])
- Consider the question of staggered terms for members of new boards as a result of restructuring and 2010 convention actions
- Clarify/consider need for new bylaws for matters not covered by 2010 restructuring actions
- Consider expansion of the definition of a “visitation circuit” as currently provided by Bylaw 5.1
- Consider expansion of representation at circuit forums (Bylaw 5.3.2) in light of Opinion 11-2617 addressing multi-congregation parishes (cf. Bylaw 5.2.2 [c])
- Consider change to current nomination and election requirements for regional vice-presidents (in light of Synod practice for regional vice-president nominations)
- A number of agenda items were briefly noted or discussed, no longer to be included on future agendas:
  - LCMS National Housing Support Corporation (11-2612)
  - Council of Presidents calls v. contracts policies (addressed by 11-2618)
  - Multi-congregation parish voting privilege questions (addressed by 11-2618)
  - Communication with new and existing boards re Bylaw 3.8.2.2.3 requirements

#### **86. Items Remaining for the Agenda of the Commission’s February, 2012 Meeting**

The following items on the agenda of the meeting were not given attention, either because the commission awaits further information/input or because of time limitations. They will be carried over to the next meeting:

- Review of Concordia Historical Institute Bylaws and Policy Manual (08-2523)
- Revisions of *Standard Operating Procedures Manuals* to accompany Bylaws section 2.16 (Expulsion of President of Synod from Membership in the Synod), Bylaws 3.10.4.7.5 – 3.10.4.7.9 (Seminary Dispute Resolution); and Bylaws 3.10.5.6.5 – 3.10.5.6.9 (College and University Dispute Resolution)
- Questions Related to Women’s Service in Congregations (11-2596)
- Questions Related to Constitution Art. VI and Bylaw 2.14.1 (11-2598; also 09-2544)
- Review of Concordia University System Bylaws (11-2602)
- Review of English District Bylaws (11-2613)
- Review of Indiana District Articles of Incorporation and Bylaws (11-2619)
- Review of Iowa District East Articles of Incorporation and Bylaws (11-2621)
- LCMS CCM Website review and suggestions for additions
- Revision of CCM internal governing document
- Status of review and files of agency governing documents

#### **87. Future Meetings and Other Matters**

The commission discussed dates for its coming meetings and established February 10–12, 2012 and May 11–13, 2012 for its next meetings. During the course of the meeting, commission member George Gude informed the commission of his decision to allow his name to be included on the ballot for district secretary.

**88. Adjournment**

Available time for the meeting having expired, the meeting was closed with prayer.

  
Raymond L. Hartwig, Secretary