

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS

Telephone Conference Call Meeting
March 20, 2012

106. Call to Order/Opening Prayer

Chairman Wilbert Sohns called the meeting to order with all members of the commission participating in the conference call meeting. He called on Philip Esala for an opening prayer.

107. Role of CTCR and CCM Opinions, Doctrinal Statements and Resolutions (12-2634)

With a letter received March 14, 2012, the chairman of a Hearing Panel under Bylaw section 2.14 submitted two questions for the commission's response in accord with Bylaw 2.14.7.8 (k) (2).

Question 1: In performing its function under Bylaw 2.14, what weight or significance should a hearing panel give to:

- (a) Prior opinions of the CTCR?
- (b) Prior opinions of the CCM?
- (c) Opinions of the CTCR or interpretations of the CCM provided to the panel in response to questions submitted under Bylaw 2.14.7.8 (k)?

Opinion: The role of the Commission on Theology and Church Relations (CTCR) is set out in Bylaws 3.9.5 through 3.9.5.2.2. Bylaw 3.9.5 indicates that the commission "exists to assist congregations in achieving the objectives of Article III 1 and 6 of the Constitution of the Synod and to assist the President of the Synod in matters of church relationships."

Bylaw 3.9.5.2.1 goes on to state that the CTCR "shall provide guidance to the Synod in matters of theology and church relations." In performing its function, the CTCR is to prepare and distribute special studies and documents to the members of the Synod and to conferences, refer theological issues and questions to proper individuals or groups of individuals for additional study, suggest and provide studies of contemporary issues, including current issues, foster and provide for ongoing theological education, and obtain theological treatises, conference papers, and similar documents and studies. The CTCR also has responsibilities with regard to "Fraternal and Other Organizations" under Bylaws 3.9.5.3 and 3.9.5.3.1 and responsibilities to assist the President of the Synod at his request in discharging his constitutional responsibilities "for maintaining doctrinal unity within the Synod" (Bylaw 3.9.5.2) and "for maintaining doctrinal integrity as he relates to other church bodies" (Bylaw 3.9.5.2.2). In addition, the CTCR receives from time to time special instruction and direction from the Synod in convention.

Fundamentally, the weight or significance that a hearing panel should give to a theological statement or opinion of the CTCR is the same as the weight or significance that should be given by all members of the Synod. That is to say, its opinion should be recognized as the considered opinion of the CTCR in attempting to carry out the bylaw functions identified above.

With respect to the opinions of the Commission on Constitutional Matters (CCM), Bylaw 3.9.2.2 (c) states that "[a]n opinion rendered by the CCM shall be binding on the question decided unless and until it is overruled by a convention of the Synod." As such, a hearing panel is bound by prior opinions of the CCM, since a convention of the Synod has never overruled an opinion of the commission.

With respect to the opinions of the CTCR or interpretations of the CCM provided to a panel in response to questions submitted under Bylaw 2.14.7.8 (k), a different result attaches. While, as discussed above, in general the opinions of the CTCR are provided for the “guidance” of the Synod, Bylaw 2.14.7.8 (k) (4) specifically states: “When an opinion has been requested, the time limitations will not apply until the parties have received the opinion. The panel must follow any opinion received from either the CCM or the CTCR.” Therefore, unlike other letters, opinions, study guides, and other materials prepared by the CTCR, in this particular circumstance the Synod has chosen to bind a panel, for the purposes solely of the case then before it, to an opinion issued by the CTCR when a question is submitted to it by the panel under this bylaw.

With respect to interpretations provided to a panel by the CCM, such opinions, as described above, are always binding on the Synod. No difference in weight or significance attaches to an opinion of the CCM under Bylaw 2.14.7.8 (k).

Question 2: Does the Synod require as a condition of membership that a member be bound by a doctrinal statement or resolution by the Synod in convention?

Opinion: No. This issue was resolved at least as far back as 1962. The 1959 convention had adopted Resolution 9 of Floor Committee 3, which read as follows:

Subscribing to the “Brief Statement,” the General Confessions, and Particular Symbols of the Lutheran Church; Teaching the Doctrine of Inspiration at Our Colleges and Seminaries; Using Scripture as the Word of God

RESOLUTION 9, COMMITTEE 3

WHEREAS, The pastors, teachers, and professors of Synod at the time of their ordination and installation pledge themselves to be faithful to the Holy Scriptures and to the Lutheran Confessions (“...solemnly pledge to the Scriptures as the inspired and inerrant Word of God and to the Symbolical Books of the Lutheran Church as a true exposition of the Scriptures...” Synodical *Handbook*, 4.19; 4.21; 4.23); and

WHEREAS, Some persons have inquired as to the binding force of the Brief Statement as well as other statements on doctrine and practice formally adopted by Synod; and

WHEREAS, Article II-C of the Articles of Incorporation of The Lutheran Church—Missouri Synod lists as an objective of Synod “to exercise supervision over such pastors and teachers as to doctrine, practice, and performance of their official duties”; therefore be it

Resolved:

A. That Synod further clarify its position by reaffirming that every doctrinal statement of a confessional nature adopted by Synod as a true exposition of the Holy Scriptures is to be regarded as public doctrine (*publica doctrina*) in Synod; and

B. That Synod’s pastors, teachers, and professors are held to teach and act in harmony with such statements; and

C. That those who believe that such statements are not satisfactory in part or in their entirety are not to teach contrary to them, but rather are to present their concern to their brethren in the ministry, particularly in conferences, to the appropriate district officials, and if necessary to the synodical officials.

The issue of the constitutionality of adding to the confessional statement of the Synod and effectively the requirements of membership by resolution, rather than by the process of amending the Constitution, was then raised. While no formal opinion of the CCM had been previously requested, the issue was submitted to them in preparation for the 1962 convention. During the CCM’s meeting of May 14–15, 1962, most of the entire meeting was spent examining and discussing the issue. A standing committee was appointed to

draft an opinion which was published as a supplement to the CCM's report to the convention. That opinion directly addressed and answered this question:

**Supplement to Report of Committee on Constitutional Matters (re Resolution 9) 1962
CONVENTION PROCEEDINGS, p. 187**

1. The most controversial resolution presented to and adopted by the San Francisco convention in 1959 was, without doubt, Resolution 9 of Floor Committee 3 (*Proceedings*, 1959, pp. 191, 192). This was evident while the convention was in session. It became obvious also in several ways after the convention had adjourned; for example, for the first time, if memory serves well, the Committee on Constitutional Matters was asked by a district (English District) to rule on the constitutionality of an adopted resolution.

2. The request of the English District seemed to us to be based, at least in part, on the fact that Resolution 9 of Floor Committee 3 had not been given to the congregations for general study prior to the convention. On this basis, our committee formulated an opinion which stated that it could not declare this resolution unconstitutional on this technical ground, because Resolution 9 had been formulated by a floor committee of the convention in answer to several overtures and it was therefore impossible to present it to the congregations prior to the convention. Our committee admittedly did not pass on the question of the constitutionality of Resolution 9 because there seemed to be no compelling reason to do so at that time. For one thing, the President and vice-presidents of the Synod had promised an amplification and clarification of the resolution, and protocol indicated that this clarification should be published before any opinion would be expressed on the constitutionality of Resolution 9; again, it was obvious that the Cleveland convention would be asked for a ruling on the constitutionality of Resolution 9, either by a vote to rescind or to reaffirm this resolution.

3. However, it is now common knowledge that a continuing and ever-increasing concern over this issue has been expressed by many members of the Synod. As a result a request has again been addressed to our committee to render an opinion on the real issue without further delay. It seems to us as of now, that the doctrinal issues confronting the church will be discussed much more dispassionately if the uncertainty of the status of Resolution 9 could be removed. This consideration prompts us to submit the following supplemental opinion to the section of our report captioned "Resolution 9 of Floor Committee 3" (p. 227, Reports and Memorials).

A. The right of the Synod to add to Article II of our Constitution ("Confession") by following the prescribed method of amending the Constitution (Article XIV) must be recognized and accepted.

B. The Brief Statement, which has become the focal point of attention in this present controversy, is not under attack as such; it has been praised highly by many who wish Resolution 9 rescinded and also by those who agree with Resolution 9. In expressing an opinion as to the constitutionality of Resolution 9, we are in no way underestimating or minimizing the value of the Brief Statement or of any other doctrinal statement accepted by the Synod, nor are we questioning their Scriptural correctness. This is not the province of the Committee on Constitutional Matters.

C. By including paragraph "B" of Resolution 9 of Floor Committee 3 ("That Synod's pastors, teachers, and professors are held to teach and act in harmony with such statements") in the resolution, the resolution, in our opinion, was given the effect of amending Article II of our Constitution. Furthermore, paragraph "B" limits the binding force of doctrinal statements to pastors, teachers, and professors and says nothing about its binding force on member congregations of the Synod.

D. We call particular attention to the fact that the Synod and every member of the Synod accepts without reservation the confessional standard as set forth in Article II of the Synod's Constitution; these are the conditions for acquiring and holding membership in the Synod (Article VI). Furthermore, members who act contrary to these Confessions may be expelled from the Synod (Article XIII). The Confessions mentioned in Article II are the only confessions to which pastors and teachers bind themselves in taking their ordination and installation vows or to which a congregation binds itself when it becomes a member of the Synod. It necessarily follows that in order to make any other confessional or doctrinal statement binding upon the members of the Synod, the statement must be made a part of the Constitution. Accordingly, Resolution 9 of Floor Committee 3 of the San Francisco convention, in our opinion, should have been treated as an amendment to the Constitution rather than as a measure that could be adopted by a simple majority vote.

E. Therefore, in our opinion, Resolution 9 of Floor Committee 3 of the San Francisco convention is unconstitutional, not because of any inherent defect in the wording or the content of any doctrinal statement adopted by the Synod as a public doctrine but because Resolution 9 of Floor Committee 3 was not submitted as an amendment to the Constitution in accordance with the provisions of Article XIV.

The 1962 convention considered the matter further and recognized that the Synod could not require as a condition of membership that a member be bound by a doctrinal statement or resolution adopted by the Synod in convention, unless the process of constitutional amendment was followed, and adopted 1962 Res. 6-01:

WHEREAS, The confessional basis which all members of The Lutheran Church—Missouri Synod are bound to accept without reservation is set forth in Article II of the Constitution of the Synod, namely: the Holy Scriptures and the Symbolical Books of the Lutheran Church (see Reports and Memorials “Reference Material” [yellow], p. 3); and

WHEREAS, Article VI of the Constitution of the Synod prescribes that one of the conditions for acquiring and holding membership in the Synod is: “Acceptance of the confessional basis of Article II,” which article prescribes only the Holy Scriptures and the Symbolical Books of the Lutheran Church; and

WHEREAS, The Synod at its 1959 convention, in answer to a question as to the binding force of statements on doctrine and practice, passed a resolution known as Resolution 9 of Committee 3, declaring that the Synod’s pastors, teachers, and professors are held to teach and act in harmony with every doctrinal statement of a confessional nature adopted by the Synod as a true exposition of the Holy Scriptures, which are to be regarded as public doctrine (*publica doctrina*) (see Reports and Memorials [yellow], “Reference Material” p. 22); and

WHEREAS, Questions have been raised as to whether this resolution, by making such doctrinal statements binding on members of the Synod, is not thereby requiring members of the Synod to subscribe to doctrinal statements additional to those which are required by the Constitution of the Synod and therefore has the effect of amending the Constitution by a simple resolution; and

WHEREAS, Article XIV of the Constitution of the Synod provides that an amendment of the Constitution requires a two-thirds majority vote of all votes cast and submission to congregations of the Synod; and

WHEREAS, The Synod has been requested to declare Resolution 9 unconstitutional because (1) it has the effect of amending the Synod’s Constitution and (2) was not submitted as an amendment as required by Article XIV; and

WHEREAS, The doctrinal content or Scriptural correctness of any doctrinal statements is not being judged or questioned in the consideration of the constitutionality of Resolution 9, but the question of constitutionality is confined to proper procedure, as fully set forth in the supplemental report of the standing Committee on Constitutional Matters, in which the committee rendered the opinion that Resolution 9 is unconstitutional (see Unprinted Memorial 601-A); and

WHEREAS, Your Floor Committee 6 of this convention is in agreement with the opinion of the standing Committee on Constitutional Matters; therefore be it

Resolved, That the Synod declare Resolution 9 of Committee 3 of the 1959 synodical convention unconstitutional on the ground that said resolution has the effect of amending the confessional basis of the Constitution of the Synod without following the procedure required by Article XIV of the Constitution.

The issue is further clarified by recognizing that one must unconditionally accept and subscribe to the confessional position set forth in Article II of the Constitution to obtain and retain membership. The Synod provides no avenue of dissent from that unconditional subscription. With respect to doctrinal resolutions and statements, however, the Synod expressly recognizes and provides for a process of dissent. While members of the Synod are expected to honor and uphold the resolutions of the Synod, including doctrinal resolutions and doctrinal statements, the Bylaws specifically provide for a process of dissent, described in Bylaw section 1.8:

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.

- 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.

108. Letter to Commission on Handbook

Final changes were made to a letter addressed to the Commission on Handbook in response to that commission's December 27, 2011 letter to the CCM, clarifying a number of issues surfaced by CCM Opinion 11-2600.

109. Adjournment

After brief discussion of matters to be addressed during the commission's April 13–14 meeting, the meeting was adjourned with words of benediction.



Raymond L. Hartwig, Secretary