

2004 CONVENTION WORKBOOK – APPENDIX I
OPINIONS OF COMMISSION ON CONSTITUTIONAL MATTERS

Questions Re Rights of Individuals and Congregations (99-2157)

A Dispute Resolution Panel in a July 16, 1999 letter submitted a series of questions for clarification of a number of details from its dispute case, questions raised by the complainant in the case. The Commission responded in an August 11, 1999 letter to the panel as follows:

1. In Matthew 18:17, where it says “Tell it to the Church”, the question is “Who is the Church”?

Response to Question 1: The function of the Commission on Constitutional Matters is to interpret the Synod’s Constitution, Bylaws, and resolutions (Bylaw 3.905, d). The question is one of doctrine or doctrinal application and thus should be addressed to the Commission on Theology and Church Relations in accord with Bylaw 8.21, a.

2. What does the phrase “inexpedient as far as the condition of the congregation is concerned” mean and how is it applied in matters relating to the right of self-government of LC-MS Congregations?

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

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

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

Bylaw 1.05, d, elaborates on the principle set forth in Article VII:

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

Bylaw 1.09, addressing the topic of doctrinal resolutions and statements, provides:

The Synod, in seeking to clarify its witness or to settle doctrinal controversy, so that all who seek to

participate in the relationships that exist within and through the Synod may benefit and may act to benefit others, shall have the right to adopt doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions.

Regarding such doctrinal resolutions, Bylaw 1.09, b, states, “Such resolutions come into being in the same manner as any other resolutions of a synodical convention and are to be honored and upheld until such time as the Synod amends or repeals them.” As to doctrinal statements, Bylaw 1.09, c, 7, states, “They shall be honored and upheld (“to abide by, act, and teach in accordance with” [1971 Res. 2.21]) until such time as the Synod amends or repeals them.”

This relation of the Synod to its members, where its resolutions are concerned, is further defined in Bylaw 2.39, a-c:

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

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

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

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

Thus, in answer to the question to the Commission, the phrase, “inexpedient as far as the condition of a congregation is concerned,” does not refer to the Constitution and Bylaws of the Synod and is restricted to resolutions adopted by a convention of the Synod which are non-doctrinal in nature.

3. Does the LCMS require that an individual who is a member of a LC-MS congregation but not a member of the LC-MS (i.e., not an ordained nor a commissioned minister) waive their individual rights as a prerequisite for participating in the LC-MS Synodical Dispute Resolution Process (i.e., Reconciliation, Dispute Resolution Panel, etc.)—even without individual consent, or in the event that the individual retains/reserves their rights to prior to participating in the LC-MS Synodical Dispute Resolution Process?

Response to Question 3: The Commission understands this question to relate to a layperson and the effect of the Synod's dispute resolution process on such a layperson. Bylaw 8.01 defines the parties involved in a dispute who are subject to the dispute resolution process. They are:

1. Members of the Synod.
2. The Synod itself.
3. A District of the Synod
4. An organization owned and controlled by the Synod
5. Persons involved in excommunication.
6. 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.

Relative to number 5 above, "persons involved in excommunication, Bylaw 8.13, b, 1, limits the dispute resolution process to procedural questions involved in excommunication cases. Therefore, the process can be utilized to question the procedure followed in an excommunication matter; it cannot be used to review the facts, which serve as the basis of the excommunication.

"Members of the Synod" is defined in Article V of the Constitution of the Synod. Members of the Synod sign the Constitution of the Synod and thus are bound by the dispute resolution process as set forth in Chapter VIII of the Bylaws of the Synod. Laypersons, who are members of congregations that are members of the Synod, are not themselves members of the Synod. Since such laypersons are not members of the Synod, they have not agreed to be bound by the dispute resolution process of the Synod and thus waive none of their rights by participating in the process.

While laypersons do not meet the technical definition of "member of Synod" as defined in the Bylaws, they are nevertheless encouraged to participate fully in the synodical dispute resolution process. Each person or party to a dispute is urged "by the mercies of God to proceed with one another with 'the same attitude that was in Christ Jesus' (Phil. 2:5)" (Preamble to VIII. Synodical Dispute Resolution, *Handbook*, p. 125). For the sake of the Gospel those who are not "members of the Synod" are invited to employ the means Synod has provided for the resolution of disputes.

4. During LC-MS Synodical Dispute Resolution (Reconciliation, Dispute Resolution Panel, etc.), does the Congregation retain its right of self-government?

Response to Question 4: As stated in Bylaw 8.11, a congregation retains the right of self-government it has as a member of the Synod during the dispute resolution process: "The congregation's right of self-government shall be recognized."

5. According to LC-MS Synodical Dispute Resolution Procedure Rule 27, what are the congregation's "scriptural responsibilities toward its member", and what Scripture verses serve as the basis for the congregation's "scriptural responsibilities toward its member"?

Response to Question 5: The Synod's dispute resolution "Rules of Procedure" were created as a result of 1995 Res. 7-03B, which directed their formulation. Accordingly, the Commission can render an opinion on any aspect of the resolution that mandated the procedures. However, interpretation of the content of such procedures is beyond the authority of the Commission. Since this question involves theology, it will more properly be directed to the Commission on Theology and Church Relations.

6. Given that the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the individual congregations right of self-

government, it is but an advisory body (LC-MS Constitution: Article VII Relation of the Synod to Its Members), does the Synod or its Districts or any Officer of the Synod or Officer of Its Districts have the ecclesiastical authority to not respect action(s) taken by a LC-MS congregation and to unilaterally cancel and/or declare action(s) taken by a LC-MS congregation or its Voters Assembly as illegal, non-binding, not valid, and/or of no effect?

Response to Question 6: The Commission responds that neither the Synod, nor any of its Districts, nor any of its officers can unilaterally cancel an action taken by an LCMS congregation through its voters assembly or by edict make such action non-binding, not valid, or of no effect. If the action of the congregation is such that it is subject to the Synod's dispute resolution process in Chapter VIII of the Bylaws or could lead to an action to terminate the congregation's membership in the Synod under Bylaw 2.27, the procedures outlined in those Bylaws are the remedy available to the Synod, its Districts, and its officers.

Bylaw 8.11 addresses the consequences of a decision rendered under the Synod's dispute resolution process:

The congregation's right of self-government shall be recognized. However, when a decision of a congregation is at issue, a Dispute Resolution Panel may review the decision of the congregation according to the Holy Scriptures and shall either uphold the action of the congregation or advise the congregation to review and revise its decision. If the congregation does not revise its decision, the other congregations of the Synod shall not be required to respect this decision, and the District involved shall take action with respect to the congregation as it may deem appropriate.

It must be noted that Bylaw 8.11 applies only to those decisions of a congregation that may be brought before a dispute resolution panel.

7. Does a LC-MS District President have the ecclesiastical authority to: (1) not respect, unilaterally cancel and/or declare an action taken by the Voters Assembly of a LC-MS Congregation as not valid, and/or (2) not respect, unilaterally cancel and/or declare as not valid a meeting duly called by the Voters Assembly of a local LC-MS Congregation?

Response to Question 7: Because a District President is an officer of the Synod, the opinion to the previous question is likewise applicable to the District President. Neither the Synod, nor any of its Districts, nor any of its officers have any authority to cancel or declare invalid a duly called meeting of or an action taken by the voters' assembly of a congregation that is a member of the LCMS. A District President is, however, charged with the responsibility to "give counsel" to congregations (Bylaw 4.73) 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" (Bylaw 4.75).

Adopted Sept. 14, 1999

Question re Implementation of the CCM "Guidelines for Constitutions" (01-2222)

The chairman of a District Constitution Committee requests an opinion regarding the importance of the inclusion of a paragraph in congregations' constitutions regarding called church workers. He notes that the Commission on Constitutional Matters recommends such a paragraph in its "Guidelines for Constitutions."

Question: “What exactly is involved according to Bylaw 2.45, c, and according to “Guidelines for Constitutions,” Article 5.0? Must a congregation have wording in its constitution saying it will only call pastors and teachers certified by the Synod? Is it enough for a congregation to simply refrain from making such a call even though the church may not explicitly commit itself to calling only endorsed workers? Must we, as a committee, refrain from recommending approval of such constitutions? Or may we approve these constitutions with a strong suggestion that they employ the wording suggested in the synodical guidelines?”

Opinion: In its guidelines, the Commission’s explanatory paragraph under “5.0 CALLED CHURCH WORKERS” states, “Since the congregation is applying for membership in the Synod or already is a member of the Synod, it is obliged to call only ordained and commissioned workers who are members of the Synod.” This issue, whether or not specifically addressed in a member congregation’s Bylaws, is already resolved, so long as the congregation remains a member of the Synod. By its membership, the congregation has committed itself to calling only “ordained or commissioned ministers who have been admitted to these respective ministries in accordance with the rules and regulations set forth” in the *Handbook* of the Synod (Bylaw 2.45, b). To do otherwise jeopardizes their membership in the Synod (Bylaw 2.45, c).

A District Constitution Committee, as provided by Bylaw 2.03, a and b, exists to review new or changed constitutions of congregations “to ascertain that the provisions are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod.” It is the primary interest of the committee, therefore, to take care that nothing in the documents they are examining is contrary to the above-mentioned. Beyond that, so long as a congregation’s commitment to the Constitution and Bylaws of the Synod is made clear, it is not absolutely necessary to restate requirements of membership contained in the Constitution and Bylaws of the Synod. The District committee may, however, wish to encourage inclusion of significant paragraphs such as the one in question into local constitutions for the sake of clarity and availability to the members of the congregation who often do not have copies of the *Handbook* of the Synod in their possession.

Adopted May 17, 2001

Question re Eligibility for Reappointment to a Commission (01-2223)

The Executive Director of the Commission on Theology and Church Relations, on behalf of the Commission, requested a response to the following question.

Question: “The Commission on Theology and Church Relations at its April 26-28 meeting adopted a resolution requesting that the Commission on Constitutional Matters give an opinion whether the Bylaws permit an individual who has completed three full terms (9 years) on the Commission on Theology and Church Relations as an appointee of the President of the Synod is eligible to be elected by a seminary faculty to serve a new three year term without a break in his membership on the Commission.”

Opinion: The answer to this question is “no.” Bylaw 3.61, b, states that “All members of all synodical boards and commissions shall be ineligible for reelection or reappointment to the same board or commission after serving a total of two successive six-year elected terms or three successive appointed or elected three-year terms, unless otherwise provided in the Bylaws.” The Commission notes that no distinction is made or exception granted if the appointing or electing entity changes. While the person in question may be appointed or elected to a position on another board or commission (Bylaw 3.61, c),

eligibility for service on the same board or commission begins again after an interval of three or more years (Bylaw 3.61, b).

Adopted May 17, 2001

Request for Evaluation of Constitution/Bylaws Resource (01-2224)

The Commission, in response to requests made to the Office of the Secretary of the Synod, provides the following brief commentary regarding the publication, *Flexible, Missional Constitution/Bylaws* by Alan and Cheryl Klaas. The publication is intended to address (1) concerns raised by congregations regarding difficulty filling boards and committees, (2) disagreements over what a congregation's constitution allows or does not allow, (3) dated structure that is getting in the way of ministry, and (4) the lack of time and energy on the part of congregations to undergo the years of meetings required to examine and change existing constitutions and bylaws. The publication offers helps to congregations to address these concerns "in one day, not two years."

While Bylaw 3.905 narrows the attention of the Commission on Constitutional Matters to the Constitution, Bylaws, and resolutions of the Synod, the Commission provides a brief response to this request for a review of said document, given the fact that the Commission also publishes its own "Guidelines for the Constitution and Bylaws of a Lutheran Congregation" to assist congregations in developing or revising their official documents. For the most part the Commission will respond in a general manner based upon the announced intentions of the authors.

- (1) The publication intends to address concerns raised by congregations regarding difficulty in filling boards and committees. It recommends an organizational structure that centers most of the decision-making in a "senior leadership group," reserving overall direction and only major decisions such as church worker calls or property matters to the voters' assembly (the "twenty-percenter decisions"). The Commission recognizes that, other than the office of Pastor and the right of the congregation to govern itself, the internal structure of a congregation is a matter of self-determination, so long as existing laws for non-profit charitable organizations are not violated. The Commission further recognizes that in the cases of small or new congregations, it can be futile to try to have boards and committees for every purpose. The Commission also recognizes the propensity for voters' assemblies to get bogged down by too much detail. But the Commission expresses caution that the structure that is being suggested, like any system, may not suit every situation, may lend itself to top-down leadership, and may in effect discourage the members of a congregation from participation or even taking an active interest in the affairs of the congregation.
- (2) The publication intends to address concerns about what a congregation's constitution allows or does not allow. It minimizes the involvement of the congregation in the development of the constitution, explaining that the congregation needs to make "relatively few key decisions" ("about ten") without any need to discuss wording. It also provides a procedure for creating bylaws that "accomplishes a great deal in a short period of time." The Commission expresses concern that the key documents of a congregation are treated with such casual haste, suggesting that whatever length of time it may take to do this properly is worth the effort. The Commission also observes that the helps provided to address what should be allowed or not allowed, intended to be general enough to reach a broader market of congregations of varied denominational associations, fall short of the specific help that congregations will need in developing their documents. In the case of LCMS congregations, for example, it will be necessary to do further study to learn of the expectations associated with synodical membership.
- (3) The publication intends to address what it calls dated structure that gets in the way of ministry. It differentiates between "churched culture churches" and "mission outpost churches," the former

preoccupied with internal issues, the latter focusing on the Great Commission. The Commission would share the same concern whenever congregations fail to remember their purpose. A congregation should periodically evaluate its structure to make certain that it enables rather than hampers its mission. The Commission would suggest, however, that, in cases where a congregation has lost its sense of mission, more will likely be deficient than merely the structure of its operations.

- (4) The publication intends to address a congregation's lack of time and energy to undergo a long and tedious process of developing and adopting constitutions and bylaws. The Commission responds that this process need not be long and tedious. A small committee of interested persons can be given the responsibility to produce draft documents, after which the entire congregation reviews and discusses them before their adoption. While the process, therefore, need not take two years, whatever length of time that may be necessary to do this important task carefully and properly is worth the effort.

Adopted May 17, 2001

Questions Repeatedly Raised re Nominations Process (01-2225)

Due to questions repeatedly raised regarding the consequences for the election of President upon the death of Dr. A. L. Barry, the Secretary of the Synod suggested that the Commission provide a response to a series of questions for publication in *Reporter*. The Commission provided the following responses.

Question 1: If an ordained minister dies after he has been nominated for the office of President of the Synod by a voting congregation, can such congregation nominate another candidate in place of the deceased candidate?

Opinion: The answer is "no." The Bylaws of the Synod make no provision for such nominations.

Question 2: What happens if a candidate for the President of the Synod dies and is one of the five ordained ministers receiving the highest number of votes from the nominating ballots of the congregations?

Opinion: Bylaw 3.961, c, provides that in the event of the death of a candidate, the nominee having the next highest number of votes shall become a candidate.

Question 3: Are the candidates for President of the Synod limited to the ordained ministers chosen in accord with the nominating procedure set forth in Bylaws 3.961, a-d?

Opinion: The answer is "no." Bylaws 3.961, f and g, provide a mechanism whereby the convention shall have the right to alter the slate of candidates at the proper time by amendment. Briefly, the procedure is:

- (a) A delegate makes a motion to amend the slate of candidates for President by the addition of another ordained minister.
- (b) The motion is seconded.
- (c) The delegates, by vote, adopt the motion to add the ordained minister to the slate of candidates for President, deliberately excluding verbal characterizations and discussion of the motion.
- (d) After all such amendments have been voted on, the convention then ratifies the slate of candidates prior to the election for President.

However, the Bylaws require that any delegate making a nomination from the floor shall have secured prior written consent of the candidate to be nominated. Such delegate shall immediately submit to the

Secretary of the Synod this document and written pertinent information concerning the nominee as detailed in Bylaw 3.961, e.

Adopted July, 2001

Request for Reconsideration of Agenda Item 00-2211 (01-2227)

In a letter dated April 9, 2001, the President of Concordia University, Portland asked the Commission to revisit its opinion rendered in agenda item 00-2211. This item concerned a resolution passed by the Iowa District East (3-06) memorializing the convention of the Synod. Titled "To Promote Better Doctrine and Practice at Concordia Portland," it calls for the President of the Synod to "formally investigate the doctrine and practice of Concordia University, Portland with a view toward addressing the concerns about false doctrine at that institution..." The Commission's prior opinion found that Bylaw 3.19 did not prohibit such an overture being presented to the convention.

The April 9 letter raises two additional questions: (1) whether the resolution (now listed in the *Workbook* for the 2001 Synod convention as Overture 5-11) is contrary to Art. XII, 2, of the Synod's Constitution because it is in conflict with the procedures outlined for dealing with complaints against members of a college's faculty or administration in Bylaw 6.47; and (2) whether, now that it has notice of the complaints of false doctrine through publication of Resolution 3-06, the Board of Regents of Concordia, Portland must carry out the provisions of Bylaw 6.47 and conduct an investigation according to the requirements of that section.

The short answer to both questions is Ayes." The Commission finds that Bylaw 6.47 is the proper mechanism for dealing with a complaint against a member of an institution's faculty or administration concerning any matter, and that this bylaw may not be circumvented by a convention resolution which seeks to establish a different method of handling such allegations.

Art. XII, 2, of the Synod's Constitution provides that A[E]ach District is at liberty to adopt such bylaws and pass such resolutions as it seems expedient for its conditions, provided that such bylaws and resolutions do not conflict with the Constitution and Bylaws of the Synod." The resolution in question, in its fourth WHEREAS, asserts that "members of the faculty of Concordia Portland have expressed doctrinal positions contrary to that of the Synod's positions, such as advocating open communion and the ordination of women to the Pastoral Office...." These allegations are serious enough to warrant removal from the faculty of anyone who advocates them (Bylaw 6.43, c, 6). The Board of Regents is responsible for investigating such charges (Bylaws 6.45 and 6.47). There is no other means stated in the Bylaws for dealing with such serious allegations which, though stated against unnamed faculty members, are phrased in terms of specific complaints. Bylaw 3.101, A, 2 provides that the President of the Synod shall at regular intervals officially visit or cause to be visited all the educational institutions of the Synod to exercise supervision over the doctrine taught and practiced in those institutions. Art. XI, B, 2 and 3, of the Constitution give the Synod's President the power to admonish and reprove those whose doctrine he finds in error, which would include faculty members of a Synod university. In that regard, the *Resolved* clauses of the resolution in question ask for action that is within the President's power. However, the WHEREAS clauses of the resolution state specific complaints against unnamed faculty members. Where such concrete and specific complaints exist, the proper procedure to follow is that given under Bylaw 6.47. The Commission finds that the Iowa District East resolution is contrary to Art. XII, 2, of the Synod's Constitution because it seeks to establish a procedure for investigating an allegation of false doctrine on the part of specific faculty members in a Synod university which runs counter to the procedure established in Bylaw 6.47 and therefore is out of order. Because the resolution conflicts with the Synod's Bylaws, it is not one that the Iowa District East may properly adopt. (As a practical matter, since the resolution has in

fact already been adopted by the District, it might be more accurate to observe, as is explained *infra*, that such a resolution could not be properly adopted by the convention.)

The sixth WHEREAS of Resolution 3-16 states that attempts have been made to address the concerns stated in the resolution pursuant to Bylaws 2.27 and 6.47, without success. Does this support a resolution that mandates a different approach than the one under Bylaw 6.47? The answer is no. The Commission notes that in the case of an allegation of false doctrine, Bylaw 6.47, g, provides that if the complaining party is dissatisfied with the results of the process in that bylaw, a complaint may be taken to the appropriate District President under Bylaw 2.27. Likewise, under Bylaw 2.27, b, if the complaining party is unhappy with the way the District President deals with the matter (either because the District President fails to act within 90 days or declines to suspend the member), the complaint may be taken to the Praesidium. By following the procedures set forth in Bylaws 6.47 and 2.27 Iowa District East can eventually request an investigation by the Praesidium if it is not satisfied by the handling of the matter by the Board of Regents and the District President. This would seem to be the same result that the resolution in question seeks to achieve (or at least a very similar result), although the resolution seeks to cut out several intermediate steps. Those steps, however, are mandated by the Bylaws and cannot be ignored or set aside unless the bylaw itself is amended. Therefore the resolution conflicts with the Synod's Bylaws and is therefore improper.

What should the Board of Regents of Concordia University, Portland do now that it has knowledge of Resolution 3-06, making charges against its faculty? In a recent opinion (00-2199) this commission held that Bylaw 6.47 requires the Board of Regents of a Synod university to apply the procedure of Bylaw 6.47 any time a complaint is made against a member of the faculty or administration of that university. The bylaw does not specify a particular way in which complaints against faculty or administration members must be "received," but surely the publication of a resolution accusing unspecified members of the university faculty of false doctrine would be one way that the Board of Regents would receive knowledge of such a complaint, if not the preferred way. The prior opinion of the Commission made it clear that the Board of Regents must apply the steps of Bylaw 6.47 to all instances where a complaint is made. This one is no different. It would elevate form over substance and add requirements that are not in the Bylaws for this commission to create some sort of requirement of a formal complaint that must be brought to the Board of Regents in a specified manner before the responsibilities of Bylaw 6.47 are triggered. The intent of the bylaw is that the Board of Regents should investigate all complaints. This is a broad responsibility and should be interpreted to give effect to its apparent intent. The Board of Regents must follow Bylaw 6.47 in this case.

In its present form Resolution 3-06 (Overture 5-11) is out of order because it conflicts with the method for dealing with specific complaints against university faculty members under Bylaw 6.47. Pursuant to Bylaw 3.905, a, this commission must review overtures that "in any manner affect the Constitution and Bylaws" for agreement with the Constitution and Bylaws. It reports its conclusions to the floor committee responsible for each overture, and that committee "is to report its findings and recommendations to the convention." Presumably the floor committee that considers Overture 5-11 will follow the opinion of this commission and report that the overture is out of order and recommend that it not be presented to the

¹ The complaint to the District President is a subsequent step to board of regents review, not an alternative avenue of complaint. This is confirmed both by the location of Bylaw 6.47, g within that bylaw and by Bylaw 6.45, b, which provides that the Board of Regents' decision is final except that Bylaw 6.47, g allows further appeal to the District President.

² The Commission has been made aware that the BHE/CUS has offered to facilitate a meeting between representatives of Iowa District East and Concordia University, Portland to discuss the District's concerns. This approach is in the best Gospel tradition of our Lord's admonition in Matthew 18:15-16 about reconciliation. The BHE/CUS is to be commended for its concern and interest in assisting in resolving this matter.

Synod in convention, or that changes be made to bring it into conformity with the Constitution and Bylaws of the Synod before it is presented.

Adopted July, 2001

Question re Terms of Office of University Regents (01-2230)

A question was presented to the Commission during the 2001 convention of the Synod regarding the elections for the Board of Regents of Concordia University, Selma at the 1998 convention.

Question: Were the regents elected at the 1998 convention elected to three-year or six-year terms?

Opinion: The Commission makes the following observations:

- (1) The election in question was reported in session 9, July 16, 1998, of the convention (see page 35 of the 1998 convention *Proceedings*).
- (2) Resolution 5-06, which amended Bylaw 6.01 by changing the term of office of elected regents from three years to six years, was adopted in session 10, July 16, 1998, of the convention. This resolution was therefore adopted after the election in question was finalized.
- (3) The convention's parliamentarian has ruled that bylaw changes take effect immediately upon passage.
- (4) Therefore the change in term of office of regents from three years to six years did not occur until after the Concordia, Selma board election was finalized.

Based upon this information, the regent who presented the question was elected to a three-year term of office. The Commission notes that a footnote on page 43 of the Synod's 1998 *Handbook*, commenting upon Bylaw 3.59, indicates that "Six-year terms for elected Board of Regents members for colleges and universities will take effect at the next elections" [i.e., at the 2001 synodical convention]. Based upon the chronology set forth above, this footnote is correct.

Adopted July, 2001

Question re Disciplinary Process of a Non-Member Faculty Member (01-2233)

In a September 28 letter the President of a university of the Synod, in preparation for his role as facilitator of the actions described by Bylaw 6.47 a, asked the following questions regarding the final outcome of the process described by Bylaw 6.47:

Question: What if the complaint is brought under Bylaw 6.43 c 5 or 6, but the respondent (i.e., the accused faculty member) is not a member of the Synod (i.e., a rostered ordained or commissioned minister of religion)? Does the matter end with the decision of the Board of Regents? Or does the ecclesiastical disciplinary process of Bylaw 2.27 have some role to play (and, if so, what is it, given that membership in the Synod is not at issue)?

¹ Any such changes would have to conform to Bylaw 6.47 both in terms of the factual statements in the "whereas" clauses and the actions requested in the "resolve" clauses. At the very least, Res. 3-06 (Ov. 5-11) would require a major overhaul before it would begin to conform to the requirements of the Constitution and Bylaws. However, the question of whether and how it could be made to so conform is not before this commission.

Response: Bylaw 6.23 c requires that, as with rostered members of the Synod, when laypersons are employed in full-time teaching positions, “they shall pledge to perform their duties in harmony with the Holy Scriptures as the inspired Word of God, the Lutheran Confessions, the Synod’s doctrinal statements, and the policies of the Synod.” Accordingly, in a previous opinion (99-2142) the Commission ruled:

In the case of both categories of persons, doctrinal resolutions and statements “are to be honored and upheld until such time as the Synod amends or repeals them” (Bylaw 1.09 b). If there is disagreement, “dissent from doctrinal resolutions and statements shall be governed by Bylaw 2.39 c.”

In the same prior ruling the Commission also ruled:

If a person is hired after pledging full compliance with the stated positions of the Synod and fails to honor that commitment, one of the causes for which members of a faculty may be removed from office is “advocacy of false doctrine (Constitution, Art. II) or failure to honor and uphold the doctrinal position of the Synod as defined further in Bylaw 1.09” (Bylaw 6.43 c 6).

In other words, the Bylaws of the Synod and prior rulings of the Commission establish that rostered and lay members of faculties are held to the same standard of conduct. Accordingly, Bylaw 6.47, as it describes the process to be followed when a board of regents receives a complaint against a member of a school faculty or administration, does not distinguish between rostered and lay faculty members: “If the Board of Regents receives a complaint against that institution’s faculty or administration concerning any matter...,” a commonality that continues throughout the process until the Review Committee issues its decision and the Board of Regents takes appropriate action.

The action of the board is final in most cases. However, Bylaw 6.47 g provides that when the complaint involves “5. Conduct unbecoming a Christian; 6. Advocacy of false doctrine (Constitution, Art. II) or failure to honor and uphold the doctrinal position of the Synod as defined further in Bylaw 1.09” (Bylaw 6.43 c), the complainant “may take the complaint to the District President.” If the Review Committee finds grounds to establish a violation of Bylaw 6.43 c 5-6, Bylaw 6.47 h requires that it “must refer the complaint to the District President” in order that “the procedure set forth in Bylaw 2.27” may be followed prior to final action by the Board of Regents. Bylaw 2.27 deals with action to terminate an individual’s membership in the Synod. If the person in question is not a member of the Synod, that bylaw is inapplicable. It is not possible to terminate a membership that does not exist in the first instance.

The Commission rules, therefore, that complaints against lay members of a faculty are to be handled in the same manner as complaints against rostered workers, except that the process ends with action by the Board of Regents, since it is not possible to apply Bylaw 2.27 to one who is not a member of Synod. The action of the Board of Regents will be final as to one who is not a member of Synod. However, that action is subject to review by the Synod’s President under Bylaw 3.101, subsections 2 and 5, which allow the President to visit the Synod’s educational institutions, call up for review any action that may violate the Constitution, Bylaws or resolutions of the Synod and request that it be reversed. The President is to report an unsatisfactory response to the Board of Directors, this Commission, or the Synod in convention, as appropriate, for further action.

Adopted Nov. 1, 2001

**Question re District Membership and Ecclesiastical Supervision
of Rostered Workers Called or Appointed
by Recognized Service Organizations (01-2234)**

An executive director of a program board of the Synod in a letter dated October 17, 2001, brought forward a question that arose in his conversations with a District President regarding District membership and ecclesiastical supervision of two pastors called by a Recognized Service Organization.

Question: When a pastor accepts a call from a Recognized Service Organization, to which District will he belong and from which District President will he receive his ecclesiastical supervision?

Response: A church worker who is called by a Recognized Service Organization (RSO) remains an active member of the Synod (Bylaw 2.15 j) so long as the following requirements are met:

- He or she must be a communicant member of a congregation which is a member of the Synod (Bylaw 2.15) and must be regularly performing the duties of an executive or professional staff member of the RSO (Bylaw 2.15 j).
- He or she remains accountable to the Synod for teaching and practice and is to be supervised by the appropriate District President according to Bylaws 2.21ff. (CCM Ag. 2115 – August 24, 1998).
- Ecclesiastical supervision is provided by the President of the District through which membership in the Synod is held (Bylaw 2.41 i), who is responsible for overseeing the doctrine and life of that member (Art. XII 7).

The Commission notes that “the District through which an individual holds membership and the District through which a member is ecclesiastically supervised will not be determined in any case on the basis of District membership of the congregation to which the individual belongs” (Bylaw 2.41 j). Church workers called or appointed by recognized service organizations may therefore hold membership in any LCMS congregation, since such membership does not affect District membership or ecclesiastical supervision.

Regarding the specific question posed to the Commission, it rules that District membership and ecclesiastical supervision are to be determined by the geographic location of the RSO. The geographic District in which an RSO is physically located will be the District through which church workers who have accepted an executive or staff position will hold synodical membership and from which District’s president they will receive ecclesiastical supervision. This decision is consistent with Bylaw 2.43 which, while it addresses the responsibility of District Presidents for maintaining the roster of the Synod, specifically mentions workers called by “institutions which relate to” a District as holding membership in that particular District. While an RSO formally relates to “the board of the Synod to which the organization desires to relate” (Bylaw 14.03 c), the Commission assumes that it will also relate most closely to that District to which it is geographically most proximate. Non-geographic Districts are excluded from consideration by Bylaw 2.41 d, which allows membership in non-geographic Districts by persons serving entities other than a congregation or District only under specific conditions.

(Note: The Commission instructed that its secretary write a letter to the Commission on Structure calling its attention to the need for further clarification in the Bylaws in this regard.)

Adopted Nov. 1, 2001

Questions re Dispute Resolution Process (01-2235)

In an October 25, 2001 letter a pastor involved in a dispute resolution process asks for “an official understanding of certain questions” that pertain to the process, explaining that two of the questions “cover a further explanation of terms used in Bylaw VIII” and that the other two “may or may not be an

unwritten part of every Constitution calling upon all parties to deal with one another in an atmosphere of fairness.”

Question 1: I ask for your understanding of the term “informal” as used in Bylaw 8.05. A further extrapolation on this point would be that if a party in a matter of dispute will not meet without witnesses, then has the matter gone from “informal” to “formal”?

Opinion: Bylaw 8.05 differentiates between “the formal reconciliation process” which is delineated in succeeding bylaws and “Informal Efforts toward Reconciliation” referred to in its title. It defines informal efforts as “meet(ing) together, face to face, in a good-faith attempt to settle (the) dispute.” The parenthetical biblical reference to a specific verse of the Matthew 18 process further supports this understanding: “If your brother sins against you, go and show him his fault, just between the two of you. If he listens to you, you have won your brother over” (Matt. 18:15 NIV). When such informal, face to face efforts have been inadequate, the parties are to be directed to engage in further such efforts before the formal reconciliation process that involves other persons, e.g., witnesses, can begin (Bylaw 8.07 c).

Question 2: Bylaw 8.21 b calls on members and agencies of Synod to participate in reconciliation efforts. If a person does not participate, does the reconciler have power to act upon that refusal? What, if any, action or actions can be taken in such a matter?

Opinion: Bylaw 8.21 b requires that “any member of the Synod, officer of a congregation, or officer of any organization owned or controlled by the Synod shall, when called upon by the Dispute Resolution Panel or Review Panel to do so, testify or produce records related to the dispute.” In doing so, it speaks specifically to dispute resolution panels and does not include the preceding reconciliation process *per se*.

Bylaw 8.07 e, however, does provide also to reconcilers the authority to obtain the participation of persons who have a contribution to make to a reconciliation effort: “The reconciler may draw upon persons and resources which the reconciler deems necessary to assist in the reconciliation process.” Failure or refusal to participate on the part of members of the Synod, officers of a congregation, or an officer of any organization owned or controlled by the Synod falls short of the stated intent and spirit of the dispute resolution process to be “the exclusive and final remedy for those who are in dispute” (Chapter VIII Preamble, paragraph 2), a ministry of reconciliation that is “one of the church’s foremost priorities” (Preamble, paragraph 4). In the interest of this process and “for the sake of the Gospel, the church should spare no resource in providing assistance” (Preamble, paragraph 1). Failure on the part of members or officers of the Synod or its organizations would also be a failure of membership responsibility in the Synod, whose “Constitution, Bylaws, and all other rules and regulations...apply to all congregational and individual members of the Synod” (Bylaw 2.39 a).

Question 3: Is there any understanding among us that circumstances are placed on hold while a dispute is in the process of being reconciled or resolved? What if a distribution of funds and/or a monetary reward are at issue? May one party take action during the process that makes a recovery of funds unlikely or impossible?

Opinion: There is no bylaw that deals with this issue directly. The Commission notes, however, that Bylaw 8.01, by prohibiting termination of membership in the Synod in order to render the provisions of the dispute resolution process inapplicable, speaks indirectly to this issue. In addition, the 1995 convention of the Synod directed that *Rules of Procedure* be developed to enhance the operation of the Dispute Resolution Process. Rule 45, “Decisions,” reads in part:

b. The panel may award any remedy or relief that it deems scriptural, just, and equitable, and within the scope of the issues defined by the panel, including, but not limited by the

remedies requested by the parties. Any monetary award in a decision should clearly set forth the party that is obligated to pay such monetary award and the manner in which it is to be paid.

In the event that a congregation is a party to the dispute, Rule 6, “Congregation’s Right of Self-Government,” provides:

The congregation’s right to self-government shall be recognized. However, when a decision of a congregation is at issue, a Dispute Resolution Panel may review the decision of the congregation according to Holy Scriptures and shall either uphold the action of the congregation or advise the congregation to review and revise its decision. If the congregation does not revise its decision, the other congregations of the Synod shall not be required to respect this decision, and the District involved shall take action with respect to the congregation as it may deem appropriate.

Question 4: When a matter goes to dispute resolution, may a party that has heard a confidential statement disclose same? May one use confidential statements to clear his own name? If confidential matters may be disclosed, is there someone who has the power to judge if they are germane to the matter in dispute? If the Synod follows its procedure and places records with the Concordia Historical Institute, is not the Synod also indirectly disclosing a confidence?

Opinion: Bylaw 8.21 h provides that all Dispute Resolution Panel or Review Panel records of disputes in which a final decision has been rendered by the Dispute Resolution Panel or Review Panel shall be placed in the custody of Concordia Historical Institute. It further provides that all such records shall be sealed and shall be opened only for good cause shown and only after permission has been granted by a Dispute Resolution Panel, selected by blind draw for that purpose.

In addition, Rule 26 of the *Rules of Procedure*, “Confidentiality, Publication of Decisions, and Records of Panels” addresses the question. It reads as follows:

26. Confidentiality, Publication of Decisions, and Records of Panels.

a. Because of its biblical nature, Christian conflict resolution encourages parties to openly and candidly admit their offenses in a particular dispute. Thus, Christian conflict resolution requires an environment where parties may speak freely, without fear that their words may be used against them in a subsequent legal proceeding. Moreover, because of the Synod's commitment to keep parties out of court, reconcilers serving on behalf of the Synod would not do so if they believed that any party might later try to force them to testify in any legal proceeding regarding a synodical dispute. Therefore, all communications that take place during the dispute resolution process shall be treated as settlement negotiations and shall be strictly confidential and inadmissible for any purpose in a court of law, except as provided in this Rule.

b. This Rule extends to all oral and written communications made by the parties or by the reconcilers and panels, and includes all records, reports, letters, notes, and other documents received or produced by the reconcilers and panels as part of the conciliation process, except for those documents that existed prior to the synodical dispute resolution process and were otherwise open to discovery apart from this process. It is understood that the parties shall not compel the reconcilers or the panel members to divulge any documents or to testify in regard to the dispute resolution process in any judicial or adversarial

proceeding, whether by personal testimony, deposition, written interrogatory, or sworn affidavit....

....d. Reconcilers and panels may divulge appropriate and necessary information under the following circumstances, and the parties agree to waive confidentiality and hold the Synod, reconcilers, panels, and panel members harmless for doing so: (1) when, as part of its normal office operations, the Synod and its representatives consult with its staff members or outside experts regarding particular issues or problems related to a case; (2) when compelled by statute or by a court of law; (3) when an agreement or decision has been contested or appealed; (4) when an action has been brought against the Synod or its representatives as a result of its participation in a dispute resolution case; (5) when the Synod or its representatives deem it appropriate to discuss a case with the church leaders of parties; and (6) when the Synod or its representatives deem it necessary to contact appropriate civil authorities to prevent another person from being harmed....

....f. While a matter in dispute is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the parties involved, the reconcilers or panel members, or the Synod. The reconciler or panel shall bring any violation of this Rule to the attention of the parties.

g. All Dispute Resolution Panel or Review Panel records of disputes in which a final decision has been rendered by the Dispute Resolution Panel or Review Panel shall be placed in the custody of Concordia Historical Institute. All such records shall be sealed and shall be opened only for good cause shown and only after permission has been granted by a Dispute Resolution Panel, selected by blind draw for that purpose.

Adopted Nov. 1, 2001

Question re the Right of the President to Appoint Representatives to Commissions (01-2236)

In an October 26, 2001 memorandum, the President of the Synod requested an opinion regarding his right to appoint a representative to attend meetings of the Commission on Ministerial Growth and Support and the Commission on Worship. To support his right to do so, he called the attention of the CCM to Bylaws 3.101 B 1, 3.101 C 3, and 3.51.

Question: Do the Bylaws of the Synod prohibit the President of the Synod from appointing a representative to attend meetings of the Synod's Commission on Ministerial Growth and Support and Commission on Worship?

Opinion: The Commission notes that prior to the 2001 convention of the Synod, Bylaw 3.913 designated the President of the Synod or his designee as an advisory member of the Commission on Ministerial Growth and Support. All advisory members of the Commission were removed by Res. 7-30 of the 2001 convention of the Synod for the stated reason of making more effective use of advisory input and use better stewardship of time by not requiring advisory members to sit through entire commission meetings but by calling upon their advisory function when their area of expertise comes into view and by allowing flexibility to solicit advice as the needs dictate.

The following sections of the Constitution and Bylaws of the Synod are pertinent to the question at hand:

Article XI A 1: The officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod....

Bylaw 3.101 B 1: [The President shall] oversee the activities of all agencies of the Synod to see to it that they are in accordance with the Constitution, Bylaws, and resolutions of the Synod (each commission is an agency of the Synod according to Bylaw 3.51).

Bylaw 3.101 B 5: [The President shall] call up for review any action by an...agency which, in his view, may be in violation of the Constitution, Bylaws, and resolutions of the Synod and, if he deems appropriate, request that such action be altered or reversed....

Bylaw 3.101 C 3: [The President shall] personally, or by way of a representative, have the option to attend all meetings of the Synod's program boards, the boards of all synodwide corporate entities, and Worker Benefit Plans, including executive sessions. The President's representative shall normally be a member of the Administrative Team. The President shall, in reasonable time, receive notice of such meetings, the proposed agenda, and minutes thereof.

Bylaw 3.179: The Administrative Team consists of the President, First Vice-President, Chief Financial Officer, Chief Administrative Officer, and the Secretary and shall be under the leadership of the President. The team shall assist the President and the Board of Directors of the Synod in carrying out their respective responsibilities for oversight, supervision, management, and coordination as set forth in the Constitution, Bylaws, and resolutions of the Synod.

Bylaw 3.175: The Chief Administrative Officer shall

- a. meet regularly with the executive officers of program boards, commissions, and synodwide corporate entities as the liaison with the Board of Directors and the President of the Synod;
- b. provide leadership to assure that the mission and ministry activities of the church are being carried out in a coordinated, cooperative and efficient manner.

Bylaw 3.51 (Definitions) b: *Commission*: A group of persons, elected or appointed as prescribed in the Bylaws, rendering a precisely defined service function of the Synod and responsible, as the case may be, to the Synod in convention, to the President of the Synod, or to the Board of Directors of the Synod....

Bylaw 1.07 d: Each...commission that serves the Synod in a specific area of program or ministry...adopts programs in its assigned area of responsibility; administers the programs and resources as provided or authorized by the Constitution and applicable Bylaws, or as assigned by the respective convention or board; and proposes modifications thereto....It shall report its activities to the respective convention, president, and board.

Bylaw 3.101 C 3 provides that the President, or his representative, has the option to attend all meetings of three specific agencies of the Synod: (1) its program boards; (2) the boards of all synodwide corporate entities; and (3) Worker Benefit Plans. This bylaw addresses the very issue that is the subject of the question. It makes no mention of commissions and this omission leads the Commission to conclude that the President does not have the authority to personally or by his representative attend all meetings of the Commission on Ministerial Growth and Support or the Commission on Worship.

The President does appoint the members of these two commissions. However, his appointees are not his representatives. The duty of a board or commission is to carry out the functions of that board or

commission as enumerated in the Bylaws of the Synod and not to represent the appointing authority, except when specifically provided in the Bylaws.

How then does the President interact with the Commission on Ministerial Growth and Support and the Commission on Worship? These commissions are responsible to the President (Bylaw 3.51 b). These commissions are required to report their activities to the President (Bylaw 1.07 d). The Chief Administrative Officer is required to meet regularly with the executive officer of each of these commissions as liaison with the President (Bylaw 3.175). The President has the duty to oversee the activities of each of these commissions to see to it that they are in accordance with the Constitution, Bylaws, and resolutions of the Synod and has the authority to call up for review any action by either of these commissions and request that such action be altered or reversed if he is of the opinion that such action is in violation of the Constitution, Bylaws, or resolutions of the Synod. In addition, the President always has the right to address these commissions in person, by his representative, or by written communication to express his concerns, but he does not have the authority to have his representative attend their meetings as a quasi nonvoting member of the commission.

Adopted Nov. 1, 2001

Ecclesiastical Supervision of the Synodical President (01-2240)

A District President has questioned the correctness of this Commission's opinion in 98-2122, dated September 30, 1998, which opined that the President of the Synod is under the ecclesiastical supervision of the President of the Missouri District. He has pointed out that pursuant to Article XI B 1 d of the Synod's Constitution the Synod President is the ecclesiastical supervisor of all District Presidents. He has also pointed out that this Commission has previously issued an opinion on January 10-11, 1992, Ag. 1915, which found that the Missouri District President *did not* have ecclesiastical supervision of the synodical President. Can these two conflicting opinions be reconciled? The Commission finds that they cannot. Which opinion is correct? For the reasons stated below, the Commission withdraws the pertinent paragraphs of its 1998 opinion, 98-2122, and reaffirms its 1992 opinion, Ag. 1915.

Because of the importance of this question, both prior opinions are reproduced herein. The 1992 opinion reads as follows:

69. Supervision of Synodical President (Ag. 1915)

A pastor had asked the question of the Commission on Constitutional Matters whether on the basis of Bylaw 3.533, d the President of The Lutheran Church—Missouri Synod was excluded from the responsibility placed upon the President of the Missouri District in 4.73 of the *Handbook* of the Synod. The further question was asked, "If he is excluded, to whom does a brother bring his concern when personal admonition to have the President of the Synod carry out the responsibilities of his office as defined by the *Handbook*?" The Secretary had prepared a possible response for consideration by the Commission on Constitutional Matters which stated:

[The pastor's] question is not easy to answer. I would assume that in some instances, such as if a synodical President were serving as a pastor of a congregation in the district, the district president would have responsibility for supervision.

However, if someone disagrees with the supervisory activity of the synodical President, it would not seem that the district president is in a position to exercise

supervisory responsibility over the synodical President. Article XI of the Constitution is quite clear in that the synodical President has supervision of a district president, an officer of the Synod (XI,B,1,d). It is the Synod which has a right to call its officers to account and to remove them from office in accordance with Christian procedure. (XI,A,2). This is supported by Bylaw 3.103, c which states, "Any member of the Synod shall have the right to appeal to the convention of the Synod from his [the President's] action."

It would seem that the only recourse is an appeal to the convention of the Synod "when personal admonition fails to have the President of the Synod carry out the responsibilities of his office as defined by the *Handbook*." If the matter cannot wait until a regularly scheduled convention of the Synod, a request can be made to the district presidents for the calling of a special convention. If three-fourths of them agree, such a convention can be called. (VIII, B).

The one bylaw which may appear to contradict the above is 4.73. The question, however, is whether the President of the Synod is "subject to his [the district president's] ecclesiastical supervision." The previous argumentation provided would say that he is not.

The 1998 opinion reads in pertinent part as follows:

3. District President Fellowship and Discipline Questions (98-2122)

...The District President finally also asked several questions relating to Bylaw 2.41, d:

You also posed several questions to the Commission relating to Bylaw 2.41, d, and the District membership and ecclesiastical supervision of the President of the Synod.

"Must the President of the Synod be a member of a District of the Synod under the provisions of Bylaw 2.41 d? Under the provisions of the same Bylaw, does the President of the Missouri District have the right (and in certain circumstances, the duty) to apply the provisions of Bylaws, Chapter II, D. and E. (Bylaws 2.21 through 2.33) to the President of the Synod?"

In answering these questions, the Commission first observes that the President of the Synod is under the ecclesiastical supervision of the President of the Missouri District under Bylaw 2.41, d, since the synodical President serves the Synod at its headquarters in St. Louis, Missouri. Nothing in the bylaw indicates any intent that the synodical President (or anyone else) be excepted from this provision. Bylaw 4.73 requires that the President of the Missouri District supervise the doctrine, life and official administration of those who are subject to his ecclesiastical supervision. As part of that supervision, the President of the Missouri District is held to apply the provisions of Bylaws 2.21 through 2.33 when necessary.

The Commission further notes that these provisions do not apply to all grievances which might be brought against the synodical President, but only those listed in Bylaws 2.23, a. 1-3, and 2.27, a. Furthermore, given the importance of the responsibilities of the synodical President and the disruption of the administration

of Synod affairs which would result from the application of these procedures to the indocile President, it is to be expected that the President of the Missouri District would exercise the utmost caution, discretion and good judgment in exercising his responsibilities under these sections.

The 1992 opinion of this Commission was overlooked when the 1998 opinion was written. The 1998 opinion discusses Bylaws 2.41 d and 4.73. It does not discuss any provisions of the Synod's Constitution. The 1992 opinion discusses provisions of the Synod's Constitution and Bylaw 4.73, but does not mention Bylaw 2.41 d.

The Commission observes that the 1992 opinion is primarily based on the Synod's Constitution, whereas the 1998 opinion is based on the Bylaws, without reference to the Constitution. A general rule of construction holds that where a constitution and its related bylaws conflict, the provisions of the constitution will control.

The Commission further observes that Bylaw 3.915 d (1989 Bylaw 3.533 d) provides that "[a]n opinion rendered by the Commission shall be binding on the question decided unless and until it is overruled by a synodical convention." The 1992 opinion was issued prior to the 1992 synodical convention. There have been four synodical conventions since that opinion was issued, and no action has been taken to overrule it. The 1998 opinion was issued after the 1998 convention, and thus there has only been one synodical convention at which it might have been overruled, but no action was taken to do so at the 2001 convention of the Synod.

Bylaw 2.41 d has changed slightly since 1992. Where the bylaw in the 1989 *Handbook* reads, "An individual member of the Synod who is serving an entity other than a congregation or District...shall be subject to the ecclesiastical supervision of the President of the geographical District in which the entity is located" (emphasis added), the version of that same bylaw in the 1998 *Handbook* reads, "An individual member of the Synod who is serving an agency other than a congregation or District...shall be subject to the ecclesiastical supervision of the President of the geographical District in which the agency is located" (emphasis added). Furthermore, 1998 *Handbook* Bylaw 3.51 a defines an "*Agency of the Synod*" as "[a]n instrumentality other than a congregation, whether or not separately incorporated, which the Synod in convention or its Board of Directors has caused or authorized to be formed to further the Synod's objectives." Subsection l of that same bylaw separately defines "*Synod*" as "the association of self-governing Lutheran congregations initially incorporated on July 3, 1894, and presently named The Lutheran Church—Missouri Synod, and all agencies of the Synod as defined in Bylaw 3.51 a." Clearly, the Synod is not an agency of itself, but includes its agencies under its larger umbrella. This change is significant. It could be argued that this Commission's 1992 opinion was weakened by its failure to consider Bylaw 2.41 d, based on the rationale that the synodical President was serving an entity other than a congregation or a District and thus should be under the ecclesiastical supervision of the President of the geographical District in which the International Center is located (i.e., Missouri). It would seem that the change in the bylaw has eliminated this argument, since the synodical President is not serving an agency of the Synod as that term is used in the present Bylaw 2.41 d, but rather is serving the Synod itself, an entity that is separately defined in Bylaw 3.51 l.

After due consideration of both its prior opinions and of the past and present wording of the Synod's Constitution and Bylaws, this Commission is of the opinion that its 1992 ruling is the correct one. First, that ruling is grounded primarily in the Constitution, rather than the Bylaws. Second, one bylaw that might have been seen to undermine that opinion has been changed and would no longer have that effect. Third, the 1992 opinion has stood the test of time in that four synodical conventions have been held since it was issued, and it has not been overruled. Fourth, this interpretation resolves the conundrum created by

the 1998 opinion where the District President would exercise ecclesiastical supervision over the synodical President, who would in turn exercise ecclesiastical supervision over that same District President.

This interpretation also answers the concern expressed in the Commission's 1998 opinion that the synodical President might be harassed and hampered in carrying out his duties by constant scrutiny of his actions through complaints made to the Missouri District President. This interpretation does not make the synodical President a law unto himself, exempt from accountability for his actions. According to the 1992 opinion, there is a mechanism for the Synod in convention to exercise authority over the synodical President.

There are other bylaws that are implicated by the question of ecclesiastical authority, including the dispute resolution provisions of Chapter VIII of the Bylaws. That chapter is clearly intended to apply to all members of the Synod. The provisions of the Constitution and Bylaws interpreted in this opinion are far from clear and definitive on the issue presented. This commission respectfully recommends that the Synod's Commission on Structure give consideration to this issue to attempt to bring greater clarity to the intention of the Constitution and Bylaws.

Adopted Dec. 9, 2001

The Binding Nature of CCM Opinions (01-2241)

In a memorandum dated December 6, 2001, the President of the Synod indicated that he is aware that the Commission has been "asked to render an opinion regarding the question of the accountability of the President of the Synod and whether or not he is under the ecclesiastical supervision of the President of the Missouri District, specifically in light of the apparent conflict on this matter between two previous CCM opinions, that of 1992 and that of 1998." In connection with this matter, he asked a series of related questions.

Question 1: Bylaw 3.905 d states, in part: "An opinion rendered by the commission shall be binding on the question decided unless and until it is overruled by synodical convention." Has the 1992 opinion of the CCM been in fact overruled by a synodical convention? If so, at which convention and in which resolution did this occur? If not, then on what constitutional basis would the 1998 opinion of the CCM become more authoritative than the 1992 opinion, which preceded the 1998 opinion and is, therefore, still "binding on the question decided"?

Opinion: As noted in the Commission's preceding opinion 01-2240, 1992 opinion Ag. 1915 was not overruled by any of the conventions that followed. The Commission also recognized that the 1992 opinion and a portion of 1998 opinion 98-2122 are in conflict. It concluded that the 1992 opinion "is the correct one" for reasons given and, therefore, to be regarded as authoritative.

CCM records indicate numerous cases in which the Commission has agreed to reconsider its opinions. On rare occasion it has also withdrawn or changed an opinion on the basis of further study and consideration of the question presented.

Question 2: If the CCM renders an opinion that, in fact, the 1992 opinion of the CCM is still "binding on the questions decided," what then happens to a synodical member's official charges under Bylaw 2.27 that have been filed against the synodical President with the Missouri District President?

Opinion: The Commission has rendered the opinion (01-2240) that the 1992 opinion of the CCM "is the correct one" and, therefore, binding on the questions decided. According to the 1992 opinion, "[i]t would

seem that the only recourse [for a synodical member's charges] is an appeal to the convention of the Synod 'when personal admonition fails to have the President of the Synod carry out the responsibilities of his office as defined by the *Handbook*'" (Ag. 1915).

Question 3: Since both the Constitution and the Bylaws clearly state that the President of the Synod has supervision of all District Presidents and of all officers of the Synod, including the Vice-Presidents, under what constitutional authority would either a District President or the synodical Vice-Presidents be charged with the responsibility of determining the continuation of the roster status of the President of the Synod under Bylaw 2.27?

Opinion: The Commission in its preceding opinion (01-2240), by deciding that 1992 opinion Ag. 1915 "is the correct one," has ruled, based upon the Constitution (Art. XI A 2), that only the Synod in convention has the right to call the President of the Synod to account and to determine the continuation of his roster status. There is no constitutional authority that gives a District President or synodical Vice-President such responsibility.

Adopted Dec. 9, 2001

Questions re Responsibilities of Vice-Presidents in Bylaw 2.27 Process (01-2242)

In a December 14, 2001 memo, the President of the Synod reviewed *Handbook* references pertaining to the ecclesiastical supervision of District Presidents and asked specific questions relative to charges filed by a complainant against a District President.

Question 1: Since the President of the Synod is the ecclesiastical supervisor of all District Presidents, in the event the President of the Synod "*declines to suspend the member or fails to act within 90 days after receipt of the written complaint...*" (Bylaw 2.27 b), are the charges against the District President thus concluded?

Response: (The Commission notes an apparent error in the Bylaws as printed in the 1998 edition of the *Handbook*. The last sentence of Bylaw 2.27 g states as follows: "If disqualified for the reasons set forth in section b (emphasis added), the next qualified officer of the Synod shall function in the place of the President." It is apparent that the reference should be to section a 1 and the Commission proceeds on that presumption in this opinion.).

The answer to the question is "no." Bylaw 2.27 g states that the President of the Synod shall proceed in the same fashion as a District President if he receives a complaint relative to a District President. Bylaw 2.27 b provides that if a District President declines to suspend the accused member or fails to act within 90 days after receipt of a written complaint, the complainant may present the written complaint to the Praesidium. Thus, since a complainant can appeal to the Praesidium the non-action or negative decision of a District President under Bylaw 2.27 b, a complainant can likewise appeal to the Praesidium the non-action or negative decision of the President of the Synod under Bylaw 2.27 g.

Question 2: If your answer to question #1 is "No," I would assume your understanding would be that the charges against the District President may then be submitted by the complainant to the Praesidium of the Synod, who would consider these charges without the participation of the President of the Synod (Bylaw 2.27 g). If that understanding is accurate, my next question is this: Since both the Constitution and Bylaws clearly state that the President of the Synod has ecclesiastical supervision of all District Presidents and of all officers of the Synod, including the Vice-Presidents, under what constitutional authority would the Synodical-

Vice Presidents be charged with the responsibility of determining the continuation of the roster status of a District President under Bylaw 2.27?

Response: The President of the Synod has ecclesiastical supervision of District Presidents by reason of Article XI B of the Constitution. However, ecclesiastical supervision does not include the responsibility of determining the continuation of the roster status of a District President. That matter is covered by Article XIII 2 which provides: "Expulsion shall be executed only after following such procedure as shall be set forth in the Bylaws of the Synod. Bylaws 2.27 and 8.09 establish the steps to be followed to expel a member from the Synod. Under these Bylaws the President can either decline to seek the expulsion of a District President as a member of the Synod, or pursue such expulsion by following the procedure set forth in Bylaw 2.27 c. If he does pursue such expulsion, the decision to expel is not his but, rather, the decision of the Dispute Resolution Panel (or Appeal Panel, if there is an appeal), which will consider the matter (Bylaw 8.09).

If the President of the Synod declines to seek the expulsion of a District President as a member of the Synod, the complainant has the option to appeal such declination to the Praesidium of the Synod (Bylaw 2.27 b). Should the Praesidium decide to pursue the expulsion from the Synod of the District President, it must follow the same procedure in Bylaw 2.27 c as the President would have had to do should he have decided to pursue the expulsion. As in the case of the President, the decision to expel is not that of the Praesidium but, rather, the decision of the Dispute Resolution Panel or Appeal Panel.

Therefore, the synodical Vice-Presidents in their capacity as members of the Praesidium determine the continuation of the roster status of a District President only in those very limited situations where the Praesidium upholds the decision of the President of the Synod that the alleged actions of the District President are insufficient to expel the District President as a member of the Synod.

Question 3: Article XI B 2 addresses the accountability of District Presidents (as well as other officers, all employees, and individual Districts of the Synod) to the President of the Synod and specifically charges the President with the *"duty to see to it that all the aforementioned act in accordance with the Synod's Constitution."* Under what constitutional authority would this accountability ever be assumed by the Praesidium of the Synod, whether with or without the participation of the President of the Synod?

Response: The Vice-Presidents of the Synod have no constitutional or bylaw "duty to see to it that all the aforementioned act in accordance with the Synod's Constitution." Such duty rests solely with the President of the Synod (Article XI B) except in those situations enumerated in Article XI C.

Adopted Jan. 11, 2002

Questions re Publicity of Dispute Cases (01-2243)

A pastor of the Synod in a December 3, 2001 letter noted that Bylaw 8.21 e states that "while a matter in dispute is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the parties involved." He asked a series of questions, stating his intent "not that some new canon laws might be used over against others but rather that all members of Synod may deal with one another in a decent, fraternal and orderly way, especially when certain issues become hotly contested."

Question 1: Is Bylaw 8.21 e to be interpreted that any party involved in a dispute or any synodical official involved in handling the dispute may not use the public press or other means to advocate a position in a dispute resolution case?

Response: Bylaw 8.21 e states: "While a matter in dispute is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the parties involved." The term "any of the parties involved" includes the following if the matter is initially commenced under Bylaw 2.27:

- The party who brings the matter to the attention of the President of the Synod (Bylaw 2.27 g) or a District President (Bylaw 2.27 a) or the Praesidium of the Synod (Bylaw 2.27 b)
- Any party to whom the matter is presented and who is required to thoroughly investigate whether the allegations can be substantiated. Such party would be, unless disqualified, the President of the Synod or a District President or the Praesidium of the Synod, as the case may be
- The respondent (Bylaw 8.03)
- The Secretary of the Synod who forms a Dispute Resolution Panel
- Members of the Dispute Resolution Panel
- Members of the Appeal Panel
- Members of the Review Panel

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

Question 2: Since the process described in Bylaw 2.27 f may include a formal presentation of the complaint to the Dispute Resolution Panel, does Bylaw 8.21 e also apply to all parties and synodical officials when a complaint is filed according to Bylaw 2.27?

Response: When a complaint is filed according to Bylaw 2.27, the matter is "in dispute" and therefore Bylaw 8.21 e is applicable. Whether any "synodical officials" are "any of the parties involved" depends upon what position a synodical official has to the matter in dispute. If all of the parties involved in the matter adhere to Bylaw 8.21 e, there should be no public knowledge that the matter is in dispute.

Question 3: Does the Constitution or its Bylaws describe explicitly or implicitly any consequences for failing to abide by Bylaw 8.21 e?

Response: There is no specific provision in the Constitution or Bylaws that deals with a failure to abide by Bylaw 8.21 e. However, individual membership in the Synod is obtained by the procedures set forth in Bylaw 2.07 c, which is authorized by Article VI 7 of the Constitution of the Synod. In addition, Bylaw 1.05 d provides that individual members commit themselves as members of the Synod to act in accordance with the synodical Constitution and Bylaws under which they have agreed to live and work together.

Article XIII of the Constitution provides that members who persist in an offensive conduct shall, after previous futile admonition, be expelled from the Synod by following such procedures as set forth in the Bylaws of the Synod. Whether a violation of Bylaw 8.21 e is a violation of Article XIII depends upon the facts of a given situation.

Question 4: If a synodical employee who has the responsibility for official communications—through (a) the Synod's official printed media (e.g. *The Lutheran Witness*, the *Reporter*), (b) the public press, or (c) an electronic medium such as e-mail—publicizes the issues of a matter in dispute which is still undecided or while an appeal is being contemplated (either by his own volition or at the behest of a superior synodical officer or board), shall that synodical employee be held accountable for such action?

Response: The director of the Synod's news and information services is appointed by and responsible to the Board for Communication Services (Bylaw 12.03). The Board for Communication Services has the responsibility for the official periodicals of the Synod (Bylaws 3.813 c and 12.01 c). Staff (which includes such director) is responsible to the Synod through its board, which shall exercise supervision in accordance with the Constitution and Bylaws, resolutions of the convention, and the decisions of the respective board or commission (Bylaw 1.07 e). Therefore, an employee of the Synod is accountable for his/her actions to the board or commission he/she serves.

Adopted Jan. 11, 2002

Questions re Implementation of Matthew 18 in Bylaw 2.27 (01-2244)

In a November 19, 2001 letter, a pastor of the Synod asked a series of questions regarding the implementation of Matthew 18 in the dispute process and other related matters. The Commission responded as follows.

Question 1: Should the Commission on Constitutional Matters render rulings on how Matthew 18 is to be implemented?

Response: Bylaw 2.27 a 2 directs a District President to follow the guidelines of Matthew 18: 15-16. Bylaw 6.47 a requires a Board of Regents to direct the complainant to first meet face to face with the respondent in an attempt to resolve the issue (Matt. 18:15) and have the president of the educational institution assist in the attempt. Bylaw 6.47 d provides that if a Board of Regents determines that all informal reconciliation efforts have failed, the Board of Regents shall form a Review Committee of five persons (Matt. 18:16). Bylaw 8.05 indicates that before any matter is submitted to the formal reconciliation process, the parties involved in a dispute must meet together, face to face, in a good-faith attempt to settle their dispute (Matt. 18:15). Bylaw 8.07 c states that if the reconciler determines that informal reconciliation efforts have been inadequate, the reconciler shall direct the parties to engage in further informal reconciliation efforts.

Bylaw 3.905 d directs the Commission on Constitutional Matters to interpret the Synod's Constitution, Bylaws and resolutions upon the request of an appropriate party. The Commission on Constitutional Matters is not a fact-finding body. Thus, if the question on how Matthew 18 is to be implemented involves an interpretation of the Constitution, Bylaws or resolutions of the Synod, the Commission on Constitutional Matters will render an opinion. However, if the question involves a factual or theological determination, the Commission has no authority to render an opinion.

Question 2: If, on the one hand, questions about the implementation of Matthew 18 are of a theological nature and outside the purview of the Commission on Constitutional Matters, what entity within Synod would be called upon to make a definitive interpretation in cases which required clarification?

Response: Bylaw 8.21 i provides that if any part of a dispute involves a specific question of doctrine or doctrinal application, each party shall have the right to an opinion from the Commission on Theology and Church Relations.

Question 3: Would the Commission on Constitutional Matters be willing to consider the possibility that Matthew 18 does not necessarily mean that all complainants must have a face-to-face encounter with the offender?

Response: See the responses to questions 1 and 2 above.

Question 4: Bylaw 2.27 a 2 references Matthew 18:15-16, while the Preamble to Bylaw VIII references Matthew 18:15-20 and Bylaw 8.07 e references Matthew 18:16. Is Matthew 18 in fact treated consistently throughout the Bylaws?

Response: Yes. References to specific verses of Matthew 18 relate to the bylaw where the reference is found.

Question 5: A series of questions are then set forth as follows:

- Do Synod's Bylaws distinguish between offenses which are the result of immorality and offenses which are the result of false teaching?
- Do Synod's Bylaws make a distinction between temporal disputes which occur among members and offenses against God's eternal Word?
- If a complaint is filed against a member of Synod who maintains that Jesus Christ didn't really rise from the dead, would this be treated as a disagreement among members of Synod who just have different opinions on the matter or is it treated as an offense against the clear Word of God requiring formal discipline?
- Does an offense against the clear Word of God need "dispute resolution" or does it need to be handled in a different manner?
- What entity would determine whether a matter is merely the difference of theological opinion between contentious parties or is an offense against the clear Word of God?
- If a complaint is filed against a member of Synod who openly espouses the ordination of women, is that likely to be treated as a matter of dispute which needs to be resolved or rather as a matter of error which needs to be disciplined?
- Do Synod's Bylaws 2.27 or 8.01 address a situation in which one member of Synod may formally point out the *de facto* doctrinal dissension of another member who either has or has not followed the procedure listed in Bylaw 2.39? If so, would this be treated as a matter for dispute resolution—or rather for possible expulsion from Synod through some other entity?
- Is the Commission on Constitutional Matters able to give a ruling as to a reasonable length of time after the stipulations of Bylaw 2.39 have been followed to bring closure to the matter—or may a member of Synod maintain his dissent indefinitely as long as he has followed the procedures stated in Bylaw 2.39?

Response: These questions are so broad that a specific response thereto would require a lengthy discourse which would be confusing by reason of the fact that the questions themselves are confusing. Since a definite conclusion cannot be given, the Commission declines to respond thereto in view of the bylaw

provision that its opinions are binding on the question decided unless and until it is overruled by a synodical convention.

Adopted Jan. 11, 2002

**Questions re Duties of District Presidents related to
Bylaw 2.27 and Dispute Resolution (01-2239)**

In a October 5, 2001 letter, a pastor of the Synod reminded the Commission of its responsibility to “interpret the Synod’s Constitution, Bylaws, and resolutions upon written request of a member” (Bylaws 3.905 d) and requested an interpretation of the duties of a District President relative to dispute resolution and a ruling regarding the actions of the President of the Michigan District.

Questions: [Please provide] an interpretation of the duties of a District President related to his responsibilities in Bylaw 2.27, and also related to the purposes and objectives and procedures of the synodical dispute resolution process. [Please also provide a ruling] based on the misapplication, refusal to act, or disobedience of the requirements of Michigan District President C. William Hoesman related to Bylaw 2.27.

Response: You are correct that it is the responsibility of the Commission on Constitutional Matters to interpret the Synod’s Constitution, Bylaws, and resolutions. It is not the responsibility of the Commission to make application of these documents to individual cases since it does not have all the facts to make such determinations. The Commission will therefore limit its comments to your first request for an interpretation of the duties of a District President as provided by Bylaw 2.27.

The Constitution and Bylaws of the Synod provide two avenues of action when disputes arise between members of the Synod. One avenue is the dispute resolution process provided in Chapter VIII of the Bylaws, which “is applicable whether the dispute involves only a difference of opinion without personal animosity or is one which involves ill will and sin which requires repentance and forgiveness” (Bylaw 8.01). The second avenue is the termination of membership process provided by Bylaw 2.27, which applies when a written complaint is made against a member of the Synod regarding “facts which could lead to the expulsion of a member from the Synod under Article XIII of the Constitution” (Bylaw 2.27 a).

Parties with concerns regarding other members of the Synod should decide early on which avenue they wish or need to take. If the goal is “to resolve, in a God-pleasing manner, disputes that involve as parties, members of the Synod, the Synod itself, a District or an organization owned and controlled by the Synod, persons involved in excommunication or 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,” the dispute resolution process provided by Chapter VIII of the Bylaws “shall be the exclusive remedy to resolve such disputes” (Bylaw 8.01). In such case, efforts must be made to resolve the matter informally before the formal process begins (Bylaw 8.05). If such informal efforts are unsuccessful, the Secretary of the Synod or of the District (see Bylaw 8.13 b and c) is contacted for the assignment of a reconciler, in which case the process outlined in Chapter VIII is followed to the conclusion of the matter.

If, on the other hand, a concern is of such nature that it could lead to termination of membership in the Synod, then a written complaint should be filed with the appropriate District President, who is required to “investigate whether the allegations can be substantiated” (Bylaw 2.27 a 1) and to make a decision regarding termination of membership (Bylaw 2.27 b). This process requires that the District President “follow the guidelines of Matt. 18:15-16 and may appoint a small committee to assist in reconciliation efforts” (Bylaw 2.27 a 2).

Oftentimes District Presidents become involved in dispute resolution before either of the above avenues are taken, as part of their overall responsibilities to “supervise the doctrine, the life, and the official administration on the part of the ordained or commissioned ministers who are members through his District or are subject to his ecclesiastical supervision” (Bylaw 4.73). In doing so, District Presidents may make use of the trained reconcilers in their Districts.

When either of the formal avenues of dispute resolution are chosen, it is important that the action be clearly taken, either by contacting the District or Synod Secretary for the assignment of a reconciler or by making a formal written complaint to the District President as required by Bylaw 2.27 a. When a written complaint is made to a District President, he has 90 days to act. If he “fails to act” or if he declines to suspend the member, the complainant may present the written complaint to the Praesidium of the Synod (Bylaw 2.27, b).

In large part the questions addressed to the Commission focus on the “fails to act” issue. The Commission on Constitutional Matters has previously interpreted “fails to act” as follows (Ag. 2097):

The CCM interprets “fails to act” to mean that a District President takes no action within 90 days of receiving a complaint. Such inaction would mean no measures were initiated within the 90 day period to ascertain the truth or falsity of the complaint allegations. The same criteria would apply to the First Vice-President or next qualified District officer under Bylaw 2.27, 1. The words “fail to act” clearly prevent a District President from stifling a complaint through the refusal to act, i.e., by literally doing nothing. A complaint which is ignored by a District President for 90 days triggers the “fails to act” language. In that situation, an appeal to the Praesidium is the proper procedure anticipated in the bylaw.

When, however, a District President receives a complaint, he may take a number of actions which toll the “fails to act” language of the bylaw. He may suspend the member. He may decline to suspend the member. In each case he has acted. The District President may elect to investigate personally or intervene through the efforts of his representatives. He may meet with the complainant or with the person against whom the complaint is lodged. He may appoint a small committee to assist reconciliation efforts. He may take these steps or any other reasonable efforts to get to the heart of the complaint and be deemed to have acted. Such efforts may extend beyond 90 days until a decision concerning suspension is reached. At that time a complainant may appeal if the District President declines to suspend.

If a District President has taken no action or ignored a complaint for the 90 day period stipulated in the bylaw, it is appropriate for the Praesidium to consider an appeal by the complainant under the “fails to act” language of 2.27, b. When a District President takes action within 90 days, the “fails to act” language is tolled while the investigation or reconciliation efforts are pending. An appeal made on a current case in such circumstances should be properly denied by the Praesidium pending its prompt disposition by the District President.

The Bylaws are silent regarding the length of time a District President has to conclude action on a complaint. The clear intent of the bylaw requires expeditious action by a District President when dealing with such a complaint. A District President may not frustrate the purpose of the bylaw by undertaking some action within 90 days and subsequently refusing to act. The actions of a District President upon receiving a complaint must ultimately lead to a decision to suspend or not to suspend. When a District President begins to act within 90 days and subsequently fails to act, a complainant may properly appeal to the Praesidium. The Praesidium shall determine on a factual basis whether the District President commenced and continued to act.

If you continue to believe that the District President in this case failed to act on your complaint within the 90-day required period of time as understood in light of the aforementioned CCM ruling, you may present your written complaint to the Praesidium of the Synod.

The President of the District is not responsible to arrange meetings between the complainant and the respondent. That responsibility rests with the parties involved in the dispute (Bylaw 8.05) and, later in the process, with the reconciler who is chosen (Bylaw 8.07 a, b, c, and d).

Adopted Jan. 11, 2002

Question re Inability of Praesidium to Reach a Decision (02-2246)

The Praesidium of the Synod, in a memo dated January 11, 2002, described its inability after four separate ballots to determine the eligibility of the President to act in response to a complaint against a District President and asked the following question:

Question: “Does a deadlocked Praesidium on the question of the eligibility of the Synodical President to act in a case of formal charges against a District President mean that the Synodical President is or is not disqualified from acting in this case?”

Response: Such a deadlock has neither effect. The bylaw in question, 2.27 a 1, which applies in the instant case because of a challenge to the synodical President’s authority to take action pursuant to Bylaw 2.27 g, requires that the Praesidium reach a definitive conclusion. The bylaw does not allow for a deadlock. The matter at issue in all such cases, the ability of the President to act impartially in investigating a disputed case, is far too important to allow it to be decided by default, deadlock, the vicissitudes of parliamentary procedure, or the manner in which a motion is worded. In the case of such a deadlock, given the importance of the issue, the Praesidium must find a way to reach a definitive conclusion.

The Commission further observes that the Synod depends upon the Praesidium to resolve such weighty issues. It notes that the members of the Praesidium are all learned men, elected to important and solemn office in the Synod because the delegates to the Synod’s convention who elected them felt that they had the ability to deal with difficult and weighty matters. The Commission therefore encourages the members of the Praesidium to continue to deliberate upon this important matter in order to arrive at a churchman-like and God-pleasing decision.

Adopted Jan. 11, 2002

Questions re Relationship of Chapter II and Chapter VIII of Bylaws (02-2247)

A District President in a letter dated January 9, 2002, submitted a series of questions regarding the role of a District President in addressing complaints.

Question 1: “If a complaint is made under Bylaw 2.27 that is personal and relational in nature (such as alleged slander) wherein the ultimate goal should be reconciliation between the parties who are members of Synod, can a District President direct a complainant to use Bylaw Chapter VIII as a more appropriate means of dealing with the matter? If so, must the complainant use Chapter VIII if he wishes to pursue the matter?”

Opinion: The criteria for use of the procedure set forth in Bylaw 2.27 is whether the facts which are the basis of the complaint could lead to the expulsion of the member from the Synod. Article XIII 1 of the Constitution states: “Members who act contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI or persist in an offensive conduct shall, after previous futile admonition, be expelled from the Synod.” Thus, the District President must decide whether the facts of the complaint are such that, if true, are a violation of Article XIII 1. If they are, a proceeding under Bylaw 2.27 is appropriate. However, if they are not, the matter must be commenced under the procedure set forth in Chapter VIII of the Bylaws.

If a District President concludes that the matter does not qualify to proceed under Bylaw 2.27, he declines to suspend the member. The complainant may then (a) appeal such refusal to the Praesidium under the provisions of Bylaw 2.27 b; (b) pursue the matter under the procedure set forth in Chapter VIII of the Bylaws; or (c) take no further action.

Question 2: “Can Bylaw Chapter VIII be used by a District President as a means of accomplishing Bylaw 2.27 a 1 and 2? If a District President so decides, must the complainant follow Chapter VIII if he wishes to pursue the matter?”

Opinion: This question was answered in the opinion to Question 1 above. It should be noted, however, that the procedure under Chapter VIII of the Bylaws begins with a requirement (Bylaw 8.05) that the parties involved in the dispute must meet together face to face in a good-faith attempt to settle their dispute (Matthew 18:15). In the same manner, Bylaw 2.27 a 2 requires that the District President follow the guidelines of Matthew 18:15-16 and may appoint a small committee to assist in reconciliation efforts. Thus reconciliation is the stated goal of procedures under Bylaw 2.27 as well as Chapter VIII of the Bylaws. Further, a District President who follows the mandates of Bylaw 2.27 a 2 is acting and thus does “act after receipt of the written complaint” (Bylaw 2.27 b).

Question 3: “Can a District President purposefully, for the good of the church, decide to not “act” (Bylaw 2.27 b) on a complaint with the intention that, if the complainant wishes, the complaint be forwarded to the Praesidium of Synod? If so, can a District President, prior to the 90 day deadline (Bylaw 2.27 b), notify the complainant and/or the Praesidium of Synod to expedite the matter?”

Opinion: A District President can “fail to act” for any reason he deems appropriate. The Bylaws are silent on the issue. In a previous decision (Ag. 2097) dated May 22, 1998, the Commission stated the following regarding the term “fails to act”:

The CCM interprets “fails to act” to mean that a District President takes no action within 90 days of receiving a complaint. Such inaction would mean no measures were initiated within the 90 day period to ascertain the truth or falsity of the complaint allegations. The same criteria would apply to the First Vice-President, or next qualified District officer under Bylaw 2.27 a 1. The words “fails to act” clearly prevent a District President from stifling a complaint through the refusal to act, i.e., by literally doing nothing. A complaint which is ignored by a District President for 90 days triggers the “fail to act” language. In that situation, an appeal to the Praesidium is the proper procedure anticipated in the bylaw.

The Bylaws do not provide for a waiver of the 90 day passage before the complainant may present the written complaint to the Praesidium. Further, a District President has no authority to notify the Praesidium that he will fail to act on a written complaint he has received. The complainant alone is the party who must make the decision as to whether or not he will appeal to the Praesidium the decision of the District

President to decline to suspend the respondent or the failure of the District President to act within 90 days after receipt of the written complaint.

Adopted Feb. 22, 2002

Proposed Amendment to the Bylaws of the LCMS Foundation (02-2248)

Legal Counsel for The Lutheran Church—Missouri Synod Foundation, in a letter dated January 15, 2002, requested that amendments to the Foundation’s Bylaws, approved by the Board of Directors of the Synod at its November 14-16, 2001 meeting, be approved by the Commission.

Synod Bylaw 3.603 b requires that the Board of Trustees of the LCMS Foundation consist of:

- Two members elected by the Synod in convention, one ordained minister and one layperson
- The chairman of the Board for District and Congregational Services or his representative from that board
- At least seven members appointed by the members, as provided in the Bylaws of the Foundation
- The Chief Financial Officer of the Synod as a nonvoting member
- The President of the Synod or his representative

The Commission notes that the amendment to Article II, Section 1 of the Foundation’s Bylaws meets the requirements of Synod Bylaw 3.603 b, including the requirement that seven members of the Board of Trustees be appointed by the Members of the Foundation as provided in the Bylaws of the Foundation. The Bylaws of the Synod do not restrict the method of selection or the composition of the seven Trustees appointed by the Members of the Foundation pursuant to its own Bylaws, so long as there are at least seven, and leaves to the wisdom of the Members of the Foundation the method of selection of those trustees.

The Foundation’s amended Article II, Section 1 requires that four of these seven members of the Board of Trustees be elected by the At Large Members of the Foundation (identified by Foundation Bylaw Article I, Section 1 as five individuals appointed by the Board of Directors of the Synod) and that the remaining three Trustees be elected by all the Members of the Foundation (the At Large Members as well as one representative from each District, college, university, seminary, or other agency or auxiliary of The Lutheran Church—Missouri Synod that has entered into a formal partnership with the LCMS Foundation as defined under policies of the corporation’s Board of Trustees). It is noted that the Synod’s Bylaw 3.603 b does not specify how these appointments should be accomplished. The amended Foundation bylaw calls for the “election” of those trustees as the method of “appointing” them. Since the Bylaws of the Synod do not restrict the manner of appointment, the Commission sees nothing that would prohibit the appointment through an election process as outlined in the amended Foundation bylaw. The amendment to Article II, Section 1 is therefore approved.

Article II, Section 3 of the Foundation’s Bylaws governing the filling of vacancies has also been amended. The amended bylaw requires that any vacancy in a trusteeship be filled by that entity that originally filled the position. This is in accord with Synod Bylaw 3.63 and with prior Opinion 99-2143 of the Commission. The amendment to Article II, Section 3 of the Bylaws is therefore also approved.

Adopted Feb. 22, 2002

Questions re Academic Freedom for Non-Member LCMS Faculty (02-2249)

In a letter dated January 15, 2002, a pastor referred to the Commission's previous Opinion 99-2142 and asked its application to a professor at a synodical school who is not a commissioned minister of the Synod but is a member of an LCMS congregation.

Question 1: "Page 320 of the 2002 *Workbook* of the Synod contains your response to 'Question regarding Academic Freedom (99-2142).' You there write, 'In the case of both categories of persons, doctrinal resolutions and statements are to be honored and upheld until such times as the Synod amends or repeals them' (Bylaw 1.09 b). If there is disagreement, 'Dissent from doctrinal resolutions and statements shall be governed by Bylaw 2.39 c' (Bylaw 1.09 d). In the meanwhile, dissenters are to 'continue to honor and uphold publicly...the position of the Synod, notwithstanding further study and action by the Synod' (Bylaw 1.09 c 10) or face removal from office (Bylaw 6.43 c 6). Does this apply to a professor at a synodical school who is a member of a Missouri Synod congregation but not a commissioned minister of the Synod? Specifically, is such a person governed by Bylaw 2.39 c? The above quotation certainly seems to indicate that such a person is."

Opinion: Bylaw 6.23 c requires that when laypersons are employed in full-time teaching positions, they pledge to perform their duties in harmony with the Holy Scriptures as the inspired Word of God, the Lutheran Confessions, the Synod's doctrinal statements, and the policies of the Synod. Further, in speaking of doctrinal resolutions, Bylaw 1.09 b states that doctrinal resolutions are to be honored and upheld until such time as the Synod amends or repeals them.

Bylaw 2.39 applies to members of the Synod, and by definition the professor in question is not a member. Bylaw 2.39 is therefore inapplicable. Any expression of disagreement or dissent from such faculty member with a position of the Synod must not violate such non-member's duty and agreement to perform his or her duties "in harmony with the Holy Scriptures as the inspired Word of God, the Lutheran Confessions, the Synod's doctrinal statements, and the policies of the Synod" (Bylaw 6.23 c), and to perform such duties in a manner that does not violate the requirement to "honor and uphold the doctrinal position of the Synod..." (Bylaw 6.43 c 6).

Question 2: "Is 7.3.3 (sic) of the BHE/CUS Policy Manual revised statement of Academic Freedom," adopted by the BHE/CUS Board on July 9, 1998, but never approved by the Synod, in harmony with Bylaws 1.09 b, 1.09 d, and 2.39 c:

"It is not inappropriate to present information regarding concepts that conflict with synodical doctrinal statements/resolutions. This involves (1.) a fair and accurate description of the synodical position, and (2.) a manner of presentation that encourages constructive insights and enhanced understanding of the issues. Presentation of differing and even disturbing concepts is appropriate within the context of a constructive educational activity."

Opinion: A policy manual adopted by an entity of the Synod sets forth the internal operating procedures of that entity. Such policies have no force beyond the entity. They are subordinate to the Constitution and Bylaws of the Synod. They are not approved by the Synod but only by the entity that adopted the policies. Bylaw 3.905 sets forth the functions of the Commission on Constitutional Matters (CCM). Included in those functions is the duty to interpret the Synod's Constitution, Bylaws, and resolutions. The CCM does not have the authority to interpret policies that are adopted from time to time by the entities of the Synod. Accordingly, the Commission cannot respond to Question #2.

Adopted Feb. 22, 2002

Sundry Questions re the Bylaw 2.27 Process (02-2250)

In a January 22, 2002 letter, a pastor of the Synod submitted a series of questions and concerns to the Commission regarding the Bylaw 2.27 procedure for investigating complaints brought against a member of the Synod.

Question 1: “In looking through the Bylaws of the Synod (Bylaw 2.27 specifically), it speaks of the fact that the complainant, if the District President declines to suspend, can appeal to the Praesidium. I understand the 90 day rule. But what if the District President investigates and rules against the complainant. Can it be pursued further by the complainant or is the matter over?”

Opinion: This question is answered by the provisions of Bylaw 2.27 b. If the District President declines to suspend the member or fails to act within 90 days after receipt of the written complaint, the complainant may present the written complaint to the Praesidium of the Synod.

Question 2: “Does the process as it is set up in Bylaw 2.27 make the Praesidium the de facto “Supreme Court” of the Synod, if the District President or synodical President or other supervisory entity, after investigating a complaint, rules against the complainant?”

Opinion: Again, Bylaw 2.27 b provides the answer. If after investigation the Praesidium concludes that the facts form a basis for expulsion of the member under Article XIII of the Constitution, the Praesidium shall proceed in the same fashion as hereafter required of the District President. If the Praesidium determines not to proceed, it shall in writing so inform the complainant and the involved member, which shall terminate the matter. Thus, if the Praesidium decides to pursue the matter, the Praesidium is the party that must present the facts to the Dispute Resolution Panel that will decide whether the member is to be expelled from the Synod. On the other hand, if the Praesidium decides not to pursue the matter, such decision is final and there is no further appeal of that decision.

Question 3: “What happens to the accused in all this? If the complainant can bring the charges farther up the ladder, does this not place the accused in a case of double jeopardy?”

Opinion: Double jeopardy involves being tried more than once for the same violation. The procedure of Bylaw 2.27 b is not a trial. It is an investigation. It is a procedure whereby a District President investigates whether the matter should be formally presented to a Dispute Resolution Panel for decision. If the conclusion of the District President is in the negative, the complainant has a right to ask the Praesidium to undertake a similar investigation. Double jeopardy does not attach to investigations. Double jeopardy is applicable to the formal hearing at which the Dispute Resolution Panel reaches a decision as to whether the accused is guilty of the charges and that such guilt is of such a type that it requires expulsion from the Synod. Once a decision is reached, the accused cannot be tried a second time on the same facts.

Adopted Feb. 22, 2002

Questions re Appointment of Interim Directors (01-2237)

The President of the Synod in an October 26, 2001 memorandum requested an opinion relating to Bylaw 3.101 C 4 and the powers and duties of the President of the Synod when interim executive directors or interim chief executive officers are appointed.

Question 1: “When a program board, commission, or governing board of a synodwide corporate entity appoints an interim executive director or chief executive officer, does the slate of candidates for such an interim position require the mutual concurrence between the appointing board and the President of the Synod?”

Opinion: The question uses the term *interim* executive director or chief executive officer. The Bylaws do not use the term *interim* but speak only of the initial appointment of the executive officer (Bylaws 3.69 e and 3.193) and executive director or chief executive officer (3.101 C 4).

Prior to the 1998 convention of the Synod, Bylaw 3.69 e provided that “the executive officer of each entity must also be approved by the President of the Synod.” As recommended by the Blue Ribbon Committee, this bylaw was amended to its present wording: “The slate of candidates for the initial appointment of the executive officer of a board, commission, or synodwide corporate entity shall be selected by the board or commission in consultation and mutual concurrence with the President of the Synod.” In commenting on the proposed change the Blue Ribbon Committee Report to the convention stated: “In practice, the President approves a slate of candidates.” Resolution 8-02B, which approved the amendment, included the same comment: “In practice, the President approves a slate of candidates.”

Bylaw 3.183, which relates to synodwide corporate entities, was likewise amended by Resolution 8-02B. Its former wording, “The election of the chief operating or executive officer shall have the approval of the President of the Synod, in accordance with Bylaw 3.69 e,” was amended to read, “The slate of candidates for the initial appointment of the executive officer of a synodwide corporate entity shall be selected by its governing board in consultation and mutual concurrence with the President of the Synod” (Bylaw 3.193).

Present Bylaw 3.101 C 4 provides that the President of the Synod shall “engage in consultation with each program board, commission, and the governing board of each synodwide corporate entity to reach mutual concurrence on the slate of candidates for the position of executive director or chief executive officer.” This bylaw was also created by Resolution 8-02B and had no counterpart in the previous Bylaws. Both the Blue Ribbon Committee Report and Resolution 8-02B make the very same comment relative to the creation of this bylaw: “In practice, the President now approves a slate of candidates. See Bylaw 3.69 e.”

Thus it is clear that Resolution 8-02B codified that which had become the practice under the previous Bylaws. Therefore, if prior to the 1998 convention of the Synod the President did not approve the slate of candidates for the interim executive officer of a board or commission, the amendments adopted by Resolution 8-02B did not change that practice. This Commission is advised that prior to the 1998 convention the President did not approve the slate of candidates for the interim position of an executive officer. Accordingly, such approval is not required under the present Bylaws. However, as provided in Article XI B 3 of the Constitution, the President has and always shall have the power to advise, admonish, and reprove.

Question 2: “If a program board, commission or governing board of a synodwide corporate entity determines, for any reason, that a vacancy in the position of its permanent executive director or chief executive officer should remain vacant for a significant period of time, does the slate of candidates for such an interim position require the mutual concurrence of the governing board and the President of the Synod?”

Opinion: An interim executive officer is one who provides leadership during the interval necessary to accomplish the established procedure to select a successor permanent executive officer. If the selection process is not conducted in an expeditious manner or is delayed because the governing board determines that other matters require prior resolution, then it is not an interim executive officer that is being appointed but rather an executive officer who is serving for an indeterminate period of time. In such a situation, the individual who is to serve during such indeterminate period of time must be selected from a slate of candidates selected by the board or commission in consultation and mutual concurrence with the President of the Synod. To hold otherwise would be contrary to the intention of the Bylaws that the President of the Synod must approve those individuals from whom a board or commission will choose its permanent executive officer. Therefore, it is a violation of the Bylaws of the Synod for a board, commission, or synodwide corporate entity to select an executive officer to serve for an indeterminate period of time without consultation with and the mutual concurrence of the President of the Synod.

Since the Bylaws lack specific reference to the matter of interim appointments, the Commission refers this matter to the Commission on Structure for its consideration and possible modification of the Bylaws to further address this concern.

Adopted April 15-17, 2002

Requests for Reconsideration of Opinion 01-2243 (02-2251)

In letters dated January 29, January 30, and February 12, 2002, a District President and two pastors formally requested that the Commission reconsider its January 11, 2002 ruling regarding publicity in dispute cases, raising several issues and offering their own rationale and counsel. The Commission has taken into consideration the points made and issues raised by the questioners and upon reconsideration, rules that its opinion 01-2243 stands, for the following reasons:

- (1) Opinion 01-2243 is consistent with other opinions of the Commission since the Synod replaced the pre-1992 adjudication process with the post-1992 dispute resolution process. In its July 8, 1999 response to a series of questions regarding the relationship of Bylaw 2.27 to Chapter VIII of the Bylaws (99-2151), the Commission explained how the two fit together. After Bylaw 2.27 “triggers the procedure,” the process may move to Chapter VIII and Bylaw 8.07, h. “In this case the ‘complainant’ is the member who is contesting the expulsion, and the ‘report of the reconciler’ is the District President’s ‘statement of the matter in dispute.’” The Commission concluded: “Therefore, in response to the question, Bylaw 2.27 and Chapter VIII of the Bylaws do not operate independently of and without regard for each other.” Instead, “Bylaw 2.27 ties into Chapter VIII of the Bylaws at Bylaw 8.07, h. Bylaw 8.07, a-g, are not utilized in a Bylaw 2.27 action.” Therefore, the remaining paragraphs governing the Chapter VIII process apply also to disputes originating with Bylaw 2.27, including Bylaw 8.21 and paragraph e.
- (2) Opinion 01-2243 recognizes a relationship between the two pertinent sections of the Bylaws that has long existed in the *Handbook* of the Synod. Over the years as the *Handbook* was revised, including revisions to processes for addressing disputes of all kinds, the requirement regarding publicity has not been significantly changed. Portions of the former processes were carried over into new processes, in particular the requirement governing publicity:
 - j. While a case is still undecided or while appeals are contemplated or pending, there shall be no publicity of the case by any party to the proceeding (Bylaw 5.31 j; 1973 *Handbook*, p. 124).

- m. While a case is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the case by any party to the case. A violation by a party may place the party's stand in jeopardy. At the request of either party the status of the process and periodic progress reports on the process may be properly disclosed by the chairman of the commission to parties on a need-to-know basis (Bylaw 8.51 m; 1989 *Handbook*, p 134).
- e. While a matter in dispute is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the parties involved (Bylaw 8.21 e; 2001 *Handbook*, p. 126).

1989 Bylaws 8.31 and 8.35 stipulate the kinds of "situations" to which the adjudication process, including the above bylaw, apply. Included are disputes such as are covered by the current (2001) Chapter VIII Dispute Resolution Process. Also included are "cases involving expulsion under Article XIII of the Constitution," covered by current (2001) Bylaw 2.27, "Commencing an Action to Terminate Congregational or Individual Membership." Both kinds of cases were included under the same process. Requirements regarding publicity applied to both kinds of cases. This is demonstrated by Commission on Constitutional Matters' rulings prior to 1992.

- (3) Opinion 01-2243 is consistent with opinions rendered by the Commission before the Synod replaced the pre-1992 adjudication process with the post-1992 dispute resolution process. Regarding a 1975 case in which charges of false doctrine were made against a church worker, the Commission was asked on two occasions to rule regarding the release of information. In a February 21, 1975 ruling delineating the procedure to be followed when a board of control has sustained a charge of false doctrine, the Commission ruled: "6. Since the Board of Control is obligated under Bylaw 6.79 to forward the accusation to the District President, no publicity should be given the case beyond the simple announcement by the Board of Control of the action taken and of its basis (Bylaw 5.31, j)."

This was followed by an April 11-12, 1975 ruling (Ag. 809, 809 A and D) in response to a series of additional questions from the board of control regarding the same case. Noting that it had forwarded to the District President of the accused the "charge" (Bylaw 6.79) or "accusation" (Bylaw 5.11) along with accompanying documentation, the board of control asked to what extent it remained a "party of the proceeding" (Bylaw 5.31, j). The Commission responded that "the Board of Control has been involved in the proceedings and therefore comes under the phrase 'any party' in the bylaw." When asked whether the limitations on publicity permit the board an opportunity to defend itself or to deal with its accusers in keeping with the provisions of the Eighth Commandment, the Commission ruled that "as of this moment it would not be proper to initiate discussion of those charges...which could lead to expulsion from the Synod." When said board noted that news releases and statements have already placed into the public domain a considerable body of information and asked whether "the public repetition of such information at the present time, perhaps arranged in one report for the sake of convenience, be regarded as objectionable publicity," the Commission ruled that "the circulation of such statements by the Board of Control at this time would be inappropriate under Bylaw 5.13 j." When said board reminded the Commission that it had ruled that the board would be permitted to announce the basis of its action and asked whether the board's statement of its "basis" could include "such matters as a chronological and explanatory account of the procedures followed, the charges, the opinion of the CTCR, and the findings of the Faculty Hearings Committee," the Commission responded that "the Board of Control may list simply the findings of the Board on the basis of which the Board of Control has removed [the accused] from office."

Correspondingly, a like response was given to inquiries regarding publicity in a non-suspension case. In a 1989 dispute case involving a church worker and an agency of the Synod over a decision made by the agency, the Synod's Director of News and Information was refused a copy of an appeal document submitted by one of the parties to the dispute to the entity involved in resolving the case. He indicated that it was his desire and intention to report factually and objectively in the light of reports on the matter which had tended to circulate in the Synod's "grapevine." At the same time, the chairman of the entity involved in resolving the case argued that the release of such information would not only be contrary to the bylaw regarding publicity (Bylaw 8.51 m), but it would also fail to honor Objective III, 9 of the Constitution of the Synod to "provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties." The Commission responded that "a reporting of the naked fact that an appeal had been filed was legitimate. However, any reference to substance, etc., in its opinion, was not appropriate." Therefore, the appeal document was not released as requested.

In summary, the stipulation regarding publicity was carried over from the old process when it was changed in 1992. In the old process, requirements regarding publicity were applied to expulsion cases as well as to other dispute cases. The Commission's Opinion 01-2243 is consistent with prior rulings and practice and therefore stands.

Finally, the Commission has also considered the additional issues raised in the letters it received and offers the following additional comments in response:

- 1) Issue: If a complaint is made against a member of the Synod and the District President concludes that the facts form a basis for the expulsion of the member from the Synod, the District President would have to discuss the matter with leaders of the congregation served by the member and possibly the congregation itself. Would not the President of the District thereby be giving publicity to the matter?

Response: Bylaw 2.25 a states that when a formal proceeding has been commenced against a member of the Synod that may lead to expulsion of the member from the Synod, the member shall have suspended status. Paragraph d of the same bylaw requires the District President to notify the congregation or other agency being served by the member of the Synod of such suspended status. Therefore discussions with the leaders of the congregation or the congregation itself are not publicity. Rather, they are part of the dispute resolution process.

- 2) Issue: A complaint against a member of the Synod may be made by a non-member of the Synod. Such non-member is not bound by the Bylaws of the Synod and thus such non-member is not bound by the prohibition against publicity set forth in Bylaw 8.21 e.

Response: This is correct. This is, however, what the Bylaws provide. If there is a problem it is with the provisions of the Bylaws and not with the opinion issued by the Commission. Non-member complainants should be encouraged to respect the intent and nature of the dispute resolution process that has been established by the Synod and as outlined in the Preamble to Chapter VIII of the Bylaws. The Commission suggests that this matter also be reviewed by the Commission on Structure.

- 3) Issue: The opinion of the Commission "gags" the President of the Synod who, under Article XI of the Constitution of the Synod, "shall have the power to advise, admonish and reprove" (subsection B, paragraph 3). How can he do this if the CCM ruling takes away his free speech?

Response: Article XIII 2 of the Constitution provides: “Expulsion shall be executed only after following such procedure as shall be set forth in the Bylaws of the Synod.” As pointed out in its Opinion 01-2243, the bylaw prohibition against publicity in a proceeding under Bylaw 2.25 f is applicable to the President of the Synod since he is a party involved in the matter. Thus, the prohibition against the President of the Synod giving publicity to a matter in dispute has its genesis in the Bylaws of the Synod and not in the opinion of the Commission.

Properly understood, the opinion of the Commission does not infringe upon the duties of the President that are set forth in the Constitution and Bylaws of the Synod. There is no prohibition against the President communicating with the members of the Synod as to the underlying doctrinal topics that are involved in a disputed matter. The President cannot give publicity to the particular matter in dispute. Some confusion appears to exist as to the Commission’s use of the term “matter in dispute” to which the prohibition of publicity applies. This phrase includes the details of the charges or allegations made, the correspondence and other communication which follow, the status of proceedings or deliberations, the President’s actions pertaining thereto, and his opinion as to who is right or wrong. The duty of the President of the Synod under Article XI B of the Constitution is to supervise the doctrine and administration of officers, employees, Districts, and District Presidents, to see to it that they act in accordance with the Synod’s Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod. This duty, as well as the power to advise, admonish, and reprove, is tempered by the provisions of Article XIII and the bylaws that flow from it.

Adopted April 15-17, 2002

Question re Withdrawal from Dispute Resolution Process (01-2253)

In a letter dated November 5, 2001, a Dispute Resolution Panel, upon completion of a hearing and decision in a case involving the suspension of a pastor who sought to resign from the Synod prior to the opening of the hearing in order to avoid the hearing process, asked the Secretary of the Synod on its behalf to ask the Commission to respond to the following question:

Question: “Can a member of Synod withdraw from the dispute resolution process prior to the commencement of the actual hearing but after the hearing has been requested?”

Opinion: Bylaw 2.27 and Chapter VIII of the Bylaws are the exclusive process provided by the Synod for addressing termination of membership. Once the process has been initiated, the Synod and its members are bound to follow the procedure that has been provided. “No person, entity or agency to whom or to which the provisions of this chapter are applicable because such person, entity or agency is a member of the Synod may render the provisions of this chapter inapplicable by terminating that membership” (Bylaw 8.01).

As part of that process, a member whose expulsion has been requested according to Bylaw 2.27 c is given 15 days to decide whether to have the matter heard by a Dispute Resolution Panel or whether not to contest such expulsion and thereby consent to termination of membership (Bylaw 2.27 c 2 c). Once the choice is made to continue the process by requesting a hearing before a panel, the Synod is duty-bound to finish its process. Should the member of the Synod decide to withdraw from the dispute resolution process at any time after the decision to request a hearing has been made, the process must none-the-less be continued to its conclusion.

Adopted April 15-17, 2002

Function of the Commission's GUIDELINES for Constitutions and Bylaws (02-2256)

A pastor of a congregation working on its Constitution and Bylaws in a February 13, 2002 letter asked several questions regarding the Commission's "GUIDELINES for the Constitution and Bylaws of a Lutheran Congregation." He noted that these guidelines are used and interpreted differently across the Synod.

Question 1: "We would like your committee to issue an opinion as to the function of the guidelines in producing a constitution and by-laws. Is it their intent to be guidelines or is the essence of the material to be used verbatim?"

Opinion: The Commission calls attention to its comments in the Preface of said guidelines. Noting the desirability of uniformity and also the wide divergences that exist among the congregations of the Synod, the Commission states that what is included in its document "should be regarded as guidelines." Noting that Bylaw 2.03 requires that all constitutions and bylaws, including changes to existing constitutions and bylaws, be submitted to a District standing constitution committee for examination and to the District's Board of Directors for approval, the Commission states that such committees, "in evaluating constitutions and bylaws that are submitted, will judge them in light of the principles contained in this document." The Commission also describes its approach to the guidelines by explaining that "the following are subjects that should ordinarily be addressed" by a congregation. It is therefore not the Commission's intention that the material must be used verbatim.

Question 2: "Our mother church has in '3.0 Confessional Standard' that the God's Word (sic) is 'without error' in addition to the usual verbiage. That wording, we feel from looking at our Synodical position, is not going beyond either the Scriptures or the Synod's position. It is without question the position of the Brief Statement. Would such a modification be permissible in light of the guidelines?"

Opinion: According to Bylaw 2.03, decisions regarding such matters are the responsibility of District standing constitution committees, for which decisions such committees may wish to obtain guidance from the Commission on Theology and Church Relations.

Question 3: "We also notice in the Membership area the statement on communicant membership is quite open. Churches I have been to in the past have defined this area to include regular use of Word and Sacrament....Does this kind of concept exceed the position of the church or are we able, through this document, to stand very specifically for a position which we feel gives direction to our people?"

Opinion: The Commission reiterates that decisions of this nature are the responsibility of District standing constitution committees. It is the stated responsibility of these committees not to needlessly restrict congregations but to "examine the constitution and bylaws to ascertain that they are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod" (Bylaw 2.03 a).

Question 4: "How the guidelines are to be used is not seen uniformly across our Synod. Is this document, as would be implied from the title, "guidelines" in which we find our unity or are they to be understood in a more rigid fashion where divergence from their position would leave a church outside our fellowship?"

Opinion: As already stated, the Commission intends that its document serve to provide guidelines to the congregations of the Synod, recognizing the desirability of uniformity as well as the wide divergences that exist among congregations. While the guidelines may also serve to promote unity in the Synod, such unity is grounded in “common confession and mission” (Bylaw 1.01) according to the requirements of membership established by the congregations (Article VI; Bylaw 1.05 d).

Adopted April 15-17, 2002

Questions re Duties of the President and Board of Directors, Dispute Process (02-2257)

In a letter dated February 13, 2002, a pastor of the Synod, emphasizing their urgency, “put seven questions to the Commission on Constitutional Matters in view of recent and important developments.”

Question 1: “Constitution XI B sets forth the duties of the President of Synod. Is it legitimate to use a Bylaw (e.g. 2.27 g) to abridge Constitution XI B?”

Opinion: It is never appropriate for a bylaw to abridge any part of the Constitution. The Commission opines that the bylaw in question does not impinge upon Article XI of the Constitution.

Question 2: “Constitution Article XI C 1 states that the Vice-Presidents shall function upon request of the President. Do the Vice-Presidents of Synod have the authority to assume his function without the request of the President?”

Opinion: Article XI C 2 and Bylaw 3.105 provide such provision in the case of disability, deposition from office, or death. Other than under such circumstances, the Vice-Presidents have no authority to assume any function of the President unless specifically provided for by the Constitution and Bylaws of the Synod under certain conditions or situations.

Question 3: “Constitution Article XI A 1 limits the officers of the Synod only to such rights as have been expressly conferred upon them by the Synod. Do the Board of Directors, the Secretary of Synod, or the Vice-Presidents of Synod have the authority to direct the President in his constitutionally mandated responsibilities?”

Opinion: None of the officers mentioned has the authority to direct the President in his constitutionally-mandated responsibilities.

Question 4: “Constitution Article XI F 2 sets forth the duties of the Board of Directors: ‘It shall exercise supervision over all the property and business affairs of the Synod.’ Does this include ‘general oversight responsibilities for the behavior of the Synod’s members toward one another?’”

Opinion: The Board of Directors does not have general oversight responsibility for the behavior of the Synod’s members toward one another.

Question 5: “In light of Bylaw 3.183 d 2, does the Board of Directors have the authority to order the Communications Department, the editor of the REPORTER, all program boards, all officers of Synod, and all staff not to distribute information?”

Opinion: The Commission will respond to this question in its forthcoming opinion 02-2259.

Question 6: “When a complaint is filed under Bylaw 2.27, is it legitimate to invoke the limitation of 8.21 e before the steps mandated in 2.27 have been completed? To do so confuses two intentionally separate procedures.”

Opinion: See Opinion 02-2251.

Question 7: If Matthew 18 has not been followed as Scripture itself requires, and as referenced in Bylaws 2.27 a 2, Preamble to Chapter VIII, and 8.07 e, then must not charges be dropped with prejudice?

Opinion: The Bylaws make no such provision. Such concern should be brought to the District President. However, Matthew 18 is an integral part of the entire dispute resolution procedure, even as reconciliation is the ultimate goal of the entire process. This is clearly stated in the Preamble to Chapter VIII: “The words of Jesus provide the basis for church discipline for the local congregation. The same passage also grants Christ’s guidance for all Christians in seeking to settle other disputes, many of which fall outside the purview of church discipline involving the congregation. In either case, the steps of Matthew 18 should be applied lovingly in both formal and informal settings. The parties and others attempting to effect resolution of a dispute must always remain mindful that the church has been given the ‘ministry of reconciliation’ (2 Cor. 5:18). Hence, conflict resolution in the church is to lead to reconciliation, restoring the erring member in a spirit of gentleness (Gal. 6:1). Its aim is to avoid the adversarial system practiced in society” (Preamble to Chapter VIII, paragraph 3).

Adopted April 15-17, 2002

Question re Propriety of Action of President of the Synod (02-2260)

In a February 20, 2002 e-mail message to the chairman of the Commission, a pastor asks whether the President of the Synod usurped the authority of the Commission by sending out a memo to all congregations of the Synod regarding an event that is currently being addressed by the dispute resolution process.

The Commission does not know the content of the memo referred to and therefore cannot respond to the specific question. The Commission reiterates the final paragraph of its opinion 02-2251 that has already addressed the matter in question:

Properly understood, the opinion of the Commission does not infringe upon the duties of the President that are set forth in the Constitution and Bylaws of the Synod. There is no prohibition against the President communicating with the members of the Synod as to the underlying doctrinal topics that are involved in a disputed matter. The President cannot give publicity to the particular matter in dispute. Some confusion appears to exist as to the Commission’s use of the term “matter in dispute” to which the prohibition of publicity applies. This phrase includes the details of the charges or allegations made, the correspondence and other communication which follow, the status of proceedings or deliberations, his actions pertaining thereto, and his opinion as to who is right or wrong. The duty of the President of the Synod under Article XI B of the Constitution is to supervise the doctrine and administration of officers, employees, Districts, and District Presidents, to see to it that they act in accordance with the Synod’s Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod. This duty, as well as the power to advise, admonish, and reprove, is tempered by the provisions of Article XIII and the bylaws that flow from it.

Adopted April 15-17, 2002

Question re Continued Participation in Dispute Process (02-2261)

In a letter dated February 25, 2002, a pastor of the Synod requests clarification regarding the continued participation of a person who has withdrawn, has been recused or dismissed, or has in any other way discontinued participation in the process governed by Bylaw 2.27 and Chapter VIII of the Bylaws.

Question: “May any member of Synod who has been officially involved in a formal complaint or dispute (as clarified in CCM ruling #01-2243) be free to give publicity to the issues of matters involved in that complaint or dispute before the matter itself has been concluded as specified in Bylaw 8.21 e if that member has withdrawn, been recused, dismissed, or in any other way discontinued his participation in that complaint or dispute?

Opinion: In its April 1975 opinion, Ag. 809, 809 –A and –D, the Commission on Constitutional Matters responded to questions in a then-current dispute case. To one of those questions from a board of control of a seminary which had forwarded to its District President the charges that had been brought against a member of its faculty, “In what way does the Board’s role in the remaining procedures make it a ‘party of the proceeding’ (Bylaw 5.31, j),” the Commission responded: “The Board of Control has been involved in the proceedings and therefore comes under the phrase ‘any party’ in the bylaw.” Consistent with this previous opinion, the Commission therefore rules that any of the parties involved in a dispute, as that term is defined in opinion 01-2243, remains a party involved until final resolution of the dispute, regardless of whether such a party has withdrawn, been recused, dismissed, or in any way discontinued participation in the dispute.

Adopted April 15-17, 2002

Challenge of Secretary’s Decision in Dispute Resolution Process (02-2262)

In a March 22, 2002 letter, the President of the Synod forwarded a concern addressed to him by a pastor of the Synod who is involved in a dispute resolution process, challenging a decision by the Secretary of the Synod as administrator of the process. The matter in question: a decision by the Secretary to allow the process to continue despite the pastor’s contention that a request for a reconsideration of a dispute panel’s decision by the other party in the dispute was not filed in timely fashion. The Commission responds to issues raised by the challenge to the Secretary’s decision. The Secretary of the Synod did not participate in the discussion or decision.

Question 1: Bylaw 8.09 d states: “Within 30 days after receiving the decision of the Dispute Resolution Panel, any party to the dispute...may request a decision regarding a reconsideration. ...Such request for a reconsideration shall be mailed to the Secretary of the Synod, each member of the Dispute Resolution Panel, and the other parties to the dispute, and shall be accompanied by a written memorandum stating the basis for the request.” When does the 30 day period commence?

Opinion: For the complainant and the respondent, the 30 day period commences for each on the day such party to the dispute receives a written copy of the decision of the Dispute Resolution Panel.

Question 2: In what form must a party to the dispute transmit their request for a reconsideration?

Opinion: Such request for a reconsideration must be in writing. The Commission further determines that the term “shall be mailed” includes regular mail, e-mail, or facsimile.

Question 3: Are the 30 day period and other like time limits in Chapter VIII of the Bylaws to be strictly construed, or may some latitude be applied to such time periods under extenuating circumstances?

Opinion: The Preamble to Chapter VIII of the Bylaws is instructive in responding to this question. There it is stated that the purpose of the Synod’s dispute resolution process is to bring about peace, truth, justice, and reconciliation. Such purpose will be better accomplished if there is a reasonable application of the time limitations rather than a strict application that would lead to a termination of the process before it has had an opportunity to be fully utilized. The purpose of the time limitations in Chapter VIII is to move the matter forward rather than allow technicalities to possibly abort the search for truth, justice, and reconciliation. What is “reasonable” is a matter to be determined on a case by case basis by the Secretary of the Synod who has a duty to administer the Synod’s dispute resolution process (Bylaw 3.143 o), provided such time delay does not have a negative impact on the orderly progress of the dispute resolution process.

Question 4: Does Bylaw 8.09 d require that the request for reconsideration of a dispute resolution panel’s decision and the written memorandum actually reach all of the parties involved within the 30 day period or does it require simply that the request for reconsideration be filed within the 30 day period?

Opinion: The answer to this question is “neither.” The bylaw provides that the request for a reconsideration accompanied by the written memorandum is to be mailed (as defined in the opinion to question #2 above) within 30 days after the complainant or respondent receives the decision of the Dispute Resolution Panel.

Question 5: If the request for reconsideration and accompanying memorandum does not reach all of the parties involved within the 30 day period, does it make the request null and void, thereby effectively upholding the Dispute Resolution Panel’s decision?

Opinion: This question has been answered in the previous opinions herein.

Adopted April 15-17, 2002

Questions re Eligibility of Recused Members of Praesidium (02-2263)

A District President in an April 4, 2002 e-mail letter, requested answers to the following questions regarding the eligibility for subsequent participation in a dispute case of recused members of the Praesidium.

Question 1: If a complaint has been made against a District President according to Bylaw 2.27 and the complaint involves requesting his removal from the Synod, may the President of the Synod submit this matter to a vote of the congregations of the Synod according to the Constitution of the Synod, Article XI B 8?”

Opinion: Article XIII 2 of the Constitution of the Synod provides that expulsion of a member from the Synod is to follow the procedure set forth in the Bylaws. Bylaw 2.27 g is the bylaw that establishes the procedure to be followed if the complaint is against a District President and such procedure can be

undertaken at any time. Therefore, since action on such a complaint need not be delayed until the next convention of the Synod, the provisions of Article XI B 8 are not applicable to such a matter.

Further complaints under Bylaw 2.27 g cannot be brought before a convention of the Synod since the Bylaws created under the authorization of Article XIII 2 make no provision for the dispute to be resolved by a convention of the Synod.

Question 2: If a Vice-President of the Synod charged with investigating this case declines to suspend the District President, may the complainants present their request to the Praesidium of the Synod for a decision, according to Bylaw 2.27 b?

Opinion: The answer to this question is “yes.” As provided in Bylaw 2.27 b, “the complainant may present the written complaint to the Praesidium of the Synod, which consists of the President and the Vice-Presidents of the Synod.”

Question 3: In the event that the case is submitted to the Praesidium according to Bylaw 2.27 b, may any member(s) of the Praesidium who have been recused and the member of the Praesidium who was initially charged with the investigation of the case participate in the process which engages the Praesidium in dealing with the case?

Opinion: That member of the Praesidium who has conducted the investigation according to Bylaw 2.27 g (in this case a Vice-President because he is “the next qualified officer”) “shall not participate as a member of the Praesidium” in its responsibilities described in 2.27 a 1 and 2.27 b. Furthermore, any member of the Praesidium who has been disqualified from investigating the case, whether by action of the Praesidium or by personal decision “because he is a party to the matter in dispute, has a conflict of interest, or is unable to act” (Bylaw 2.27 a 1), remains disqualified from further participation in the Praesidium’s remaining responsibilities described in Bylaws 2.27 a 1 and 2.27 b.

Adopted April 15-17, 2002

Questions re Council of Presidents’ Policy re Sexual Misconduct (02-2264)

In an e-mailed letter dated April 10, 2002, a pastor, upon receiving a public letter sent by the President of the Synod, raised questions regarding the sexual misconduct “Zero Tolerance” policy of the Council of Presidents and that policy’s relationship to the dispute resolution process that is provided in the Bylaws of the Synod.

Question 1: “I have grave concerns that this policy might circumvent the dispute resolution policy by automatically reaching a decision without any real defense possible for the one accused. I am especially concerned about this since an investigation, which was also mentioned, will destroy any ministry even if the individual is found innocent. Is this policy in addition to the dispute policy already in place in our by-laws, something not covered by our current by-laws, or is this policy exempt, and thus outside, from the normal dispute resolution policy? The information I have does not mention the possibility of an appeal.”

Opinion: Any policy developed by the Council of Presidents is its internal elaboration of the dispute resolution process prescribed in Chapter VIII of the Bylaws. Such policy cannot circumvent or contradict the Constitution and Bylaws of the Synod.

Question 2: “In the president’s letter he states that ‘the appropriate District President shall, in his discretion, determine whether the kind of sexual contact is “sexual intercourse” within the spirit and purpose of this policy.’ Does this mean that each District will have a different definition of what sexual intercourse means and thus make the zero tolerance policy different in each District? If so, is this difference in what is needed to expel a pastor proper in the LC-MS?”

Opinion: Bylaw 2.27 charges each District President with the responsibility to conduct a thorough investigation when facts which could lead to the expulsion of a member from the Synod under Constitution Article XIII are presented to him or have otherwise become known to him. It is his personal responsibility to investigate whether the allegations can be substantiated and whether the facts form a basis for expulsion. The Commission assumes that one purpose of said policy of the Council of Presidents would be to provide some uniformity as District Presidents carry out this responsibility. However, the responsibility to make these Bylaw 2.27 decisions remains with the President of that member’s District in each case.

Question 3: “Also in the letter it is stated that this policy is contained in a Manuel (sic) that is meant for internal use only by the ecclesiastical supervisors of our Synod. Is it proper in the LC-MS to have policies, especially ones that call for the dismissal of a pastor from the Synod, that are kept secret except for a select few to know?”

Opinion: Policies adopted by an agency of the Synod set forth the internal operating procedures of that agency. Such policies have no force beyond that agency. They are subordinate to the Constitution and Bylaws of the Synod. They are not approved by the Synod but only by the agency that adopts the policies. Bylaw 3.905 sets forth the function of the Commission on Constitutional Matters. Included in those functions is the duty to interpret the Synod’s Constitution, Bylaws, and resolutions. The Commission does not have the authority to interpret policies that are adopted from time to time by the agencies of the Synod.

Adopted April 15-17, 2002

Request for an Opinion re Role of Bylaw 8.05 in Bylaw 2.27 Process (02-2267)

A party to a dispute, in a May 13, 2002 letter, requested an opinion regarding the role of Bylaw 8.05 in a dispute process initiated according to Bylaw 2.27.

Question: “Is it not incumbent upon any party complaining against another party under the Constitution and Bylaws of The Lutheran Church—Missouri Synod, to follow specifically the provision of Bylaw 8.05 before filing any charge?”

Opinion: The Preamble to Chapter VIII of the Bylaws states that the words of Jesus in Matthew 18:15-20 grant guidance to all Christians in seeking to settle disputes and that the steps of Matthew 18 should be applied lovingly in both formal and informal settings. It goes on to say that the parties and others attempting to effect resolution of a dispute must always remain mindful that the church has been given the “ministry of reconciliation” and that conflict resolution in the church is to lead to reconciliation.

Bylaw 8.05 provides as follows: “Before any matter is submitted to the formal reconciliation process, the parties involved in a dispute must meet together, face to face, in a good-faith attempt to settle their dispute (Matt. 18:15).” It should be noted that this bylaw relates to a complaint commenced under Chapter VIII of the Bylaws where there are specific provisions for informal and formal reconciliation efforts before a

matter can be presented to a dispute resolution panel. However, the matter in question was commenced under Bylaw 2.27 that sets forth the following steps:

1. The written complaint is presented to the President.
2. The President thoroughly investigates whether the charges can be substantiated.
3. As part of that investigation and because a dispute has arisen among members of the body of Christ, the President is to follow the guidelines for dispute resolution as set forth in Matthew 18:15-16.
4. As part of that investigation, the President may appoint a small committee to assist him in his efforts to reconcile the parties.
5. The President reaches a decision as to whether or not the charges in the complaint can be substantiated and thus lead to the expulsion of the member from the Synod.

Because the goal of all Christians should first be reconciliation, it is incumbent upon those within the church to always follow Matthew 18.

Thus in those matters commenced under Bylaw 2.27, Matthew 18 is part of the process during the investigative actions of the President, whereas in those matters which would not lead to the expulsion of a member from the Synod and thus commenced under Chapter VIII of the Bylaws, the parties involved in a dispute must meet together, face to face, as set forth in Matthew 18, before a reconciler is appointed to assist in reconciliation efforts. In either procedure, Matthew 18 is central for it is the methodology our Lord and Savior Jesus Christ mandated for brothers to reconcile their differences.

Adopted May 20, 2002

Questions re Board of Directors and Board for Communication Services Relationship (02-2259)

In letters dated February 20 and 28, 2002, the chairman of the Board for Communication Services and a pastor of the Synod questioned the right of the Board of Directors to adopt its February 1, 2002 resolution, "To Bring Publicity to an Immediate Halt." The Commission offers the following responses to the questions submitted.

Question 1: "In light of the limitations placed on the jurisdiction of the Board of Directors to the supervision of property and business affairs of the Synod (Const. Art. XI F 2; cf. Bylaw 1.07 c), has the Board of Directors by its resolution usurped the authority given to the President by the Constitution and Bylaws? Does the assertion of the Board of Directors in this issue vitiate the power of the President to carry out the responsibilities given him by the Constitution (Art. XI B 1, 2, 3 and 4) and Bylaws (Bylaw 3.101), since this issue is ecclesiastical and theological in nature? Does the Board of Directors exceed its jurisdiction and authority to act in light of Art. XI B 1, 2, 3 and 4 when it orders the President of the Synod not to distribute information that he is not otherwise restricted by Bylaw or convention resolution from distributing?"

Opinion: Article XI F defines the constitutional role and duties of the Board of Directors and its authority. Bylaw 1.07 c reaffirms its status as legal representative and custodian of all property of the

Synod and its responsibility for the general management of the business affairs of the Synod. Bylaws 3.183 to 3.189 further elaborate on those issues. The Board of Directors has those “powers and duties which have been accorded to it by the Articles of Incorporation, Constitution, Bylaws, and resolutions of the Synod” (Bylaw 3.183 a) and is required to “provide for the coordination of the policies and directives authorized by the Constitution, Bylaws, and resolutions of the Synod, evaluate plans and policies, and communicate to the appropriate boards and commissions suggestions for improvement” (Bylaw 3.183 b). It is “responsible for the general management of the business and legal affairs of the Synod and is authorized to take on behalf of the Synod any action related to such business and legal affairs which has not been expressly delegated by the Constitution, Bylaws, and resolutions of the Synod to other officers or agencies of the Synod, and as to those it shall have general oversight responsibility” (Bylaw 3.183 c). To the extent of its responsibilities relative to the general management and supervision of the business and legal affairs of the Synod, or as required by Resolution 7-03C of the 2001 convention, such management and supervision includes “the right to call up for review, criticism, modification, or revocation any action or policy of a program board, commission, or council, except opinions of the Commission on Constitutional Matters” (Bylaw 3.183 d 2). The Board is also required to “allocate available funds to the program boards, commissions, councils, and departments of corporate Synod and hold them accountable therefore” (Bylaw 3.183 d).

Article XI B defines the duties of the President and imposes on and grants to him the ecclesiastical supervision of the Synod. These duties and powers are further defined in Bylaw 3.101, including the provision that “the President of the Synod has ecclesiastical supervision of all officers of the Synod and its agencies,...” (Bylaw 3.101A 1) with the power to “call up for review any action by an individual officer, executive, or agency which, in his view, may be in violation of the Constitution, Bylaws, and resolutions of the Synod...” (Bylaw 3.101 B 5).

The Synod in its 2001 convention, by Resolution 7-03C, also charged both the President and the Board of Directors with specific responsibilities:

Resolved, That the President and Board of Directors of the Synod shall see to it that the Constitution and Bylaws of the Synod are observed; and be it further

Resolved, That when a failure to comply with the Constitution and Bylaws is discovered, the President or Board of Directors, whichever is charged with supervision or oversight, shall act to correct such failure to comply as quickly as possible; and be it finally....

The action of the Board of Directors was taken following the issuance of CCM opinion 02-2243, and before the issuance of opinion 02-2251 which clarified the information to which the prohibition of publicity applied. While the Board of Directors may allocate funds to the President and hold him accountable for their use, the Board of Directors may not control his ecclesiastical purposes, including the expenditure of funds for ecclesiastical activities. The Board of Directors cannot, consistent with the Constitution, restrict the ecclesiastical power of the President and his communications in fulfilling that responsibility. The resolution as passed restricts the President in the performance of his ecclesiastical responsibilities. In doing so, the Board of Directors acted outside the scope of its authority in its resolution as directed to the President.

Question 2: “Does the Board of Directors likewise exceed its jurisdiction and authority to act by attempting to restrict the *means* by which the President may distribute such information?”

Opinion: It is the responsibility of the Board of Directors to “allocate available funds to the program boards, commissions, councils, and departments of corporate Synod and hold them accountable therefore” (Bylaw 3.183 d). Insofar as the administrative offices of the Synod are included in the “departments of

corporate Synod,” the Board is responsible for the allocation of funds and for holding the recipients of those funds accountable, so long as other provisions of the Constitution and Bylaws of the Synod are not thereby violated. As discussed above, however, the Board of Directors cannot, consistent with the Constitution, restrict the ecclesiastical power of the President or the means chosen by him in fulfilling that responsibility within the resources available to him.

Question 3: “The Board for Communications Services and its staff would face a conundrum were the Board of Directors to order the Editor of the official periodicals or other BCS staff not to disseminate certain information while at the same time were the President to specifically direct that the same information be disseminated. To whom would the BCS respond affirmatively in this situation, the Board of Directors or the President?”

Opinion: The Board for Communications Services is created by Bylaws 3.811 and 3.813. It “serves in a specific area of program or ministry in accordance with the Synod’s Constitution and applicable Bylaws” (Bylaw 1.07 d). As a program board, it is “charged with developing policies and programs for an operating function of the Synod and supervises their implementation” (Bylaw 3.51 h). The “operating function” that the Synod has charged the Board for Communications Services with is delineated in Bylaw 3.813. Included in that operating function are to “have responsibility for the official periodicals of the Synod” (Bylaw 3.813 c) and to “assist the appropriate officers of the Synod in their communication responsibilities” (Bylaw 3.813 e). The official periodicals of the Synod, among many services provided, are to “include official reports and notices,... provide current synodical news,... serve as a forum for the responsible exchange of opinion on issues confronting the Synod, and report general church news of interest to the Synod” (Bylaw 11.01 b).

While the Board of Directors significantly influences the Board for Communication Services (appointing 5 of 7 board members, allocating funds for its operation, and holding it accountable for those funds), the Board for Communication Services is an independent board not directly answerable to the Board of Directors. Similarly, while the President influences the Board for Communication Services through his ecclesiastical role and as a primary recipient of the services of the Board for Communication Services in facilitating his communications responsibilities, the Board for Communication Services is not directly answerable to the President. As regards the management and supervision of the business and legal affairs of the Board for Communication Services, the Board of Directors has the power to call up for review, criticism, modification or revocation the actions or policies of the Board for Communication Services under Bylaw 3.183 d 2. The President is to see to it that the Board for Communication Services acts in accordance with the Synod’s Constitution, to admonish it if it departs from the Constitution, and, if such admonition is not heeded, to report such cases to the Synod (Art. XI B 2). He is also to “see to it that the resolutions of the Synod are carried out” (Art. XI B 4). As discussed above, Resolution 7-03C of the 2001 convention of the Synod additionally charged the President as well as the Board of Directors with the specific responsibility to “see to it that the Constitution and Bylaws of the Synod are observed” and that “when a failure to comply with the Constitution and Bylaws is discovered, the President or Board of Directors, whichever is charged with supervision or oversight, shall act to correct such failure to comply as quickly as possible” (2001 *Proceedings*, p. 164).

The President and the Board of Directors therefore share oversight responsibilities for many program boards. Both are required to see to it that the Constitution and Bylaws of the Synod are observed, including, but not limited to, the requirements and responsibilities specifically enumerated in that board’s section of the Bylaws. In a case of non-compliance with the Constitution and Bylaws, the President is to admonish those involved and, if such admonition is not heeded, to report such cases to the Synod. To the extent of his oversight and influence, he is to correct such failure to comply as quickly as possible. In such case of non-compliance, the Board of Directors is also to act to correct any failure as quickly as possible, potential actions to include calling up for review, criticism, modification, or revocation the

errant action or policy of the board. Therefore, if the President and the Board of Directors are faithful to their duties and responsibilities, the question that is posed should not happen. Should there be disagreement, they must earnestly consult with one another regarding proper supervision of the board in question.

The Board for Communication Services is independently required to honor the Constitution and Bylaws of Synod. Should directives and guidance be received from different officers (including the President and the Board of Directors) or other boards or commissions of the Synod, the Board for Communication Services must strive to honor those directives and guidance to the extent consistent with its mandated functions under Bylaw 3.813.

The question specifically asks further as to its proper response should the President submit an article regarding a matter in dispute and asks the Board for Communication Services to publish that material and, further, whether the Board of Directors' resolution referenced above is unconstitutional. Opinion 02-2251, by defining the term "matter in dispute" as it relates to the prohibition of publicity under Bylaw 8.21 e, defines what matters may be published and those which the Board for Communication Services should properly decline to publish.

The Commission on Constitutional Matters previously responded to the question of whether the President could exercise "censorship" over official periodicals of the Synod in opinion Ag. 2073, issued June 25, 1997. That opinion found authority for actions which might be considered censorship on the part of the President, but recognized extreme limitations on that authority. The Commission found that, to the extent that such authority exists, it flows from his general authority under Article XI B 1, which indicates "the President has the supervision regarding the doctrine and administration..." and Bylaw 3.101 C 11, which authorizes the exercise of executive power where there is no specific directive of the Synod and action is required. As applied to the issue of censorship, the opinion observed that "prohibiting or directing items for publication in the official periodicals of the Synod should be done by the President of the Synod only in exceptional circumstances." The opinion also recognized that the exercise of such extraordinary measures under the bylaw, now renumbered as 3.101 C 11, would require the President to first consult with the Vice-Presidents, the Board of Directors, or the Council of Presidents, whichever in his judgment would be most appropriate and, further, that any such decision could be appealed by any member of the Synod to the Commission on Constitutional Matters and/or to the Synod in convention, whichever would be appropriate.

It should also be noted that the prior opinion also discussed and relied in part on former Bylaw 3.101 h which indicated that the President remains "ultimately responsible for the day to day supervision of the synodical staff." While that provision was dropped from the Bylaws, the prior opinion was not premised on that provision but rather on the grant of power to the President to act in unforeseen circumstances, with the limitations specifically attached thereto. Since that prior opinion, the power of the Board of Directors has also been expanded. The provisions of Bylaw 3.183 were expanded by the 1998 convention to include the right to call up for "modification, or revocation" rather than the prior right to merely call up for "suggestion."

Were the BCS actually presented with the factual situation posed in the question submitted, one would expect the BCS to exercise its responsibilities after meeting with the Board of Directors and the President urgently in an attempt to resolve the dispute.

Question 4: "If the President writes about a matter in dispute and asks the Board for Communication Services to publicize that writing through its various channels of communication, does the Board of Directors order prohibit the BCS from doing so? In light of the limitations placed

on the Board of Directors by the Constitution and Bylaws noted above, has the Board of Directors issued an order that is unconstitutional?”

Opinion: The Commission has previously ruled that, according to Bylaw 8.21 e, any party to whom the matter in dispute is presented and who is required to thoroughly investigate whether the allegations can be substantiated, whether the President of the Synod or a District President or the Praesidium of the Synod, is not to give publicity to a matter in dispute (see CCM opinion 01-2243). The Commission has also ruled that in dispute cases resulting from Bylaw 2.27 g the President of the Synod is and remains a party until the dispute is finally resolved (see CCM opinion 02-2261). In such case, “use of the press or other means by a party involved in the matter to bring to the attention of the public information regarding the matter or to advocate a position is ‘publicity’ and is prohibited by the bylaw if it occurs while a matter in dispute is still undecided or while an appeal is contemplated or pending” (see opinion 01-2243). The President may therefore discuss underlying doctrinal topics that are involved in a disputed matter, but he is not allowed to discuss “matters in dispute,” specifically, “details of the charges or allegations made, the correspondence or other communication which follow, the status of proceedings or deliberations, the President’s actions pertaining thereto, and his opinion as to who is right or wrong” (see opinion 02-2251).

Therefore, in response to the questions, the President may not write about a matter in dispute or ask the Board for Communication Services to publicize that writing through its various channels of communication unless he is addressing underlying doctrinal topics without reference to the matters in dispute as defined. If the Board of Directors is aware that the Constitution or Bylaws (as interpreted by relevant opinions of the Commission on Constitutional Matters) are not being observed, the Board of Directors under Resolution 7-03C has the right and responsibility to “call up for review, criticism, modification, or revocation any action or policy of a program board,” including those of the Board for Communication Services (Bylaw 3.183 d 1). In such case, such action by the Board of Directors is not unconstitutional.

Question 5: “In light of the limitations placed on the jurisdiction of the Board of Directors to the supervision of the property and business affairs of the Synod (Const. Art. XI F 2; cf. Bylaw 1.07 c), has the Board of Directors by its resolution usurped the jurisdiction delegated by the Bylaws to the Board for Communication Services? Does the Board of Directors have the general power to censor the Synod’s official periodicals and other communication outlets for which the Board for Communications Services has been given responsibility by the Synod, in light of the limitations placed upon the Board of Directors by Bylaw 1.07 c? May the Board of Directors exercise such censorship even if the periodicals have complied fully with the long-standing ‘program policies, as well as directions’ established for them by the Board for Communication Services (Bylaw 1.07 d)? May the Board of Directors order that no articles be written on a given subject?”

Opinion: As discussed above, the question fails to recognize the extent of the responsibilities of the Board of Directors, including its authority to call up for review the actions of all program boards including the Board for Communication Services, and its responsibilities under 2001 convention Resolution 7-03C. Accordingly, the calling up for review, criticism, modification, or revocation by the Board of Directors of an action of the Board for Communication Services is not a usurpation of its jurisdiction or a censoring of the periodicals of the Synod so long as the bylaws regarding the rightful responsibilities of the Board for Communications Services are not violated. To the extent that the resolution of the Board of Directors, written without the benefit of opinion 02-2251 of this Commission, attempted to restrict the Board for Communication Services in the performance of duties mandated by Bylaw 3.813 b, c and e, the Board of Directors was in error. Its good faith in attempting to fulfill its mandate under Resolution 7-03C to correct a perceived failure by the Board for Communication Services to comply with the Constitution and Bylaws, particularly as it understood those documents under opinion 02-2243, is not here questioned.

Question 6: “Conversely, may the Board of Directors order that an article or statement on a given subject must be published? May the Board of Directors order that an article be published and placed in a specific location within an official periodical, with no deviation in wording or content or placement?”

Opinion: According to Bylaw 11.01 a, the official periodicals of the Synod exist, among other purposes, to “include official reports and notices.” Insofar as an article or statement qualifies as an official report or notice, the official periodicals of the Synod “shall...include” such reports or notices without change in wording or content. Furthermore, since the Board for Communication Services is also required to “assist the appropriate officers of the Synod in their communication responsibilities” (Bylaw 3.813 e), the Board should be willing to cooperate with the officers of the Synod as they look for the best way to carry out those communication responsibilities. Under the Constitution and Bylaws, one would expect the Board for Communication Services to attempt to honor the requests of the Board of Directors, but it must exercise its own judgment in fulfilling its duties under Bylaw 3.813. The Board for Communication Services should carefully consider input from all officers of Synod, including the President and the Board of Directors, but it is ultimately responsible for determining itself how to carry out its mandate in the Bylaws. As such, the Board for Communication Services is not subject to the censorship of the Board of Directors but is always subject to the actions of the Board of Directors and President to hold it accountable in the performance of those duties.

Question 7: “Finally, if the Board of Directors’ order stands as regards Board for Communication Services staff, including staff of the official periodicals, does the Board’s order stand as regards *all* reporting on the case at issue? For example, does the Board’s order properly prohibit reporting on matters of *procedure* as well as matters of substance in the case? In other words, may the periodicals report how the case is progressing through the process outlined in the Bylaws (e.g., Bylaw 2.27)? For example, even if the periodicals are prohibited by Board of Directors order from explaining the respective positions of the complainants and the person against whom charges are brought, may they report that the case is now in the hands of the synodical President, or before the Praesidium, or before a Dispute Resolution Panel, as the case may be? Are the periodicals prohibited from reporting even an official statement of the Praesidium concerning a vote of the vice presidents on the qualification of the President to rule in a given case?”

Opinion: Bylaw 8.21 e requires that “while a matter in dispute is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the parties involved.” The Commission’s opinion 02-2251 clearly defines what is to be included as a matter in dispute: “This phrase includes the details of the charges or allegations made, the correspondence and other communication which follow, the status of proceedings or deliberations, the President’s actions pertaining thereto, and his opinion as to who is right or wrong.” Accordingly, the information given by example in question 7, since it pertains to “the status of proceedings or deliberations,” is therefore included in “a matter in dispute” and should not receive publicity until the case is decided and the time for appeal has expired.

Adopted June 10-11, 2002

Questions re Interim Directors of Synodwide Corporate Entities (02-2269)

A pastor of the Synod, in a letter dated May 13, 2002, asked two questions of the Commission in light of its recent opinion 02-2237 regarding the appointment of interim directors.

Question 1: “When a program board, commission or governing board of a synodwide corporate entity appoints an interim executive director or chief executive officer, is it appropriate for that individual to send correspondence to the members of the Synod with his signature under a title which would indicate that he is the permanent executive of that corporate entity?”

Opinion: The Commission has been given the responsibility, according to Bylaw 3.905 d, to interpret the Constitution, Bylaws, and resolutions of the Synod. The question that has been asked is outside that responsibility. The Commission suggests that this is a question that is best directed to the governing board of the executive officer in question.

Question 2: “If the interim executive of a corporate entity has not been approved by the President of Synod, when a list is prepared for the permanent position, shall the President of the Synod approve such a list before a call can be extended to that interim executive?”

Opinion: Bylaw 3.69 e clearly states that the “slate of candidates for the initial appointment of the executive officer of a board, commission, or synodwide corporate entity shall be selected by the board or commission in consultation and mutual concurrence with the President of the Synod.” This requirement pertains to the entire list of candidates. See again opinion 02-2237.

Adopted June 10-11, 2002

Question re Definition of “Office” in the *Handbook* of the Synod (02-2272)

In a June 4, 2002 letter, the Secretary submitted a question on behalf of the Board of Directors of the Synod regarding the definition and application of the term “office” in Bylaws 3.75 and 4.109.

Question: “When Bylaws 3.75 and 4.109 prohibit holding ‘more than one elective office; or more than two offices,’ what is the definition of ‘office’? Does it refer only to officer positions and membership on boards, or is it to be understood more generally to include any elected or appointed position of the Synod and its Districts that is prescribed by bylaw? In particular, do the prohibitions of Bylaws 3.75 and 4.109 pertain to appointments by the Board of Directors of the Synod under Bylaw 3.501?”

Opinion: The Commission notes that the Constitution and Bylaws of the Synod offer no clear definition of the word “office,” particularly as pertains to the question that has been asked. Therefore, no clear answer can be provided to this question. The Board of Directors may wish to turn this matter over to the Commission on Structure for its attention.

The Commission notes, however, that Bylaws 3.75 and 4.109 both contain the provision that “doubtful cases shall be decided by the President of the Synod.” Until such time as clarification may be provided by a convention of the Synod, this provision is available for a solution to the case at hand.

Adopted June 10-11, 2002

Question re Visitation and Electoral Circuits (02-2273)

A chairman of a Commission on District Bylaws, in a letter dated June 3, 2002, explained that his District is considering the realignment of its Circuits and is considering making a distinction between visitation and electoral Circuits. As his committee prepares recommendations for the next District convention, it is

requesting clarification regarding matters pertaining to Circuits and Circuit Forums in Chapter V of the Synod's Bylaws.

Question: "Is the definition of a Circuit given in Synod Bylaw 5.01 (i.e. –3.05 Electoral Circuit) to be applied to every occurrence of the word Circuit in Chapter V of the Synodical Bylaws? If not, in which instances in Chapter V is the word Circuit used with a different definition? Specifically does the definition of Circuit in Synodical Bylaw 5.01 apply to Bylaw 5.03, 5.31, 5.33, 5.35, & 5.37, so that only Electoral Circuits, that is, Circuits with either sufficient communicant membership and number of congregations to qualify, or which have been granted an exception by the Synodical President for the previous convention, constitute a Circuit Forum?"

Opinion: Chapter V of the *Handbook* of the Synod provides for "visitation Circuits," called such by Bylaw 3.03 when it describes an electoral Circuit as consisting "either of one or two adjacent visitation Circuits." The membership requirements for a visitation Circuit are provided by Bylaw 5.01. The various functions of a visitation Circuit and its officers are provided by Bylaws 5.03–5.51. Every occurrence of the word "Circuit" in Chapter V of the *Handbook* refers to visitation Circuits.

Bylaws 5.31–5.37, which refer specifically to Circuit Forums, therefore also speak of visitation Circuits. Each congregation of a visitation Circuit is to be represented at its Circuit Forum by its pastor and one member designated by the congregation. Among its functions, a visitation Circuit serves also as an electoral Circuit (Bylaw 5.35), although two adjacent visitation Circuits may be joined together by a District (Bylaw 3.03). In such case, a combined meeting of the Circuit Forums of the two adjacent visitation Circuits will be necessary to carry out the functions of an electoral Circuit as described in Bylaws 5.35 and 3.05. In all cases, for both visitation and electoral Circuits, specific membership requirements must be honored unless exception is made by the President of the Synod upon request of a District's Board of Directors.

Adopted June 10-11, 2002

Questions re BHE/CUS Board Approval of Board of Regents Appointments (02-2274)

The Commission is currently considering a request for an opinion regarding the relative authority and relationships of college and university boards of regents and the BHE/CUS Board. That decision is pending (02-2270). In a June 7, 2002 memorandum, the Executive Director of the BHE/CUS Board submitted the following separate question with an urgent request for a more immediate response.

Question: "In the area of initial appointments to seminaries and to colleges/universities of theology faculty members, what is the role of the Board for Higher Education over against the local Boards of Regents in granting prior approval for theological faculty? How do the approvals differ?"

Opinion: The appointment of faculty is governed by Bylaw 6.23 a,

The Board of Regents on recommendation of the president of the institution shall appoint all full-time members of the faculty. The Board for Higher Education shall require certification of theological and professional competency. All initial appointments to seminaries and to college/university theology faculties shall require the prior approval of the Board for Higher Education. All other initial full-time appointments shall require prior approval of the Boards of Regents and shall include a

thorough theological review involving the District President and selected members of the Boards of Regents.

Under the bylaw, the Board for Higher Education must require certification of the theological and professional competency of all full-time faculty members hired. In the case of initial appointments to the seminaries or the theological staff of a college or university, the Board for Higher Education must itself approve the certification and also approve the candidate or candidates prior to actual appointment by the Board of Regents. (This responsibility of the Board for Higher Education is also contained in Bylaw 3.409 h.) In all other cases of initial appointment, the Board of Regents is itself responsible for approval of the candidate or candidates after a thorough theological review of each candidate in consultation with the local District President and selected board members. In such cases, the Board of Regents reports the certification of the theological and professional competency of all faculty hired to the Board for Higher Education.

Adopted June 10-11, 2002

Questions re Authority of BHE/CUS Board and Concordia University System (02-2276)

In a June 9, 2002 e-mail memorandum, a pastor of the Synod asks a series of questions concerning the relationship between the BHE/CUS Board and the Boards of Regents of the Concordia University System.

Question 1: “Does the Board of Higher Education have doctrinal oversight (sic) over the Boards of Regents of the Concordia University System?”

Opinion: Bylaw 3.101 A 1 places the responsibility of supervision of the doctrine taught and practiced in the Synod, including synodwide corporate entities, under the Office of the President: “The President of the Synod has ecclesiastical supervision of all officers of the Synod and its agencies, the individual Districts of the Synod, and all District Presidents.” Bylaw 3.101 A 2 additionally requires that the President shall “at regular intervals officially visit or cause to be visited all the educational institutions of the Synod to exercise supervision over the doctrine taught and practiced in those institutions.” Bylaw 3.101 B 2 adds that he shall officially visit or cause to be visited all of the Synod’s educational institutions “to see to it that they are in accordance with the Constitution, Bylaws, and resolutions of the Synod.” The Bylaws, therefore, place the responsibility for doctrinal oversight of boards of regents of the Concordia University System under the Office of the President and not the BHE/CUS Board.

Question 2: “Does the Board of Higher Education have the authority if needed to remove Regents whom (sic) are not upholding the official positions of Synod?”

Opinion: The Bylaws of the Synod grant no such authority to the BHE/CUS Board.

Question 3: “Do the universities of the Concordia System have the authority to begin foundations for the purposes of keeping monies away from Synodical control?”

Opinion: Bylaw 3.607 reads: “Since the Foundation serves all the Synod, no new foundations shall be established by Districts, colleges, seminaries, universities, and agencies without prior approval of the Board of Directors of The Lutheran Church—Missouri Synod.” Bylaw 6.63 adds: “All surplus institutional funds above an adequate working balance shall be deemed to be surplus and shall be deposited with the Vice-President—Finance—Treasurer of the Synod for investment. Earnings from such investments shall be credited to the depositing institution.” Therefore, universities of the Concordia

University System do not have the authority to begin foundations for any reason without the approval of the Board of Directors of the Synod.

Adopted June 10-11, 2002

**Request for Reconsideration of Opinion 02-2267
re Role of Matthew 18 in the Synod's Dispute Resolution Process (02-2277)**

The First Vice-President of a District in a letter dated June 4, 2002, submitted a "Motion for Reconsideration" of the Commission's opinion 02-2267, expressing disappointment and offering detailed explanation why said opinion should be reconsidered.

Opinion: In support of the request for reconsideration, the writer points out the requirements under both Bylaw Chapter VIII (the Synod's Dispute Resolution Process) and Bylaw 6.47 (dealing with complaints against faculty members) that a face-to-face meeting and informal resolution efforts occur between the complainant and the accused before a formal dispute process may be invoked. The writer further suggests that, by implication, such must also be the case under Bylaw 2.27, particularly in view of prior Commission opinions 02-2251 and 02-2257. Unfortunately, the suggested analysis ignores the differences between the purpose and express process of Bylaw 2.27 and the purpose and express processes set forth in the other two circumstances. Bylaw 2.27 is expressly a process to terminate congregational or individual membership.

Because the goal of the church is not expulsion, but reconciliation, the drafters of the bylaws and the conventions which adopted them recognized the desire to seek such reconciliation in lieu of proceeding unhesitatingly down the adversarial process which may lead to expulsion. Bylaw 2.27 a 2 expressly requires the responsible District President to follow the guidelines of Matthew 18 and encourages him to seek reconciliation. As prior opinions of the Commission have recognized, attempts to seek reconciliation are included in the District President's duty to act on a complaint within 90 days. During such efforts, the time requirements of the bylaw may be tolled. In opinion 02-2251, the Commission attempted to clarify the resulting connection between Bylaw 2.27 and Chapter VIII of the Bylaws.

As reflected in opinion 02-2257, a Bylaw 2.27 process cannot be dismissed on the basis that Matthew 18 has not been followed. Bylaw 8.05 requires a face-to-face meeting as a precondition to proceeding to a formal dispute resolution process initiated under Chapter VIII. Bylaw 2.27 has no such precondition because it is a reflection of the church's ecclesiastical responsibility to assure a member's continued adherence to the Synod's qualifications for membership. That responsibility is independent of the source by which potential unfitness becomes known to the church, and even independent of any wrongful conduct on the part of the person bringing such allegations. As the Commission earlier suggested, the complaint may even be initiated by someone outside the church, or even a non-Christian who may refuse to consider reconciliation under Matthew 18 or any other process.

Opinion 02-2267 further recognized that "because the goal of all Christians should first be reconciliation, it is incumbent on those within the church to always follow Matthew 18." This is demonstrated in Bylaw 2.27 by its provision that the guidelines of Matt. 18:15-16 be followed with the assistance of a small committee if necessary. Whenever possible, members of the church must honor Matthew 18 and must seek reconciliation. Failure of a member to act in good faith in seeking such reconciliation should itself be recognized as giving offense and should be addressed by the responsible District President.

Adopted June 10-11, 2002

Question re Notification of Suspended Status

of a District President (02-2279)

The President of the Synod in a June 26, 2002 e-mail message requested an opinion regarding his on-going ecclesiastical responsibilities in the case of a District President on suspended status, with particular reference to Bylaw 2.25 d.

Question: “When the member on suspended status is a District President whose ecclesiastical supervisor, the Synodical President (Bylaws 3.101 and 2.27 g), has been disqualified on the basis of Bylaw 2.27 a. 1. from investigating the complaints brought against the District President, is it nevertheless the responsibility of the Synodical President to carry out Bylaw 2.25 d. 2. and 3., or does that responsibility belong to the officer of the Synod who has been charged on the basis of Bylaw 2.27 a. 1. with investigating the complaints brought against the District President?”

Opinion: The President of the Synod is the ecclesiastical supervisor of all District Presidents (Constitution Art. XI B; Bylaw 3.101 A 1). He continues to have this ecclesiastical supervisory responsibility under the Constitution and Bylaws of the Synod also when a District President is on suspended status, even though he may have been disqualified from investigating complaints brought against the District President on the basis of Bylaw 2.27 a 1.

Under ordinary circumstances, when formal proceedings are commenced against a District President under the procedure set forth in Bylaw 2.27, the President of the Synod is responsible for carrying out its requirements (Bylaw 2.27 g). When he is disqualified on the basis of Bylaw 2.27 a 1, “the next qualified officer of the Synod shall function in the place of the President” (Bylaw 2.27 g).

Bylaw 2.25, which provides the conditions and requirements of suspended status, states in its final paragraph f: “If the member on suspended status is a District President, the duties assigned to the District President under sections d and e hereof shall be performed by the next proper successor District officer.” The responsibilities outlined in Bylaw 2.25 d 2 and 3, therefore, belong neither to the President of the Synod nor to the next qualified officer of the Synod but to the next proper successor District officer.

In the case of the suspension of a District President, therefore, it will be necessary for the investigating officer of the Synod, whether the President or the next qualified officer, to inform the next proper successor District officer of the suspension, which officer will then be responsible for performing the duties described in paragraphs d and e of Bylaw 2.25.

Adopted June 27, 2002

Questions re President's Duty to Call up for Review (02-2282)

The Secretary of the Synod has submitted the following question to the CCM:

Bylaw 3.101 B 5 requires that the President of the Synod shall “call up for review any action by an individual officer, executive, or agency which, in his view, may be in violation of the Constitution, Bylaws, and resolutions of the Synod and, if he deems appropriate, request that such action be altered or reversed.” It also speaks of “the President’s constitutional duty to report to the Synod those who do not act in accordance with the Constitution and do not heed his admonitions, as prescribed in Art. XI B 2.”

Question 1: Does Bylaw 3.101 B 5 give to the President of the Synod the right and/or the responsibility to call up for review an action of an officer carrying out the

responsibilities of Bylaw 2.27 c and request that such action be altered or reversed?

Question 2: Does Bylaw 3.101 B 5 give to the President of the Synod the right and/or the responsibility to report to the Synod via pastoral letter the calling up for review of an action of an officer carrying out the responsibilities of Bylaw 2.27 c if such officer does not heed his admonitions?

Although the Secretary's letter references Article XI B of the Constitution, the two specific questions as posed deal only with the President's rights and responsibilities under Bylaw 3.101 b 5 as it relates to review of an action of an officer of the Synod acting under Bylaw 2.27. Under Bylaw 2.27, the investigating officer is to thoroughly investigate allegations, follow the guidelines of Matthew 18, and if he concludes the facts form a basis for expulsion under Article XIII of the Constitution, prepare and send to the concerned member a written statement of the case and a notification of the member's suspended status. If the member contests expulsion, Bylaw 2.27 d then requires the investigating officer to forward to the Secretary of the Synod the statement of the matter in dispute and a memorandum describing compliance with Matthew 18. Under the dispute resolution process, a Dispute Resolution Panel is then formed under the provisions of Chapter VIII of the Bylaws, and the panel eventually issues a decision. Under Bylaw 8.09 c 4 d, that decision is then publicized as deemed appropriate by the District or synodical President.

When a decision is issued by the panel, any party to the dispute, or the President of the Synod (in recognition of the President's power and responsibility under Article XI B 1-3), if a question of doctrine or practice is involved, may request reconsideration, and the President may request an opinion of the CCM or CTCR.

Assuming that all persons involved have scrupulously followed the provisions of Bylaw 8.21 e and the CCM's prior opinions, the President may learn of the basis of the action of the investigating officer only after completion of the work of the Dispute Resolution Panel, when he is expressly required to be apprized. If the investigating officer has failed to follow his responsibilities under Bylaw 2.27 c, or erred in his interpretation of the doctrines of the church, the Constitution, Bylaws and resolutions of the Synod, the appeal process is designed to discover and correct such failures or errors, and the President's need to call up the action of the investigating officer for review or the need to report by a pastoral letter such calling up for review would be moot.

If the investigating officer under Bylaw 2.27 commits a procedural error, primary responsibility for correction of that error is vested in the Secretary of the Synod, who is to administer the Synod's dispute resolution process under Bylaw 3.143 o.

Were the President of the Synod to become aware, before announcement of a decision of the Dispute Resolution Panel under 8.09 c 4 d, that an investigating officer has misstated a doctrinal position of the church or acted in violation of the Constitution, Bylaws, or resolutions of the Synod, a President of the Synod has responsibility to act. Article XI B 1-4 of the Constitution sets forth his duties. Subsection 1 imposes on him duties regarding the supervision of the doctrine of the church and administration of all officers of the Synod. Subsection 2 requires that he see to it that all act in accordance with the Synod's Constitution and admonish all who depart from it. Subsection 3 provides that "the President has and always shall have the power to advise, admonish, and reprove. He shall conscientiously use all means at his command to promote and maintain unity of doctrine and practice in all the Districts of the Synod." Subsection 4 requires that the President see to it that the resolutions of the Synod are carried out.

In fulfilling his duties, the President would normally be expected to rely on the provisions of Chapter VIII of the Bylaws to correct errors occurring during the dispute resolution process. This is particularly so in view of the responsibilities given others under Article XIII, and the bylaws flowing from that article. We previously recognized in CCM Opinion 02-2251 that the President's duty and power "to advise, admonish, and reprove is tempered by the provisions of Article XIII and the bylaws that flow from it." Recognizing the procedural protections embodied in the dispute resolution process, including the initial review by a Dispute Resolution Panel, and subsequent appeal to an Appeal Panel, which may then form a Review Panel, the President would normally be expected to choose not to actively intervene until that process has concluded. Following the initial decision of the Dispute Resolution Panel, he may also, under Bylaw 8.09 d, where a question of doctrine or practice is involved, request at that time either reconsideration, or an opinion of either the CCM or the CTCR.

Under extraordinary circumstances, such as when an issue is of synod-wide concern and having an immediate and ongoing negative impact on the Synod, the President may choose to exercise his discretion in fulfilling his duties under Article XI. The President's right and/or responsibility to call up for review an action of an investigation officer carrying out the responsibilities of Bylaw 2.27 c flows from his constitutional responsibilities and powers. Similarly, his right and/or responsibility to report to the Synod via pastoral letter flows from his constitutional responsibilities and powers under Article XI.

It should be noted that, since the Secretary of the Synod submitted the question, he has not participated in the discussions leading to this opinion. Dr. Norman Sincebaugh was hospitalized and unable to participate in deliberations, and was taken to his eternal rest while this question was being considered.

Adopted Aug. 20, 2002

Question re Filling of Vacancy on Commission on Constitutional Matters (02-2298)

In an August 22, 2002 e-mail letter to the chairman of the Commission, the President of the Synod asked the following question regarding the process for filling the vacancy on the Commission on Constitutional Matters resulting from the death of Commission member Norman Sincebaugh.

Question: "In consideration of the circumstances..., is the President of the Synod acting within Bylaw 3.903 if, in consultation with the Vice-Presidents of the Synod, he appoints one of the remaining eight candidates [from the original appointment process] to fill the vacancy created by the death of Dr. Sincebaugh, or does the process of selection of candidates need to begin anew?"

Opinion: Bylaw 3.903 c requires that vacancies on the Commission on Constitutional Matters be filled by following the procedure set forth in Bylaw 3.903 a, namely, the initial appointment procedure. The Commission rules that the process must therefore begin anew. Candidates for the open position on the Commission must be nominated by District boards of directors and be presented through the office of the Secretary to the Council of Presidents. The Council of Presidents must then elect five candidates and present them through the office of the Secretary to the President of the Synod. The President of the Synod, in consultation with the Vice-Presidents of the Synod, must then appoint one of the candidates to the open position. The Commission encourages all who are involved in the process to proceed as expeditiously as possible.

Adopted Aug. 28, 2002

Clarification of Effect of Suspension of a Congregation (02-2280)

A pastor of the Synod, in a June 27, 2002 e-mail letter, requested an opinion regarding the suspension of a congregation by a District President and the practical results of such a suspension.

Question 1: “May a District President suspend a congregation pursuant to Bylaw 2.25 if he rules that the congregation is persisting in ‘offensive conduct’ (Article XIII) by effectively ‘terminating’ its pastor for unscriptural and unconstitutional reasons (e.g., personality conflict) by discontinuing or severely reducing the pastor’s salary or by other such circuitous means while not actually removing the pastor from office? This question assumes that appropriate admonition has been carried out according to Scripture and the synodical Bylaws.”

Opinion: Bylaw 2.25 a provides that when formal proceedings have been commenced against a member of the Synod (individual or congregation) under procedure set forth in Bylaw 2.27 which may lead to the expulsion of such member from the Synod, the member shall have suspended status. Thus suspended status is not an independent act by a District President but is, rather, a status that follows automatically when the District President formally requests expulsion of the member from the Synod (Bylaw 2.27 c).

Formal proceedings to terminate a congregation’s membership in the Synod can only be commenced by a District President after he has thoroughly investigated the matter and then concluded that the facts form a basis for termination of the congregation’s membership under the criteria established in Article XIII of the Constitution of the Synod, which includes “an offensive conduct.” However, termination of a congregation’s membership in the Synod is not decided by the District President if the congregation does not consent to termination of its membership in the Synod. Rather, that decision is made by a Dispute Resolution Panel after it hears the evidence presented by the District President and the congregation. What constitutes “offensive conduct” is a decision to be made by the Dispute Resolution Panel, taking into consideration the provisions of Article III 9 of the Constitution of the Synod which states that one of the objectives of the Synod is to “provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights.”

Question 2: “What is the practical effect of suspension on the suspended congregation? Is that congregation entitled to call another pastor while on suspended status? If not, may the District President refuse a request from the suspended congregation for a call list until the suspension has been resolved?”

Opinion: Bylaw 2.25 b states: 1) Suspended status continues until membership is duly terminated or the formal proceedings are completed favorably to the member; and 2) While on suspended status a member shall continue to hold all rights under the Constitution and Bylaws of the Synod subject to the limitations set forth in the Bylaw. Such limitations (Bylaw 2.25 c 1-4) are applicable to individual members of the Synod. The Bylaws are silent as to limitations on activities of a congregation that is on suspended status. However, Bylaw 2.45 addresses issues relating to the calling of ministers of religion. Included therein is the requirement that when calling an ordained minister, a congregation shall seek the advice of the District President. Having sought such advice from the District President, the congregation has complied with the bylaw.

Adopted Oct. 2, 2002

Dispute Resolution Process Panel Selection (02-2300)

A party to a dispute, in a letter dated August 26, 2002, addressed a series of questions to the Commission regarding the panel selection process used by the Office of the Secretary of the Synod in the

administration of the Synod's dispute resolution process. The questions were submitted "with the understanding that since most of these questions deal with the role of the Secretary of the LCMS in his capacity as administrator of the dispute resolution process, the Secretary will be excluded appropriately in the discussions and decisions of the Commission on Constitutional Matters on a question by question basis by the Commission." The Secretary of the Synod did not take part in the deliberations regarding this matter or the opinions set forth.

Question 1: "If a party to a dispute has requested to be present or represented in person at the time of the draw made by the Office of the Secretary of the LCMS in its capacity as Administrator of the Dispute Resolution process to determine those eligible to act as reconcilers in a case at the national level, must that request be honored by the Secretary of the LCMS?"

Opinion: Bylaw 8.07 (h) states:

If the complainant requests formation of a Dispute Resolution Panel, the Secretary of the Synod or his representative shall within 21 days select such a panel in the prescribed manner and then forward to each panel member a copy of the report of the reconciler with its attachments.

Bylaw 8.15 b 1 states:

Nine names shall be selected by a blind draw from the Dispute Resolution Roster. The Bylaws make no provision for a party to a dispute to be present in person or by representative at the time of selection of the Dispute Resolution Panel. Accordingly, there is no right for a party to a dispute to be present at the time of selection of the Dispute Resolution Panel, which is done by the Secretary in the presence of a disinterested witness or witnesses.

Question 2: "If a nominated reconciler panelist is to be replaced once the initial draw and selection process has transpired, should not the Secretary of the LCMS proceed to draw three candidates for the remaining panelist slot, or six candidates drawn if two spots remain, so that

- a) the same selection process and elimination process affording equal opportunity to disputants to know the potential selectees and to discard for any reason an appropriate number of them be continued in subsequent procedure as in the initial procedure?
- b) the disputants would know after the Bylaw 8.17 continuing blind draw the names of the next potential panelist(s)?
- c) the selection process by blind draw indicated in Bylaw 8.16 c 4 being inexact as to methodology, said inexactness would best be made exact by the most fair and reasonable approximation of the process more specifically designed in Bylaw 8.15 b 3?"

Opinion: Bylaws 8.15 b 3 and 4, when addressing the nine names selected by the Secretary from the Dispute Resolution Roster, state:

- 3) The list shall be mailed simultaneously to each party, who shall be entitled to strike three names and return the list to the Secretary of the Synod within one week.
- 4) The Secretary of the Synod will correct any problem in the panel membership by a further blind draw for removals or additions until the panel is constituted.

Thus the pertinent bylaws provide that each party to a dispute has the opportunity to strike three names from the nine selected by blind draw. However, the Bylaws make no similar provision if it is necessary to make further adjustment by addition or deletion to the dispute resolution panel so that it meets the pastor/layman requirements of Bylaws 8.15 b or 8.16 c. Therefore, a member deleted or added to the Dispute Resolution Panel is done by blind draw and the parties to the dispute have no part in that selection process.

Question 3: “In a reconciliation panel proceeding and any proceedings such as a disqualification proceeding (Bylaw 8.17) flowing from the initial proceeding, ought not the disputants be provided by the Secretary of the LCMS with any and all information forwarded to the panelists from himself as well as from the respective disputants at the same time as the information is supplied by the Secretary of the Synod to the panelists?”

Opinion: This question has two parts. The first is "a reconciliation panel proceeding" which the Commission assumes to be a Dispute Resolution Panel, and the second, a "disqualification proceeding" which the Commission assumes to be the three-member panel to rule on disqualification (Bylaw 8.17).

Bylaw 8.07 f states:

f. Upon conclusion of the formal reconciliation meeting or meetings, the reconciler shall prepare a written report which contains the actions of the reconciler, the facts agreed to, the facts remaining in dispute and whether reconciliation has been achieved. Attached to the report shall be:

1. the statement of the complainant as to informal reconciliation efforts;
2. the statement of the matter in dispute;
3. any reply by the respondent.

The report and the attachments shall be forwarded to the parties to the dispute and the Secretary of the Synod or District as appropriate.

Bylaw 8.07 h states:

h. If the complainant requests formation of a Dispute Resolution Panel, the Secretary of the Synod or his representative shall within 21 days select such a panel in the prescribed manner and then forward to each panel member a copy of the report of the reconciler with its attachments.

Thus, the Bylaws require the Secretary to simultaneously forward the same material to both parties to the dispute as well as to the members of the Dispute Resolution Panel.

Bylaw 8.17 relates to a procedure to be followed when a party to a dispute alleges that one or more members of a Dispute Resolution Panel have actual partiality or the appearance thereof. The bylaw states that if the panel member does not agree to the disqualification, “the decision shall be made by a separate three-member panel of reconcilers drawn for that purpose.” The bylaw is silent as to the procedure to be followed by this panel. However, since the Bylaws require that the same material be forwarded to the parties to the dispute as are forwarded to panel members after a Dispute Resolution Panel is formed, the Commission rules that the same practice must be followed upon formation of the three member panel to rule on the allegation that an individual chosen to be a member of a Dispute Resolution Panel is disqualified by reason of actual partiality or the appearance thereof.

Question 4: “If a party in a dispute requests a face to face meeting with a dispute panel once formed, should not that request automatically be honored by the chairman of the panel?”

Opinion: Several portions of the Bylaws are relevant to this question:

a. The Dispute Resolution Panel shall meet in person, or by telephone conference, within 30 days after its appointment, for the purpose of selecting a chairman and secretary. After the chairman confers with the parties to the dispute, the Dispute Resolution Panel shall choose a location and a date for the formal hearing of the matter (Bylaw 8.09 a).

1. The hearing shall be private, attended only by the parties, and one adviser of each party's choice, should any party desire one (Bylaw 8.09 c 1).

...The panel shall establish the procedure to be followed in the hearing and the relevancy of evidence so that each party shall be given an opportunity fully to present its respective position (Bylaw 8.09 c 1).

d. No party to a dispute nor anyone on the party's behalf, shall either directly or indirectly communicate with the reconciler or any member of the Dispute Resolution Panel, Appeal Panel, or Review Panel without the full knowledge of the other party to the dispute (Bylaw 8.21 d).

Also relevant is Rule of Procedure 36, paragraphs a and b:

a) At the request of the parties or at the discretion of the panel, a preliminary conference with the chairman of the panel and the parties may be scheduled to arrange for an exchange of information and the stipulation of uncontested facts to expedite the panel proceedings.

b) In large or complex cases, at the discretion of the panel, a preliminary hearing may be scheduled with the chairman of the panel and the parties to arrange for the production of relevant evidence, to identify potential witnesses, to schedule further hearings, and to consider other matters that will expedite the panel proceedings.

Therefore, the answer to this question is: no. The rules governing attendance at the formal dispute resolution hearing are set forth in Bylaw 8.09 c 1 quoted above. Any other meeting of a party to a dispute with the Dispute Resolution Panel or a member thereof is governed by Bylaw 8.21 d and Rule 36 of the Rules of Procedure,* both quoted above. It should be noted that both parties to a dispute, at all times, must have notice of any meeting of a party to the dispute with the Dispute Resolution Panel or a member thereof and be given the opportunity to be present at a time convenient to both parties.

Adopted Oct. 2, 2002

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- The Commission recognizes the Rules of Procedure to the dispute resolution process because they were created as a result of Resolution 7-03B adopted at the 1995 convention of the Synod.

Commission on Constitutional Matters
October 2, 2002

Selection of Special Panel to Decide Bylaw 8.17 Request (02-2303)

A party to a dispute in a September 3, 2002 letter asked a series of questions regarding Bylaw 8.17 relating to the procedure to be followed if a party to a dispute alleges that a member of a Dispute Resolution Panel has actual partiality or the appearance thereof.

Question 1: Must the Secretary of the Synod divulge the names of the three panel members that will decide the issue of partiality?

Opinion: The bylaw is silent on this issue. However, since the names of the members of the chosen Dispute Resolution Panel are made known to the parties to the dispute, the Commission rules that the names of the members of the disqualification panel should likewise be made known to the parties to the dispute.

Question 2: Who determines the procedure to be followed by the disqualification panel to reach a decision?

Opinion: The bylaw is silent on this issue also. The Commission rules that the panel itself shall establish the procedure it wishes to follow to reach a decision. Thus, the panel may choose to reach a decision based on written materials submitted by the parties to the dispute; the panel may decide to hold a formal hearing attended by the parties and may follow the procedure used by a Dispute Resolution Panel, if deemed necessary. The procedure to be followed should be sufficient to allow the panel to make an informed decision.

Question 3: Who determines which panel member is to be chairman and secretary of the panel?

Opinion: Bylaw 8.09 provides a procedure to be followed to organize a Dispute Resolution Panel. It states:

The Dispute Resolution Panel shall meet in person, or by telephone conference, within 30 days after its appointment, for the purpose of selecting a chairman and secretary. After the chairman confers with the parties to the dispute, the Dispute Resolution Panel shall choose a location and a date for the formal hearing of the matter.

This same procedure is to be followed in organizing the disqualification panel. The Secretary of the Synod may request one of the disqualification panel members to be a convener for the sole purpose of contacting by telephone conference the other two panel members for the purpose of the panel selecting a chairman and secretary and related matters.

Question 4: Is it appropriate for the Secretary to instruct the disqualification panel to perform its duties in haste?

Opinion: The Secretary of the Synod may convey to the disqualification panel his desire that it perform its function quickly. It is to be remembered that the matter in dispute cannot be resolved until the members of the Dispute Resolution Panel are chosen and the panel can then begin its work. Thus, it is imperative that the disqualification panel perform its work in an expeditious manner while fully informing itself on all aspects of the question.

Adopted Oct. 2, 2002

Questions re CUS Board and Boards of Regents Authority (02-2270)

The Executive Director of the Board for Higher Education, in a May 22, 2002 memorandum, asked for clarification regarding “the meaning and limits of authority of the BHE/CUS Board as the ‘governing board’ of higher education, further stating that this question is critical since “the relationship between the BHE/CUS Board and the Board of Regents will determine the future of accreditation for Synod’s institutions of higher education.”

Question 1: “Bylaw 3.401 identifies the BHE/CUS Board as the ‘governing board of the Concordia University System.’ What does this mean? What authority and limits of authority does the BHE/CUS Board have in respect to the oversight of the Concordia institutions?”

Opinion: Bylaw 3.401 a identifies the Board for Higher Education, a program board of the Synod, as “the Board of Directors of the Concordia University System.” Bylaw 3.401 b provides that this board “has authority with respect to the Synod’s colleges and universities” and “to all the Synod’s institutions of higher education, including its seminaries.” The Synod has outlined the “overall responsibility” of the board in Bylaw 3.409, thereby establishing its authority to supervise and coordinate the activities of the Synod’s colleges, universities, and seminaries “as a unified system through their respective boards of regents.” Bylaw 3.409 also establishes limits to its authority by detailing the functions of the board “in keeping with the objectives and the Constitution, Bylaws, and resolutions of the Synod.”

Question 2: “Bylaw 3.401 b identifies the BHE/CUS Board as having ‘authority with respect to all the Synod’s institutions of higher education, including its seminaries.’ What does this mean? What authority and limits of authority does the BHE/CUS Board have in respect to the oversight of the institutions of higher education?”

Opinion: Bylaw 3.401 b identifies the Board for Higher Education as having “authority with respect to all the Synod’s institutions of higher education, including its seminaries.” Bylaw 3.51 k defines such supervision as “to have authority over, to direct actions, to control activities” as to the unified synodical system. Therefore, the board has overall responsibility and the authority to direct actions and control activities to the extent provided by Bylaw 3.409. However, the board must respect the duties that have been expressly given to the boards of regents of each institution of higher education as delineated in Bylaw 6.03.

Question 3: “Bylaw 6.01 notes that ‘each college, university, and seminary of the Synod shall be governed, subject to the general policies set by the Synod, by a Board of Regents.’ What does this mean? What authority and limits of authority does the Board of Regents have in respect [to] the governance of the respective institution?”

Opinion: The functions of a board of regents have been delineated by Bylaw 6.03. The Synod thereby has also provided the authority to carry out these duties as well as the limits to such authority.

Question 4: “At question is the role and limits of authority of the BHE/CUS Board and the Board of Regents. There are some who believe the BHE/CUS Board has authority over the local institution ‘through the Board of Regents.’ If this is correct, what authority does the local Board of Regents have? Those of us who work in education know that accreditation agencies require that the institution is governed by the local Board of Regents and not by an outside source. With this in mind, is the BHE/CUS Board a ‘coordinating board’ with ‘oversight’ but not the governing board?”

Opinion: A board of regents has the responsibility and authority outlined by Bylaw 6.03 and thereby “governs” its institution “subject to general policies set by the Synod” (Bylaw 6.01). As already noted in answer to question 2 above, the Board for Higher Education must respect the duties that have been expressly given to boards of regents as delineated in Bylaw 6.03. To the extent of its functions outlined in Bylaw 3.409, however, the Board for Higher Education does have “overall responsibility” over boards of regents and their institutions as a unified synodical system and is required to carry out these responsibilities.

Adopted Oct. 21-22, 2002

Interpretation of Article VI 2 b (02-2278)

A pastor of the Synod teaching at an educational institution of the Synod requested an opinion regarding the Article VI prohibition against taking part in sacramental rites of heterodox congregations or of congregations of mixed confessions, particularly as it pertains to participation in the Lord’s Supper.

Question: Could you explain the exact meaning of Article VI 2 b of the Constitution which proscribes members of Synod from "taking part in the ...sacramental rites of heterodox congregations or of congregations of mixed confessions"; specifically, with reference to the celebration of the Lord's Supper in heterodox congregations. Does this forbid members of Synod from communing in such congregations (presumably congregations not in fellowship with the LCMS) or does it only forbid members from being celebrant or helping in the distribution of the elements or some other service at the altar?

Opinion: The Commission previously addressed issues related to Article VI 2 of the Constitution in opinions Ag. 1930 and 98-2122. In response to a series of questions regarding the participation of synodical pastors, teachers, deaconesses, and congregations in services and events sponsored jointly by associations or groups of churches not in church fellowship with each other, the Commission responded:

The question of the application of the language of Article VI in the Constitution of The Lutheran Church—Missouri Synod is a matter which falls within the purview of the Commission on Theology and Church Relations which is to provide study materials on the basis of which, the Synod may determine the application. The study document which the CTCR has prepared and which is now in circulation is intended to serve that purpose. At the conclusion of this study it will be the Synod’s responsibility in keeping with the Bylaws to make the ultimate decision regarding the position of the Synod in relation to questions such as those which have been posed.

The Commission does not believe that there is a specific question of constitutional or bylaw stipulation squarely before it and believes that it would be presumptuous for the Commission on Constitutional Matters to respond at this time to the questions of application which have been posed. (Ag. 1930, March 13, 1992)

In response to the question, “Does Article VI either in 2, b, or elsewhere forbid the participation of pastors of other churches or confessions in the services and sacramental rites of a congregation of the Synod?” the Commission ruled as follows:

Article VI sets forth the conditions required of congregations and individuals to obtain and continue to hold membership in the Synod. To respond to the question, the Commission deems it necessary to review the provisions of Article VI, paragraphs 1 and 2. Paragraph 1 states that a member of the Synod must accept the confessional basis of Article II of the

Synod's Constitution. Paragraph 2 builds on paragraph 1 and requires a member of the Synod to renounce unionism and syncretism of every description.

The last two words of paragraph 2 are: "such as." These words indicate that what follows in the subparagraphs of paragraph 2 are examples of that which is prohibited in the opening sentence of paragraph 2. The subparagraphs are not, therefore, an all-inclusive listing but only examples of prohibited activities.

Subparagraph b prohibits an individual member of the Synod from taking part in the services and sacramental rites of heterodox congregations or of congregations of mixed confession. The example in subparagraph b does not address directly the question asked of the Commission, namely: "Does Article VI, b, forbid participation of ministers of heterodox congregations or congregations of mixed confession from participating in the services or sacramental rites of a congregation that is a member of the Synod?" However, this is the other side of the coin of that which is prohibited in subparagraph b. It is equally unionism and syncretism whether an individual member of the Synod participates in the services or sacramental rites of a heterodox congregation or a congregation of mixed confession or whether a minister of a heterodox congregation or a congregation of mixed confession participates in the services or sacramental rites of a congregation that is a member of the Synod. The principle remains the same. It is contrary to the condition of membership set forth in Article VI, 2. Neither the remainder of the Constitution nor the Bylaws of the Synod provide any exception to this principle (98-2122, Nov. 30, 1998).

Article VI indicates that taking part in a service or sacramental rite of a heterodox congregation or a congregation of mixed confession is an act of unionism and syncretism. The specific questions are then: 1) What constitutes "taking part"? 2) What constitutes a "service"? 3) What constitutes a "heterodox congregation"? 4) What constitutes a "congregation of mixed confession"? The answer to these questions relates to a minister of religion's commitment to witness publicly and privately to the one and only Gospel set forth in the Holy Scriptures. Among the functions of the Commission on Theology and Church Relations is to "provide guidance to the Synod in matters of theology and church relations" (Bylaw 3.925 b). Thus this question should be directed to that commission.

Adopted Oct. 21-22, 2002

Rights and Responsibilities of President of the Synod Under Bylaw 3.101 (02-2282A, B)

Two pastors of the Synod in separate letters to the Commission dated July 15, 2002, requested a ruling from the Commission regarding the Bylaw 3.101 distinction between the President's ecclesiastical and administrative powers and duties as pertaining to his announced intention to call up for review a decision of the investigating officer in a current dispute case.

Question: May the President of the Synod use Bylaw 3.101 to justify the review and possible overturning of the decision that was made by the member of the Praesidium under the provisions of Bylaw 2.27 c?

Opinion: The President's authority in such circumstances derives from Article XI B of the Constitution, which incorporates both the ecclesiastical and administrative responsibilities. An issue can implicate both areas of responsibility. The failure of a reviewing officer to take into consideration some resolution of the Synod would be administrative, but a reviewing officer acting based on a misunderstanding of the doctrines of the church would be considered ecclesiastical.

Opinion 02-2282 of the Commission addressed this question. That opinion indicates that the President's authority is not founded in the Bylaws but rather in Article XI of Synod's Constitution. Under Article XI the President has the authority to advise, admonish and reprove, and if such admonition is not heeded, report such cases to the Synod. He does not have the authority to overturn the decision that was made by the member of the Praesidium under the provisions of Bylaw 2.27 c.

Adopted Oct. 21-22, 2002

Responsibilities of the President and Secretary in Dispute Resolution Process (02-2283)

A pastor of the Synod in a July 11, 2002 letter requested responses from the Commission to a series of questions pertaining to the Synod's dispute resolution process and the role of officers of the Synod in that process.

Question 1: Under the LCMS Constitution and Bylaws and more specifically Article XI B 4 as well as Bylaw 1.09 b, does the President of the LCMS at all times and in all circumstances have the right and responsibility to exercise the duty of ensuring that all members carry out the resolutions of the Synod?

Opinion: The duties of the President of the Synod as set forth in Article XI B of the Constitution of the Synod are applicable at all times during the term of office of the man who occupies the position of President of the Synod. Bylaw 1.09 b deals with doctrinal resolutions and thus comes under the provisions of Article XI B 4, which provides that "The President shall see to it that the resolutions of the Synod are carried out." However, the President's supervisory authority to carry out this directive does not extend over all members of the Synod but is limited to the officers of the Synod, all such as are employed by the Synod, the individual Districts of the Synod and all District Presidents (Article XI B 1).

Question 2: In the event that another synodical officer is granted the authority of the synodical President, by whatever means, does not an officer under those circumstances have the responsibility of carrying out the resolutions of Synod accepted in convention, and failing to carry out that responsibility, is not that officer derelict in his constitutional duties?

Opinion: In the letter that accompanied the request for this opinion, the author indicated that his questions were related to the issues the Commission addressed in opinion 02-2282. Thus this opinion and the opinions in response to questions 3 and 4 hereof are rendered in the context of opinion 02-2282.

The question begins with an erroneous premise. The officer of the Synod who is required to conclude whether the facts form a basis for expulsion from the Synod under Bylaw 2.27 c is not granted the authority of the President of the Synod. The dispute resolution process commenced under Bylaw 2.27 designates the individual who is to make the decision required by Bylaw 2.27 c. The individual initially designated to make that choice is the President. If the President is a party to the matter in dispute, has a conflict of interest, or is unable to act, the First Vice-President or the next qualified synodical officer is designated to undertake the task. Such officer is not granted the authority of the President to see to it that the resolutions of the Synod are carried out. Rather, his authority has as its source Bylaw 2.27.

The responsibility of the officer who carries out the provisions of Bylaw 2.27 c is to determine whether the accused member of the Synod has engaged in conduct which Article XIII of the Constitution states to be the basis for expulsion from the Synod: "Members who act contrary to the confession laid down in

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

Question 3: If a convention resolution is brought forward as applicable in the matter before the officer who is to make a decision under Bylaw 2.27 c and that officer under the duties of LCMS Constitution Article XI B 4 fails either to distinguish the applicability of the convention resolution or apply the convention resolution in his decision, is that officer derelict in his constituted duties?

Opinion: As stated in the previous opinion, the duties of Article XI B 4 are those of the President and not those of the officer who carries out the function of Bylaw 2.27 c. Whether or not such 2.27 c officer is to distinguish the applicability of a convention resolution or to apply such resolution in his decision depends upon whether such resolution relates to the causes for expulsion as set forth in Article XIII of the Constitution.

Question 4: If the officer who makes the decision under Bylaw 2.27 c is deemed to be derelict in his constituted duties, is not the decision rendered invalidated?

Opinion: Neither the Constitution nor the Bylaws of the Synod use the word "derelict" and thus the Commission chooses not to address that issue. The decision of the 2.27 c officer is put to the test when the officer presents the matter to a Dispute Resolution Panel and the accused is there given an opportunity to refute the charges. The decision of the Dispute Resolution Panel or Appeal Panel will determine whether the officer was correct in his decision rendered under the provisions of Bylaw 2.27 c.

Question 5: If the Secretary of the Synod offers questions to the Commission on Constitutional Matters concerning the supervision of the office of the President in an open case before the church questioning the applicability of Bylaw 3.101 in the presidential supervision and decision process of a complaint leading to the suspension of a rostered worker, 1) can the Secretary participate in the discussion of the issue since he has violated neutrality; and 2) can the Secretary continue to be involved in the process of the complaint under discussion in any way since he has violated neutrality?

Opinion: Bylaw 3.905 d states that one of the duties of the Commission on Constitutional Matters is to interpret the Synod's Constitution, Bylaws and resolutions upon the written request of, among others, a member of the Synod or an official of the Synod. Accordingly, the Secretary is qualified to ask for an interpretation. The Secretary is a nonvoting member of the Commission. When the Commission considers a question that is asked by a member of the Commission or involves a conflict of interest by a member of the Commission, such member does not participate in the discussions leading to the opinion. As an example, the questions addressed in opinion 02-2282 were asked by the Secretary of the Synod and the final paragraph of that opinion states that the Secretary took no part in those discussions.

Both parts of the question addressed by this opinion state that the Secretary has violated neutrality. Asking for an interpretation of the Synod's Constitution, Bylaws or resolutions is not a violation of neutrality. Rather, it is an exercise of a right that the Synod grants to its members and officials to gain a proper understanding of the Constitution, Bylaws and resolutions of the Synod.

Once an opinion has been rendered on a question, such opinion is binding on the question decided unless and until it is overruled by a synodical convention (Bylaw 3.905 d). After the opinion is rendered, the member of the Commission who asked the question or had a conflict of interest resumes his full duties as a member of the Commission.

Adopted Oct. 21-22, 2002

**Authority of the President; Participation of the Vice-Presidents
in the Reinstatement Process (02-2284)**

In a letter dated July 11, 2002, a pastor of the Synod who is also a member of a faculty of an educational institution of the Synod submitted a series of questions regarding the rights and responsibilities of the President and also the involvement of the Vice-Presidents in the reinstatement process.

Question 1: “When the Synod President and all parties to a dispute are forbidden to comment publicly on that particular dispute, may the Synod President still discuss in public the theological issues that are behind the dispute, even though he would not refer directly to the dispute or the participants in the dispute?”

Opinion: The Commission discussed this issue in its opinion 02-2251 wherein it stated: “There is no prohibition against the President communicating with the members of the Synod as to the underlying doctrinal topics that are involved in a disputed matter. The President cannot give publicity to the particular matter in dispute.”

Question 2: “Do the articles of the Synod’s Constitution have a greater authority than the Bylaws of the Synod? For example, if the President of the Synod concludes that following a particular stipulation in the Bylaws, namely, the final stipulation of Bylaw 2.27 g will undermine Article XI B, may the President of the Synod disregard that Bylaw stipulation in the interest of upholding Article XI B of the Constitution?”

Opinion: In general, the Constitution of the Synod establishes broad guidelines by which the Synod operates. Article VII of the Articles of Incorporation of the Synod states: “This corporation shall have and make such bylaws as may be necessary to accomplish its purposes and shall have power to create such corporations, boards, offices, and other subordinate bodies as may be necessary to accomplish its general and specific objectives and in such bylaws assign responsibilities to those bodies.” Bylaw 2.39 a states: “The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.” Nonetheless, bylaws must be in accord with and cannot override the Constitution of the Synod. Whether or not a bylaw is invalid because it is contrary to the Constitution is a matter to be decided by the Commission on Constitutional Matters in accord with Bylaw 3.905.

Article XI A 1 of the Synod’s Constitution states: “The officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod.” Article XI B 4 states: “The President shall see to it that the resolutions of the Synod are carried out.” Bylaws of the Synod come into being by resolutions adopted by the Synod in convention assembled. There is no provision in the Constitution or Bylaws of the Synod that gives to any officer of the Synod, including the President, the right to disregard any provision of any bylaw. As stated in Bylaw 1.07, “The delegate convention of the Synod is the legislative assembly which ultimately legislates policy, program, and financial direction to carry on the Synod’s work on behalf of and in service to the member congregations, reserving to itself the right to give direction to all officers and agencies of the Synod.”

Question 3: “Reinstatement is a matter of ecclesiastical supervision. The only people in the Council of Presidents who have ecclesiastical supervision are the elected district presidents and the President of Synod (see Art. XI B; Art. XII 7-9). Synod vice-presidents do not normally have ecclesiastical supervision of doctrine and practice (see Art. XI C). When Bylaw 2.33 says that reinstatement is done through a 75% or more majority of the *District Presidents*

present and voting, it specifically speaks to those who have ecclesiastical supervision (both by experience and by role) according to the Constitution. Does Bylaw 2.33 limit reinstatement only to those who have ecclesiastical supervision, namely district presidents and the President of the Synod? In other words, does Bylaw 2.33, in accordance with Art. XI B and Art. XII 7-9, stipulate that the way in which the Council of Presidents has determined to reinstate individuals is by means of a vote of *district presidents*?"

Opinion: In its opinion 00-2198 the Commission has already essentially answered this question, as follows:

The Commission notes that Bylaw 2.31 establishes that "the decision to accept or deny a request for reinstatement shall be at the sole discretion of the Council of Presidents." Bylaw 2.33 adds that "procedures for investigating and processing requests for reinstatement ... shall be the responsibility of the Council of Presidents." Such reference to the Council as a whole is consistent with all other bylaws relating Council roster responsibilities. In no case is a vote or other action of District Presidents distinguished from the vote and action of the Praesidium, including, for example, the vote to extend candidate status (Bylaw 2.19, a).

The Commission therefore rules that when Bylaw 2.33 stipulates that "a decision to reinstate shall require an affirmative vote of at least 75 percent of the District Presidents present and voting," the bylaw intends to include the President and Vice-Presidents of the Synod in the voting. The Commission concludes that the drafters of the bylaw, in the interest of carefully delineating the percentage vote needed, referred in particular to District Presidents but had no intention of excluding the Praesidium from the vote. To decide otherwise would labor against other statements in these same bylaws which clearly place decisions regarding reinstatement into the hands of the Council of Presidents.

Question 4: "When Bylaw 2.31 says that the Council of Presidents has the sole discretion in reinstating an individual member of the Synod, while Bylaw 2.33 says the reinstatement is done through a 75% or more majority of the District Presidents present and voting, may the Council of Presidents excuse the Synod Praesidium or a portion of the Praesidium (e.g., Synod vice-presidents) from participating in a particular vote to reinstate?"

Opinion: See answer to question 3 above. The Council of Presidents is required to abide by the Bylaws of the Synod, including the opinions of the Commission on Constitutional Matters, which "shall be binding on the question decided unless and until it is overruled by a synodical convention" (Bylaw 3.905 d). Therefore, Bylaw 2.31 may not be understood to allow the Council of Presidents to excuse the Praesidium or a portion of it from participating in a particular vote to reinstate.

The Commission recognizes the inconsistency of terminology used in Bylaw 2.31 and therefore will refer this matter to the Commission on Structure for its attention.

Adopted Oct. 21-22, 2002

Constitutional Power of President When Recused (02-2285; 02-2285A; 02-2285B; 02-2285C; 02-2301)

In letters dated July 15, July 24, July 25, August 8, and August 27, 2002, a number of pastors of the Synod raised a follow-up question to the Commission's previous opinion 02-2282 regarding the right of a president of the Synod who has been recused from a particular dispute case to invoke his general constitutional power to call into question a decision in the case, as follows:

Question: May a synodical President who has been recused from presiding over a disciplinary case submitted to the Praesidium under Bylaw 2.27 invoke his general constitutional power “to advise, admonish, and reprove” (Article XI B 3) and his specific power given under Bylaw 3.101 B 5 to “call up for review any action by an individual officer” in order to call into question the ruling made by the member of the Praesidium who was given power to investigate and rule on the case?

Opinion: While a synodical president may be disqualified from participation in Bylaw 2.27 and Chapter VIII of the Bylaws for reasons given in Bylaw 2.27 a 1, he may, due to his constitutional responsibilities and powers provided under Article XI and in light of this Commission’s opinion 02-2282, call up for review a decision made by the next qualified officer who is carrying out the responsibilities of Bylaw 2.27 and Chapter VIII. The Commission has responded in further detail to this question in its opinion 02-2297.

Adopted Oct. 21-22, 2002

Former Opinion re *Lutheran Book of Worship* (02-2286)

An emeritus member of the Synod in a June 30, 2002 letter requested that the Commission update its 1983 ruling regarding the *Lutheran Book of Worship* in light of related convention actions. After citing several references from convention actions, he explained: “This evidence is supplied to the CCM to help them find the official decision on the part of the convention of the Synod that the *Lutheran Book of Worship* is doctrinally impure.”

Opinion: In its April 29, 1983 opinion Ag. 1645-1640, the Commission stated:

If in fact the *Lutheran Book of Worship* is not “doctrinally pure,” then under Article VI of our Synod’s Constitution it should not be used by our congregations. However, we can find no evidence of an official decision on the part of the convention of the Synod itself that the *Lutheran Book of Worship* is doctrinally impure.

Bylaw 3.905 d states that an opinion rendered by the Commission on Constitutional Matters shall be binding on the question decided unless and until it is overruled by a synodical convention. The material furnished to the Commission to support the present request was available to the Commission when it rendered its 1983 opinion. Since many synodical conventions have been held since 1983 and none of these have overruled the 1983 opinion, the Commission declines to revisit the question.

Adopted Oct. 21-22, 2002

Eligibility of Women for Offices of President/Vice-President in Congregations (02-2288)

A pastor of the Synod in an e-mail letter dated July 23, 2002, explained that his congregation was in the process of updating its constitution. Upon submission of the updated constitution to the District for approval, the congregation was informed that it should add a provision excluding women from the positions of congregational president (chairman) or vice-president (vice-chairman) as per article 12.0 of the Commission’s “GUIDELINES for the Constitution and Bylaws of a Lutheran Congregation.” The pastor explains that his congregation agrees with the doctrinal position that women should not be involved in the specific functions of the pastoral office nor hold positions in the church that violate the order of creation. He notes, however, that these offices in question can be viewed as strictly functionary and administrative in nature and asks the following question.

Question 1: “Why would it be considered a violation of the order of creation or an improper involvement in the specific functions of the pastoral office for a woman to hold these posts?”

Opinion: For information regarding why it would be considered a violation of the order of creation or an improper involvement in the specific functions of the pastoral office for a woman to hold one or other of these posts, the petitioner is advised to request explanation from the Synod’s Commission on Theology and Church Relations.

Question 2: “What is the rationale for the position advocated by the Commission on Constitutional Matters in its ‘Guidelines for the Constitution and Bylaws of a Lutheran Congregation’?”

Opinion: Resolution 3-06A of the 1995 convention of the Synod resolved, “That the members of the Synod continue to uphold its position on women serving in congregational offices and to abide by the position as stated in the 1970 opinion of the Commission on Constitutional Matters (CCM) that congregations may allow women to hold all congregational offices except those of chairman, vice-chairman, elder, and any other board or policy-making committee ‘whose chairmanship the congregation might wish to restrict to men.’” The Commission’s “GUIDELINES for the Constitution and Bylaws of a Lutheran Congregation” incorporates this and earlier convention decisions of the Synod (1969 Res. 2-17; 1971 *Workbook*, p. 244; 1981 Res. 3-11).

Adopted Oct. 21-22, 2002

Relationship of the Synod to Auxiliary Organizations (02-2289)

A pastor of the Synod in a July 24, 2002 letter to the Commission asked a series of questions regarding the relationship of the Synod to auxiliary organizations and their operations, especially as pertains to rostered members of the Synod employed by such organizations.

Question 1: Are the Constitution, Bylaws, policies, administration and activities of an Auxiliary or Recognized Service Organization required to be in conformity with and defer to the Constitution and Bylaws of Synod?

Opinion: The answer to this question is: No. While Bylaw 13.01 c 6 requires that an Auxiliary shall “honor and uphold the doctrine and practice of The Lutheran Church—Missouri Synod as set forth in the Scriptures and the Lutheran Confessions,” and while Bylaw 13.01 a 2 requires that an Auxiliary “identifies itself with the Synod,” the latter bylaw also states that an Auxiliary “is not a part of the Synod’s constitutional structure.” Bylaw 13.01 a 4 provides that an Auxiliary “...operates with freedom and self-determination as a ministry and is independent of the Synod in its organization and administration, in the establishment and evaluation of its own objectives, activities, and programs, and in financial matters, while complying with the responsibilities outlined in Bylaw 13.01.”

Regarding a Recognized Service Organization, while Bylaw 13.03 a provides that “the granting of recognition by the Synod signifies that a service organization, while independent of the Synod, fosters the mission and ministry of the church, engages in program activity that is in harmony with the programs of the boards of the Synod, and respects and does not act contrary to the doctrine and practice of the Synod,” Bylaw 13.03 b provides that “under the governance and policies of its own board, a Recognized Service Organization operates with freedom and self-determination as a ministry organization independent of the Synod or Districts or congregations of the Synod in the establishment and evaluation of its own objectives, activities, and programs, in organization and administration, and in financial matters.”

Question 2: If a rostered member of the Synod who is employed by an Auxiliary or Recognized Service Organization has also been elected or appointed to an office, board membership or other position specified in the synodical Constitution and Bylaws, may the policies or the administrative or governing structure of the Auxiliary or Recognized Service Organization forbid the rostered member from duly carrying out the duties of that office, board membership or other membership or other position as specified in the synodical Constitution and Bylaws, or dictate for the rostered member in carrying out such duties additional stipulations which are not specified in the synodical Constitution and Bylaws?

Opinion: The Synod, an Auxiliary, and a Recognized Service Organization are separate organizations. Each has the right to establish its own governance. The Constitution and Bylaws of the Synod are the governing instruments of the Synod. Each individual by accepting an elected or appointed office, a staff position, or employment with the Synod becomes bound by such governing instruments. In the same manner, an individual who accepts a position with an Auxiliary or Recognized Service Organization becomes subject to the governing instruments of such Auxiliary or Recognized Service Organization. If, on the one hand, an individual holds a position with the Synod and, on the other hand, also holds a position with an Auxiliary or Recognized Service Organization, and such dual positions subject the individual to conflicting requirements in the governing instruments of each organization, the individual must choose which organization he wishes to remain a part of or which position he wishes to hold. The Constitution and Bylaws of the Synod do not impose any limitations on an Auxiliary or Recognized Service Organization enforcing the terms of its governing instruments in such situations.

Question 3: May an Auxiliary or Recognized Service Organization take disciplinary action against a rostered member of the Synod in its employ who has been elected or appointed to an office, board membership or other position specified in the synodical Constitution and Bylaws for duly carrying out the duties of that office, board membership or other position as specified in the synodical Constitution and Bylaws?

Opinion: The answer is provided in the previous opinion.

Question 4: Does becoming an Auxiliary or Recognized Service Organization indicate agreement with, and require conformity and deference to, the Constitution and Bylaws of Synod as regards the Constitution, Bylaws, policies, administration and activities of the Auxiliary or Recognized Service Organization, and does this include a requirement that a rostered member who is employed by an Auxiliary or Recognized Service Organization and has also been elected or appointed to an office, board membership or other position specified in the synodical Constitution and Bylaws be allowed and not be hindered from or disciplined for by the Auxiliary or Recognized Service Organization, carrying out the duties of that office, board membership or other position as specified in the synodical Constitution and Bylaws?

Opinion: See the first two opinions above.

Adopted Oct. 21-22, 2002

Voting Eligibility of a Pastor with a Joint Call (02-2291)

In a July 23, 2002 letter to the Secretary of the Synod, a District Executive for Missions asked for an opinion regarding eligibility to vote in District and Synod conventions when a congregation and the District jointly call a minister of religion—ordained. The worker would serve as the called pastor of a congregation and have duties for the District as well.

Question: If a pastor is called jointly by a congregation and the District, is such pastor eligible to vote in District and Synod conventions?

Opinion: Bylaw 3.03 states that “voting delegates shall consist of one pastor and one layman from each electoral circuit” when delegates are being chosen for a convention of the Synod. Article V A states:

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.

Further, Bylaw 3.05 a states that “all pastors who are not advisory members under Article V B of the Constitution shall be eligible for election” as delegates to a synodical convention, and Bylaw 4.21 states that “the convention of the Districts shall be governed by the Bylaws adopted by the Synod for its conventions, insofar as these may be applicable.”

Since neither the Constitution nor the Bylaws of the Synod draw any distinction between those ministers of religion—ordained who are called by congregations of the Synod full time and those who are called in only a part-time capacity, a pastor who serves a congregation in a part-time called capacity may be elected to serve as a delegate to either a synodical or District convention as long as the above stipulations are met.

Adopted Oct. 21-22, 2002

Use of Term “Recusal” in Dispute Resolution (02-2293)

A pastor of the Synod in a letter received August 1, 2002, submitted a request for a ruling regarding the definition of a term that is being commonly used in conjunction with dispute resolution in our Synod. After the pastor provided additional information regarding this term to aid the Commission in its decision, he identified “the exact question” that he wished to place before the Commission, as follows.

Question: “Does the Constitution of Synod give a definition for the term ‘recuse’ or ‘recused’ or ‘recusal’? If a definition is not contained within the constitution, then is it not logical to use that most common understanding of the word mentioned above?”

Opinion: “Recuse” is an old legal term referring to the act of refusing or rejecting a judge, challenging that a judge not try a case on account of partiality. Whereas the Commission itself has on occasion used the term in its rulings in general reference to disqualification from a position or from involvement in a dispute case, neither the Constitution nor the Bylaws of the Synod use, nor do they give a definition to, the term or its related forms. The term that is used by the Bylaws of the Synod is the term “disqualified” (Bylaw 2.27 g) or “disqualification” (Bylaw 8.17). For this reason, reference to “the most common understanding” of the word is not pertinent or instructive, since the term has been imposed upon the dispute resolution process of the Synod from outside its Constitution and Bylaws.

Adopted Oct. 21-22, 2002

Questions re Disqualification of President in Dispute Resolution Process (02-2297)

A pastor of the Synod in an August 23, 2002 letter asked a series of questions following CCM opinion 02-2282, contending that “while the CCM dealt with a synodical president’s authority to interject himself into a Bylaw 2.27 procedure under the authority of Article XI B 1-3 of the Constitution, the Commission did not explicitly apply this decision to a case in which a synodical president is disqualified from a Bylaw 2.27 proceeding.”

Question 1: “Is a synodical President who is disqualified from participation in Bylaw 2.27 a and b also subject to disqualification in regard to Bylaw 2.27, subsections c-f, as well as other duties of that ecclesiastical supervisor discussed in Chapter VIII as part of the dispute resolution process? If a synodical President is disqualified from further participation in Bylaw 2.27 c-f and chapter VIII, is he not then also unable to call up for review any decision made by the next qualified officer acting in accordance with these Bylaws.”

Opinion: Bylaw 2.27 g provides that when complaints are brought against a District President, the President of the Synod must proceed in the same fashion as a District President in investigating whether the allegations can be substantiated. If the President is disqualified, the next qualified officer of the Synod functions in his place throughout the remainder of the process as it continues into Chapter VIII of the Bylaws and the President remains disqualified.

In opinion 02-2279, the Commission ruled that the President of the Synod nonetheless continues to have “ecclesiastical supervisory responsibility under the Constitution and Bylaws of the Synod...even though he may have been disqualified on the basis of Bylaw 2.27 a 1.” Accordingly, the Commission ruled in opinion 02-2282 that “under extraordinary circumstances, such as when an issue is of synod-wide concern and [is] having an immediate and ongoing negative impact on the Synod, the President may choose to exercise his discretion in fulfilling his duties under Article XI. The President’s right and/or responsibility to call up for review an action of an investigation officer carrying out the responsibilities of Bylaw 2.27 c flows from his constitutional responsibilities and powers.”

Therefore, while a synodical president may be disqualified from participation in Bylaw 2.27 and Chapter VIII of the Bylaws for reasons given in Bylaw 2.27 a 1, he may, due to his constitutional responsibilities and powers, call up for review a decision made by the next qualified officer who is carrying out the responsibilities of Bylaw 2.27 and Chapter VIII.

Question 2: “If, in a specific case, a disqualified synodical president calls for a review of a decision made in accord with Bylaw 2.27 or Chapter VIII, are there not two functioning synodical presidents? Should not the synodical President be prohibited from exercising his normal constitutional authority in a case in which he has been disqualified, since another officer is effectively functioning as the synodical President in that case?”

Opinion: Again, the President of the Synod continues to have ecclesiastical responsibility under the Constitution and Bylaws of the Synod, even though he may have been disqualified from carrying out the specific functions of the President of the Synod described in Bylaw 2.27 and Chapter VIII. The next qualified officer has not assumed the office of the President but has been given responsibility for only those specific functions due to the President’s disqualification. Therefore, there are not two functioning synodical presidents.

Question 3: “Is not Bylaw 2.27 g complementary rather than contradictory to the Constitution Article XI B? If so, should not the next qualified officer be functioning as the synodical President for (and throughout) a specific complaint and resolution process, thus upholding both the Bylaws and Constitution and avoiding a conflict of interest on the part of a disqualified synodical President?”

Opinion: Bylaw 2.27 may be said to be complementary to Article XIII of the Constitution, providing the procedure whereby expulsion from the Synod may be executed. The President of the Synod, even when disqualified from carrying out the functions of his office provided by Bylaw 2.27, retains the overall responsibility and power of his office under Art. XI B.

Question 4: “Does Bylaw 3.51 k prohibit applying “to call up for review” in Bylaw 3.101 B 5 to cases of ecclesiastical supervision?”

Opinion: Bylaw 3.51 k provides a definition for “supervision” for the Bylaws of the Synod, specifically, “to have authority over, to direct actions, to control activities.” It also provides that “the definition of ecclesiastical supervision shall be determined exclusively by those Bylaws pertaining to ecclesiastical supervision.” Bylaw 3.101 B 5 occurs under Section B, which outlines the President’s administrative powers and duties. If the President is convinced that his concerns regarding an action by an individual officer, executive, or agency may be in violation of the Constitution, Bylaws, and resolutions of the Synod and that such concerns are administrative in nature, he may act according to the bylaw to the extent of requesting that such action be altered or reversed.

Adopted Oct. 21-22, 2002

Status of “The Lutheran Understanding of Church Fellowship” (02-2299)

In a letter dated August 26, 2002, a pastor of the Synod called attention to a recent resolution of the Synod, 2001 convention Resolution 3-07A, in light of Bylaw 1.09 c.

Question: “Given the requirements stipulated in the Constitution and Bylaws of Synod regarding how a document or statement becomes the doctrinal position of the Synod, does ‘The Lutheran Understanding of Church Fellowship,’ commended to the Synod under Resolution 3-07A from the last synodical convention, qualify as such?”

Opinion: Bylaw 1.09 a grants to the conventions of the Synod the right to adopt doctrinal resolutions and statements in harmony with Holy Scripture and the Lutheran Confessions. Doctrinal resolutions come into being in the same manner as other resolutions, as discussed in Bylaw 1.09 b. Doctrinal statements must be subjected to the procedure provided by Bylaw 1.09 c, requiring passage by the Synod in convention and ratification by a two-thirds majority vote of the Synod’s congregations. Doctrinal statements and resolutions alike are to be honored and upheld until such time as the Synod amends or repeals them.

Resolution 3-07A was adopted according to the procedure provided by Bylaw 1.09 b. It is a resolution that commends to the Synod for continued use and guidance the study developed by the Commission on Theology and Church Relations, as was called for by Resolution 3-03B of the 1998 convention, and the response prepared by the Commission on Theology and Church Relations in conjunction with the synodical President based on the reactions of the Synod to that study.

Adopted Oct. 21-22, 2002

Further Clarification of Opinion 02-2282 in Light of Related Constitutional and Bylaw Provisions (02-2304)

A District President in an August 28, 2002 letter raised a series of “matters of clarification in connection with various constitutional and bylaw provisions” related to the Commission’s recent opinion 02-2282 “which dealt with the power of the office of the President of the Synod.”

Question 1: The Commission on Constitutional Matter states in its opinion 02-2282 "...when an issue is of synod-wide concern and having an immediate and ongoing negative impact on the Synod, the President may choose to exercise his discretion [and his] right and/or responsibility to call up for review an action of an investigating officer carrying out the responsibilities of Bylaw 2.27 c...". Who determines whether an issue exists, and what sort of issue this may be? Is this the decision of the President alone?

Opinion: The above statement from the Commission's opinion 02-2282 is a paraphrase and not an exact quote. The Commission opinion states: "Under extraordinary circumstances, such as when an issue is of synod-wide concern and having an immediate and ongoing negative impact on the Synod, the President may choose to exercise his discretion in fulfilling his duties under Article XI. The President's right and/or responsibility to call up for review an action of an investigating officer carrying out the responsibilities of Bylaw 2.27 c flows from his constitutional responsibilities and powers."

Article XI B of the Constitution sets forth the duties of the President of the Synod. They are applicable to every man who occupies the office of the President. They begin when the man is inducted into the office of President and do not end until his successor is inducted into office. They are to be carried out at all times during his term of office. The Synod established a procedure in the Bylaws for a member's expulsion from the Synod in accord with the mandate in Article XIII of the Constitution. That procedure cannot negate the duties of the President set forth in Article XI B. Thus, if there is authority for his actions under the provisions of Article XI B (since they are applicable at all times during his term of office), the President may use that authority in a phase of an expulsion proceeding to which such authority is appropriate. The authority of the President is found in Article XI B. He does not have authority to overturn the decision made by the investigating officer carrying out the responsibilities of Bylaw 2.27 c.

As stated above, the President's authority under Article XI B is constant during his term of office. In opinion 02-2282 the Commission used the phrase "under extraordinary circumstances." This phrase was an acknowledgement by the Commission that an unfettered use by the President of the authority he possesses under Article XI B could create chaos in the activities of the Synod enumerated in the Bylaws. There are no restrictions in the Constitution on such use other than the provision of Article XI A which states: "The officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod." Yet, the President must give cognizance to the provisions of the Bylaws for they express the will of the Synod through their adoption by members of the Synod in convention assembled. Therefore, when the Bylaws set forth defined responsibilities and procedures, the President should give recognition to those responsibilities and procedures and only use his Article XI B authority relative to those responsibilities and procedures under extraordinary circumstances and in a manner to support the provisions of the Bylaws. The decision to use the provisions of Article XI B is that of the President and the President alone.

Question 2: Does opinion 02-2282 of the Commission exempt the President of the Synod from the requirements of Bylaw 8.01 which states that the procedures outlined in Chapter VIII "...shall be the exclusive remedy to resolve such disputes..." in the event that the President, by means of a pastoral letter, publicly accuses an officer of the Synod of violating the Constitution or Bylaws, or doctrinal position, or resolutions of the Synod?

Opinion: Opinion 02-2282 does not exempt the President of the Synod from the requirements of Bylaw 8.01.

Question 3: Since according to a previous Commission opinion, only a convention of the Synod may consider resolving a dispute with the President of the Synod, does this mean that the person so accused by the President has no recourse for remedy until the next convention of the Synod when a committee appointed by the President will consider the dispute? If so, how does this agree with the words of John 7:51? Does this deprive an officer of the Synod to speak in his own defense to the same audience before which he was accused?

Opinion: In opinion 01-2240 the Commission affirmed its 1992 opinion (Ag. 1915) that addressed the question of who has supervisory responsibility over the synodical President. The 1992 opinion stated: "It would seem that the only recourse is an appeal to the convention of the Synod when personal admonition fails to have the President of the Synod carry out the responsibilities of his office as defined by the *Handbook*."

The issue posed by this question does not appear to deal with the President carrying out the responsibilities of his office. Rather, it asks what if the President falsely, in a public manner, accuses an officer of the Synod of violating the Constitution or Bylaws or doctrinal position or resolutions of the Synod. A personal dispute involving an officer of the Synod is not a matter to be decided by a convention of the Synod. A dispute between two members of the Synod is to be resolved under the provisions of Chapter VIII of the Bylaws beginning with Bylaw 8.05.

The Commission does not respond to the question regarding John 7:51 because such question is beyond the function of the Commission.

As to the question of whether an officer of the Synod is deprived of an opportunity to speak in his own defense to the same audience before which he was accused by the President of the Synod, the Commission directs attention to its opinions 01-2243 and 02-2251 which addressed themselves to the issue of publicity while a matter is in dispute. The Commission interprets the Constitution and Bylaws of the Synod. It has no authority to enforce its opinions.

Question 4: The opinion of the Commission states that the appeal process, which is designed to discover and correct the investigating officer's errors in fulfilling his responsibility under Bylaw 2.27 c, make the President's need to call up the action of the investigating officer for review, or the need to report by a pastoral letter such calling up for review "moot." The word "moot" is defined as, "subjected or subject to argument or discussion" (Webster's Collegiate Dictionary). Does the use of this word in the CCM opinion mean that the President may, despite the fact that the appeals process has been followed, call up for review the decision made, and claim that he is given this authority by Article XI of the Constitution and Bylaw 3.101?

Opinion: The sentence taken from opinion 02-2282 is part of a paragraph where the Commission pointed out that if all the parties involved in the matter in dispute were to scrupulously follow the provisions of the Bylaws, the President would have no knowledge as to the decision of the investigating officer under Bylaw 2.27 c until such time as the Dispute Resolution Panel issued its decision. This would occur because every party involved in the dispute honored Bylaw 8.21 e and did not give publicity to the matter. However, in opinion 02-2282 the Commission was required to furnish an opinion in a situation where the President was made aware of the decision of the investigating officer under 2.27 c in violation of the ban on publicity in Bylaw 8.21 e and opinions of the Commission on Constitutional Matters. In such situations, the Commission ruled, the President may invoke the provisions of Article XI B. Thus, if the

Bylaws and the opinions of this Commission relative to "publicity" were followed by all parties, there never would be a situation where the President would have knowledge of the decision of the investigating officer before the decision is rendered by the Dispute Resolution Panel and, therefore, any opinion on what is to happen if the ban on publicity is violated would never be necessary. It is in this context that the Commission used the word "moot."

As concluded in opinion 02-2282, the President may invoke the provisions of Article XI B of the Constitution relative to a decision rendered by an investigating officer under Bylaw 2.27 c if he becomes aware of such decision prior to the time the Dispute Resolution Panel renders its decision.

Question 5: The opinion of the CCM states that "*...the president would normally be expected not to choose to actively intervene until that process was concluded.*" The process referred to is the dispute resolution process. Do the words, "normally choose" mean that the President has freedom to choose to intervene at any time, should he so wish, and that Article XI of the Constitution and Bylaw 3.101 give him this option? According to this opinion, do the words, "until that process has concluded," mean that the President may exercise his freedom of choice to ask the Dispute Resolution Panel or the Dispute Review Panel to reverse their decision, because he considers it not to be in accord with his understanding of the Constitution, Bylaws, doctrinal position of the Synod, or a resolution adopted by the Synod in convention? If the President may do so, how does this affect the meaning of Bylaw 8.09 e that the decision of the Review Panel ". . .shall be binding and not be subject to further review"?

Opinion: Article XI B of the Constitution states that the President has the supervision regarding the doctrine and administration of (a) All officers of the Synod; (b) All such as are employed by the Synod; (c) The individual Districts of the Synod; (d) All District Presidents. It further states that it is the President's duty to see to it that all the aforementioned act in accordance with the Synod's Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod. Bylaw 3.101 gives the President the right to call up for review any action by an individual officer, executive, or agency which in his view, may be in violation of the Constitution, Bylaws and resolutions of the Synod.

The investigating officer under Bylaw 2.27 c is one of the individuals over whom the President has the supervision regarding their doctrine and administration under Article XI B and one of those whose actions he may call up for review under Bylaw 3.101. The members of a Dispute Resolution Panel or a Review Panel when performing their duties as panel members are not acting as officers of the Synod, employees of the Synod, District Presidents or an executive. They are panel members and as such are beyond the authority of the President under Article XI B. However, Bylaw 8.09 d does provide that the President may request a decision regarding a reconsideration if a question of doctrine or practice is involved in the decision of the Dispute Resolution Panel.

Question 6: In light of the opinion 02-2282, which gives the President authority to call for a Review Panel to reverse its decision, does this give the Synod assembled in convention the authority to call up for review any decision of a Dispute Resolution Panel, or Review Panel, since the authority of the Synod is above the authority of the President? Or is the Synod under the authority of the President in this matter, even when assembled in convention?

Opinion: The question is based on a false premise. As stated in the opinion to Question 5 above, the President does not have authority over the Review Panel. Bylaw 8.09 provides that a decision of a Dispute Resolution Panel is binding upon the parties to that dispute subject to request for review. The same bylaw provides that the decision of a Review Panel is "binding upon the parties to that dispute and

not be subject to further appeal" (emphasis added). Unless the bylaw is amended by a convention of the Synod, a convention of the Synod cannot take any action relative to a final decision rendered in a matter in dispute.

Question 7: In the event of such intervention by the President, if in his opinion he believes that either the Constitution, the Bylaws, a resolution of the Synod, or the doctrinal position of the Synod, or that the decision will have "...an immediate and ongoing negative impact on the Synod...", does the President have to ask for an opinion from either the CCM or the CTCR?

Opinion: There is no requirement in the Constitution or Bylaws of the Synod that requires the President to seek input from the CCM or CTCR.

Question 8: In the event that a District President is involved in the dispute resolution process because he has suspended a member of the Synod (individual or congregation) and the Dispute Resolution Panel and the Dispute Review Panel have sustained the District President, may the President of the Synod call their decision up for review and request them to reverse their decision because he is personally convinced, without having personally conducted the investigation required of the District President, that they have not acted in accord with the Constitution, Bylaws, doctrinal position of the Synod, resolutions of a convention of the Synod, or that their decision will have "...an immediate and ongoing negative impact on the Synod"?

Opinion: The answer to this question is: No. See the opinion to Questions 5 and 6 above.

Question 9: The opinion of the CCM states "*In fulfilling his duties, the President would normally be expected to rely on the provisions of Chapter VIII of the Bylaws to correct errors occurring...*" Does this mean that he is not required to do so? Does this opinion also apply to the President with respect to the other Bylaws of the Synod, that he is "normally expected" to abide by them, but is not required to do so?

Opinion: The opinion to Question 1 above addresses this question. Each opinion of this Commission is in response to a specific question and is applicable to that question alone. The partial sentence from opinion 02-2282 quoted in this question applies to the interaction of Article XI B of the Constitution and Bylaw 2.27 c and nothing more.

Question 10: When a District President is involved in the dispute resolution process, may he, the Board of Directors of his District, his congregation, or any other group of persons conduct a public relations campaign to gain support for him in the Synod and in the public media? May they also solicit contributions from all the congregations of the Synod for a "Defense Fund"?

Opinion: Again this Commission is called upon to issue an opinion regarding a fact situation that arises because there has been a violation of Bylaw 8.21 e and its prohibition of publicity, and a violation of the opinions of this Commission on the topic of "publicity" which are binding on the members of the Synod unless and until such opinions are overruled by a convention of the Synod (Bylaw 3.905 d). The Constitution and Bylaws of the Synod are silent on the fact situations of this question. However, Rule 26 f of the dispute resolution Rules of Procedure is a restatement of Bylaw 8.21 e but then adds that the reconciler or Dispute Resolution Panel shall bring to the attention of the parties any violation of the rule prohibiting publicity.

Question 11: If the President of the Synod is convinced that an opinion of the CCM will have "*an immediate and ongoing negative impact on the Synod,*" may he call up for review, ask them to reverse their decision, and if this is not done, report in a pastoral letter to the Synod that the CCM has violated the Constitution, Bylaws, doctrinal position of the Synod, or a resolution of the Synod? If this is true, must the President also insist that the opinion of the CCM not be followed, since according to the opinion of the CCM, "Subsection 1 (Art. XI B 1-4) imposes upon him duties regarding the supervision of the doctrine and administration of all officers of the Synod. Subsection 2 requires that he sees to it that all act in accordance with the Synod's Constitution and admonish all who depart from it?"

Opinion: Article XI B 1 states that the President has the supervision regarding the doctrine and administration of all officers of the Synod, all such as are employed by the Synod, the individual Districts of the Synod and all District Presidents. The Commission on Constitutional Matters or its individual voting members are not officers or employees of the Synod and thus do not come under the provisions of Article XI B 1 and 2. The President may publicly comment on the opinions of this Commission, but Bylaw 3.905 states that its opinions shall be binding on the question decided unless and until it is overruled by a synodical convention.

Question 11 a: "Does resolution 3.07A (1991 Convention Proceedings pp 137, 138) adopt the CTCR document, "The Lutheran Understanding of Church Fellowship" (1991 CW pp 375-385), together with the CTCR response (1991 CW pp 48-51) as the official doctrinal position of the Synod?"

Opinion: Resolution 6-03 of the 1962 convention of the Synod established the Commission on Theology and Church Relations. Among the functions and duties assigned to the Commission were the following:

3. Consider and seek to adjust matters concerning which differences of opinion have arisen in the Synod and which have been referred to it by the President and Vice-Presidents. The functions of this commission shall be strictly advisory in this capacity, along the line of brotherly effort in the interest of divine truth;....
7. Advise and prepare special studies in theological matters, both of an internal and external nature, on request of the President of the Synod, the synodical officers, executives, boards, commissions, and committees;....

In the course of time it became necessary for the Commission on Constitutional Matters to clarify the role of the CTCR in the life of the Synod. In an April 29, 1983 opinion (Ag. 1606, A,B,C,D) the Commission stated the following:

The bylaws on the role of the Commission on Theology and Church Relations are quite clear. The Commission is to issue studies for the guidance of the synodical membership. Its proposals may be challenged.

If any proposal of the Commission is to become the official position of the Synod, a detailed procedure, outlined in Bylaw 1.03,¹ is to be followed. Until the Synod has taken action, a proposal of the Commission is of an advisory nature for study and guidance and not binding on the membership of the Synod. It should also be noted that those who dissent should proceed by following the proper avenues as set forth in Bylaws 1.03² and 1.19 e¹.

¹ Current Bylaw 1.09 c

² Current Bylaw 1.09 c

The Commission on Constitutional Matters finds that the Commission on Theology and Church Relations itself has attempted to make this clear, but its proposals continue to be regarded by many as setting forth the official position of the Synod, which is an erroneous conclusion.

The Synod in convention has recognized and promoted the use of studies of the Commission on Theology and Church Relations variously. It has in some fashion commended these studies for:

- study (1967 Res. 2-02; 1977 Res. 3-35; 1983 Res. 3-11; 1983 Res. 3-12; 1983 Res. 3-13; 1983 Res. 3-14; 1986 Res. 3-19; 1992 Res. 3-01; 1992 Res. 3-15; 1992 Res. 3-17; 1992 Res. 3-18; 1995 Res. 3-21; 1998 Res. 3-23; 2001 Res. 3-07A)
- guidance (1967 Res. 2-02; 1975 Res. 3-05; 1983 Res. 3-14; 1986 Res. 3-03; 1995 Res. 3-20; 2001 Res. 3-07A)
- reference (1975 Res. 3-05; 1986 Res. 3-03; 1992 Res. 3-15)
- discussion (1967 Res. 2-02)
- direction (1992 Res. 3-17)
- response (1977 Res. 3-35; 1983 Res. 3-12; 1983 Res. 3-13; 1992 Res. 3-18)
- continued use (2001 Res. 3-07A)
- as a tool (1992 Res. 3-01).

Several studies were “adopted” as synodical documents for reference and guidance (1967 Res. 2-13) as presented by the Commission on Theology and Church Relations (1965 Res. 2-03; 1965 Res. 2-25). Only one statement, *A Statement of Scripture and Doctrinal Principles*, issued by the President of the Synod in consultation with the Vice-Presidents and evaluated and approved by the Commission on Theology and Church Relations, has in recent times been given doctrinal statement status. None of them, including the study and response in question which was commended to the Synod “for continued use and guidance” (Res. 3-07A of the 2001 convention), has been submitted to the process (Bylaw 1.09 c) whereby it has become a doctrinal statement of the Synod.

1973 Resolution 3-01, stated that *A Statement of Scriptural and Confessional Principles*, issued by the President of the Synod in consultation with the Vice-Presidents of the Synod and affirmed by the Commission on Theology and Church Relations, presents what the Synod throughout its history has taught and is therefore “neither a new standard of orthodoxy nor a document ‘based on private writings, but on such books as have been composed, approved, and received in the name of the churches which pledge themselves to one doctrine and religion’” (FC, SD, Comp. Summary, paragraph 2). It declared *A Statement* to be a “more formal and comprehensive statement of belief” in the sense of Resolution 5-24 of the 1971 convention and further declared that *A Statement* hold the status that that resolution described:

Resolved, That the Synod reaffirm the desirability of the formulation of doctrinal statements which clearly set forth the teachings of the Holy Scriptures and apply them to issues of our day; and be it further

Resolved, That the Synod clearly state that such doctrinal formulations are subordinate to the Lutheran Confessions; and be it further

Resolved, That the Synod distinguish between resolutions concerning doctrine formulated and adopted at a convention and more formal statements of belief which are produced by officially authorized groups, and which are then presented to congregations and

¹ Current Bylaw 2.39 c

clergy of the Synod for study and discussion, and which are subsequently adopted by a synodical convention; and be it further

Resolved, That the Synod reaffirm the resolutions of recent conventions that the Synod “honor and uphold the synodically adopted statements as valid interpretations of Christian doctrine” (1969 *Proceedings*, p. 91); and be it finally

Resolved, That in the case of the aforementioned more formal and comprehensive statements of belief that the Synod declare –

- 1) its position that these statements, together with all other formulations of doctrine, derive their authority from the Word of God which they set forth from the Holy Scriptures;
- 2) its insistence that the ministry of the church regard these formulations with special seriousness and that those who disagree with these formulations in part or in whole be held to present their objections to them formally to those officials whom the Synod has given the immediate supervision of their doctrine;
- 3) its conviction that as a result of joint study of the Word of God the Holy Spirit will lead the Synod into all truth, that possible errors in the aforementioned statements will be discovered and corrected, that instances of failure to submit to the clear teaching of the Holy Scripture will be evangelically dealt with on an individual pastoral basis, and that the Synod can speak with a voice that is Scriptural, Gospel oriented, truly Lutheran, and that we will continue to “walk together” as a true Synod.

1975 Resolution 3-05, reaffirming that *A Statement [of Scriptural and Confessional Principles]* is in accord with the Scriptures and the Lutheran Confessions and contains nothing contrary to them, offers additional insight into the use of Commission on Theology and Church Relations statements in its first resolve: “That the Synod commend to its members for reference and guidance the report titled ‘Guiding Principles for the Use of *A Statement of Scriptural and Confessional Principles* with Special Reference to the Expression of Dissent’ (1975 *CW*, pp. 468-470, the closing sentences of which read:

A Statement is not to be used mechanically or legalistically to discipline members of the Synod, but it is to be honored, upheld, and used fraternally and evangelically throughout the Synod in an effort to assist the Synod in remaining faithful to its confessional position. Used in this way, *A Statement* may, with the blessing of God’s Holy Spirit, serve the ‘conservation and promotion of the unity of the true faith’ (Constitution, Article III) and aid the Synod in the faithful proclamation of the Gospel of Jesus Christ to all the world.”

After also commending the document titled “Report on Dissent” to the members of the Synod “for reference and guidance” and instructing the Commission on Theology and Church Relations to make several revisions to *A Statement*, the Synod not only reaffirmed that “*A Statement* is in accord with the Scriptures and the Lutheran Confessions, and contains nothing contrary to them, and is in accord with the doctrinal position of The Lutheran Church—Missouri Synod as it has been taught historically and expressed in the official doctrinal statements of the Synod,” but it also adopted the following opinion of the Commission on Constitutional Matters:

Since the Synod has the right to adopt doctrinal resolutions, it also had the right to adopt Resolution 3-01 [of the 1973 convention].

In Resolution 3-01 the Synod approved a document known as *A Statement*. That document therefore comes under the provision of New Orleans Resolution 2-12: “That the Synod reaffirm its position (Resolutions 2-21 and 5-24, Milwaukee *Proceedings*) that such statements, insofar as they are in accord with the Scriptures, are, pursuant to Article II of the Synod’s Constitution, binding upon all its members (cf. also Article VII).”

However, the Synod cannot make *A Statement* binding upon its members in the same sense in which the Scripture is binding. Nor can it ask its members to bind themselves to *A Statement* in the same manner in which they freely bind themselves to the Lutheran Confessions.

Resolution 3-01 does not broaden the confessional base of the Synod. It was not offered as a constitutional amendment. It is to be recognized as a properly adopted resolution. In it the Synod determined that *A Statement* defines the corporate position of the Synod and sets forth the public teaching of the Synod.

The adoption of Resolution 3-01 by the Synod does not bind the individual conscience any more than any other human document can; only Scripture should bind the conscience. As Luther stated before the Diet of Worms:

“Unless I am convinced by the testimonies of the Holy Scriptures or evident reason (for I believe neither in the Pope nor Councils alone, since it has been established that they have often erred and contradicted themselves), I am bound by the Scriptures adduced by me, and my conscience has been taken captive by the Word of God, and I am neither able nor willing to recant, since it is neither safe nor right to act against conscience. God help me. Amen.”

To the person troubled in his conscience, the Synod says:

“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 of 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” (Milwaukee Resolution 2-21, 1971 *Proceedings*, p. 119).

Subscription to *A Statement* cannot be a requirement for membership in the Synod. However, already at the Cleveland convention in 1962, the Synod resolved “that the Synod beseech all its members by the mercies of God to honor and uphold the doctrinal content of these synodically adopted statements” (Cleveland Resolution 3-17, 1962 *Proceedings*, p. 106). And “to honor and uphold means not merely to examine and study them, but to support, act, and teach in accordance with them until they have been shown to be contrary to God’s Word.” (Milwaukee Resolution 2-21, 1971 *Proceedings*, p. 119).

In response to the question, therefore, the Commission notes that Resolution 3-07A did not adopt “The Lutheran Understanding of Church Fellowship” and its response as a doctrinal statement of the Synod in the same manner as the Synod has in the past adopted a number of doctrinal statements, such as *A Statement of Scriptural and Confessional Principles*. The resolution in question did, however, commend the study “The Lutheran Understanding of Church Fellowship” and its response “for continued use and guidance” to build unity in the Synod, using similar terminology to that which has been used to commend numerous other studies of the Commission on Theology and Church Relations.

Question 11 b: “Does Resolution 3-07A mean that any member of the Synod who does not abide by, and follow in practice the CTCR documents referred to in Resolution 3-07A, is in violation of the doctrinal position of the Synod, or a doctrinal resolution of the Synod?”

Opinion: Any member of the Synod who does not abide by and follow in practice the CTCR documents

referred to in Resolution 3-07A is acting contrary to a study of the CTCR that the Synod has commended to its members for continued use and guidance. All doctrinal resolutions and statements are to be honored and upheld until such time as the Synod amends and repeals them.

Question 11 c: “If the answer to the above question is affirmative, must a District President, or the Synodical President suspend a member who does not teach or practice in agreement with the above-mentioned CTCR documents, if admonition has been futile and the member persistently refuses to heed such admonition?”

Opinion: The Commission notes that even the use of *A Statement of Scriptural and Confessional Principles*, adopted by the 1973 convention as a formal doctrinal statement, was to stop short of such use: “A *Statement* is not to be used mechanically or legalistically to discipline members of the Synod, but it is to be honored, upheld, and used fraternally and evangelically throughout the Synod in an effort to assist the Synod in remaining faithful to its confessional position.”

Oct. 21-22, 2002

Theological Review of Faculty Appointments (02-2305)

A pastor of the Synod serving as a member of the Board of Regents of a synodical school asked in a September 17, 2002 letter for clarification of the review process for candidates for a professorship of theology.

Question: Does [the] theological review process conducted by the District President and selected board members apply also to candidates for a professor of theology?”

Opinion: The answer is: No. Bylaw 6.23 a states that an initial appointment to theology faculties requires the prior approval of the Board for Higher Education. Through the prior approval process the Board for Higher Education establishes the standards to be met by candidates for appointment to theological faculty positions. Those standards must take into consideration the confessional standard and the objectives of the Synod as expressed in Articles II and III of the Synod’s Constitution.

Adopted Oct. 21-22, 2002

Role of Conscience during Dissent Process (02-2306)

A pastor of the Synod in a September 17, 2002 letter to the chairman of the Commission, questioned how the conscience of a pastor member of the Synod may be respected during the dissent process regarding a matter that impacts the life of the congregation he serves.

Question: “While [a member of the Synod] has begun the dissent process withing (sic) the fellowship of peers and is proceeding according to the guidance of his district president, the question at hand concerns how he ought to regard the promptings of his conscience while the dissent is in process. There appear to be only three alternative courses of action: 1) The dissenter should act contrary to his understanding of God’s will for the duration of the dissent process. 2) The dissenter should be expelled from the synod and be denied the dissent process. 3) The dissenter should act according to his conscience during the duration of the dissent process.”

Opinion: Bylaw 2.39 a requires that “the Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.” Bylaw 2.39 c requires that if resolutions of the Synod are of a doctrinal nature, the process of dissent outlined therein is to be followed,

during which time the conscience of the dissenter as well as the consciences of others and the collective will of the Synod shall be respected.

The dissenter, therefore, should not be forced to act contrary to his conscience so long as it is governed by his understanding of God's will. Nor should he be expelled from the Synod and thereby be denied his right as a member of the Synod to the dissent process. However, the consciences of others as well as the collective will of the Synod must also be respected. If his congregation believes otherwise regarding an issue that impacts congregational life, or if the collective will of the Synod has been stated by convention action to be clearly otherwise, these also are to be respected. The dissenter may not under such circumstances act according to his conscience during the duration of the dissent process. A different solution must be found, one that respects the conscience of the dissenter as well as the consciences of others and the collective will of the Synod.

Resolution 3-05 of the 1975 convention includes the following paragraph:

To the person troubled in his conscience, the Synod says: "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 of 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" (Milwaukee Resolution 2-21, 1971 *Proceedings*, p. 119).

Adopted Oct. 21-22, 2002

Use of the Term "Ministry" in Constitutions of Congregations (02-2307)

A member of a District Committee for Constitutional Matters, in an e-mail letter dated September 26, 2002, requested clarification of an issue surfaced by the committee's review of a congregation's constitution. Said congregation has expressed interest in renaming all of its boards "ministries." He notes in his letter that this use of the term "ministry" is not the normal use of the term in the Synod. The Secretary of the Synod, to whom the letter was addressed, forwarded the letter to the Commission for a response, as suggested in the letter.

Question: Should the use of the term "ministry" in place of more traditional language such as "board" be allowed to stand in a constitution of a congregation that is a member of the Synod since it does not match the normal use of the term in our Synod and in the Book of Concord? Has this situation come up in other parts of the Synod, and, if so, was this terminology allowed to stand in a constitution where it might conflict with definitions in the Book of Concord?

Opinion: Congregations are bound by the processes set forth in the Constitution and Bylaws of the Synod, as previously discussed in this Commission's opinion 99-2157. That opinion identified in particular four areas of self-government which historically have been recognized by the Synod: "(a) The calling of pastors, teachers, etc., from a list of those accredited by the Synod itself; (b) The owning and maintaining of congregational property without granting any rights of it to the Synod; (c) Church discipline; and (d) The administration of a congregation's programming and financial affairs."

One area for which a congregation voluntarily gives up its right of self-government for the sake of continued membership in the Synod is that of the approval of amendments to its constitution and bylaws. According to Bylaw 2.03 b, "A member congregation which revises its constitution and bylaws or adopts

a new constitution or bylaws shall, as a condition to continued eligibility as a member of the Synod, submit such revised or new constitution and/or bylaws to the District President, who shall refer such to the District's constitution committee for review to ascertain that the provisions are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod."

It is the responsibility, therefore, of the District's constitution committee to work with a congregation that has submitted changes to its constitution and bylaws to ascertain that the provisions are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod." If the committee is concerned that such harmony does not exist, it must continue to work with the congregation, using resources at its disposal such as the "GUIDELINES for the Constitution and Bylaws of a Congregation" published by this Commission, or by consulting with the Commission on Theology and Church Relations of the Synod in the case of doctrinal or confessional questions.

Finally, when the committee has done all that it can do for the sake of harmony between the proposed constitution and bylaws and Holy Scripture, the Confessions, and the teachings and practices of the Synod, the committee provides a report to the District President. He makes a recommendation to the District Board of Directors, whose responsibility it is to make a final decision (Bylaw 2.03 b).

Should the District Board of Directors decide that the proposed changes to the constitution and bylaws of the congregation are not in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod and therefore decline to approve the changes, the congregation must continue to use its existing constitution and bylaws until such time as approval can be obtained. All actions of District boards of directors regarding constitutions and bylaws of congregations "shall be reported to the next convention of the District" (Bylaw 2.03 b).

In response to the particular questions asked regarding the use of specific terminology in light of its usage in the Lutheran Confessions, the District committee is advised to consult with the Commission on Theology and Church Relations. Regarding approval of the use of particular terminology in constitutions and bylaws elsewhere in the Synod, the Commission on Constitutional Matters does not have such information and suggests consultation with the Council of Presidents.

Adopted Oct. 21-22, 2002

Right to Nominate and Elect a District President on Suspended Status (02-2314)

The President of the Synod in a memorandum dated October 22, 2002, requested an opinion from the Commission regarding the right of a member of the Synod to be nominated and elected to the office of District President while on suspended status.

Question: "The Constitution of the Synod states *'The Synod, under Scripture and the Lutheran Confessions, shall...provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights'* (LCMS Constitution Article III). Furthermore, Bylaw 2.25 b. states *'While on suspended status, the member shall continue to hold all rights under the Constitution and Bylaws subject to the limitations set forth herein.'*

"Accordingly, do the Constitution and/or Bylaws of the Synod prohibit a District President from being nominated and re-elected to the office of District President that he currently holds, while his suspended status as a member of the Ministers of Religion—Ordained roster of the Synod is under appeal?"

Opinion: The answer to this question is: No. The Constitution and Bylaws of the Synod do not prohibit a District President or any other member of the Synod on its clergy roster from being nominated and elected to the office of District President while his suspended status is under appeal. Bylaw 4.51 only requires that a District President “be elected from the clergy roster of the Synod.”

The Commission has addressed this question previously in its opinion 98-2122 in which it stated:

It is correctly noted that “if a District President is placed on suspended status, he is to be relieved of his duties as District President under the provisions of Bylaw 2.25, c.” The bylaw states that a member on suspended status shall “be relieved of the duties and responsibilities which the member holds with the Synod, District, or other agency of the Synod.” Also asked is, “But what of his office? Does he retain his office until relieved by the next convention of the District?” While formal proceedings are taking place, the District President retains his office, but he is relieved of the duties of that office until such time as a final decision is reached under the dispute resolution process. However, if while formal proceedings are underway, the term of office of the District President comes to an end, the District may, if it chooses, re-elect the District President. If re-elected, the District President continues to be relieved of the duties of his office and will only resume such duties if the final decision in the dispute resolution process determines that the District President has not violated Article XIII, 1, of the Constitution of the Synod.

But “if a District chooses to keep the suspended District President in office – as has happened with congregations and suspended pastors – what recourse does the Synod have?” If at the conclusion of formal proceedings a District President is expelled as a member of the Synod, he is also removed from the clergy roster of the Synod. Since Bylaw 4.51 requires that a District President be on the clergy roster of the Synod, expulsion from the Synod also terminates the District Presidency of the expelled member.

Adopted Oct. 21-22, 2002

Application of 2001 Resolution 3-07A (02-2294)

In a July 30, 2002 letter to the chairman of the Commission, a pastor questioned a particular interpretation of Resolution 3-07A that had been circulated in the Synod. He asked whether he could submit the following question to the Commission for a ruling. The Commission grants that as an ordained minister and member of the Synod he is entitled to submit his question.

Question: What does Resolution 3-07A mean and how should it be applied in the church?

Opinion: The confessional position of the Synod, which every member of the Synod accepts without reservation, is set forth in Article II of the Constitution: “1. The Scriptures of the Old and the New Testament as the written Word of God and the only rule and norm of faith and of practice; 2. All the Symbolical Books of the Evangelical Lutheran Church as a true and unadulterated statement and exposition of the Word of God....” Conditions for acquiring and holding membership in the Synod according to Article VI 1 includes “Acceptance of the confessional basis of Article II.” Article VIII C of the Constitution states: “All matters of doctrine and conscience shall be decided only by the Word of God. All other matters are decided by a majority vote.”

For the guidance and use of the Synod, the Synod also recognizes that doctrinal resolutions and statements of the Synod may be adopted by conventions. Bylaw 1.09 states: “The Synod, in seeking to

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

Doctrinal resolutions may be adopted by the Synod for the information, counsel, and guidance of the membership. Pursuant to Bylaw 1.09 b, such doctrinal resolutions “shall conform to the confessional position of the Synod as set forth in Article II of its Constitution,” are adopted in the same manner as other resolutions, and “are to be honored and upheld until such time as the Synod amends or repeals them.”

Doctrinal statements, as compared to resolutions, set forth in greater detail the position of the Synod, particularly in controverted matters. Doctrinal statements must be subjected to the more rigorous procedure provided by Bylaw 1.09 c. That bylaw requires, among other procedures, adoption by the Synod in convention and ratification by a two-thirds majority vote of the Synod’s congregations. Bylaw 1.09 c 7 states that “such adopted and ratified doctrinal statements shall be regarded as the position of Synod” and, as with doctrinal resolutions, are to “be honored and upheld...until such time as the Synod amends or repeals them.”

In response to the question regarding the meaning and effect of Resolution 3-07A, the Commission notes that “The Lutheran Understanding of Church Fellowship” is not simply a study document, as it was used prior to the 2001 convention. As noted in its first two whereases, Resolution 3-03B of the 1998 convention called for a study of fellowship principles and practices on the nature of our church body and our fellowship principles and practices, and Resolution 3-10C of the 1998 convention called for all 2000 District conventions to utilize the study to help build a “better understanding, general harmony, and more consistent practice in our Synod.” The President of the Synod and the Commission on Theology and Church Relations produced the document “The Lutheran Understanding of Church Fellowship” jointly. Following a period of study by District conventions, conferences, and congregations, the Commission on Theology and Church Relations in conjunction with the President of the Synod submitted a report to the Synod on the synodical discussions, and Resolution 3-07A was submitted to the 2001 convention. Resolution 3-07A recognized that the document “The Lutheran Understanding of Church Fellowship” “is in harmony with Scripture and the Lutheran Confessions and that “a majority affirmed The Lutheran Church—Missouri Synod position on church fellowship that it set forth.” The resolution also recognized that a majority “found it scriptural and confessional and wanted The Lutheran Church—Missouri Synod to maintain its historic position.” Resolution 3-07A is a doctrinal resolution of the Synod pursuant to the requirements of Bylaw 1.09 a and b. It was not proposed or adopted as a doctrinal statement under Bylaw 1.09 c.

The final four resolves outline the convention-approved uses of “The Lutheran Understanding of Church Fellowship,” and the published response of the Commission on Theology and Church Relations. First, “*Resolved*, That we rejoice and give thanks to God for the unity of doctrine and practice that this study has demonstrated.” Second, “*Resolved*, That we commend this study and response for continued use and guidance to build that unity where it is still lacking.” Third, “*Resolved*, That the Synod reaffirm once again its position on joint worship and recommit ourselves to live according to the instruction of the Lord’s apostle...(Eph. 4:1-3)...(Eph. 5:21)....” Fourth, “*Resolved*, That all action taken in this resolution shall be used to help carry out ‘The Great Commission’ and shall not in any way detract or distract from the primary mission of God’s kingdom here on earth....”

In adopting Resolution 3-07A, the 2001 synodical convention not only commended “The Lutheran Understanding of Church Fellowship” document (2001 *Convention Workbook*, pp. 375–387) for use and guidance, but it also commended the “response” of the Commission on Theology and Church Relations

(“A Report on Synodical Discussions” – 2001 *Convention Workbook*, pp. 48–51) “for continued use and guidance.”

In carrying out their official responsibilities, ecclesiastical supervisors of the Synod are expected, as with all synodical resolutions, including doctrinal resolutions and statements of the Synod, to heed Resolution 3-07A and see to it that it is “carried out” (Art. XI B 4) and “implemented” (Bylaw 4.71 b). In carrying out their official responsibilities, officers of the Synod are expected, as with other doctrinal resolutions and statements of the Synod, to heed the resolution and submit to it. All members of the Synod are to honor and uphold Resolution 3-07A together with all other doctrinal resolutions and statements until such time as the Synod amends or repeals them (Bylaw 1.09 b and c). Those members who dissent are expected to do so within the guidelines of Bylaw 2.39 c.

Regarding interpretation of the content of “The Lutheran Understanding of Church Fellowship” and the response, such questions should be directed to the Commission on Theology and Church Relations.

Adopted Jan. 20-21, 2003

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

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

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

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

Adopted Jan. 20-21, 2003

Ecclesiastical Supervision and Conflict of Interest (02-2309)

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

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

Opinion: After the example of the apostolic church, Acts 15:1-31, the Synod was formed “to unite in a corporate body the congregations of the Evangelical Lutheran Church that acknowledge and remain true to the *Book of Concord* of the year of our Lord 1580 as a true exhibition of sound Christian doctrine”

(Articles of Incorporation, Article II a). The Synod's objectives include: "The Synod, under Scripture and the Lutheran Confessions, shall – 1. Conserve and promote the unity of the true faith....8. Provide evangelical supervision, counsel, and care for pastors, teachers, and other professional church workers of the Synod in the performance of their official duties....9. Provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights" (Constitution, Article III). Recognizing the objectives for which it was organized, the Synod obligated itself "to assist and advise congregations, pastors and teachers affiliated with The Lutheran Church—Missouri Synod and to exercise supervision over such pastors and teachers as to doctrine, practice, and performance of their official duties" (Articles of Incorporation, Article II c).

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

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

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

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

Synod” (Bylaw 3.101 A); and such other constitutional terminology as “counsel,” “care,” and “protection” (Art. III 8 and 9).

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

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

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

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

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

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

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

assume rights and duties that have been conferred upon another by the Constitution, Bylaws, and resolutions of the Synod.

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

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

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

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

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

Opinion: There is no such constitutional provision.

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

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

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

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

A Bylaw 2.27 action against a District President falls within the provisions of Bylaw 2.27 g, and the synodical President becomes the investigating officer. Disqualification of the President of the Synod, as with the District President, occurs where he is a party to the matter in dispute, has a conflict of interest, or is otherwise unable to act. The fact that the investigating officer, whether a synodical or District President, has been involved in performing his ecclesiastical responsibilities in supervising the accused party is in and of itself not a basis for disqualification. In fact, the Constitution of the Synod presupposes that since or when there is prior supervision, advice, or futile admonition regarding the activity giving rise to a charge, the synodically-designated ecclesiastical supervisor would have been involved in that advice or admonition. Carrying out such responsibility does not make the ecclesiastical supervisor a party to the matter in dispute nor give rise to a conflict of interest. Rather, the duty to investigate flows from and is a natural outgrowth of the District or synodical President’s ecclesiastical supervisory responsibility.

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

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

Adopted Jan. 20-21, 2003

Constitutionality of 2001 Resolution 7-03C (02-2310)

In a letter dated October 2, 2002, an ordained minister of the Synod questions the validity of 2001 convention Resolution 7-03C in light of the Constitution and Bylaws of the Synod.

Question 1: Does the adoption of Resolution 7-03C (2001 *Proceedings*, p. 164), especially Resolve #3 and Resolve #4, conflict with the Articles and Bylaws of the synodical Constitution (Duties of the President, Duties of the Board of Directors) and therefore such resolution should be deemed null and void?

Opinion: The third and fourth resolves of Resolution 7-03C read as follows:

Resolved, That the President and Board of Directors of the Synod shall see to it that the Constitution and Bylaws of the Synod are observed; and be it further

Resolved, That when a failure to comply with the Constitution and Bylaws is discovered, the President or Board of Directors, whichever is charged with supervision or oversight, shall act to correct such failure to comply as quickly as possible.

Article XI B 1 provides that the President has the supervision regarding the doctrine and administration of all officers of the Synod, all employees of the Synod, the Districts of the Synod, and all District Presidents. Bylaw 3.101 A 1 adds to the list of those for whom he is responsible the agencies of the Synod. It is his responsibility to see to it that all the aforementioned act in accordance with the Constitution of the Synod (Art. XI B 2) and its resolutions (Art. XI B 4). He is to see to it that their activities are also in accordance with the Bylaws (Bylaw 3.101 B 1) and to call up for review any action that in his view may be in violation of the Constitution, Bylaws, and resolutions.

Bylaw 3.183 c provides that the Board of Directors has general oversight responsibility over the officers and agencies of the Synod as determined by the Constitution, Bylaws, and resolutions of the Synod. The Board has the right to call up for review, criticism, modification, or revocation any action or policy of a program board, commission, or council, except opinions of the Commission on Constitutional Matters (Bylaw 3.183 d 2).

Therefore, Resolution 7-03C does not conflict with the Constitution and Bylaws of the Synod regarding the duties of the President and Board of Directors. Both are responsible for seeing to it that the Constitution and Bylaws are observed to the extent of their assigned responsibilities. Whichever is charged with supervision or oversight is responsible to act to correct any failure to comply.

Question 2: When there is a conflict of governance on constitutional adherence between the synodical President and the synodical Board of Directors, who decides who has jurisdiction? Who has authority over whom? The Board of Directors over the President, or the President over the Board of Directors?

Opinion: The Commission has already responded to this question in its Opinion 02-2259 pertaining to one of the agencies of the Synod:

The President and the Board of Directors therefore share oversight responsibilities for many program boards. Both are required to see to it that the Constitution and Bylaws of the Synod are observed, including, but not limited to, the requirements and responsibilities specifically enumerated in that board's section of the Bylaws. In a case of non-compliance with the Constitution and Bylaws, the President is to admonish those involved and, if such admonition is not heeded, to report such cases to the Synod. To the extent of his oversight and influence, he is to correct such failure to comply as quickly as possible. In such case of non-compliance, the Board of Directors is also to act to correct any failure as quickly as possible, potential actions to include calling up for review, criticism, modification, or revocation the errant action or policy of the board. Therefore, if the President and the Board of Directors are faithful to their duties and responsibilities, the question that is posed should not happen. Should there be disagreement, they must earnestly consult with one another regarding proper supervision of the board in question. (CCM Opinion 02-2259)

Adopted Jan. 20-21, 2003

Accountability of Officers to Conventions of the Synod (02-2311)

A pastor of the Synod in an October 11, 2002 letter questions a recent ruling of the Commission (02-2263) in which the Commission stated: "Further complaints under Bylaw 2.27 g cannot be brought before a convention of the Synod since the bylaws created under the authorization of Article XIII 2 make no provision for the dispute to be resolved by a convention of the Synod." He noted that Bylaw 3.73 states: "All officers, boards, and commissions shall be accountable to the Synod for all their actions, and any

decision of such officers, boards, and commissions may be appealed to the national convention of the Synod.”

Question: If an officer of the Synod charged a member of the Synod under Bylaw 2.27 and did not follow approved synodical resolutions in making his case, could not a national convention overturn this decision under Bylaw 3.73?

Opinion: The Synod, upon instruction of Article XIII 2, has established in its Bylaws the procedure to be followed for expulsion of a member from the Synod. In that procedure, a Dispute Resolution Panel is given the responsibility for deciding whether or not the Bylaw 2.27 investigating officer made a proper decision. The Synod has also provided opportunity for appeal of the Dispute Resolution Panel’s decision regarding the investigating officer’s decision to an Appeal Panel, with the possibility of a second hearing by a Review Panel to finally decide the case. The Synod has not provided in its bylaws any opportunity for further appeal of the final decision to a convention nor has it provided to itself opportunity to question or overturn any part of its dispute resolution process.

The bylaw in question, Bylaw 3.73, provides for the general accountability of all officers, boards, and commissions, whose decisions may be appealed to a national convention of the Synod. Mention is not made in the bylaw of the panels employed by the dispute resolution process, whose final decisions, including decisions regarding suspensions, are final and binding (Bylaws 8.09 c 4 a and 8.09 e 1) and therefore not subject to actions by conventions of the Synod.

Adopted Jan. 20-21, 2003

Conflict of Interest (02-2313)

In an October 22, 2002 letter, the President of the Synod submitted a series of questions regarding the subject of conflict of interest and its application to the duties of the President under Bylaw 2.27 g.

Question 1: Is there any definition of “conflict of interest” in the Constitution, Bylaws, or resolutions of The Lutheran Church—Missouri Synod, other than as discussed in Bylaw 3.75 and the CCM’s prior opinion Ag. 2020?

Opinion: There is no clear definition of “conflict of interest” in the Constitution, Bylaws, and resolutions of the Synod. In addition to Bylaw 3.75 (repeated in Bylaw 4.109), the Bylaws also make specific reference to conflict of interest in Bylaw 3.71, which requires disclosure of conflicts of interest with regard to financial matters and participation in activities that may be detrimental or at odds with the activities of the Synod or in situations in which information obtained through relationship with the Synod could be used in a way that is detrimental to the interests of the Synod. The Bylaws also variously address conflict of interest issues throughout, as in Bylaws 3.69 g, 3.981, 8.17, *et al.*

There have been numerous prior decisions by the Commission on Constitutional Matters that pertain to conflict of interest issues, most of which have addressed financial conflicts of interest. Apart from those, the Commission has also addressed questions regarding actual or potential conflicts of interest as a result of holding multiple offices or positions, e.g., whether a District executive secretary could hold elected or appointed membership on synodical boards and commissions (Ag. 400, June, 1966), whether a member of a District Board of Appeals could also serve on a District *ad hoc* committee (Ag. 286, October, 1971), whether a conflict of interest existed in an appointment of an advisory member of a District board of directors to another position (Ag. 433B, August, 1973), and whether a seminary president could also hold membership on the Board for Admissions’ Services (Ag. 1668, September, 1985).

In one prior opinion, interpreting then-Bylaws 8.05 and 8.07 (Ag. 1873, December 1989), the Commission was asked to determine whether a synodical president could delegate his responsibilities under then-Bylaw 8.05 a to one or more Vice-Presidents of the Synod based upon real or perceived conflicts of interest. The Commission ruled as follows:

Regarding the issue of responsibility you have inquired, “May the synodical president delegate his responsibilities under Bylaw 8.05, a to one or more synodical vice-presidents, particularly in cases where he feels that there may be a real or perceived conflict of interest or that such a delegate of responsibility would enhance the achievement of reconciliation, or where the president is rightly or wrongly alleged by one of the parties to have an involvement in the case under adjudication?” The Commission’s response is, “No, he may not.” The Handbook makes it clear that “the President shall have the right to authorize the Vice-Presidents to perform the duties of his office and shall hold them responsible for their performance. Accountability, however, shall always remain with the President,” Bylaw 3.101, m. The Commission respectfully points out that the President may appoint a small committee to seek to effect reconciliation. This committee may or may not consist of vice-presidents of the Synod.

Question 2: If the answer to Question 1 above is “yes,” what other definition of “conflict of interest” exists?

Opinion: See the opinion to Question 1.

Question 3: If the answer to Question 1 is “no,” do the Constitution and Bylaws of the Synod allow for any other reason by which the Vice-Presidents of the Synod could recuse the President of the Synod from investigation of charges against a District President under Bylaw 2.27 g?

Opinion: Bylaw 2.27 g makes reference to Bylaw 2.27 a 1, which allows for disqualification of the President due to one of three grounds: (1) he is a party to the matter in dispute; (2) he has a conflict of interest; or (3) he is unable to act. Therefore the President can be disqualified from investigating charges against a District President for one of these three reasons. The Constitution and Bylaws provide no other reasons for disqualification.

Question 4: If the answers to Questions 1 and 3 above are “no,” would it ever be in accord with the Constitution and Bylaws of the Synod for a majority of the Vice-Presidents of the Synod to determine that the President of the Synod should be recused from handling charges filed against a District President that could result in his being removed from the clergy roster of the LCMS?

Opinion: As indicated in the opinion to Question 3, the only reasons which allow the Vice-Presidents of the Synod to determine that the President should be disqualified from investigating charges filed against a District President are the three reasons articulated in Bylaw 2.27 a 1.

Question 5: If the answers to Questions 1 and 3 above are “no,” what effect, if any, does the absence of a “conflict of interest” have in a Bylaw 2.27 g case against a District President who has been suspended and whose suspension is currently under appeal, when the President of the Synod was recused by a majority of the Vice-Presidents of the Synod on the basis of an alleged conflict of interest?

Opinion: As indicated above in the opinion to Question 3, Bylaw 2.27 a provides for the disqualification of the investigating officer (in this instance the President) only where he is a party to the matter in dispute,

has a conflict of interest, or is unable to act. If the President believes that the Vice-Presidents of the Synod have misunderstood the issue of conflict of interest or have disqualified him for a reason other than those provided in this bylaw, he should request reconsideration by the Praesidium.

For another treatment of the issue of “conflict of interest,” see the Commission’s response to question 8 of Opinion 02-2309.

Adopted Jan. 20-21, 2003

Role of BHE/CUS Board in Light of Board of Directors Resolution (02-2315)

The Executive Director of the BHE/CUS Board, in a memorandum dated October 29, 2002, asked the Commission for assistance in understanding the consequence of a recent action by the Board of Directors of the Synod which resolved “That each agency of the Synod keep the Board of Directors informed by direct communication with the administrative officer of the Synod and the chairman of the Board of Directors of any contemplated action which falls under the supervision and oversight of the Board of Directors and/or which will result in the spending of funds beyond that currently budgeted or which will obligate future funding, and such notification is to be made while the contemplated action is still in the planning stage.”

After asking a series of questions (“What is the role of the BHE/CUS Board and staff? Is this an appropriate and proper interpretation of the Constitution and Bylaws of the Synod? What does this mean for the colleges/universities/seminaries and the policies of the BHE/CUS Board for oversight and governance? Are the agencies of Synod to ask permission from Synod’s Board of Directors in order to do [their] work before it has processed with the BHE/CUS Board and staff? Is the BHE/CUS Board excluded from its role of oversight and governance of the institutions of higher education?”), he asked the following “basic question”:

Question: Should the institutions of higher education make direct communication with the executive director and chairman of the Synod’s Board of Directors, bypassing the BHE/CUS Board? What is the role of the BHE/CUS Board and its staff if this resolution is applied.

Opinion: Bylaw 3.183 c provides that the Board of Directors is “responsible for the general management of the business and legal affairs of the Synod.” It also assigns to the Board “general oversight responsibility” for officers and agencies of the Synod for business and legal affairs, even when these have been “expressly delegated by the Constitution, Bylaws, and resolutions of the Synod.” Bylaw 3.51 a defines “agency of the Synod” as “an instrumentality other than a congregation, whether or not separately incorporated, which the Synod in convention or its Board of Directors has caused or authorized to be formed to further the Synod’s objectives,” including “each board, commission, council, seminary, university, college, District, Worker Benefit Plans, and each synodwide corporate entity.”

Bylaw 3.187 requires that the Board of Directors also adopt an annual budget of the Synod (paragraph b). Bylaw 3.183 d gives to the Board the responsibility to allocate available funds to program boards, commissions, councils, and departments of corporate Synod and to hold them accountable. These entities are required to provide reports regarding operations and policies as requested by the Board (paragraph 1). The Board also has a right to call up for review, criticism, modification, or revocation any action or policy of one of these entities (paragraph 2).

The Commission concludes that the Board of Directors has been given “general oversight responsibility” over the colleges, universities, and seminaries of the Synod as its agencies (see CCM Opinion 02-2259).

As part of this general oversight, the Board has a legitimate interest in any contemplated action of an agency which results in the spending of funds beyond those currently budgeted or which will obligate future spending. By a request for such information, the Board exercises its right to call up an action for review, but this request is to be made, in this case, to the BHE/CUS Board. The role of the BHE/CUS Board and its staff will be to provide the requested information to the Board of Directors through its chairman and chief executive officer.

Adopted Jan. 20-21, 2003

Right of a Board to Adopt a Doctrinal Statement (02-2316)

In a letter dated November 1, 2002, a pastor of the Synod calls attention to the 2001 Report of the Church Growth Study Committee, “For the Sake of Christ’s Commission” (2001 *Workbook*, pp. 442-450), noting that a proposed resolution to the 2001 convention of the Synod commending this study to Synod’s entities (Res. 3-14) was not acted upon by the convention. For the record, the Commission notes that the convention placed this matter in omnibus Resolution B. The pastor asked following questions in its regard.

Question 1: Does an individual board or commission have the right to adopt a doctrinal statement as its editorial position that has not been approved by the CTCR or a convention of the Synod?

Opinion: Only the Synod in convention has the right to adopt doctrinal statements according to the process provided by Bylaw 1.09 c. Boards and commissions regularly identify materials that they find useful for their own purposes, but they must abide by the Constitution, Bylaws, and resolutions of the Synod.

Question 2: Can a board or commission refuse the transfer of a position cost and personnel to another board or commission on the basis of a failure to adopt an unofficial doctrinal position as its doctrinal editorial statement?

Opinion: Boards of the Synod function according to the general regulations provided by Bylaw 3.69 and other pertinent bylaws, and according to the specific bylaws that govern their activity.

Adopted Jan. 20-21, 2003

Status of District-Trained “Lay Ministers” (02-2322)

A pastor of the Synod in a December 26, 2002 e-mailed letter asked for an opinion on the status of “lay ministers” who have completed a two-year course of study provided by the District and who have been commissioned and subsequently called by congregations of the District.

Question: Can a person who has completed a District program for “lay ministers,” has been commissioned by the District, has been called by a parish of the District, and has had “the laying on of hands” be considered a church worker such as a DCE or Lutheran school teacher, and how does the status of such a person impact her service in the District or as a participant in conferences or as a delegate to conventions?

Opinion: There is no inherent right to membership in the Synod, and the decision regarding qualification for a first call and membership in the Synod is according to the terms and at the sole discretion of the Synod (Bylaw 2.07). Individuals who wish to be members of the Synod as Ministers of Religion—

Commissioned must first be declared qualified according to the provisions of Bylaws 2.09–2.11 and placed and installed according to Bylaw 2.13.

Until such time as the above requirements are met, membership on the roster of the Synod is not possible. The participation in localized training or the use of terminology such as “lay minister” or the employment of some form of commissioning or calling or laying on of hands do not qualify a person for roster status. Such non-rostered persons are lay persons and are therefore eligible for service on boards or commissions or as delegates to conventions of District or Synod as lay participants.

Individuals who are interested in membership in the Synod are encouraged to pursue fulfillment of the requirements for rostered status through the Concordia University System (2001 Res. 7-13A).

Adopted Jan. 20-21, 2003

The President of the Synod and the Provisions of Chapter VIII of the Bylaws (02-2325)

The President of the Synod in a December 31, 2002 e-mailed letter, noting that from time to time “individual members of the Synod express profound disagreement with the President of the Synod regarding decisions made or actions taken in the regular course of the fulfillment of duties and responsibilities of his office,” submitted the following question to the Commission:

Question: Since the CCM has recognized the responsibility for ecclesiastical supervision given to the President of Synod, and since the President of Synod is responsible to the Synod in convention, and since the CCM has already recognized the potential for the President of Synod to be “harassed and hampered in the carrying out of his duties” by provisions of the Bylaws, and since the CCM has noted that “the provisions of the Constitution and Bylaws...are far from clear on the issue presented” [Opinion 01-2240], is the President of Synod subject to the provisions of Chapter VIII of the Bylaws when the complaints filed against him arise from his actions as President of the Synod.”

Opinion: The President of the Synod is not subject to implementation of Chapter VIII of the Bylaws when complaints are filed against him that pertain to the exercise of his rights, powers, and duties of ecclesiastical or doctrinal supervision (Art. XI B and Bylaw 3.101). See also the Commission’s responses to question 3 of Opinion 02-2309.

The Preamble to Chapter VIII of the Bylaws does provide, however, that “when disputes, disagreements, or offenses arise among members of the body of Christ, it is a matter of grave concern for the whole church (paragraph 1). It encourages that “individuals, congregations, and various entities and agencies within the Synod....proceed with one another with ‘the same attitude that was in Christ Jesus’ (Phil. 2:5).” Bylaw 8.01, by providing that “this procedure is established to resolve, in a God-pleasing manner, disputes that involve as parties, members of the Synod” as well as its entities, includes also the President of the Synod “whether the dispute involves only a difference of opinion without personal animosity or is one which involves ill will and sin which requires repentance and forgiveness.”

Therefore, while the President of the Synod is not subject to implementation of Chapter VIII of the Bylaws when complaints are filed against him that pertain to the exercise of his rights, powers, and duties of ecclesiastical or doctrinal supervision (Art. XI B and Bylaw 3.101), he like every other member of the Synod is subject to implementation of Chapter VIII when other “disputes, disagreements, or offenses arise among members of the body of Christ” (Preamble, paragraph 1). Care should be taken in its

administration that the dispute resolution process is not used to harass or hamper anyone in the carrying out of his or her duties.

Adopted Jan. 20-21, 2003

Voting Rights of Congregations (03-2327)

A retired pastor of the Synod in a letter dated January 14, 2003, recalled how District convention delegate representation in dual or multiple parish situations was handled during his years of active ministry: “the lay delegates were chosen alternately by one of the congregations or the other.” He asked a series of related questions:

Questions: Is the term “parish” a synonym for congregation, or is a distinction to be made between them? Was [my previous experience] the correct procedure, or should each congregation have had the right to send a delegate? If each congregation holds membership in the Synod, by what right can a congregation be deprived of a separate vote by being the member of a parish with two congregations served by one pastor?

Opinion: In a 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 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.

Adopted Jan. 20-21, 2003

Publicity of Dispute Resolution Panel Decision (03-2347)

In an April 2, 2003 e-mail letter, the President of the Synod submitted the following question to the Commission:

Question: Given the provisions of Bylaw 8.09 c 4 d, may the synodical President publicize as he deems appropriate under the circumstances the final decision of a Dispute Resolution Panel, prior to such decision being appealed by a party to the dispute, without violating the provisions of Bylaw 8.21 e?

Opinion: As administrator of the dispute resolution process under Chapter VIII of the Bylaws, the Secretary of the Synod responded to the same question informally that has now been submitted to the Commission. That response was as follows:

Bylaw 8.09 provides the entire procedure for the panel portion of the dispute resolution process. After a panel has been requested, the process is followed to its conclusion, which conclusion may properly take place at several points in the process: (1) after the dispute resolution panel has issued its decision and no appeal is forthcoming; (2) after a request for reconsideration of a dispute

resolution panel has been made but not granted by an appeal panel; or, if a request for reconsideration is granted, (3) after the review panel has issued its decision and no further opportunity for appeal is available.

Bylaw 8.21 e requires that so long as a matter in dispute is undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the parties involved. Rule of Procedure 26 f specifies that this includes “the reconcilers or panel members, or the Synod.” It is clear that until a matter is finally decided or resolved, there is to be no publicity by anyone who has knowledge. This has been reflected in CCM Opinion 01-2243 and numerous subsequent opinions (01-2251; 02-2259; 02-2260; 02-2261; 02-2266; 02-2284; and 02-2304).

What then of Bylaw 8.09 c 4? It appears to authorize publicity before the entire process has been exhausted. It should be noted, however, that paragraph 4 speaks of the “final decision,” referring to cases in which there is no request for reconsideration. Until the 30 days for such request provided by paragraph d have elapsed, the “decision of the Dispute Resolution Panel” is not yet “final.” Nor is it final if a request for reconsideration is made. This is also clear from paragraph c 4 a, which states that the decision of the panel is binding “subject to request for review,” and paragraph c 4 c, which speaks of the decision being carried out, which is only reasonable after it is truly final. Paragraph c 4 d, therefore, must also be similarly understood. It speaks of publicity by the District or synodical President after a “final decision” has been reached.

Having reviewed the informal response of the Secretary, the Commission adopts that response as its own.

Adopted April 8, 2003

Review of Michigan District Bylaws/ District President Signature Responsibilities (03-2344)

In a letter dated March 21, 2003, the President of the Michigan District submitted a question regarding the interpretation of Article XII 9 d of the Constitution. He also asked the Commission to review changes to his District’s Bylaws that will be proposed to its convention.

Upon review of the proposed changes to the Bylaws of the Michigan District, the Commission has no recommendations. Regarding the interpretation of Article XII 9 d, the Commission responds as follows.

Question: According to synodical *Handbook* Article XII 9 d, a District President shall ... "Sign all examination papers and certificates of ordination and, in general, all official papers and documents of their District." How is the "all official papers and documents of their District" to be interpreted? (i.e., a contract for snow removal ... purchase and/or sale of property, office equipment, etc.)

Opinion: This paragraph of Article XII 9, after specifically naming “examination papers and certificates” as requiring District Presidents’ signatures, speaks “in general.” Thereby, the bylaw does not attempt to itemize those documents that should be signed by District Presidents.

District Presidents are required to assume responsibility for the functions of their office and, in Article XII 9 d, to accept that responsibility by applying their signatures. Documents pertaining to their

ecclesiastical supervisory and chief administrative officer responsibilities as delineated in Synod and District Bylaws require their signatures. Lesser documents not included in a general understanding of “official papers and documents” and that do not directly pertain to District Presidents’ ecclesiastical and administrative responsibilities do not require their signatures.

Adopted April 8, 2003

**Use of Bylaws Chapter VIII to Challenge
Board of Regents Decision (03-2324A)**

In a February 3, 2003 letter, the member of the Synod who previously submitted Question 03-2324 submitted a subsequent request for clarification.

Question: The member of Synod who previously submitted question 03-2324 indicates that, following the decision of the Board of Regents to dismiss a complaint against a non-commissioned professor, the complainant wishes to invoke Chapter VIII of the Bylaws to address what he describes as a dispute with the Board of Regents as to their action in dismissing the complaint. The member asked whether Chapter VIII of the Bylaws may be used to address such a dispute with the Board of Regents itself.

Opinion: As indicated in the Preamble and Bylaw 8.01, Chapter VIII was established to resolve, in a God pleasing manner, disputes that involve as parties members of the Synod, the Synod itself, a District or an organization owned or controlled by the Synod, persons involved in excommunication or lay members of congregations of the Synod holding positions with the Synod itself or with the Districts or other organizations owned and controlled by the Synod, and shall be the exclusive remedy to resolve such disputes.

In other sections of the Constitution and Bylaws, there are specific duties assigned to various individuals or organizations who are directed, authorized, and even mandated to make those decisions. Specific checks and balances are detailed throughout the Constitution and Bylaws with regard to those powers and responsibilities. Disagreement with a decision by a Dispute Resolution Panel under Bylaw 8.09 d, for example, may be appealed only to an Appeal Panel and may not serve as the basis of a Chapter VIII proceeding against the Dispute Resolution Panel or its individual members. Because the decision of the Appeal Panel is expressly declared by Bylaw 8.09 e 1 to be final, disagreement with the panel’s decision would similarly not be subject to a Chapter VIII proceeding. As recognized in Opinion 02-2324, a decision of the Board of Regents, in the circumstances described, are final pursuant to the terms of Bylaw 6.47 f 5. The decision of the Board of Regents is not a dispute to which Chapter VIII of the Bylaws applies. To rule otherwise would allow any action or any decision of any official or entity of the Synod to be challenged under Chapter VIII. Such was not the intent of Chapter VIII, as described therein.

Adopted April 8, 2003

Implications of District Membership for Board of Directors Membership (02-2323)

A District President in a December 21, 2002 letter asked a series of questions regarding the consequences of a member of the Board of Directors changing District membership to a District in which another member of the Board already resides.

Question 1: If there are two current members serving on the Board [of Directors of the Synod], each elected from two separate Districts, and if one of these two individuals transfers to the District in which the other individual holds membership and, therefore, District

representation, would this action in any way disqualify either persons from continuing to serve on the Board, since they would both hold membership in the same District as a result of the transfer?

Opinion: Bylaw 3.181 a, in addressing membership on the Synod's Board of Directors, states: "The Board of Directors shall consist of...four ordained ministers, one commissioned minister, and eight lay persons. No more than one of these 13 may be elected from one District."

First, there must be an understanding of synodical membership, which consists of congregations and of individual members, that is, ordained or commissioned ministers (Constitution, Article V). The Board of Directors consists of both individual members of the Synod and laypersons, all of whom are to be members of voting congregations (Article X B 1).

Bylaw 2.41 indicates the District through which individual membership is held. An individual member who is serving a congregation in a given District or who is serving a District must hold synodical membership through that District (paragraph a), while an emeritus member has a choice of District membership, as paragraph e states:

An emeritus member not regularly serving any congregation or other agency shall continue to hold membership through the District through which membership was held at the inception of the emeritus status unless a transfer is approved by both the President of that District and the President of the District to which membership would be transferred.

In determining the District membership of individual members of the Synod, Bylaw 2.41 j applies in every case:

The District through which an individual holds membership and the District through which a member is ecclesiastically supervised, will not be determined in any case on the basis of District membership of the congregation to which the individual belongs.

On the other hand, laypersons are not eligible to be members of the Synod. They are eligible to be members of the Board of Directors by being members of voting congregations of the Synod. Therefore, a layperson is "from" that "District" of which his or her voting congregation is a member.

Therefore, the bylaw phrase "from one District" is applied according to the District membership of the individual member of the Synod and the District membership of the congregation to which the layperson belongs. An individual member of the Synod and a layperson being members of the same congregation is in itself of no consequence. The decisive qualification is the District membership of the individual member of the Synod and the District membership of the congregation of which the layperson is a member.

Further, the Commission has previously stated in Opinion 98-2127:

The Commission would clarify that while two current members of the Board of Directors of the Synod may reside in the same state, the decisive qualification for board membership on the part of church workers is not the place of residence but District membership, as stated in Bylaw 3.189 of the 1998 *Handbook* [Bylaw 3.181 of the 2001 *Handbook*]....So long as District membership is held in different Districts of the Synod, residence in the same state is of no consequence. A board member may be an emeritus church worker who has upon retiring changed his place of residency. His synodical

membership, however, ordinarily remains in the District where he last served, in accord with Bylaw 2.41 e.

It is therefore conceivable that current members of the Board of Directors can reside in the same state, be members of the same member congregation of the Synod, and yet not be “from one District”(Bylaw 3.181 a).

While, however, two memberships as defined above may in fact be held in the same one District, there may not be two persons from that same District elected to the Board. Bylaw 3.181 states: “No more than one of these 13 may be elected from one District.” When persons are elected from two separate Districts and one transfers to a District that already has a person from that District elected to the Board of Directors, that does not disqualify either person from serving on the Board and finishing his or her term of office. The decisive qualification is the status of membership at the time of the election.

Question 2: What is the distinction between 3.181 a (“no more than one of these 13 may be elected from one District”) and 3.407 d (No more than one of these seven members elected by the Synod in convention can be from the same District of the LCMS)?

Opinion: Bylaw 3.181 relates only to the Board of Directors of the Synod whereas Bylaw 3.407 relates to the Board for Higher Education.

Question 3: In the case of 3.181 a, members are elected for a six (6) year term. If under the above circumstance, one current member’s term ends in 2004, while the other member elected from a separate District has a term which does not expire in 2004, (but this person transfers to the other person’s District)—at the 2004 convention, which District may not have any other person nominated or elected to this Board—the District from which this transferred member was originally elected, or the District in which this transferred person would currently hold membership?

Opinion: In answer to the question posed, it is the status of District membership at the time of election that is one of the determining factors. If a member midterm transfers District membership to a District from which another Board member has already been elected and is serving, it is when the term ends/timing of the election that is a determining factor.

Assuming that one current member of the Board of Directors who was elected from a separate District and whose term ends in 2007 transfers District membership midterm to another District which already has a person elected from that District to the Board of Directors and whose term ends in 2004, the following is the application of the bylaws: A person from the District of the person whose term ends in 2004 may be nominated and elected from that given District to the Board of Directors since “no more than one of these” was “elected from one District” (Bylaw 3.181 a). The person whose term ends in 2007 (assuming that the previous person was elected in 2004) may not be nominated and elected from that same District in 2007 since “more than one” member would have been “elected from one District” (Bylaw 3.181 a).

Assuming that one current member of the Board of Directors who was elected from a separate District as an individual member of the Synod and whose term ends in 2007 moved midterm to a another state but did not transfer District membership and perhaps even joined the same congregation of the District which already has a person elected from that District to the Board of Directors and whose term ends in 2004, the following is the application of the bylaws: A person from the District of the person whose term ends in 2004 may be nominated and elected from that given District to the Board of Directors since “no more than one of these” was “elected from one District” (Bylaw 3.181 a). The person whose term ends in 2007

may be nominated and elected from that District where membership is still held in 2007 since “no more than one of these” was “elected from one District” (Bylaw 3.181 a).

Adopted April 29, 2003

Additional Confessional Statements (03-2328)

In a letter addressed to the Secretary of the Commission dated January 17, 2003, an ordained minister of The Lutheran Church—Missouri Synod asked the following series of questions:

1. Do LCMS pastors or congregations violate the conditions of membership in the Synod if they adopt a “confessional statement” or invite LCMS members to join them in a common confession of this statement?
2. If they practice church fellowship only with those who subscribe to that “confessional statement,” are they practicing selective fellowship?
3. Would the above action and practice in a sense be a “church within a church—a synod within the Synod,” and would they be wrongfully “disfellowshipping” those members of the Synod who accept 2001 convention Resolution 3-07A while rejecting the “confessional statement” of this group?
4. If such a new “confessional statement” is permitted in the LCMS to define a particular group with whom they will fellowship or refuse to fellowship, have they formed a synod within the Synod?
5. If such a group with a confession that binds them to some and excludes others is permitted in the Synod, how will Synod members and congregations be informed whether they want to be in fellowship with this group or not? How will LCMS members know that they have been “disfellowshipped” by other members who have formed a confessional group of their own? If the Synod allows this group to organize its own synod or fellowship group, how many more can the Synod allow to become organized?
6. If a congregation adopts the “confessional statement” in question, which excludes LCMS members from their fellowship, is this in violation of the LCMS Constitution and Bylaws and 2001 Resolution 3-07A?

Opinion: Questions 2 through 4 should be referred to the Commission on Theology and Church Relations. The Commission on Constitutional Matters is not responsible for interpreting the referred-to “confessional statement” or for judging its theological content and implications. The following opinion is an answer to the concerns raised especially in questions 1, 5, and 6 regarding the use of confessional statements in addition to those formally adopted by the Synod and as a condition of membership or fellowship in the Synod.

The conditions of membership in the Synod are contained in Article VI of the Constitution. Article VI requires acceptance of the confessional basis of Article II of the Constitution. Bylaw 1.09 describes the authority of the Synod, retained to its corporate self, to adopt doctrinal resolutions and statements that seek to clarify the Synod’s corporate confession and understanding of doctrinal issues. Dissent from those doctrinal resolutions and statements is governed by Bylaw 2.39 c.

The question is unclear as to whether the “confessional statement” proposed to be adopted by a member is consistent with a doctrinal position of the Synod or is a doctrinal position that has not been addressed by the Synod as a whole. If the “confessional statement” which is proposed were consistent with a doctrinal position of the Synod, there would be no reason for its separate adoption by the individual member or congregation. If the “confessional statement” appears to be contrary to a doctrinal position of the Synod, the action of the member, whether individual or congregation, is governed by Bylaw 2.39 c. If the “confessional statement” is intended to address an issue that has not yet been addressed by the adoption of a doctrinal resolution or a statement on part of the Synod, the processes provided in the Constitution and Bylaws and particularly Bylaw 1.09 govern the action.

Subscribing to or requiring a “confessional statement” in place of or in addition to the confessional position of the Synod as set forth in Article II of its Constitution as a condition for fellowship with one another in the Synod is a violation of the covenant relationship in the Synod (Article VI 1; Bylaw 1.03). Members of the Synod are expected to subscribe only to the Holy Scriptures and the Lutheran Confessions.

The Synod requires that its member congregations accept the Synod’s confessional standard. At the same time the congregation’s own standard must not go beyond the Synod’s confessional standard. The best procedure would be to adapt Article II of the Synod’s own Constitution to the congregation’s constitution (CCM Opinion 98-2135, Review of “Guidelines for Constitution and Bylaws of a Lutheran Congregation”).

Requiring a doctrinal statement, doctrinal formulation, or statement of belief in place of or in addition to the synodically adopted (according to the Synod’s established procedures) doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions (Bylaws 1.09 and 2.39) as a condition for fellowship with one another is also a violation of the covenant relationship in the Synod and destroys the “walking together” as a Synod. Divergent confessional or doctrinal resolutions and statements cannot coexist in the Synod without serious disturbance of the members. “Refusal to comply with these provisions as well as active promotion of non-compliance constitute divisive and unbrotherly conduct which destroys the very concept of the Synod as ‘a walking together’”(CCM Goetjen Opinion, Minutes #554, June 12, 1967).

When congregations and ordained and commissioned ministers join the Synod, they voluntarily enter a covenant relationship with all other members. They agree to the reason for forming a synodical union, a “walking together” to prevent schism according to the example of the apostolic church, Acts 15: 1-31 (Constitution Preamble, “Reason for the Forming of a Synodical Union”). They agree together in their scriptural and confessional subscription (Article II; Bylaw 1.03), which members accept without reservation and in the carrying out of the objectives of the Synod (Article III).

The first object of the Synod under Scripture and the Lutheran Confessions is to “conserve and promote the unity of the true faith (Eph. 4: 3-6; 1 Cor. 1:10)...and provide a united defense against schism, sectarianism (Rom. 16:17), and heresy”(Article III 1).

Committed to a common confession, member congregations voluntarily “join with one another in the Synod to support one another and to work together in carrying out their commonly adopted objectives” (Bylaw 1.01). In joining the Synod,

.... 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 synodical Constitution and Bylaws under which they have agreed to live and work together and which the congregations alone have the authority to adopt or amend through conventions. (Bylaw 1.05 d)

As such,

The Synod (emphasis added), in seeking to clarify its witness or to settle doctrinal controversy, so that all who seek to participate in the relationships that exist within and through the Synod may benefit and may act to benefit others, shall have the right to adopt doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions. (Bylaw 1.09.a)

Since it is the duty of every member to “diligently and earnestly (emphasis added) promote the purposes of the Synod by word and deed” (Bylaw 2.35), and it is understood that the “Constitution, Bylaws and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod” (Bylaw 2.39 a), the “members of the Synod are expected as part of the life together within the synodical fellowship to honor and to uphold the resolutions of the Synod” (Bylaw 2.39 c). This includes honoring and upholding by the mercies of God those resolutions of the Synod that encourage and allow for Christian liberty and pastoral and congregational freedom (e.g., 1969 Resolution 2-17 on women’s suffrage [Cf.. CCM Opinion January 23, 1970]; 2001 Resolution 3-07A, “To Commend ‘The Lutheran Understanding of Church Fellowship’ and CTCR Report on the Synodical Discussions” – V. “Response to Specific Concerns, B. Cases of Discretion”).

In answering the questions asked, the Commission also calls attention to Article VII of the Constitution:

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.

As a part of life together in the Synod, members have the responsibility to continually examine and reexamine their confession (symbols, doctrinal statements, and resolutions) to determine if they are faithful to Holy Scriptures. Members have a never-ending task of testing everything that the Synod believes, teaches, and practices to see if they are in accordance with the Word of God. If there are issues that need to be readdressed or issues that are considered by the members of the Synod that have not yet been addressed, any action is to be governed by the procedures set forth in the Bylaws, particularly Bylaws 1.09 and 2.39.

An October 16, 1969 opinion of the Commission On Constitutional Matters, “An Opinion Regarding Dissenting Groups and Activities Within the Synod,” which addresses in general a related question, also importantly includes:

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. The pastors and teachers conferences; the circuit meetings; the synodical and District board, commission, and committee meetings; the doctrinal supervision and appeals procedures; and above all the conventions of the Districts and of the Synod provide the proper channels through which the issues of opinion and judgment are to be discussed and decided. In the absence of a clear word of God issues must be decided by the majority principle, applied in Christian love and with Christian restraint (Article

VIII, C). 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....

In this opinion the Commission is not attempting to limit the right of individuals to speak their own minds. Before and after the passage or rejection of synodical resolutions individuals must be free to express their concerns, especially to their peers. Frank and open discussion, carried on in a spirit of Christian love and forbearance, must be part of our life together in the Synod. It can be proper and salutary. However, in this opinion the Commission is addressing itself to the organizing of groups, to the calling of meetings, secret or open, to attempted manipulation of existing groups, to circularizing activities, and to a wide scale of joint actions, all of which by their very nature tend to polarize or fragment the constituency of the Synod, and thus have the effect of disrupting the synodical unity.

In Christian love, members who have joined together voluntarily also have agreed to retain “the right of brotherly dissent” and to respect the conscience of the dissenter when resolutions are of a doctrinal nature (Bylaw 2.39 c). The members have agreed together that the expression of dissent follows these synodically established procedures: (1) Express the dissent within the fellowship of peers; (2) Then, bring the dissent to the attention of the Commission on Theology and Church Relations; (3) Following these first two steps, dissent may find expression as an overture to the convention for revision or rescision (Bylaw 2.39 c).

Thus, those who have joined the Synod voluntarily agree to the basis of the fellowship, the common commitment and “walking together” as well as the synodically established procedure for the Synod to express its fellowship and unity with one another, to express its common confession, and to clarify its common witness or to settle doctrinal controversy. Any member who disregards the above agreement, including the synodically established procedure for the expression of dissent, and seeks to establish, teach, practice and promote a “confessional statement” or statement of belief within the fellowship that has not been adopted by the Synod itself, violates the very purpose, fellowship, and unity of the Synod, is not acting in accordance with the Synod’s Constitution and Bylaws, is guilty of “offensive conduct” (Article XIII) and is subject to the disciplinary procedures specified in the Constitution and Bylaws.

Among the resolutions that the members of the Synod are to honor and uphold is Resolution 2-21 of the 1971 synodical convention (1971 *Proceedings*, pp. 118–119), which states in its Preamble:

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 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.

Note: The complete text of the October 16, 1969 opinion of the Commission on Constitutional Matters, "An Opinion Regarding Dissenting Groups and Activities Within the Synod," follows:

AN OPINION REGARDING DISSENTING GROUPS AND ACTIVITIES WITHIN THE SYNOD

From several quarters the Commission on Constitutional Matters has received inquiries which may be summarized in the following constitutional questions:

Is it permissible under the Constitution of the Synod, without the consent of the Synod, to call into being organizations whose purposes are to express dissent to the resolutions of the Synod or whose purposes might ostensibly be in keeping with the purposes and functions of the Synod but might in reality arrogate responsibilities which the Synod has reserved to itself? By the same token, is it permissible for existing organizations to engage in such activities?

The Commission on Constitutional Matters holds that such actions subvert the Constitution of the Synod.

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.

In Article III, Objects, the fundamental thrust of the Synod is not only clearly stated but is given preeminence. The first purpose of the Synod is listed as: "The conservation and promotion of the unity of the true faith (Eph. 4:3-6; 1 Cor. 1: 10) and a united defense against schism and sectarianism (Rom. 16:17)." The Scripture references include the

admonitions to preserve the unity of the Spirit in the bond of peace, to avoid all divisions, and to beware of division makers.

Objects 2, 3, 4, 5, and 6 continue with this theme. All of these imply the quest for oneness, its preservation and extension.

Objects 7 and 8 need special emphasis in view of the questions which have been raised regarding the formation and continuation of groups which attempt to carry out the purposes which the Synod reserves for itself:

7. The supervision of the ministers and teachers of Synod with regard to the performance of their official duties;

8. The protection of pastors, teachers, and congregations in the performance of their duties and the maintenance of their rights.

The Synod was organized and is maintained to carry out these objects. The congregations, pastors, and teachers who by their own free decision have joined the Synod have done so with the determination that the important functions described in Article III (and we would stress especially Objects 1, 7, and 8 in view of the questions which have been raised) should be carried out by the Synod. Any assumption of these responsibilities by secret or open, voluntary or auxiliary, new or established groups is disruptive of the synodical purpose and cannot be tolerated.

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. The pastors and teachers conferences; the circuit meetings; the synodical and District board, commission, and committee meetings; the doctrinal supervision and appeals procedures; and above all the conventions of the Districts and of the Synod provide the proper channels through which the issues of opinion and judgment are to be discussed and decided. In the absence of a clear word of God issues must be decided by the majority principle, applied in Christian love and with Christian restraint (Article VIII C). 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.

It is incongruous for separate groups to organize for the purpose of policing the members of the Synod; it is equally incongruous for groups to organize for the purpose of either shaping or nullifying a decision in an area of concern in which the Synod has reserved to itself the right of making decisions. Where the Synod has not reserved this right to itself (e.g., the decision to establish orphanages, high schools, old folks homes, hospitals), congregations and individuals have the right to effect an organization so long as its objectives and operations do not interfere with the purposes and functions of the Synod. However, where the Synod has reserved this right to itself (e.g., the administration of its colleges and seminaries; the supervision of doctrine; the declaration of fellowship with other church bodies), congregations and individuals have no right under the Constitution of the Synod without the express approval of the Synod to effect organizations to achieve

purposes for which the Synod itself exists or to carry on activities which rightfully belong to the duly elected or appointed officials of the Synod. Under these circumstances such organizations become divisive and schismatic and therefore subversive of the very purposes of the Synod.

In this opinion the Commission is not attempting to limit the right of individuals to speak their own minds. Before and after the passage or rejection of synodical resolutions individuals must be free to express their concerns, especially to their peers. Frank and open discussion, carried on in a spirit of Christian love and forbearance, must be part of our life together in the Synod. It can be proper and salutary. However, in this opinion the Commission is addressing itself to the organizing of groups, to the calling of meetings, secret or open, to attempted manipulation of existing groups, to circularizing activities, and to a wide scale of joint actions, all of which by their very nature tend to polarize or fragment the constituency of the Synod, and thus have the effect of disrupting the synodical unity.

All members of the Synod and of its congregations are to beware of the danger of groups and activities which divide and splinter the Synod. Synodical and District officers and board and commission members have a special responsibility to identify divisive and subversive movements and to avoid them. By their example and advice they are to conserve and promote the unity of the true faith and the oneness of the Synod.

While the above opinion has been prompted by a specific situation, it holds generally and addresses itself to a problem which has troubled the Synod for some time. We are living in an age in which a great number of institutions are under attack and in which lack of confidence is rampant, an age of the conspiracy syndrome and the power syndrome, after which "the Gentiles" seek. It should not be so among us. We need to remember that we are not two or three or more synods; we are one synod, pledged to share the journey. It is within the context of the Synod—the forums, channels, and procedures which the Synod itself establishes—that differing viewpoints need to be discussed and an issue finally decided. Continuing dialog beyond the point of decision must also be carried on within the same synodically agreed upon framework and in deference to the majority will. We have committed ourselves not to that which divides but to that which unites. We are one synod.

Adopted April 29, 2003

Restricted Status (03-2331)

A member of the Synod, in a January 27, 2003 letter, asked a series of questions regarding an individual's placement and retention on restricted status under certain conditions.

Question 1: If a member of Synod is not notified "in writing as to the specific reasons for having been placed on restricted status" is the member actually on restricted status?

Opinion: Yes, placement on restricted status is an initial action taken by a District President for reasons given in Bylaw 2.23 a. The District President is then required to carry out the provisions of Bylaw 2.23 c, including notification of the individual who has been restricted "in writing as to the specific reasons for having been placed on restricted status." If the District President has not fulfilled his responsibility in that regard, the member has the right under Bylaw 2.23 d to challenge the placement on restriction or the

continuance of such restricted status by filing a Petition for Removal of Restricted Status with the Council of Presidents.

Question 2: If a member of Synod is not notified “in writing as to the reasons for such continuance of restricted status” is the restricted status removed by default after the year is completed?

Opinion: Bylaw 2.23 c allows a District President to extend the restricted status beyond one year by annually notifying the member in writing as to the reasons for such continuance of restricted status. If the notice is inadequate or the member disagrees with the reasons asserted, again, the individual has the remedy provided under Bylaw 2.23 d, to file a Petition for Removal of Restricted Status with the Council of Presidents.

Question 3: If a member of Synod is not notified “in writing as to the specific reasons for having been placed on restricted status” how is the member able to know what he must do to satisfactorily resolve the issues of concern (i.e., counseling, medical treatment, doctrinal studies)?

Opinion: Bylaw 2.23 e requires that, “while a member is on restricted status, the District President shall minister to that member either directly or through others, concern himself with the spiritual well being of that member, and continue efforts to resolve those matters which led to the imposition of restricted status.” If a member believes that the District President is not fulfilling his responsibilities in this regard, the individual has the rights provided by Bylaw 2.23 d as discussed above.

Question 4: If a member of Synod is not notified “in writing as to the specific reasons for having been placed on restricted status” is it proper for [the] District President to identify the member’s status as restricted?

Opinion: A member’s restricted status continues until the matter is satisfactorily resolved or until a District President chooses not to extend the restricted status beyond one year. In the alternative, restricted status may be terminated by action of the Council of Presidents under Bylaw 2.23 d.

Question 5: If a member of Synod is not notified “in writing as to the specific reasons for having been placed on restricted status” how is the member able to appeal this “undocumented restriction” according to the provisions of Synod Bylaws 2.23 d and 2.29?

Opinion: If an individual is listed as being on restricted status and feels that he has not been appropriately notified in writing as to the specific reasons for having been placed on such status, presumably the Petition for Removal of Restricted Status filed by the affected member under Bylaw 2.23 d would recite, as at least one of the reasons for the petition, the fact that inadequate notice or explanation in writing has been provided for the imposition of such restricted status.

Question 6: If a member of Synod has been put on “restricted status” whether properly or improperly, does he have to apply for reinstatement or does the proper authority remove the restricted status?

Opinion: Bylaw 2.23 c provides that restricted status continues for a period of one year or a lesser period if the matter is satisfactorily resolved. In order for the period to extend past one year, the District President must notify the member in writing as to the reasons for continuance of restricted status. If a District President has not chosen to continue restricted status following the expiration of one year, restricted status would terminate on the anniversary date of the initial restriction. Reinstatement is not necessary since membership in the Synod continues during restricted status.

Adopted April 29, 2003

Immediate Termination of Dispute Resolution Process (03-2334)

A pastor of the Synod, after corresponding with the Secretary of the Synod, requested that his questions be forwarded to the Commission on Constitutional Matters, also adding an additional question. He questions the necessity for the dispute resolution process of the Synod to continue if and when an opinion of the Commission on Constitutional Matters appears to decide the case.

Question 1: If the recent CCM rulings (more properly, binding opinions) say that charges cannot be brought if/when [a] person has checked with [his/her] supervisor and [the] supervisor had given permission and "go ahead" based on his interpretation of a synodical document and/or resolution, how can the effect of charges which have been ruled "not allowed because they are invalid" (my summary) and the process triggered by the charges continue?

Opinion: It is the responsibility of the investigating officer and subsequent panels to decide whether allegations brought against a member of the Synod are valid, taking into consideration all pertinent evidence as well as opinions requested from the Commission on Theology and Church Relations and binding opinions requested from the Commission on Constitutional Matters. In the case of CCM opinions, it remains for the investigating officer and/or panel(s) to become informed of all prior CCM opinions and to determine their applicability and consequences. Until such decisions are finally made and all opportunities for appeal have been exhausted, the dispute resolution process continues.

Question 2: On the basis of what logic or specific constitution/bylaw provision is the CCM decision (binding opinion) not implemented and declared effective?

Opinion: All CCM opinions are binding on the question decided unless and until they are overruled by a convention of the Synod (Bylaw 3.905 d). All CCM opinions are therefore also binding on panels in the dispute resolution process, particularly when the question being decided originates from a panel (Bylaw 8.21 i). If a panel does not implement a CCM opinion, either party to the dispute or the President of the Synod, if a question of doctrine or practice is involved, has the right to ask for a decision from an Appeal Panel regarding a reconsideration of the earlier panel's decision (Bylaw 8.09 d).

Question 3: Is there a specific constitution/bylaw provision which demands that the process which is in operation must be carried out, even when the binding ruling has been made that the charges are invalid?

Opinion: In an earlier opinion (01-2253), the CCM responded to a question regarding withdrawal from a dispute resolution process after a hearing had been requested:

Once the process has been initiated, the Synod and its members are bound to follow the procedure that has been provided....Once the choice is made to continue the process by requesting a hearing before a panel, the Synod is duty-bound to finish its process.

This opinion was provided on the basis of Bylaw 8.01, which reads: "No person, entity or agency to whom or to which the provisions of this chapter are applicable because such person, entity or agency is a member of the Synod may render the provisions of this chapter inapplicable by terminating that membership." While there is no specific constitution or bylaw provision that specifically requires that a dispute resolution process that is underway must be carried out in its entirety, there also is no constitution

or bylaw provision, including Chapter VIII of the Bylaws (Synodical Dispute Resolution), that provides for early termination of a dispute resolution process.

Question 4: Is there any provision in [the] constitution/bylaw[s] which precludes the President of the Synod (or the Secretary of the Synod, or the current acting President of the Atlantic District, or some other person elected to office) from [making a] declaration to implement CCM binding opinion immediately.

Opinion: While the officers of the Synod are responsible to the extent of their various responsibilities for seeing to it that the Constitution, Bylaws, and resolutions, including CCM opinions, are carried out, Article XI A 1 of the Constitution provides that “the officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod.” None of the officers mentioned have been expressly given the right to intervene in the dispute resolution process of the Synod. In its prior Opinion 02-2304 the CCM opined that not even a convention of the Synod can take any action relative to a final decision of a matter in dispute. In matters pertaining to the dispute resolution process, it is the business of investigating officers and panels, not officers and not even conventions, to become informed of and to make application of all pertinent CCM rulings in given cases.

Question 5: This opinion [01-2253], which predated the more recent CCM rulings which say that if a person has sought authorization/permission or approval from his supervisor and has received it based on the supervisor’s interpretation then the charges are obviously invalid, would make sense in situations where such actions did not take place. However, surely it would be recognized that if the charges are determined invalid, the process would not continue, because to do that would continue to cause harm to the individual as well as to the Synod. Thus my request for the CCM to review both the more recent rulings and the one you cite above to determine if the earlier one still makes sense or whether it should be set aside in circumstances such as the present one and after the newer rulings.

Opinion: Upon your request, the Commission has reviewed the rulings in question and concludes that there is no reason to set aside Opinion 01-2253, for reasons included in the opinions provided to questions 1-4.

Adopted April 29, 2003

Discontinuance of Church Work Program (03-2335)

In a memorandum dated February 21, 2003, the President of the Concordia University System submitted the following question regarding the discontinuance of the BA Deaconess program at Concordia University, River Forest by the Board for Higher Education/Concordia University System Board at the request of the university’s Board of Regents.

Question: May the BHE/CUS Board discontinue a church work program, (in this case the BA Deaconess program at River Forest) which was established by synodical resolution, without submitting its intent to a synodical convention?

Opinion: Individual education programs may be established by colleges and universities of the Concordia University System in various ways, including action by the Synod in convention under Chapter III of the Bylaws as a result of the recommendations of the Board for Higher Education pursuant to Bylaw 3.409 (particularly paragraph b) or upon initiation by the Board of Regents of a particular institution in coordination with the Board for Higher Education, as outlined in Bylaw 6.03 d. Unless restricted by an action of the Synod in convention, the decision-making responsibility for the nature and extent of ongoing

programs, including the discontinuance of a particular program, falls to the authority both of the individual institution's Board of Regents under Bylaw 6.03 (in coordination with the Board for Higher Education) and with the Board for Higher Education on its own initiative under Bylaw 3.409 (particularly paragraphs c and k).

Resolution 6-05 of the 1979 convention authorized the Board for Higher Education to direct Concordia College, River Forest, Illinois to establish a full deaconess training program on its campus by the fall of 1980. The convention recognized (in the resolution's third whereas) that it was possible to add the deaconess program without adding curriculum or academic staff. It is within the ongoing responsibilities of the Board of Higher Education as well as the local Board of Regents to continue to monitor the viability and appropriateness of the deaconess program at Concordia University, River Forest, as with any academic program.

Bylaw 3.409 l restricts the authority of the Board for Higher Education with respect to the expansion, consolidation, relocation, change to a junior college level, or separation of a college or university from the Synod to circumstances in which the Board for Higher Education has obtained prior consent by a two-thirds majority vote of the Board of Directors of The Lutheran Church—Missouri Synod together with a two-thirds majority vote of either the Council of Presidents or the appropriate Board of Regents. That limitation, however, does not apply to termination of individual programs.

The same subparagraph of Bylaw 3.409 imposes further restrictions with respect to the closure of a college, university, or seminary. Such closure requires a two-thirds majority approval of the Synod in convention. Here again, however, no such restriction is placed upon the termination of an individual program.

While the Commission therefore finds no prohibition of the discontinuance of the BA Deaconess program at Concordia University, River Forest by the Board for Higher Education, for the reasons set forth above, it should also be noted that Bylaw 3.409 imposes on the Board the overall responsibility to provide for the education of ordained and commissioned ministers and other professional church workers for the Synod. The Synod has expressly indicated its desire to have a deaconess training program and has expressly identified throughout its Bylaws and many past synodical convention resolutions the importance of deaconesses to the Synod. At present, Concordia University, River Forest has the Synod's only BA Deaconess program. Pursuant to Bylaw 3.409 a, b and k, the Board for Higher Education has the responsibility not only to establish criteria for determining the ongoing viability of institutions, but also the responsibility to develop detailed coordinating policies and procedures for the colleges and universities of the Synod that include plans to provide for meeting the constituency needs and interests of the Synod. This responsibility certainly includes a plan for providing for the education and training of deaconesses, as repeatedly expressed in the resolutions of the Synod.

Adopted April 29, 2003

Appointments to Commission on Constitutional Matters (03-2337)

A member of the Synod, in a February 19, 2003 letter, called into question the legitimacy of an appointment of a member of the Commission on Constitutional Matters in the event that all bylaw appointment provisions are not followed.

Question 1: If a person is appointed to the Commission on Constitutional Matters (CCM) in violation of Synod's Bylaws, namely Bylaw 3.903 a 3, "in consultation with the Vice-Presidents of the Synod" (p. 71, 2001 *Handbook*), is that person actually and properly to be considered a member of the CCM?

Answer: The members of the Commission on Constitutional Matters are selected pursuant to the procedures outlined in Bylaw 3.903. In paragraph a 3 of that bylaw, the President of the Synod, in consultation with the Vice-Presidents of the Synod, appoints the members of the Commission from a list presented by the Council of Presidents, which list is narrowed to five candidates for each vacant position from a pool of nominees submitted by the District boards of directors. However, it is helpful to understand that the Bylaws do not describe the manner or method of “consultation.” The Commission also notes that “consultation,” which simply means to seek opinion or advice, is not the same as “mutual concurrence” (also a bylaw phrase used elsewhere), which means to be united or in agreement as in action or opinion. Any alleged violation of the process for selection of a member of the CCM should be brought to the attention of the President of the Synod, the Vice-Presidents of the Synod, the Council of Presidents, and the CCM itself for appropriate review and response.

Question 2: If the answer to question number one is "no," are subsequent decisions of the CCM, in which he participated, valid?

Opinion: The Constitution and Bylaws of the Synod are silent on this question, and since the Commission renders its decisions on the basis of consensus, one such person does not invalidate the opinion of the Commission.

Question 3: If the answer to question one is "yes," is it necessary for other members of the Synod to any longer abide by the bylaws?

Opinion: Members of the Synod commit themselves “to act in accordance with the synodical Constitution and Bylaws under which they have agreed to live and work together and which the congregations alone have the authority to adopt or to amend through conventions” (Bylaw 1.05 d). Bylaw 2.39 a also states, “The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.”

Adopted April 29, 2003

Ecclesiastical Supervision and the Filing of Complaints (03-2333)

In a February 9, 2003 letter, a member of the Synod took issue with Commission Opinion 02-2309. He expressed concern that the opinion contravenes Bylaw 2.27, which provides the right for any person to bring a written complaint, and creates a hierarchy in the Synod. He asked that Opinion 03-2309 be revoked.

Opinion: The opinion of this Commission to question 9 of Opinion 02-2309 stated that the members of the Synod, through the Constitution, assigned certain duties to the President of the Synod. Article XI A states:

1. The officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod.

Section B of Article XI then sets forth the “Duties of the President.” Included in those duties are the following, as set forth in paragraphs 1, 2, and 3:

1. The President has the supervision regarding the doctrine and administration of a. All officers of the Synod; b. All such as are employed by the Synod; c. The individual Districts of the Synod; d. All District Presidents.

2. It is the President's duty to see to it that all the aforementioned act in accordance with the Synod's Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod.

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

Article XII of the Constitution is entitled, "Districts of the Synod and Their Regulation." Paragraph 7 therefore states:

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....

The above quoted paragraphs of Articles XI and XII speak for themselves. As the Commission stated in Opinion 02-2309, the Synod has assigned to the President of the Synod "the formal or official constitutional responsibility to admonish or reprove members of the Synod." Likewise, the Synod has assigned to a District President the "supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers in their District."

Therefore, the Constitution provides that ecclesiastical supervision by the Synod is to be performed by the President of the Synod and District Presidents. There is no provision in the Constitution that such ecclesiastical supervision by the Synod is to be performed by any other party. Does this prohibit any other individual member of the Synod from privately admonishing an erring brother? Certainly not. However, it is the constitutionally mandated duty of the President and District Presidents, and only the President and District Presidents, to perform ecclesiastical supervision in the name of the Synod, as detailed in the Constitution and Bylaws.

Bylaw 2.27 establishes the procedure for commencing an action to terminate congregational or individual membership. Such termination requires that the member has, after futile admonition, acted contrary to the confession laid down in Article II of the Constitution and the conditions of membership laid down in Article VI, or persisted in an offensive conduct. (It is to be remembered that termination of membership ultimately lies with a Dispute Resolution Panel or, if appealed, a Review Panel.) Ecclesiastical supervision and termination of membership are two different actions. A written complaint submitted under the provisions of Bylaw 2.27 is not ecclesiastical supervision.

Adopted June 23, 2003

Board of Directors Appointment Responsibilities (03-2340)

In an e-mailed letter received February 28, 2003, an emeritus pastor of the Synod reminded the Commission of Bylaw 3.75 and questioned the right of the Board of Directors of the Synod to appoint its own members to the boards of synodwide corporate entities.

Question: Is it in harmony with the Bylaws of the Synod for the Board of Directors to appoint any of its own members to the boards of these corporate entities (Concordia Historical Institute; Concordia Publishing House; Concordia University System; The Lutheran Church Extension Fund—Missouri Synod; and The Lutheran Church—Missouri Synod Foundation)?

Opinion: The answer to the question as stated is no. It is recognized that Bylaw 3.75 a states, “No one, either in the Synod or in a District, or between the Synod and a District, shall hold more than one elective office; or more than two offices, although one or both be appointive; or ever hold two offices of which one is directly responsible for the work done by the other.” It would be improper for an elected member of the Board of Directors to also be a member of the governing board of a synodwide corporate entity because of the oversight responsibility of the Synod’s Board of Directors (Art. XI F 2; Bylaw 3.183). The Constitution and Bylaws of The Lutheran Church—Missouri Synod do not authorize the Synod’s Board of Directors to appoint members to the governing boards of any of the synodwide corporate entities.

The Commission calls attention to the fact that in three of the corporate entities of the Synod the membership of the entity differs from the governing board of the entity. There is membership of the Concordia University System (Bylaw 3.405) and membership of its board (Bylaw 3.407). The Bylaws of the Synod also make a distinction between Members of the Lutheran Church Extension Fund—Missouri Synod (Bylaw 3.501 a) and the Board of Directors of the Lutheran Church Extension Fund—Missouri Synod (Bylaw 3.501 c). Members of The Lutheran Church—Missouri Synod Foundation (Bylaw 3.603 a) are also to be distinguished from the Board of Trustees of The Lutheran Church—Missouri Synod Foundation. Being a “Member” of these entities is not the same as being a member of the governing board of the entities.

The Commission makes note of the following: The Synod’s Board of Directors makes no regular appointments to the following corporate entities: Concordia Historical Institute (Bylaw 3.203) and Concordia Publishing House (Bylaw 3.301). The Board of Directors of The Lutheran Church—Missouri Synod appoints one group of Members to the corporate entity of Concordia University System, but the Synod’s Board of Directors appoints no person to the Board of Directors of Concordia University System (Bylaws 3.405 and 3.407). The Synod’s Board of Directors appoints Members to the corporate entity of the Lutheran Church Extension Fund—Missouri Synod but no person to its Board of Directors (Bylaw 3.501 a, c). The Synod’s Board of Directors appoints one group of Members to the entity of The Lutheran Church—Missouri Synod Foundation but does not appoint persons to the Board of Trustees of The Lutheran Church—Missouri Synod Foundation (Bylaw 3.603).

Bylaw 3.63 a addresses the filling of vacancies on synodically elected boards, which would include those members of the governing boards of the synodwide corporate entities who are elected by the Synod in convention. This bylaw provides that the Synod’s Board of Directors selects the individual to fill such vacancy. However, the slate of candidates from which the Board of Directors selects the individual is prepared by parties other than the Board of Directors of the Synod.

Adopted June 23, 2003

Board of Directors Appointments to Other Entities of the Synod (03-2342)

In an e-mailed letter received February 28, 2003, a parish pastor of the Synod questioned the right of the Board of Directors to appoint its own members to certain positions in the Synod and inquires regarding the status of any inappropriate appointments that may have been made.

Question 1: Were the self-appointments that the synodical Board of Directors made for themselves to the Concordia University System and Lutheran Church Extension Fund—Missouri Synod (and others) appropriate, especially seeing how the Concordia University System Board and the Lutheran Church Extension Fund—Missouri Synod report directly/indirectly to the Board of Directors of the Synod?

Opinion: Any appointment, including “self-appointments,” made by the Synod’s Board of Directors that complies with the Bylaws is appropriate. Any appointment is inappropriate if it reflects non-compliance. Opinion 03-2340 serves as an answer to this question.

Question 2: Should all preceding appointments and subsequent appointments and elections held thereafter and even decisions rendered from such respective entities as a result of their various appointments be considered null and void?

Opinion: Any appointment or election may be declared null and void if the appointment or election was not in compliance with the Synod’s Constitution and Bylaws. The Constitution and Bylaws are silent concerning the validity of a decision in such case.

Question 3: If the Board of Directors of the Synod acted improperly in appointing its own members, does the President of the Synod have the authority to nullify the action of the Board of Directors of the Synod in appointing its own members to the synodwide corporate entities?

Opinion: The President of the Synod has the constitutional duty to see to it that all officers of the Synod “act in accordance with the Synod’s Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod” (Art. XI B 2). And according to Article XI B 3, “The President has and always shall have the power to advise, admonish and reprove.”

According to Bylaw 3.101 B 1 and 5, the President shall “oversee the activities of all agencies of the Synod to see to it that they are in accordance with the Constitution, Bylaws, and resolutions of the Synod” and “shall call up for review any action by an individual officer, executive, or agency which, in his view, may be in violation of the Constitution, Bylaws, and resolutions of the Synod and, if he deems appropriate, request that such action be altered or reversed. If the matter cannot be resolved, the President shall refer it to the synodical Board of Directors, the Commission on Constitutional Matters, and/or the Synod in convention as the President deems appropriate to the issues and party/parties involved.”

Were the Board of Directors of the Synod to act improperly in appointing its own members, there is no constitutional or Bylaw authority given to the President of The Lutheran Church—Missouri Synod to nullify an unconstitutional action of the Synod’s Board of Directors.

Adopted June 23, 2003

District Constitution Committee Review of Congregation Constitutions and Bylaws (03-2349)

In a letter received April 21, 2003, a District Secretary and the Chairman of his District's Constitution Committee request the guidance of the Commission in responding to a section of a congregation’s Constitution and Bylaws that had been submitted for review. The District committee found articulated in the documents submitted for review a view of the Call and the call process that provoked a number of questions. The paragraph in question includes several statements about the nature and tenure of a Call that are not addressed by the “Guidelines for the Constitution and Bylaws of a Lutheran Congregation” provided by the Commission on Constitutional Matters.

Question: Is this section of the submitted Constitution and Bylaws governing “Calls to the Church” a correct and adequate confession of the doctrine and practice of our Synod?

Opinion: Bylaw 2.03 provides that a District Constitution Committee is to review a congregation's new Constitution or Bylaws or a revision thereof to ascertain that the provisions are in harmony with the Holy Scriptures, the Confessions, and the teachings and practices of the Synod. Since this question addresses doctrinal matters, it should be addressed to the Commission on Theology and Church Relations.

This question with its reference to the "Guidelines for the Constitution and Bylaws of a Lutheran Congregation" calls into question the role of the guidelines in the work of a District Constitution Committee. Congregations cannot become members of The Lutheran Church—Missouri Synod until their constitutions and bylaws have been approved by a constitution committee of a District of the Synod. Furthermore, any amendments must also have that approval before becoming operative.

Since a high degree of uniformity is desirable, the Commission on Constitutional Matters has from time to time issued guidelines for the proper construction of congregational constitutions and bylaws. It should be noted, however, that there are wide divergences among the congregations of the Synod and that it is not advisable to formulate one constitution and bylaws to fit all congregations. Therefore, District committees, when evaluating constitutions and bylaws that are submitted, will judge them as to whether they contain the principles set forth in the guidelines.

Adopted June 23, 2003

CCM Rulings, Dissent, and Ecclesiastical Supervision (03-2354)

In a letter received May 22, 2003, a pastor of the Synod asked a series of questions in three categories: (1) Commission on Constitutional Matters Rulings in Conflict with Official Documents; (2) Regarding Dissent; and (3) Regarding Ecclesiastical Supervision.

Question 1: If, for whatever reason, the Commission on Constitutional Matters had in effect created new governing principles outside of its purview – or issued a ruling which was in conflict with the Scriptures, the Confessions, and the Constitution of the Synod – what recourse would a member of the Synod have for challenging that ruling of the Commission on Constitutional Matters?

Opinion: Bylaws 3.903 and 3.905 define the membership and functions of the Commission on Constitutional Matters. Those bylaws make no provision for an individual member of the Synod to challenge an opinion of the Commission that was issued in response to a question by an eligible party as set forth in Bylaw 3.905 d. However, the Commission has reconsidered an opinion when asked to do so by a written request from any eligible party that the bylaw allows to make an initial request for an opinion from the Commission.

Question 2: If a member of the Synod were to sign a statement such as the example listed below, would his action be interpreted by the Commission as (a) making a formal statement of brotherly dissent as described in Bylaw 2.39 c; (b) engaging in an activity whereby each signatory would be liable for a complaint to be lodged against him by another member of the Synod; or (c) simply stating his personal opinion in public according to our country's freedom of speech as protected by the Bill of Rights?

(Please note: this request for a ruling is not asking in any way for approval or acceptance of the details found in the following statement, which is provided simply for the purpose of serving as an example. It is provocative with highly-charged terms in an attempt to resemble actual documents of this kind which circulate in the Synod at present.)

We, the undersigned, declare with the signatures affixed to this document our formal protest against, and rejection of, the Dispute Resolution Panel (DRP) ruling in the Benke case. We are in total concurrence with the Rev. Dr. Wallace Schulz's protest against the DRP's decision.

Furthermore, we believe that a grave injustice has been done to Christ and His Church in that:

- 1) ...the CCM acted contrary to the Synod's Constitution when it adopted a position on ecclesiastical supervision which is contrary to the Scriptures and the Confessions.
- 2) ...the CTCR acted contrary to the Synod's Constitution when it interpreted Resolution 3-07 to include praying together with non-Christian religions as Dr. Benke did in A Prayer for America.
- 3) ...the DRP was misguided by the CCM and CTCR rulings and that in making its judgment as it did, it violated the constitutional mandate that all judgments must be founded solely on the basis of Scripture and the Confessions.
- 4) ...Dr. Schulz is correct in his assessment of these points as he clearly stated in his report.
- 5) ...Dr. Kieschnick has thrown our Synod into great turmoil and jeopardy regarding our Constitution, our confession, our missions, and our financial situation—and that he must be held accountable for this.

We believe that the ruling made by the Dispute Resolution Panel must be overturned on the basis of the clear evidence provided by Dr. Schulz from God's Word and the Confessions of the Evangelical Lutheran Church. The precedent which the Dispute Resolution Panel has put into place sets the Synod on a new theological and confessional course contrary to that which it has maintained in the past. We are, therefore, compelled by truth to reject the DRP ruling.

Opinion: The Bylaws do not prohibit criticism or comment by any party, member or non-member, regarding an opinion rendered by the Commission on Constitutional Matters. Bylaw 3.73 provides that "all officers, boards, and commissions shall be accountable to the Synod for all their actions, and any decision of such officers, boards, and commissions may be appealed to the national convention of the Synod."

Question 3: The use of the term "ecclesiastical supervision" in recent CCM rulings such as CCM ruling (02-2309) "Ecclesiastical Supervision and Conflict of Interest" raises certain questions. Does the term "ecclesiastical supervision" as used in the synodical Constitution and Bylaws apply only to the synodical President and the District Presidents, or does it apply to other positions and relationships within the Synod as well? For example:

Question 3A: Are pastors to be understood by the Synod's Constitution and Bylaws as "ecclesiastical supervisors" of the congregations to which they have been called?

Opinion: There is no reference to pastors as ecclesiastical supervisors in the Constitution and Bylaws of the Synod.

Question 3B: Are Circuit Counselors "ecclesiastical supervisors" over parish pastors?

Opinion: The Constitution and Bylaws only refer to the President of the Synod and the District Presidents as ecclesiastical supervisors. Bylaw 5.13 a states that the Circuit Counselor “shall serve under the direction of and be accountable to the District President and shall serve as his spokesman when so authorized and directed and shall assist him in doctrinal and spiritual supervision.” Further, Bylaw 5.13 c states that a Circuit Counselor “shall serve in a servant role and seek to remind and encourage members of the Circuit of their responsibilities as God’s people and the privilege they have in being about His mission.”

Question 3C: Are the Vice-Presidents of the Synod to be understood in any sense of the term as “ecclesiastical supervisors”?

Opinion: The Constitution and Bylaws only refer to the President of the Synod and the District Presidents as ecclesiastical supervisors. Bylaw 3.121 indicates that the First Vice-President “shall be responsible to the President at all times.” Bylaw 3.123 indicates that the four additional Vice-Presidents “shall be responsible to the President at all times for the performance of their duties as Vice-Presidents.” Bylaw 3.125 indicates that the Vice-Presidents “shall be elected advisors of the President” and “may upon his request or as provided by the Synod assist him in discharging his responsibilities or represent him.”

Question 3D: Are the Vice-Presidents of the District to be understood in any sense as “ecclesiastical supervisors,” e.g., over the Circuit Counselors and/or individual members of the District whom they represent or by whom they were elected?

Opinion: The relationship of District Vice-Presidents to the District President is the same as the relationship of the Vice-Presidents of the Synod to the President of the Synod.

Question 3E: Is the President of the Synod an “ecclesiastical supervisor” over the individual members of the Synod?

Opinion: Bylaw 3.101 indicates that the President shall carry out his ecclesiastical duties in the Districts of the Synod through the District Presidents. The same bylaw goes on to state that the President of the Synod has ecclesiastical supervision of all officers of the Synod and its agencies, the individual Districts of the Synod, and all District Presidents. Therefore, the President of the Synod is not an “ecclesiastical supervisor” over the individual members of the Synod. Such supervision is the responsibility of District Presidents (Bylaw 4.73).

Question 3F: Could a member congregation bypass its “immediate” ecclesiastical supervisor to get permission from a Circuit Counselor or District President? (E.g., the congregation wants to participate in an interfaith prayer service in the wake of a horrible disaster, but the pastor of the congregation is against it. Can the leadership and/or members of a congregation get permission from an ecclesiastical supervisor who is higher up the totem pole than their own pastor to grant them permission?)

Opinion: The Commission notes that a congregation does have a direct relationship to the Synod, to its District, and to the District President as ecclesiastical supervisor (Art. XII 7; Bylaws 4.73 and 4.75). Questions regarding ecclesiastical supervision on the congregational level should be referred to the Commission on Theology and Church Relations.

Adopted June 23, 2003

Exceptions to Electoral Circuit Requirements (03-2355)

A parish pastor in a letter dated May 25, 2003, requested the Commission's opinion regarding "the presidential power to grant exceptions mentioned in Bylaw 3.03."

Question: Does the presidential power to grant exceptions mentioned in Bylaw 3.03 apply only to those visitation circuits not meeting either the 7 to 20 congregations and/or the 1,500 to 10,000 membership requirement? Does the bylaw allow a visitation circuit to be divided into two electoral circuits and be granted two sets of delegates, two pastors and two lay, by the president upon request of a District Board of Directors?

Opinion: Visitation Circuits (generally referred to in the Bylaws as "Circuits") are component parts of the Synod (Bylaw 1.05 f). They are formed by the determination of Districts (Art. XII 3 c; Bylaw 1.05 b). Exceptions to membership requirements for visitation Circuits as provided by Bylaw 5.01 can be made only by the President of the Synod upon request of a District Board of Directors.

Electoral Circuits consist of either one or two adjacent visitation Circuits as determined by the District according to the requirements for electoral Circuits (Bylaw 3.03). As is the case with visitation Circuits, exceptions to the bylaw requirements for electoral Circuits can be made only by the President of the Synod upon request of a District Board of Directors.

Therefore, in response to the above questions, existing visitation Circuits are the basic entities for determining representation to conventions of the Synod. When one or two adjacent existing visitation Circuits fail to meet the requirements of Bylaw 3.03 for electoral Circuits, the bylaw provides to the President of the Synod the authority to grant exceptions in such cases. However, the bylaw does not provide opportunity to divide visitation Circuits to form electoral Circuits, nor does it provide to the President the authority to grant exceptions in such cases.

This opinion is consistent with Opinion Ag. 337 of the Commission, "Temporary Electoral Circuit" (July 21-22, 1972), which ratified a response provided by the Secretary of the Synod to a related question. The Secretary had stated that it was "not permissible to move two parishes from one visitation circuit to another merely for electoral circuit purposes (the choosing of delegates to a synodical convention)."

Adopted June 23, 2003

Election of Delegates to a Convention of the Synod (03-2360)

A pastor of the Synod in a June 19, 2003 e-mail letter asked two questions regarding the election of delegates to a convention of the Synod.

Question 1: What is the proper/prescribed method and timetable for notice for the convening of a circuit caucus for the election of synodical delegates?

Opinion: The Commission assumes that what is meant by "circuit caucus" is the meeting of the electoral Circuit for the purpose of electing delegates to a convention of the Synod. Bylaw 3.05 a states, "Each electoral Circuit shall meet at the call of the Counselor(s) to elect its delegates not later than nine months prior to the opening day of the convention." The same paragraph also states, "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 elected in the manner prescribed by the congregation." Furthermore, Bylaw 3.05 b states, "Prior to the meeting of the electoral Circuit, each congregation may nominate one layperson, either from its congregation or from the Circuit. These names must be submitted to the Circuit Counselor prior to the day of the Circuit meeting and shall constitute the slate of candidates."

Therefore, although there is no prescribed method and timetable for notice for the convening of an electoral Circuit in the Constitution and Bylaws of the Synod, ample notice is necessary to provide opportunity for each congregation to elect its representatives to the meeting in the manner prescribed by its Constitution and Bylaws and to submit the nomination of a layperson to the Circuit Counselor(s) prior to the day of the meeting.

Question 2: Does subscription to a non-approved confessional statement (“That They May Be One” or “The Keller Resolution”) invalidate the election of a delegate to the synodical convention?

Opinion: Members of the Synod continue to hold all rights under the Constitution and Bylaws of the Synod with the single exception of individual members on suspended status. While individual members are on suspended status, they may continue to perform the duties of the positions they hold, but they are relieved of their duties as members of the Synod, including service as a delegate to a convention of a District or the Synod (Bylaw 2.25 b).

Adopted June 23, 2003

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

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

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

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

Adopted Aug. 15-16, 2003

Confessional Statements (03-2352)

In a May 13, 2003 e-mailed letter, a parish pastor asked a series of questions regarding the confessional position of the Synod and subscription to other confessional statements that may be circulated within the Synod.

Question 1: Is the “confessional position of the Synod...set forth in Article II of its Constitution, to which all who wish to be and remain members of the Synod shall subscribe” (Bylaw 1.03) exclusive? May individuals or congregations add to or remove items from it?

Opinion: Members of the Synod are required to accept without reservation and subscribe to the Synod's confessional position as set forth in Article II of its Constitution (Bylaw 1.03). Although the Synod has provided for itself the right to adopt doctrinal resolutions and statements (Bylaw 1.09), even these are not to be regarded as additions to the confessional basis for membership provided in Article II. Accordingly, individuals or congregations may not add to or remove items from Article II.

The Commission calls attention to its earlier Opinion 03-2328, in which it stated:

Subscribing to or requiring a "confessional statement" in place of or in addition to the confessional position of the Synod as set forth in Article II of its Constitution as a condition for fellowship with one another in the Synod is a violation of the covenant relationship in the Synod (Article VI 1; Bylaw 1.03).

Question 2: May members of the LCMS subscribe to "confessional statements," "confessions of faith," or "common confessions of the one Holy Christian and Apostolic faith, as set forth in Holy Scriptures, as taught in the Book of Concord, and as presented above," as "the correct interpretation of our Lord's teaching" in addition to those listed in Article II of the LCMS Constitution?

Opinion: Other confessional statements, confessions of faith, or common confessions may in fact be correct interpretations of our Lord's teaching, but as a condition for acquiring and holding membership in the Synod, acceptance of and subscription to the confessional basis described in Article II of the Constitution alone is required for membership in the Synod (Article VI 1).

Question 3: What are the consequences with regard to membership in The Lutheran Church—Missouri Synod for those who subscribe themselves to "the correct interpretation of our Lord's teaching" on any subject and ask others to join in a confession that is not listed in Article II of the LCMS Constitution?

Opinion: In joining the Synod, members willingly obligate themselves to fulfill the membership requirements of Article VI and agree to accept without reservation the confessional position of the Synod as described in Article II. Accordingly, individual members or congregation members of the Synod may not add to or remove items from Article II. As noted above, other confessional statements, confessions of faith, or common confessions may in fact be correct interpretations of our Lord's teaching and may be used for a variety of purposes, but such other confessions may not be used as a condition for acquiring and holding membership in the Synod.

The Commission also calls your attention to the following portion of CCM Opinion 03-2328:

The question is unclear as to whether the 'confessional statement' proposed to be adopted by a member is consistent with a doctrinal position of the Synod or is a doctrinal position that has not been addressed by the Synod as a whole. If the 'confessional statement' which is proposed were consistent with a doctrinal position of the Synod, there would be no reason for its separate adoption by the individual member or congregation. If the 'confessional statement' appears to be contrary to a doctrinal position of the Synod, the action of the member, whether individual or congregation, is governed by Bylaw 2.39 c. If the 'confessional statement' is intended to address an issue that has not yet been addressed by the adoption of a doctrinal resolution or a statement on part of the Synod, the processes provided in the Constitution and Bylaws and particularly Bylaw 1.09 govern the action.

Question 4: If members of the Synod subscribe to a confession other than or in addition to those listed in Article II, are they making a “mixed confession” or serving a congregation of “mixed confession” in violation of Article VI 2 a of the Constitution?

Opinion: If the allegation of a “mixed confession” is substantiated according to the procedures established by the Synod in Bylaw 2.27, then that is the basis for the judgment on whether a member is in violation of Article VI 2. It is not the responsibility of the Commission to make that judgment or interpret the content of a given “mixed confession” or “a confession other than or in addition to those listed in Article II.” It is recommended that the Commission on Theology and Church Relations be consulted concerning a definition of a “mixed confession.”

Question 5: If members of the Synod subscribe to a confession other than or in addition to those listed in Article II, are they “act[ing] contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI” and in violation of Article XIII 1 of the Constitution of the Synod?

Opinion: As noted above, other confessional statements, confessions of faith, or common confessions may in fact be correct interpretations of our Lord’s teaching, but they may not be regarded as a condition for acquiring and holding membership in the Synod. To do so would be contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI and in violation of Article XIII 1 of the Constitution of the Synod.

Question 6: If members of the Synod subscribed to a confession other than or in addition to those listed in Article II, may they be seated as voting delegates in a District convention or in a synodical convention?

Opinion: Members of the Synod may be seated as or represented by voting delegates in a District or Synod convention except when an individual member of the Synod has been placed on suspended status. In such case the member shall “1. be relieved of duties as a member of the Synod (e.g., as a delegate to a District or synodical convention, as a member of any District or synodical board or commission)” (Bylaw 2.25 c 1).

Question 7: If a member of the Synod subscribes to a confession other than or in addition to those listed in Article II, may he/she be nominated for or elected to an office in the LCMS at the Circuit, District, or synodical level?

Opinion: An individual member of the Synod may be nominated for or elected to an office of the Synod at the Circuit, District, or synodical level so long as eligibility requirements have been satisfied. However, if the member has been placed on restricted status and the elected office includes a new position of service (Bylaw 2.23) or if the member has been placed on suspended status (Bylaw 2.25), he/she is ineligible to accept a call to any other position of service in the Synod (Cf. Bylaw 2.15 d) and may not serve in the office or perform the functions and duties of the office until the restricted status or suspended status has been resolved in the member’s favor.

Question 8: Have members of the Synod who have signed “That They May Be One” subscribed to a confession in addition to those listed in Article II of the Constitution of the Synod?

Opinion: It is the responsibility of a member’s District President as ecclesiastical supervisor to exercise supervision of doctrine (Article XII 7) and discipline (Article XII 8). Therefore, it is the responsibility of the District Presidents of the members in question to judge their actions in light of the content of the document they have signed.

Question 9: Is refusal to practice church fellowship with other members of the Synod removal by self-exclusion from the Synod? If not, what other sign must members give that they have removed themselves from membership in the Synod?

Opinion: The Constitution and Bylaws of the Synod are silent concerning “self-exclusion” and any “signs” members must give to indicate that they have removed themselves from membership in the Synod.

Question 10: “That They May Be One” serves as the basic confession for the “Keller Resolution” subscribed by four Texas congregations on April 14, 2002, and other LCMS congregations since then. The “Keller Resolution” includes the following resolves:

Resolved, That, in keeping with its status as a public confession, we will practice Church Fellowship with those congregations and pastors subscribing to this confession; and be it further

Resolved, That, in keeping with our public confession, we mark and avoid (Romans 16:17) Rev. Gerald Kieschnick and Rev. David Benke as those have publicly participated in, and defended such participation in, unionistic and/or syncretistic worship services; and be it further

Resolved, That, in keeping with our public confession, we will not practice Church Fellowship with those who defend the public sins of Rev. Gerald Kieschnick and Rev. David Benke, outlined above, nor will we practice Church Fellowship with those who reject the biblical doctrine set forth in points 1 through 14 of “That They May Be One”; and finally, be it further

Resolved, That, if Rev. Gerald Kieschnick and Rev. David Benke have not public repented and amended their sinful lives by the Festival of the Reformation, 2002—giving public, unambiguous testimony to their repentance of their willful, public sin—this congregation will gather other congregations which have adopted this resolution to take further action in keeping with our common confession of the Scriptural teaching of Church Fellowship.

Have these congregations “broken fellowship” with the Synod by their actions and removed themselves from the Synod by self-exclusion?

Opinion: If these congregations have not formally terminated their membership in the Synod, they are still considered members and are subject to the ecclesiastical supervision of their District Presidents.

Question 11: May any congregation that has signed the “Keller Resolution” be represented by voting delegates at a District convention or a synodical convention?

Opinion: A congregation may be represented by voting delegates at a convention of a District or the Synod until such time as the congregation is no longer a member of the Synod, as stated in prior opinions of the Commission (Ag. 1907 A-D; Ag. 2084; Ag. 2084B). The congregation does not lose its voting rights for any reason, even if suspended. A congregation’s voting rights are forfeited only when a congregation resigns or is removed from membership.

Question 12: May pastors of congregations that have signed the “Keller Resolution” be voting delegates at a District convention or a synodical convention?

Opinion: Unless an otherwise eligible pastor of a congregation has been placed on suspended status, he may serve as a voting delegate at a District or Synod convention (Bylaw 2.25).

Adopted Aug. 15-16, 2003

Questions re Permission Given by Ecclesiastical Supervisor (03-2353)

A member of the Synod asks the following questions of the Commission:

Question 1: If an ecclesiastical supervisor approves a text or speech that is in doctrinal error, is he, or the writer/speaker, or both able to be charged/disciplined for said text or speech?

Opinion: If an ecclesiastical supervisor approves a text or speech that is in doctrinal error, both he and the writer (speaker) are to correct or amend such error. CCM opinion 02-2309 states:

When an ecclesiastical supervisor discovers error in his counsel, it is incumbent upon that supervisor to correct or amend it. The member should then be held to consider the corrected counsel. Failure to consider such amended admonition could form the basis for disciplinary action as provided in Article XIII.

Question 2: As a corollary, if a publication ‘passes doctrinal review’ in accord with synodical Bylaws, who is responsible for doctrinal errors that are found by others to be contained therein—the author, the doctrinal reviewer or both?

Opinion: The procedures for doctrinal review are not the same as those for ecclesiastical supervision. Any member of the Synod can make a challenge to a published item. Bylaw 10.15 states; “A challenge to the doctrinal review certification of a published item may be initiated by any member of the Synod.” It is finally up to a panel of three doctrinal reviewers to determine what should be done with the published material.

Question 3: If an ecclesiastical supervisor gives one permission to do something that is in error, does such permission also free one from accountability for other errors committed in the act or process of doing the “permitted thing”?

Opinion: This question is answered in response to question 1. When an error is discovered, it is to be corrected or amended.

Question 4: Does “absolution” given by the ecclesiastical supervisor for “possible offense caused” by a sinful action mean that an individual is also no longer responsible for the sin itself, that he is under no compulsion and unable to be put under compulsion to renounce his action before those who may have been misled by it—even before the whole Synod or World if that sin is a generally known or publicized action? Does being forgiven by God remove the necessity for a member of the Synod to renounce false teaching and correct both errors he has proclaimed and false impressions he may have given?

Opinion: Although a part of this question is answered in opinion one, the issues pertaining to sin, forgiveness by God and responsibility for a sin itself are questions which could be better addressed by the Commission on Theology and Church Relations.

Adopted Aug. 15-16, 2003

Confessional Statement and Voting Rights (03-2356; 03-2356A)

In letters dated May 30 and May 31, 2003, a District President and a parish pastor asked similar questions regarding the voting rights of those who have signed certain documents or have declared themselves no longer in fellowship with other members of the Synod.

Question 1: Can signers of these documents (“That They May Be One” and “Keller Resolution”) be voting delegates at conventions, or have they removed themselves from this particular right and privilege by signing such documents?

Opinion: The Commission has answered this question in Opinion 03-2352, which is included in these minutes.

Question 2: Are individuals/congregations who have declared themselves to be no longer in fellowship with other members of the Synod constitutionally authorized to sit as delegates at synodical, District, and Circuit conferences and conventions? If so, under what parameters and guidelines? If not, with what recourse for congregational/pastoral participation?

Opinion: Individuals and congregations continue to be members of the Synod until such time as their membership is terminated. Individual members on suspended status are relieved of certain rights and privileges during the period of suspension (Bylaw 2.25 c). Congregations on suspended status continue to hold all rights and privileges because the Bylaws provide no limitations. The Bylaws also do not provide additional parameters and guidelines.

Adopted Aug. 15-16, 2003

Criticism of the CCM by an Elected Officer of the Synod (03-2361)

In a letter addressed to the Commission on Constitutional Matters dated June 6, 2003, an ordained minister of The Lutheran Church—Missouri Synod has asked the following questions:

Question 1: When [an officer of the Synod] in his criticism against the CCM Opinion 02-2309 failed to quote “It should be noted, however, that when an ecclesiastical supervisor discovers error in his counsel, it is incumbent on that supervisor to correct or amend it. The member should then be held to consider the corrected counsel. Failure to consider such amended admonition could form the basis for disciplinary action as spelled out in Article XIII,” did he give inaccurate and misleading information by this misinterpretation to the Synod?

Opinion: This question does not ask for an interpretation of the Synod’s Constitution, Bylaws or resolutions and therefore an answer is not the responsibility of the CCM. It is not the responsibility of the Commission to judge the actions or communications of a member or officer of the Synod. Procedures for dealing with such an alleged “offensive conduct” (Article XIII of the Constitution) are set forth under Bylaw 2.27 if it is considered that the offence calls for expulsion from membership. The use of the Synod’s dispute resolution procedure as set forth in Chapter VIII of the Bylaws is encouraged when disputes, disagreements or offenses arise among the members when it does not involve expulsion from membership.

Question 2: May [the officer], as an elected officer of the Synod, be free to criticize an opinion of the CCM in which he withholds basic information, thus criticizing on the basis of his

misinformation, rather than using the bylaw channels, which Synod requires of members to use to challenge or appeal a CCM decision?

Opinion: While criticism or dissent may not be prohibited, officers of the Synod, just as individual members, commit themselves as members of the Synod to act in accordance with the synodical Constitution and Bylaws under which they have agreed to live and work together and which the congregations alone have the authority to adopt or amend through conventions (Bylaw 1.05 d).

An officer of the Synod must recognize that “Elected officers serve the Synod in accordance with duties assigned to them or otherwise authorized by the Constitution and appropriate Bylaws...” (Bylaw 1.07b), that “Every member of the Synod shall diligently and earnestly promote the purposes of the Synod by word and deed” (Bylaw 2.35) and that “The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod” (Bylaw 2.39a).

In their accountability to the Synod, “All officers, boards, and commissions shall be accountable to the Synod for all their actions, and any decision of such officers, boards, and commissions may be appealed to the national convention of the Synod” (Bylaw 3.73). And as such, an officer of the Synod must especially respect the requirement that “An opinion rendered by the commission shall be binding on the question decided unless and until it is overruled by a synodical convention” (Bylaw 3.905 d).

As an officer of the Synod, the officer must assume only such rights as have been expressly conferred upon him/her by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod. It is the Synod that at all times has the right to call its officers to account (Article XI A).

Adopted Aug. 15-16, 2003

The Final Decision of a Dispute Resolution Panel (03-2364)

In an e-mail communication addressed to the Commission on Constitutional Matters dated July 29, 2003, an ordained minister of The Lutheran Church—Missouri Synod has asked the following questions:

Question 1: Do the Bylaws of The Lutheran Church—Missouri Synod allow for the Synod in convention to overrule a decision of a DRP?

Opinion: Bylaw 3.73 states: “All officers, boards, and commissions shall be accountable to the Synod for all their actions, and any decision of such officers, boards, and commissions may be appealed to the national convention of the Synod.” Members of a Dispute Resolution Panel are not officers of the Synod and a Dispute Resolution Panel is not a board or commission.

It must also be noted: “The final decision of a Dispute Resolution Panel shall a) be binding upon the parties to that dispute subject to request for review;” (Bylaw 8.09 c 4 a). When and if the review has been requested, “The final decision of the Review Panel shall 1. be binding upon the parties to that dispute and not be subject to further appeal” (Bylaw 8.09 e 1). Accordingly, the Bylaws of the Synod do not allow the Synod to overrule a Dispute Resolution Panel or a Review Panel decision.

Question 2: If the Bylaws do not allow the Synod to overrule this decision, then should the overtures be returned to the congregations making them, informing them that the decision cannot be overturned?

Opinion: Depending upon the overture, its nature and contents and the circumstances of the case, either Bylaw 3.19 c or Bylaw 3.19 d are applicable. These are as follows:

[3.19] c. Overtures with reference to a case in which a member has been suspended or expelled and which is at present in the process of or subject to appeal, as well as overtures which, upon advice of legal counsel, may subject the Synod or the corporate officers of the Synod to civil action for libel or slander, or which contain libel or slander, shall not be accepted for convention consideration.

[3.19] d. The synodical President shall determine if any overture contains information which is materially in error, or contains any apparent misrepresentation of truth or of character. He shall not approve inclusion of any such overture in the convention manual and shall refer any such overture to the District President who has ecclesiastical supervision over the entity submitting the overture for action. If any published overture or resolution is found to be materially in error or contains any misrepresentation of truth or of character, it shall be withdrawn from convention consideration and referred by the President of the Synod to the appropriate District President for action.

The President of the Synod must handle any such overture according to the above bylaw provisions.

Question 3: If so, then should the President's office or the Secretary of Synod return them?

Opinion: This question is answered under question 2 above.

Adopted Aug. 15-16, 2003

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

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

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

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

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

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

See also the answer to Question 1.

Adopted Sept. 30, 2003

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

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

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

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

The Lutheran Church—Missouri Synod is a church body, entitled to the fullest autonomy allowed under the Constitution of the United States. Historically, in order to hold title to property and conduct civil affairs in a secular society, churches have been required in many states to have a civil status as well as a

religious status. To further its primarily ecclesiastical functions, our Synod authorized the formation of a civil entity known as The Lutheran Church—Missouri Synod, incorporated under the civil laws of the State of Missouri. The Articles of Incorporation of The Lutheran Church—Missouri Synod reference the Bylaws and Constitution of the Synod no less than seven times each and identify the purpose of the corporation, to “unite in a corporate body the congregations of the Evangelical Lutheran Church...”

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

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

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

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

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

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

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

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

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

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

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

Later in that same opinion the Commission noted:

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

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

Adopted Sept. 30, 2003

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

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

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

There seems to be a lack of clarity between the role of the Board of Directors and that of the BCS regarding the management and prioritization of BCS activities, including oversight of REPORTER. While the Synod's Bylaws direct the Board of Directors to "allocate available funds to the program boards, commissions, councils, and departments of corporate Synod and hold them accountable therefore" (3.183 d), those same Bylaws direct the Board for Communication Services to:

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

The questions submitted to the Commission were as follows.

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

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

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

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

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

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

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

Question 4: May the Board of Directors require what in effect are unfounded mandates of the program boards by not providing along with its requirements the funds to carry out those requirements? Is this, in effect, order the same number of bricks but without providing any straw (Ex. 5:6-8)?

Opinion: Please refer to the answers above.

Adopted Sept. 30, 2003

**Authority of the Board of Directors
Over Restricted Funds (President's Office) (03-2365)**

In an e-mail letter received July 31, 2003, a pastor of the Synod pursues a question regarding President's Office expenses paid by restricted giving.

Question: Does the Board of Directors of The Lutheran Church—Missouri Synod have fiscal review and authority concerning restricted funds given to the President’s Office? May the Board of Directors intervene if such spending is at odds with the purpose and objectives of the Synod? Can the Board provide oversight on restricted funding? Can the Board stop such spending with proper cause?

Opinion: The Constitution and Bylaws of the Synod give the Board of Directors broad authority in the areas of fiscal responsibility, as outlined in Article XI F of the Constitution and Bylaw 3.183. Those powers and responsibilities are subject to a number of restrictions. For example, “restricted funds” as referenced in the question is understood to include gifts in trust, accepted by the Synod with particular restrictions. If accepted, the trust provisions must be honored and the restrictions complied with.

With respect to restricted funds given to the President’s Office, the same principle applies. Bylaw 3.183 c does include a general recognition of responsibility of the Board of Directors in the business and legal affairs of the Synod and, as discussed in Opinion 02-2259, the general duty to see that the Constitution and Bylaws of the Synod are observed, as directed in 2001 convention Resolution 7-03C. As further discussed in the response to Question 2 of Opinion 02-2259, however, the President is the chief ecclesiastical officer of the Synod, and the Board of Directors may not restrict the ecclesiastical functions of the President and the means chosen by him to carry out those functions within the resources available to him. It is expected that the Board of Directors, as well as all members of the Synod, will provide such constructive input as they may have to assist the President in the performance of his office.

Adopted Sept. 30, 2003

Role of District Board of Directors in the Configuration of Visitation Circuits (03-2368)

A pastor of the Northern Illinois District, in a letter dated August 20, 2003, asked a series of questions regarding the responsibilities of a District board of directors in the determination of the configuration of visitation and electoral Circuits.

Question 1: Is it permissible for a District board of directors to approve the dividing of two visitation circuits into four permanent visitation circuits when the original circuits were specifically established by the District in convention?

Opinion: Synod Bylaw 4.91 provides that a District board of directors “shall have such powers and duties as are accorded to it by the Constitution, Bylaws, Articles of Incorporation, resolutions, and policies of the Synod, as well as those of the District.” There is no bylaw of the Synod that authorizes District boards of directors to create visitation circuits. Therefore, unless authorized to do so by the Constitution, Bylaws, Articles of Incorporation, resolutions, and policies of the District, a District board of directors is not authorized to realign Circuits.

The Northern Illinois District, most recently by its adoption of Resolution 4-02 during its 2003 convention (which gave final authorization to the division of an existing visitation Circuit into two Circuits), has demonstrated its concurrence with this principle that the District Board of Directors has not been given the final authority to realign Circuits. Therefore, absent any direct provision in the District’s Constitution, Bylaws, Articles of Incorporation, resolutions, or policies, the Northern Illinois District Board of Directors may not approve the dividing of two visitation Circuits into four permanent visitation Circuits. As the Commission stated in its February 8-9, 1974 opinion Ag. 500, “a District convention should realign Circuits or at least specifically authorize the [District’s] Board of Directors to take certain actions in connection with such realignment.”

Question 2: Is it permissible for a District Board of Directors to approve the dividing of two visitation Circuits into four new and permanent visitation Circuits if the individual congregations in these Circuits have not formally approved and requested the same?

Opinion: See the opinion to question #1 above regarding the right of a District board of directors to take such an action. The Constitution and Bylaws of the Synod are silent concerning the rights of affected congregations in a Circuit realignment.

Question 3: Is it permissible for a District Board of Directors to take an official action before that Board has ever met for the first time?

Opinion: A board of directors cannot conduct business outside of a meeting properly called and constituted according to the Constitution and Bylaws of the District and Synod. Synod Bylaw 3.69 b states: “b. Every agency shall organize itself as to officers and subcommittees at its initial meeting after election or appointment and shall conduct its business in accordance with accepted parliamentary procedure.”

Question 4: Is it permissible for a District Board of Directors to take official action when some of the members of the Board have not, as of yet, been officially installed into their position?

Opinion: A board of directors cannot include in its decision-making any members of the board that have not been inducted into office until such induction takes place. For this reason, according to Synod Bylaw 3.65 b, the initial meeting of the newly-constituted board “shall ordinarily be held in association with the induction and shall begin with a combined orientation program conducted under the direction of the President.” If essential business must be transacted in the interim, the existing board of directors “shall continue to function until the newly elected and re-elected members [of the board] assume office....The newly elected members of [the board of directors] shall attend whatever meetings are held in the interim, without vote, to become acquainted with their new responsibilities and functions” (Bylaw 3.67).

Question 5: Is it permissible for a District Board of Directors to take official action outside of an official meeting of that board – where its members have not had the opportunity to enter into face-to-face discussion and to vote on the issue within the construct of an official meeting?

Opinion: Again, it is not permissible for a District Board of Directors to take an official action outside of an official meeting of the board. However, face-to-face meetings of a board are not essential if all other requirements are met. In its Opinion 00-2197, the Commission spoke to the issue of telephone conference calls:

Already in 1974 the Commission on Constitutional Matters ruled regarding conference calls, stating “that such a meeting, although irregular, could be permitted.” The Commission further stipulated that all parties to the meeting should be “agreeable to the arrangement” and that the conference call should be “conducted in such a fashion as to provide for full and complete discussion and opportunity for statements and for the raising of questions,” making certain “that the rights of all parties are respected and protected.”

Adopted Sept. 30, 2003

Dispute Resolution Panel Decisions (03-2370)

In an August 26, 2003 e-mailed letter, a pastor of the Synod asked two questions “recognizing that a Dispute Resolution Panel’s unappealed ruling or Review Panel’s ruling is ‘final,’ and thus cannot be ‘overturned,’ even by a convention of the Synod, and recognizing, further, that such rulings have no precedential value.”

Question 1: Can the Synod in convention consider an overture that “repudiates” a specific decision—not with a goal of “overturning” the decision (which is, by bylaw, impossible), but of establishing a contrary finding that serves precedentially in future cases?

Opinion: Bylaw 3.19 c and d specifies the kinds of overtures that shall not be accepted for or must be withdrawn from convention consideration. Mention is not made of overtures treating subject matters related to dispute resolution or appeal panel final decisions. It is a function of the conventions of the Synod to establish general synodical positions (Bylaw 3.01), which, unlike panel decisions that are not precedential (Bylaw 8.09 c 4 b and e 2), are to be honored and upheld by its members (Bylaw 2.39 c). Doctrinal resolutions and statements are governed by Bylaw 1.09. Amendments to bylaws or constitutional provisions which were considered in a Dispute Resolution Panel decision may be modified as provided by Article XIV of the Constitution and Chapter XIV of the Bylaws. The Synod in convention may thereby consider an overture that addresses an issue that was also an issue in a Dispute Resolution Panel’s decision.

Question 2: If a rostered member of the Synod is a participant in a Dispute Resolution Panel that makes statements in doctrinal error in its ruling, is he able to be held accountable for such errors under the Bylaws of the Synod?

Opinion: The proceedings before a Dispute Resolution Panel are private and not subject to publicity. Thus, only the parties to the dispute, as well as the members of the Dispute Resolution Panel, have full knowledge of the evidence that was produced at the hearing. Further, Bylaw 8.21 h provides that all records of disputes in which a final decision has been rendered shall be sealed and shall be opened only for good cause shown and only after permission has been granted by a Dispute Resolution Panel, selected by blind draw for that purpose.

Bylaw 8.09 c 4 d provides that a copy of the final decision of a panel shall be publicized as deemed appropriate under the circumstances by the District or synodical President. In those limited circumstances, publicity would be given to the decision of the panel. However, the decision is that of the panel and not of the individual members of that panel. Accordingly, because the facts presented to the panel at the hearing remain confidential and the opinion is that of the panel and not of the individual members of the panel, individual members of the panel cannot be charged with doctrinal error.

Adopted Sept. 30, 2003

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

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

of God? Can the church allow them (ecclesiastical supervisors) to be considered above accountability? Can those who follow approval by their ecclesiastical supervisor claim this same immunity from challenge to their action?"

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

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

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

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

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

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

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

doctrinal resolutions and statements in convention (Bylaw 1.09 a)¹ and also expresses its collective will through its Constitution, Bylaws and other resolutions (Bylaw 3.01)².

On the basis of the Synod's Constitution and Bylaws, if the Constitution and Bylaws or resolutions of the Synod contradict God's unchangeable Word or exceed the boundaries of Holy Scripture, "the only rule and norm of faith and of practice" (Article II), it is incumbent upon the Synod in convention to amend or repeal such. And any action or decision of officers, boards or commissions may be appealed to the Synod in convention (Bylaw 3.73).³

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

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

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

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

Thus, Opinion 02-2309 opined that in the forming of the Synod, one of the objectives and protections of the Synod itself was that the Synod was to provide for ecclesiastical supervisors, and inherent in such

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

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

³ "All officers, boards, and commissions shall be accountable to the Synod for all their actions, and any decision of such officers, boards, and commissions may be appealed to the national convention of the Synod."

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

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

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

Adopted Dec. 13, 2003

President and Board of Directors' Appointments (03-2371)

In a letter received September 29, 2003, an ordained member of the Synod submitted a series of questions regarding the President's right and the Board of Directors' practice of making board and commission appointments for the new triennium prior to the end of the previous triennium.

Question 1: CCM 01-2231 addresses the question, "May a President-elect of the Synod make appointments, which a President is required to make under the Bylaws, prior to being inducted into office?" The CCM cites Bylaw 3.67 c, which applies to boards of directors as well as the President. Would the CCM's answer regarding the President-elect be the same, therefore, to this similar question: "May a Board of Directors-elect of the Synod make appointments, which a Board of Directors is required to make under the Bylaws, prior to being inducted into office?"

Opinion: In Opinion 01-2231, the Commission referred to Bylaw 3.67, “Interim Authority,” and quoted paragraph c: “No appointments to synodical boards or commissions shall be made and no new programs shall be initiated by the outgoing President [or the boards of directors or elected or appointed boards or commissions] during the interim.” The Commission concluded that “the outgoing President may not make any appointments after the election by which his successor was chosen,” noting that the President has no powers or duties as President, including the power and duty to make presidential appointments, until his induction into office “on or subsequent to September 1st following the convention” (Bylaw 3.65).

This same applies to the Board of Directors of the Synod, since Bylaw 3.67 c specifically mentions “boards of directors” as well as the President.

Question 2: Carrying the question a bit further, to *before* a convention rather than *after* a convention: “May an outgoing Board of Directors make appointments for a new triennium prior to being elected (or re-elected) for that new triennium by the Synod in convention?” Put another way, “May the BOD elected for one triennium make appointments for the following triennium? For example, may the Board of Directors that was elected by the 2001 convention for the 2001-2004 triennium make appointments to agencies, boards and commissions that will not take office until after a new Board of Directors is elected by the 2004 national convention of the Synod?”

Opinion: Whereas paragraph c of Bylaw 3.67 provides that no appointments are to be made to synodical boards or commissions by the outgoing President or any other boards or commissions during the interim between the convention and induction into office, it does not address this question. There is at present no bylaw that explicitly approves, forbids, or addresses the timing of these appointments with the exceptions of interim authority in Bylaw 3.67 c and appointments to the Commission on Structure in Bylaw 3.917 a.

It is reasonable to advocate that no appointments should be made for a new triennium by an outgoing Board of Directors prior to those positions becoming vacant at the end of the triennium. It is also reasonable to conclude that it would be difficult for the Board of Directors to make informed appointments upon taking office on September 1st and expect those appointees also to take office on September 1st (cf. Bylaws 3.59 b and 3.65). Therefore, the Commission recommends that this matter be referred to the Commission on Structure for the development of a convention action that will resolve this question.

Adopted Dec. 13, 2003

Challenge to Circuit Forum Election Procedure (03-2374)

A Circuit Counselor in a November 6, 2003 e-mailed letter asks the Commission’s opinion regarding procedure to be followed in the case of a mistake in the procedure used to elect delegates to the 2004 convention of the Synod.

Question: We have a person in our Circuit who wants to protest the vote for the lay delegate on the following bases: one of our churches placed two names from their church to be the lay delegate for the 2004 convention. We did not find out until it was too late and the voting was done and I had sent off the names to the District. The lay delegate was one of the two names given by [the congregation]. With the October 10th [elections] deadline here and gone and with November 7th being the deadline for me to have the names in, we are unable to make a change. What is the proper way to correct this problem before we send off the money or get to the convention and have someone protest the person who is our lay delegate to the convention?

Opinion: Bylaw 3.05 details the process to be used by electoral Circuits to elect delegates to the conventions of the Synod. Should errors occur, they must be corrected during the course of the meeting or by calling another meeting, provided that such a meeting is possible. The bylaw includes no provision for corrections following the meeting if it is not possible to call another meeting.

Bylaw 3.11 provides that the names and addresses of elected delegates are to be forwarded by the Secretary of the District to the Secretary of the Synod and that this process constitutes certification. Bylaw 3.25 requires that conventions of the Synod be conducted according to parliamentary law, which allows for challenges to the report of the credentials committee of the convention at the time that it makes its report to the convention. In the present case, therefore, the matter may be challenged at that time, in which case the delegates (other than those whose credentials are challenged) will decide the matter.

Adopted Dec. 13, 2003

Special Legal Opinions Obtained by Board of Directors (03-2372, 03-2373)

Two pastors of the Synod, in letters dated October 21 and 23, 2003, asked similar questions regarding the special legal opinion obtained by the Board of Directors.

Question 1: Is the Bryan Cave opinion/Board of Directors report on that opinion consistent with the LCMS Constitution and Bylaws?

Opinion: Without specific questions deriving from the Board's report, the Commission cannot issue an opinion regarding either the Bryan Cave opinion or the Board of Directors' report on that opinion because the function of this Commission, as set forth in Bylaw 3.905, is limited to providing interpretations of the Synod's Constitution, Bylaws, and resolutions.

Question 2: If it is not, should the Board of Directors make the total Bryan Cave opinion available to the entire LCMS prior to the 2004 convention?

Opinion: The question as posed requests a value judgment rather than an interpretation of the Synod's Constitution, Bylaws, and resolutions. Nothing in the Constitution or Bylaws of the Synod requires the Board of Directors to publicize the opinion it obtained. It is within the discretion of the Board of Directors to determine whether the Bryan Cave opinion should be publicized prior to the convention.

Question 3: Again, if it is not consistent with the LCMS Constitution and Bylaws, should the Board of Directors be required to get a second opinion from a reliable law firm familiar with Missouri law without disclosing to the second law firm the Bryan Cave opinion?

Opinion: The Bylaws of the Synod do not give any direction as to the methodology the Board of Directors is to follow in fulfilling its functions. Bylaw 3.73 states: "All officers, boards, and commissions shall be accountable to the Synod for all their actions, and any decision of such officers, boards, and commissions may be appealed to the national convention of the Synod."

Adopted Jan. 28, 2004

Board of Directors as Officer of the Synod Opinions of the Commission on Constitutional Matters Executive Power of the President of the Synod (03-2376)

The President of the Synod, in a December 3, 2003 e-mailed letter, submitted a series of questions regarding the Board of Directors and the Commission on Constitutional Matters.

Question 1: LCMS Constitution Article X, “Officers,” states: “The officers of the Synod are....5. A Board of Directors.” Are the individual members of the Board of Directors individual officers of the Synod? Is the Board of Directors collectively, as an entity, an individual officer of the Synod?

Opinion: The dictionary defines an officer as one who holds an office of trust, authority or command. In a legal context, an officer has been defined as a high level management official of a corporation or unincorporated business, hired by the Board of Directors of the corporation or the owner of a business, such as a president, vice-president, secretary, financial officer or chief executive officer. Officers of secular profit or nonprofit corporations typically serve at the discretion of those in control and are appointed by them.

As a church body, The Lutheran Church—Missouri Synod has chosen to retain to itself the authority in the selection of officers and does so in convention. In identifying its officers, the Articles of Incorporation in Article V, entitled “Officers,” reads as follows “The corporation shall have a board of directors of such number and qualifications and who shall be elected in such manner and for such terms of office as shall be set forth in the Constitution or Bylaws of The Lutheran Church—Missouri Synod. In addition, the corporation shall have officers having such qualifications and who shall be elected or appointed in such manner and for such terms of office as provided for in the Constitution or Bylaws of The Lutheran Church—Missouri Synod.” By this disclosure in the Articles of Incorporation themselves, the Synod has given notice to the world of its intent to operate as a church body and pursuant to its Constitution and Bylaws.

The Constitution of the Synod, Article X, describes its officers as “1. A President; 2. Vice-Presidents, in line of succession, as prescribed by the Bylaws; 3. A Secretary; 4. A Vice-President—Finance—Treasurer not in line of succession; 5. A Board of Directors; 6. Other officers, as specified in the Bylaws.” Article XI of the Constitution is entitled “Rights and Duties of Officers.” Contained within that article are the description of the duties of the President, the duties of the Vice-Presidents, the duties of the Secretary, the duties of the Vice-President—Finance—Treasurer, and the duties of the Board of Directors.

In a traditional sense, an officer is an individual and not a board or other entity. However, in the context of the structural organization of the LCMS, the Synod has chosen to identify the Board of Directors collectively as an officer of the Synod. Since the Synod has chosen to reserve to itself ultimate control of its affairs, such a designation is consistent with the concept that an officer is chosen by the controlling authority of a corporation or other legal entity to perform specific functions within certain defined limitations, as is the case with the Board of Directors. It is also consistent with the Synod’s designation of the President under Article XI of the Constitution as having supervision regarding the doctrine and administration of the officers of the Synod. As such, the Board of Directors of The Lutheran Church—Missouri Synod, both in its identification in the Constitution and by identification of its function, within the church is in fact collectively an officer of the Synod.

There are no provisions in the Constitution or Bylaws of the Synod that give any authority or defined duties to the individual members of the Board of Directors. Reference is always made to the Board of Directors as a unit. As an example, Bylaw 3.183 addresses the authority of the Board of Directors, and Bylaw 3.185 addresses the power of the Board of Directors with respect to the property of the Synod. These bylaws clearly refer to the Board of Directors as a unit and not individual members of the Board of Directors. Further, as pointed out above, Article X of the Constitution, in designating the individual officers of the Synod, refers to “A Board of Directors,” and does not use language that could be

interpreted to mean the individual members of the Board. Accordingly, the individual members of the Board of Directors of the Synod are not officers of the Synod.

It is therefore correct to assert that the Board of Directors collectively is an officer of the Synod, but it would not be correct to recognize the individual directors as individual officers of the Synod.

Question 2: The LCMS Board of Directors has declared that it “cannot agree with or accept” certain official opinions of the CCM and that such opinions “are of no effect.” In such an instance of an apparent conflict between a BOD resolution and a CCM opinion, what, if any, specific directive of the Synod resolves such a conflict while honoring and upholding specific provisions of the synodical Bylaws, including Bylaw 3.183 d and d 2 (“Authority of the Board of Directors”): “to the extent of its responsibilities relative to the general management and supervision of the business and legal affairs of the Synod....[it] shall have the right to call up for review, criticism, modification, or revocation any action or policy of a program board, commission, or council, except opinions of the Commission on Constitutional Matters”; and Bylaw 3.905 d: “An opinion rendered by the commission shall be binding on the question decided unless and until it is overruled by a synodical convention”?

Opinion: The questioner correctly points out the two primary, relevant provisions of the Bylaws. In order to understand these bylaw provisions, it is helpful to review the development of the Board of Directors, as well as development of the Commission on Constitutional Matters. In addition, a review of the prior actions of the Synod with respect to historical conflicts between the Board of Directors and the Commission on Constitutional Matters may be of assistance.

In 1961, a report entitled “The Development of the Formal Administrative Structure of the LCMS from 1897-1961” was issued under the authorship of Dr. August Suelflow, who was engaged as Research Secretary for the Synodical Survey Commission. In that report Dr. Suelflow identified the embryonic roots of the present Board of Directors as being traced to the original “Synodical Board of Control” or “Supervision” established by the Synod in 1908. Dr. Suelflow describes the Board as having been initially created as a board to conduct interim business between conventions of the Synod together with other boards in a horizontally related fashion, such as the Mission Board and the Board for Higher Education. The Synodical Survey Commission Report in the 1962 *Convention Workbook* states, “Synod’s Board of Directors was established in 1917 to replace the original ‘Synodical Board of Control’ organized in 1908 chiefly to coordinate and handle matters for Synod’s educational institutions.” In the 1920’s the *Proceedings* continued to be published both in English and German. Dr. Suelflow describes that the current Board of Directors was referred to as “Directors” in the English version of the 1920 convention, although the official German version of the *Proceedings* still referred to the Board as a “board of control,” the historic term. As the new Constitution (considered merely “an amplification of the old Constitution made necessary by the expansion of the Synod’s work”—Introduction, 1924 synodical *Handbook*) was developed, the Board of Directors was charged to serve as the legal representative of the Synod, the custodian of all the property, and the manager of all business affairs. These functions included the preparation of an annual budget, the regulation of collection of monies, and the allocation of the finances of the Synod. While the bylaws pertaining to the Board of Directors have evolved since that time, the essence of the Board of Directors and the specific duties and responsibilities assigned to it by the Synod and convention remain.

Of one particular note, particularly with respect to the issue presented, is the last series of amendments to Bylaw 3.183 d 2. Prior to 1998, the authority of the Board was described in the bylaw (then numbered 3.191 e) which read: “The synodical Board of Directors of The Lutheran Church—Missouri Synod shall

receive periodic reports on the operations of the various synodwide corporations, councils, boards, commissions, and departments and shall have the right to call up for review, criticism, or suggestion any policy of a corporation, council, board, or commission of the Synod.” By actions of the 1998 convention, that bylaw was amended and ultimately renumbered. The Board’s authority from the Synod to call up for review, criticism, modification, or revocation was amended to expressly exempt opinions of the Commission on Constitutional Matters from that right and authority, which became consistent with Bylaw 3.905 d as quoted above.

The history of the Commission on Constitutional Matters may also be of assistance in understanding the apparent conflict. Again, as Dr. Suelflow reported, prior to 1923 constitutional matters within the Synod were handled by *ad hoc* committees elected by synodical conventions. In 1923, a standing Committee on Constitutional Matters was created by resolution of the convention. Over time, the responsibilities of the Commission were expanded. For example, in 1932, the Synod resolved that all proposals seeking changes and/or amendments to the Constitution and Bylaws would first be submitted to the Committee on Constitutional Matters. The current responsibilities of the Commission on Constitutional Matters are as set forth in Bylaw 3.905.

At the 1962 synodical convention, the Synodical Survey Commission recommended with respect to the Commission on Constitutional Matters that its “opinions shall be binding until and unless Synod overrules them” (1962 *Convention Workbook*, p. 258). That recommendation was implemented by the Synod, and the Bylaws of the Synod were amended to provide that “an opinion of the Commission shall be binding on the question decided unless and until it is overruled by a synodical convention.” That bylaw has continued in existence since that time and is currently found in Bylaw 3.905 d, as quoted above.

The first formal opinion of the Commission on Constitutional Matters based upon that bylaw was issued as early as March 7, 1968, as agenda item 111. After the Commission had earlier issued an opinion as to whether a District convention could recognize as a pastoral delegate an individual not on the roster of Synod, the same issue was again submitted for consideration. The Commission recognized that the prior opinion was binding and declined to rule further.

In 1976, during a very difficult period for the Synod, the Commission was asked to deal with a number of issues regarding the Association of Evangelical Lutheran Churches. The September 1976 minutes reflect in agenda item 144 a challenge to an opinion of the Commission brought by Dr. J.A. O Preus, joined by then legal counsel to the Synod, Phil Draheim. The minutes reflect that the request for rehearing was made both on the initiative of Dr. Preus as well as at the request of the Missions Department, the Pension Department, the Church Extension Fund, the Executive Committee of the Board of Directors, and several District Presidents. The Commission reminded the Synod, through its opinion, that the Synod had chosen to accept the opinions of the Commission on Constitutional Matters as binding. Despite significant disagreement within the Synod, the Synod chose, following that decision, not to change the Bylaws with respect to the binding effect of the decision of the Commission.

Later in that same year, in December of 1976, the Commission discussed agenda item 210, which involved a questionnaire from the Task Force on Constitution, Bylaws, and Structure. The Task Force explored whether the items on the Commission’s agenda should be screened by the Board of Directors, and whether the Commission’s decisions and opinions should not be of a binding nature until a subsequent convention came to such a conclusion. Ultimately, both of those suggestions were rejected, and the bylaw provisions regarding the binding nature of Commission on Constitutional Matters' opinions remains.

In March, 1990, the Commission issued an opinion generally surveying the relative rights and responsibilities of various agencies or entities of the Synod to interpret the Constitution and Bylaws of the Synod in matters of adjudication and appeals. In the March, 1990 opinion, the Commission reiterated that, under the bylaw then numbered Bylaw 3.533, “once a question is asked and an opinion rendered, no other body has the right to alter or change it and the ‘opinion rendered by the Commission shall be binding on the question decided unless and until it is overruled by a synodical convention.’”

The concept that the decisions of the Commission are binding unless and until overruled by the convention has been recognized repeatedly since, as, for example, in a February, 1991 report in response to a request from the President; in Opinion Ag. 2022 (January, 1996); in a July, 1999 response to a request for reconsideration of Opinion 99-2144; and in opinions 99-2156 (September, 1999), 99-2162 (October, 1999), and 01-2240 (December, 2001).

Thus, the Synod in convention determines the structure of the Synod, and the Synod in convention has expressly restricted the right of the Board of Directors to call up for review, criticism, modification, or revocation opinions of the Commission on Constitutional Matters. Furthermore, despite multiple opportunities to amend the Bylaws to eliminate the binding nature of Commission on Constitutional Matters' opinions, the Synod in convention has recognized the need to empower an entity, subject only to the convention itself, to have the authority to issue binding opinions regarding its Constitution and Bylaws. The Synod in convention has chosen to continue to entrust that authority to the Commission on Constitutional Matters. Any apparent conflict is not with the Commission on Constitutional Matters but with the Constitution and Bylaws themselves.

Question 3: LCMS Bylaw 3.101 C 11 provides that the President shall “be authorized, in the event that the affairs of the Synod require the exercise of executive power for a purpose for which there is no specific directive of the Synod, to exercise such power after consultation with the Vice-Presidents, the Board of Directors of The Lutheran Church—Missouri Synod or the Council of Presidents, whichever, in his judgment, is most appropriate.” What, if any, are the constitutional or bylaw definitions, boundaries, or limits of such “executive power”?

Opinion: The general duties of the President and the power to fulfill those duties are described in Article XI B of the Constitution and in Bylaw 3.101. The term “executive power” is not used in the Constitution of the Synod. The term does appear in Bylaw 3.101 C 10, which directs that the President shall “exercise executive power when the affairs of the Synod demand it and when he has been expressly invested with such power by the Synod in convention,” and in paragraph c 11 of that bylaw as quoted in the question above.

Article XI B of the Constitution defines the duties of the President and inherently the power to carry out those duties as follows:

B. Duties of the President

1. The President has the supervision regarding the doctrine and the administration of
 - a. All officers of the Synod;
 - b. All such as are employed by the Synod;
 - c. The individual Districts of the Synod;
 - d. All District Presidents.
2. It is the President's duty to see to it that all the aforementioned act in accordance with the Synod's Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod.

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

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

5. When the Synod meets in convention the President shall give a report of his administration. He shall conduct the sessions of the convention so that all things are done in a Christian manner and in accord with the Constitution and Bylaws of the Synod.

6. It is the duty of the President, or an officer of the Synod appointed by the President, to be present at the meetings of the Districts, to advise them, and to report at the next session of the Synod.

7. The President shall perform all additional duties assigned to him by the Bylaws or by special resolution of the Synod in convention.

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

The Bylaws further define the President's powers and duties in Bylaw 3.101, dividing those powers and duties as to ecclesiastical, administrative, and those which are both ecclesiastical and administrative. The President, together with all the officers of the Synod, is limited in his powers by Article XI A 1 of the Constitution: "The officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod." As prior opinions of the Commission have recognized, because of the broad grant of authority to the President, it is often difficult to define with particularity and in advance the precise boundaries of the President's duties and powers. In a September, 1972 "Opinion on Presidential Authority," (cf. Ag. 330, 340, etc.) the Commission noted:

1. That it is the opinion of the Commission on Constitutional Matters that the Constitution and the Bylaws of The Lutheran Church—Missouri Synod give to the President of the Synod exceptionally broad responsibilities and correspondingly broad authority.
2. That while the ordinary day to day responsibility not only for administration but also for doctrine rests also with other officials, boards, and commissions created in the course of time by the Synod, the Synod has never repealed the broad responsibility and authority vested in the presidential office, but instead the Synod appears to have increased those powers from time to time. It is therefore conceivable that the President, acting in accordance with the appropriate Articles of the Constitution and By-Laws of The Lutheran Church—Missouri Synod, may exercise his pastoral judgment to intervene in situations which, in his estimation, are so important that the exercise of his ultimate constitutional responsibility is required.
3. That when a synodical President feels impelled to exercise that responsibility it is clearly understood that his action is always subject not only to the regular appeals procedures involving the commissions of adjudication and the Board of Appeals, but also to approval or disapproval, to ratification or rescission, by the convention of the Synod.
4. That if the Synod does not wish to have such authority reside in its President, then it is the opinion of the Commission on Constitutional Matters that the Constitution will need to be

amended to limit the authority of the President. Procedures for amending the Constitution are detailed in Article XIV.

Later, in 1979, while reviewing proposed Task Force proposals to amend the Constitution and/or Bylaws, the Commission noted (Ag. 1266A):

6. The oft repeated statement that, "No one has any authority between conventions to make decisions" is held by the CCM to be completely groundless. The boards and commissions of the Synod are empowered to make decisions. Furthermore, if there is lack of clarity the CCM can always be asked for an interpretation. In addition, Bylaw 2.89 c specifically states that if there is a conflict between two boards or commissions of the Synod, the Board of Directors is empowered to make a final determination. Finally, if there is no other recourse, the Bylaws (2.29 c) bestow upon the President of the Synod executive powers that he can exercise in consultation with a proper, related group, with the provision (a good one) that his decision is always appealable to the next convention. Somehow this myth of "no possibility of decisions between conventions" needs to be laid to rest. Furthermore, if the assembly is designed to take care of this alleged problem, the question arises, "Who makes decisions between the semi-annual meetings of the assembly?" (A box within a box within a box, etc.). .

In April, 1997, while addressing a concern between the President and the Board for Communication Services, the Secretary of the Synod had noted:

- 1) The Bylaws do allow for the exercise of executive powers by the President of the Synod even when he has not been expressly invested with such power for a specific purpose. Bylaw 3.103, b, cannot be read apart from Bylaw 3.103, c, which speaks to the issue of exercising executive power for a purpose for which there is no specific directive. Prior to such exercise of power, however, the President must consult with one of the four groups identified, namely, the Praesidium, Board of Directors, Council of Presidents, or Council of Administrators, whichever he judges to be most appropriate. As noted in the final sentence of 3.103, c, "Any member of the Synod shall have the right to appeal to the convention of the Synod from his action."

Opinion Ag. 2073, issued in June, 1997, included the following comments:

The issue of presidential authority in unforeseen circumstances is dealt with in Bylaw 3.103, c. "In the event that the affairs of the Synod require the exercise of executive power for a purpose for which there is no specific directive of the Synod, he shall be authorized to exercise such power after consultation with the Vice-Presidents, the Board of Directors of The Lutheran Church—Missouri Synod, the Council of Presidents, or the Council of Administrators, whichever in his judgment is the most appropriate"....

The CCM agrees that the President must "assume only such rights as have been expressly conferred ... by the Synod" and "when he has been expressly invested with such power for a specific purpose."

These provisions must not be read, however, in isolation from the remainder of the Constitution and Bylaws. They must be considered *in pari materia*. Specific enabling language mandates presidential authority in the areas of doctrine and practice. He has authority over administration of the officers and employees of the Synod. He is expressly identified as the CEO of the Synod. The President is mandated to be responsible to the Synod for the supervision of doctrine. While a President is prohibited from exercising powers that have not been expressly conferred upon him, he

may exercise executive powers within framework provided by the Constitution and Bylaws. The President may, for example, exercise broad power under the express language granting him responsibility for doctrinal supervision. The Bylaws need not articulate every heresy or aberrant doctrine that might trigger executive action. It is implicit in the express grant of authority in the Constitution and Bylaws to supervise doctrine.

Despite this broad recognition of authority, the Commission's opinion continued:

Having said this, the Commission is concerned that executive power not be exercised to the extent that it deprives the members of the Synod of the benefit of receiving various points of views, having access to general church news of interest to the Synod, or deprives an accused individual of the right of defense. The history surrounding the founding of the Synod provides adequate evidence for such concern. If it is believed by a member or members that this is occurring, the remedy is identified above.

The better approach, an alternative to censorship, would be a discussion of the rationale for including or not including certain letters to the editor on a given subject, publication of articles on such subject, or that a notice be printed in a specific form. It is assumed that all parties involved are concerned about the welfare of the Church and that in most, if not all, cases agreement can be reached regarding the printing of certain materials.

In 1998, the Commission addressed the power of the President to respond to actions of a District that were contrary to the Constitution and Bylaws of the Synod. In Opinion 98-2122 (September 30, 1998) the Commission referred specifically to the authority of the President under Bylaw 3.101 c 11:

If therefore a District takes an action that is contrary to the Constitution and Bylaws of the Synod, such action is null and void, and the President of the Synod could proceed under the authority granted to him by Bylaw 3. 10 1, C, 11, where the President shall

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

As recently as the 2001 convention, the Synod reaffirmed and reemphasized the duty of the President to assure that all officers and agencies of the Synod abide by the Constitution and Bylaws in adopting Resolution 7-03C, the second, third, and fourth resolves of which read:

Resolved, That we reaffirm the expectation that all officers, staff members, and agencies of the Synod adhere to the Constitution and Bylaws of the Synod and, where applicable, the articles of incorporation and bylaws of the entity and assume only those powers granted to them; and be it further

Resolved, That the President and Board of Directors of the Synod shall see to it that the Constitution and Bylaws of the Synod are observed; and be it further

Resolved, That when a failure to comply with the Constitution and Bylaws is discovered, the President or Board of Directors, whichever is charged with supervision or oversight, shall act to correct such failure to comply as quickly as possible.

Were all eventualities and potential problems foreseeable, the Synod could adopt bylaws and policies to address all issues in advance, and the question posed could be answered with greater specificity. However, the Synod has recognized that there are circumstances that it may not have foreseen or for which it may not have made direct provision. For those reasons, the Synod has therefore invested the President with very broad powers to address those circumstances that it did not foresee or for which it made no other provision. For the same reason, the Commission cannot define in advance the ultimate boundaries of that power.

Adopted Jan. 28, 2004

Enforcement of Commission on Constitutional Matters Opinions (04-2379)

A pastor of the Synod, in a letter dated January 10, 2004, asked a series of questions regarding the enforcement of Commission Opinion 02-2309 and its statement that “when an ecclesiastical supervisor discovers error in his counsel, it is incumbent upon that supervisor to correct or amend it. The member should then be held to consider the corrected counsel. Failure to consider such amended admonition could form the basis for disciplinary action as provided in Article XIII.”

Question 1: How will the Commission on Constitutional Matters follow up on its Opinion 02-2309 to assure that error will be amended?

Opinion: The functions of the Commission on Constitutional Matters are set forth in Bylaw 3.905. Paragraph d of that bylaw states that the Commission is to interpret the Synod’s Constitution, Bylaws, and resolutions upon the written request of a member, official, board, commission, entity, or agency of the Synod. Thus the Commission is limited to providing an interpretation of the Synod’s Constitution, Bylaws, and resolutions. It has no power or authority to enforce its opinions.

Question 2: If it is not the charge of the Commission on Constitutional Matters to call upon the President to correct his error in ecclesiastical supervision, what is the correct process for assuring that the President conforms to the binding opinion of the Commission regarding correcting his counsel after discovering that it was in error and that the District President “consider the corrected counsel”?

Opinion: Article XI of the Constitution of the Synod states that the officers of the Synod (and this would include the President) are responsible to the Synod for the performance of their duties. It further states that the Synod has at all times the right to call its officers to account and, if circumstances require it, to remove them from office in accordance with Christian procedure. Accordingly, it is a convention of the Synod that has ultimate authority over the President as to his performance of his office.

Question 3: How is that correction then to be made known to the whole Synod?

Opinion: There is no provision in the Constitution, Bylaws, and resolutions of the Synod that addresses this issue.

Adopted Jan. 28, 2004

Restricted and Suspended Status (04-2381)

A pastor of the Synod, in a January 21, 2004 e-mailed letter, asked a series of questions regarding “Restricted Status.”

Question 1: Based on the Constitution and Bylaws of the Synod, is the following sequence of actions legally and/or ethically permissible within the LCMS?

1. A pastor is placed on restricted status by his District President for reasons X.
2. The pastor appeals his restricted status to the Council of Presidents.
3. The Council of Presidents fails to render a fair and timely decision on the appeal within the six months that the Constitution of the Synod allows for their deliberation of the appeal.
4. The pastor therefore requests that his restricted status be dropped on the grounds that the Council of Presidents has failed to render a fair and timely decision of his appeal.
5. The District President “voluntarily” drops the restricted status at the pastor’s request.
6. A meeting for purposes of reconciliation is scheduled by the District President with this same pastor.
7. At this meeting for reconciliation the District President changes his mind and decides to renew his charges against the pastor.
8. But this time the District President places the pastor on suspended status for reasons X, the very same reasons for which he originally placed the pastor on restricted status.

Opinion: A District President may place on restricted status an individual member of the Synod under his ecclesiastical supervision for reasons given in Bylaw 2.23 a. Restricted status continues for one year or a lesser period if the matter is satisfactorily resolved (Bylaw 2.23 c). Restricted status may also be extended, successfully appealed, or discontinued by the District President (Bylaw 2.23 c and d), or it may become suspended status at the commencement of formal proceedings that may lead to the member’s expulsion from the Synod (Bylaw 2.25 a).

Failure of the Council of Presidents to decide the matter within the prescribed six months is contrary to the bylaw and therefore a matter of concern. However, the sequence of actions by the District President as described meet the requirements of the bylaw.

Question 2: After a District President has voluntarily dropped restricted status following the failure of the Council of Presidents to hear its appeal in a fair and timely way, can the same District President then change his mind and place the same pastor on suspended status for the same charges as he originally placed the pastor under restricted status?

Opinion: Restricted status is a discretionary action of a District President. If he decides that a restriction is no longer useful or appropriate, he may decide to lift it. If he finds at a later date that the conditions provided by Bylaw 2.23 a continue to exist, he may restore the restricted status or he may decide to commence action to terminate membership, thereby placing the member on suspended status. In cases in which the member is on restricted status when formal Bylaw 2.27 suspension proceedings are commenced, restricted status becomes suspended status (Bylaw 2.25 a).

Question 3: Is it possible for the Council of Presidents to hear charges against a pastor on suspended status in a fair and timely manner after the Council of Presidents has already failed to hear these very same charges in a fair and timely manner while the pastor was on restricted status?

Opinion: This question is based upon a misunderstanding. The Council of Presidents does not hear charges against a pastor on suspended status. When a member of the Synod is placed on suspended status and desires to have the matter heard and resolved, a Dispute Resolution Panel is formed to hear the matter following the process described in Chapter VIII of the Bylaws. The Dispute Resolution Panel and not the Council of Presidents hears and resolves the matter (Bylaw 2.27 c).

Question 4: Bylaw 2.29 e states that in an appeal of restricted status, “The decision of the hearing panel shall be the decision of the COP and shall be final with no right of appeal.” After the COP has ruled on an appeal of charges placed against a pastor on restricted status, may a District President then circumvent the finality of this decision of the COP by placing the pastor on suspended status for the same charges?

Opinion: Restricted status and suspended status are two different actions. Even if the Council of Presidents were to remove a member’s restricted status, the involved District President may begin proceedings for the expulsion of the member from the Synod if he concludes that the same facts that led him to place the member on restricted status form a basis for such expulsion under Article XIII of the Constitution (Bylaw 2.27 c). The commencement of formal Bylaw 2.27 proceedings places the member on suspended status (Bylaw 2.25 a).

Question 5: Bylaw 2.29 e states that in an appeal of restricted status, “The decision of the hearing panel shall be the decision of the COP and shall be final with no right of appeal.” After the COP has failed to hear an appeal of restricted status in a fair and timely manner and a pastor’s restricted status has been dropped, does finality also apply to this result?

Opinion: A decision of the Council of Presidents regarding a particular case of restricted status has bearing only on the restriction in question. The removal or the dropping of a restricted status has no bearing on future decisions to place that member of the Synod on restricted status or to commence formal Bylaw 2.27 proceedings that result in suspended status.

Adopted Jan. 28, 2004