

**MINUTES**  
**COMMISSION ON CONSTITUTIONAL MATTERS**  
**Hilton Airport Hotel, St. Louis**  
**April 6–7, 2018**

**135. Call to Order**

Commission Chairman Dr. George Gude called the commission's meeting to order, with all members present, and called upon Mr. Neely Owen to offer opening devotions, which he did on the basis of the exhortation for Easter from *Starck's Prayer Book*.

**136. Southern District Bylaw Amendment Proposal (18-2877)**

By a February 8 e-mail, the President of the Southern District forwarded a convention resolution proposing a simple bylaw change related to district office term limits. With the district convention falling before the commission's next scheduled meeting, the commission chairman and the Secretary evaluated the minor change, found it to be consistent with alternatives already considered by the commission in Op. 18-2851, and therefore indicated that it could be considered approved for presentation to the convention. The commission ratified the response of its chairman and the Secretary.

**137. Oklahoma District Proposed Articles and Bylaws, 3<sup>rd</sup> Resubmission (17-2832C)**

By a February 14 e-mail, the Secretary of the Oklahoma District forwarded a revised proposal for amendment of the district's certificate of incorporation to comply with LCMS Bylaw 1.5.3.6 and 2016 Res. 9-02A. The commission chairman and the Secretary reviewed the proposal, finding it to satisfy the concerns of the commission's prior review, and responded that it was approved for inclusion in the district *Workbook* and for presentation to the district convention. The commission ratified the response of its chairman and the Secretary. The district is thanked for its cooperation with the review process and reminded to submit a clean copy of articles and bylaws, as adopted by the convention, for the commission's files.

**138. Kansas District Bylaw Proposal, 3<sup>rd</sup> Resubmission (17-2844C)**

In response to the commission's prior review, by a February 20 e-mail, the Secretary of the Kansas District forwarded a new revision of the district's bylaw proposal. As the new revision adopted the suggestion previously made by the commission, the Secretary of the Synod indicated that the proposal could now be considered approved by the commission for presentation to the district convention. The commission ratified the response of the Secretary. The district is thanked for its cooperation with the review process and asked to submit, for the commission's files, a clean copy of its bylaws as adopted by the convention.

**139. Missouri District Bylaw Proposal, 5<sup>th</sup> Edition (17-2823E)**

By an e-mail of April 4, the chairman of the Missouri District bylaw revision committee forwarded the final draft of the district's bylaw proposal, incorporating additional changes to bylaws dealing chiefly with terms of office and a council of the district. The commission approves this final edition of the bylaw proposal for presentation to the convention, thanks the district for its cooperation with the review process, and reminds the district to submit a clean copy of its bylaws as adopted for the commission's files.

**140. Concordia University Nebraska Articles of Incorporation and Bylaws (16-2800)**

Pursuant to a request related to the review of corporate documents initiated by 2016 Res. 9-02A, the President of Concordia University Nebraska, by an email of Nov. 3, 2016, sent his institution's articles and bylaws for review. The university's general counsel later forwarded updated versions, amended in 2017. With regard to the articles, the commission notes the following:

- Article III contains the asset disposition language required by LCMS Bylaw 1.5.3.6 (b) and 2016 Res. 9-02A, although the phrase "to be used for educational purposes as provided by The Lutheran Church—Missouri Synod" needs to be removed.

- The articles do not contain the relationship language required by LCMS Bylaw 1.5.3.6 (a) and 2016 Res. 9-02A. “[A]gencies of the Synod shall comply with the requirements of this bylaw change [including both (a) and (b) of Bylaw 1.5.3.6] in time for the CCM to report the status of compliance to the 2019 convention of the Synod.”
- It is also noted, *contra* the final paragraph of the resolutions amending Article V (dated July 29, 2008 and January 31, 2017) that the prior review and approval of the LCMS Commission on Constitutional Matters *is required* whenever an agency of Synod, like a university, intends to make changes to its articles or bylaws (LCMS Bylaw 3.9.2.2.3 [a]). Article VIII should mention this requirement.

With regard to the bylaws, the commission noted that these require extensive updating to reflect the present state of LCMS Bylaws (*e.g.*, to reflect the organization of the colleges and universities under Concordia University System as opposed to under the Board for University Education, to reflect the requirements imposed upon the board of regents by LCMS Bylaws 1.5.3–1.5.3.5, to reproduce or reference the full range of responsibilities assigned a board of regents in LCMS Bylaws 3.10.6.1 and 3.10.6.4–3.10.6.5, etc.). The commission notes at the outset, in the first paragraph, that the university is neither an affiliate nor a member of The Lutheran Church—Missouri Synod, but an *agency* thereof (Bylaw 1.2.1 [a]). Amendments to the bylaws also require prior approval by the commission.

#### **141. Questions regarding Const. Art. VI 2 (18-2875)**

A member pastor of the Synod, by a January 19, 2018, e-mail, posed the following questions to the commission, some regarding Const. Art. VI 2, and others, regarding Bylaw 1.8.3.

##### **Regarding Const. Art. VI 2:**

**Question 1:** As used here, is *unionism* different than *syncretism*?

**Opinion:** Article II of the original 1847 Constitution of the Synod addressed the conditions under which an individual or a congregation could become a part of the Synod and have fellowship with the Synod. (Since 1924, this has been treated under Article VI.) The 1847 Constitution, in Article II 3, used the phrase *aller Kirchen- und Glaubensmengerei* in describing what members of the Synod were required to renounce; the same phrase was used in Article VI 2 when the Constitution was restructured in 1924. The term *Kirchenmengerei* means, most naturally, the mixing or mingling of churches with a different confessional basis or outward church practices of the same. The term *Glaubensmengerei* means, most naturally, the mixing or mingling of beliefs or confessions. In 1924, when the first official English translation of the Constitution of the Synod was completed from the 1924 German text, the phrase *unionism and syncretism of every description* was used to translate *aller Kirchen- und Glaubensmengerei*. While in today’s usage the meaning of the terms *unionism* and *syncretism* may vary, depending on context, in interpreting the constitution, they must be understood in their originally intended meaning and context.

The constitution then proceeded to give three examples of activities that would be identified as the mingling or mixing of churches and/or beliefs, without distinguishing some as *Kirchenmengerei* or *unionism* and others as *Glaubensmengerei* or *syncretism*. (These examples were not, of course, intended to be exhaustive, as they are prefaced with the words “such as.”)

For the purposes of understanding the Constitution—while there may be shades of meaning, with *unionism* tending more toward commingling practices or services and *syncretism* toward commingling doctrines or teaching—there is considerable overlap between the two. An historically defensible, precise dissection of these terms is unlikely to be possible. For the purposes of understanding the Constitution, though, it is not necessary sharply to divide the terms. The phrase “*aller Kirchen- und Glaubens-mengerei*” or “*unionism and syncretism of every description*” is best understood as an expansive single thought—perhaps a pleonasm, the use of two almost identical terms to avoid any possible misunderstanding or minimization. While other terms are also used in the literature of the Synod to express the same concept, the Constitution clearly states that it is the expectation of members of the Synod that, because they “accept without

reservation the Scriptures and the Lutheran Confessions” (Const. Art. II), they would renounce activities *of every description* that would commingle the confession, teaching, or practice of that true and salutary confession with any contrary (and therefore false and harmful) confession, teaching, or practice.

Whether or not any particular activity or “fact situation” would be determined to constitute unionism or syncretism (*Kirchen- und Glaubensmengerei*) and, therefore, to constitute a violation of the conditions of membership in the Synod, falls outside of the authority of the Commission on Constitutional Matters. Such a decision is properly the responsibility of the ecclesiastical supervisor of that member.

Question 2: What is the definition of *unionism* as used here?

Opinion: See the response to question 1.

Question 3: What is the definition of *syncretism* as used here?

Opinion: See the response to question 1.

Question 4: What are *heterodox tract and missionary activities*, and what is meant by *participating in* such activities?

Opinion: As used in the Constitution of the Synod, *heterodox* means “confessing a different doctrine or belief from that expressed in Article II of the Constitution of the Synod.” In any specific instance, the Constitution designates the primary responsibility for determining if a teaching or action is heterodox to the ecclesiastical supervisor of that member of the Synod. To participate means, simply, “to take part in.” If a member is uncertain in any given situation, the ecclesiastical supervisor of that member should be consulted.

It must be noted that this passage is stated in the Constitution as one of three *examples* of unionistic and syncretistic activity. To make an application from above, it is the expectation of members of the Synod that, because they “accept without reservation the Scriptures and the Lutheran Confessions” (Const. Art. II), they would renounce (and therefore not take any part in) activities *of every description* that would commingle the confession, teaching, or practice of that true and salutary confession with any contrary (and therefore false and harmful) confession, teaching, or practice.

With regard to the meaning of *taking part in* or *participating in*, these words are used to state *examples* of prohibited activity. The positive requirement of the Constitution is not only that members avoid the prohibited example activities, but that they *renounce unionism and syncretism of every description*. Contrary to that required renunciation are any activities inviting the reasonable inference that the exclusive teaching and practice of Synod’s confession (Const. Art. II) may, as a matter of indifference or insignificance, be laid aside, replaced by, or comingled with other teachings or practices. Such activities violate Const. Art. VI 2 and give the sort of offense contemplated in Const. Art. XIII 1’s *offensive conduct*.

Regarding Bylaw 1.8.3:

Question 5: What is meant by “Any such public teaching shall place in jeopardy membership in the Synod?” Does this include public practice?

Opinion: The question as asked does not quote the entire bylaw. Bylaw section 1.8 deals with the right of a member of the Synod to dissent from the doctrinal position of the Synod as this is expressed in the Synod’s doctrinal resolutions and statements. The bylaw section details the process by which this dissent may be expressed and to whom it may be expressed. Bylaw 1.8.3 specifically states that the right to dissent from the doctrinal position of the Synod *does not* include the right to publicly teach *or practice* contrary to the established doctrinal position of the Synod. (Bylaw 1.8.2 distinguishes from “public teaching” or “a public forum” a private and confidential discussion among a fellowship of competent peers, and this distinction is elaborated by CCM Op. 13-2665.) When a member publicly teaches or practices contrary to the established doctrinal position of the Synod, the exercise of ecclesiastical supervision is called for. Should admonition

of the member prove fruitless, the member is exposed to expulsion from the Synod as specified in Article XIII.

Question 6: What Articles and/or Bylaws of the Synod would address an infraction of Bylaw 1.8.3?

Opinion: Constitution Article XIII, Expulsion from the Synod, and Bylaw sections 2.13–2.16 and 4.4 would generally provide the ecclesiastical supervisory mechanisms to address an infraction of Bylaw 1.8.3.

#### **142. Wyoming District Policy Manual (17-2852A)**

The commission continued its review of the materials sent by the Wyoming District, considering now the district's policy manual, much of which was not germane to the commission's duty to review. The following areas were found to require attention:

- In “Articles of Agreement For The Multi-Congregation Parish,” Article III, paragraph 3, p. 30, it is stated: “In the event of the dissolution of this multi-congregation parish, each Congregation will be considered vacant. The Ordained Minister shall be eligible for a Call from any Congregation as per the guidelines and regulations of the Synod and District.”

The CCM, in its meeting of May 22, 1998 (Ag. 2014), found as follows on a related question: “Regardless of whether the call was issued by both congregations under a parish arrangement or whether each congregation issued a call individually, the Commission would maintain that each congregation has issued a call to the pastor. If this is granted, the Commission does not believe that the relationship with the pastor can be terminated by simply dissolving the dual parish agreement. That termination should be made in accordance with the process outlined in the constitution of the congregation.”

It is thus improper to suggest that merely dissolving the dual-parish arrangement terminates the call of the pastor, who has been called not by the dissolved *parish* (as if a now non-existent corporate shell) but by the constituent *congregations*.

- Any references to superseded *Handbooks* of the Synod should be updated (including the ones on pp. 33 and 60).
- “Endowment Guidelines,” p. 36: The commission calls to the district's attention the special role of the LCMS Foundation, as has been indicated (since 1981) in Bylaw 3.6.5.1.2 and its predecessors.
- “Data Involved in Ecclesiastical Supervision,” p. 43: As parish pastors, teachers, etc. are not employees of the district, their ecclesiastical supervision files (PIF/SET) are not “personnel files” in the common sense, and should not be referred to as such. “Ecclesiastical supervision records” may be a more suitable term.
- On p. 58, the phrase “found innocent” does not accord with either criminal or civil procedure. Perhaps what is meant is “exonerated upon the exhaustion of an appropriate investigation,” which still begs the question of “by whom.”
- The guideline on pp. 59ff. is a document of the Council of Presidents that has not been designated for public dissemination.

#### **143. Minnesota North District Articles of Incorporation and Bylaws Resubmission (17-2867A)**

By a March 22, 2018, e-mail, in response to the commission's earlier review, the Secretary of the Minnesota North District submitted a revised proposal of changes to the district's articles and bylaws. With regard to the articles, the commission notes that its concerns have been addressed, although the article on amendment has been left in a confusing state. The commission recommends a clarification of the proposed Article V as follows (the option of whether to require adoption by *two* conventions being up to the district, subject to the laws of the State of Minnesota:

These Articles of Incorporation may be amended as provided by the law under which this body is incorporated (see Preamble above), provided that such amendments:

- a. are not inconsistent with the Constitution or Bylaws of The Lutheran Church—Missouri Synod or the Constitution and laws of the United States or the State of Minnesota; and
- b. have been submitted to the Commission on Constitutional Matters of the Synod for review and approval before presentation to and adoption by the district convention; and
- c. are acted upon favorably at [*either: a ~~general~~ regular or special meeting or: two successive meetings (whether ~~general~~ regular or special)*] of this corporation by the affirmative vote of a two-thirds majority of the delegates present and voting or by a simple majority of all delegates, whichever is less, certified by the presiding officer, verified by the secretary of the corporation; and
- d. shall thereafter be recorded with the Secretary of State of the State of Minnesota.

With regard to the bylaws, the commission notes two minor points requiring further attention:

- MNN Bylaw 2.32: The word “be” should be removed along with “submitted.” Also, after “prior to the Convention” the phrase needs to be added, “with printed copies available to designated recipients upon request” (LCMS Bylaw 4.2.1 [g]); likewise in MNN Bylaw 2.72, after “of electronic communication.”
- Bylaw 2.56 [b] should read: “Congregations ~~and the district president~~ may nominate, and the district president may suggest nomination of, pastors from the clergy roster of the Synod District who are serving congregations or who are emeriti [Synod Bylaws 4.3.1 and 5.2.2 (~~db~~)].”

With the above changes incorporated, the proposed articles and bylaws are approved for presentation to the district convention. The district is thanked for its cooperation with the review process and reminded to submit a clean copy of its articles and bylaws as adopted.

#### **144. Mid-South Bylaw 8.3.3.1 (d) Revision Proposal (17-2855A)**

The Secretary of the Mid-South District forwarded for the commission’s review a proposed overture striking one sentence of district bylaw 8.3.3.1, in order to harmonize the bylaw with changes made earlier by the district’s board of directors in response to 2016 LCMS convention actions. The commission thanks the district for its cooperation with the review process and gives its approval to this proposal.

#### **145. Indiana District Proposed Articles and Bylaws (18-2881)**

The Secretary of the Indiana District, by a March 17 e-mail, sent his district’s proposed revised articles of incorporation and bylaws for review by the commission. The commission approves the articles as proposed, noting that they satisfy the relationship and asset disposition language requirements of LCMS Bylaw 1.5.3.6 and 2016 Res. 9-02A.

With regard to the bylaws, the commission notes the following:

- Bylaw 1.09 (c) mentions a policy manual, which the commission will need to review.
- In Bylaw 2.35 (a), under “b) four Regional Vice-Presidents,” and again in Bylaw 2.81 (a) and 7.37 (j), a region does not have a “roster.” The Vice-Presidents are “nominated from the roster of the district, with residence in the respective region” (LCMS Bylaw 4.3.1).
- In Bylaw 7.15, names on a ballot should be listed in alphabetical order (LCMS Bylaw 3.12.4.1).
- In Bylaw 8.01, the district may wish to add “f. If adopted in a further amended, not pre-approved form, their adoption is subject to the procedure of LCMS Bylaw 3.9.2.2.3 (b).”

With required changes made, the commission approves the bylaw proposal for submission to the convention. The district is thanked for its cooperation with the review process and reminded to submit a clean copy of the articles and bylaws as adopted for the commission’s files.

#### **146. Southeastern District Proposed Bylaw Revisions (18-2880)**

By an e-mail of March 16, 2018, the Southeastern District forwarded a proposed resolution intended to bring the district's bylaws into line with changes made by the 2016 LCMS convention.

The commission notes the concerns expressed in its prior review, Op. 14-2723A, which apparently remain unaddressed. As a full copy of the district's present bylaws as adopted in 2015 was not provided to the commission, it is unable to ascertain whether these changes, or the others indicated in Op. 14-2723, were made in 2015, and unable to review the bylaws in full. The commission assumes that it is to review the submitted, proposed amendment in the context of the last draft submitted in 2015, but cautions that it is unable to ascertain whether or not it was adopted intact. This review must therefore be regarded as, at best, provisional.

The commission, noting one objection to the two changes proposed, adds that two additional changes appear to be required:

- The district should take care to note that the amendment to Article X, Section 3, and the underlying LCMS Bylaw 3.9.2.2.3 (b), do not absolve the district of its responsibility under LCMS Bylaw 3.9.2.2.3 (a), should it intend to bring bylaw changes, to obtain *prior* review and approval.
- In SED Bylaw Article II 2 d: delegates to the district convention no longer automatically serve as electors for the Synod president (LCMS Bylaw 3.12.2.3). Article II 2 d must be removed in its entirety.
- SED Bylaw Article V 4 c needs to distinguish the elections of President and Vice-President, in which only the lowest vote-getting candidate is removed from each subsequent ballot, from the others, in which those receiving less than 15% of the vote are removed (except in the noted exceptional case), cf. LCMS Bylaw 3.12.4.2 (e).

The district is thanked for sending the proposed changes for review, and asked to submit a clean copy of the bylaws, as adopted, for the commission's files.

#### **147. Florida-Georgia District Articles of Incorporation and Bylaws (18-2878)**

By a February 22 e-mail, the Secretary of the Florida-Georgia District sent his district's proposed articles of incorporation and bylaws for the commission's review. A subsequent version was forwarded by way of March 25 e-mail, and that version is the subject of this review. The articles as proposed are approved for presentation to the convention and as satisfying the requirements of LCMS Bylaw 1.5.3.6 and 2016 Res. 9-02A.

With regard to the bylaws, the commission notes:

- In the district's proposed bylaw D2.28(b), the election procedure of dropping from subsequent ballots all those who received less than 15% of the vote applies only to elections *other than* those of the president and vice-presidents of the district. In electing the president and vice-presidents, only the one candidate receiving the fewest votes is removed (cf. LCMS Bylaw 3.12.4.2 [e]).
- In Bylaw D2.16, though the intention is somewhat clear, the rostered members of the District must *also* be members of member congregations of the district (LCMS Bylaw 4.3.3). The first instance of "member of a voting congregation of the District or a rostered member of the District" should be replaced with "member of a member congregation of the District and, if an individual member of the Synod, on the district roster," and the second instance, with "member of a member congregation of the District or, if an individual member of the Synod, ceases to be on the district roster."
- In Bylaw D2.22 (c), such meetings must be held "in accordance with LCMS Board of Directors policy" (LCMS Bylaw 1.5.3).
- Under Bylaw D2.31, Selection, (c), the phrase "subject to ratification by the entire convention" should be clarified by the addition of the words," which retains the right to amend the slate;" likewise, in Bylaw D2.34 (d)(4).

With these corrections, the commission approves the bylaw proposal for presentation to the convention. The district may also wish to add, with the commission's approval, as D5.01 (d): "If adopted in a further amended, not pre-approved form, adopted subject to the procedure of LCMS Bylaw 3.9.2.2.3 (b)."

The district is thanked for its cooperation with the review process and reminded to submit to the commission a clean copy of the articles and bylaws as adopted by the convention.

**148. Concordia University Wisconsin / Ann Arbor Articles of Incorporation, Bylaws, and Policies (16-2802)**

By e-mails of November 16, 2016, and April 2, 2018, Concordia University Wisconsin / Ann Arbor (CUWAA) forwarded for review its articles of incorporation (last modified with article of merger filed April 17, 2014), bylaws (dated April 15, 2014), and various faculty, student, and employee policies.

With regard to the articles of incorporation, the commission finds:

- Asset disposition language satisfying LCMS Bylaw 1.5.3.6 (b) is present in Article VIII.
- Relationship language satisfying LCMS Bylaw 1.5.3.6 (a), to wit, "That all provisions of [the university's] Articles of Incorporation and Bylaws are subject to the provisions of the Constitution, the Bylaws, and the resolutions of the Synod in convention," is not explicitly present in the language of Article IV. Article IV, specifying that "the University shall at all times be operated as a component of the Concordia University System of The Lutheran Church—Missouri Synod (the "Synod") and in a manner consistent with the rules, policies, and procedures of the Concordia University System ("CUS") and the Constitution, Bylaws, and resolutions of the Synod as now or hereafter enacted or amended," taken together with language present elsewhere in the articles, may, however, be a basis upon which to seek an exemption from the precise requirement of Bylaw 1.5.3.6 (a) from the Board of Directors of the Synod.
- The university is reminded that, under 2016 Res. 9-02A, the articles need to be revised into compliance with LCMS Bylaw 1.5.3.6, or an exemption obtained from the Board of Directors of the Synod, in time for compliance to be reported to the 2019 convention of the Synod.

With regard to the bylaws, the commission notes agenda item 17-2815, under which a revision proposal is reviewed separately below.

With regard to the submitted policies required under LCMS Bylaws 3.6.6.7 and 3.10.6.7.5.2, in the *Faculty Handbook* Termination and Dispute Resolution material, the commission questions the connection of the appeal process mentioned in Policy 4.2 C, which applies apparently to all senior-level faculty, and the apparently corresponding process in Policy 4.4 C, which is under the heading (Section 4.4) of "rostered faculty," apparently applying only to faculty who are individual members of the Synod.

Noting that the process of Bylaw 4.4 C notes a now-defunct *Standard Operating Procedures Manual* and that it derives from the faculty complaint process formerly embodied in the Bylaws of the Synod, and noting that the same are also the basis of the new *Model Operating Procedure Manual (MOPM)* offered by the Concordia University System, the commission suggests that the university might consider comparison of its policies with, and perhaps adoption of, the more detailed and updated *MOPM*.

The commission did not review the *Employee Handbook* or student conduct material, as it did not appear to be within its purview.

**149. Concordia University Wisconsin / Ann Arbor Revised Bylaws (17-2815)**

By a February 21, 2017, e-mail, the Office of the President of Concordia University Wisconsin / Ann Arbor (CUWAA) submitted bylaws as adopted by the Board of Regents at its February 3, 2017, meeting, chiefly to include the new regent appointed under 2016 LCMS Bylaw 3.10.6.2. The commission notes that agencies intending to amend their bylaws are to obtain the review and approval of the commission *in advance*. Attention is required at two points:

- Section 3.3 (d) and Section 3.4 should indicate that the additional regent is appointed by the LCMS *Praesidium*, not by the LCMS *President* alone.
- Section 3.7: The provision regarding *ex officio* members resigning from the board but not from office is understood not to apply to those who are *ex officio* members of the board by virtue of Synod Bylaws, and may not be of reasonable application to others.
- Section 3.8.7 is not consistent with LCMS Board of Directors Policy 2.4.6, which is required to be followed under LCMS Bylaw 1.5.3.
- Section 7.2: “Synod Bylaws” should read “Synod Constitution, Bylaws, or resolutions.”
- Section 10.7: It is unclear to the commission how it can authorize the suspension of the university’s bylaws, except under the provisions of Section 10.8—in which case the Synod’s bylaws would be controlling and the university’s, of null effect. It seems to the commission that Section 10.7 should simply be removed.

The commission thanks CUWAA for submitting its bylaws for review, and asks that a clean, adopted copy be filed with the commission upon its adoption.

#### **150. Texas District Bylaw Proposal, Revised (18-2876A)**

By a March 19 e-mail, the Secretary of the Texas District forwarded a response to the commission’s previous review of the district’s articles and bylaws (Op. 18-2876). The commission notes that the district’s legal counsel continues to evaluate the feasibility of potential changes to district articles to comport with 2016 Res. 9-02A and LCMS Bylaw 1.5.3.6. The district notes an intention to revisit, in the coming triennium, the unique structure of its governing documents (including a preamble, as noted in the commission’s prior reviews, Op. 15-2752 and Op. 12-2640). The commission finds all of its other previous concerns to have been addressed in the district’s response, approves the bylaw proposal for presentation to the convention, and awaits further word as to the district’s articles of incorporation (in time to report compliance to the 2019 convention of the Synod) and concerning its preamble. The district is thanked for its cooperation with the review process and reminded to submit a clean copy of its governing documents, as adopted, for the commission’s files.

#### **151. New Jersey District Proposed Articles of Incorporation (18-2884)**

By an April 5 e-mail, the President of the New Jersey District forwarded his district’s proposed articles of incorporation for the commission’s review. The commission, having spent some time on the proposal’s unique provisions, offers the following response:

- In Article II, the objectives of the district appear to appropriate a previous edition of the statement of corporate Synod’s objectives from its Articles of Incorporation. While the Constitution of the Synod is the Constitution of the District, the correspondence is not so natural for the articles, which are somewhat specific to the different corporate situations of the Synod and the districts. A good alternative to deriving the district objectives from those of Synod’s Articles of Incorporation would be to have a look at the very simple version in the commission’s recommended template (Op. 18-2872). The template simply references Synod’s objectives and acknowledges that the members of the district are really those members of the Synod falling within the assigned geographical bounds (or otherwise assigned membership in the district).
- Again in Article II, the provisions about memoranda of understanding and the survivability of donor designations are extremely detailed for inclusion in the articles, and potentially counter-productive, even for the district itself. Extreme caution is advised regarding the district’s assuming property of “at-risk” congregations, as such, as the holding of such properties could expose the district to significant liabilities—possibly far exceeding the value of the properties. Const. Art. VII 2, stating clearly that neither the Synod nor the district has “equity in the property of the congregation” also merits weighty consideration here. Congregations are absolutely free to determine how finally to



dispose of their property upon dissolution (but are strongly advised to do so in a manner consistent with controlling non-profit law).

- Under Article IV, the provision that the district meets “once in every two years” is out of date. The district meets the year prior to the Synod convention, which meets on a triennial cycle.
- The three proposed new paragraphs under Article VI present several serious concerns. The district, like the Synod, has no equity in the property of congregations (Const. Art. VII 2) and is strictly advisory to congregations, so far as their right of self-government is concerned (Const. Art. VII 1), which certainly includes the final disposition of their property. Congregations *cannot be compelled* by the district’s articles of incorporation, or by any other district or Synod authority, to enter into a memorandum of understanding with the district or into any other arrangement for the distribution of their assets, as the first proposed paragraph implies.
- Further, it is unclear how the first and third proposed paragraphs relate. Are the memoranda as proposed binding on the district or only upon the district’s successors, under the second paragraph? In the second paragraph, merger and dissolution of districts, two distinct events with very different legal and financial implications, are conflated (cf. LCMS Bylaw 4.1.1.3).
- Finally, congregations are free to designate gifts to the district for specific purposes and with restrictions, including gifts designated in the course of their dissolution. The district is free to accept such gifts, provided that the purposes for which they are given are in accord with the objectives of the Synod and the district (LCMS Bylaws 4.1.1.1–2; Constitution III). Non-profit corporate law governs the use of restricted gifts by original recipients and successor corporations.

The language proposed does not clarify but confuses and complicates the situation, should a congregation dissolve. Gifts given under restriction reduce the flexibility of the district itself to respond to mission priorities; therefore, encouragement of such restrictions would hamper the district, through its convention, officers, and boards, from accomplishing its purposes, which are Synod’s purposes in that place. In any case, provisions such as these are best left to the judgment of the individual congregations and their right of self-governance.

- The commission is therefore unable to give its approval to the proposed three paragraphs under Article VI, Property, or the second proposed paragraph under Article XIII, Dissolution.
- In the other two paragraphs proposed under Article XIII, Dissolution, and under Article XIV, Relationship to Synod, the commission recognizes the language required by LCMS Bylaw 1.5.3.6 and 2016 Res. 9-02A.

The commission thanks the district for its cooperation with the review process and asks that it would address the above and to submit a revision of the proposed articles for further review.

#### **152. 2016 Res. 9-02A Review of Concordia St. Paul (CUSP) Documents (16-2804A)**

In response to the commission’s request for articles of incorporation and faculty complaint and dispute resolution policies from the colleges and universities of the Synod, the President of Concordia University, St. Paul, forwarded an explanation of his institution’s policy for handling complaints as well as his board’s policy manual, which included the institution’s articles and bylaws. The commission treated the articles of incorporation under CCM Op. 16-2804 (November 10–11, 2017), and now treats the remainder of the materials submitted. The commission notes that at least those required changes it catalogued in Op. 16-2804 will need to be addressed in time for the commission to report the institution’s compliance to the 2019 Synod convention.

Concerning policies for faculty complaints and dispute resolution, those procedures referenced in the e-mail accompanying Concordia St. Paul’s documents no longer exist in the bylaws of the Synod. The commission recommends adoption of the *Model Operating Procedure Manual* developed by Concordia

University System (CUS) and the Office of the Secretary, as providing an implementation of the procedures once elaborated in the bylaws of the Synod, with the caveat that the institution should consult legal counsel to review the *MOPM* and provide limited edits as necessary, to assure compliance with applicable laws, including laws governing employment contracts, alternative dispute resolution agreements and legal remedies.

Concerning the bylaws:

- Article I, Sections 2, 4, and 7: It is not accurate to say that vacancies on the board of regents are filled, in general, by the board of regents. Vacancies in Synod-elected, district-elected, and certain other positions are filled otherwise. CUSP Bylaws need to be amended into compliance with LCMS Bylaws 3.10.6.3 and 3.2.5.
- Section 8: The powers of the board of regents relative to the property and operation of the institution are limited by the Constitution, Bylaws, and resolutions of the Synod. For example (among many others), disposal of real property requires approval of the Board of Directors of the Synod. See also LCMS Bylaws 1.4.4, 3.3.4.5, 3.3.4.6, and 3.10.6.4, as well as LCMS BOD Policy 5.4.1.2.3.1.
- Article V: Amendments may be made only with prior approval of the LCMS Commission on Constitutional Matters. This requirement may be implicit in their consistency with the Constitution, Bylaws, and resolutions of the Synod, but should be explicit.
- While such a statement, were it to be included as required in the Articles, would govern, it would be well to add also to the Bylaws that the provisions of these Bylaws are all subject to the Constitution, Bylaws, and convention resolutions of The Lutheran Church—Missouri Synod.

Noting Appendices C, D and E, “Board of Regents’ Advancement Committee,” “Committee on Finance, Operations and Personnel,” and “Academic Committee,” respectively, the commission points out LCMS Bylaw 3.10.6.5. The board should carefully evaluate its policies and practices, with regard to these committees, in light of this bylaw, as it seems to the commission there is a significant potential in this structure for constructive delegation and commingling of authority to/with bodies including non-board members. The commission also notes LCMS Bylaw 1.5.3.6, that standing committees such as these may be created, but proper safeguards must be in place to maintain the proper authority of the board. The creation of such committees must also be reported to the President and Board of Directors of the Synod.

The commission also notes an internal inconsistency: the omission in Appendix E, “Academic Committee,” of the suggestion present in Appendices C and D, that the majority of committee members be members of LCMS (congregations). In this connection, the commission notes Bylaw 3.10.6.1 that “the board of regents of each institution shall consider as one of its primary duties the defining and fulfilling of the mission of the institution within the broad assignment of Synod.” Obviously, the commission understands only what it is able to discern from the documents presented and has no opportunity to observe the operation of the board or its committees (and the same caveat might be applied to all the concerns noted). Nonetheless, the commission questions whether the delegation of significant authority, even if only advisory, to a body not required to be comprised of at least a majority of members of LCMS congregations is consistent with this fiduciary responsibility the board of regents owes the Synod. It would be most appropriate for strong safeguards of the board’s governing interest (and the interests of Synod as a whole) to be explicitly stated and enforced—perhaps that a majority of the committee members be not only members of LCMS congregations but also members of the board of regents, and to expressly state that the committees are advisory only, with all decision-making authority remaining with the board.

Concerning the remainder of the board policy manual:

- Throughout, references to the LCMS *Handbook* require updating.

- Section I, Page 1, #3: The sentence, “Four laypersons shall be appointed by the Board of Regents in a non-convention year,” seems to be a vestige of former bylaws; if not, its connection with the remainder is unclear. Perhaps four here is meant to be a minimum, as on Page 2.
- The list of members needs to be updated according to LCMS Bylaw 3.10.6.2.
- Note the prohibition (if any additional board members are appointed in convention years) of Bylaw 3.2.4 [g], that no appointments may be made in the interim between the election of new regents and their assumption of office, either in a Synod or a district convention year.
- The board must meet at least quarterly or obtain approval from the President of the Synod (Bylaw 1.5.3).
- Section I, Page 2: Note the requirement of Bylaw 3.10.6.2 [8], that appointees be approved as qualified by the Secretary of the Synod and President of CUS.
- Under D, “A written ballot...,” the commission does not understand the procedure for election of “two candidates” or its relation to the broader process for election of four or more.
- Section I, Page 5: Synod’s conflict of interest policies must be adhered to by every agency (Bylaw 1.5.2).
- Section I, Page 7 and 9: The commission notes that the executive committee is granted expansive powers that seem to exceed those typically assigned to an executive committee (see limits imposed in LCMS Bylaw 1.5.3.2, which applies to CUSP as an agency of the Synod).
- Section 1, Page 11: The commission notes that the president’s apparent authority to confirm chairmen of board committees, who, in addition, together comprise a significant portion of the executive committee, may present a substantial conflict, as the president serves under the governance of, and is responsible to, the board of regents.

The commission has not reviewed the employee, faculty, and student handbooks referenced *in toto*, though it has made a cursory review of selected policies dealing with student-faculty grievances, employment grievances, and harassment, which did not include the appeal process required to be available to faculty challenging a termination decision. The commission notes that the board of regents and institution are required to develop policies exhaustive of the list required by the policies of the Concordia University System, at least inclusive of those topics listed in Bylaw 3.6.6.7. The noted handbooks and other policies of the university should be reviewed by the institution to ensure that all bylaw- and CUS-required policies are in place.

### **153. Northwest District Bylaws Proposed (18-2882)**

By a March 28 e-mail, the office of the Northwest District President sent the district’s bylaws, along with an overture (amending Bylaws 3.3.1 and 3.3.3–5, removing Bylaw 3.3.13, inserting a new Bylaw 3.4.5, and relocating Bylaws 3.3.11–12) intended to align the district’s bylaws with changes made at the 2016 LCMS convention, for prior review and approval by the commission. The commission’s review noted the following points requiring further attention:

- The wording of Bylaw 2.3.2 is of rather uncertain meaning, and should be replaced with the wording of LCMS Bylaw 4.1.1.2, that the “Bylaws of the Synod shall be primarily the bylaws of the district.”
- Bylaw section 2.4 does not adequately allow for the office of the district president, who is *not* merely part of the “district staff” that is under the administration and direction of the district’s board of directors. The district president is a constitutional officer of the district in his own right, with ecclesiastical supervisory responsibilities beyond the board’s purview and with duties owed directly to the convention, to the Synod as a whole, and to its President, in particular. The other

constitutional officers (secretary, vice-presidents) need to be treated specially, as well. These are not simply “district staff.”

- Under Bylaw 2.5.3, it may be helpful to note that the (voting) representation of each congregation is as specified in LCMS Bylaw 5.3.2.
- The term “circuit counselor” needs to be changed to “circuit visitor” in Bylaws 3.1.4, 4.5.1, 5.1 and 5.4.1.
- In Bylaw 3.1.1, the word *rostered* may be less susceptible to misunderstanding than *professional*.
- In Bylaws 3.3.2–3 and 5.5.1, while the district president is nominated from the clergy roster of the Synod, the vice-presidents and Secretary are nominated from the clergy roster of the *district*.
- Bylaws 3.3.4 and 3.3.10 conflict with regard to the possibility of floor nominations for regional vice-presidents.
- In Bylaw 3.4.6, the ranking of the vice-presidents should be conducted as specified in LCMS Bylaw 3.12.2.7 (g), “by separate ballots with a simple majority of voting delegates determining the second, third, [etc.] in succession.”
- In Bylaw 5.5.2, the Secretary’s duties should include or reference, in addition, those items included in the Synod’s Constitution and Bylaws.
- With regard to Bylaw section 5.7, the responsibility for the financial affairs of the district rests natively with the board of directors. While administrative responsibilities may be delegated instrumentally to the district president, they may not be *finally* so delegated, and the board must take care not to overburden the district president with administrative and fiscal responsibilities, to the detriment of his primary ecclesiastical duties.

The district is thanked for its cooperation with the review process. Presuming the above changes are made to the proposal, the commission gives its approval for presentation to the convention and requests a clean copy of the bylaws as adopted by the convention.

#### **154. Minnesota South District Articles and Bylaws Resubmission (17-2831A)**

The Secretary of the Minnesota South District, in response to the commission’s previous review, submitted, by a February 22 e-mail, a new edition of his district’s proposed amendments to its articles and bylaws. The commission finds its previous concerns to have been satisfactorily addressed, with the exception of the following:

- Bylaw 4.2.15.2 still seems to pose congregational membership and not residence as the criterion for region membership. The phrase “from its region” may more clearly read “with residence in its region,” although the district may well understand the existing wording in this sense. In the phrase “members of member congregations of the district or region,” the words “or region” should be removed. In either case, LCMS Bylaw 4.3.1, one of the “primary bylaws of the district,” governs here.
- In Bylaws 4.5.16, the inclusion of “full-time assistants to the district president, chaplains, and others under the immediate direction of the board of directors” into a bylaw intended to deal only with officers is confusing, especially with the addition of the subsequent comment “Non-rostered workers are considered at will employees, etc.” In the Bylaws of the Synod, officers may be removed for cause; staff serve “at the pleasure of the appointing authorities” (LCMS Bylaw 3.11). If the district wishes to present a procedure for removal of staff for cause, the commission recommends that the district do so in a separate bylaw.

With the above change made, the commission approves the district’s articles and bylaws for presentation to the convention. The district is thanked for its cooperation in the review process (and especially for the clear and very helpful presentation of the changes made in response to the commission’s previous review) and is asked to submit a clean copy of its articles and bylaws, as adopted by the convention, for the commission’s files.

#### **155. Minnesota South District Policy Manual, Proposed (18-2879)**

By a February 16 letter, the Secretary of the Minnesota South District forwarded his district's policy manual for review by the commission. The commission thanks the district for sending its policies for review and notes the following points needing attention:

- In connection with policy 1.05.01, the requirements of the LCMS Board of Directors Policy Manual need to be applied and/or referenced under LCMS Bylaw 1.5.3.
- Potential misunderstandings must be avoided carefully in the designation of constitutional officers of the district as "executive staff."
- The district may wish to check policy section 3.21 against the current operating practices of the Lutheran Church Extension Fund.
- Under policy section 4.08, it may be helpful to note that Synod and its officers and agencies consider the last approved version of congregational governing documents to be in force (LCMS Bylaw 2.4.1 [f]).

#### **156. South Wisconsin District Articles of Incorporation and Bylaws, Revised Proposal (17-2862A)**

In response to the commission's previous review, the Secretary of the South Wisconsin District, by an April 5 e-mail, forwarded for the commission's review a revised draft of the district's articles and bylaws. This draft was found to satisfy the commission's previous concerns and is approved for presentation to the convention. The district is thanked for its cooperation with the review process and asked to submit a clean copy of its articles and bylaws as adopted for the commission's files.

#### **157. South Wisconsin District Bylaw Amendment, Proposed (17-2862B)**

By an April 7 e-mail, the Secretary of the South Wisconsin District forwarded an amendment intended to be applied to Bylaw 1.54. Upon review, the commission gives its approval, noting only its uncertainty about whether Bylaw 1.54 (c) is intended to remain or be removed in the amendment. It is the commission's opinion that (c) is useful, and the commission's presumption that it remains. The district is thanked for its cooperation with the review process and asked to submit a clean copy of its articles and bylaws as adopted for the commission's files.

#### **158. Concordia University Irvine Articles of Incorporation, Bylaws, and Faculty Contract (17-2808)**

By a December 21, 2016, e-mail, the general counsel for Concordia University Irvine (CUI) forwarded for the commission's review the university's articles of incorporation (dated October 18, 2001), bylaws (dated December 9, 2016), and faculty contract (dated March 19, 2014).

With regard to the articles, the commission notes the presence of the asset disposition language required by LCMS Bylaw 1.5.3.6 (b), but the absence of the relationship language required by LCMS Bylaw 1.5.3.6 (a). The university is reminded of its need to revise its articles into compliance with Bylaw 1.5.3.6 and 2016 Res. 9-02A in time for compliance to be reported to the 2019 convention of the Synod. The commission also notes the absence of an indication in the articles that revisions must be reviewed and approved in advance by the LCMS Commission on Constitutional Matters (LCMS Bylaw 3.9.2.2.3 [a]), a lacuna that might as well be corrected at this time.

With regard to the bylaws, the commission finds nothing requiring attention, other than the following:

- There is no reference to LCMS Bylaw 1.5.2's conflict of interest policy.
- The commission questions whether *all* new regents, whether elected at district or Synod conventions, or appointed by the board, take office on September 1 (CUI Bylaw 5.4). Noted in this connection is LCMS Bylaw 3.2.4 (g).
- In CUI Bylaw 8.3, the commission presumes that the "officer" referenced is an officer of the board, and that the removal spoken of is removal from that office and not from the board.

- Article 13 should indicate that prior review and approval by the LCMS Commission on Constitutional Matters is required for any agency, including a university, intending to amend its bylaws.

With regard to the faculty contract, the commission notes that reference is made to 2013 LCMS Bylaw procedures for handling of faculty complaints (as well as to a portion of the university handbook not submitted for review). The university is advised that the procedures formerly referenced in the 2013 *Handbook* as provided by the Concordia University System *Standard Operating Procedure Manual* are no longer extant as such. Universities are now required by the LCMS Bylaws to adopt their own policies regarding faculty termination appeal. The university is advised to consider, under appropriate legal advice, adoption of the Concordia University System *Model Operating Procedure Manual*, which provides substantially the same procedure as the pre-2013 bylaws in a new form compatible with the 2016 LCMS Bylaws.

#### **159. Adjournment**

With its presently addressable agenda concluded, the commission adjourned at noon on Saturday. The commission has meetings scheduled June 8–9, August 17–18, and September 14–15, 2018 (and is planning to meet jointly with the Council of Presidents during its September meeting). Depending on assessment of workload over the next few weeks, the necessity of the June meeting may be reconsidered.

John W. Sias, *Secretary*