

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS Crowne Plaza Airport Hotel, St. Louis June 13–14, 2014

36. Call to Order / Opening Devotion

Chairman George Gude called the meeting to order, provided the opening devotion, and reviewed the agenda for the meeting. All members of the commission were present for the meeting.

37. Constitutional Questions re Advocacy of Doctrinal Positions Contrary to the Synod's Stated Positions (13-2694)

In an email dated December 6, 2013, the President of the Synod asked the commission if open and repeated advocacy of theological positions contrary to the Synod's stated positions were violations of Article II and Article VI 1 of the Synod's Constitution. He also posed specific questions about the public rejection of "A Statement of Scriptural and Confessional Principles" (1973) and about the filing of formal dissent from such theological positions.

Response of the Commission

Unity of doctrine and practice were primary reasons for the formation of the Synod and are key to its continued existence. This unity is expressed internally as we walk together and externally in witness to those outside the Synod. Subscription to the stated confessional position of the Synod is both a precondition for acquiring membership in the Synod and a requirement of those who wish to continue to hold membership in the Synod (individuals and congregations) (Constitution Art. II; III 1; XIII 1; Bylaw 1.6.1).

The object of the Synod, as stated in Article III 1 of the Constitution, is (1) to conserve and promote a unity in which all are "united in the same mind and the same judgment" (1 Cor. 1:10), and (2) to avoid schism caused by contrary doctrine (Rom. 16:17). This purpose of the Synod is defeated when individuals are permitted to teach in accordance with their private views, for then there can be no such thing as a *synodical* position, and a meaningful corporate confessional commitment is impossible. Formal commitment of the Synod to a confessional base is pointless unless the Synod has the right *as a synod* to apply its confessional base definitively to current issues and thus conserve and promote unity and resist an individualism which breeds schism. [1971 Res. 2-21]

The confessional position of the Synod is set forth in Article II of the Constitution:

The Synod, and every member of the Synod, accepts without reservation:

1. The Scriptures of the Old and the New Testament as the written Word of God and the only rule and norm of faith and of practice;
2. All the Symbolical Books of the Evangelical Lutheran Church as a true and unadulterated statement and exposition of the Word of God, to wit: the three Ecumenical Creeds (the Apostles' Creed, the Nicene Creed, the Athanasian Creed), the Unaltered Augsburg Confession, the Apology of the Augsburg Confession, the Smalcald Articles, the Large Catechism of Luther, the Small Catechism of Luther, and the Formula of Concord.

The Synod, while acknowledging the unique status of the Scriptures (*norma normans*, "the norming norm") and the Lutheran Confessions (*norma normata*, "normed norm"), also acknowledges that the

Confessions are not exhaustive in their confession of biblical doctrine but “speak primarily to the articles of faith in controversy in the days of the Reformation” (Constitution Art. VIII C; 1971 Res. 5-24).

The Synod has retained the right and obligation to re-affirm the confessional position of the Synod in time of controversy, to clarify its witness, to set forth the confessional position of the Synod against new and urgent challenge, and to refute error, as long as such statements are in harmony with Scripture and the Lutheran Confessions. The Synod does so in line with the confessional principle of the Formula of Concord [FC SD Preface, 4–10], such that in making such resolutions and statements it does not go beyond the confessional basis of Article II of the Constitution, but merely defends its existing confession against new misinterpretations. The Synod holds that its confessional base is “as broad as *Holy Scripture*, and that provided a doctrinal resolution is in fact in harmony with the Word of God, which is ‘the *only* rule and norm of doctrine,’ the content of such a resolution is *intrinsic* to the Synod’s confessional basis” (1971 Res. 2-21).

Some historical examples of Synod stating its position in controverted matters include the adoption of C.F.W. Walther’s theses on church and office (*Kirche und Amt*), the “Thirteen Theses on Predestination,” the “Brief Statement,” and “A Statement on Scriptural and Confessional Principles.” The adoption of the “Thirteen Theses on Predestination” resulted in several members of the Synod leaving because they could not agree with this position of the Synod. The Synod has always expected and required that its members teach and practice in accordance with these resolutions that state its public position regarding the teaching and practice of the Scriptures (1971 Res. 2-21).

The Synod refined the process by introducing a bylaw distinction between doctrinal resolutions and doctrinal statements (1977 Res. 3-07). This change did not in any way alter the authority and status of resolutions establishing the position of the Synod that were adopted prior to this 1977 distinction. These prior resolutions remain what they always were, the official position of the Synod in the matter being covered (1977 Res. 3-07).

Since 1977, the Synod has distinguished between doctrinal resolutions which “may be adopted for the information, counsel, and guidance of the membership” (Bylaw 1.6.2 [a]) and doctrinal statements which “set forth in greater detail the position of Synod especially in controverted matters” (Bylaw 1.6.2 [b]). “[Doctrinal] resolutions come into being in the same manner as any other resolutions of a convention of the Synod and are to be honored and upheld until such time as the Synod amends or repeals them” (Bylaw 1.6.2 [a]). Doctrinal statements have a much more elaborate process of submission, evaluation, refinement, and approval but “shall be regarded as the position of Synod and shall be ‘accepted and used as helpful expositions and explanations’” to be honored and upheld as the standard of teaching and practice “until such time as the Synod amends or repeals them” (Bylaw 1.6.2 [b] [7]). Doctrinal resolutions and statements both have binding force on all congregational and individual members of Synod until it can be shown that such are not in keeping with the Word of God or the Lutheran Confessions, not as an individual judgment but when the Synod in convention by overture is convinced from the Word of God to overturn or amend them (1959 Res. 3-09; 1962 Res. 3-17; 1973 Res. 2-12 and 3-01; 1977 Res 3-07).

The Synod is not infallible and has established a formal dissent process for doctrinal statements when challenge arises (Bylaw section 1.8). Such formal dissent, however, cannot be used as a substitute for the Synod’s stated confessional position and does not permit a member to teach or practice contrary to the position of the Synod. It does not free one from the responsibility to “honor and uphold” doctrinal resolutions or “to abide by, act, and teach in accordance with” doctrinal statements until such time as Synod “amends or repeals them” (Bylaw 1.6.2). This also includes doctrinal positions adopted by the Synod prior to 1977 (cf. CCM Opinion 13-2677). The burden of proof lies upon the dissenter to convince the Synod in convention that it has erred and that a statement is in violation of Synod’s own confessional

position. The Bylaws maintain the right of the Synod to interpret its own confessional article (Bylaw 1.6.2 [b]).

Doctrinal resolutions and statements, including positions adopted prior to 1977, do not alter the Synod's confessional position nor do they add new confessions which must be subscribed. Rather, they elaborate, clarify, set forth in greater detail, and apply that confessional position. As has been true throughout its history, controversy and challenge sharpen the pen for the Synod to clarify its theological position *without* altering the confessional article of its constitution.

Question 1: Is the open and repeated advocacy of theological positions contrary to Synod's stated positions on (a) the ordination of women or women carrying out the functions of the pastoral office; (b) theistic evolution; (c) the inerrancy and/or the inspiration of the Scriptures; (d) church fellowship; and (e) same-sex relationships violations of Article II and Article VI 1 of the Synod's Constitution?

Opinion: Yes, open and repeated advocacy of theological positions contrary to the Synod's stated theological positions is ultimately a challenge to and a violation of the very confessional basis of Synod expressed in Articles II and VI 1 of the Synod's Constitution, as are all teachings and practices which contradict Scripture and the Confessions. Doctrinal resolutions and statements, including those adopted prior to 1977, have binding force on individual as well as congregational members of Synod. Members of the Synod are required to honor and uphold the stated theological position of Synod, which is defined by the confessional articles of the Constitution and any doctrinal positions adopted by the Synod to amplify, clarify, and apply its theological position in time of question, challenge, and conflict (Bylaw 1.6.2 [a] and [b]). Acting or teaching contrary to such is therefore a rejection of the stated confessional position of the Synod and ultimately of Article II itself. This does not mean that doctrinal resolutions and statements, including those adopted prior to 1977, are equal to, or that members of the Synod are required to subscribe to them in addition to, the Scriptures and Confessions. Rather, they are adopted *because* they are in harmony with Scripture and the Confessions (Bylaw 1.6.2 [b] [7]).

Question 2: Is the public rejection of "A Statement of Scriptural and Confessional Principles" (1973) a violation of Articles II and VI 1 of Synod's Constitution?

Opinion: Since "A Statement of Scriptural and Confessional Principles" (1973) was adopted by the Synod (1973 Res. 3-01) "to be Scriptural and in accord with the Lutheran Confessions," it expresses the doctrinal position of the Synod. It derives its doctrinal authority not from the vote of the convention but from the Word of God, which it sets forth. Public contradiction to "A Statement of Scriptural and Confessional Principles" is, therefore, in essence a violation of Scripture and thus Articles II and VI 1 of the Synod's Constitution.

With the adoption of "A Statement," the Synod required "that those who disagree with these formulations in part or in whole be held to present their objections formally to those who have immediate supervision of their doctrine" (1971 Res 5-24). Any dissent from the stated theological position of the Synod is to be brought to the Commission on Theology and Church Relations in accord with Bylaw 1.8.

Question 3: Does the filing of a dissent from such theological positions of the Synod prevent action from being commenced against such a member of the Synod, which may result in removal of such a member of the Synod?

Opinion: While the filing of dissent does not constitute a case for removal, the member is required to teach and practice in accord with Synod's stated confessional position during the dissent process. If the member fails to honor and uphold the stated confessional position of Synod during the dissent process,

the member becomes subject to disciplinary action due both to the violation of the doctrinal position of Synod and the offense against the other members of Synod created by such failure (Constitution Art. XIII 1). In such case it is incumbent upon the ecclesiastical supervisor of the member to exercise disciplinary action against the member who fails to teach and act within Synod's stated confessional position, whether apart from or during the dissent process (Bylaws 2.14.4; 2.15.4; 2.16.4).

The dissent process only allows a person to bring forth a contrary view to the stated position of Synod which the dissenter believes is supported by the Word of God (Bylaw 1.8.2). Those expressing dissent "are expected as part of the life together within the fellowship of the Synod to honor and uphold the resolutions of the Synod" (Bylaw 1.8.1) and "to honor and uphold publicly the [doctrinal] statement[s] as the position of the Synod..." (Bylaw 1.6.2 [b] [10]). The CTCR and ultimately the Synod in convention shall consider the dissent and shall render final judgment as to whether or not the doctrinal statement is in accord with the Word of God. While the dissent is being considered by the CTCR or the Synod in convention, "the consciences of others, as well as the collective will of the Synod, shall also be respected" by the dissenter (Bylaw 1.8.2). The individual member does not have the freedom to decide what of Synod's stated confessional position is to be honored and upheld and what is not. Once the dissent process has been concluded and if the stated confessional position of the Synod is not changed by the Synod in convention, the member is bound to teach and practice in accord with the stated confessional position of the Synod. If the member expressing dissent cannot or will not teach and practice according to the confessional position of the Synod, the only recourse left to the member is to resign from the Synod. Continuing to teach and practice in conflict with the position of Synod subjects the member to ecclesiastical discipline and finally expulsion from Synod.

38. Review of Concordia Plan Services Bylaws (14-2701)

Upon review of bylaw changes submitted by Concordia Plan Services (CPS) in several letters and emailed questions, the commission offers the following comments and recommendations, thanking CPS for its cooperation and its efforts to honor the commission's prior recommendations.

- Under Article IV, paragraph A 1, "Appointment of the President," the commission recommends inserting mention of Synod Bylaws 3.7.1.5 and 3.6.1.5 which govern the process for filling the position of chief executive.
- Under Article IV, paragraph A 2, "Election or Appointment of Other Officers," the commission recommends here (and elsewhere as applicable) avoidance of the term "election." While an election process may be used during a meeting to make appointments, the process does not make such appointments elections. Consistent use of "appointed" or "appointment" in reference to officers will be helpful and consistent with the bylaws of the Synod (e.g., Article IV D).
- Under IV B, "Vacancy," the president should not be included in this bylaw, since he is to be appointed according to Synod Bylaw 3.6.1.5.
- Under Article XI, "Conflict of Interest," see Synod Bylaw 1.5.2 for the Synod's expectations for its agencies' conflict of interest policies.

39. Colloquy Committee for Commissioned Ministry Policy Manual Review (14-2710)

With a March 11, 2014 email, the First Vice-President of the Synod, who serves as chairman of the Synod's Colloquy Committee for Commissioned Ministry, submitted the committee's newly developed policy manual for review by the commission. After review of the document, the commission thanked the committee for its cooperation, noting three matters to bring to the attention of the committee:

- Paragraph (d) of Bylaw 3.10.3.2, added by the 2013 convention of the Synod, will need to be added to the quotation of the bylaw on page 4.
- Mention of Concordia College – Selma will need to be added to the key to the chart provided on page 21.
- There is no mention in the document of a colloquy program for parish assistants, the commission assuming the reason for this to be that the parish assistant program is no longer being offered by a Concordia University System school.

40. Application of Synod Constitutional Change to District Bylaws

The 2013 convention of the Synod amended the Constitution of the Synod by changing “circuit counselor” to “circuit visitor,” a change that has been ratified by the congregations of the Synod. This change must now be reflected in all appropriate Synod and district documents, including district bylaws. Question has been raised whether such change, if it is the only change a district intends to make to its Bylaws at its 2015 district convention, requires submission for review by the Commission on Constitutional Matters prior to submission to the convention.

The commission’s response is that it will not be necessary to submit such change for prior approval (Bylaw 3.9.2.2.3 [a]) since this is only a change of vocabulary by the Synod—both words having, by definition of the Synod, the same connotation and use. However, it will be necessary for districts making this change to their Bylaws to submit such amendments nonetheless to their district conventions for adoption, then providing an electronic copy of amended documents to the commission with changes in place following their conventions for the commission’s files (Bylaw 3.9.2.2.3 [b]).

The above does not apply to districts planning additional changes to their Bylaws. Their bylaw documents, with all changes clearly identified for the commission’s review, must be submitted for prior approval well in advance of district conventions to allow adequate time for the commission’s response—which may involve requirements for and prior approval of additional changes prior to the conventions. In every case, final copies of bylaw documents approved by district conventions must be provided to the commission following the conventions for the commission’s files (Bylaw 3.9.2.2.3 [b]).

41. Revision of Bylaw Section 2.14 *Standard Operating Procedures Manual* (14-2713)

As required by Bylaw 2.14.10.3, in consultation with the Secretary of the Synod and with the concurrence of the Council of President’s Convention Actions Committee, the commission reviewed and amended its Bylaw Section 2.14 *Standard Operating Procedures Manual*, incorporating changes made to Bylaw section 2.14 by the 2013 convention (final copy to be attached to the protocol copy of these minutes).

42. Preliminary Review of Council of Presidents Policy Manual (14-2714)

The commission spent significant time and effort completing its preliminary review of the Council of Presidents Policy Manual. The following recommendations and suggestions (in addition to those noted under agenda item 23 of the commission’s February 28–March 1 meeting minutes) were noted for inclusion in the manual as the council completes its overhaul of the document, the final draft to be reviewed by the commission prior to publication.

- Chapter 16 (Intentional Interim Ministry), under the section attributed to “The Minnesota South District,” paragraph 2 f: The third sentence, “Under no circumstances will the intentional interim pastor be a candidate for the call to be permanent pastor...” is an overstatement. The right of the congregation to call the pastor of its choice cannot be bound.

- Chapter 17 (Circuit Counselor Manual), under Section “B. THE OFFICE OF CIRCUIT VISITOR IN RELATION TO THE SYNOD, DISTRICTS, CIRCUITS, CONGREGATIONS, AND OTHER PROFESSIONAL CHURCH WORKERS,” the quotation of Bylaw 1.3.4 should also include quotation of Bylaw 1.3.4.1, as it also is pertinent.
- Chapter 17, same section, in the paragraph under the quotation of Bylaw section 1.8, the statement—“The power (and really the only power) the Synod has is the persuasive power of the Gospel”—is an overstatement that does not take into consideration the Synod’s power and authority to discipline, suspend, and expel from membership.
- Chapter 17, same section, in the first paragraph under “Districts,” the reasons given for the Synod’s decision to divide into districts might also include distance and travel issues which made attendance at Synod conventions difficult.
- Chapter 17, same section, in the final paragraph under “Districts,” the final phrase “since the purpose of a district...” must be replaced with the words, “since the district is the Synod in that place.”
- Chapter 17, same section, change of wording of the second paragraph under “Privileges of Member Congregations” will be necessary, since all of the examples given do not involve balloting by member congregations of the Synod.
- Chapter 17, same section, under the subsection “Congregations,” final paragraph under “1. The Visitor Goes to the Congregations,” the fourth sentence as changed should not include the word “are,” so as to read: “Circuit visitors assist the district president;...”
- Chapter 17, same section, under the subsection “Congregations” and “2. The Visitor Gathers Representatives of the Congregation”: In the final paragraph under “Concern for the Worker’s Family,” the final word of the fourth sentence, “visitors,” should be changed to “counselors,” to read, “...or even to professional counselors.”
- Chapter 17, Section “D. GUIDELINES FOR CALLS AND VACANCIES,” Part “D. When a Pastor in the Circuit Accepts a Call,” in the paragraph titled, “2. Set date of departure from the current parish,” the word “six” should be restored since no alternative has been provided.
- Chapter 17, same section and part D, at the end of the Harrison comments under “E. The Consideration of a Call,” the Walter quote in paragraph 3 should read: “Where can my gifts be used....”
- Chapter 17, same section, subsection “II. Guidelines for the Circuit Visitor in Assisting Congregations in Dealing with Vacancies,” under subsection “C. The Vacancy Process,” the final sentence of paragraph 2 a would better read, “can be obtained from the district office,” since it is unlikely that a constitution committee would keep the file of such documents.
- Chapter 17, same section, under subsection “E. The Circuit Visitor’s Role in Assisting a Congregation Interested in an Intentional Interim,” paragraph 2 a is not true in stating that the intentional interim pastor is not eligible for the congregation’s call. A better statement on this subject would be: “Although eligible, an intentional interim pastor should not be considered for a call to the congregation where he is serving or has served as an interim pastor.”
- Chapter 17, same section and subsection, paragraph 6 a is not enforceable or practicable and should be restated in such a manner that discourages former pastors from remaining members of the congregations they served upon retirement.
- Chapter 17, same section, subsection “III. Guidelines for Assisting Congregations in Dealing with the Calling Process,” Part B “The Call Committee,” the first sentence of the note following paragraph 4 c may be over-expectant regarding the involvement of the circuit visitor, given his local knowledge, the circumstances of the call meeting, and the likelihood that the calling congregation will ask for explanation of information provided with the call list.
- Chapter 17, in the section on “THE CIRCUIT VISITOR’S ROLE IN THE MINISTRY OF CONFLICT RESOLUTION,” the quotation of Bylaw 2.14.5.1 in Part II A needs to be corrected to read: “...shall

make the determination....” In addition, Bylaw 2.14.5.3 discusses an additional reason for the use of a Referral Panel and should also be quoted here.

- Chapter 17, under “GUIDELINES FOR ASSISTING CONGREGATIONS WITH CROSS-DISTRICT AND CROSS-CIRCUIT CHURCH PLANTING,” “Assumptions and Principles” paragraph 1 b, the commission questions whether the quotation of Eph. 4:11–12 is using the best translation of this passage.
- Chapter 17, same section, paragraph 4 should include reference to 2010 Res. 1-07A, which spells out in greater detail the process addressed in this paragraph.
- Chapter 17, under subsection “CIRCUIT VISITOR’S ROLE IN ASSISTING A CONGREGATION INTERESTED IN AN INTENTIONAL INTERIM PASTOR,” the second paragraph of #5 a is not true (see first and twelfth bullets above) in stating that the intentional interim pastor is not eligible for the congregation’s call. A better statement on this subject would be: “Although eligible, an intentional interim pastor should not be considered for a call to the congregation where he is serving or has served as an interim pastor.”
- Chapter 17, first paragraph of the “Guidelines” section of the “Guidelines and Ethics for Retiring Pastors in the LCMS,” the final sentence will more appropriately read: “With this concern in mind, the Council of Presidents of The Lutheran Church—Missouri Synod suggests the following for consideration by retiring pastors.”
- Chapter 17, same “Guidelines” section, first sentence of #5: Is use of the word “imperative” too great an expectation when members find themselves in the company of former pastors? And does it not assume that all such conversation will be critical and negative? Perhaps a cautionary comment would be more appropriate.
- Chapter 21, Section 21.5 title requires change from “Board for Mission Services” to “Board for International Mission.” The same change will be required in the first paragraph of 21.5.2.
- “Announcement of Restoration” document: The commission recommends submission of this document to the CTCR for review.
- “Pastoral Growth and Support Project” document, “Policies and Procedures” section, third from last of “Policies” paragraphs: The fact that the Lay Leaders Feedback Report may be shared by the district president in the calling process is not disclosed later in the document when the confidentiality of the report is discussed. Participants should be informed up front of this possibility.
- “Pastoral Growth and Support Project” document, “Annual Procedures” paragraph for the month of “June”: The Bylaws of the Synod allow for the “expectation” of participation in the project, but there is no requirement for participation.
- “Steps in Forming a Congregation” document, step #2 under 6.1: Not all states require Articles of Incorporation, nor does the Synod require them *per se*. Such Articles do not require approval unless they also serve as the constitution of the congregation. See also steps #4 and #6 under 6.1.

43. Concordia Asia Articles and Bylaws Review (14-2715)

The commission reviewed the Concordia Asia Articles of Incorporation and Bylaws and approved the changes that have been made. The commission also called attention to the following matters:

- Article IX of the Articles of Incorporation: The language required by the 2004 convention of the Synod in Res. 4-11 will need to be added or an exception obtained from the Board of Directors of the Synod.
- The spelling of the name of original board member Glen O’Shoney should be corrected to use the upper case letter “O” rather than the number “0.”

- Bylaws Article II “Board of Directors,” Section D, “Duties of Directors,” paragraph 1: The commission notes the existence of a policy document and requests opportunity for review (Synod Bylaw 3.9.2.2.3).
- Bylaws Article III “Officers,” Section A “Number and Qualifications,” final sentence: If “managing employees” are considered to be staff of the corporation, the provision that “they may but need not be members of the Board of Directors” is called into question by Synod Bylaw 1.5.1.1, which prohibits staff from being members of the board under which they serve or members of the board of any other agency of the Synod.
- The commission noted that there is no mention of a conflict of interest policy in these articles or bylaws (Synod Bylaw 1.5.2 [a]) and must be added.

44. Review of LCMS National Housing Support Corporation Amended and Restated Bylaws (14-2716)

Upon review of the document submitted by the LCMS Housing Corporation, the commission noted two areas of concern and offered the following recommendations:

- Article III, new paragraph “N. Action by Mail Ballot”: This proposal appears to be a misapplication of section 355.266 of the Missouri Nonprofit Act and should be deleted, since the action which the Missouri statute allows cannot be applied to the LCMS National Housing Board of Directors. Section 355.381 does apply, allowing the board to act by mail or electronic ballot so long as all members participate and consent is unanimous. This latter is already covered by the following paragraph of the National Housing document, “Action by Consent.”
- Article VIII – Conflict of Interest: The commission recommends that this article be reworded to more closely comply with the mandatory provisions provided by Synod Bylaw 1.5.2.

The commission also offers several other minor suggestions for improvement to the document:

- Article III D 5: For grammatical reasons, replace the words “supporting it with your” with “by supporting the corporation with.”
- Article III J: For grammatical reasons, replace the comma between “Board Chairman” and “Chief Executive” with the word “or” and add a comma after “Chief Executive of the Corporation.”
- Article III J: For clarity, change the words “first meeting of the Member” to “first meeting of the Member’s board of directors” if that is what is intended.

45. Revision of Bylaw Section 2.17 Standard Operating Procedures Manual (14-2717)

As required by Bylaw 2.17.10.3, in consultation with the Secretary of the Synod and with the concurrence of the Council of President’s Convention Actions Committee, the commission reviewed and amended its Bylaw Section 2.17 *Standard Operating Procedures Manual*, incorporating changes made to Bylaw section 2.17 by the 2013 Synod convention (final copy to be attached to the protocol copy of these minutes).

46. District Convention Delegate Representation (14-2718)

In an email dated May 29, 2014, a district president asked for counsel from the commission regarding a three-congregation arrangement in his district, a “partnership” having been formed to “provide pastoral ministry for the three congregations” and to “pool resources (people)” to assist one with outreach activities, vacation Bible school, etc. The partnership agreement states that one congregation calls the pastor, who in turn provides pastoral care/ministry to the other two congregations, including weekly

worship services. The two congregations help to support the calling congregation in return for services provided.

The district president added that each of the congregations in the partnership believes that it is entitled to a lay delegate to the district convention, since the congregations see themselves as unique entities with their own voters assemblies, officers, etc. and since two of the congregations only “contract for pastoral services,” with the congregation that called the pastor. This congregation alone would be entitled to send a pastor delegate to the convention.

The district president requested a response to the following:

Question: Do I as district president treat this situation as a multi-congregation parish entitled to one lay voting delegate and one pastor voting delegate at our district convention, or do I treat this situation as three separate congregations with each entitled to one lay voting delegate and with the calling congregation alone sending a pastoral voting delegate to the convention?

Response: The Commission on Constitutional Matters has already provided an extensive response to questions regarding multiple-congregation delegate representation at district conventions (Opinion 11-2618, provided in its entirety below). Although the size and number of congregations involved may differ, the previous opinion’s response to the following question also addresses the above question:

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

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

A summary response that addresses all district convention delegate representation questions is provided earlier in Opinion 11-2618: “[T]he principle stands without exception: Two or more congregations being served by the same pastor constitute a parish with the right of representation by one lay delegate and one pastoral delegate.”

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

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

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

The commission notes that the second question in the foregoing paragraph calls for speculation that is beyond the responsibility of the Commission on Constitutional Matters, which is to “interpret the Synod’s Constitution, Bylaws, and

resolutions” (Bylaw 3.9.2.2). The commission will, however, provide a response to the first question in the foregoing paragraph regarding exceptions to the standard definition of a “parish.” The commission will then also respond to the questions associated with the series of “situations that might call for additional exceptions” described in the district president’s letter.

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

Response: Article V A of the Constitution of the Synod states: “At the meetings of the districts of the Synod, every congregation or parish is entitled to two votes, one of which is to be cast by the pastor and the other by the lay delegate.” This requirement has taken on additional significance as a result of 2010 Res. 8-17 “To Elect the Synod President” and new Bylaw 3.12.2.3, which assign to the voting delegates to district conventions the responsibility to elect the President of the Synod prior to the national conventions.

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

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

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

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

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

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

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

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

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

Opinion: In response to the contention that forming a dual parish “deprives one of the congregations of its constitutional right of suffrage,” the commission ruled in May, 1972 (Ag. 181) that “in view of the language of the Constitution in Article V A which speaks of ‘every congregation or parish,’” the principle that “two or more congregations being served by one pastor shall be regarded as one parish entitled to only one set of delegates” is not contrary to the Constitution and does not cause a congregation to lose its lay delegate representation at a district convention. Rather, it shares its representation with the other congregation(s) in the parish, presumably in a fair and equitable manner.

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

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

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

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

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

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

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

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

47. North Dakota District Bylaw Revisions Review (14-2719)

Upon submission of revised Bylaws by the North Dakota District in preparation for its 2015 district convention, the commission reviewed the document and offered the following recommendations or requirements:

- The commission noted that it has not received the district’s Articles of Incorporation for review and requests submission of the document for review prior to the district’s 2015 convention.

- The commission will be suggesting other or additional Synod bylaw references throughout its review. Such bylaw references, while helpful, also require regular review and updating as the Synod's *Handbook* changes from convention to convention.
- Bylaw 1.2.2: The commission recommends adding reference also to Synod Bylaw 1.3.4.1 at the end of the paragraph.
- Bylaw 1.6.1: Resolutions of the Synod and district are in a different category, addressed by district Bylaw 1.6.2 which follows. The first sentence should read: "The Constitution, Bylaws, rules, and regulations of the Synod...." At the end of this paragraph, Synod Bylaw references should be 1.7.1 and 1.7.3.
- Bylaw 1.6.2: This bylaw should include reference to Synod resolutions also. The first sentence should read: "The district expects every member congregation to respect district and Synod resolutions and to consider...." At the end of this paragraph, reference to Synod Bylaw 4.1.6 should be added to read: "[Synod Bylaws 1.7.2; 4.1.6]"
- Bylaw 1.6.3: It should be made clear that it is doctrinal resolutions that are being referred to in this bylaw, as is made clear by Synod Bylaw 1.8.2. The pertinent phrase will better read: "...uphold the doctrinal resolutions of the Synod and the district."
- Bylaw 1.7.1: The Synod Bylaw reference at the end of the paragraph should more accurately read "[Synod Bylaw 2.2.1]"
- Bylaw 1.7.2: The second-last sentence of the paragraph would better read "in good standing," and the bylaw references at the end will better read "[Synod Bylaws 2.2, 2.4.1, and 2.4.2]"
- Bylaw 1.8.5.1: The Synod bylaw references will better read "[Synod Bylaws 4.2.3; 3.1.3]"
- Bylaw 1.8.6: The Synod bylaw references at the end of the paragraph will better read "[Synod Bylaws 4.2.2 (b) and 4.2.3 (c)]"
- Bylaw 2.1.2: The Synod bylaw references should read "[Synod Bylaws 4.3.1 and 4.3.2]"
- Bylaw 2.1.7: The Synod bylaw references would better read "[Synod Bylaw 1.5.2, especially 1.5.2 (c)]"
- Bylaw 2.2.1: The Synod bylaw reference should also include reference to Constitution Art. XII 7-9.
- Bylaw 2.3.2: This paragraph will require change in light of CCM Opinions 13-2689 and 13-2692. No longer residing in the region where elected results in no longer being able to serve. The first sentence of the paragraph should therefore be deleted and the second sentence should be changed to read: "If a vacancy should occur in any vice-presidency by succession to the presidential office for the balance of an unexpired term, resignation, moving outside the region, or otherwise, the vacancy shall be filled...."
- Bylaw 2.6.1 d: Because congregational visitation is the responsibility of the district president (although he may call on the circuit visitor for assistance), and because circuit visitors may call on circuit congregations for purposes outside the formal visitation program, this paragraph would better reflect the more general kind of visiting that circuit counselors do by reading: "d. Conduct visits in a spirit of...."
- Bylaw 2.7.4 b: It should be made clear that provision of policies for the president to carry out his role and responsibilities should not include his duties as ecclesiastical supervisor, in which case the district president is accountable to the President of the Synod.
- Bylaw 2.8.2.15: Unless stated otherwise, *ex officio* membership includes voting privilege. If this is not intended, it should be made clear that this is "non-voting ex officio membership."
- Bylaw 2.9.3: Synod Bylaw 4.2.1 (a) stipulates that the Synod's bylaws governing conventions (and therefore elections) pertain also to districts, and Synod Bylaws 3.12.3.6 (a) and 3.12.4.1 require that there be at least two candidates and one alternate for each position to be filled by election. The first sentence of this district bylaw will therefore require change to read: "After names have been solicited, the Committee on Nominations shall select at least two candidates and

at least one alternate for each office, except for the offices of president, vice-presidents, and circuit visitors, and ask their consent to serve....”

- Bylaw 2.9.4 c: The phrase “of the district” should probably read “of the congregation.”
- Bylaw 2.9.4 d: According to the Synod’s Bylaws (e.g., 3.12.3.6), the Committee on Nominations has nothing to do with the election of the president. This is the responsibility of the secretary of the district, as it is of the Secretary of the Synod on the national level.
- Bylaw 2.9.6: The third sentence of this paragraph is unclear and unnecessary and should be deleted.
- Bylaw 2.9.7.1 a: According to Synod Bylaw 3.12.2.7 (a), congregations may only nominate candidates for regional vice-presidents from their own region (as properly noted in district bylaw 2.9.7.2). The bylaw would better read: “Each voting congregation shall be entitled to nominate an ordained minister from its region....”
- Bylaw 2.9.7.1 c: The first sentence is unclear as to how regional nominations are to be tabulated. The Synod bylaw (3.12.2.7) gives this responsibility to the Secretary on the national Synod level.
- Bylaw 2.9.7.2: As in Synod Bylaw 3.12.2.7 (d), nominations from the floor are not accepted for regional offices and positions. The final sentence should read: “No opportunity shall be provided for additional nominations from the floor of the convention.”
- Bylaws 2.9.8 and 2.9.9: Two occurrences where “counselor” has not been changed to “visitor.”
- Bylaw 3.1.1: This bylaw will need to be reworded to mirror accurately the content of the cited Synod Bylaws 2.5.2 and 2.5.3, which are more lengthy and distinguish between requirements for ordained and commissioned ministers.
- Section “4. Dispute Resolution”: This section must also include a reference to the Synod’s Bylaw section 1.10 governing dispute resolution. Since that also includes the content of the accompanying *Standard Operating Procedures Manual*, the district may want to consider omitting this section, instead calling attention to the Synod’s process.
- Bylaw 4.2: The reference in the final sentence should be to “Synod Bylaw 1.8.”
- Bylaw 6.3.1: A district secretary must be from the “clergy roster of the Synod” (Synod Bylaw 4.3.1). To require the district secretary to be a parish pastor is too limiting in light of the Synod’s bylaw.
- Bylaw 6.3.2 b: It should be clarified that the district committee supplies interpretations of the district’s bylaws only. The Synod’s Commission on Constitutional Matters interprets the Synod’s Bylaws.
- Bylaw 6.3.2 c: Suggestions for changes to the district’s bylaws before each convention are indeed to be submitted to the Synod’s Commission on Constitutional Matters, but this is to be done “for review and approval in advance” (Synod Bylaw 3.9.2.2.3 [a]).
- Bylaw 8.1.1 d: The first sentence should have “District” replaced by “Synod’s” to read in accord with Synod Bylaw 3.9.2.2.3 (a): “Submitted to the Synod’s Commission on Constitutional Matters....”

49. Elections of Concordia University System Presidents (14-2720)

By letter dated June 3, 2014, the President of the Synod posed a number of questions to the Commission on Constitutional Matters.

Question 1: Is it permissible according to the Bylaws of the Synod for the board of regents of one of the Synod’s colleges or universities to choose not to elect a president, but instead to create another office (e.g., “CEO” or “leader”) that effectively carries out the functions of the office of president, thereby circumventing the appointed process for selecting the “spiritual, academic, and administrative head of the institution” (Bylaw 3.10.5.5)?

Opinion: There is no provision within the Synod's Bylaws which would authorize either the board of regents or the Concordia University System to create a position to replace or serve as substitute for the office of president as this position is set forth in Synod Bylaws 3.10.5.5 through 3.10.5.5.2.

Question 2: If the above question is answered in the negative, what courses of action are available for that board of regents to correct this situation?

Opinion: There is only one course of action. A board of regents, operating under the provisions of Bylaws 3.10.5ff., is structurally bound by these bylaws and their requirements. Bylaw 3.10.5.5 requires the existence of a president of such an institution and clearly identifies this individual as the executive officer of the board of regents for the institution and identifies the specific duties and responsibilities of the president.

Under the provisions of Synod Bylaw 3.10.5.5.2, a specific process is set forth for the selection of a college/university president. It begins with the board of regents immediately informing the campus constituencies, the Board of Directors of the Concordia University System, the President of the Synod, an official periodical of the Synod, and other parties as appropriate of the vacancy or impending vacancy. It concludes with the board of regents receiving a short list of candidates which, if it contains two or more names, serves as the slate of approved nominees. At this point the board of regents, using this approved slate, "shall elect the president of the college or university." The board of regents is expected to go through this process in good faith and to follow it to its natural conclusion in a timely fashion. Should the president-elect decline to accept the position, the board of regents is responsible for resuming the effort to fill the vacancy.

Question 3: In light of Bylaw 3.6.1.5 (b) (1)–(2), describing the length of service for interim chief executives of synodwide corporate entities, would a similar time expectation be reasonable for the board of regents to move forward and elect a permanent president according to the appointed process outlined in the Bylaws?

Opinion: Synod Bylaw 3.6.1.5 (b) (1)–(2) and the timeframes stated therein are not applicable here. This provision is unrelated to the process set forth for filling the vacancy in a college or university president position.

The process in place for the filling in a college or university president position must be followed in good faith and in a timely fashion. Although the bylaws governing this process for filling the vacancy contain no specific timeframes by which each action must be accomplished, the precision by which they set forth the process and the detail indicated therein anticipate that those involved with the same and responsible for the welfare of the institution in question will act with deliberate speed and with a design to accomplish the result in an efficient and timely manner (see, generally, Bylaw 3.10.5.4 [a], [g]).

In the event that the board of regents does not fill the vacancy, such inaction by the board (either by individual members or the board as a whole) may be sufficient to establish an incapacity to act, a breach of fiduciary responsibility to the Synod or to the institution (or to both), or a neglect or refusal to perform their duties as regents. This may be considered a basis for removal of some or all of the board of regents under the provisions of Bylaws 1.5.7ff. Vacancies created thereby would then be filled under the provisions of Bylaw 3.10.5.3, with the new board of regents having the responsibility to fill the vacancy in the office of president.

50. Business Carried Over to Next Meeting

With available meeting time having expired, the commission agreed to carry over the following items on the agenda to its next meeting:

- Review of CCM Governing Policy (14-2707)
- Review of South Dakota District Articles of Incorporation (14-2709)
- Review of Minnesota North Bylaw Changes (14-2712)
- Review of Response to Review of North Wisconsin District Bylaws (14-2705A)

The following matters await further consideration by the commission and will appear on future meeting agendas after additional materials have been received:

- Concordia Historical Institute Documents Review (08-2523)
- Southern District CEF Operations Manual Review (11-2605)
- Indiana District Articles of Incorporation Review (11-2619)
- Mid-South District Articles of Incorporation Review (11-2624)
- New England District Articles of Incorporation Review (12-2633)
- Pacific-Southwest District Articles of Incorporation Review (12-2637)
- Texas District Articles of Incorporation Review (12-2640)
- All Remaining Districts Articles of Incorporation Review
- Central Illinois District Bylaw Revisions Review (13-2692)
- Final Review of Council of Presidents Policy Manual (13-2699A)
- Board for National Mission Policy Manual Review (13-2687A)
- Board for International Mission Policy Manual Review (13-2697)
- Not-for Profit Corporation Law and Annual Meetings (14-2702)

51. Future Meetings

The commission has two regular meetings scheduled for the remainder of calendar year 2014:

- September 26 – 27 (St. Louis)
- November 20 – 21 (Garden Grove, CA—coinciding with the Council of Presidents meeting [2013 Res. 6-16A])

52. Adjournment

The meeting was closed with words of benediction by Chairman George Gude.

Raymond L. Hartwig, Secretary