

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS St. Louis Crowne Plaza Airport Hotel April 13–14, 2012

106. Call to Order and Opening Devotion

Chairman Wilbert Sohns called the meeting to order with Philip Esala, George Gude, and Raymond Hartwig also present. Daniel Lorenz was absent due to schedule conflict. Neely Owen was also unable to attend but participated in a portion of the meeting via telephone.

Chairman Sohns, who served as the devotional leader for the meeting, opened the Friday and Saturday sessions with meditations based on two of the “all” words of Matthew 28:18–20.

107. Montana District Articles of Incorporation and Bylaws Review (11-2593 [A])

The commission reviewed the latest submission of the Montana District Bylaws and expressed its appreciation for the district’s cooperation in providing a copy of its Articles of Incorporation and for incorporating many of the earlier bylaw changes advocated by the commission.

Upon final review, the commission noted the following:

- In Bylaws 1.3.2 (paragraphs a, i, j, and m) and 1.3.3 (paragraph b), continued use of the word “pastor(s)” instead of “ordained minister(s)” in these paragraphs leaves question as to the intended meaning. According to Synod usage, the word “pastor” refers specifically to a parish pastor, and “ordained minister” is used in general references. In paragraphs a and i referenced above, it remains unclear if parish pastors are intended. In paragraphs j, m, and b, “ordained minister” is the correct term to use.
- Although transferred to the district’s Standard Operating Procedures Manual, the Bylaws of the Montana District Foundation Fund still require review by the Commission on Constitutional Matters. The commission requests receipt of a copy of these Bylaws for its review, as the commission is required to review agency policy manuals also.

Upon review of the Articles of Incorporation, the commission noted the following, recognizing that it may be too late for amendment actions by the 2012 district convention.

- Article “Fourth” will need to be updated to provide a current registered agent.
- Article “Fifth” does not appear to be correct, as the district does have members, *i.e.*, the voting congregations of the district.
- Article “Sixth” begs attention, as it tells very little regarding the purpose of the district (see Article II of the Synod’s Articles of Incorporation for a helpful description). Its paragraph (f) also should include mention of the required approval of the Synod’s Commission on Constitutional Matters for any amendments. And its paragraph (g) lacks any mention of the corporation being a religious organization.
- The second-last paragraph of the Articles is incorrect in that it fails to recognize or mention that upon the dissolution of the district, its assets are to return to the Synod.

Upon action by the district convention, the commission requests that a clean copy of the amended Articles and Bylaws be provided to the Office of the Secretary of the Synod (Bylaw 3.3.3.2 [f]).

Note: During its recent review of district and other agency articles of incorporation, the commission has noted wide variance in content in the documents and intends to provide, in due time, a template to assist agencies in determining the content of their Articles of Incorporation—documents by which districts and other agencies inform the outside world of the purpose and basic structure and operations of their organizations.

108. Southern District Articles of Incorporation and Bylaws Review (11-2595 [A])

Upon final review of the Articles of Incorporation and Bylaws of the Southern District, the commission granted its approval and expressed its appreciation for the district's efforts and cooperation. Upon action by the district convention, the commission requests that a clean copy of the amended Articles and Bylaws be provided to the Office of the Secretary of the Synod (Bylaw 3.3.3.2 [f]).

109. Rocky Mountain District Articles of Incorporation and Bylaws Review (11-2609 [A])

Upon final review of the Bylaws of the Rocky Mountain District, the commission granted its approval and expressed its appreciation for the district's efforts and cooperation. The commission reminds the district that it has yet to receive the district's Articles of Incorporation for review. Upon action by the district convention, the commission requests that a clean copy of the amended Articles and Bylaws be provided to the Office of the Secretary of the Synod (Bylaw 3.3.3.2 [f]).

110. Minnesota South District Articles of Incorporation and Bylaws Review (11-2615 [A])

Upon final review of the Articles of Incorporation and Bylaws of the Minnesota South District, the commission expressed its appreciation for the district's efforts and cooperation and granted its approval pending the following additional changes:

- In the Articles of Incorporation, the title which currently reads “Article II, Section 1. d)” should read “Article II, Section 3. d).”
- Under Bylaw 4.2.13.3, paragraph b), the CCM encourages using the terminology “multiple-congregation parish” when referring to two or more congregations served by the same pastor(s).
- Under Bylaw 4.2.15.2, paragraph a), “clergy roster of the district” will need to be replaced with “clergy roster of the Synod” as in Synod Bylaw 4.3.1.
- Regarding Bylaw 4.2.15.3, the paragraph will better read: “After the vice-presidents have been selected from each region, a ballot shall be cast by the district convention to rank the vice-presidents, which action shall also constitute election.”
- Regarding Bylaw 4.5.16, the commission noted that its earlier recommendation that reference be made in this Bylaw to Synod Bylaw 1.5.7 was apparently overlooked.
- Regarding Bylaw 4.11.3, the title should be changed to reflect the content of the paragraph, to read: “Full-time Positions of the District.”

Upon final action by the district convention, the commission requests that a clean copy of the amended Articles and Bylaws be provided to the Office of the Secretary of the Synod (Bylaw 3.3.3.2 [f]).

111. Minnesota North District Articles of Incorporation and Bylaws Review (11-2625 [A])

Upon review of the Articles of Incorporation and Bylaws of the Minnesota North District, the commission granted its approval to the documents and expressed its appreciation for the excellent cooperation it received from district personnel working on the documents. Upon action by the district convention, the commission requests that a clean copy of the amended Articles and Bylaws be provided to the Office of the Secretary of the Synod (Bylaw 3.3.3.2 [f]).

112. Northwest District Articles of Incorporation and Bylaws Review (11-2626 [A])

The commission provided a response to two issues surfaced by the district in a letter dated April 5, 2012: (1) the commission's recommendation that the word "primarily" be used when discussing the relationship of the Synod's Bylaws to the district, and (2) the recommended inclusion of the phrase "and Synod's resolutions" in reference to agreement with the Constitution and Bylaws of the Synod. The commission responded to these concerns as follows:

- (1) Synod Bylaw 4.1.1.2 expressly uses the word "primarily" when discussing Bylaws of the Synod as being "primarily the bylaws of the district." The district is again advised to make this change to accurately reflect the Synod's bylaw in its own bylaw on this subject.
- (2) While it is true that districts, creations of the Synod, must regard resolutions of the Synod as binding, this does not take away the opportunity for a district to register a collective concern to the Synod.

The commission looks forward to further response from the district prior to its May 11–13 meeting, this in regard to these and the commission's other recommendations.

113. Florida-Georgia District Articles of Incorporation and Bylaws Review (11-2628 [A])

Upon final review of the Articles of Incorporation and Bylaws of the Florida-Georgia District, the commission granted its approval to the documents and expressed its appreciation for the excellent cooperation it received from the district in working through the documents. Upon action by the district convention, the commission herewith requests that a clean copy of the amended Articles and Bylaws be provided to the Office of the Secretary of the Synod (Bylaw 3.3.3.2 [f]).

114. New Jersey District Articles of Incorporation, Bylaws, and Proposed District Convention Resolutions Review (12-2629[A])

Upon final review of the Articles of Incorporation and Bylaws of the New Jersey District, the commission granted its approval to the documents and expressed its appreciation for the excellent cooperation that it received from the district in working through the documents. Upon action by the district convention, the commission requests that a clean copy of the amended Articles and Bylaws be provided to the Office of the Secretary of the Synod (Bylaw 3.3.3.2 [f]).

Upon review of the overtures to amend district bylaws that are being submitted to the district convention, the commission gives its approval to all but recommends that the resolution to amend district Bylaw 9.01, specifically proposed new paragraph b, reference Synod Bylaw 4.1.1.3 (a) and use the Synod's terminology in the first line, also changing "nominee" to "nominee(s)" in the second line.

115. Ohio District Bylaws (“Code of Regulations”) Review (12-2630 [A])

Upon final review of the bylaws (Code of Regulations) of the Ohio District, the commission expressed its appreciation for the district’s cooperation in applying its recommendations to the governing documents, offering the following final comments:

- Under Article IV, the commission suggests that paragraph B will more accurately read: “All organized congregations that have joined the Ohio District hold voting membership. At all conventions of the Ohio District every congregation or multiple-congregation parish is entitled to two votes, one of which is to be cast by the pastor and the other by the lay delegate. ‘Parish’ here means one or more congregations served by the same pastor(s). (Synod *Handbook*, Article V A).”
- Under Article V, the change made to paragraph B is good, but the first line will better read: “The district expects every member congregation of the district to respect the Synod’s and the district’s resolutions....” and the second sentence will better read: “The district, like the Synod, being an advisory body, recognizes the right of a congregation....” The commission also calls attention to the typographical error in the final sentence: “no” is clearly intended to read “not.”
- Under Article VII, the introductory statement of paragraph E, given the content that follows in the sub-paragraphs, should read: “All other officers, boards, committees, and individuals shall be....”
- Under Article XIII, the third paragraph will better read: “Electoral circuits (which are one or two visitation circuits) shall meet prior to conventions of the Synod to elect circuit delegates to the national convention. Each congregation may be represented by its pastor and one lay member designated by the congregation(s).”
- Under Article XV, the reference to “the Constitution” should be deleted from the second paragraph, since the constitution of the district is the Constitution of the Synod, which cannot be amended by a district.

Upon action by the district convention, the commission requests that a clean copy of the amended Articles and Bylaws be provided to the Office of the Secretary of the Synod (Bylaw 3.3.3.2 [f]).

116. Concordia University System Discussion (12-2635)

A major portion of the meeting was devoted to an executive session discussion of Articles of Incorporation and Bylaws issues from within the Concordia University System.

117. Transfer of Congregations Between Districts (12-2636)

With a March 26, 2012 emailed memo, the Secretary of the Synod requested an opinion from the commission in response to questions surfaced by the request of a new congregation of an LCMS district to have its membership transferred to the neighboring district. The congregation is situated on the border of its current district but is the product of a mission effort that also involved the neighboring district.

Question: Does Synod Bylaw 4.1.1.3 pertain in this situation, since the transfer would in effect change the boundaries of the districts, or does Bylaw 4.1.1.4 pertain, since this is intended to be no more than a transfer of congregations between districts at the request of a congregation?

Opinion: Since the transfer to another district “is intended to be no more than a transfer of congregations between districts at the request of a congregation,” only Synod Bylaw 4.1.1.4 pertains.

According to Res. 7-10 of the 1995 Synod convention,

[*Resolved*,] That in order to provide direction for transfer of congregations, the following bylaw provision be added:

- 4.03 d Transfer of congregations between districts is completed upon approval of the respective district boards of directors at the request of the congregation [current Bylaw 4.1.1.4]. Transfer of congregations between partner churches requires the additional approval of the governing boards of the church bodies [current Bylaw 4.1.1.5].

And be it further

Resolved, That such actions be reported by the district president of the transferring district in the official periodicals of The Lutheran Church—Missouri Synod [1995 *Convention Proceedings*, p. 153].

Synod Bylaw 4.1.1.3¹ is the provision “for the formation, division, realignment, merger, or dissolution of a district or districts ... initiated by a national convention of the Synod or the Board of Directors of the Synod” [emphasis added]. The 1995 convention resolution made it clear that new Bylaw 4.03 d [2010 Bylaw 4.1.1.4] was an additional provision allowing a congregation to initiate a request for a transfer to another district and therefore was not in conflict with Bylaw 4.03 a,b,c [2010 Bylaw 4.1.1.3]. The Bylaw 4.1.1.4 provision for transfer of congregations between districts applies even though it has the effect of changing the boundaries of the districts.

118. Confessional Standard—Treatise on the Power and Primacy of the Pope (12-2638)

In an April 10, 2012 emailed letter, a district secretary asked for an opinion from the commission regarding the requirement by his district’s Constitutional Review Committee that the Treatise on the Power and Primacy of the Pope be specifically listed with the other symbolical books in the confessional paragraphs of congregations’ constitutions.

Opinion: The commission is aware of differing opinions regarding the specific listing of the Treatise on the Power and Primacy of the Pope as one of the symbolical books of the Evangelical Lutheran Church. The list provided in Article II of the Synod’s Constitution, for example, has never included mention of the Treatise (reflecting the document’s association historically with the Smalcald Articles). At the same time, instances of specific listings of the Treatise as one of the confessional documents in the Book of Concord can be found in various materials published by the Synod.²

¹ 4.1.1.3 The Synod decides when and whether a district shall be formed, divided, realigned, or merged with another or other districts, or dissolved; determines the boundaries of a district; and approves the name of a district.

(a) A proposal calling for the formation, division, realignment, merger, or dissolution of a district or districts may be initiated by a national convention of the Synod or the Board of Directors of the Synod.

(b) Such proposals shall

- (1) be submitted to the President at least six months prior to a convention of the Synod;
- (2) be produced in consultation with the Department of Planning and Research;
- (3) include a substantiated description of the nonviable aspects of the current district(s) on the basis of general principles of viability adopted from time to time by conventions of the Synod, and shall specify the problems or factors which make the adoption of the proposal advisable or necessary;
- (4) provide evidence that the proposed change is the best of the options available;
- (5) provide a specific and realistic development plan for the proposed district(s), including detailed proposals for staff personnel and financial operations; and
- (6) be the object of an evaluation prepared by the Board of Directors of the Synod and submitted to the convention.

² A footnote to the document produced by the Commission on Constitutional Matters, “Guidelines for Constitutions and Bylaws of Lutheran Congregations,” states, “Historically, *The Treatise on the Power and Primacy of the Pope*, not listed in Article II, has often been considered to be included in the *Smalcald Articles*.”

Whether separately listed or not, the inclusion of the Treatise on the Power and Primacy of the Pope in the content of the Book of Concord is not questioned. Any insistence, therefore, that the treatise be listed as an expectation of membership in the Synod is excessive on the part of a district constitution committee, whose responsibility it is “to ascertain that [member congregations’ constitutions and bylaws] are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod” (Bylaws 2.2.1 [b]; 2.4.1 [b]).

119. Remaining Agenda Items/Dates for Future Meetings

The commission noted the remaining items on its agenda, the following to be taken up during its May 11–13 meeting:

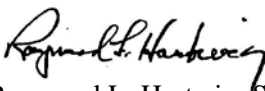
1. Bylaw section 2.16 *Standard Operating Procedures Manual* Revisions
2. College and University dispute resolution *Standard Operating Procedures Manual* Revisions
3. Seminary dispute resolution *Standard Operating Procedures Manual* Revisions
4. Women’s Service to Congregations (11-2596)
5. CUS Articles of Incorporation and Bylaws (11-2602)
6. Southern District Church Extension Fund Articles of Incorporation and Bylaws (11-2605 A, B)
7. English District Operations Manual (11-2613B)
8. Iowa District East Articles of Incorporation and Bylaws (11-2621)
9. Mid-South District Articles of Incorporation and Bylaws (11-2624)
10. Priority of a Pastor’s Call (12-2627)
11. Ohio District Governance Policies (12-2630B)
12. SELC Articles of Incorporation and Bylaws (12-2631)
13. Montana District Policies (12-2632)
14. New England District Articles of Incorporation and Bylaws (12-2633)
15. Pacific Southwest District Articles of Incorporation and Bylaws (12-2637)

Chairman Sohns also reviewed the schedule of coming meetings of the commission that have already been established:

- May 11–13, 2012
- August 10–12, 2012
- November 2–4, 2012 (possible overlap with a Commission on Handbook meeting)
- May 17–20, 2013 (2013 convention Floor Committee Weekend)
- July 20–25, 2013 (2013 convention of the Synod)

120. Adjournment

Available time having elapsed, the meeting was closed with words of benediction by Chairman Sohns.


Raymond L. Hartwig, Secretary