

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS

Crowne Plaza Airport Hotel, St. Louis

August 9–11, 2013

229. Call to Order, Opening Devotion, Review of Agenda

Chairman Wilbert Sohns called the meeting to order. Daniel Lorenz, serving as devotional leader for the meeting, provided an opening devotion. As the commission prepared to conduct its business, Chairman Sohns reviewed the agenda for the meeting.

230. “Fellowship of Peers” (13-2665)

In a letter dated January 23, 2013, a member of the Synod asked the commission two questions regarding the meaning of “fellowship of peers” in the use of the dissent procedure of the Synod. To aid the questioner and the Synod the commission provides the following background and rationale.

The purpose of a discussion between members of the Synod on points of theology and doctrine gives indication of whether the members are discussing and re-examining a doctrine or doctrines or whether they are indeed teaching or advocating as doctrinal truth a position different from that of the Synod. When any member of the Synod in any forum, including but not limited to blogs, Facebook pages, and email groups, publicly teaches or advocates that a doctrinal position of the Synod as stated in a resolution of the Synod is in error and does not use the Synod’s dissent procedures, he/she/it may no longer be honoring and upholding the Constitution, Bylaws, and resolutions of the Synod and could thereby be subject to a charge of false doctrine (see Bylaw 1.6.2 [10]).

“The Lutheran Church has always affirmed the right and responsibility of expressing dissent from teachings and practices believed to be at odds with God’s Word.” So expresses the Commission on Theology and Church Relations (CTCR) in its introduction to its 2006 report, “CTCR Response to Expressions of Dissent (2004–2006)” (p. 6).

That CTCR report continues: “The right and responsibility of expressing dissent is based on the premise that Scripture *alone* is the infallible and authoritative ‘rule and norm’ for faith and practice in the life of the church (cf. Article II of the LCMS Constitution). Sinful human beings—both as individuals and as a group—can and do err in their understanding of what the Bible teaches” (p. 6). As such, the Synod has established an agreed-upon procedure for dissent which respects both the dissenter and the Synod.

That balance of respect for both the dissenter and the Synod is expressed in that same CTCR report as follows: “The Synod may be in error on some point of doctrine or practice—but the dissenter may also be in error. The process seeks to protect not only the conscience of the dissenter but also the consciences of those who believe that the position of the Synod is *not* in error (or who are still deliberating the matter). It upholds the necessary right and responsibility of expressing dissent, while also seeking to ensure that our ‘life together within the fellowship of the Synod’ is preserved with as great a degree of peace and unity as possible” (p. 8). This CTCR report draws significantly upon 1971 Res. 2-21, which resolution is attached as Appendix A to the CTCR report and to which the Commission on Constitutional Matters commends the questioner.

This report, “CTCR Response to Expressions of Dissent (2004–2006),” has not been adopted by the Synod in convention, yet the report is to be recognized as the considered opinion of the CTCR in

attempting to carry out the bylaw function assigned to it to provide guidance to the Synod in matters of theology and church relations (see Bylaw 3.9.5.2.1).

Commission on Constitutional Matters Opinion 11-2589, “Ecclesiastical Supervision and Right to Dissent,” provides, in its opinion to Issue 1 therein, background on the dissent procedures of the Synod, to which opinion the commission refers the questioner. This opinion gives background from the Synod’s Constitution and Bylaws from the 1973 report of the Commission on Theology and Church Relations, “Guiding Principles for the Use of ‘A Statement of Scriptural and Confessional Principles’ with Special Reference to the Expression of Dissent,” and from previous opinions of the Commission on Constitutional Matters, especially Opinion 05-2444, “Proper Dissent and Dispute,” and Opinion 05-2443, “Activity of Small Groups Within the Synod,” opinions to which the commission also refers the questioner.

The balance of respect for both the dissenter and the Synod is included in the first words of Bylaw 1.8.1: “While retaining the right of brotherly dissent,...” (emphasis added). The attitude of dissent begins with the assumption that the discussion between members of the Synod in regard to an issue will be as “brothers” (sisters are of course included). The Synod expects, even desires, its members to discuss issues of the church, whether of doctrine or of practice, in a congenial manner, assuming that fellow members of the Synod will treat one another in love.

Dr. C. F. W. Walther emphasizes that love must be consciously, even tenaciously, practiced in his 1879 essay to the first Iowa District convention:

Two men in a Synod/District may disagree about something, and that disagreement can easily become a fire that inflames the entire Synod/District, for both of them then often try to gather support for their own position. We cannot prevent bitter thoughts from arising. Unfortunately, our hearts are such touchy tinder that such sparks can immediately start a fire; but we should immediately get water and put it out.

“To begin to love is not very difficult, but *abiding in love*,” says Luther. Let us note that carefully, dear brethren! That we *now* love one another requires no skill. But it “is truly an art and a virtue” to abide in this brotherly love, for Satan will do everything to destroy this love.

Finally, let us also note this extremely important axiom of Luther: “*Where there is no love, there doctrine cannot remain pure!* [Duties of an Evangelical Lutheran Synod, Essays for the Church, Vol. II, Concordia Publishing House, 1992, p. 58]

1971 Res. 5-24 couples brotherly love with the Synod’s conviction of faith that the Holy Spirit works through the power of God’s Word to lead the Synod to all truth:

13. While it must be recognized that a separation may regretfully be called for when neither the dissenter nor the Synod is persuaded to alter their position, all members of the Synod should earnestly and frequently invoke the blessing of the Holy Spirit “that as a result of joint study of the Word of God, the Holy Spirit will lead the Synod into all truth” and “that the Synod can speak with a voice that is Scriptural, Gospel oriented, truly Lutheran, and that will continue to ‘walk together’ as a true Synod.” [1971 Res. 5-24, *Convention Proceedings*, p. 165]

Within the context of the attitude of love and the conviction that the Holy Spirit will enable brothers and sisters who discuss and even disagree with one another to be led to the truth, the Synod has established a three-part process described in Bylaw 1.8.2 for the manner in which dissent may be properly shared and openly discussed:

Dissent from doctrinal resolutions and statements is to be expressed first within the fellowship of peers and then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or recision [emphasis added].

The question before the commission discusses the first part of this process.

Question 1: “Given the new developments in electronic media, which allow people to share their ideas publicly on the internet, what is the meaning of ‘fellowship of peers’ in Bylaw 1.8.2? With everything that goes on in Synod, with Blogs, Facebook pages, email groups etc. proliferating within Synod what constitutes ‘Fellowship of Peers?’ Is it confined to specific groups? Is it limited to Pastor’s conferences, Districts and Synod in Convention, Official LCMS gatherings, RSO gatherings, etc.?”

Opinion: Key to a group being considered a “fellowship of peers” in the context of dissent is the competency of those making up the group to evaluate critically the position of the one expressing dissent, and to identify areas of strength or weakness in that position. Such a fellowship of peers will assist the one expressing dissent to sharpen his/her/its thinking and to aid him/her/it in objectively evaluating the issue(s) involved. In the Synod, a member’s ecclesiastical supervisor can be helpful in identifying the makeup of such a group. A member expressing dissent should consult with his/her/its ecclesiastical supervisor to identify a trustworthy fellowship of peers with adequate understanding and competency to evaluate and critique the issue in dissent.

Bylaw 1.8.2 refers not only to peers, but to a fellowship of peers. A fellowship of peers recognizes the common bond held by those who hold membership in the Synod. This “brotherly” (and “sisterly”) bond is emphasized in the Constitution and Bylaws of the Synod, valuing the familial bond shared by those who voluntarily join together “to support one another and to work together in carrying out their commonly adopted objectives” (see Bylaw 1.1.1).

Examples of a “fellowship of peers” are included in the 1973 report of the CTCR, “Guiding Principles for the Use of ‘A Statement of Scriptural and Confessional Principles’ with Special Reference to the Expression of Dissent.” A peer group of pastors may be their pastors conferences, of teachers may be their teachers conferences, of professors may be their colleagues, and of staff members may be their boards and other staff persons. In other words, each is to talk with those individuals who are competent to evaluate critically the position of the one expressing dissent and identify the areas of strength or weakness in that position.

While this 1973 report of the CTCR, “Guiding Principles for the Use of ‘A Statement of Scriptural and Confessional Principles’ with Special Reference to the Expression of Dissent,” has not been adopted in a convention resolution of the Synod, it gives valuable background and insight into what the Synod understood to be the meaning of “fellowship of peers” in Bylaw 1.8.2.

Peer groups in the Synod are not limited to those listed above. For example, conferences of circuit counselors have been gathered to discuss issues of mutual interest and concern, recognizing the value of their sharing “as peers.” North American Mission Executives (NAME) is another example of a group of peers, as are others with similar responsibilities such as in stewardship, development, youth, education, and more.

The questioner asks whether anything has changed in regard to “fellowship of peers” because of the relative ease through which discussion may occur through the World Wide Web, Facebook, blogs, and Internet group discussion. Certainly these electronic means facilitate communication between people, both within and without what the Synod has understood as the “fellowship of peers.” Where in years past

geographical concerns may have limited peers to those in physical proximity to each other to have meaningful dialogue and productive discussion of issues of concern, modern communication enables meaningful and even nuanced discussion between peers to take place easily, almost instantaneously, across the globe with little or no expense. And yet communication using the World Wide Web, social media, Internet discussion groups, and any other means of communication does not lessen the responsibility of members of the Synod to honor and uphold the Constitution, Bylaws, and resolutions of the Synod.

The means (proximity, electronic venue, etc.) are not the issue, but rather how the means are used. Electronic communication has not changed the Synod's understanding of a fellowship of peers, but electronic communication provides additional means to discuss issues. The most effective means of communication is that which assists in discussing the issue. Without identifying in advance a fellowship of peers and limiting and controlling these electronic communications within that fellowship, members should recognize that the misuse of these means, either intentionally or inadvertently, can result in publicly teaching or advocating false doctrine.

Members of the Synod can and will use the World Wide Web, social media, and Internet discussion groups to discuss issues of theology and doctrine. The Synod encourages such discussion, as was stated in the 1973 report of the CTCR, "Guiding Principles for the Use of 'A Statement of Scriptural and Confessional Principles' with Special Reference to the Expression of Dissent," in the sections noted below:

9. From the fact that the Synod has established the aforementioned procedures for expressing and dealing with dissent, it is clear that the Synod does not intend to impede the fraternal discussion of doctrinal issues, and that the Synod recognizes that such discussion may even lead to the revision or correction of its official doctrinal statements. But it is equally clear that the Synod, in the interest of doing things decently and in order, has established the aforementioned procedures for expressing and dealing with dissent so that the church is not disturbed by its members engaging in loveless public criticism or disparagement of its official position.
10. In evaluating and dealing with dissent or disagreement which has been expressed in accordance with the aforementioned procedures, all supervisory officials and boards, as well as the Commission on Theology and Church Relations and any peer groups that may be involved, should always endeavor to distinguish carefully between formal and substantive dissent, and to deal with the latter in terms of the Synod's confessional base, namely Holy Scripture and the Lutheran Confessions (cf. Constitution, Article II).
- ...
12. It must be recognized that the process of expressing and dealing with dissent may reveal that the dissenter actually disagrees with the confessional position of the Synod, and not merely with a formation in a synodical statement of belief. It is imperative that all members of the Synod be dealt with fraternally, evangelically, pastorally, and in keeping with the provisions of the Constitution and Bylaws of the Synod for the exercise of doctrinal discipline.
13. While it must be recognized that a separation may regretfully be called for when neither the dissenter nor the Synod is persuaded to alter their position, all members of the Synod should earnestly and frequently invoke the blessing of the Holy Spirit "that as a result of joint study of the Word of God, the Holy Spirit will lead the Synod into all truth" and "that the Synod can speak with a voice that is Scriptural, Gospel oriented, truly Lutheran, and that will continue to 'walk together' as a true Synod" (1971 Res. 5-24, *Convention Proceedings*, p. 165).

How members discuss theology and doctrine in any forum for communication (including the World Wide Web, social media, and Internet discussion groups) and at the same time honor and uphold the Constitution, Bylaws, and resolutions of the Synod in regard to dissent is important. How a member is to express brotherly dissent as opposed to teaching or advocating false doctrine is discussed in numerous opinions of this commission, including 00-2203, "Questions re Brotherly Dissent and False Doctrine,"

and 05-2444, “Proper Dissent and Dispute by Members of the Synod,” to which opinions the commission also refers the questioner.

While focusing on whether or not a pastor who is in the process of the Synod’s brotherly dissent procedures can discuss and question his issues with his congregation, Opinion 05-2451, “Procedure for Dissent,” indicates:

Therefore, a pastor in the process of doctrinal dissent does not violate his obligation to “honor and uphold the resolutions of the Synod” (Bylaw 1.8.1) by discussing a doctrinal issue with members of his congregation in preparation of an overture to be submitted to a convention. While a dissenter is not “free to teach the dissenting view...” (see Opinion Ag. 2048, October 23, 1996), he is free to “have frank and open discussions and to always examine and review all positions and resolutions of the Synod” (see Opinion 05-2444), especially with members of his congregation. There is a distinction between discussion of doctrinal issues and the teaching of doctrine contrary to the position of the Synod. While there is freedom to discuss doctrinal issues, “[a] member dissenting...must follow the doctrine of the Synod and its doctrinal resolutions pending the outcome of the process.” [emphasis added]

The Synod emphasizes seeking the truth even in the processes it provides for dissent. In 03-2328, “Additional Confessional Statements,” the commission opined:

As a part of life together in the Synod, members have the responsibility to continually examine and reexamine their confession (symbols, doctrinal statements, and resolutions) to determine if they are faithful to Holy Scriptures. Members have a never-ending task of testing everything that the Synod believes, teaches, and practices to see if they are in accordance with the Word of God. If there are issues that need to be readdressed or issues that are considered by the members of the Synod that have not yet been addressed, any action is to be governed by the procedures set forth in the Bylaws....

That opinion also refers to an October 16, 1969 opinion of the commission, “An Opinion Regarding Dissenting Groups and Activities Within the Synod,” illustrating discussion between a fellowship of peers:

Christians as well as non-Christians expect differences of opinion and judgment to arise when people walk together. The Synod has provided for forums in which such differences can be discussed and evaluated beyond the confines of the local congregation. The pastors and teachers conferences; the circuit meetings; the synodical and District board, commission, and committee meetings; the doctrinal supervision and appeals procedures; and above all the conventions of the Districts and of the Synod provide the proper channels through which the issues of opinion and judgment are to be discussed and decided. In the absence of a clear word of God issues must be decided by the majority principle, applied in Christian love and with Christian restraint (Article VIII, C). When the majority will has been determined, it must be respected. Otherwise life together (synod) becomes all but impossible. Discussion may indeed continue; but it needs to be carried on with full respect for the majority will and within the forums established by the Synod for the preservation of the synodical unity.

Question 2: “Furthermore, given that many laity have advanced university degrees in theology and other academic disciplines (something that was not the case within the LCMS when it was founded in the nineteenth century), are they included within a pastor’s or professor’s ‘fellowship of peers’?”

Opinion: Advanced degrees in theology and other academic disciplines by the Synod’s laity, while perhaps more prevalent today than previously in LCMS history, have always been a part of Lutheran church history and our Synod. Martin Luther, a member of the clergy, had his respected friend and member of the laity, Philipp Melanchthon. C.F.W. Walther, a member of the clergy, had his respected member of the laity, Carl Eduard Vehse. Luther discussed points of theology with Melanchthon, as did Walther with Vehse.

Nothing in the Constitution, Bylaws, and resolutions of the Synod has changed the Synod's understanding of "fellowship of peers" because of the advanced education of either clergy or laity. As pointed out in the answer to Question 1 above, fellowship of peers in the context of the dissent procedures of the Synod consists of those with adequate understanding and competency to evaluate and critique a position being advocated by the one expressing dissent. Congregations of the Synod and individual lay members of congregations have always been encouraged to study theological issues, and where appropriate, with sufficient understanding of the theological issues, have always been able to participate in discussions among fellowships of peers. Advanced education does not lessen (or heighten) the responsibility of members of the Synod to honor and uphold the Constitution, Bylaws, and resolutions of the Synod. As in the answer to Question 1, how members discuss such matters and for what purpose indicate much about whether the members are indeed honoring and uphold the Constitution, Bylaws, and resolutions of the Synod or if they are indeed teaching or advocating a doctrinal position different than that of the Synod, which could cause them to be subject to a charge of false doctrine and the discipline of their ecclesiastical supervisor(s).

231. Minnesota South District Revised Policy Manual (13-2673)

With a May 8, 2013 email, a member of the staff of the Minnesota South District submitted his district's revised policy manual for review by the commission. Upon review, the commission offered the following recommendations:

- Under 1.01, paragraph c (and also in Policy 3.41.08), mention should be made of the required review by the Synod's Commission on Constitutional Matters.
- Under 1.07, the Synod bylaw reference provided should be 1.5.2.
- Policy 2.01.01 needs to reflect that a district president is not responsible to the district board of directors for his ecclesiastical supervisory responsibilities.
- Under 2.02 (and elsewhere), it will be helpful if mention is consistently made to whether a bylaw reference is to a Synod or a district bylaw.
- Policy 3.01.05 (and elsewhere) refers to the district constitution committee with terminology ("Committee on Constitutions and Membership") different from that in the Synod's Bylaws ("Constitution Committee"). Use of terminology consistent with that of the Synod would better serve to make the connection between district policy and Synod bylaw.

The commission thanks the district for its cooperation in offering its documents for review and giving attention to the recommendations provided.

232. Status of Church and Ministry (13-2677)

In a letter dated June 13, 2013, the president of one of the Synod's seminaries submitted a question regarding the status of C.F.W. Walther's *Church and Ministry*.

Question: "What is the official status of Dr. Walther's 'Church and Ministry' in The Lutheran Church—Missouri Synod? We regard it highly and rightly so, but is it an official doctrinal statement of our church? As [this] Seminary serves the church through the formation of pastors and deaconesses, it is important that we give "Church and Ministry" the deference it properly deserves."

Opinion: At the inception of the Synod, all official business of the Synod was conducted in the German language. Following the inception of the Synod in 1847, Dr. C.F.W. Walther attempted to clear up

confusion with regard to the doctrine of church and ministry and issued (in 1851) his *Theses on Church and Ministry*. These theses were read to the 5th convention of the Synod meeting that year, over eight sessions. After discussion, they were declared to be the positions of the Synod.

The issue of the proper consideration of various doctrinal formulations of the Synod has been an ongoing question. In 1971 Res. 5-24 “To Define Status of Synodically Adopted Doctrinal Statements,” the preamble described the dilemma:

The Synod faces a serious dilemma. On the one hand it is firmly committed to the proposition that it has no desire to alter the second article of its Constitution, which measures pure doctrine by nothing more or less than the Scriptures of the Old and New Testament and the Lutheran Confessions. On the other hand the Lutheran Confessions are not an all-inclusive compendium of Biblical doctrine. They speak primarily to the articles of faith in controversy in the days of the Reformation. There are significant articles of faith which are not specifically treated in the Confessions. Scriptures are, of course, “the only rule and norm of faith and practice.” A problem arises, however, when persons differ over the teaching of Scripture in areas where the Confessions are silent on the controverted point. How then can the Synod ever speak authoritatively to these modern theological issues? How then can the Synod ever effectively cope with new errors not dealt with in the Lutheran Confessions of the 16th century? Short of formulating new confessions, can The Lutheran Church—Missouri Synod take a definite stand on such doctrinal issues? Is our church in effect reduced to the position of declaring such topics to be open questions on which each person may interpret Scripture as he independently understands it and so teach and preach? Synodical conventions from San Francisco in 1959 through Denver in 1969 have sought in vain the solution to this dilemma. We pray the Holy Spirit that the resolution herewith submitted will represent at least a step toward the solution.

The resolution’s third resolve paragraph reads, “That the Synod distinguish between resolutions concerning doctrine formulated and adopted at a convention and more formal statements of belief which are produced by officially authorized groups, and which are then presented to the congregations and clergy of the synod for study and discussion, and which are subsequently adopted by a synodical convention.”

1973 Res. 2-12 provides a history and the reasons for the Synod to consider and adopt formulations on doctrinal matters. The preamble to that resolution traces the need of the Synod to explain its understanding of the Augsburg Confession as the need arose:

At Augsburg in the year 1530 A. D. the first generation of Lutherans promised, “If anyone should consider that [our Confession] is lacking in some respect, we are ready to present further information on the basis of the Holy Scripture.” (Tappert, *Book of Concord*, p. 96:7)

The preamble continued:

Anticipating the possibility that future circumstances might necessitate even other “doctrinal statements,” the authors of the Formula of Concord insisted “we do not intend, either in this or subsequent doctrinal statements, to depart from the aforementioned [Augsburg] Confession or set up a different and new confession.” (502:5)

The preamble makes specific reference to *Church and Ministry*, describing it as a way for the Synod to “state its position on a controversial issue on the basis of the Scriptures and the Symbols, and a way for the Synod to express its acceptance of and adherence to the scriptural and confessional doctrine.”

Following a continued period of vigorous debate within the Synod regarding doctrinal issues and how members of the Synod relate to one another regarding doctrinal matters, and the role of various doctrinal formulations, 1977 Res. 3-07 established definitions for the Synod’s future use of the terms “doctrinal resolution” and “doctrinal statement,” and for the first time established a formal procedure to distinguish between doctrinal resolutions, which can be adopted by a simple majority, and doctrinal statements,

which reflect a more rigorous and considered position of the Synod. Doctrinal resolutions are to be used “for the information, counsel, and guidance” of members of the Synod.

The same resolution recognized that there are times when the Synod needs to unequivocally establish a doctrinal statement not simply for information, counsel, and guidance, but to be formally regarded as the corporate position of the Synod. A much more rigorous process was established for the adoption of doctrinal statements, which are to be “accepted and used as helpful expositions and explanations” (FC SD Rule and Norm 10). Res. 3-07 was originally incorporated into the Bylaws as Bylaw 1.02 and is currently reflected in Bylaw 1.6.2:

Doctrinal Resolutions and Statements

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

(a) Doctrinal resolutions may be adopted for the information, counsel, and guidance of the membership. They shall conform to the confessional position of the Synod as set forth in Article II of its Constitution and shall ordinarily cite the pertinent passages of the Scriptures, the Lutheran Confessions, and any previously adopted official doctrinal statements and resolutions of the Synod. Such 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.

(b) Doctrinal statements set forth in greater detail the position of the Synod especially in controverted matters. A proposed statement or a proposal for the development of such a statement shall be

(1) submitted by the Commission on Theology and Church Relations or submitted to the Commission on Theology and Church Relations by a convention of the Synod (including that of a district), a faculty of the Synod, or an official district conference of ordained and/or commissioned ministers for evaluation, refinement, development, or recommendation, as the case may be;

(2) submitted by the commission, if it acts favorably, to the colleges, universities, seminaries, congregations, and other members of the Synod for study and suggestions for no more than one year (failure by the commission to submit a proposed doctrinal statement within a year may be appealed to the Synod in convention through a proper overture);

(3) refined further by the commission on the basis of suggestions received;

(4) submitted by the commission to the Synod in convention for further consideration and possible adoption by majority vote; amendments shall require a two-thirds affirmative vote of those present and voting;

(5) resubmitted to the congregations for ratification in its final existing form;

(6) ratified and operative if a two-thirds majority of the member congregations which respond within six months registers an affirmative vote on a ballot supplied by the Secretary of the Synod for that purpose. Failure to ratify makes the statement inoperative, and this fact shall be reported by the Secretary to the members of the Synod through an announcement in an official periodical;

(7) Such adopted and ratified doctrinal statements shall be regarded as the position of the Synod and shall be “accepted and used as helpful expositions and explanations” (FC SD Rules and Norm 10). They shall be honored and upheld (“to abide by, act, and teach in accordance with” [1971 Res. 2-21]) until such time as the Synod amends or repeals them;

(8) An overture to amend such an adopted ratified doctrinal statement shall follow the same procedure as listed in (1–6) above;

(9) An overture to repeal such an adopted and ratified doctrinal statement shall require a majority vote of the Synod in convention in answer to an overture properly submitted and be subject to the procedure of congregational approval set forth in paragraph (6) above;

(10) In the interim, those who submit overtures to amend or to repeal shall, while retaining their right to dissent, continue to honor and uphold publicly the statement as the position of the Synod, notwithstanding further study and action by the Synod in convention.

Although 1977 Res. 3-07, as well as 1971 Res. 2-21 and 5-24, identified the confusion arising from the Synod's historical use of undefined terms regarding its doctrinal positions, the resolutions did not clarify the weight or importance to be given past actions of the Synod, but rather gave guidance to the future. The resolutions did not attempt to prioritize or fit into the Synod's new definitions the historical statements of the Synod generated in convention, by its official organs (*The Lutheran Witness* and *Der Lutheraner*), or by various commissions, committees, and other agencies of the Synod.

Before 1973, The Lutheran Church—Missouri Synod had switched from the use of German to the use of English, and 1973 Res. 2-12 quoted the 1938 Dau translation of Dr. Walther's book, indicating that Walther regarded the work as "an official manifesto of the Missouri Synod....In Walther's *Kirche und Amt* spoke—and still speaks—the entire God-blest Missouri Synod." In 2001 Res. 7-17A, the Synod affirmed and reaffirmed the decision of the 1851 convention recognizing the theses on church and ministry by Dr. C.F.W. Walther published in the book *The Voice of Our Church on the Question of Church and Ministry* as the official position of the LCMS. Without following the process initiated in 1977 of adopting a doctrinal statement, the resolution affirmed and reaffirmed the actions of the 1851 convention, stating in part:

WHEREAS, The book *The Voice of Our Church on the Question of Church and Ministry*, by C.F.W. Walther, was published in 1852. The LCMS in convention declared this book to be the pure doctrine (*reine Lehre*) of church and ministry; therefore be it

Resolved, That The Lutheran Church—Missouri Synod meeting in convention in the year of our Lord 2001 affirm the above referenced writings of C.F.W. Walther as the definitive statement under Holy Scripture and the Lutheran Confessions of the Synod's understanding on the subject of church and ministry; and be it further

Resolved, That the LCMS in convention reaffirm the decision of the 1852 convention in recognizing C.F.W. Walther's book, *The Voice of Our Church on the Question of Church and Ministry*, as the official position of the LCMS; and be it further

Resolved, That all pastors, professors, teachers of the church, and congregations honor and uphold the resolutions of the Synod as regards the official position of our Synod on church and ministry and teach in accordance with them....

While 2001 Res. 7-17A did not undergo the more rigorous process described in Bylaw 1.6.2 (b) for the adoption of a doctrinal statement, the deference due *Kirche und Amt* and *The Voice of Our Church on the Question of Church and Ministry* is that reflected in the historical context of the 1851 convention and as reflected in 2001 Res. 7-17 itself. It is the definitive statement under Holy Scripture and the Lutheran Confessions of the Synod's understanding on the subject of church and ministry and is regarded as the official position of the LCMS.

233. Texas District Handbook Final Review (13-2679)

The commission was provided with the Texas District Bylaws for review following actions taken by the district convention. The commission thanks the district for its cooperation in offering its documents for review and giving attention to the recommendations provided. Upon review, the commission noted that many of its previous requirements and recommendations had been incorporated into the district's documents. The commission also noted several remaining concerns to bring to the district's attention, as follows:

- Bylaw 2.005, paragraph a, has not been updated to reflect the Synod's current process for the election of circuit visitors. This will need to be attended to when the district incorporates into its documents the changes made by the 2013 LCMS convention.

- Bylaw 6.001, paragraph d, retains wording that should have been deleted when the new paragraph “e” was added to the bylaw.
- Bylaw 6.003 continues to speak of “a majority of the voting members present” when it must, in keeping with Synod Bylaw 3.12.4.2 (d), instead require “a majority of all votes cast.”

234. University President Search Committee (13-2686)

Via a July 24, 2013 email, the commission was presented with a question relative to the application of 2013 Res. 5-09 as amended and adopted on July 24 by the 2013 LCMS convention. A search committee for the selection of a college/university president for one of the Synod’s universities had been formulated under the provisions of Bylaw 3.10.5.5.2 (b) (1) prior to the adoption of Res. 5-09. Included as members of this search committee were staff and faculty members who are not “members of LCMS congregations,” as is now required by the amendment to Bylaw 3.10.5.5.2 (b) (1) by the passage of Res. 5-09.

Question: “In light of 2013 Resolution 5-09 as amended, must the Presidential Search Committee be re-constituted?”

Opinion: Contained within this question are the following more specific issues: (1) Upon amendment of a bylaw by the Synod in convention, when do such amendments become effective? (2) Having been formulated under the provisions of the Bylaw 3.10.5.5.2 (b) (1) prior to its amendment, may the search committee continue to fulfill the tasks assigned to it as it is presently constituted, or must it now replace the members who are not “members of LCMS congregations” with individuals who are such members?

An amendment to a bylaw becomes effective upon adoption unless a specific provision has been made otherwise. Nothing contained in the Bylaws of the Synod indicates the contrary, and on the occasion that the commission has had to address similar questions it has indicated the same. *See generally*, Ag. 1860 (July 6–13, 1989) concerning a vacancy to have been filled by a board of regents.

Although a governing body can certainly include a provision in amending its bylaws whereby circumstances existing before the amendment are “grandfathered” and allowed to continue under specific terms, these terms must be specifically stated. Nothing to this effect was done in the adoption of Res. 5-09 amending Bylaw 3.10.5.5.2 (b) (1), which now reads:

A search committee shall be formed that represents the board of regents, the faculty, and the staff. Faculty members and staff members on the committee shall be members of LCMS congregations. [Underlined words represent the new language by amendment.]

On two separate occasions the commission has dealt with questions under similar circumstances. In 1986 an individual had been elected by the Synod in convention to serve on the Commission on Theology and Church Relations based on his status as a “parish pastor.” This individual subsequently retired, his roster status thereby changed to “emeritus.” With his status changed, he was clearly ineligible for re-election; however, the commission was asked whether he could be allowed to serve out the remainder of his term. The commission noted that where an individual had been placed in a position by reason of his status, it had been consistently determined that such an individual is no longer eligible to continue in that position (Ag. 1872, Sept. 29–30, 1989). Similarly, in 1996 an individual had been elected to the Board of Directors of the Synod based on his status as a lay member. At that same convention the delegates approved an action which changed the individual’s status to that of a minister of religion—commissioned. Noting that the Bylaws of the Synod contained no grandfathering provision that would allow the individual to continue serving on the Board of Directors despite the fact that the same

convention which had elected him had thereafter changed his status, the commission determined that as the effective date of his change of status. The individual was no longer eligible to continue serving (Ag. 2025, Jan. 19–20, 1996).

Although in the current circumstances the membership of the search committee had been properly selected under the provisions of Bylaw 3.10.5.5.2 (b) (1) as it existed prior to the amendment of the bylaw, the required qualifications for membership on this committee were changed on July 24, 2013. No grandfathering provision was included in the resolution that amended the bylaw, and no such provision exists within the Bylaws of the Synod that would allow the members who do not meet these requirements to continue serving on the search committee.

Synod Bylaw 3.10.5.5.2 (b) (1) as amended controls the current qualifications for membership on any search committee formed under its provisions. The search committee must meet the requirements stated therein relative to each of its members being “members of LCMS congregations.” (See also Ag. 1980 referenced above and Ag. 2116 [June 23, 1998] concerning pastoral colloquy and “grandfathering”). Depending upon the makeup of the search committee as concerns its remaining members, if it satisfies the current requirements of Bylaw 3.10.5.5.2 (b) (1) absent the members who are not members of LCMS congregations, it may continue to function and perform its duties. If not, the vacancies created thereby must be filled. Even if the search committee can function absent these members, their vacancies may be filled as determined by the board of regents.

235. Board for National Mission Policy Review (13-2687)

The commission began its review of proposed Board for National Mission policies required “for the coordination of and in support of district ministries which support congregations and schools” (Bylaw 3.8.2, as amended by the 2013 convention). The commission encourages the board to continue its work on its policies, taking into consideration the following general observations:

- Repeated mention of “congregations” throughout the document as submitted indicates a need for the board to reconsider and recall the role given to it by the Synod, one of determining policies for the Office of National Mission that target “coordination of and support of district ministries.” The board will be assisted in this by bylaw changes made by the 2013 convention.
- Repeated mention of “congregations” fails to recognize that it is the role of the national mission board and office to relate to districts and their ministries, understanding that it is the role of districts to relate to and support congregations and schools. The board will want to look critically at every reference to congregations in its proposed policies.
- Care will also need to be taken to recognize that the responsibilities of the Board (and Office) for National Mission are limited to domestic interests, with general phrases such as “throughout the world” (1.3) calling into question such understanding. Care should be taken not to enter into areas of ministry already the responsibility of other agencies of the Synod, such as those of the Concordia University System (9.1).
- The board is encouraged also to be more precise by using terminology from the Bylaws of the Synod whenever possible, taking care that choice of words does not understate or overstate what the Synod requires.

The commission appreciates the work that has been done by the Board for National Mission as it endeavors to function in a manner very different from the Synod’s former program board structure and responsibilities. The commission encourages the board to review the policies it has developed in light of the general comments above, prior to resubmitting the document for further review.

236. LCMS Foundation Bylaw Amendment Review (13-2688)

In an August 10, 2013 email, the president of the LCMS Foundation requested that the commission review the changes being proposed to the Foundation's Bylaws as a result of actions taken by the 2013 LCMS convention, including a change of maximum number of terms of office of board members to reflect the Synod's approval of four successive terms in Res. 6-14; the addition of a provision for the Foundation Board of Trustees to remove its own members as approved in Res. 6-15; and modification of language related to the restriction of Board of Trustees members coming from the same district (no more than two) to make clear that the restriction applies only to board members elected by Foundation Members (as opposed to also applying those elected by the Synod in convention).

After review, the commission approved the proposed changes to the Foundation's Bylaws.

237. District Articles of Incorporation Template

During its review of Articles of Incorporation documents submitted by districts, the commission became aware of the great variety of documents in use by the districts and the absence of significant elements in some documents. The commission also recognized the need to advocate application of 2004 Res. 4-11 "To Assure Uniformity in Articles of Incorporation of All Incorporated Entities of the Synod" in all district documents.

As the commission worked on the development of a template for districts to use for their review of their Articles of Incorporation, the commission halted its review of several districts' documents already on its agenda until the template could be completed. These documents are being returned to those districts with copies of this template and its cover letter of explanation, encouraging these and all districts to review, revise, and submit to the commission their Articles of Incorporation in preparation for submitting changes to their districts' 2015 conventions.

District Articles of Incorporation Template

Introductory Comments

The Commission on Constitutional Matters is required by Bylaw 3.9.2.2.3 to "examine the articles of incorporation, bylaws, and policy manuals of every agency of the Synod to ascertain whether they are in harmony with the Constitution, Bylaws, and resolutions of the Synod." The following suggested template for district Articles of Incorporation is intended to assist districts as they review their Articles, and to make certain that all the requirements of the Synod's Constitution, Bylaws, and resolutions are included in the Articles of Incorporation of each district.

The legal requirements of states may differ with respect to the formation of non-profit corporations and the process for amending their Articles of Incorporation. As such, it is critically necessary for each district, prior to considering changes to its Articles of Incorporation, to consult with local counsel familiar with these requirements. For example, many states will require a recitation of the then-existing registered agent and the registered agent's address, and/or a statement as to whether the corporation is a public benefit corporation, and/or the name and address of each incorporator. Some states also require a recitation that the Articles as amended were approved properly according to procedures provided by the existing corporate structure of the entity involved.

While many states allow for very simplified Articles of Incorporation, the suggestions provided in the attached template are intended to assure that each district's Articles also satisfy requirements of the Synod, which in many instances go beyond the minimal requirements of states. Of particular note:

The precise wording of suggested Articles VIII a and IX a-e in the template are required by 2004 Synod Res. 4-11 to be included in the Articles of Incorporation of all agencies of the Synod. This required wording cannot be changed or omitted without specific action by a convention of the Synod or by the Synod's Board of Directors.

Template

Amended and Restated
Articles of Incorporation
of

The (insert name) District of The Lutheran Church—Missouri Synod

A

Article I Name, Duration, Registered Office, and Agent

- a. The name of this corporation shall be “The (insert name) District of The Lutheran Church--Missouri Synod.”
- b. The period of duration of the corporation is perpetual.
- c. The address of the registered office of this corporation as of (insert date) is (insert location).
- d. The registered agent of this corporation is (insert name and address).

Article II Objectives

The objectives of this corporation shall be to carry out within the (insert name) District the objectives of The Lutheran Church—Missouri Synod.

Article III Membership

The membership of this corporation is the congregations, and the ordained and commissioned ministers of religion of The Lutheran Church—Missouri Synod who have affiliated with this district.

The voting power of this corporation resides in the congregations which are members of the corporation. These congregations exercise this voting power through the accredited pastoral and lay delegates of those same congregations of the Synod that have affiliated with this district.

Article IV Meetings

This corporation shall have general meetings of its members in the years prescribed by the Constitution and Bylaws of The Lutheran Church—Missouri Synod. Special meetings may be called in such manner as may be provided by the Synod.

Article V Officers and Board of Directors

- a. The officers of this corporation shall consist of a president, vice-presidents as specified by the bylaws of this corporation, a secretary, a treasurer and such others as bylaws may identify.
- b. The board of directors of this corporation shall be of the size and composition as shall be determined in the bylaws of this corporation.
- c. The officers and members of the board of directors shall be elected at the general meetings of this corporation for such terms as shall be specified by the bylaws of this corporation and shall serve until their successors are duly elected and have qualified.

Article VI Property

This corporation shall have power to acquire by gift, grants, demise, devise, bequest, purchase, or otherwise, property of every kind and description, real, personal, or mixed; to hold and use such property and deal with, or dispose of, any or all such property by sale, exchange, or gift, when necessary or expedient to carry out the objectives of the corporation; provided that all such property shall be acquired, dealt with, or disposed of in a manner not in conflict with the laws of the State of (insert name of state where Articles are filed) or the laws of any state in which said property is located.

Article VII Constitution and Bylaws

- a. The Constitution of The Lutheran Church—Missouri Synod is also the Constitution of this corporation.
- b. The Bylaws of The Lutheran Church—Missouri Synod shall primarily be the Bylaws of this corporation. This corporation may adopt additional bylaws that are not in conflict with the Constitution, Bylaws, and resolutions of the Synod.

Article VIII Dissolution

- a. In the event this corporation is dissolved or its existence otherwise terminates or is terminated, after the payment of the debts of the corporation, all right, title, and interest in and to its property, whether tangible or intangible and whether real or personal, shall thereupon automatically vest in or be transferred to the Synod, and this corporation covenants and agrees to execute and deliver to the Synod such documents and instruments and to take such other and further actions as the Synod may deem reasonably necessary or desirable, in order to evidence and give full effect to the foregoing. This provision may not be altered or deleted without the approval of the Synod in convention or the Board of Directors of the Synod.
- b. If, however, on the date of such proposed dissolution, The Lutheran Church—Missouri Synod, a Missouri Corporation, or its successor, is no longer in existence, the assets of the corporation may distributed to any other Section 501(C)(3) organization as designated by the board of directors.

Article IX Relationship to the Synod

This corporation, as part of The Lutheran Church—Missouri Synod, acknowledges its allegiance to the Synod and to the convention of the Synod. It submits to the authority of the Synod and the convention. It accedes, recognizes, and accepts the doctrine taught and practiced in the Synod (Art. II) and also the Articles of Incorporation, Constitution, and Bylaws of the Synod, as currently in effect and as may hereafter be amended from time to time.

- a. In the event of any conflict or inconsistency between the organizational documents of this corporation and the Articles of Incorporation, Constitution, or Bylaws of the Synod, as may hereafter be amended from time to time, the Articles, Constitution, or Bylaws of the Synod shall control and govern.
- b. This provision may not be altered or deleted without the approval of the Synod in convention or the Board of Directors of the Synod.
- c. Neither The Lutheran Church—Missouri Synod nor The Lutheran Church—Missouri Synod Incorporated is responsible for the debts or other obligation of this corporation nor do they represent or endorse the fiscal solvency of this corporation.

Article X Amendments

Amendments to these Articles of Incorporation may be made at any time at a regularly called meeting of this corporation by a majority of the voting delegates present at such meeting, provided such amendments are not inconsistent with the Constitution or the laws of the United States or the State of (insert state where articles are filed) or the Constitution or Bylaws of The Lutheran Church—Missouri Synod, and with prior approval of the Commission on Constitutional Matters of the Synod.

238. 2013 Convention Resolutions Review

The commission reviewed resolutions adopted by the 2013 Synod convention, noting actions requiring bylaw changes in addition to those articulated in the resolutions. The commission will consult with the Commission on Handbook in this regard during the process of revising the 2010 *Handbook* in preparation for the publication of the 2013 *Handbook* of the Synod.

239. Other Business

Anticipating changes due to take place in its membership by its next regular meeting, the commission wrapped up a number of items on its agenda while also identifying items that will remain for the next commission.

- The commission discussed its Governing Policy Documents in light of 2013 convention actions and other considerations. Phil Esala was tasked with noting suggestions for change to certain policies and to the history section of the document, to be passed along to the new commission.
- Wilbert Sohns, who had been assigned agenda item 09-2544 “Article VI and Heterodox Congregations,” will provide his collection of resources to the succeeding commission, since this matter will remain on its agenda.
- Secretary Hartwig will send the Articles of Incorporation template (see above) to all districts with a letter encouraging districts to consult with their own legal counsel regarding the use of the template in making revisions to their district articles of incorporation documents.
- A number of items will necessarily be carried over as agenda items for the next commission:
 - Review of CHI Policy Manual (08-2523)
 - Article VI and Heterodox Congregations (09-2544)
 - Southern District Church Extension Fund Operations Manual Review (11-2605)
 - Board for National Mission Policy Review (13-2687)
 - Board for International Mission Policy Review
 - Commission on Handbook 2013 *Handbook* Consultation
 - Council of Presidents Policy Manual Review
 - LCMS CCM Web Site Review
 - CCM “Aberrations and Concerns” Document Review/Revision
 - Monitoring of Agency Governing Documents Review and Files
- The next regular meeting of the commission has been scheduled for November 8–10, 2013, depending upon the schedules of new members of the commission.

One evening of the meeting, the commission invited Pamela Weeke (and her husband) to dinner to express its appreciation for her faithful service to the commission as Executive Assistant to the Secretary of the Synod. The Secretary was also asked to write letters of appreciation to Sherri Strand (Synod legal counsel) of Thompson Coburn LLP and Lynne Marvin of the Synod’s Travel and Meeting Department for their valuable assistance to the commission during the triennium.

240. Adjournment and Closing Devotion

With all business attended to, the meeting was closed with a devotion by Daniel Lorenz.

Raymond L. Hartwig, *Secretary*