

## MINUTES

### COMMISSION ON CONSTITUTIONAL MATTERS

Hilton Airport Hotel (Friday) and International Center (Saturday), St. Louis  
September 14–15, 2018

#### **183. Call to Order and Opening Devotion**

Commission Chairman Dr. George Gude called the commission's meeting to order, with all members present except for Rev. Gerhard Bode, attending to pastoral duties in his home parish. Rev. Larry Peters offered devotions Friday afternoon and Saturday mornings on the readings for Holy Cross Day.

#### **184. Review of Concordia University Portland Articles (16-2803)**

By a November 16, 2016, e-mail, the president of Concordia University Portland (CUP) forwarded his institution's articles of incorporation (dated August 13, 2010), bylaws (dated likewise), and policies (dated December 2, 2011) for review, along with a note that the handling of complaints against faculty is "covered under LCMS bylaws." The institution is advised that this is no longer the case (see changes made to LCMS bylaws in 2013 and 2016), and that the institution needs to have such policies in place. To assist the institution, Concordia University System (CUS) and the Office of the Secretary have developed the *Model Operating Procedure Manual*, which provides substantially the same procedures once included in the LCMS Bylaws and the policies of CUS.

With regard to the articles, the commission notes that asset disposition language similar to that required by LCMS Bylaw 1.5.3.6 (b) is present in Article 8, but that the relationship language required by LCMS Bylaw 1.5.3.6 (a) is entirely absent. The university is reminded that it needs, as a result of 2016 Res. 9-02A, to adopt the required relationship language or seek a waiver from the LCMS Board of Directors in time for compliance to be reported to the 2019 LCMS convention. It is further noted that the articles should specify that prior approval of the Commission on Constitutional Matters (CCM) is required (LCMS Bylaw 3.9.2.2.3 [a]) before amendment of the articles of Synod agencies.

The commission notes the apparent restatement of the university's articles of incorporation on Aug. 13, 2010, apparently apart from the review and approval the university was required to seek from the commission, and in a form lacking the relationship language of 2004 Resolution 4-11. (The restatement apparently removed the relationship language present in the previous articles.) This restatement, as apparently performed without the required review and approval of the commission (2010 Bylaw 3.9.2.2.3 [a]), and contrary to 2004 Res. 4-11, is therefore improperly adopted, and the board of regents is advised to take immediate corrective action to bring the articles of the institution into full conformity with both elements of 2016 Res. 9-02A and Bylaw 1.5.3.6.

With regard to the bylaws, the commission notes the weakness of Article I, Section 3, in properly expressing the relation of the university and its bylaws to the Synod and its Constitution, Bylaws, and convention resolutions (LCMS Bylaw 1.5.3.6). Noted also is the need to update Article III to reflect 2016 changes to LCMS Bylaw 3.10.6.2. Generally, the bylaws should be compared to the provisions of LCMS Bylaws 1.4.5; 1.5.1–1.5.7.2; 3.6.6–3.6.6.7; 3.9.2.2.3 [a]; and 3.10.6–3.10.6.7.5.2 to identify any conflicts (such as between LCMS Bylaw 1.5.3 and CUP Bylaw Article III, Section 7) and to fill any lacunae in policy or practice. The commission's advance approval is also required for revision of agency bylaws (CUP Bylaw Article 10, Section 1).

#### **185. Review of Concordia University Irvine Articles and Bylaws (17-2808A)**

By an e-mail of September 6, 2018, the office of general counsel for Concordia University Irvine forwarded a draft of proposed articles and bylaws for the university. The commission notes that the concerns expressed in its previous Op. 17-2808 have been satisfactorily addressed, and that the proposed articles contain the relationship and asset disposition language required by Bylaw 1.5.3.6 and 2016 Res. 9-02A. The university

is thanked for its attention to these matters and asked to file a clean copy of its documents with the commission as finally adopted.

The commission notes, for the attention of the university and of the Commission on Handbook, one potential issue in relation to the language of *advisory [board] members*. Synod's bylaws specify that boards of regents, like other governing boards "of the Synod," have members "elected and appointed as otherwise prescribed in *these* Bylaws [of the Synod]" (Bylaw 3.2.2.1). While Bylaw 3.10.6.2 treats ostensibly only of *voting* members, Synod's bylaws make no provision for addition of advisory *members* to governing boards. While boards may have many *advisors*, the language of board *membership* has important consequences (e.g., Bylaw 1.5.1's requirement that board members be members of member congregations, and Bylaw 3.10.6.5's requirement that boards not commingle authority with bodies containing *non-board members*.) Likewise, the commission has identified other instances of officers and staff of agencies being regarded as *advisory members* of the boards they serve, despite the absolute prohibition of Bylaw 1.5.1.1, which does not distinguish voting from advisory membership. This commission refers this issue to the Commission on Handbook for clarification.

#### **186. Review of College, University, and Seminary Articles of Incorporation (18-2894)**

In keeping with the convention's assignment of 2016 Res. 9-02A, to review the articles of incorporation of Synod agencies for compliance with Bylaw 1.5.3.6, the commission reviewed the status of the articles of the colleges, universities, and seminaries of the Synod. At present, the commission understands the status of the various institutions' articles of incorporation as follows:

- Concordia College Bronxville: Charter on file, last amended in 1985, lacks both relationship and asset disposition language required by Bylaw 1.5.3.6 and 2016 Res. 9-02A. Bylaws have never been reviewed. The college is requested to send present bylaws for the commission's review and urged to attend to the requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A.
- Concordia University Chicago: Articles do not contain the relationship or asset disposition language required by Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 18-2893).
- Concordia University, Irvine: Proposed articles contain language required by Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 18-2894).
- Concordia University, Portland: Articles contain asset disposition but no relationship language as required by Bylaw 1.5.3.6. and 2016 Res. 9-02A (Op. 16-2803).
- Concordia University Nebraska: Articles contain unclear asset disposition but no relationship language as required by Bylaw 1.5.3.6. and 2016 Res. 9-02A (Op. 16-2800).
- Concordia University, St. Paul: Articles contain partial asset disposition but no relationship language as required by Bylaw 1.5.3.6. and 2016 Res. 9-02A (Op. 16-2804).
- Concordia University Texas: Articles and bylaws have never been reviewed. Articles on file, most recently revised in 1995, lack both relationship and asset disposition language required by Bylaw 1.5.3.6 and 2016 Res. 9-02A. The college is requested to send present bylaws for the commission's review and urged to attend to the requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A.
- Concordia University Wisconsin / Ann Arbor: Articles contain asset disposition but not relationship language required by Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 16-2808).
- Concordia Seminary, St. Louis: The 1853 charter, while it clearly establishes control by the Synod, does not contain the asset disposition or relationship language required by Bylaw 1.5.3.6 and 2016 Res. 9-02A, nor does it reflect the present governance of the seminary.
- Concordia Theological Seminary, Fort Wayne: Articles on file, dated 1977, contain relationship language clearly indicating control by the Synod but not of the type required by Bylaw 1.5.3.6 and

2016 Res. 9-02A. The articles also lack the required asset disposition language. The articles also require significant updating.

Colleges, universities, and seminaries lacking the required language in their articles are reminded to revise their documents into compliance with Bylaw 1.5.3.6 and 2016 Res. 9-02A or to apply to the Board of Directors of the Synod for modification of these provisions with regard to their specific agencies. The commission asks to be kept apprised of efforts so that its report to the 2019 convention can be as current as possible.

#### **187. Review of Synodwide Corporate Entity, Trust Entity Manager, and Mission Agency Articles of Incorporation (18-2895)**

In keeping with the convention's assignment of 2016 Res. 9-02A, to review the articles of incorporation of Synod agencies for compliance with Bylaw 1.5.3.6, the commission also reviewed the status of the articles of the synodwide corporate entities. At present:

- Concordia Historical Institute: Articles contain language satisfying Bylaw 1.5.3.6 requirements for relationship and asset disposition language (Op. 17-2835).
- Concordia Publishing House: Articles on file, last modified with articles of acceptance in 2001, satisfy Bylaw 1.5.3.6 requirements for asset disposition language but do not contain compliant relationship language.
- Lutheran Church Extension Fund—Missouri Synod: Articles contain language satisfying Bylaw 1.5.3.6 requirements for relationship and asset disposition language.
- The Lutheran Church—Missouri Synod Foundation: Articles contain language satisfying Bylaw 1.5.3.6 requirements for relationship and asset disposition language. The commission notes that the eighth article, dealing with amendments, does not indicate the required prior review and approval by the Commission on Constitutional Matters (Bylaw 3.9.2.2.3 [a]).
- Concordia University System: Articles contain language satisfying Bylaw 1.5.3.6 requirements for relationship and asset disposition language.
- Concordia Plan Services (manager of synodwide trust entities, the Concordia Plans): Articles contain language satisfying Bylaw 1.5.3.6 requirements for relationship and asset disposition language.

Agencies lacking the required language in their articles are reminded to revise their documents into compliance with Bylaw 1.5.3.6 and 2016 Res. 9-02A or to apply to the Board of Directors of the Synod for modification of these provisions with regard to their agencies. The commission asks to be kept apprised of efforts so that its report to the 2019 convention can be as current as possible.

The commission also noted that foreign mission corporations of the Synod, in general, *are* agencies but may not be able to satisfy relationship and/or asset disposition language requirements of Bylaw 1.5.3.6, or other requirements for agency organization imposed by the Bylaws of the Synod. The commission notes that the Board of Directors might adopt policies to regulate the application of Bylaw 1.5.3.6 to such corporations, and that it might be profitable for the bylaws to distinguish this class of corporations with regard to general requirements for other agencies of the Synod.

#### **188. Summary Review of District Articles of Incorporation (18-2896)**

In keeping with the convention's assignment of 2016 Res. 9-02A, to review the articles of incorporation of Synod agencies for compliance with Bylaw 1.5.3.6, the commission also reviewed the status of the articles of the districts of the Synod. The commission notes that it has no ability to verify at present that articles as proposed were adopted by the respective conventions, but requests that districts file clean copies as adopted and filed, as required by Bylaw 3.9.2.2.3 (c). At present:

- Atlantic: 1948 articles on file lack relationship and asset disposition language (Op. 18-2864).

- California-Nevada-Hawaii: 2003 articles on file contain asset disposition but lack relationship language (Op. 18-2864).
- Central Illinois: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 18-2874).
- Eastern: Proposed bylaws (fulfilling the function ordinarily served by articles of incorporation) reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2812A).
- English: 1968 articles on file lack relationship and asset disposition language (Op. 18-2864).
- Florida-Georgia: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 18-2878).
- Indiana: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 18-2881).
- Iowa East: 2015 articles on file satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 15-2754).
- Iowa West: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2846).
- Kansas: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2844B).
- Michigan: 1969 articles on file satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 18-2864).
- Mid-South: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2858).
- Minnesota North: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2867).
- Minnesota South: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2831).
- Missouri: Proposed articles reviewed by the commission in 2014 satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 14-2703), but these do not seem yet to have been filed.
- Montana: Proposed articles reviewed by the commission in 2014 satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 14-2700).
- Nebraska: 1970 articles on file satisfy asset disposition requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A, but not relationship requirements (these were an oversight in Op. 18-2864).
- New England: 1973 articles on file satisfy asset disposition requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A, but not relationship requirements (Op. 18-2864).
- New Jersey: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 18-2884A).
- North Dakota: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2859).
- Northwest: 1994 articles on file satisfy asset disposition requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A, but not relationship requirements (Op. 18-2864).
- North Wisconsin: Articles sent for review in 2014 satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2834), but these do not seem yet to have been filed.
- Northern Illinois: Proposed articles reviewed by the commission in 2014 satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 14-2744).
- Ohio: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 18-2885).
- Oklahoma: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2832C).
- Pacific Southwest: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 18-2886).
- Rocky Mountain: 1983 articles on file lack relationship and asset disposition language (Op. 18-2864).

- SELC: The commission does not have complete articles on file and is awaiting a proposal from the district (Op. 18-2864).
- South Dakota: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2849).
- Southeastern: 1948 articles on file lack relationship and asset disposition language (Op. 18-2864).
- South Wisconsin: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2862 and 17-2862A).
- Southern: 1994 articles on file satisfy asset disposition requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A, but not relationship requirements (Op. 17-2826).
- Southern Illinois: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2842), but seem not to have been filed with the state.
- Texas: 1948 articles on file lack relationship and asset disposition language (Op. 18-2876A).
- Wyoming: Proposed articles reviewed by the commission satisfy Bylaw 1.5.3.6 and 2016 Res. 9-02A (Op. 17-2852B).

Agencies lacking the required language in their articles are reminded to continue revising their documents into compliance with Bylaw 1.5.3.6 and 2016 Res. 9-02A or to apply to the Board of Directors of the Synod for modification of these provisions with regard to their agencies. The commission asks to be kept apprised of efforts—including final deposit of amended or restated articles with state governments—so that its report to the 2019 convention can be as current as possible.

#### **189. Initial Review of North Dakota Board Policy Manual (17-2843) and Eastern District Policy Governance Manual (17-2807)**

By a December 28, 2016, e-mail the president of the Eastern District forwarded his district's board policy manual for review. By an August 26, 2017, e-mail the secretary of the North Dakota District forwarded his district's board policy manual for review. Having laid these items aside for some time, understanding that the districts might be contemplating revisions, the commission determined that it was time again to take up these documents as received, to provide some brief but concrete guidance to these districts—as well as to others having adopted, to one extent or another, a policy governance model.

Without offering a detailed review of the many provisions of the two manuals, the commission offers two summary comments that it hopes will be helpful to districts undertaking revision of their policy manuals:

- The difficulty with using a Policy Governance model in such a committed manner is that it loses sight of the distinction between the primary responsibilities for the district president (“president”) vis-à-vis the District Board of Directors (“board”). The balance and dynamic between the president and the board have both been clearly delineated in the responsibilities and accountability as set forth in the Synod Bylaws and Article XII of the Synod Constitution. Although it is certainly appropriate for the board to be concerned with setting policies consistent with the Constitution, Bylaws and resolutions of Synod and to seek assistance from the district president as chief executive (Bylaw 4.4.1) to ensure that such are properly executed within the district, this cannot alter the fact that the primary responsibility for the accomplishment of the board's duties lies with the board, regardless of whether the district president has agreed to guide and direct implementation of the same. (Bylaw 4.4.1 elaborates the district president's role as “chief executive” in terms of the execution of resolutions of the district [*i.e.*, district convention], not in terms of the carrying-out of board directives or policies, and specifies that he is to report to the district convention [not to the board].) Moreover, the fact that the district president has agreed to take on this additional responsibility in no way changes the fact that his *primary* responsibilities are as an elected officer representing the Synod in his district (Bylaw 4.4.2) and for the ecclesial supervision of those within his district and under his charge. The board may establish procedures for evaluating the president's performances of activities for responsibilities outside of those set forth in the Synod's Constitution and Bylaws; however, such evaluation may in no way address, impair, or interfere with the

president's responsibilities under the Synod's Constitution and Bylaws, which must take precedence over other activities the board may have delegated to him.

- The purpose of a policy manual is to elaborate how the responsibilities assigned to the board of directors by the constituent congregations of the Synod and district, acting in convention, will be carried out. The starting place for the policy manual is therefore the responsibilities assigned in the Constitution, Bylaws, and resolutions of the Synod and of the district, and a policy manual ought properly to begin with explicit reference thereto. While these policy manuals approach a general definition of the responsibility of the board in different ways (for example, "to represent the Stewards of the district," as beholden to contributing individuals, or as simply to carry out, in the broadest general terms, "the will of God, the Great Commandment, and the Great Commission"), these expressions take the proper place of clear and concrete expressions of the responsibilities assigned by the Constitution and Bylaws of the Synod, the bylaws of the district, or the resolutions of the Synod and district in convention. The commission notes that clarity is particularly important at this point, as the board "assume[s] such rights as have been expressly conferred...and in everything pertaining to [its] rights and the performance of its duties [it] is responsible to the Synod [and district]" (Const. Art. XI A 1). The district board of directors is responsible to the congregations of the Synod and, in particular, of the district, as these have spoken collectively and primarily through the Constitution, Bylaws, and resolutions of the Synod and of the district, and as they receive and react to reports of the board's activities.

#### **190. Review of Council of Presidents Policy Manual (17-2819)**

The commission resumed its review of the Council of Presidents Policy Manual with Chapter 8, "Personal Information Forms."

#### **191. Review of Draft 2019 Convention Report**

The commission reviewed the chairman's initial draft of the commission's 2019 convention report.

#### **192. Joint Meeting with Council of Presidents**

The commission joined the Council of Presidents for the annual joint meeting required by 2013 Res. 6-16A, "To Encourage Conversation and Education re Commission on Constitutional Matters Opinions." Dr. Gude briefly commented on 2016 Res. 9-02A and the resultant Bylaw 1.5.3.6, and the report the commission will give to the 2019 convention regarding the compliance of agencies' governing documents with these measures. After some discussion of that item, Dr. Gude introduced and explained the commission's 2019 convention overture (related to its Op. 17-2870, "Questions regarding the definition of *multi-congregation parish*"), entitled, "To Clarify the Meaning of *Parish* as it Relates to Congregational Representation at District Conventions and Election of the Synod President, and to Distinguish Assisting Capacity Pastoral Calls." The overture resulted from a joint effort of the commission and a committee of the council. In general questions and answers, a district president raised the question of Bylaw 3.12.1 (b), regarding regional membership being determined by strict geographical regional boundaries. It was noted that no formal question has been put to the commission, and that this might best be referred with a suggestion (by an interested district) to the Commission on Handbook.

#### **193. Adjournment**

With its presently addressable agenda concluded, the commission adjourned from its regular business at noon on Saturday. The commission then joined the Council of Presidents for lunch and for the scheduled one-hour joint meeting noted above. Future meetings are scheduled for January 25–26, March 22–23, and May 29–June 1, 2019, in conjunction with Floor Committee Weekend.

John W. Sias, *Secretary*