

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS St. Louis Crowne Plaza Airport Hotel December 4-5, 2015

137. Call to Order

Chairman George Gude called the meeting to order with all members of the commission present. He provided an opening devotional Bible study each day of the meeting.

138. Mid-South District Bylaws Final Review (14-2735B)

Chairman Gude reported on his conversations with the secretary of the Mid-South District which have been helpful to clarify that the Mid-South District has done all that the commission has requested. He noted that the latest changes to its Bylaws by the district's 2015 convention are also in line with the Synod's Constitution, Bylaws, and resolutions. The commission gave its final approval and thanked the district for its patience and cooperation.

139. Review of Additional Changes to Eastern District Camp Pioneer Articles of Incorporation (15-2760A)

The commission reviewed latest changes to the Eastern District's Camp Pioneer Articles of Incorporation, understood by the commission to be an effort to satisfy New York law. The commission was satisfied with the result but noted that the district will still need to comply with whatever action the 2016 Synod convention takes with regard to 2004 Res. 4-11 regarding dissolution language. What has now been proposed by the district does not comply with the language of 1981 Res. 5-07 or 2004 Res. 4-11 and will require approval by the Synod's Board of Directors (see Board of Directors Policy 5.8.5).

140. Service of Retired District President on Seminary Board of Regents (15-2777)

With a letter dated September 11, 2015, a member of the Synod called attention to Bylaw 3.10.4.2 and its listing of members of seminary boards of regents, specifically referring to subparagraph 3, "A district president other than the geographical district president [who] shall be appointed by the Council of Presidents." He requested the commission's response to the following questions.

Question 1: If a man who *had* been a district president and *had* been named as the representative of the Council of Presidents to a seminary board of regents retires, his successor has taken office, and the *former* district president who retired has moved to another state and district, no longer living in or serving the district to which he had previously served as district president, is such a retired district president still a voting member of the seminary's board of regents if the Council of Presidents has not yet named a successor to the seminary's board of regents?

Opinion: The answer to this question is "no," since the former district president would no longer be able to fulfill the requirement for service as a voting member of the seminary's board of regents, *i.e.*, "a district president...appointed by the Council of Presidents" (Bylaw 3.10.4.2, subparagraph 3). When a district president is called upon to serve, such service is tied to his office and is his sole basis for authority to act. When an individual ceases to hold the office of district president, his authority to act as a district president also ceases (see CCM Opinion 12-2652).

Question 2: Does a “request” of the Council of Presidents for such a retiree to be the appointee of the Council of Presidents to the seminary’s board of regents confer a seat and a voting right and power to such a retired district president? If so, what bylaw of the Synod permits this, and what of the Council of Presidents is an action of the *entire* body of the Council of Presidents? Are the Synod’s Constitution and Bylaws in fact applicable to actions and governing, or can assertion of “custom” overrule the Constitution and Bylaws? If so, why and how?

Opinion: There is no provision in the Constitution and Bylaws of the Synod that would allow for a request to a former district president to serve in a position that requires the service of a district president. Nor can an assertion of “custom” overrule the absence of such a provision in the Constitution and Bylaws of the Synod. Where a bylaw specifically calls for an action by a “district president,” no agency of the Synod may set aside a bylaw of the Synod and authorize a person who does not hold the office of district president to act as such.

141. English District Policy Manuals (15-2778)

With a September 21, 2015 email, the secretary of the English District submitted his district’s corporate operations manual for review by the commission. Upon review, the commission offered the following comments.

- Under ELECTED OFFICERS – Rights and Duties, paragraph 1, this list should include the treasurer of the district as an officer of the district (Synod Constitution Art. XII 2; Bylaw 4.3.2), which may require removing “elected” from the introductory statement. The commission also suggests that the reference to the Synod’s *Handbook* would better state “Constitution and Bylaws.”
- Under ELECTED OFFICERS – Rights and Duties, paragraph II A, the statement will better read: “The term Bishop may be used informally in addition to or as an alternate term to President.”
- Under ELECTED OFFICERS – Rights and Duties, paragraph E, mention is made of an “executive handbook,” which is a document that the commission has not seen but must also review (Synod Bylaw 3.9.2.2.3).
- Under APPOINTED STAFF – Job Descriptions, “EXECUTIVE ASSISTANT TO THE PRESIDENT: BUSINESS AND FINANCE AND TREASURER, paragraph 1: This paragraph should make clear that the primary role of the treasurer of the district is that of treasurer, because of which he is an officer in his own right and not just an assistant to the president.
- Under APPOINTED STAFF – Job Descriptions, “EXECUTIVE ASSISTANT TO THE PRESIDENT: BUSINESS AND FINANCE AND TREASURER, paragraph 2: It is not correct to refer to the treasurer merely as “contracted by the board of directors.” He is to be “elected or appointed as the bylaws of the district may provide” (Synod Bylaw 4.3.2).
- Under COMMITTEE ON NOMINATIONS, “Duties”: This entire section is not the responsibility of the nominations committee but of the secretary, as in the case of the Synod’s Secretary (Synod Bylaw 3.12.3.6). It is the responsibility of the district secretary to obtain nominations for district president (paragraph A), obtain nominations for district vice-president (paragraph B), prepare slates of regional positions (paragraph C), etc.
- The *ADDENDA* regarding Section 4-03(b) Tax Deferred Plan is foreign to the purpose of the document as well as unnecessary and can be removed.
- Under ENGLISH DISTRICT ENDOWMENT FUND, section “3.0 Distribution of Funds” does not contain the dissolution language required by Synod 2004 Res. 4-11. The district will need to use the language that is being submitted in an overture to the 2016 convention, assuming its adoption.

- Under ENGLISH DISTRICT ENDOWMENT FUND, section “4.0 Duration of the Fund,” the second-last sentence should instead read: “If the English District fails to act in this matter, the Fund becomes the absolute property of ~~the LCMS Foundation~~The Lutheran Church—Missouri Synod.” Also, the final sentence requires that the Bylaws of the English District be brought up to date with the 2016 LCMS convention action regarding dissolution language already referred to in the preceding paragraph.
- The statement from paragraph 4, “A Statement from the ‘Carver Model’” under The General Model for the Business of the Board of Directors fails to regard and even conflicts with the Constitution and Bylaws of the Synod, which are the primary source for the conduct of board meetings (Synod Bylaw section 1.5).
- Subparagraph (a) of paragraph 5 regarding the “basic duties of the board” is an overstatement when it speaks of the board as “the English District between conventions.” While the board conducts some business of the Synod between conventions, it does not act in place of the convention.
- Under *English District Board of Directors – Policies*, “Part II. Board Process,” the inclusion of “laity” in subparagraph A 1 is incorrect in that it confuses the rostered members of the Synod (congregations, ordained and commissioned ministers) with lay members of the Synod’s congregations (who are not individually members of the Synod).
- Under *English District Board of Directors – Policies*, “Part III. Board/Executive Relationship,” subparagraph A 1 will more accurately read: “1. The district president is authorized to establish all further policies, make all decisions, take all actions and develop all activities which are true to the board’s policies. The board may, by extending its policies, ‘undelegate’ areas of the district president’s authority except when such authority has been delegated by the Synod and not the board, and/or except as pertains to ecclesiastical supervision.”

142. College and University Boards of Regents and Foundations (15-2779)

With an October 7, 2015 email, the Secretary of the Synod submitted a series of questions regarding college and university foundations, prompted by inquiries he had received. After offering opportunity for input from Concordia University System and its colleges and universities, and after initial discussion during the meeting, the commission agreed to solicit further input before offering its response.

143. Application of Constitution Articles II and VI (15-2780)

With an October 13, 2015 email, an ordained member of the Synod requested “clarification on two issues by the CCM.” The commission prefaced its response by referencing the pertinent portions of the Constitution and Bylaws of the Synod.

Article II of the Constitution of the Synod establishes the confessional basis for the Synod, stating:

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

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

Article III of the Constitution lists the objectives of the Synod. Items 1 and 6 are applicable to the questions addressed to the commission. They state:

The Synod, under Scripture and the Lutheran Confessions, shall—

1. Conserve and promote the unity of the true faith (Eph. 4:3–6; 1 Cor. 1:10), work through its official structure toward fellowship with other Christian church bodies, and provide a united defense against schism, sectarianism (Rom. 16:17), and heresy; ...
6. Aid congregations by providing a variety of resources and opportunities for recognizing, promoting, expressing, conserving, and defending their confessional unity in the true faith; ...

Article VI of the Constitution of the Synod establishes the conditions of membership for both congregations and individual members of the Synod. Items 1, 2, and 4 are pertinent to the questions addressed to the commission:

Conditions for acquiring and holding membership in the Synod are the following:

1. Acceptance of the confessional basis of Article II.
2. Renunciation of unionism and syncretism of every description, such as:
 - a. Serving congregations of mixed confession, as such, by ministers of the church;
 - b. Taking part in the services and sacramental rites of heterodox congregations or of congregations of mixed confession;
 - c. Participating in heterodox tract and missionary activities....
4. Exclusive use of doctrinally pure agenda, hymnbooks, and catechisms in church and school.

Bylaw 3.9.2 delineates the authority of the Commission on Constitutional Matters:

The Commission on Constitutional Matters exists to interpret the Constitution, Bylaws, and resolutions of the Synod and ensure that the governing instruments of the Synod and its agencies are in accord with the Constitution and Bylaws of the Synod.

In summary, the material from the Constitution clearly requires as a condition of membership that all members of the Synod, both congregations and individuals, avoid all unionism and syncretism as they relate to other churches and organizations. In addition, the Constitution requires that what is taught by individual members and in congregations must be doctrinally pure and in accord with Article II of the Constitution.

Question 1: Is membership by a member of the Synod, individual and congregation, in the Willow Creek Association in accordance with Article II Confession and Article VI Conditions of membership?

Opinion: The commission understands this question to be, “Does membership in the Willow Creek Association by an individual or congregational member of the Synod constitute unionism and/or syncretism, which would be a violation of Article VI 2 of the Constitution of the Synod?” Since an answer to this question would require the commission to make a determination and evaluation of the nature of the Willow Creek Association, and since the authority of the commission is limited to the interpretation of the Constitution, Bylaws, and resolutions of the Synod, this request lies outside of the purview of the commission.

Question 2: Is the membership in and use of Awana materials by an LCMS congregation in accordance with membership in The Lutheran Church—Missouri Synod, especially in accordance with Article II and Article VI?

Opinion: The commission understands this question to be, “Does membership in Awana and use of its materials by an individual or congregational member of the Synod constitute unionism and/or syncretism, and do the materials produced by Awana conform to the confessional basis of the Synod?” Since an answer to this question would require the commission to make a determination and evaluation of the nature of Awana and pass theological judgment on its materials, and since the authority of the

commission is limited to the interpretation of the Constitution, Bylaws and resolutions of the Synod, this request also lies outside of the purview of the commission.

The commission notes that it would be better to direct these requests to the Commission on Theology and Church Relations to whom the Bylaws of the Synod do give authorization to give guidance to the Synod in matters of doctrinal unity, church relations, and theology. In this matter, the questioner may also wish to consult with his district president, as it is the district presidents' responsibility to "promote and maintain unity of doctrine and practice in all the districts of the Synod" (Constitution Art. XI B 3) and to "supervise the doctrine, the life, and the official administration on the part of the ordained or commissioned ministers who are members through his district or are subject to his ecclesiastical supervision" (Bylaw 4.4.5).

144. Review of Bylaws for New Legal Entity in the Dominican Republic (15-2781)

The Chief Administrative Officer of the Board of Directors forwarded to the commission the documents that have been drawn up to authorize and approve the creation of a legal entity in the Dominican Republic. Upon review, the commission expressed concern with the structure of the document, its unfamiliar language, confusing terminology regarding membership, *et al.* The commission was not able to determine whether the document complies with Synod Bylaw section 1.5. The commission also questions how Bylaw 1.5.1 is thought to pertain to such foreign organizations. The commission therefore requests further input from the Board of Directors.

145. Approval of Overture to the 2016 LCMS Convention: "To Assure Uniformity of Relationship and Asset Disposition Language in Governing Documents of Corporate Agencies of the Synod"

The commission reviewed the following overture, noting that, except for minor differences, it has already been approved for submission to the 2016 LCMS convention by the Synod's Board of Directors, Council of Presidents, and Commission on Handbook. After discussion, a motion was introduced and carried to submit the following overture to the 2016 convention.

To Assure Uniformity of Relationship and Asset Disposition Language in Governing Documents of Corporate Agencies of the Synod

Rationale

As the various corporations of the Synod were established, different reversionary language was used to make clear that all property of its agencies is the "Property of the Synod" (with the exception of assets held by the Lutheran Church Extension Fund—Missouri Synod and by any agency in a fiduciary capacity such as administered by Concordia Plan Services or certain funds held by the Lutheran Church—Missouri Synod Foundation—see Synod Bylaw 1.2.1 [q]). Such variety led the 1981 LCMS convention to adopt Res. 5-07 to provide "definite procedures and policies for the establishment of additional corporations within the Synod."

More recently, legal counsel advised that it would be helpful for the unity and interests of the Synod if clear and consistent relationship and property reversionary language be included in the Articles of Incorporation of all corporate agencies, new and old. This interest resulted in the adoption by the 2004 LCMS convention of Res. 4-11, requiring the inclusion of "clear relational and property reversionary provisions in the Articles of Incorporation of all corporate agencies." Such provisions were developed by the Commission on Structure with the assistance of special legal counsel, to be included *verbatim* in the Articles of Incorporation of all corporate entities of the Synod, "not to be altered or deleted without the approval of the Synod, in convention, or the Board of Directors of the Synod."

Ongoing efforts by the Commission on Constitutional Matters (including the creation of a model articles of incorporation document) to see to it that such language is found in all agency Articles of Incorporation has resulted in unforeseen difficulties and concerns, including not-for-profit corporation laws with requirements that vary from state to state. This was a subject of discussion at a joint meeting of the Council of Presidents,

Commission on Constitutional Matters, and Commission on Handbook on November 20, 2014, resulting in the naming of a “Resolution 4-11 Committee” to represent the three groups. The committee’s assignment was to recommend next steps for the implementation, modification, or rescission of Res. 4-11 while continuing to honor the intentions of the resolution (and those of 1981 Res. 5-07).

As the committee reviewed its assignment, it requested comments regarding the resolution from the corporate agencies of the Synod while also examining how the provisions of Res. 4-11 impact LCMS organizational documents. After a series of telephone conference meetings, the committee requested the assistance of the Synod’s legal counsel, Thompson Coburn LLP, to consider comments received in response to the letter to the corporate agencies, to review the interaction of Res. 4-11 with provisions of the LCMS organizational documents, and to consider a new approach to the entire matter of uniformity of reversionary language.

The end result of the Resolution 4-11 Committee’s work is this overture to the 2016 LCMS convention, proposed with the assistance of LCMS legal counsel. It is consistent with existing LCMS organizational documents and advocates rescinding 2004 Res. 4-11, superseding pertinent portions of 1981 Res. 5-07, and adopting a new Bylaw 1.5.3.6.

Proposed Action by the Convention

Therefore be it

Resolved, That 2004 Res. 4-11 be herewith rescinded in lieu of the adoption of new Bylaw 1.5.3.6 by this convention to accomplish the same expectations but in a manner more amenable to legal and other requirements of the Synod’s various corporate agencies; and be it further

Resolved, That those portions of 1981 Res. 5-07 pertaining to matters now addressed by the adoption of new Bylaw 1.5.3.6 be superseded by this convention action and its new Bylaw 1.5.3.6; and be it finally

Resolved, That new Bylaw 1.5.3.6 be adopted as follows:

PROPOSED WORDING

1.5.3.6 Notwithstanding anything in the Bylaws to the contrary, the Articles of Incorporation or other governing documents of each agency shall contain the following provisions:

(a) That in the event of dissolution other than by direction from the Synod in convention, the assets of such agency, subject to its liabilities, shall be transferred, consistent with applicable state and federal laws, as follows:

(1) In the case of a district, university, college, or seminary, to The Lutheran Church—Missouri Synod as may be more specifically described elsewhere in these Bylaws;

(2) In the case of a corporation formed by an agency (as defined in these Bylaws), to the agency that formed the dissolving corporation, or if such forming agency is not then in existence, to The Lutheran Church—Missouri Synod itself.

(b) That all provisions of its Articles of Incorporation and Bylaws are subject to the provisions of the Constitution, the Bylaws, and the resolutions of the Synod in convention.

An agency may submit any concerns related to the inclusion of subsections (a) or (b) in its governing documents to the Board of Directors of the Synod, and the Board of Directors may determine to permit the removal or modification of these provisions for an affected agency.

And be it finally

Resolved, That the agencies of the Synod accommodate the requirements of this bylaw change in time for the Commission on Constitutional Matters to report the status of compliance to the 2019 convention of the Synod.

146. Approval of Overture to the 2016 LCMS Convention: “To Provide Assistance to Lay Reconcilers Serving on Dispute Resolution, Hearing, and Final Hearing Panels”

Secretary Raymond Hartwig reviewed the following overture for submission to the 2016 convention in response to 2013 Res. 7-18. After discussion, a motion was introduced and carried to submit the overture as follows.

To Provide Assistance to Lay Reconcilers Serving on Dispute Resolution, Hearing, and Final Hearing Panels

Rationale

2013 Res. 7-18 “To Study Doctrinal Training for Reconcilers” responded to a request in Part 2 of the Synod President’s Report “to consider doctrinal training for reconcilers” to assist them when they are asked to serve on panels that are called upon to decide matters of doctrine or doctrinal application. The resolution’s single resolve paragraph referred this request to the Council of Presidents, the Commission on Constitutional Matters, and the Secretary of the Synod “for appropriate study and recommendations, giving particular attention to Bylaw 2.14.7, especially 2.14.7.8 (k).”

After discussions during the current triennium that included the Council of Presidents and Commission on Constitutional Matters, as well as the Commission on Handbook and the reconcilers themselves during late-2014 regional training meetings, it was generally agreed that providing such comprehensive doctrinal training for lay reconcilers as would be necessary to cover all potential doctrinal issues would not be a reasonable solution.

The bylaws governing dispute resolution and suspension/expulsion processes already contain resource assistance to the parties to a dispute to help them understand and apply the Synod’s confessional Lutheran doctrines and practices (Bylaws 1.10.18.1 [h]; 2.14.7.8 [l]). The same resource opportunity is available to a Dispute Resolution, Hearing, or Final Hearing Panel as a whole (Bylaws 1.10.18.1 [h]; 2.14.7.8 [l]). In the interest of providing lay reconciler panel members with a resource for personal assistance (*i.e.*, to talk through a doctrinal matter with a knowledgeable person), the addition of a subparagraph (3) to Bylaw 1.10.18.1 [h] and a subparagraph (5) to paragraph (l) of Bylaw 2.14.7.8, as follows, will provide such opportunity.

Proposed Action

Therefore be it

Resolved, That the following bylaw changes be adopted by the 2016 convention of the Synod to offer ready access to resources that may assist lay panel members in understanding confessional Lutheran doctrines and doctrinal applications.

PRESENT/PROPOSED WORDING

1.10.18.1 ...(h) If any part of the dispute involves a specific question of doctrine or doctrinal application,...

(3) Any individual on the panel may also request resource materials and personal assistance from the executive director of the CTCR or from a theologian recommended by the executive director, this to provide opportunity to read about, discuss with a knowledgeable person, and better comprehend doctrinal matters associated with the dispute. The dispute resolution case itself shall not be discussed.

2.14.7.8 ...(l) If any part of the dispute involves a specific question of doctrine or doctrinal application,...

(5) The lay reconciler member of the panel may also request resource materials and personal assistance from the executive director of the CTCR or from a theologian

recommended by the executive director, this to provide opportunity to read about, discuss with a knowledgeable person, and better comprehend doctrinal matters associated with the suspension. The suspension case itself shall not be discussed.

147. Close of Meeting

After the commission discussed how it will handle its review of convention business and its involvement with convention floor committees, and with all business to come before the committee having been attended to, Chairman Gude closed the meeting with prayer.

Raymond L. Hartwig, Secretary