

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
Internet Conference Meeting
May 25, 2021

87. Call to Order and Opening Devotions

Commission Chairman Dr. George Gude called the meeting to order with all sitting members present. (The Rev. R. Neely Owen, having served in an attorney position on the commission since 2010, resigned on April 20, 2021, due to health reasons; the vacancy in his 2016–2023 term is expected to be filled in September. Nominations from district boards of directors are due in the Office of the Secretary on August 16.) Dr. Gude invited Rev. Bode to offer an opening prayer. Dr. Gude then introduced the agenda for the present meeting.

88. Texas District Proposed Bylaws, Resubmission (20-2943B)

By an email of February 8, the Texas District Secretary forwarded a resubmission, pursuant to the commission’s prior review in Op. 20-2943A, of the district’s bylaw proposal for its June 2021 convention. The present submission contains changes to Texas District (TX) Bylaws 6.009 (g) and 14.009 (c), as well as insertion of a new TX Bylaw XV. The commission considers these changes to be cumulative with those approved in connection with Op. 20-2943A, although the earlier changes are not reiterated in the current draft. (The Secretary confirmed this understanding with the Texas District Secretary in a phone conversation of May 20.)

The commission noted that its concerns with the previous draft have been addressed in Texas District Bylaws 6.009 (g) and 14.009 (c).

It notes further that the language of the newly proposed Bylaw XV satisfies the asset disposition requirement of Bylaw 1.5.3.6 (b)(1) and that the change to the paragraph “The Bylaws...” of Bylaw I, as evidenced in the draft submitted in connection with Op. 20-2943A, to wit,

“The Bylaws of The Lutheran Church—Missouri Synod shall be the primary Bylaws of the Texas District. The Constitution and Bylaws of the Synod are hereby included by reference, with amendments adopted by the Synod automatically incorporated herein, except as precluded by law, because the Synod Bylaws are the primary bylaws of the district. These bylaws and the Bylaws of Synod shall be construed so as not to conflict to the maximum extent allowed, but in the event of an irreconcilable conflict the Bylaws of Synod shall control. Resolutions of the Synod are binding upon the district.”

satisfies the relationship language requirement of Bylaw 1.5.3.6 (a). Both changes are fully in harmony with the Constitution, Bylaws, and resolutions of the Synod. With regard to both these elements, the commission observes that Bylaw 1.5.3.6 grants to the LCMS Board of Directors the authority to approve, by way of an exception, their inclusion in the Bylaws rather than in the corporation’s most fundamental governing document. The commission notes Dec. 3, 2018, correspondence between counsel for the Texas District and the Board of Directors requesting the board’s consideration of such an exception, and that the Texas District is awaiting a response.

With the understanding that the changes presented here are cumulative with those approved in Op. 20-2943A, and that the above relationship and asset disposition passages are included (while it remains for the Board of Directors to determine whether such inclusion in the TX Bylaws, rather than in any more fundamental governing document, fully satisfies the requirement of Bylaw 1.5.3.6), the proposed Bylaws of the Texas District are hereby approved for presentation to the district convention as in harmony with the Constitution, Bylaws, and resolutions of the Synod. The district and its secretary are thanked for their diligent work in this regard, and asked to forward for the commission’s files, following the convention, a clean copy of the district’s bylaws as adopted.

The commission directs the Secretary to share this opinion with the LCMS Board of Directors, noting that it eagerly awaits a conclusion of the district's conversation with the board as to the sufficiency of the district's having included compliant relationship and asset disposition language in its bylaws.

89. New Jersey District Proposed Bylaws (21-2966)

By an email of April 7, 2021, the New Jersey District Secretary forwarded proposed changes to the New Jersey District Bylaws. As the commission would not be able to respond before the district's convention, Chairman Gude and the Secretary responded with informal suggestions which the district might incorporate into a bylaw change to be adopted under Bylaw 3.9.2.2.3 (b) as contingent on approval by the commission, hopefully reducing and expediting any post-adoption work that might prove necessary.

The commission here reviews the New Jersey District Bylaws as proposed in the submission of April 7, 2021, recognizing that many of the items below may have been addressed by the district on the basis of the above-noted informal consultation. The commission first notes that the specific changes as proposed in the noted submission appear to be in harmony with the Constitution, Bylaws, and resolutions of the Synod in convention. Several other areas were noted which require attention:

- In NJ Bylaw 2.21 (a): "with residence in the designated region" should read "having membership in a congregation of the designated region" (as Synod Bylaw 4.3.1 dictates).
- Likewise, in NJ Bylaw 2.21 (b): "who currently reside in" should read "holding membership in a congregation of"
- In NJ Bylaw 2.41, circuit conferences are not required by the Synod Bylaws. You might say "as encouraged" instead of "as required" (Bylaw 4.9.1 [a-b])
- In NJ Bylaw 3.11 (a), the District President is the "chief executive" (Bylaw 4.4.1) but not the "chief executive officer" (avoid corporate parlance here). Strike "officer." The second sentence, "He shall carry out his administrative responsibilities with reference to operation of the District through the Board of Directors," conflicts with the division of duties between district president and board: the district president has ecclesiastical supervisory responsibilities and the board has business, property, and legal responsibilities that are natively its own and not "administrative responsibilities" of the district president carried out through the board. This sentence should be removed and replaced with: "He shall carry out within the New Jersey District the office of district president as described in the Constitution and Bylaws of the Synod."
- In NJ Bylaws 3.11 (c) and 3.12 (c), the BOD is responsible for business, legal, and property matters, but may rely on the district president to serve as its executive, within its policies, and to an extent that does not interfere with his foremost ecclesiastical supervisory duties. It would be best to replace the text of 3.11 (c) and 3.12 (c) with: "He may act in an executive capacity with regard to the district's business, property, and legal matters, where the board by policy or resolution authorizes him to do so." It may also be best to group administrative items like this last in the list of the president's duties, and so to group the "native" or "primary" duties of the president together and first.
- In NJ Bylaw 3.20 (a), it seems the replacement circuit names are missing.
- NJ Bylaw 5.02 (c) does not satisfy Synod Bylaw 1.5.3 and LCMS BOD Policy regarding action without a meeting (e-mail "debate" does not constitute a meeting). It should be replaced in its entirety with the following: "In situations where board members are not able to meet as described above, the Board may take action by use of electronic ballot (i.e., e-mail, internet-based voting, etc.), provided all voting members of the board cast a vote and the result of the voting is unanimous."
- In NJ Bylaw 5.03 (c-d), care must be taken that the board's authority is limited to its proper sphere. The board is vested with "general management and supervision of the district's business and legal affairs" (Bylaw 4.5.1 [c]). A revision of 5.03 (c) may take more thought and could be left for a later time—or it might be fine, rightly understood (i.e., to operate within the objectives

of the Synod for a district in general and mindful of the district president's distinct authority of ecclesiastical supervision). 5.03 (d) should read "...shall establish policies governing the business, legal, and property affairs of the District."

- Bylaw 5.08 (c) should probably also mention Synod regulations (e.g., Synod Bylaw 1.5.4), though this is referenced shortly under NJ Bylaw 5.10.

The district and its secretary are thanked for their attention to the district's bylaws and reminded to submit to the commission any bylaw changes that may have been adopted by its convention. These will need to be handled, in the absence of advance review and approval, under the procedure of Bylaw 3.9.2.2.3 (b), as adopted contingent upon the positive review of the commission and/or the resolution of any newly-introduced issues by the board of directors of the district in consultation with the commission.

90. Concordia University Wisconsin Articles, Revision and Resubmission (20-2936A)

By a letter of March 31, 2021, the chairman of the Concordia University Wisconsin Board of Regents forwarded, in response to corresponding previous opinions, resubmissions of university articles and university foundation articles and bylaws. This opinion regards the proposed university articles, resubmitted pursuant to Op. 20-2936A.

The commission finds the proposed articles as submitted to be in harmony with the Constitution, Bylaws, and resolutions of the Synod and approves them for adoption by the board of regents. The university and its board and staff are thanked for their attention to these matters and to the review process, and requested to forward, for the commission's files, a clean copy of the articles as adopted by the board and filed with the state.

91. Concordia University Wisconsin Foundation Articles, Resubmission (20-2937B)

By a letter of March 31, 2021, the chairman of the Concordia University Wisconsin Board of Regents forwarded, in response to corresponding previous opinions, resubmissions of university articles and university foundation articles and bylaws. This opinion regards the proposed foundation articles, resubmitted pursuant to Op. 20-2937. With regard to these, in an email of May 25, 2021, the Assistant to the President of Concordia University Wisconsin provided a replacement draft which included cumulative changes proposed in Op. 20-2937 and those suggested by the commission in that review, as well as some other minor editorial changes.

Considering the replacement draft supplied on May 25, 2021, the commission finds the proposed changes to Article IV and to article VIII to satisfy the relationship and asset disposition requirements, respectively, of Synod Bylaw 1.5.3.6 (a) and (b)(2). The commission finds the articles in other respects to be in harmony with the Constitution, Bylaws, and resolutions of the Synod and approves of their adoption by the Concordia University Wisconsin Foundation. The foundation is thanked for its attention to these matters and remind to submit, for the commission's cop a clean copy of the articles as adopted and filed with the state.

92. Concordia University Wisconsin Foundation Bylaws, Resubmission (20-2928B)

By a letter of March 31, 2021, the chairman of the Concordia University Wisconsin Board of Regents forwarded, in response to corresponding previous opinions, resubmissions of university articles and university foundation articles and bylaws. This opinion regards the proposed foundation bylaws, resubmitted pursuant to Op. 20-2928A.

The commission indicated in Op. 20-2927A, its review of the Concordia University Wisconsin Bylaws, referenced in Op. 20-2928A, its previous review of these bylaws, that it will be unable to approve the bylaws of the foundation as entirely "in harmony with the Constitution, Bylaws, and resolutions of the Synod," as Synod Bylaw 1.5.1 prohibits an agency of the Synod (which the foundation apparently is, being controlled by the university) from having board members that are not members of Synod congregations. The refenced letter notes the indispensability of such members, the centrality of the university president to the foundation's operations, and the impression that there is no delegation of the board of regents' authority

to the foundation (an impression confirmed with a suitable limitation paragraph in the newly proposed bylaw text). Nonetheless, the composition of the board of directors with other than members of LCMS member congregations conflicts with Synod Bylaw 1.5.1.

As the commission noted in Op. 20-2928A, “the 2019 Res. 7-03 Committee is presently preparing for the 2022 convention of the Synod a proposal regarding the relationship of the colleges and universities with the Synod.” Said proposal, if adopted, might render the university and its foundation no longer agencies of the Synod, rendering this conflict with the Synod Bylaws—at that point—moot. The university’s letter notes: “We believe that all of us would like to avoid incorporating changes to our governance documents that might have to be undone as soon as two years from now.” The commission appreciates reticence to make precipitous and potentially unnecessary changes but remains unable to render approval based on potential future bylaw changes.

With this significant proviso and observation that the foundation bylaws are and remain, for the time being, out of compliance at least with Synod Bylaw 1.5.1, the commission provides the following review of other proposed changes, with the intent of allowing the Foundation to refine other aspects of its governance while seeking a path to resolution of the noted issue. The commission notes also less significant areas calling for attention:

- Foundation Bylaw 3.6, treating removal of directors, is inconsistent with Synod Bylaw 1.5.7, which treats the removal of directors of agencies of the Synod.
- Foundation Bylaw 3.8.7 is inconsistent with the requirement of unanimous participation and unanimous consent imposed by Synod Bylaw 1.5.3 and attendant LCMS Board of Directors Policy 2.4.6.
- Foundation Bylaw 3.12.3 may in practice be inconsistent with the limitation of powers of an executive committee by Synod Bylaw 1.5.3.2, although this inconsistency may be mitigated somewhat by Foundation Bylaw 3.12.7, if understood to control—but this seems very uncertain to be the intent of the provisions taken together.
- While the commission has no objection to what is stated in Section 3.13, the Foundation should confirm that the section and its implementation thereof conform to the requirements of Synod Bylaw 1.5.2.
- In Article VI, it should be noted that such amendments must be approved in advance by the LCMS Commission on Constitutional Matters.

As to the specific changes proposed, the commission finds at Section 7.7 that, similar to Section 10.7 in the university bylaws, the text should read instead: “Any action taken or authorized by the Board of Directors which would be inconsistent with the these Bylaws then in effect, ~~but~~ or has been indicated by the Commission on Constitutional Matters of the Synod to be required by the Constitution, Bylaws, or resolutions of the Synod, and such action is taken or authorized...” Since a similar change was accepted in the university bylaws, the commission presumes the adoption of this suggestion here.

Otherwise, the commission finds the specific changes as proposed to be in harmony with the Constitution, Bylaws, and resolutions of the Synod and approves such specific changes to be made, while maintaining that the above issues remain unaddressed and out of compliance with the same. The commission will be happy to review further proposed changes to address any of the above.

The foundation is thanked for its work to bring its governing documents into increasing harmony with those of the Synod and for its participation in this review process and asked to forward, for the commission’s files, a clean copy of its bylaws as adopted.

93. South Dakota District Proposed Articles and Bylaws, Resubmission (20-2953A)

By an email of March 26, 2021, the South Dakota District President forwarded a resubmission of his district’s proposed articles and bylaws, pursuant to the commission’s previous review in Op. 20-2953. The commission finds all of its previous concerns to have been addressed in the present draft and gives its

approval to the proposal for presentation to the convention as in harmony with the Constitution, Bylaws, and resolutions of the Synod. The district and its secretary and president are thanked for their diligent work in this regard, and asked to forward for the commission's files, following the convention, a clean copy of the district's bylaws as adopted and the district's articles as adopted and filed with the state.

94. Northwest District Proposed Bylaws, Resubmission (20-2954A)

By an email of April 26, 2021, the Northwest District Secretary forwarded a resubmission of his district's proposed bylaw changes, pursuant to the commission's previous review in Op. 20-2954.

The commission reiterates its previous observation that the wording of Bylaws 2.4.2–3 may contribute to misunderstanding of the relative roles of district convention, district president, and district board of directors, and suggests the district give further careful consideration to how these provisions are worded and how they are practiced. Likewise, the commission reiterates its concern regarding Bylaw 4.2.2–3, where the proposed changes do not address the commission's concern, and regarding Bylaws 3.6; 5.3.1; 5.5.2; 5.7.1–3; and 5.7.5, none of which have received apparent attention in this draft.

The specific changes that are proposed the commission finds to be in harmony with the Constitution, Bylaws, and resolutions of the Synod in convention and to bring the district bylaws into greater alignment with the present Bylaws of the Synod in a number of respects. These are therefore approved for submission to the convention. The commission does request, however, that the district take further steps to address the above-noted concerns, as stated in detail in the previous review (Op. 20-2954), so that these aspects of the district's bylaws, too, may be rendered consonant with those of the Synod. In these noted areas the bylaws as they stand are not in harmony with the Bylaws of Synod.

The district and its secretary are thanked for providing these documents for review and asked, given the time that remains before the convention of the district in June 2022, to continue the work on this revision, with submission of a new draft for review by the commission.

95. Nebraska District Proposed Articles and Bylaws, Revision and Resubmission (20-2962A)

By an email of March 2, 2021, the Nebraska District President forwarded a revised draft, pursuant to the commission's previous review in Op. 20-2962, of his district's proposed bylaw changes. The commission notes that the redlining in the present draft is relative to the last proposal, not to the bylaws as presently stand adopted, and understands that the district will be presenting the cumulative redline to the convention for consideration.

The commission notes at NEB Bylaw III C 2 b 1 that "District" should remain; district vice-presidents may be nominated from the clergy roster of the district only, not, like district presidents, from the roster of the whole Synod.

The commission notes also at NEB Bylaw III C ~~3 e~~ 2 i that a procedure specific to nomination and election of regents has here been carried over to all offices. Unless other offices have particularly detailed qualifications that are specified by bylaw as required for the office, this seems to introduce an uncertain procedure and should likely be removed. The commission can understand the need to verify region membership or check for possible issues with Bylaws 1.5.1.1–2, if something like this is intended.

With the minor change made (actually reversed) in NEB Bylaw III C 2 b 1 and the other matter addressed in NEB Bylaw III C 3 e, this draft the commission finds to have addressed all of its previous concerns, and to be in harmony with the Constitution, Bylaws, and resolutions of the Synod. The bylaws proposal is therefore approved for presentation to the district convention. The district and its president are thanked for their work in this regard and asked to forward for the commission's files a clean copy of the bylaws as adopted and of the articles as adopted and filed with the state.

96. Minnesota North District Proposed Articles and Bylaws (21-2964)

By an email of January 15, 2021, the Minnesota North District Secretary forwarded his district's proposed articles and bylaws for the commission's review.

With regard to the articles, the commission notes no changes, except those previously approved and once acted upon by the convention and awaiting their second adoption in accordance with the district's procedure for amending articles. With regard to these, the commission requests for its files a clean copy as finally adopted and filed with the state.

With regard to the bylaws, the commission notes:

- In MNN Bylaw 2.18, the commission questions the definition of "special officer" (also used in MNN Bylaw 3.54) and notes that a board of directors does not ordinarily approve reports of officers or other agencies; usually the district president has this responsibility (by analogy from Synod Bylaw 3.1.8 [a]; see Synod Bylaw 4.2.1 [a]).
- In MNN Bylaw 2.24, the change of *advisory* to *individual* is incorrect and should be reversed. Likewise, in MNN Bylaws 2.36 (in the title and three subsequent instances), 2.38, 2.70, and 3.10 (b)(3).
- The language of MNN Bylaw 2.36 (a) must be replaced in its entirety with the language of Synod Const. Art. XII 10 b.
- MNN Bylaw 2.36 (d) should read: "Only a pastor called by and installed in a congregation or parish in other than an 'assisting capacity only,' as defined in the Bylaws of the Synod, may serve as that congregation or parish's voting pastoral delegate."
- MNN Bylaw 2.34 (c) should indicate that the advisory delegate in this instance is an *advisory lay delegate*.
- The newly inserted MNN Bylaw 2.34 (d) should read instead: "A pastor called to a congregation in an *assisting capacity only*, as defined in the Bylaws of the Synod, is not eligible to serve as a voting delegate of that congregation."
- In MNN Bylaw 2.34 (e), the commission notes that this requirement—if understood to preclude registration at the time of the convention—would seem to conflict with MNN Bylaw 2.34 (a). If the intention here is to require earlier submission to allow for floor committee service or to ensure some other arrangements, that should be indicated, but it should be made clear that this "shall" does not preclude acceptance of valid credentials at the time of the convention.
- In MNN Bylaw 2.42, it should be made clear that only voting representatives of congregations or parishes count toward the quorum.
- In MNN Bylaw 2.58 (b), regional (conference) membership of the vice-presidents is determined not by residence but by congregational membership: "...and ~~residing~~ holding membership in a congregation of the local conference..."
- In MNN Bylaw 2.58 (d), the sending of nominating ballots, especially for president and vice-president, to all individual members is unusual but theoretically permissible.
- In MNN Bylaw 2.66 (f), the procedure seems unclear. What prior elections are referred to here?
- In MNN Bylaw 3.10 (b)(3), the lay delegate to the Convention of the Synod is an advisory member of the circuit forum.
- In MNN Bylaw 3.20 (b), regional (conference) membership of the vice-presidents is determined not by residence but by congregational membership: "...and ~~have residence~~ hold membership in a congregation within the conference..."
- As a specific example of the potential of inexhaustive references giving a false impression, in MNN Bylaw 3.26 (a)(3), the district secretary has broader duties than those analogous to those assigned to the Secretary of the Synod, for example, handling district convention credentials and administering certain aspects of dispute resolution within the district.

- In MNN Bylaw 3.26 (b)(1)(i), “as an assistant pastor” should read “to a congregation in an assisting capacity” (cf. Synod Bylaw 3.3.1 [a])
- In MNN Bylaw 3.32, there appear to be extraneous question marks, which should be removed.
- In MNN Bylaw 3.34, regional (conference) membership of the regional board members is determined not by residence but by congregational membership: “...shall ~~reside~~ hold membership in a congregation within the conference...”
- In MNN Bylaw 3.46, the commission notes that the provision that “no resolution may be passed by less than six affirmative votes” is unusual, but theoretically permissible.
- In MNN Bylaw 4.06, the commission notes a very broad definition of “staff,” which may impact or be understood to impact broader service of these individuals in the district or Synod. Compare Synod Bylaw 1.5.1.1.

The commission thanks the district and its secretary for submitting these bylaws for review and requests a subsequent draft with the above issues addressed so that it can continue its review.

97. Correspondence: 2019 Res. 9-17: Voting Privilege in the LCMS

The Secretary shared with the commission an email from retired teacher Richard Cohrs, related to the work of the noted committee. Separately, the Secretary responded to Cohrs that the committee has issued its report and recommendations and that he may work through bodies able to submit overtures to the conventions of his district or the Synod to offer his further suggestions for convention consideration.

98. Adjournment and Upcoming Meetings

The commission discussed items remaining on its agenda, including Ag. 21-2965, a question from the Commission on Handbook, and longer-term projects of revising the congregational constitution and bylaw templates and the possibility of proposing model district bylaws based on representative approaches drawn from the various districts, as an aid to districts considering revisions. The commission will, while performing preliminary work on these items, handle urgent business through the summer by additional internet conference meetings, planning to meet in person after its vacancy is, Lord willing, filled in September.

Having concluded its agenda, the commission adjourned with closing prayer by Rev. Bode.

99. Mid-South Bylaw Proposal, Revised (20-2958A)

By an email of May 26, the Mid-South District Secretary forwarded a revision of the district’s bylaws that adopted the changes indicated as necessary in the commission’s previous review (Op. 20-2958) and addressed, by way of amendment of Bylaw 8.5.1 and insertion of Bylaw 8.5.1.1, also the commission’s suggestion regarding the distinction of temporary and permanent service of a vice-president in line of succession in the case of presidential incapacity or departure from office before term expiration. Subsequent to its meeting, the commission reviewed the changes to Bylaw 8.5.1 and unanimously consented to the language as proposed. Thus this change, too, stands approved for presentation to and adoption by the convention.

John W. Sias, *Secretary*