

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
St. Louis, Missouri
March 15–16, 2024

24. Opening Devotion and Adoption of Agenda

With all members present, Chairman Peters opened with a devotion, on Friday, based on Matthew 10 (and on Saturday, John 8), and the meeting's agenda was proposed and adopted as follows.

25. Opinion Request: Specific Ministry Pastor Supervision of Commissioned Ministers (23-3017)

By an email of September 27, a district president requested an opinion on the following questions regarding the permissibility of supervision of commissioned ministers by a specific ministry pastor (SMP). Consonant with Bylaw 3.9.2.2 (b), the commission requested, received, and reviewed input from the Council of Presidents and members of the Pastoral Formation Committee. Having concluded the extensive discussion begun in its December meeting, the commission offers the following background and responds to the series of questions as follows:

Background: Interpretation of Bylaw 2.13.1 (a)

The questions asked arise out of Council of Presidents Policy Manual 14.2.3's assertion (dated April 2018) that the "supervision of commissioned ministers, other rostered workers, a school, etc." by an SMP is precluded by Bylaw 2.13.1 (a)'s prohibition of the SMP "being placed or called into ecclesiastical roles that exercise pastoral oversight outside the context of his call." The commission must first address the meaning of Bylaw 2.13.1 (a), namely, to determine if the language "outside the context of his call" necessarily prohibits the specification of an SMP's call as involving supervision of some other called worker, such as a commissioned minister.

The "Background" for 2007 Resolution 5-01B slightly elucidates "outside the location of his call," the original language of the noted bylaw, adding (*Proc.*, 135) the clarifying language "i.e., in the church-at-large," along with the four subordinate examples that came to be included as the prohibitions of Bylaw 2.13.1 (b)(1–4). It further speaks of the SMP's "jurisdictional" limitations being on the basis of "theological education [] formed within the context of [an SMP's] specific ministry and [that] does not represent the breadth and depth of theology and ecclesiology that forms a basis for pastoral oversight *beyond the local level*." (In the related bylaw language, 2010 Res. 7-05 replaced *location* with *context*, with the sole stated purpose of preventing the misinterpretation of Bylaw 2.13.1 [a] to mean that an SMP cannot receive a call to a new position of service, even though he has been trained for such and certified for such as determined by his district president.) The prohibition of Bylaw 2.13.1 (a) does not, therefore, address the SMP's exercise of pastoral oversight *within his parish*, as may be assigned to him in the role described in his call documents (e.g., sole pastor, staff pastor). Rather, it addresses and prohibits his undertaking *ecclesiastical roles exercising pastoral oversight in the church-at-large*, such as (but not limited to) those listed in Bylaw 2.13.1 (b)(1–4).

Granting that this is far from the only consideration in whether an SMP may properly be placed into such a role (see further below), Bylaw 2.13.1 (a) does not itself, therefore, prohibit an SMP's specific context and call from being defined to include supervision of another called worker of the same parish, such as a commissioned minister. This understanding of Bylaw 2.13.1 (a) is consistent with the Synod's designation of the SMP *as pastor* and even in some circumstances *as sole pastor* of his parish. The bylaw limits the SMP's jurisdiction to the scope defined by his present call (see 2007 Res. 5-01B, "Background," *Proc.*, 133–34) but does not make him less a pastor within the scope of that call. (This is not, however, to deny that his service as pastor remains, throughout his service as an SMP, subject to the additional supervision of a general ministry pastor.)

Considering specifically a sole-pastor SMP, while such SMP remains under the supervision of another ordained minister (not SMP) who serves outside his parish, such SMP *and not that supervisor* (whose call is elsewhere) is *the pastor* of his parish. The sole-pastor SMP (as opposed to being one in a staff-pastor position) exercises the fullness of the pastoral office in that congregation (including preaching the Gospel, administering the Sacraments and the authority of spiritual judgment, Walther's Ministry Thesis V). Any auxiliary offices in the parish necessarily serve under his pastoral oversight, as from his office *as the pastor of the congregation* all others originate as helpers to it (Walther's Ministry Thesis VIII). He serves, in turn, under the ecclesiastical supervision of his district president (as does any pastor who is a member of the Synod), as well as under the additional supervision¹ of a non-SMP pastor. The authority, however, of his office *as pastor loci* is not diminished by Bylaw 2.13.1 (a); diminished only is his *jurisdiction* outside the scope defined by his call (in this case, outside his parish).

Background: SMP Formation, Specific Ministry Context, and the Role of District Presidents

At the same time, the theological education of an SMP is formed *for a specific ministry context*: “[The SMP] is eligible to serve only in that specific ministry context for which he has been trained and may not be offered or accept a call for ministry for which he has not been certified as determined by his district president” (Bylaw 2.13.1). The SMP program consists—by design, as an exceptional route—of training and formation that lacks the depth and breadth of preparation afforded by the M.Div. track: “[E]merging needs and economic pressures often make it impossible to call a pastor who has received a broad and thorough theological education to every congregation or mission station where, nevertheless, people need to hear the Gospel” (2007 Res. 5-01B, “Background,” *Proc.*, 133). The SMP curriculum focuses on “basic competencies” for Word and Sacrament ministry, with seminars and local mentorship touching on aspects of the particular context (perhaps including “basic mission planter training, edge gathering, and advanced mission planter training”) (id., 134). Upon certification, call, and ordination, “the student is placed on the pastoral roster of the Synod as a ‘specific ministry pastor.’ He now may preach and administer the Sacraments under supervision in a specific locality.” He subsequently must complete the educational program to “continue development of the foundational competencies necessary for serving as a specific ministry pastor” (id., 135).

Specific ministry pastors are “pastors certified for calls into *specific ministry contexts*, who serve under the supervision not only of the district president but also of a designated general ministry pastor. As such, they are eligible for calls *into a similar specific ministry context*, where they continue under the supervision of a general ministry pastor” (id., 135).

While the specific kind of ministry or context may vary in some duties and responsibilities from situation to situation, what does not change is that the SMP remains under the supervision of a pastor who is not SMP. This supervision is essential to the ongoing service of SMPs in whatever context and continues as long as the SMP is in service or rostered, unless he continues his education and reaches “a level appropriate to general ministry pastor” and, as a result of an examination, has his status changed (ibid.). In view of the fact that “an SMP pastor has been certified and ordained to serve in a *specific kind of ministry*” (emphasis added), the implementing resolution looked for “opportunity” for such a pastor “*subsequently* to be prepared to serve the church more broadly,” noting that this further necessary preparation would require “a combination of further academic preparation, accumulated pastoral experience, and examination (id., 134).”

¹ 2007 Res. 5-01B and the bylaws it introduced appear to have used the terms *supervision* and *oversight* without reference to the definitions of Bylaw 1.2.1. *Supervision* here does not appear to be either “to have authority over, to direct actions, to control activities” (the definition of *supervision*, Bylaw 1.2.1 [u])—because the SMP and neither the supervising general pastor nor the district president *is pastor* within the scope of the SMP’s call—or, in the case of the supervision general pastor, the fullness of the *ecclesiastical supervision* assigned to the district president (Bylaw 1.2.1 [i]). The Council of Presidents continues to define, in practical terms, the sense of the general pastor’s supervisory work. This terminology is referred to the Commission on Handbook for potential clarification.

In view of the limited training and formation of SMPs, 2013 Res. 5-04B resolved “[t]hat district presidents not approve specific ministry sites which could reasonably be expected to support a general pastor or sites where a minister of religion—commissioned could fulfill the duties” (*Proc.*, 140). This restriction, still in effect, underscores and circumscribes the authority and responsibility of district presidents to limit the calling or service of SMPs to ministry contexts for which their training adequately prepares them and for which there is no option of a more fully trained minister. The convention adopted this resolution citing the prior report of the SMP task force, as follows: “Special circumstances (e.g. small parishes which cannot afford a pastor) exist. Flexibility is vital as the church fulfills her vocational calling to preach the Gospel to everyone everywhere. While the church cannot maintain her theological integrity, fidelity, and courage in these bewitching times unless she has an overall well-trained and doctrinally steeped ministerium, special circumstances warrant less-trained pastors so the means of grace can be delivered by a called and ordained pastor. Therefore the task force recommends the retention of the SMP program for special circumstances.” (*id.*, 139–40).

The SMP program remains an exceptional path to the exercise of the pastoral office and not the ordinary one. To ignore this distinction is to violate the very provisions by which the SMP program was conceived and for which it was established. Clearly, the training ordinarily provided for an SMP *does not prepare him adequately for every type of parish call, even for every one that exercises pastoral oversight only within the parish context*. As Bylaw 2.13.1 and the fifth resolve of 2013 Res. 5-04B make clear, “the respective district president remains responsible for determining the appropriateness of the specific ministry” (*id.*, 139), a responsibility that must be undertaken with deliberate care and wise judgment about the content and adequacy of SMP training for the responsibility and authority to be exercised within a particular call to a particular parish. (The Council of Presidents as such [or as the Board of Assignments, Bylaw 3.10.1.3] may also have a role with respect to the definition of such contexts, at least initially, as these men are “placed by the Council of Presidents into a specific Word and Sacrament ministry context,” [Bylaw 2.13.1].)

Finally, while the question fundamentally turns on the interpretation of Bylaw 2.13.1, the SMP program is set forth by 2007 Res. 5-01B, and it is also incumbent on the commission to weigh the significance of this resolution (and others) relative to the question at hand. To the commission, the training of an SMP as described in the enabling and subsequent resolutions and in the SMP Policy Manual (2021) of Concordia Seminary, which the commission examined, does not appear to contemplate service at the head of a parish staff including a school or professional church worker auxiliary offices (commissioned ministers). That the preparation of a typical SMP² is *less* in some respects than that of a commissioned minister is reflected by the prohibition of 2013 Res. 5-04B. A careful judgment is required of the district president *as to a particular ministry context (call, parish) and to some extent to a particular man*, whether the service of an SMP in a given capacity is appropriate. This judgment is unique to every case, and is not the purview of the commission, but of the district president.

The commission offers that the SMP program has been addressed in some fashion by each convention since its adoption in 2007 and that, as it continues to account for an increasing proportion of ordained ministers in the Synod—which, in local areas, has become significant—elements of its implementation continue to present challenging unclarities and require district presidents to exercise significant judgment with little clear and concrete guidance. Such is the genesis of these questions and of this opinion, which had to be rendered on some very fine historical distinctions of few Bylaw words. This is perhaps itself a call for the convention to assess and clarify yet again.

Question 1: Is there any circumstance under Bylaw 2.13.1 in which an SMP might have supervisory authority over a commissioned worker?

² *Some particular* SMPs, of course, already possess certification as a commissioned minister. While the particular SMP may thereby have the training expected of a commissioned minister and ought not by virtue of *additional* SMP training be excluded from commissioned ministry roles, it should not be presumed that this combination constitutes adequate preparation for *pastoral* supervision of commissioned ministry in a congregation.

Opinion: Yes, in limited circumstances.

The commission must first clarify the sense of “supervisory authority” in the question. Whether an SMP can exercise “employment” supervision, generally, over others employed by his parish is a matter of the congregation’s self-governance (Const. Art. VII), into which the commission does not intrude. The commission specifically addresses *pastoral oversight*,³ that being the sense in which the holder (sole or senior pastor of the congregation) of the Office of the Holy Ministry in that place oversees the doctrine, practice, and life of those occupying any auxiliary offices in the congregation, a consequence of their offices assisting and being responsible to the Office of the Holy Ministry he bears (cf. Walther’s Ministry Thesis VIII).

As explained above, Bylaw 2.13.1’s main paragraph limits the development of an SMP to a “specific Word and Sacrament ministry context” for which the training, which lacks necessarily the breadth and depth of general pastoral formation, in the judgment of the district president, can be expected adequately to prepare him. His subsequent calls are limited to ones for which the district president can certify his limited training as preparing him.

Bylaw 2.13.1 (a), as explained above, does not address the pastoral authority of an SMP *within his context (call, parish)* and therefore does not itself preclude his role being defined to include supervision of, for example, a commissioned minister within his parish. This does not diminish the responsibility of the district president to approve the training and calling of SMPs to only those specific ministry contexts for which the training is adequate and for which more fully prepared options are not available (2013 Res. 5-04B). While the commission cannot foreclose the possibility (e.g., with regard to an SMP who also served capably as a commissioned teacher/principal) that a particular SMP *could* be equipped to exercise pastoral oversight, within his parish, over a commissioned auxiliary minister, it does not find this ordinarily to be the case—a position supported by, for example, 2013 Res. 5-04B’s assertion that SMPs not be used where a commissioned minister could fulfill the duties. Ultimately, however, this lies within the determination by the district president that the specific ministry context (call, parish), involving as it does whatever supervisory capacities with regard to auxiliary offices present in the context, is one for which the necessarily limited training of an SMP adequately prepares him.

Question 2: For example, if a large congregation with a staff of senior pastor, SMP, a director of Christian education, a full day school staff, and a director of parish music experiences a vacancy in the senior pastor position, what would be the appropriate relationship between the SMP and the commissioned workers?

Question 3: If the answers to the above questions indicate that there is never a circumstance that an SMP might have supervisory authority over a commissioned worker, would that obligate congregations in the scenario envisioned above to engage a vacancy pastor in order to maintain proper supervisory authority over, not only the SMP, but also all commissioned workers involved?

Opinion (regarding Questions 2 and 3): Relationships inherent to the SMP’s current call would be unchanged. As to relationships requiring adjustment due to the senior pastor vacancy, it is the parish’s determination—with the benefit of the advice, counsel, and ecclesiastical supervision of the respective district president and within the commitments it has made as a member of the Synod—how pastoral oversight will be provided for in the vacancy. (It should be noted that an assistant or associate pastor remaining in the parish does not always serve as the senior during a vacancy, even where he is a general pastor.) If the district president cannot certify that the SMP is adequately trained to take on oversight of the congregation’s auxiliary offices (or otherwise, to carry out the role of the senior pastor), the congregation will need to obtain the service of a different vacancy pastor who is so equipped. The SMP “is eligible to

³ See note 1 above regarding the use of *oversight* in a sense likely far more general than that of Bylaw 1.2.1 (p).

serve only in that specific ministry context for which he is trained” and may not serve outside that context (call, parish) without the certification of his district president (Bylaw 2.13.1).

26. Opinion Request: District Convention Advisory Delegate Poll and 2023 Res. 9-08A (24-3025)

By an email of February 13, an ordained minister serving a district of the Synod requested an opinion on the following matter (as it was revised and extended by the Secretary for clarity). Consonant with Bylaw 3.9.2.2 (b), the commission requested input from district presidents, district boards of directors, and the Praesidium of the Synod.

Background: A district of the Synod in 2022 adopted a resolution directing the district to provide for a non-binding advisory vote of nonvoting advisory delegates prior to votes taken at 2025 and subsequent district conventions. (This has been, in one form or another, a practice of long or short standing in a number of districts.)

The 2023 Synod convention, meanwhile, adopted Res. 9-08A, ‘To Strengthen Nonvoting Advisory Delegate Participation at Conventions,’ which reads in relevant part: “Recent efforts have included polling advisory delegates prior to delegate voting, but *in addition to violating the established rules of order* (Robert’s Rules of Order, Newly Revised [12th ed.] 45:72), *such polling reduces the advice and counsel given to a single word—either ‘Yes’ or ‘No.’ The counsel these advisors can bring is much more nuanced and valuable than merely a single word.*” (*emphasis added*)

Question: Taking into consideration 2023 Res. 9-08A and Bylaw 4.2.1 (f), “The president of the district shall conduct the sessions according to accepted parliamentary rules[...],” is it consistent with the Constitution, Bylaws, and resolutions of the Synod for a district convention to conduct a non-binding advisory vote of nonvoting advisory delegates prior to votes of voting delegates?

Opinion: 2023 Res. 9-08A has, in response to a number of overtures suggesting broader use of the non-binding advisory vote (Ov. 9-20–25), considered the question of strengthening nonvoting advisory delegate participation at conventions and recommended other means instead, raising concerns regarding rules of order and that advisory delegates’ advice not be reduced to a simple *yes* or *no*. The resolution did not, however, prohibit the practice.

Furthermore, the commission observes that Bylaws 3.1.9 (i)(3) and 4.2.1 (f) do not prescribe *Robert’s Rules of Order, Newly Revised* (RONR) or any other parliamentary manual in such a way as to prevent the alteration of its rules by a Synod or district convention adopting special (or “standing,” RONR 2:24, 59:27–37) rules (*id.*, 2:16n5, 2:22). Both Synod and district conventions thus frequently alter the basic provisions of Robert’s (or whatever other parliamentary manual might be used), in a manner fully in accord with “accepted parliamentary rules” (*id.*, 2:14–24).

Therefore, while the Synod in convention has recommended otherwise—and these recommendations should be taken under serious advisement by districts in ordering their conventions—it is not prohibited by the Constitution, Bylaws, and resolutions of the Synod for a district to conduct the contemplated non-binding advisory vote, provided its convention has adopted a special rule providing for such.

27. Lutheran Church Extension Fund Canada Corporation (23-3005A)

The Secretary noted further correspondence with the Lutheran Church Extension Fund (LCEF), following the 2023 Synod convention and its relevant amendments of Bylaws 3.6.4 and 3.6.4.4.1, by way of Res. 9-10A, “To Amend Bylaws 3.6.4 and 3.6.4.4.1 to Clarify Use of Lutheran Church Extension Fund Financial Resources and Related Services,” regarding its desire to restructure and assume the Canada Corporation presently used as an instrument of the English District. The commission reviewed the correspondence and discussed with the Secretary guidance to be shared with LCEF regarding this project.

28. Lutheran Church Extension Fund Articles of Incorporation and Bylaw Review (24-3024)

In its review of a proposed amendment to the Lutheran Church Extension Fund (LCEF) Articles of Incorporation (Op. 23-3015, minutes of September 6, 2023), the commission had noted a number of additional items potentially requiring attention and indicated that it would undertake a full review of the LCEF Bylaws and consult with LCEF regarding some of them, in particular, the requirement of Synod Bylaw 3.6.1.3 (a) that “a minimum of one-third of the voting members of the governing board of a synodwide corporate entity shall be elected by the Synod in convention.”

The commission now undertakes that review. In addition to the bylaw items identified in the commission’s previous review (Op. 23-3015, September 6, 2023, these reproduced here for convenience), the commission notes the following, marked as “(new)”:

Articles of Incorporation (new)

ARTICLE SEVENTH: “subject to the Constitution and Bylaws” should read “subject to the Constitution, Bylaws, and resolutions.” (Bylaw 3.6.1.8 [b])

ARTICLE EIGHTH: members-at-large are limited to three *successive* terms, while in the corresponding bylaw (Article I, Section 1 [c], there is no qualification on the limit of three terms). This is inconsistent. Presumably, the bylaws should be brought into line with the articles (see below).

ARTICLE EIGHTH: the commission notes that the “rounding down” of the number of additional members appointed by the Synod Board of Directors is not inherent in controlling Synod Bylaw 3.6.4.2.1; however, the commission notes this aspect of the LCEF articles as “semi-original” (dating to the implementation of the 1979 structure in 1981 LCEF articles) and does not find it, therefore, to require modification.

Bylaws

Article I, Section 1 (c): see above under ARTICLE EIGHTH: “three terms” should read “three successive terms” (new).

Article I, Section 2: while not inconsistent with the Constitution and Bylaws of the Synod, a reference to “written or telegraph notice” of a special meeting may be worthy of update.

Article II, Section 1: Synod Bylaw 3.6.1.3 (a) provides that a minimum of one-third of the voting members of the governing board of a synodwide corporate entity shall be elected by the Synod in convention. Thus, with three voting members elected by the convention, LCEF’s board may contain no more than six appointed voting members; it presently has eight. Bylaw 3.6.1.3 (a) was (as Bylaw 3.192, reading “A minimum of approximately one-third” until 2004) introduced by 1998 Res. 8-02B, for “implementation following the 2001 convention” (*Proc.*, 166).

A review of LCEF Bylaws in the commission’s files noted a modification by the LCEF membership in November of 1999, containing provisions adopting the present makeup of the LCEF board “beginning with the installation of officers elected at the convention of the [Synod] occurring in the year 2001.” The language adopted by LCEF designated three members to be elected by the Synod in convention, as newly required by 1998 Bylaw 3.490, but did not reduce the total size of the board to bring the ratio into alignment with Bylaw 3.192 (present-day Bylaw 3.6.1.3 [a]) or with the comment under which the 1998 change to Bylaw 3.490 was adopted, which indicated that the change was to “establish[] that a minimum of approximately [n.b., the Bylaw no longer allows approximation] one-third of the voting board members are elected by the Synod in convention” (1998 Res. 8-03B, *Proc.*, 167). (Perhaps the ratio of 3/11 was felt to be “approximately” 1/3 at the time, although documentation of this conclusion has not been identified.) Nonetheless, this reflects the identification of a long-standing but apparent conflict between the Bylaws of the Synod and those of LCEF, which needs to be corrected.

Article II, Section 3: Here it is provided that no director may be re-elected after serving four consecutive terms; Synod Bylaw 3.6.4.3, however, does not read “consecutive” or “successive,” but limits directors of LCEF to four terms total.

Article II, Section 4: It would be appropriate to include the requirement of Synod Bylaw 1.5.3, that the board of directors meet at least quarterly (new).

Article II, Section 6 f: perhaps “including the District Vice Presidents” is intended here?

Article VI, final sentence: “to ascertain that” should read (cf. Bylaw 3.6.1.7 [a]) “for it to review and approve that.”

Synod Bylaw 1.5.2 requires implementation of the Synod’s conflict of interest policy. While explicit mention in these governing documents is not required, the commission wishes to ensure this is implemented (new).

The commission thanks LCEF for submitting its articles and bylaws for review and looks forward to reviewing a draft of changes developed pursuant to this review. Foremost among issues identified is the requirement of Synod Bylaw 3.6.1.3 (a), that a minimum of one-third of the voting members of the governing board of LCEF be elected by the Synod in convention. The commission understands consultation to be underway between LCEF and the Secretary as to how LCEF’s governing documents and organization can be brought into compliance with this requirement.

29. 2023 Res. 7-04B Review of Higher Education Institution Governing Documents (23-3023)

With all universities and seminaries having submitted documents (albeit, with some requests for potentially associated foundations outstanding), the commission began its review of documents in the order received, starting with Concordia University, St. Paul (articles, bylaws, and policies reviewed) and Concordia University Wisconsin (university articles only reviewed to date).

The commission also began to review and discuss a document prepared by the Secretary and his assistant as an overview of requirements and changes in 2023 Bylaws, as relate to governance of the Synod’s higher education institutions, and a summary of the commission’s previous interaction with the institution’s documents. The commission hopes to provide comprehensive guidance to the institutions and the board of directors at the conclusion of this review. It intends to reserve formal opinions on the individual documents until the review is complete, in the interest of presenting consistent, coherent, and fully developed feedback. The Secretary is authorized, in the interim, to interact informally with institutions undertaking revision of their governing documents, in the interest of collective efficiency.

30. Future Agenda Items

The commission noted the following agenda items as being assigned by the chairman for initial work, for treatment in future meetings:

- Review and Revision of Guidelines for Congregational Constitutions and Bylaws (23-3019): Input has been gathered under Bylaw 3.9.2.2 (b) and submitted for the commission’s review. The chairman has assigned aspects of what will be a significant project for initial work by commission members.
- Concordia University System (CUS) Articles and Bylaws, Proposed Revisions (24-3026): The commission has received draft documents for review, related to the new corporate structure and function for CUS under 2023 Res. 7-04B and attendant bylaws. A policy manual is also expected to be ready for review in the near future.
- Procedures for Delay of Meetings of Synod (23-3022): The overture assigned to the commission in Omnibus A has been assigned to a member of the commission for initial assessment.

- Agency Structural Requirements: The Secretary noted, in light of agenda item 23-3005A and other situations, the suggestion that Bylaw requirements for agencies of agencies, generally in Bylaw section 1.5, be reviewed for the potential of proposed amendments to allow more general exceptions by the Board of Directors of the Synod, modeled after those embodied in Bylaw 1.5.3.6 and subject to evaluations that the purpose of the excepted bylaws would be adequately satisfied by other means.

31. Plan for Next Meeting

Until schedules permit an in-person meeting, the commission will accomplish urgent business by internet conference; a date for a scheduled internet conference will be set by email.

32. Meeting Review and Adjournment

The agenda being concluded, the commission adjourned.

John W. Sias, *Secretary*