MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
Internet Conference Meeting (Zoom.us)
July 21, 2020

32. Call to Order and Opening Prayer
Commission Chairman Dr. George Gude called the meeting to order, opening with prayer, with all members present except for Larry Peters and Neely Owen, who joined early in the meeting.

33. Concordia University Wisconsin Articles of Incorporation (20-2936)
By a June 11, 2020, email, counsel for Concordia University Wisconsin (CUW), under a cover letter from the chairman of the CUW Board of Regents and in response to the commission’s April 4, 2020, Op. 20-2927, forwarded proposed Articles of Incorporation intended to satisfy the requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A.

The commission notes in the redline draft, in Articles IV and VII, the apparent insertion of outdated language having to do with the former “BUE” or “Board for University Education,” which must be removed in favor of the exclusive language of the present “CUS” or “Concordia University System.” Otherwise, the commission found the articles as drafted to contain the relationship and asset disposition language required by Bylaw 1.5.3.6 and 2016 Res. 9-02A.

The university is thanked for addressing this issue and for submitting its documents for review. It is asked to submit for the commission’s files a final, clean version of its articles once they are adopted and filed with the state.

34. Concordia University Wisconsin Bylaw Revision (20-2927A)
Counsel for Concordia University Wisconsin (CUW), under the same cover letter from the chairman of the CUW Board of Regents, also forwarded a revised bylaw proposal, responding to changes requested by the commission in its April 4, 2020, Op. 20-2927. The commission has found the draft to have initially addressed the issues identified in Op. 20-2927; however, in its present further review of a substantially altered bylaw proposal the commission notes additional issues requiring attention.

At Section 1.3 (h), the commission notes that the draft includes language to allow “the delegation of certain responsibilities in the area of fund and donor development, investment management, and related tasks to Concordia University Wisconsin Foundation, Inc. (the Foundation), or its or any successor, provided that in all cases the University retains control of the Foundation through majority control of the Foundation Board of Directors as provided in the Foundation Bylaws to such an extent that the Foundation and the University qualify to file a consolidated financial statement and further that such delegation does not in any way mitigate or reduce the governance authority and responsibility of the Board of Regents of the University.” The commission notes that the ultimate responsibility for the governance of such activities rests with the board of regents (Bylaw 3.10.6.4 [e], [h], [i]). The commission is concerned that in the CUW Bylaws as drafted, these responsibilities may be delegated to an entity that, while controlled in a corporate law sense by the University, is not apparently regarded as subject to the requirements of an agency of the Synod (e.g., being required to have board members that are all members of member congregations of the Synod, Bylaw 1.5.1, etc.). Further, LCMS Bylaw 3.10.6.5 prohibits delegation of the board’s authority “to any other body that includes non-board members.” The commission does not understand such delegation to be possible, in a general sense, without “mitigate[ing] or reduc[ing] the governance authority and responsibility of the board of regents.” It therefore cannot approve of this addition.

At Section 3.3, the commission notes that the board should be aware of the requirements of LCMS Bylaw 3.10.6.2 and 1.5.1 with regard to its appointed regents. With regard to the advisors and their voting service on committees, the commission notes that, generally, standing committees of specialists containing non-board members may be created by an agency of the Synod (Bylaw 1.5.3.4). Absent here, however, are clear
provisions for the board’s retention of supervision and the need to notify the President and Board of Directors of the Synod of the formation of such standing committees. Such are required by Bylaw 1.5.3.4. As to any responsibilities specifically of the board of regents that might be delegated to such committees, again, the University is reminded that Bylaw 3.10.6.5 prohibits the delegation of the board of regents’ specific responsibilities to bodies including non-board members.

In the same respect, the commission notes in Sections 4.1 and 4.2 that the University’s bylaws as set forth allow significant delegation to such committees, composed of board and/or non-board members, retaining only certain “nondelegable powers” (Section 4.2). While Section 4.2 (f) appears to preclude delegation of any authority required by LCMS Bylaws to be performed by the board itself, this seems a rather circuitous means of circumscribing the authority of the committees vis-à-vis that of the board itself. The delegation of any of the responsibilities expected by LCMS Bylaw 3.10.6.4 to be performed by the board of regents itself would violate LCMS Bylaw 3.10.6.5.

Returning to Section 3.6, it is unclear to what provision of the Synod’s Bylaws this section refers. The Bylaws of the Synod have no general provision for removal of board advisors such as those representing the Foundation or those appointed by a district president, and reference to such an absent provision should be corrected.

Finally, at Section 10.7, the commission does not understand the circumstances under which the commission would be called upon to give an “approval” as described, and requests clarification of the University’s intent.

The commission thanks the University for its submission of this draft and requests resubmission with the identified items addressed or clarified, so that it may continue its review.

36. Concordia University Wisconsin Foundation Articles of Incorporation (20-2937) and Concordia University Wisconsin Foundation Bylaw Revision (20-2928A)

Counsel for Concordia University Wisconsin (CUW), under the same cover letter from the chairman of the CUW Board of Regents, also forwarded the Articles of Incorporation of the University’s controlled Foundation, as requested by the commission in its April 4, 2020, initial review of the Foundation’s bylaws, Op. 20-2928. Also forwarded was a slightly revised bylaw proposal. With the articles and revised bylaws in hand, the commission here continues its review.

As an agency of a university that is itself an agency of the Synod, ostensibly created by the University, controlled by the University, and operating as a delegate or agent of the University for fundraising, investment and possibly other purposes, the commission understands the Foundation to be subject to the requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A, as well as to the requirements, generally, imposed by the Synod’s Bylaws on any agency of the Synod.

In Article VIII, the clause dealing with disposition of assets upon a dissolution satisfies the requirement of such language by Bylaw 1.5.3.6 and 2016 Res. 9-02A. The articles, however, lack language stating the relationship of the Foundation and its documents to The Lutheran Church—Missouri Synod, as required by the same bylaw and resolution (see especially Bylaw 1.5.3.6 [a]). Such language will need to be added.

The commission’s further present concerns regarding the relation of the University and the Foundation are treated in the review of the University’s bylaws above. The commission would have other comments on the agreement of the articles and bylaws of the Foundation with the Constitution, Bylaws, and resolutions of the Synod, but reserves such further review until the fundamental issues noted here can be addressed.

The commission finally notes that 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. The commission invites further conversation with the University regarding bringing governing
documents into alignment with present requirements, while understanding that a final resolution of some of these issues may best be deferred until after the convention.

37. District Constitution Committee Authority to Interpret (South Wisconsin District Bylaw 1.45 e) (20-2939)

The President of the South Wisconsin District requested that the commission review his district’s Bylaw 1.45(e), regarding the district’s Committee on Constitutional Matters, as previously reviewed in CCM Op. 17-2862 and 17-2862A, in light of the following questions. The bylaw reads as follows:

1.45 Function:

The Committee on Constitutional Matters (CCM) shall: …

e. Interpret and give advisory interpretations in regard to congregational Constitutions and Bylaws when requested by congregations, the District President, or the Board of Directors. If desired, a congregation has the authority to request more than an advisory interpretation of its documents.

Preliminary Comments: Authority of Constitution Committees and Congregational Governance Controversies

Bylaw 2.2.1 requires each district to have a standing Constitution Committee. A congregation that wishes to join the Synod is required to submit its constitution and bylaws to the appropriate district president, who refers it to the committee for review. The role of that committee is to examine the constitution and bylaws of the congregation applying for membership to ensure they are “in harmony with Holy Scriptures, the Confessions and the teachings and practices of the Synod.” The district Constitution Committee can require that anything contrary to such be changed by the congregation before its application for membership can be acted on and accepted by the district board of directors. Bylaw 2.4.1 requires the committee to evaluate, in the same manner, proposed changes to a member congregation’s constitution or bylaws. In neither case does the committee have authority to pass judgment on or require changes to any other aspects of the congregation’s manner of organization. This limitation is consistent with Constitution Article VII: the Synod is advisory to congregations in relation to their self-government and as such has no authority to impose anything upon a congregation.1

A district Constitution Committee’s authority, established in the Bylaws of the Synod as noted, is limited to the evaluation of congregational documents as above described. Neither Bylaw 2.2.1 nor Bylaw 2.4.1 authorizes a district Constitution Committee to interpret and give opinions regarding the constitution and bylaws of a congregation. In fact, for it to do so may amount to a violation of Article VII of the Constitution of the Synod if it amounts to an organ of the Synod imposing its understanding on the self-government of the congregation. A request for interpretation of congregational governing documents may imply not just uncertainty but a congregational controversy regarding the sense or force of such documents, and the Constitution and Bylaws of the Synod provide specifically for Synod’s role in such matters of controversy. While the original Constitution of the Synod provided for the Synod’s arbitration of disputes within a congregation if all parties involved submitted the matter to Synod for arbitration,2 these provisions were

1 At the same time, in joining the Synod a congregation agrees to abide by and be bound by the Constitution and Bylaws of the Synod. Should a congregation act contrary to the Constitution and Bylaws of the Synod, the Synod cannot force it to change. The recourse of the Synod in such an instance is to remove that congregation from membership in the Synod (Article XIII) following the procedure of the proper Bylaw section.

2 The 1847 Constitution of the Synod, Chapter IV, Business of the Synod, provided as one of the functions of the Synod the following:
removed by 1924. The current Constitution and Bylaws of the Synod make no general provision for disputes within a congregation to be placed before the Synod for adjudication, the Synod does provide one general mechanism to address disputes within congregations. This responsibility belongs to the president of the district of which that congregation is a member. District presidents are charged with the ecclesiastical supervision of the members of their district, both congregations and individual members (Const. Art. XII 7). Bylaw 4.4.6 specifically deals with the responsibilities of the district president when controversies arise within a congregation of his district. In carrying out this responsibility the district president is free to ask the advice of whoever he wishes to get a full understanding of the situation. He could conceivably ask the advice of the district Constitution Committee, should he so choose; however, any response he received would be no more than advice and in no way would it be authoritative. The district president is also free at his discretion to involve others (a circuit visitor or someone trained in dispute resolution) to assist and work with those having the dispute in an attempt to bring about resolution. Nonetheless, dealing with these disputes within the congregation remains the responsibility of the district president.

While the current Constitution and Bylaws of the Synod make no provisions for the Synod to reach and enforce a decision regarding a dispute within a congregation, the Synod Bylaws do provide a process for resolving disputes that involve as parties members of the Synod, both congregations and individual members (ordained and commissioned ministers). This process is found in Bylaw section 1.10. All members, congregations and individual members, by their joining of the Synod are bound to follow this process in the event of a dispute between members of the Synod. When a dispute within a congregation involves both the congregation on the one hand, which is a member of the Synod, and an individual member of the Synod (pastor or commissioned minister) on the other, the provisions of Bylaw section 1.10 apply. While the district president, who has ecclesiastical supervision over both the congregation and the individual member, would likely already have been involved, this Bylaw section 1.10 process is available to those members who are in dispute, and must be used and followed if requested. The goal of the Bylaw section 1.10 process is for reconciliation to occur between the parties involved. However, if this cannot be achieved, the process also provides for a panel to render a formal decision after hearing the facts presented by both sides, and this formal decision is binding on all parties. Yet, even in this instance, because of the advisory nature of the Synod, the Synod cannot force a congregation to follow the decision rendered (Bylaw 1.10.9). However, as a member of the Synod, the congregation has agreed to follow and abide by this procedure, and its failure to follow the decision could put in jeopardy the membership of the congregation in the Synod.

The Commission’s Prior Reviews (Op. 17-2862 and 17-2862A)

The Commission on Constitutional Matters reviewed the bylaws of the district at its November 2017 meeting (Op. 17-2862). District Bylaw 1.46 (e) [now 1.45 (e)], at the time of that review, listed as a function of the district Committee on Constitutional Matters (as the district committee is known, to which the responsibility of the district Constitution Committee, among other duties, is assigned): “Interpret and give

9. To give theological opinions, also to settle disputes between single persons or between parties in the congregations. But the latter is to take place only in cases where all persons involved have applied to Synod for arbitration.

Note that according to the 1847 Constitution, for the Synod to become involved in a dispute in a congregation, it required that all of the parties involved would have requested arbitration by the Synod. This was because of the advisory nature of the Synod. When the Constitution of the Synod was revised in 1854, this same wording was retained now as Chapter IV, point 4. This same wording remained in the Synod Handbook through 1899. However, when the Constitution was again revised and translated into English, between 1917 and 1924, this stipulation was removed.

3 Those specifically between a congregation as such and a rostered worker, however, are treated specially; see below.
opinions in regard to congregational Constitutions and Bylaws when requested by congregations, the District President, or the Board of Directors.” In its opinion the commission responded:

Bylaw 1.46 [e]: The committee does not have authority to render binding opinions as to the meaning of congregational constitutions or bylaws, unless granted such by these congregational documents. The congregation, not the district president or board of directors, would have the authority to request more than an advisory interpretation of its documents.

In essence the commission indicated that unless, and only if, there were a specific statement to that effect in the constitution or bylaws of the congregation, authorizing a request to be made of the district Constitution Committee or some other outside source to give an interpretation of its constitution and bylaws and agreeing to abide by said decision, the district Constitution Committee does not have the authority to render a binding decision interpreting the constitution or bylaws of a congregation. In addition, the wording of the congregation’s constitution and bylaws would have to specify who is authorized to request this opinion on behalf of the congregation. Theoretically, with these provisions in place in its constitution and bylaws, a congregation could bind itself to abide to the interpretation of the district Constitution Committee or some other outside source. Yet, even in this case, the opinion rendered would be devoid of authority, as far as Synod itself is concerned, as the rendering of such opinions is not a function assigned to the district Constitution Committee.

The present wording of district Bylaw 1.45 (e) does not accurately reflect this opinion of the commission and is not consistent with the language suggested to the district in the Synod Commission on Constitutional Matters review of its bylaw in Op. 17-2862. It does not specify that this authority for the congregation to request a binding opinion from the district Constitution Committee or other outside source must be specifically included in the constitution and bylaws of the congregation itself. Regrettably, the commission in Op. 17-2862A did not object to the language adopted by the district; that language today is found to have been insufficient, and the approval granted in Op. 17-2862A is hereby overruled.

As district Bylaw 1.45 (e) currently stands, it is in violation of Const. Art. VII and Bylaws 2.2.1, 2.4.1, and 4.4.6, and cannot be used.

The commission now turns to the specific questions asked:

Question 1: Considering the specific charge of a district Constitution Committee (Bylaw sections 2.2 and 2.4), and that the Bylaws provide otherwise for handling controversies within a congregation through ecclesiastical supervision (Bylaw 4.4.6), and that Synod is purely advisory to congregations in regard to matters of self-government (Const. Art. VII), is it consistent with the Constitution and Bylaws of the Synod for a district Constitution Committee to be authorized to render opinions as indicated above?

Opinion: No. A district constitution committee giving an opinion interpreting the constitution or bylaws of a congregation is not so authorized by the Bylaws 2.2.1 and 2.4.1 of the Synod. Even if a congregation were to have specifically included in its constitution or bylaws a provision for requesting such an interpretation from the district Constitution Committee and had, as a congregation, requested such, any opinion rendered would be without authority so far as the Synod or district are concerned. The congregation requesting such an opinion, therefore, could not safely rely upon it, for example, in regard to ecclesiastical supervision of the congregation by the district president or any dispute under Bylaw section 1.10.

Question 2: Does it make a difference whether such interpretations are made at the request of a district president, in the course of ecclesiastical supervision, or whether by the congregation itself, or by the board of directors of the district?

Opinion: See preliminary comments. A request for insight regarding the meaning of a portion of the constitution and bylaws of a congregation could theoretically be addressed to a district Constitution Committee by either the congregation or the district president. However, any such response would be no
more than advice (and, even so, not the advice of the district or the Synod) and could not be regarded as an authoritative interpretation. Since a district board of directors is not involved in ecclesiastical supervision, it would have no official role in resolving a dispute within a congregation of the district.

**Question 3:** If such opinions are legitimate when requested by congregations, considering that membership in the Synod is held by the congregation and not by its members (other than rostered church workers thereof) would such an opinion, if allowable, need to be requested by the congregation as such, as an official act, or could it be requested by an officer of the congregation, such as its chairman or president?

**Opinion:** See preliminary comments. Any such opinion, regardless of how it may come to be requested, possesses no authority under the Constitution and Bylaws of the Synod.

**Question 4:** Were the interpretation offered to relate to the divine call of a member of the Synod by a congregation of the Synod, a circumstance in which a dispute resolution panel might ultimately be called upon to determine a dispute, would such an “advisory” or “more than advisory” opinion, supported by the bylaws of a district, necessarily be regarded as authoritatively rendered?

**Opinion:** See preliminary comments. Even in the event that a congregation had the necessary provisions in its constitution or bylaws authorizing the district Constitution Committee or some other source to give an “authoritative” (from the congregation’s perspective) interpretation of its constitution and bylaws in the case of a dispute within the congregation, the congregation, as a member of the Synod, is bound to the ecclesiastical supervision of the district president and to the Bylaw section 1.10 process, and any such outside opinion would possess no authority under the Constitution and Bylaws of the Synod and have no bearing on the role of the district president or of the Bylaw section 1.10 process of the Synod.

**Question 5:** South Wisconsin District Bylaw 1.45 (c) states as another function of the committee: “c. Interpret, within the limitations of synod bylaw, the bylaws unique to our district and resolutions of the district in cases of controversy. Its opinion shall be binding unless overruled by the district[.]” Could determinations under 1.45 (e) be overruled by the district?

**Opinion:** Any opinion issued under District Bylaw 1.45 (e) possesses no authority under the Constitution and Bylaws of the Synod. Neither has the district (or a district board of directors) the authority to interpret the constitution and bylaws of a congregation, except to satisfy itself that they contain nothing contrary to the Scriptures or the Confessions; therefore, the overruling of a moot opinion would itself be moot.

**Question 6:** Again, in regard to South Wisconsin District Bylaw 1.45 (e), “Its opinion shall be binding unless overruled by the district,” would the “district” be limited to the district convention, or could an opinion be overruled by, for example, the district board of directors?

**Opinion:** See above answer to Question 5.

### 38. Adjournment and Upcoming Meetings

The commission set its next meeting for August 10, 6–8:30 p.m., and will continue to arrange a greater number of relatively brief internet conference meetings to deal with business as it arises. Chairman Gude and Secretary Sias will review the business before the commission and plan a work schedule. With its agenda for the present meeting concluded, the commission adjourned.

John W. Sias, Secretary