MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
Hilton Airport Hotel, St. Louis
March 22–23, 2019

194. Call to Order and Opening Devotion

Commission Chairman Dr. George Gude called the commission’s meeting to order with all members present. Atty. Tom Deadrick offered devotions Friday and Saturday mornings, based on Matt 27:50, on Friday, and, on Saturday, John 3:16; 2 Cor 5:21; and Rom 3:21–25.

195. Further Questions Regarding Restricted Status (18-2871A)

By a letter of Oct. 15, 2018, the member who posed the question of Op. 18-2871 (CCM minutes of Feb. 2, 2018) asked several follow-up questions, all related to restriction of a called worker. Regarding the opinions supplied to questions 5 and 8 of that opinion, the member wrote (the questions have been edited for brevity):

**Question 1:** What is expected of the district president in accordance with Bylaws 2.13.2.3 and 2.13.2.4? Is any letter a district President writes, no matter how generic or general, in the spirit of Bylaw 2.13.2.3 and 2.13.2.4? Is a district president fulfilling the intent and spirit of these Bylaws by simply saying, “You are belligerent” or “domineering” without explaining how this is so? How, then, is it possible to follow Bylaw 2.13.3 to file a petition disagreeing with charges that are not clearly spelled out?

**Opinion:** The bylaws do not specify what is to be included in the notification of restricted status; the wording would be unique to each situation, and this commission is not charged with findings of fact, such as determining the sufficiency of particular language. The purpose of restricted status is to allow the district president opportunity to conduct an investigation and to address a serious situation wherein he has determined that allegations of conduct or incapacity, neglect, or refusal to perform duties have a substantial basis without yet initiating formal expulsion procedures. If a member of the Synod believes that the restricted status is not appropriate, the bylaws provide the member a process for petitioning to have the status removed. Should a restricted member petition for removal of restricted status under Bylaw 2.13.3.2, the district president’s adherence to Bylaws 2.13.2–2.13.2.1 and 2.13.2.3–4 would be subject to the panel’s review. This would include a review of whether the worker was properly notified in writing of “the specific reasons for having been placed on restricted status,” particularly in light of the requirement of Bylaw 2.13.2.4, namely, that the district president would “continue efforts to resolve those matters which led to the imposition of restricted status.”

**Question 2:** Isn’t the intent as stated previously in your letter, “Restricted status is intended to be a temporary step taken by the district president while he conducts an investigation to determine if the alleged conduct rises to the level of expulsion from the Synod under Article XIII, or until the matter is resolved”? How can one appeal an investigation if there are not specifically defined charges? Doesn’t the force of the Bylaw and its intent allow this temporary step to become a perpetual, on-going step because an investigation, by its very nature, can take years?

**Opinion:** Restriction is not punitive, but investigative, so that alleged or suspected conduct that could lead to expulsion for incapacity, neglect, or refusal to perform the duties of office can be investigated and addressed, and a resolution reached (Bylaws 2.13.2.1, 4). Restriction can be renewed on an annual basis, and a restricted member can petition for removal of restriction on an annual basis, again with the hearing panel reviewing the district president’s determination of substantial basis for the restriction (Bylaw 2.13.2.1) and his adherence to relevant bylaws. Were the worker to petition for removal of restriction, the district president would have to justify the restriction to the panel’s satisfaction, under relevant bylaws.
**Question 3:** Whom do the bylaws empower to determine what constitutes domineering? Is this something the Commission on Theology and Church Relations (CTCR) defines? Is this something Scripture defines? Does a panel decide this or individual District Presidents and/or the President of Synod?

**Opinion:** See Op. 18-2871. Ultimately, if there were to be a suspension and an appeal of the suspension, it would be the hearing panel that would, after hearing the facts and considering them in light of the Scriptures, the Lutheran Confessions, and the Constitution, Bylaws, and resolutions of the Synod (Bylaw 2.14.7.8 [a]), make the determination as to whether or not the behavior alleged is demonstrated and is grounds for expulsion under Const. Art. XIII 1. An opinion requested of the CTCR in such a process must be followed (Bylaw 2.14.7.8 [k][4]).

**Question 4:** Is what constitutes a substantial basis in Bylaw 2.13.2.1 to make the conclusions of (a), (b), or (c) a determination made solely by the district president (unless a petition for review requires a panel to make such a determination)? Is “substantial basis” really not a legal term referencing the quality, quantity, or significance of evidence, nor a reference to any Scriptural judicial requirements and precedents such as Deuteronomy 19:15–21 or 1 Timothy 5:19–21?

**Opinion:** See Op. 18-2871, responses to questions 1 and 2.

**Question 5:** Article XIII of the constitution mentions “offensive conduct.” Do the bylaws define what is meant by “offensive conduct”? If not, who defines what constitutes “offensive conduct”? Does 2001 Res. 7-17 (recognizing Walther’s Church and Ministry as “the definitive statement under Holy Scripture and the Lutheran Confessions of the Synod’s understanding on the subject of church and ministry,” “the official position of the LCMS”) have any place in these opinions on restricted status or any effect on these bylaws? In particular does not Thesis X state that “laymen have this right, and for this reason they also have a seat and vote with the preachers in church courts and councils”? Thesis IX speaks of a pastor not dominating over the Church by making new laws, arranging ceremonies arbitrarily, or imposing excommunication alone but does insist on “unconditional obedience” when “the preacher is ministering the Word of God.” This ties to Thesis X because it deals with judging whether something is indeed doctrine and should be obeyed or is in truth domineering.

**Opinion:** Ultimately each case is unique, and the determination would be made by a hearing panel if, after an investigation, a district president suspended a member and that member appealed the suspension. The panel would reach its determination on the basis of the facts established in light of the Scriptures, the Lutheran Confessions, and the Constitution, Bylaws, and resolutions of the Synod (Bylaw 2.14.7.8 [a]).

**Question 6:** Does not 2001 Res. 7-17 mean that the panel of Bylaw 2.13.3.2 (a) that is making judgments on the ministry of a pastor should include laymen?

**Opinion:** Such a panel is not a “church court or council,” but an administrative hearing in which ecclesiastical supervisors from other districts review the decision of one of their peers that a substantial
basis exists for an investigative hold or “restriction” on a rostered worker. The Synod in convention, in which member congregations are represented equally by pastors and lay delegates, has set forth the procedure of Bylaw 3.12.3.2 to evaluate petitions for removal of restricted status. This is not in conflict with Synod’s position in *Church and Ministry.*

196. **Board for International Mission Ends Policy Review** (18-2897)

By a letter of Sept. 10, 2018, the chairman of the Board for International Mission forwarded his board’s ends policies, as adopted Oct. 5, 2017, for review by the commission under Bylaw 3.9.2.2.3. The commission finds the policies to be in harmony with the Constitution, Bylaws, and resolutions of the Synod and thanks the board and its chairman for the opportunity to review its policies, as well as for the board’s significant and fruitful effort, spanning the past several years, to elaborate and to fulfill its proper role in the post-2010 Synod structure.


By an e-mail of Nov. 27, 2018, the chairman of the Board for National Mission forwarded his board’s policies for review by the commission under Bylaw 3.9.2.2.3. The commission finds the policies, structured along the lines of Synod’s seven mission priorities, to be in harmony with the Constitution, Bylaws, and resolutions of the Synod and thanks the board and its chairman for the opportunity to review its policies, as well as for the board’s significant and fruitful effort, spanning the past several years, to elaborate and to fulfill its proper role in the post-2010 Synod structure.

198. **Appointment of Pastoral Delegate by District President** (19-2906)

A district president faced with a necessity of appointing a replacement voting pastoral delegate for the 2019 Synod convention posed the following situation: An electoral circuit, consisting of two triple-congregation parishes and four others, duly elected eligible pastoral and lay delegates and alternates for the 2019 convention. Since the time of the circuit forum, the pastoral delegate has developed a medical issue and the alternate is also unable to attend the convention, necessitating the appointment of an alternate delegate by the district president (Bylaw 3.1.2.1 [j]). The availability of the circuit’s remaining pastors to attend the convention is such that the only option for appointment of an alternate delegate is a pastor of a congregation or parish already providing the circuit’s lay delegate. This prompts the following questions:

**Question 1:** Can the district president, acting under Bylaw 3.1.2.1 (j), appoint as a pastoral delegate a pastor whose congregation or parish is also providing the lay delegate, such that both the elected lay delegate and the appointed pastoral delegate may serve, Bylaws 3.1.2.1 (d)(3), (e), (e)(3), (f), (f)(3), (g), and (h) notwithstanding?

**Opinion:** It is important at the outset to recognize that the system set forth in Bylaw 3.1.2.1, as a whole, is designed to fairly ensure a breadth of representation from the circuits. Hence, those congregations whose pastor has been chosen as a pastoral delegate are thereby excluded from consideration in the election of any other voting delegate during this process (see Bylaw 3.1.2.1 [d][3]). Similarly, during the election of lay delegates from the remaining eligible congregational nominees, selection of any individual nominee as lay delegate precludes consideration of other nominees from that congregation in the selection and supply of alternate delegates under this process of election (see Bylaw 3.1.2.1 [e][3]). Finally, the election of a pastor as alternate pastoral delegate renders the congregation(s) he serves ineligible for consideration in election of alternate lay delegates.

All of the foregoing speaks only to the process of election of pastoral and lay delegates under Bylaw 3.1.2.1. It is not explicitly and fully determinative of what may take place where an individual delegate is unable to serve and a vacancy must be filled. Authority is granted by Bylaw 3.1.2.1 (j) to the district president to fill such a vacancy. This is in order to ensure that the circuit’s right to representation, as the circuit took all necessary steps to secure by the due and timely election of delegates and alternates, is protected and preserved. The filling of the vacancy is not an election.
In the limited circumstance that the only individuals available to the district president (who are reasonably able to function at the convention as the circuit’s pastoral delegate) would have been precluded from consideration for election by reason of the restrictions Bylaws 3.1.2.1 (d)(3), (e)(3), (f), (f)(3), (g), and (h), this does not in and of itself preclude the District President from acting, in consultation with the circuit visitor, as required by Bylaw 3.1.2.1 (j), to select such an individual as a replacement. In the interest in fairness and to maintain the integrity of the process, however, the district president must make every effort to ensure that the representative weight that the spirit of this bylaw seeks to accomplish is preserved to extent possible (see generally, Op. 13-2675 May 19, 2013), while providing for the full representation of a circuit that has duly and properly elected delegates and alternates and has suffered losses of the same.

Question 2: Could the district president, acting under Bylaw 3.1.2.1 (j), appoint as a pastoral delegate a pastor whose congregation or parish is also providing the lay alternate, Bylaws 3.1.2.1 (d)(3), (e), (e)(3), (f), (f)(3), (g), and (h) notwithstanding?

Opinion: The answer to Question 2 is essentially the same and is dependent on the same reasoning as that set forth in response to Question 1.

Question 3: If the answers to the above are not affirmative in the general case, may an allowance for the above be made, for the sake of the circuit’s representation, if the district president has no other reasonably feasible option to appoint an alternate pastoral delegate that is not the pastor of a congregation or parish that has already provided a lay delegate (or alternate)?

Opinion: This question is sufficiently answered by the foregoing.

Question 4: Can the district president, acting under Bylaw 3.1.2.1 (j), appoint as a pastoral delegate a pastor whose congregation or parish is also providing the lay alternate, provided that the lay delegate and/or alternate elected from said pastor’s congregation or parish would voluntarily step aside?

Opinion: As noted in response to Question #1, “the system set forth in Bylaw 3.1.2.1, as a whole, is designed to fairly ensure a breadth of representation from the circuits.” At issue are fairness and the preservation of the right of the congregations within the circuit to choose their own delegates. The circuit in question has taken all available measures to secure its right to full representation at the convention, including electing alternates as a first safeguard. As noted above, where the choice of the district president—the second safeguard of the circuit’s full representation—is constrained, such that he could only make an appointment that, due to the parish restrictions of Bylaws 3.1.2.1 (d)(3), (e), (e)(3), (f), (f)(3), (g), and (h), the forum could not have made by election, he may do so, to ensure that full representation. Should the complementary (in this case, lay) delegate or alternate, in a sense of churchmanship or fairness, be willing to forego his position to enable the district president, in making his selection, to more evenly distribute representation within the circuit, nothing within these Bylaws would preclude these steps being taken. Nor, of course, would this be required.

199. SELC District Articles of Incorporation (19-2899)

By an e-mail of Jan. 11, 2019, Counsel for the SELC District forwarded a draft amendment to the district’s articles of incorporation. The commission finds the proposed addition to satisfy the requirements of Bylaws 1.5.3.6 and 2016 res. 9-02A, but recommends the following simplification of the proposed addition to the articles:

Except to the extent, if any, that the law requires otherwise, and notwithstanding anything in the Bylaws to the contrary, the Articles of Incorporation or any other governing documents are amended as follows: (a) All provisions of these Articles of Incorporation and Bylaws are subject to the provisions of the Constitution, the Bylaws, and the resolutions of the Synod of The Lutheran Church—Missouri Synod in convention, and (b) that in the event of dissolution other than by direction from the Synod in convention, the assets
of such agency, the district, subject to its liabilities, shall be transferred, consistent with applicable state and federal laws, as follows: (1) in the case of a synod-wide corporate entity, district (emphasis added), university, college or seminary, to The Lutheran Church—Missouri Synod, as may be more specifically described elsewhere in these Bylaws; and (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.

The commission requests also a clean and complete copy of the articles as presently in force, so that the remainder may be checked for consistency, and the addition considered in context. The commission also needs to file the complete articles in its repository of agency documents (Bylaw 3.9.2.2.3 [c]). The SELC District is thanked for its efforts to comply with Bylaws 1.5.3.6 and 2016 Res. 9-02A, and for submitting its documents for review.

200. Rocky Mountain District Articles of Incorporation (19-2902)

The commission finds the proposed addition to satisfy the requirements of Bylaws 1.5.3.6 and 2016 Res. 9-02A. The commission requests also a clean and complete copy of the articles as presently in force, so that the remainder may be checked for consistency, and the addition considered in context. The commission also needs to file the complete articles in its repository of agency documents (Bylaw 3.9.2.2.3 [c]). While understanding that this change is a direct consequence of a clear directive of the LCMS Bylaws, for future reference, intended changes to the articles of an agency are to be submitted to the commission for approval in advance of adoption (Bylaw 3.9.2.2.3 [a]).

201. Professor at a Synod Educational Institution as Presidential Voter (19-2903)

During the course of registration for the pre-convention election of the President under Bylaw 3.12.2.3, the Secretary of the Synod addressed the following question to the commission. He noted that Const. Art. V A, Const. Art. XII 10 A, and Bylaw 3.12.2.3 all speak of votes (at Synod and district conventions and in the pre-convention election of the President, respectively) inhering to the congregations and being vested in their pastors (now without distinction as to assistant status) and lay delegates. Const. Art. V B and Const. Art. XII 10 B, however, term certain individual members “advisory members [only],” which (depending of the sense of the “only” and the relative precedence—in case of a given instance where both might apply—of the constitutional paragraphs regarding voting and advisory membership) could preclude a congregation’s pastoral vote from being assigned to a pastor who was at the same time a professor at an educational institution of the Synod. Bylaw 3.12.2.3, despite its now-removed connection to district convention delegacy, makes no reference to advisory members only, indicating simply that the congregation chooses “the pastor” of the congregation or the one designated, should the congregation have multiple pastors, and a lay voter. The Secretary also noted that the precedent is unclear and not obviously directly applicable.

Question: An ordained minister, a full-time professor at a college, university, or seminary of the Synod, also serves part-time as a congregation’s associate or assistant pastor. Supposing he is duly called and installed to both positions, can the congregation select him as its pastoral voter in the pre-convention election of the President of the Synod?

Opinion: The commission engaged in a protracted and detailed discussion of the history of the relevant constitutional language (Const. Art. V A–B) and its application, weighing whether the language of Const. Art. V B is in this application applicable as being prohibitive (disallowing a member who is called by a congregation and might otherwise be selected by the congregation as a voting delegate or voter [Const. Art. V A] from serving in such capacity if listed in Const. Art. V B) or irrelevant as being permissive (allowing ministers and candidates who are not the voting pastoral representatives of a member congregation to be at least advisory members of the Synod).
Noting its sincere discomfiture with this solution and its intention to present a convention with a full report and recommendation for constitution and bylaw revisions to address the long-term issues uncovered in its study and discussion, the commission deferred to the 2016 convention’s apparent presumption that, when it struck assistant pastors from the list of Const. Art. V B (2016 Res. 11-09), it was striking them from a prohibitive list, thus allowing congregations to designate such as their voters. In the instant question, therefore, the ongoing presence of “professors at the Synod’s educational institutions” in the list of Const. Art. V B is understood to prohibit installed professors of Synod’s educational institutions from serving as the voting representatives of congregations in the presidential vote unless and until the convention takes corrective action.

202. South Dakota District Articles of Incorporation (19-2901)

The president of the South Dakota District forwarded his district convention’s 2018 Res. 1-12, which amended district bylaws to facilitate a new nomination process for district vice-presidents in advance of the district convention. These changes are approved by the commission and therefore in force and effect. The district president indicated that the convention failed at that time to revise bylaws regarding the election process for district vice-presidents to correspond to the new nomination process and inquired whether the provision of LCMS Bylaw 3.9.2.2.3 (b) could allow the district board of directors to adopt these bylaws to complete the convention’s abortive amendment. The commission does not find Bylaw 3.9.2.2.3 (b) to be applicable, but suggests that the district board of directors propose for the commission’s advance approval, prior to the next district convention, suitable election bylaws. These could then be adopted by the convention prior to the election of the vice-presidents of the district. The district president’s letter suggests possible solutions; the proposed amendment to South Dakota District Bylaw 5.05 (f) is approved for such submission to the convention, as is the proposed provision for floor nominations to be added to Bylaw 5.05 (e).

203. Rescinding Approval by the Colloquy Committee for Pastoral Ministry (19-2907)

The Colloquy Committee for Pastoral Ministry of the Synod asked the commission whether the roster status of an individual who was initially approved by the committee under Bylaw 2.8.1 and later by the Council of Presidents for direct emeritus rostering under Bylaw 2.7.5, but who would later be found to have withheld information from the Colloquy Committee that would have prevented approval, could be withdrawn for re-evaluation.

The Synod has maintained eligibility rules, a process, and standards for individual membership in the Synod, including colloquy. The bylaws remind us that “there is no inherent right to membership in the Synod, and the decision as to qualification” remains at the “sole discretion of Synod” (Bylaw 2.6.3). In this regard, Bylaw 2.8.1 requires that the “colloquy committee must be satisfied that the individual will meet all personal, professional, and the theological requirements of those who hold the office of ministry.”

The information presented to the Commission on Constitutional Matters is sufficient on its face to establish, without making a factual determination, that assuming the same to be true, the individual making application for roster status either was grossly negligent or intentionally misleading in the information provided to the colloquy committee such that they were unable to properly meet their obligation under the provisions of Synod Bylaw 2.8.1. Consequently, the committee’s actions would have been based upon woefully inadequate information, thus so severely impairing their ability to carry out their responsibilities such as to render them not fully performed. Having not fully completed their bylaw responsibilities, the actions and recommendations of the colloquy committee did not meet the standards set forth in Bylaw 2.8.1.

Because their actions were neither fully informed nor based on complete information, the colloquy committee is advised to reopen the application for roster status and give the applicant full opportunity to submit such information and any extenuating circumstances as he may deem appropriate in explanation of such, apparently having been not forthcoming in the initial application. The Colloquy Committee, having received full and sufficient information, may then act to make their determination and recommendation.
based on Synod Bylaw 2.8.1 as to the rostering of this individual, with further action by the Council of Presidents as to whether this individual meets the standards necessary for rostering under Bylaw 2.7.5. Their decision on the basis of this re-evaluation is determinative of the individual’s roster status.

204. District Membership of Bylaw 3.2.5 (c) Committee Member (19-2908)

A member of the Synod’s Committee for Convention Nominations (CCN), also a member of the “Bylaw 3.2.5 (c)” continuing committee for vacancy nominations (CCVN, coining the term for sake of abbreviation), has accepted a call that will result in his transfer to a district other than the one he represents on the committee. Another member of the committee, a member of the Synod, noted on the one hand that the member in question had been properly appointed by the plenary CCN to the CCVN while a CCN member properly representing his then-district, and on the other hand that the representative nature of the CCN, alternating between seventeen and eighteen districts of the Synod each triennium, would seem to be disrupted by the member’s movement from a district in the Bylaw 3.12.3.1 list to one on the Bylaw 3.12.3.2 list. He then asked whether the member in question may continue to serve on the Bylaw 3.2.5 (c) committee, given that he will no longer be a member of the district he represented on the CCN.

The commission notes that even before the CCN submits its final report (Bylaw 3.12.3.6), although the members are elected by certain districts of the Synod each triennium as listed in 3.12.3.1–2, the members of the CCN act on behalf of the whole Synod. Bylaws do not require as a qualification for election that the member elected by a district be a member of that district. Finally, the CCN elects the Bylaw 3.2.5 (c) committee from among its membership by electing its chairman and two other of its members to serve in the particular capacity of screening nominees for vacancies that occur in the upcoming triennium. The members of this smaller committee represent and are selected by the CCN as a whole, and serve the whole Synod. The commission therefore finds that transfer of a member of the Bylaw 3.2.5 (c) committee to another district after the submission of the CCN’s final report does not vacate the member’s position on the “Bylaw 3.2.5 (c)” continuing committee for vacancy nominations.

205. Camp Luther Bylaws (19-2900)

The executive director of Camp Luther, Three Lakes, WI, sent the camp’s bylaws, as last revised in 2015, for the commission’s review. The commission notes, in Article V, that with regard to telephonic and electronic meetings of the board of directors, these would need to be conducted in accordance with LCMS Board of Directors policies (Bylaw 1.5.3 and LCMS BOD Policies, e.g., 2.4.3–4). With regard to termination of office, members of the board would need to be removed in accordance with LCMS Bylaws 1.5.7–1.5.7.1. Camp Luther is thanked for forwarding its bylaws for the commission’s review.

206. Lutheran Haven Articles and Bylaws (19-2904)

The commission notes that Lutheran Haven has been designated a recognized service organization of the Synod, and that despite its historic connection with the SELC District of the LCMS, is regarded by the commission as such. The granting of such status (Bylaw 6.2.1) indicates that the organization is “independent of the Synod” and “under the governance and policies of its own board, etc.” The board thanks Lutheran Haven for sending its documents for review.

207. New England District Bylaw Revision (19-2905)

By an e-mail of Jan. 22, 2019, the secretary of the New England District forwarded his district’s bylaws, as amended in the 2018 district convention, for the commission’s review. The commission approves the changes indicated, noting the following points requiring attention in the remainder of the bylaws:

- Bylaws 3.01–3.03: The president may be elected from the clergy roster of the Synod; other elected officers must be drawn from the clergy roster of the district (LCMS Bylaw 4.3.1).
- Each instance of circuit counselor needs to be updated to read circuit visitor (LCMS Bylaw section 5.2)
• Bylaw 8.01: It is unusual for the circuit visitors to serve as the elected nominating committee (Bylaw 4.7.2). This is permissible, as the circuit visitors are elected by the district convention, but the convention should be reminded of the dual purpose of the election of these circuit visitors.

• Bylaw 8.20: the ranking of district vice-presidents needs to be by majority, not plurality (LCMS Bylaw 4.7.2; cf. LCMS Bylaw 3.12.2.7 [g]).

The district and its secretary are thanked for forwarding the district’s bylaws for review.

208. Review of 2019 Overtures (19-2910)

The Secretary presented the overtures submitted to the 2019 convention to the commission for study and reflection, and the commission briefly discussed a few that related to constitutional and bylaw questions.

209. Future Meetings and Adjournment

With its presently addressable agenda concluded, the commission adjourned from its regular business at noon on Saturday. Future meetings are scheduled for May 29–June 1, 2019, in conjunction with Floor Committee Weekend, and July 18–19, 2019, in conjunction with the 67th Convention of the Synod in Tampa, FL.

John W. Sias, Secretary