53. Call to Order and Opening Devotions

Commission Chairman Dr. George Gude called the meeting to order with all members present, calling upon Attorney Deadrick to offer opening devotions, which he did, on Friday, on the basis of LSB 555, “Salvation unto Us Has Come,” and, on Saturday, on the basis of LSB 677, “For All the Saints.”

54. Prior Evidence in Bylaw Section 2.17 Hearing Panel (20-2955)

A Bylaw section 2.17 Hearing Panel by an e-mail of October 20, 2020, and under Bylaw 2.14.7.8 (k) requested the commission’s opinion on the following questions:

**Question 1:** If a district president took no action on a previous accusation and therefore the case was terminated, is evidence from such previous accusation admissible to a current case?

**Opinion:** When a district president receives information that requires him to consider initiating the proceedings outlined in Bylaw section 2.17, the district president eventually has two options, to initiate formal proceedings or to not initiate formal proceedings, “which shall terminate the matter” (Bylaw 2.17.5), subject to other provisions that are not relevant to this question.

When a district president receives information that initiates Bylaw section 2.17, the district president is to “thoroughly investigate whether the allegations of the accuser can be substantiated” (Bylaw 2.17.4 [a]). “Thoroughly investigate,” having no Bylaw definition, is then to be interpreted by its ordinary or plain meaning. To the commission, this means to leave no stone unturned, to look at all relevant information, and then to weigh the information as to credibility and importance. This thorough investigation may involve prior accusations that, due to the judgment of the ecclesiastical supervisor responsible at the time and to many reasons too numerous to be listed here, had previously resulted in no formal proceedings.

The provision that such a conclusion shall “terminate the matter” and that the district president responsible shall “in writing so inform the accuser, any district president involved, and the involved member” (Bylaw 2.17.5, including subparagraph [e]; cf. Bylaws 2.14.5; 2.15.5; 2.16.5.1; 2.16.8 [d]) serves as a formal statement to the accuser that the accusation as presented has been assessed and a determination has been reached by the ecclesiastical supervisor responsible that, in his judgment and upon the facts and evidence available at the time, formal proceedings will not be initiated on the basis of the specific accusation presented.

Such a conclusion does not expunge facts or evidence related to prior accusations and/or investigations, or prevent a district president, on the basis of additional facts or evidence, from initiating subsequent formal proceedings based in part on new evidence and in part on evidence existing prior to the current matter, including, without limitation, evidence connected with a previous accusation that did not result in formal proceedings.

The materiality or relevance of facts and evidence to a subsequent case is not diminished by the decision of a district president at some prior point not to proceed to formal proceedings. It may be reassessed in a subsequent decision whether to suspend a member and may be presented to a panel subsequently convened on the basis of new accusations, facts, or evidence. As is the rule for all material presented to a panel, provided by the Bylaw section 2.17 Standard Operating Procedures Manual, General Regulation K, “Witnesses and Evidence,” p. 15:

(b) Panels shall be the judge of the relevance and materiality of evidence offered. Relevance of testimony will be determined by whether such evidence will support (or not) an issue in contention.
A panel may reject and not consider evidence or testimony from a witness that it deems unnecessary or unhelpful to its consideration of the matter.

**Question 2:** Does the phrase, “the ecclesiastical supervisor shall close the investigation, terminating the matter,” Bylaw 2.17.5 (SOPM 2.3 c) mean that evidence from such a case may not be used in a subsequent case?

**Opinion:** No. See answer to Question 1 above.

**Question 3:** If evidence from an accusation was gathered and considered by a district president, resulting in no formal action, under a set of bylaws, and the bylaws were subsequently amended in such a way that the admissibility of that evidence to a current case is questioned, which bylaws pertain, those under which the evidence was gathered and considered without further action, or those under which a current case is being heard?

**Opinion:** The commission is unable to answer such a hypothetical question. Should the panel encounter a specific question regarding the applicability of specific provisions that have changed over time in a way that appears relevant to the facts at hand, the panel may inquire further.

55. **Virtual Meeting of Hearing Panels (20-2956)**

By the same e-mail, the hearing panel in a Bylaw section 2.17 matter also requested an opinion on the following two procedural questions occasioned by the COVID-19 pandemic:

**Question 1:** May one or more members of a Hearing Panel (under Bylaw section 2.17) attend a hearing by electronic means?

**Opinion:** The Bylaws and Standard Operating Procedures Manuals (SOPM) for Bylaw sections 2.14–17 do not prohibit a hearing panel, in an emergency situation (such as a weather emergency or flight cancellation), from allowing a panel member who is unable physically to attend from joining the hearing by electronic means.

The observation that such participation is not prohibited does not solve the manifold technical challenges that could arise in attempting to render such participation as effective as physical presence would be. Such participation would therefore be confined to the realm of strict necessity (i.e., it would be impossible or highly imprudent, reasonably speaking, for the panel member to be present physically at the hearing) and not of preference or convenience.

The commission also notes that the determination of a panel to proceed with a hearing in which one or more members of the panel attends electronically (as opposed to proceeding without the member, his or her being “unable to perform required duties,” 2.17 SOPM, Detailed Flowchart 4.3 [d], or rescheduling the hearing if the number of members unable to attend physically would so necessitate) is a discretionary act which may be reviewed for its impact on the provision of a fair and impartial hearing.

**Question 2:** May the entire Bylaw section 2.17 Hearing Panel proceeding be conducted by electronic means in such a way that no two members of the panel, neither the accused or the accuser [sic, really “the ecclesiastical supervisor”], nor any of the witnesses are physically present with each other?

**Opinion:** Bylaw sections 2.14–17 and the corresponding Standard Operating Procedures Manuals (SOPM) do not contemplate the possibility of a virtual hearing; rather they reflect the established practice, heretofore without exception, of the panel and parties meeting at an established time in a given single place (e.g., Bylaw 2.17.7.6). Considerations that may strongly favor this practice, even given modern technological alternatives, include the non-verbal cues generally more readily observable in an in-person setting and process security (recordings are prohibited, except as made by the panel for its own use; access to the proceedings is controlled to prevent witness “contamination” or inappropriate “leakage” of sensitive information; sensitive documents can be shared in-person and collected for the official record). A physical
“face-to-face” meeting of the parties is required to begin dispute resolution (e.g., Bylaw 1.10.5) and expulsion processes (except in the case of Bylaw section 2.17) for reasons that have withstood recent scrutiny even in light of technology that, for one-on-one meetings, is otherwise quite reasonable (Op. 19-2914). While there is no similar explicit requirement that the hearing in a Bylaw section 2.14 or 2.17 matter be “face-to-face,” some of the same practical implications and value judgments might surely be in play. Decisions regarding the adjudication of disputes, especially regarding membership in the Synod and fitness for ministry, ought be afforded the best reasonable means possible.

Standard operating procedures have contemplated certain specific uses of electronic means in connection with these proceedings. Meetings ancillary to the main hearing, such as the one conducted by the panel to finalize its opinion, are explicitly authorized to be conducted electronically (Bylaw section 2.17 SOPM, Detailed Flowchart 4.6 [c], p. 43). Appeal Panels routinely (and almost exclusively) meet electronically (id., Detailed Flowchart 4.9 [g], p. 47). Panels may also receive testimony electronically, at the discretion of the panel (e.g., id., General Regulation K, p. 17). As noted above, a panel may determine to allow one or more of its members to join the hearing electronically, although this should be limited strictly to cases of necessity. These are circumscribed usages of virtual meeting technology, incidental to the main hearing at which the evidence and testimony of the parties are to be given a “fair and equitable” hearing (Bylaw 2.17.7.2 [f]).

The commission cannot at present exclude the possibility that future circumstances might occur in which law or reasonable care might render it impossible to physically assemble the required hearing—which includes a panel of necessity drawn from various parts of the country—within 45 days or a “short delay” (Bylaw 2.17.7.6). In such a case the interest of timely resolution begins to weigh against the customary safeguards of a fair and full hearing afforded by an in-person meeting. Even so, for a hearing to be conducted by electronic means, suitable procedures would first have to be devised to ensure, in light of the many practical concerns noted above, the panel’s ability to conduct a fair and equitable hearing by such means.

The commission is not in a position, by itself, to develop such procedures and render such safeguards, which would need to be incorporated into the appropriate “comprehensive” Standard Operating Procedures Manuals (Bylaw 2.14.10.3, etc.). It cannot, therefore, authorize such a hearing at this time.

Circumstances and perceptions of electronic means of procedural meeting, along with the technology available, have changed rapidly as a result of the COVID-19 pandemic, and continue to evolve. The commission has noted previously, however, the danger that the change of means of a deliberative proceeding may very well change the essential character of a deliberative proceeding. The commission being charged, together with the Council of Presidents, with maintaining “comprehensive” Standard Operating Procedures Manuals for Bylaw sections 1.10 and 2.14–17 (e.g., Bylaw 2.14.10.3), is open to a conversation with the Council about the wisdom and propriety of the use of electronic means for hearing processes, but finds that—as suggested by Robert’s Rules (RONR [12th ed.] 9:30–32)—if such “are to be authorized, it is advisable to adopt additional rules pertaining to their conduct.” The commission does not here opine on whether such might, given suitable rules, be authorized without unacceptable jeopardy to the process set forth in the Bylaws.

The commission does here opine that the Standard Operating Procedures Manuals as presently amended, with the concurrence of the Council of Presidents, do not contemplate a fully electronic meeting of a Hearing Panel in a Bylaw section 2.14 or 2.17 procedure, much less provide comprehensive procedures for the same. This being the case, the use of fully electronic means for a hearing is not consistent with procedure in place at this time. The panel thus needs to seek—in keeping with law and prudence, and adopting all necessary reasonable safeguards, but also being mindful of the gravity of the matter at hand—to conduct a hearing in the accustomed fashion in as timely a manner as circumstances will allow.
56. Oklahoma District Bylaw Revision, Proposed (20-2947)

By an email of August 12, 2020, the Secretary of the Oklahoma District forwarded his district’s proposed bylaw revisions for review. The commission offers the following points requiring attention:

- Article III 1 b: The Synod’s amendment of its Bylaw 4.2.1 will require the following change: “with residence with membership in a congregation in the designated region.”
- Article III 4, paragraph dealing with meeting and conducting business by “various electronic means”: The district should consult Bylaw 1.5.3 and policies of the Synod Board of Directors. Electronic meeting is permitted under Synod BOD Policy 5.7.8, under the noted stipulations. Policy 2.4.6, also relevant, requires that actions to be taken by electronic ballot (i.e., not in the context of a meeting) must have the participation of all board members and the vote must be unanimous. While these policies are mentioned in the district bylaw, the commission feels the district should be advised of especially the final requirement noted and perhaps should note it explicitly.
- Article IV 2: The commission notes that nominations for circuit visitor must be received the day before the meeting (Bylaw 5.2.2 [b]) and suggests that this requirement should be included for clarity.
- Article VI: The commission notes its prior Op. 17-2863, which clarifies the meaning and application of Bylaw 3.9.2.2.3 (b). It understands the two paragraphs of Article VI, respectively, to refer to the situations contemplated in Bylaw 3.9.2.2.3 (a) and Bylaw 3.9.2.2.3 (b); the former to refer to the ordinary course of business and proposals coming to the convention from the district board of directors and the latter to refer to changes to such proposals or other changes that arise unexpectedly in the course of a convention. So long as this is the district’s understanding, the language is adequate.

The commission thanks the district and its secretary submitting this proposal for review. The commission approves the proposal, with the above minor issues suitably addressed as suggested, for presentation to the district convention. The district is asked to forward a clean copy of the bylaws as adopted following the convention, for the commission’s file.

57. Southern District Articles of Incorporation and Bylaws, Proposed Revision (20-2949)

By an email of September 4, 2020, the office of the President of the Southern District, on behalf of the district’s secretary, submitted proposed revisions to the articles of incorporation and bylaws of the district. The commission notes the following:

**Articles of Incorporation:** The proposed addition to Article IX provides the relationship language required by Synod Bylaw 1.5.3.6 (a) and 2016 Res. 9-02A, except that the following change is required: “subject to the provisions of the Articles Constitution, Bylaws, and resolutions…”.

The dissolution language of Article IX is lacking two features of the language of Synod Bylaw 1.5.3.6 (b), which should be included. The commission recommends a change to the added language as follows:

In the event of a dissolution of the corporation, all property and assets to which the assets of the District holds title or over which it has control, subject to its liabilities, shall be transferred forthwith, consistent with applicable state and federal laws, to The Lutheran Church—Missouri Synod or to Synod’s nominee.

The commission approves the proposal, with the above changes implemented, for presentation to and adoption by the convention. The district is thanked for attending to this matter and for sending its proposal for review and asked to forward for the commission’s files a clean copy of the articles as adopted and accepted by the State of Louisiana.
Bylaws: The commission notes the following points requiring attention:

- Article II E: District conventions are properly governed by the Constitution and Bylaws of the Synod and of the district, by special rules adopted by the convention, and by parliamentary law. How the “District Handbook of Operations” governs the convention is unclear, unless it contains special rules adopted by or in the tradition of the convention itself. This needs to be clarified.

- Article II G: While this commission reviews policy manuals when submitted (ideally, upon significant revision) and while anything found contrary to the Constitutions, Bylaws, and resolutions of the Synod would be nullified by these documents, policies do not require “approval” by this commission.

- Article III A 2: For the purpose of eligibility for regional offices at the district level, the region membership of an individual is now determined by the region of the congregation in which the individual holds membership, not the individual’s residence (Synod Bylaw 4.3.1). Thus a change is required here: “with residence membership in a congregation in the designated region”

- Article III B 3: The numeral is apparently inadvertently struck. Here “moves from the Southern District” might better read “leaves the Southern District,” as residence within the strict boundaries of the district is not required to hold a position; what is required is, for ministers, being on the roster of the district, or for laypersons, holding membership in a congregation of the district. The final sentence of Article III B 3 requires modification as follows: “If any vacancy still exists, the Board of Directors shall appoint a replacement for that position from the members of member congregations of the district (and, if applicable, of the appropriate region). Those holding regional positions must maintain membership in a congregation of the designated region throughout—and, when appropriate, residents of designated regions during the course of their tenure.”

- Article III B 4: The district should at least be aware of the limitation on the authority of an executive committee imposed by Synod Bylaw 1.5.3.2.

- Article IV B 1: The commission notes the use of the term “accountable” which may refer to a supervisory relationship or may be used in some general sense. The district president is not supervised by the board of directors as regards his ecclesiastical supervisory work, for example, but is responsible to the President of the Synod and the district and Synod in convention. Perhaps such exclusions are contemplated in the last sentence of this paragraph, but the commission feels the whole should be more clearly stated.

- Article IV D 1: The commission finds the succession rules stated here to be of uncertain meaning, especially as regards the second sentence (which perhaps is intended to read, “to serve...part-time). The district may need to clarify this whole paragraph to more clearly reflect its intentions.

- Article V D 5: It needs to be noted that the convention retains the right to amend the selections presented by the various regional caucuses for ratification. While districts may, as Southern District has, choose to elect district positions by a process of selection and ratification, the district convention as a whole always retains the right, in such a process, as with ratification of the circuit visitor ballot, to amend the slate to be ratified.

- Article VI A should note, following the existing sentence dealing with multi-congregation parishes, the following, from Const. XII 10: “Congregations of a multi-congregation parish, other than the congregation supplying the voting lay delegate, may elect and depute an advisory lay delegate, with voice but no vote.”

The district and its secretary are thanked for submitting this proposal for review. The commission requests a draft of the proposal with the above issues addressed, so that it can complete its review and approve the bylaws for presentation to the district convention.
58. Southern District “Handbook of Operations” Review (20-2950)

By the same email of September 4, 2020, mentioned in Op. 20-2949, the office of the President of the Southern District, on behalf of the district’s secretary, also submitted the Southern District “Handbook of Operations” for review. The commission offers the following observations:

- The character of this item is somewhat unusual, as it summarizes—not always with reference—many items dictated by the Constitution and Bylaws of the Synod alongside other “policies,” presumably as determined by the board of directors. It may be helpful to clarify by citation which portions are summaries of convention directives and which are policies of the board. The maintenance of such a document—especially without significant references—is that it will omit important details or fall out of consistency with controlling documents as they are amended from time to time. The commission has reviewed the policies for consistency with the Bylaws of the Synod but has made no attempt to check the present item against the district’s own bylaws.
- Page 5, President, Authority and Responsibility, (c)(3): the parenthetical “pertinent to the district” should be removed.
- Page 7, Vice-Presidents, Tenure of Office: The final sentence requires modification thus: “To qualify for the office of District vice-president, a candidate shall be listed on the clergy roster of the Synod and shall hold membership in a voting congregation of the District. Requirements for congregational membership of regional vice-presidents should also likely be listed here.
- Page 8, Secretary, Authority and Responsibility: Duties of the district secretary with respect to the Synod and its Bylaws, including in relation to the Synod’s Dispute Resolution Process, are omitted (Synod Bylaw 1.10.10.2).
- Page 8, Secretary, Relationships: As an officer of the district in his own right, the Secretary is responsible to the convention for his bylaw-mandated responsibilities.
- Page 9, Treasurer, Relationships: As an officer of the district in his own right, the Treasurer is responsible to the convention for his bylaw-mandated responsibilities.
- Page 11, Board of Directors, Membership: executive assistants of the district may be advisors to the board but are not advisory members.
- Page 14, Board of Directors, The Executive Committee: the restrictions of Bylaw 1.5.3.2 on executive committee actions should be noted here.

The district is thanked for its careful attention to revision of these documents and for submitting its policy manual for the commission’s review.

59. Concordia University, St. Paul, Proposed Revision of Bylaws, Resubmission (20-2944B)

The president of Concordia University, St. Paul, by an e-mail of Oct. 15, submitted a revised bylaw proposal in response to the commission’s earlier review, Op. 20-2944. The commission found the present submission to have addressed the concerns noted in that review and approves the proposal for adoption by the institution’s board of regents. The president and board are thanked for undertaking a very significant revision of the university’s bylaws and for their careful attention to the review process. The commission requests a clean copy of the bylaws as finally adopted for its files.

60. Concordia University, St. Paul, Policy Manual (20-2944A)

By an August 4, 2020, email, the President of Concordia University, St. Paul, forwarded proposed restated articles of incorporation and proposed revised bylaws for the university, along with the board of regents’ policy manual. The articles and bylaws were reviewed in Op. 20-2944; the commission now turns to its review of the policy manual. The commission notes the following:

- As a specific example of a general observation, with regard to Membership of Board of Regents: Composition, Qualification and Election on p. 1, incomplete recitations of bylaws, especially where a bylaw reference is absent, can be misleading if this document is intended to be the primary
“operating document”; the full requirements of related Synod bylaws—which are controlling—may be forgotten by those following the manual. Here “The president, or his representative, of the district” does not reflect the full requirements of Synod Bylaw 3.10.6.2 [4], in which the representative is required to be a standing representative who is a vice-president of the district. This is but one example. The scope of the document, in general, and its relation to the full detail of bylaws which control, regardless of the degree of their reflection in this manual, should be reviewed generally.

- Policy on Election of Board of Regents (p. 2): The policy should include (presumably in “B”) the requirement that the qualifications of board-appointed regents must be reviewed and verified in advance by the Secretary of the Synod and the President of CUS (or their designees) (Synod Bylaw 3.10.6.2 [8]).
- Policy on Duties and Functions under LCMS Governing Documents (pp. 7–8): The list provided is an incomplete recitation of the board of regents’ duties under Synod Bylaw 3.10.6.4, choosing to focus principally on the “operation and management” duties of Synod Bylaw 3.10.6.4 (i) but passing over important duties listed in Synod Bylaw 3.10.6.4 (a–h). This might inadvertently lead to a myopic view of the board’s area of responsibility. Also in this area, the list of policies required to be developed should include policies for handling faculty and administration complaints and appeal of termination (Synod Bylaw 3.10.6.7.5.2).
- Policy on Committee Functions (p. 13): As “standing committees” these are subject to the requirements of Synod Bylaw 1.5.3.4. The details of appointment to the various committees, although indicated here to be “as set forth in the [various] committee charter[s],” seem generally to be wanting.
- Charter of Executive Committee (Appendix F): The language of “1. Purpose” could more clearly indicate that the work of the executive committee is of at least two distinct categories, as indicated in Bylaw 1.5.3.2: emergency actions and delegated activities. (Perhaps the last sentence of this paragraph should at least include an “also.”) With a great deal of delegation to the executive committee, the board’s means of retaining supervision may be worth review.
- On p. J-1, “with the broad assignment of the LCMS” should read “within…”
- In Appendix K, terms “Key Employee” or “Responsible Person” would seem not to extend so far as the “all staff” of Synod Bylaw 1.5.2, although their definitions do not seem to have been completed in this draft.

It is noted that advance review and approval of policy manuals is not required; the commission does appreciate the opportunity to review the above, as well as the significant and thoughtful attention being given to the revision of governing documents at Concordia, St. Paul.

61. South Dakota District Restated Articles of Incorporation and Bylaws, Proposed (20-2953)

By a letter of September 24, 2020, the president of the South Dakota District forwarded for the commission’s review amendments to the district’s articles of incorporation and bylaws, as proposed by the district board of directors. The commission notes the following:

Regarding the South Dakota District Articles of Incorporation:
- Art. of Inc. IV B: The change of “pastor” to “ordained minister of religion” should be reversed and strengthened. The language of “pastor” here is consistent with that of Const. Art. XII 10 a and reflects that the pastoral voting delegate must be an installed pastor of the congregation, and not simply any ordained minister; “voting” may of course be added before both instances of delegate. Replace “the ordained minister of religion delegate” with “one of its called and installed pastors.”
- Art. of Inc. IV C: The inserted sentence requires modification thus: “Each congregation in a multi-congregation parish not represented by a that does not supply the voting lay delegate may be represented by an advisory lay delegate.” Such congregations are surely already represented by a voting delegate; the delegate is simply drawn from a different congregation of the parish.
Regarding the South Dakota District Bylaws:

- Bylaw 1.01 [b–c]: “of the Synod” in each instance should read “of the district,” as noted in Op. 17-2849.
- Bylaw 1.27: “Board of the Synod” should be “Office of the Synod” to reflect the post-2010 structure (Bylaw 3.8.2.3); the meaning, at the present time, of the phrase “and ordinarily shall be represented at their conferences” is also uncertain and this phrase should perhaps be removed.
- Bylaw 2.05: The President is an officer of the district and its chief executive, but the Bylaws of the Synod do not refer to him as “Chief Executive Officer,” a term associated with corporate models not entirely compatible with the constitutional structure of a district, and especially confusing in relation to the supervision of the (entirely proper) supervision of the Executive Secretary and Business Manager directly by the board.

The commission observes a heavy emphasis on administrative duties and perhaps a recasting of the ecclesiastical supervisory role of evangelical supervision, counsel, and care (Const. Art. XI 1–3; XII 6–9) as simply counseling. Finally, while the district president does on the Council of Presidents counsel together with other district presidents and the Synod Praesidium on matters regarding doctrine and administration of the Synod and its districts, the Bylaws of the Synod nowhere consider the district president to be the “representative spokesman of the constituency” of a district. This bylaw, which threatens to confuse expectations, requires revision to bring it into greater consistency with the role of district president as described in the Constitution and Bylaws of the Synod.

- Bylaw 5.05 (f) [7]: “remove” should read “removed.”
- The commission notes an inconsistency between Bylaws 5.05 (f) [3/7] and 5.05 (c) [3]; the district may want to use the procedure of Bylaw 5.05 (f) [3/7] also in the former case, since ties for third place and therefore ballots of more than three are allowed for.
- Bylaw 6.01 (a): The manner in which the provision of Bylaw 3.9.2.2.3 (b) has been incorporated as (a)(4), and in which the new (a)(5) is proposed to be incorporated, may lead to confusion. Subparagraphs (a)(1)–(a)(3) and the first sentence of (a)(4) refer to one sequence of actions under (a); the remainder of (a)(4) and (a)(5) refer to two different sequences. The following (not the only means, but a means of clarifying) is suggested:
  - Subparagraph (a)(4) should read: “Adopted by a majority vote of the Convention.” The remaining material of the present (a)(4) and (a)(5) would be dealt with as follows.
  - Bylaw 6.01 (b) would then read: “Amendments arising in the course of a convention, or during the course of a convention being made to previously approved proposals, may be adopted by a majority vote of the convention, provided the resolution is contingent on approval by the Commission on Constitutional Matters. The amended bylaws become effective immediately upon, and only upon, approval of the Commission on Constitutional Matters. Should the Commission on Constitutional Matters not approve the adopted changes, the District Board of Directors may modify the amendments to comply with the Commission on Constitutional Matters’ requirement, upon their two-thirds vote.”
  - A new 6.01 (c) would incorporate the material existing in present Bylaw 6.01 (a)(5), to read: “Changes in, and additions to, these Bylaws may also adopted by a two-thirds majority of the District Board of Directors, when necessitated by amendments to the Synod Constitution or Bylaws or otherwise expressly directed by a resolution of the Synod in Convention. Such amendments shall have been drafted by the Secretary of the District and approved in advance by Synod’s Commission on Constitutional Matters.”

The commission thanks the district and its president for submission of these proposed changes and looks forward to reviewing a draft with these issues corrected, so that it may approve the changes for presentation to the district convention.
62. Clarification of Op. 20-2939, District Constitution Committee Authority to Interpret (South Wisconsin District Bylaw 1.45(e) (20-2939A))

By an e-mail of Sept. 16, a member of the South Wisconsin District requested clarification of the commission’s Op. 20-2939 (July 21, 2021), to which request the commission now responds:

Question 1: The commission in Op. 20-2939 has ruled that SWD Bylaw 1.45(e) is “in violation of Const. Art. VII and Bylaws 2.2.1, 2.4.1, and 4.4.6, and cannot be used.” The rationale is that Bylaw 1.45(e) “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.” In doing so, the commission cites Op. 17-2862. However, Op. 20-2939 implies that a “binding opinion” would never be possible because even a response to a “request for insight regarding the meaning of the constitution and bylaws of a congregation” … “would be no more than advice (and even so, not the advice of the district or by Synod) and could not be regarded as an authoritative interpretation.” Op. 17-2862 and Op. 20-2939 thereby appear to stand in contradiction to one another and do not provide clear guidance on how the South Wisconsin District might revise Bylaw 1.45(e) in order to bring it into compliance with the Synod’s governing documents.

Clarification: Opinion 20-2939 (minutes of July 21, 2020) states that 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 reason it cannot stand is that Synod Bylaws 2.2.1 and 2.4.1 do not authorize a district commission or committee on congregational constitutions to give binding opinions regarding the interpretation of the constitution or bylaws of a congregation; for a district commission or committee on congregational constitutions to do so it would be a violation of Constitution Article VII. However, since congregations are free to establish their own self-government, Op. 20-2939 assumes that it is theoretically possible for a congregation to insert in its governing documents, some other outside group, or even a particular group established from within the congregation to give such a binding opinion.

Opinion 17-2862 (minutes of Nov. 10-11, 2017), which was a general review of the bylaws of the district, stated regarding what was the wording at the time (then numbered 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.” Opinion 17-2862 thus acknowledged that such an option might be theoretically possible for a congregation to insert in its governing documents, but Op. 17-2862 did not expand on what the implications or ramifications might be.

In contrast, Op. 20-2039, in addition to indicating that such theoretical authority could only be established in the governing documents of a congregation and not in those of a district, addresses specific issues regarding what the implications and ramifications are, should a congregation have chosen to insert such language into its governing documents. In such a case, where this language is present in congregational governing documents to authorize an outside opinion, the effect would be that while the congregation would be bound to this opinion, that opinion would have no authority in matters governed by the Constitution and Bylaws of the Synod. This would be true even if the opinion was rendered by a district committee or commission on congregational constitutions, because a district committee or commission on congregational constitutions giving such an opinion would be operating outside of the authority given to it by the Constitution and Bylaws of the Synod. To give an example of what this means, if a congregation, acting upon an opinion so received, removed a called ordained or commissioned minister from his or her position in the congregation, and the matter was subsequently appealed via the Bylaw 1.10 process, the dispute
resolution panel itself would decide the matter, including whether or not a congregation followed its own constitution in the removal. Any opinion received by the congregation regarding the meaning of its governing documents from any other source, within or outside of the congregation, would have no authority and be of no bearing on the decision of the panel.

Since there appears not to be a good way to make district Bylaw 1.45 (e) fit the responsibilities and limits given by Synod’s Bylaws to a district’s committee or commission on congregational constitutions, and since the activity described is outside of the responsibilities given to such committees by the Constitution and Bylaws of the Synod, the district may wish simply to eliminate its Bylaw 1.45 (e).

The district constitution committee, as established by the Bylaws of the Synod for a specific purpose—namely, the review of congregational governing documents to determine if they meet the standard of Const. Art. VI 5 and Bylaws 2.2.1 (b) and 2.4.1(b)—is not charged generally or otherwise with the authoritative interpretation of the meaning of congregational governing documents. Any opinion, be it called “binding” or “advisory,” of such a committee as to the meaning of congregational governing documents—beyond the specific question of their harmony with the Scriptures and Confessions—is not issued within the charge of such a committee, and district bylaws ought not suggest that such an opinion has any official weight. Moreover, the assistance of congregations experiencing a “controversy,” such as may be involved in an internally disputed reading of its governing documents, is assigned explicitly not to such a committee but to the district president (Bylaw 4.4.6), as made clear in Op. 20-2939.

Question 2: In the same vein, Op. 17-2862 and Op. 20-2939 do not clearly distinguish between an “advisory” opinion and a “more than advisory” (or “binding” opinion). Do the same requirements exist for both? Namely, must a congregation include in its governing documents both the authority and those authorized to request an “advisory” opinion from the district constitution committee? Or do those requirements apply only to a “more than advisory” (or “binding”) opinion?

Clarification: Advice is essentially different from a binding opinion. Thus, a congregation wishing to amend its constitution or bylaws is free to ask for advice from the district president, a district committee or commission on congregational constitutions, or someone knowledgeable in the area, and no specific mention needs to be made in the governing documents of the congregation. Such a request for advice is simply a request for assistance, which a congregation is free to accept or ignore. A congregation dealing with an internal conflict may also ask the advice and assistance of its district president without specific reference in its governing documents, since this falls within his responsibilities, Article XII 7 and Bylaw 4.4.6. Such advice may include a district president pointing out the procedures that have been outlined in the constitution and bylaws of a congregation and indicating that these need to be followed. Any kind of advice so given could not be considered binding, nor would it have official standing if a dispute in a congregation involving the congregation and one of its called ordained and commissioned ministers were to progress to the dispute resolution processes of Bylaw section 1.10. In the Bylaw section 1.10 process, the matter—including whether or not a congregation followed its own procedures outlined in its constitution and bylaws—would ultimately be decided by a dispute resolution panel regardless of any advice the congregation may have received.

63. Northwest District Bylaws and Amendment Proposed by Circuit 9 (20-2954)

By an e-mail of October 14, 2020, the Secretary of the Northwest District forwarded an overture from Circuit 9 of his district proposing a bylaw change intended to clarify the financial disclosure incumbent upon the district’s board of directors. The commission also obtained a copy of the Northwest District Bylaws as presently adopted (last reviewed in Op. 18-2882), in order to review this proposal in context and to provide the district with the commission’s customary full review.
As to the Bylaws as a whole:

The commission identifies a number of areas requiring attention, which will warrant a bylaw revision by the district:

- **Bylaw 2.3.2**: The wording is incompatible with, and must be replaced with, the wording of LCMS Bylaw 4.1.1.2, no more, no less: that the “Bylaws of the Synod shall be primarily the bylaws of the district” (previously noted in Op. 18-2882).
- **Bylaw 2.3.4**: The commission notes for the district’s consideration the suggestion of the Secretary’s memo, dated November 14, regarding the suggested inclusion of a district mechanism corresponding to that of Synod Bylaw 7.1.2, to allow a district board of directors to adopt updates to district bylaws necessitated by the Synod’s bylaw amendments.
- **Bylaw 2.4.2**: The board’s ability to “administer the activities of the District” could be construed to intrude on exclusive responsibilities of the district president. The language here needs to be modeled on that of Synod Bylaw 4.5.1.
- **Bylaw 2.4.3**: The first sentence needs to refer also to the Synod’s Bylaws as well as to Synod’s Constitution. The second sentence places “all responsibility for daily management of the district” upon the district president, whose duties are chiefly as described in the previous sentence. The board of directors—not the president—is ultimately responsible for the business and property matters of the district’s operation. Something for the district to consider is whether the delegation of these management aspects to the district president interferes with or impedes his practical ability to carry out his primary ecclesiastical charge of evangelical supervision, counsel, and care.
- **Bylaw section 2.5** needs to be clarified to distinguish the function of visitation circuits and electoral circuits. This could be done simply by modifying Bylaw 2.5.4 to begin: “Each Electoral Circuit.”
- **Bylaw 3.1.2**: The advisory lay delegates of Const. Art. XII 10 should be mentioned here, perhaps by reproducing the final sentence from Const. Art. XII 10, “In addition, …”
- **Bylaw 3.1.4**: Regents for Concordia University, Portland, will need to be removed from the list.
- **Bylaw 3.3.3**: The change to Synod Bylaw 4.3.1 requires changes here: “regions in which they reside hold congregational membership”; “from that are members of congregations within their region”
- **Bylaw 3.4.5**: The reference to Bylaw 3.3.11 should probably be to District Bylaw 3.4.4 instead.
- **Bylaw 3.6**: The commission notes here what appears to be a requirement of congregations stated in district bylaws; while the congregations may well be expected to pay their assessment, this is a matter to which Const. Art. VII applies.
- **Bylaw 4.2.2**: The description of the board’s role as “govern[ing] the district” is overly broad. The board’s sphere of authority is as defined in Synod Bylaw 4.5.1.
- **Bylaw 4.2.3**: This bylaw should be reviewed in the same sense as Bylaw 2.4.3. The district president’s primary charge is ecclesiastical, not administrative or managerial, not as executive for the board. The district president’s ecclesiastical role—in which he is responsible not to the board but to the district convention and President of the Synod—must be distinguished from whatever assignments the board has delegated to him (and he has presumably accepted), and the latter must be prevented from crowding out or impinging on the former.
- **Bylaw 5.3.1**: The President is an officer of the district and its chief executive, but the Bylaws of the Synod do not refer to him as “Chief Executive Officer,” a term associated with corporate models not entirely compatible with the constitutional structure of a district.
- **Bylaw 5.5.2**: The duties of the district secretary as contained in the Bylaws of the Synod are not adequately reflected here.
- **Bylaws 5.7.1–3**: See comments on bylaws 2.4.3 and 4.2.3, above. The district board of directors—not the president—is finally responsible for the business and legal affairs of the district (Synod Bylaw 4.5.1).
- **Bylaw 5.7.5**: The wording does not adequately reflect Synod Bylaw 1.5.4 (see further below).
• Bylaw 6.2: The functions indicated as “listed in the Synod Handbook” no longer are as they were formerly (cf. 1998 Bylaw 4.97 [a]). At a minimum this phrase should be removed; the district may wish further to bring this aspect of its bylaws into greater alignment with the present structure of the Synod and its design for coordination with districts (e.g., Synod Bylaw 3.8.2.3).

The commission looks forward to review of a bylaw revision proposal addressing the above, as well as any other changes the district intends to set before its upcoming convention.

As to Circuit 9’s proposed amendment to Northwest District Bylaws 5.7.5–6:

The proposed amendment to Northwest District Bylaws 5.7.5–6, dealing with financial disclosure of the district’s records, is not inconsistent with the Constitution and Bylaws of the Synod.

In reviewing this proposed amendment and its rationale, the commission noted that each district is an agency of the Synod (Synod Bylaw 1.2.1 [a][1]), having as its primary bylaws the Bylaws of the Synod (Synod Bylaw 4.1.1.2). Synod Bylaw 1.5.4 therefore presently and fully applies to the districts as agencies, requiring that a district provide any member congregation of the Synod with:

- full disclosure / inspection of all financial books and records (“all information,” except as specifically excluded under subparagraph [a]), subject to the conditions of subparagraph (f);
- full, audited financial statements and summary operating budgets (as reflected in subparagraph [c]); and
- “upon request,” quarterly financial statements “as reported to the respective governing boards” (subparagraph [d]), that is, in the form that regularly supports the board’s “general management and supervision of the district’s business…affairs” (Bylaw 4.5.1 [d]).

The provision of such information as is “produced for normal publication or distribution” shall be provided free of charge (subparagraph [e]).

The proposed addition to the “secondary” bylaws of the district goes in some respects beyond the requirement of the existing and in-force “primary” bylaws of the district (namely, Synod Bylaw 1.5.4), in requiring general annual distribution of financial documents to all members of the district and in requiring delivery of a full budget (perhaps as opposed to a “summary budget”) to any member (congregational or individual) of the district. It is not, however, inconsistent with the Bylaws of the Synod for the district to elect to hold its board and administration to the proposed higher standard in these respects.

64. Mid-South District Policy Manual (20-2952)

By a letter of September 21, 2020, the Secretary of the Mid-South District forwarded the “2020 Revision Draft” of the “District Board of Directors Accountable Manager Governance Document” for the commission’s review, largely in response to the commission’s previous review in Op. 14-2736 and subsequent conversation between the district and the Secretary of the Synod. The commission notes that its prior approval is not required for policy manuals, as it is for bylaws, but is pleased to review the document and expresses its thanks to the district and its officers and board for significant work done since the last review. The commission notes the following:

- A significant foreword / preamble (pp. 4–5) substantively clarifies the relationship of the district president and board of directors in a manner consistent with the Constitution and Bylaws of the Synod. This clear statement of relationships and distinction of duties and lines of supervision and oversight itself serves as a necessary clarification and limitation on the otherwise largely “Policy Governance” style delegation that remains elsewhere in the document (e.g., Policies 2.4.7.1–2; Policy chapter 3; Policy 4.2.2–4). The reference to the “Mid-South District Constitution and Bylaws” is understood in the sense of LCMS Bylaw 4.1.1.2, but the reference to the Synod’s Constitution and Bylaws should be made explicit.
Policy 2.2.1.5: Removal of a board member for the reason of unexcused absence (the concept of excusal is not evident here) is subject to Bylaws 1.5.7–1.5.7.1, with which this policy is inconsistent.

Policy 2.5.4.1: The language here is of uncertain meaning and warrants clarification.

Policy chapter 3 (along with Policies 2.4.7.2 and 4.3.1.3.1, among many others) continues to contain a very strong Policy Governance approach, detailing extensive expectations for the district president’s executive carrying-out of almost all business and legal functions of the district. While one presumes that this must happen with some degree of further delegation by the district president, and while this chapter is “normed” to some extent by the foreword / preamble, the commission remains concerned that the great administrative burden imposed by the board of directors on the district president by way of all these delegated responsibilities not impair or impede his ecclesiastical functioning. Additionally, the board needs to be careful to participate actively and principally in its sole responsibility to perform the “general management and supervision of the district’s business and legal affairs.”

Policy 4.6.10: This at least implies that the president’s non-fulfillment of duties delegated by the board would justify removal from office as district president, which may well not be the case, though it could be reason for the board otherwise to delegate its work. The Handbook of the Synod, furthermore, contains no processes accessible to a district board of directors for removal of a district president.

The board and its secretary are thanked for significant work on the document and for submitting it for review.

**65. Requirements for Call Processes by Agencies, Auxiliaries, and Recognized Service Organizations (20-2957)**

Dr. Gude and the Secretary have been assigned Commission on Handbook (COH) Issue 19-005 (COH minutes of Oct. 18, 2019), dealing with the inclusion of material dealing with call processes by agencies, auxiliaries, and recognized service organizations in Bylaw section 2.5, which has to do (otherwise) with “Membership” (agencies, auxiliaries, and recognized service organizations not being members of the Synod), as well as with the related issue of the meaning of the convention’s having placed recognized service organizations under the rule that they “call and be served by” only those ordained ministers (or candidates) listed in Bylaw 2.5.2.

With regard to the question of interpretation involved in the latter item, the commission understands that with regard to Bylaw 2.5.2, “served by” refers to service in the sense of the distinctive functions of the pastoral office, not to “service” in some purely secular sense. A divine call cannot be extended by any of the listed calling entities to any person not listed under Bylaw 2.5.2’s (1), (2), or (3). Furthermore, such a calling entity cannot be “served by,” in the sense of any exercise of distinctive functions of the pastoral office, any person not listed under Bylaw 2.5.2’s (1), (2), or (3). The convention’s inclusion of recognized service organizations in the list of calling entities in Bylaw 2.5.2 renders this restriction applicable to such.

The commission does not object to the Commission on Handbook’s relocation of the material or references thereto for clarity’s sake, or to clarification of the above meaning with regard to Bylaw 2.5.2 and its application to recognized service organizations.

**66. District President Authority in a Congregational Controversy (20-2951)**

By an email of Sept. 16, a member of the Synod inquired of the commission regarding the authority of a district president under Constitution XII 7 and Bylaw 4.4.6, as the district president assists congregations having internal disputes. The commission has solicited and received input from the Council of Presidents on the request, consonant with Bylaw 3.9.2.2 (b). The commission had an initial discussion of the questions but, noting their close relation to the fundamental concepts of Const. Art. VII, left further consideration and the formulation of an opinion to a later meeting.
67. Adjournment and Upcoming Meetings

Having concluded its agenda (except for repeat review request 20-2927B, which was later noticed to have been missed) the commission adjourned with closing prayer. The commission tentatively scheduled its next in-person meetings for January 15–16, 2021, and April 9–10, 2021, in St. Louis.

John W. Sias, Secretary