160. Call to Order and Opening Devotion

The commission determined to forgo its scheduled June meeting due to less than expected business. Commission Chairman Dr. George Gude called the commission’s meeting to order, with all members present except for Neely Owen, attending to his family, and, on Saturday, Larry Peters, who had to depart to attend to pastoral duties. Dr. Gude offered textual study devotions Friday and Saturday mornings, on John 6:51–71 and Ephesians 5:21–33, respectively.

161. Questions regarding the definition of multi-congregation parish (17-2870)

A district president of the Synod submitted a series of questions regarding whether or not the call of a pastor by both an existing dual parish and by a third congregation rendered the three congregations a parish (Const. Art. V A). His questions were prefaced with the following rather extensive background:

Background

A long-standing dual-parish had gone vacant. A series of circumstances resulted in the lack of resources for the dual-parish to support a pastor. Since there were no other congregations within reasonable distance with which to form a triple-parish, a larger congregation in the area chose to assist by offering to call the pastor of the dual-parish as an associate, at least until the congregations could manage on their own. This arrangement was established solely out of the generosity of the larger parish for the sake of supporting the proclamation of the Gospel in two small rural communities. A pastor was installed as the pastor of the dual-parish and an associate of the larger congregation. The pastor of the larger congregation has no call to, and no responsibilities toward, the dual-parish.

The Secretary of the Synod, following a previous CCM opinion, ruled that this arrangement constituted a parish under Const. Art. V and that, therefore, these three congregations were [together] entitled to one pastoral and one lay vote at the convention of the district. The questions herein set forth are intended to challenge that ruling on the basis of two facts:

(1) The congregations in question do not fit the normal pattern of the construction of a parish by design or intent.

(2) The current Constitution and Bylaws of the Synod do not contain a definition of the term parish thereby making a textual interpretation impossible. The commission might then seek to follow historical patterns. These, however, are not entirely consistent, since there is historical precedent in Walther’s Gesamgtgemeinde for congregations, in association, to be considered independent congregations.

CCM Op. 09-2545, quoted below (in part, underlining added), seems to have formed the basis for the decision of the Secretary of the Synod in this matter. In this decision, the commission seems to have relied on text that had not existed in the Handbook for 46 years. If the commission is permitted to use a “ghost” text that is not available to the members of the Synod, those members are at a distinct disadvantage by not being allowed reasonable access to the law. The congregations in question, lacking a definition of the term parish, can reasonably argue that they could find no ground in the bylaws for their voting rights to have been limited by this arrangement.

Voting Rights of Congregations (09-2545)

In a January 18, 2009 e-mailed letter, a parish pastor requested an opinion with respect to the representation of a four-congregation partnership (a multiple-congregation parish) at a district convention.
**Question:** Four congregations have formed a partnership. They each have called the two pastors who serve this partnership. Can each of the four congregations send a lay delegate to our district convention which is in June? Also, what is the status of the two pastors in regard to being the pastoral delegate or delegates to the district convention?

**Opinion:** The four-congregation partnership is entitled to two votes, that of a pastor who serves the four-congregation partnership and a lay delegate, both chosen by the four-congregation partnership.

Article V of the Synod’s Constitution states: “At the meetings of the districts of the Synod, every congregation or parish is entitled to two votes, one of which is to be cast by the pastor and the other by the lay delegate.”

In its Opinion 03-2327 (January 20–21, 2003), the Commission on Constitutional Matters opined with respect to Article V the opinion, “Voting Rights of Congregations,” included the definition of the term “parish” and addressed a multiple-congregation arrangement:

In the May 3–4, 1985 ruling (Ag. 1748), the commission ratified an opinion that had been offered by the Secretary of the Synod regarding the voting rights of congregations at district conventions when several congregations form a dual or multiple parish, namely, “that a multiple parish has only two votes, that of the pastor who serves the parish and a lay delegate chosen by the parish.”

This opinion took into consideration earlier versions of the Handbook that had provided a definition of the term parish, e.g., “If a pastor serves two or more congregations, these shall be regarded as one parish and shall be entitled to only one lay vote” (1963 Handbook, Bylaw 3.09). The term [parish] therefore refers to a dual or multiple-parish arrangement served by the same pastor and is not synonymous with congregation. As such, two or more congregations are served by one pastor share the right of representation by one lay delegate and one pastoral delegate to a district convention.

The four-congregation partnership constitutes one parish as defined above.

The four questions, then, are as follow:

**Question 1:** Is the Commission on Constitutional Matters bound to interpret the text of the Constitution and Bylaws of the Synod on the basis of the text of the Constitution and Bylaws as currently delivered to the members of the Synod?

**Opinion:** The Commission on Constitutional Matters is charged with the interpretation of the Constitution, Bylaws, and resolutions of the Synod (Bylaw 3.9.2). In interpreting the Constitution and Bylaws the commission is required to understand the terms used in their original intended meaning and context, and not on the basis of how the meaning of a term might have changed over time. In addition, when Bylaws or amendments to the Constitution are adopted by the Synod, while every attempt is made to make changes to the Constitution or Bylaws clear and precise, there are times when it is later discovered that the present text of bylaws as adopted does not provide all the necessary context for a particular bylaw’s interpretation and/or application. In those instances, the commission is required to take into consideration the intention of the entire resolution by which the text in question was adopted, and the historical context and standing interpretation of the terms used.

**Question 2:** Absent a definition of the term parish in the Constitution and Bylaws of the Synod as currently delivered to the members of the Synod, is the commission permitted to import or construct a definition of the term?

**Opinion:** While Bylaw 1.2.1 lists definitions of many of the terms that are used in the Constitution and Bylaws of the Synod, that bylaw makes no attempt to define every term used in these documents. Many of these terms have had a common use and understanding within the Synod throughout its history. In interpreting the Constitution and Bylaws the commission is required to understand and expoit these terms based on their historic use in the Constitution and Bylaws of the Synod.
Such is the case with the term *parish* in Const. Art. V A, and it is in relation to its particular use in this article that a definition is sought. This article deals with the voting rights at the conventions of the Synod: In conventions of the district it states that every congregation or parish is entitled to two votes, one by the pastor and one by the lay delegate. This arrangement precedes the creation of district conventions, originating with the pre-delegate (directly representative) conventions of the Synod, from 1847 to 1872.

The matter of voting rights at conventions of the Synod was first established by the 1847 Constitution at the founding of the Synod, and has remained consistent (as presently applied to district conventions) throughout Synod’s history:

Article 3 – External Organization of Synod

1. The “synodical personnel” is made up of the ministers (*Der Diener*) of the Church and the delegates of the congregations (*Pfarrgemeinden*), each of which has the right to elect one delegate. If pastors or delegates are absent for a good reason they may in a particular case deliver their vote in writing.

Article 3 describes the organization and conduct of the annual conventions of the Synod, with Section 1 dealing with those who may vote. Those who may vote are the ministers and delegates of the *Pfarrgemeinden*. The 1847 Constitution includes an important explanation of what is meant by this term, translated here as *congregation*. In the original German text, the term *Pfarrgemeinden* is footnoted as follows. Note that we have translated *Pfarrgemeinde* as *congregation* in the article and *parish* in the footnote, but the word is the same—reflecting that *congregation-or-parish* (Const. Art. V A) corresponding to one pastor.

A parish [*Pfarrgemeinde*] is either one single congregation or the sum of the individual congregations which the pastor serves [*bedient*], as, in Germany, the territory in which he serves is called *Kirchspiel* or *Kirchensprengel*. The pastor may serve 3 or 4 or more congregations, locally separated; they are in relation to him essentially only one congregation and must, therefore, jointly send to the convention one delegate.

Thus, how the Synod from its inception viewed the right to vote is clear. The vote belongs to the *Pfarrgemeinde*, the *congregation-or-parish* and is exercised by the pastor of the congregation-or-parish and a lay delegate designated by the congregation-or-parish. From the beginning of the Synod, the term *Pfarrgemeinde* or *congregation-or-parish* (to use the present Const. Art. V language) was understood to mean a single congregation or two or more individual congregations being cared for by the same pastor.

When the Synod divided into districts in 1854, the same wording applied to both the district conventions and the conventions of the Synod. In 1872, when the Synod authorized the holding of delegate conventions, it was not felt necessary to change the wording of the Constitution. The first three Synod *Handbücher* (1873, 1879, 1888) retained the 1847 language in this section, but omitted the footnote defining *Pfarrgemeinde*. The 1873 *Handbuch* (p. 105) indicates a decision of the Northern District reflecting the 1847 definition: “While it is hoped for and desired that the various congregations of one pastor might each send its own [lay] delegate...only one at a time can represent [as voting lay delegate] the interests of the parish [*Parochialbezirks*].” The 1899 *Handbuch* included a footnote indicating: “A parish [*Parochie*] consisting of several congregations but having only one pastor [*aber nur einen Pfarrer hat*, emphasis original] can send only one voting [lay] delegate. Others sent are...only advisory members.”

This language and meaning of Article 3, Section 1, remained unchanged until the Constitution of the Synod was revised and translated in 1924. The wording selected in 1924, as Const. Art. V A, is still the current wording. The revised language did not alter in any way the meaning regarding who was designated as authorized to vote in conventions. The new wording did, however, attempt to make clarifications: The procedure followed after the Synod began to hold delegate conventions was now placed into the Constitution. In describing who was to vote at conventions of the districts, the phrase *congregation-or-parish* was used to describe what had been the practice of the Synod from the beginning, namely that the
sum of the congregations served by a given pastor are to be considered a unit when it comes to the matter of voting representation at conventions. Thus, from the beginning of the history of the Synod a *congregation-or-parish*, although the term itself was not used until 1924—when the Constitution was, culminating a thorough reorganization in German, translated officially into English—is the total of the congregations served by one pastor.

This definition has more recently been applied to groups of congregations served by the same *two or more* pastors (CCM Op. 02-2321, 09-2545, 11-2617), and to congregations which may not all have *called* the same pastor(s), but are all *served* by him/them (1972 Ag. 305; 1978 Ag. 1275A, B; Op. 11-2618, 14-2718). These applications, however, do not appear to have been contemplated before the modern era.

**Question 3:** Does the manner in which an amendment occurred, (e.g., unintended elision or adoption by the Synod in convention) permit the commission to amend the text of the Constitution or Bylaws in a manner that causes its text to differ substantially from the text that has been delivered to the members of the Synod?

**Opinion:** The commission was unsure of the precise intent of the question. The Commission on Handbook is charged with the maintenance and management of the *Handbook*, consisting of the Constitution, Bylaws, and Articles of Incorporation of the Synod (Bylaw 3.9.4). In carrying out this work it revises the *Handbook* following every convention. At times, it may, in consultation with the Commission on Constitutional Matters, make a non-substantive change in the bylaws for the sake of clarity of a particular bylaw or to correct errors made in the publication process.

It is not the business of the Commission on Constitutional Matters to amend the text of the Bylaws, although it may, in a case where the Constitution or other Bylaws render certain language unconstitutional or inapplicable, have to indicate that such language is inoperative until it can be corrected by a convention. In this specific instance, the question seems to be whether the commission was correct, in its 2009 and prior opinions on this matter, to apply the previous definition of *parish*, even though the explicit statement of this definition had been removed from the bylaws in 1981.

Where a definition has been removed from the bylaws by a convention, the circumstances of its removal are important in determining the significance, if any, of the removal to the meaning of the defined term(s). In 1981, the definition appears to have been removed as part of a sweeping revision of bylaws, only part of which was adopted. In reviewing the related material, the commission was unable to discern any sense that the convention intended to rescind the *definition*, the explicit statement of which it was removing from the bylaws, or to detect any sense of a new intended definition with which it might be replaced. As noted in the various opinions since, the Synod continued to operate, between 1981 and present, on the previously explicit definition of *parish* as the commonly understood definition.

Furthermore, here, the question is one of *constitutional* interpretation: What does *congregation-or-parish* mean in *Const. Art. V*? How the convention changed the bylaws in 1981—unless it acted thereby to *interpret the Constitution, explicitly and with substantive rationale*, which it did not—has no bearing on what the constitutional term has meant since 1924, or on what its predecessor term *Pfarrgemeinde* has meant since 1847. In 2009, and again in 2014, the commission applied the definition that had consistently been applied to that point (see Op. 14-2718, June 13–14, 2014; Op. 11-2618, Nov. 11–13, 2011; Op. 09-2545, Feb. 7–8, 2009; Op. 03-2327 and 02-2321, Jan. 20–21, 2003; Ag. 1748, May 3–4, 1985; Ag. 1734, Feb. 1, 1985); Ag. 1275A, B, June 9, 1978; Ag. 305, May 4–5, 1972; Ag. 181, Oct 1–2, 1970). It cited this definition from its previously explicit statement in the bylaws. In doing so it did not amend the bylaws or “resurrect” a dead bylaw, and certainly did not go beyond its authority (Bylaw 3.9.2.2 [c]). It simply applied the historically demonstrable, settled interpretation of *Const. Art. V*.

**Question 4:** Does the call of a pastor of a dual-parish as an associate pastor of a local larger congregation, where the pastor of the larger congregation has no call to and no
responsibilities toward the dual-parish, constitute a *parish* under Article V of the Constitution?

**Opinion:** Presently, based on the standing treatment of *parish*, if any pastor of a congregation serves any other congregation, the totality of the congregations served is considered a *parish*.

Formerly—when Synod was capable of distinguishing the one Pfarrer, the (head) pastor of a given congregation, from its Hilfsprediger, assistant pastor(s), if any—this was not the case.

In the early period, a congregation had only one pastor (*Pfarrer*), though it may have had Hilfsprediger, assistant(s), in addition. Those congregation(s) under one *Pfarrer* were a Pfarrgemeinde or congregation-or-parish. Perhaps independent congregations could have shared Hilfsprediger, though this possibility is more theoretical than historically demonstrable. The relation of congregations and pastors is now far more complicated. Today the category of associate pastors has evolved and the once-constitutional distinction of assistant pastors (Hilfsprediger) as advisory only has, by the 2016 convention, been removed. More pastors are being shared among multiple congregations, whether by call or by uncalled but still regular service. In this changing situation, over many decades, interpretation has fallen along the lines that congregations with any serving pastor in common constitute a parish.

The original intent of *Pfarrgemeinde*, which grouped congregations based on their sharing of a head pastor, relied on a distinction not possible to draw using present bylaws: namely, distinguishing “the (head) pastor” or *Pfarrer* from any “assistant pastors” or Hilfsprediger of a given congregation. Without such a distinction, the only viable, practical application of the constitutional principle is as previous commissions have repeatedly decided: “[T]he principle stands without exception: Two or more congregations being served by the same pastor constitute a parish with the right of representation by one lay delegate and one pastoral delegate” (Op. 11-2618, Nov. 11–13, 2011). The commission notes that if such distinctions could again be drawn, it would be fully consistent with the meaning of the original constitutional language to define a congregation-or-parish as (a) congregation(s) with a (head) pastor of its/their own, who is not the (head) pastor of any other congregation(s). Multiple congregation-or-parish representation units could share assisting pastors without thereby becoming together one congregation-or-parish. Without clarifying bylaw changes, however, such a solution is impossible to implement today. Given such distinctions, however, it would be entirely consistent with the foundational, constitutional *Pfarrgemeinde* or congregation-or-parish concept practiced from Synod’s inception.

An example from the early history of the Synod is the practice of forming a Gesammtgemeinde as Lutheranism expanded in certain cities. Perhaps the most notable of these was the Gesammtgemeinde in St. Louis. In 1847, due to the growth of Trinity Lutheran Church in St. Louis, where C.F.W. Walther was the pastor, the congregation started a school and church on a second location, which took the name of Immanuel. Initially Immanuel was not an independent congregation, and at the 1854 convention of the Synod the pastor of Immanuel, J. F. Buenger, was listed as an advisory delegate. In 1856 a third school and then church were added, which caused a re-evaluation of the arrangement. The solution was the division of the Gesammtgemeinde into three “districts.” In this arrangement, while the Gesammtgemeinde would nominate pastors for a vacant congregation, each “district” or congregation would actually elect him, with the result that each was served by its own pastor. Later, a fourth “district” was also added. The common bond holding the congregations together was their affection for C.F.W. Walther and their desire to maintain a connection with him. (About a year after Walther’s death in 1887, the congregations involved decided to dissolve the Gesammtgemeinde.)

To deal with this unique circumstance, the Synod resolved at the 1866 convention that each congregation with a “separate pastor” was to be recognized as a congregation entitled to be represented at conventions by an ordained and a lay delegate:

A request of the President, as pastor of the Lutheran congregation in St. Louis, was read, wherein the Synod was asked either:
[1.] To clarify that in the Synod Constitution all such congregations as have their own [einen eignen] Seelsorger are to be understood as Pfarrgemeinden, even when the same are combined in other respects with other congregations into a Gesammtgemeinde; or

[2.] To alter the Constitution to require that every such congregation is to be represented by its Seelsorger and a delegate from its hearers.

The Synod by resolution gave the sought-after clarification, that every congregation with an “independent” [einem selbständigen] Seelsorger is to be understood as a Pfarrgemeinde, and thus to be entitled to be represented in the Synod by its Seelsorger and a delegate. (1866 Proceedings, p. 75)

There thus exists the possibility under the constitutional concept of Pfarrgemeinde, a.k.a. congregation or parish that “every congregation with its own independent pastor” would constitute a congregation-or-parish (Pfarrgemeinde), to be represented by one pastor and one lay delegate. The qualifiers its own and independent refer to a pastor or pastor(s) in the following situation to a congregation or parish: He is (they are) recognized as “the pastor(s)” (i.e., not merely assisting, or as equals among or subordinate to others) who are not recognized as “the pastor(s)” by any other congregation(s) (i.e., if they are also serving any other congregation, it is merely as assisting under the supervision of someone else who is “the pastor”). In this sense, each such congregation or set of congregations having its/their own pastor(s) would constitute a congregation-or-parish. As noted previously, such a definition would rely on a distinction between “the pastor” and “assisting pastors” that is not presently possible under existing bylaws.¹

In the case prompting this question, suppose that the distinctions underlying the 1866 Gesammtgemeinde practice were to be recovered. Congregation 1 could call Pastor A as “head” pastor and Pastor B as assisting pastor. Congregations 2 and 3 could call Pastor B as “head” pastor. In this situation, Congregation 1 would have its own pastor in the sense delineated above if Pastor B serves that congregation only as an assistant, under Pastor A’s supervision. Pastor B, likewise, would be the pastor of Congregations 2 and 3. Supposing all this to be the case, Congregation 1 would be a parish, which may be represented by Pastor A only, and Congregations 2 and 3 together would form a parish, which may be represented by Pastor B only. If Pastor B could serve as Congregation 1’s delegate, or is regarded in any fashion as “the pastor” of Congregation 1 (even, to use one of the invented terms, as associate with Pastor A, not strictly under Pastor A’s supervision) then Congregations 1, 2, and 3 would, in fact, remain one parish, even under the Gesammtgemeinde practice.

Were these distinctions to be recovered today in the bylaws of the Synod, two congregations having some sort of a joint arrangement or relationship, but each of them having its own separate pastor, would each be allowed to be represented by two delegates at a district convention, one ordained and one lay. An example might be that congregation A is quite small and the man who has been called as the pastor of congregation A, with the agreement of his congregation, assists the pastor of congregation B, which is quite large, by each month making half of the visitations to the homebound of congregation B. Since each pastor has his own parish for which he is responsible, the one merely assisting at the other, each congregation would be entitled to its two votes at the district convention, and each pastor would only be eligible to cast the vote for the congregation of which he is the pastor.

Conclusion: In the opinion of the commission, it would be appropriate for the convention to again take up the definition of parish and to develop appropriate bylaws that would clarify its application to present situations, while remaining within the boundaries of original constitutional intent.

¹ Noted also is the problem of invention of titles for pastoral roles which have no doctrinal, constitutional, or bylaw basis, and thus no official standing. Some of these have caused considerable confusion.
To facilitate the convention’s consideration of this question, the commission offers the following overture, by which the convention may adopt the definition that “(a) congregation(s) with a (head) pastor of its/their own, who is not the (head) pastor of any other congregation(s) constitutes a congregation-or-parish, even though it might share other (assisting) pastors with other congregations.” Unless the possibility of making such distinctions is restored to the bylaws, the present practice will persist.

Appendix: Overture to the 2019 Convention of the Synod

To Clarify the Meaning of Parish as it Relates to Congregational Representation at District Conventions and Election of the Synod President, and to Distinguish Assisting Capacity Pastoral Calls

Rationale

At the time of its inception, one of the major founding principles for the polity of the Synod was an equity between the laity and clergy in the decision-making process of the Synod. This was written into the Constitution by designating that the right to vote belongs to the member congregations of the Synod, with each congregation (the German term was Pfarrgemeinde, or “pastor-congregation”) receiving two votes: one was the vote of its pastor, and the other was the vote of its lay delegate (in the German, these were Deputierten der Pfarrgemeinden). A footnote of the 1847 constitution of the Synod describes what was understood by the term Pfarrgemeinde:

A Pfarrgemeinde is either one single congregation or the sum of the individual congregations which the pastor serves, as in Germany the territory in which he serves is called Kirchspiel or Kirchensprengel. The pastor may serve 3 or 4 or more congregations, locally separated; they are in relation to him essentially only one congregation and must, therefore, jointly send to the convention one delegate.

When the Constitution of the Synod was translated into English in 1924, the term congregation was used to refer to a Pfarrgemeinde comprising a single Gemeinde cared for by a pastor, and the term parish was used to refer to a Pfarrgemeinde comprising two or more Gemeinden cared for by a pastor. Thus, one German term Pfarrgemeinde was divided, in English, into two constituent cases. Thus, while the term parish was not used until 1924, the concept that a parish is “two or more congregations being cared for by the same pastor (or pastors)” goes back to the 1847 Synod constitution. This arrangement, that representation was on the basis of Pfarrgemeinden ensures a congregation-pastor parity, a “balance of power,” at the conventions of the Synod between the laity and the clergy. Even more fundamentally, it sees to representation of the congregations—which are the voting members of the Synod—on an equitable basis by units of preaching and hearing. One may be reminded of Luther’s bipartite definition of the Church as comprising hearers and those who preach to them: “holy believers and lambs who hear the voice of their Shepherd” (Smalcald Articles, Part III, Art. XII 2).

These same apparent desires, for Synod to be composed fundamentally of units of preaching and hearing (Pfarrgemeinden or pastor-congregations) and to maintain equity between the laity and the clergy at the conventions of the Synod, led to establishment of advisory membership when Synod was formed in 1847. This category was created to allow pastors to fulfill their desire to join the Synod while their congregations yet desired to remain independent. Typically, in the early period of the Synod, a large number of those pastors in attendance at conventions were advisory members, entitled to voice at the convention but no vote.

Thus, while the understanding and intention of the Synod is clear regarding voting representation at conventions of the synod—a parish being the total number of congregations cared for by a pastor (or pastors)—unique situations occurred and were addressed by the Synod. One of these situations was the practice of forming a Gesammtgemeinde as Lutheranism expanded in certain cities. Perhaps the most notable of these was the Gesammtgemeinde in St. Louis. In 1847, due to the growth of Trinity Lutheran Church in St. Louis, where C.F.W. Walther was the pastor, the congregation started a school and church on a second
location, which took the name of Immanuel. Initially Immanuel was not an independent congregation. In 1856, a third school and then church were added, which caused a re-evaluation of the arrangement. The solution was the division of the Gesammtgemeinde into three “districts.” In this arrangement, while the Gesammtgemeinde would nominate pastors for a vacant congregation, each “district” or congregation would actually elect him, with the result that each congregation was cared for by its own pastor even though the congregations were related to one another in the Gesammtgemeinde.

The question thus arose: at conventions of the Synod and district, was this group of congregations to be understood as one Pfarrgemeinde, entitled to only one pair of delegates? The situation was brought to the 1866 convention of the Synod for resolution, and the convention determined that each congregation with its own independent pastor was to be recognized as a congregation entitled to be represented at conventions by an ordained and a lay delegate. The sense of congregation or parish, taken together as equivalent to the German Pfarrgemeinde, thus is more flexible than the often-applied, modern-day rule, as stated in the since-removed 1963 Bylaw 3.09: “If a pastor serves two or more congregations, these shall be regarded as one parish and shall be entitled to only one lay vote.” While this bylaw was removed in 1981, without replacement, this interpretation has been consistently applied since. In the early period, however, congregations having pastors in common might still be separate Pfarrgemeinden, so long as each had a distinct pastor to call its own (head) pastor.

Today as well, there are unique situations occurring which raise complex problems for representation and for which the current bylaws do not provide a means of addressing. To give two examples:

- Congregations A & B have formed a two-congregation parish and have been regularly served by a pastor. After that pastor took a call, the situation of those two congregations was such that it would be difficult to support a pastor. A larger Congregation C, which has its own pastor (Pastor 1), offers to help solve their dilemma by having the new pastor of Congregations A & B (Pastor 2) assist at Congregation C for one day a week and paying a portion of the salary. The pastor of Congregation C has no responsibilities in Congregations A & B. Congregations A & B have their own pastor (Pastor 2), and Congregation C has its own pastor (Pastor 1). Pastor 2 merely assists part-time at Congregation C.

- Congregations D & E both have their own pastor, and because of their size both are in need of some additional pastoral help. However, neither has the size or resources to call an associate pastor on their own. To resolve their situations, Congregations D & E decide, in addition to the pastor that each one has, to call a pastor between them, who would split his time serving both congregations. Here congregations D and E each have their own pastor, but a third pastor is shared, assisting at both and “the (head) pastor” of neither.

In both of these examples, since, in each case one of the pastors is serving all of the congregations, present interpretation makes all the congregations involved become a multi-congregation parish, entitled to one pair of delegates at the district convention and for the President of the Synod.

The resolution adopted in 1866, however, would seem to indicate that in these examples, while these congregations or parishes have some sort of a joint arrangement or relationship, each congregation-or-parish (e.g., the parish comprised of A and B, and the congregations being C, D, and E) has its own independent pastor, and each congregation-or-parish should be allowed to be represented by two delegates at a district convention, one ordained and one lay. Bylaws as they currently exist, however, make no provision for this possibility, and in addition pose significant problems in allowing this to take place. For example, the current bylaws allow any ordained minister called by a congregation to be designated as the pastoral delegate of that congregation. In the example of Congregations D & E the one individual who is called by both congregations would be eligible to vote for either.

The Commission on Constitutional Matters has proposed the following additions to the Bylaws to clarify the definition of the meaning parish in Constitution Article V A and the bylaws dealing with district
conventions and election of the Synod president, and to provide a means for dealing with these unique situations so that congregations having *their own pastors* are not deprived of the privilege of voting at the conventions of a District and for the President of the Synod.

The following bylaw revision is possible under the Constitution of the Synod because the definition adopted falls within the originally adopted meaning of *Pfarrgemeinde* or *congregation-or-parish*, as the 1866 resolution demonstrates. If adopted, it would replace and supersede the understanding derived from the former 1963 Bylaw (removed without replacement in 1981), namely, that any congregations served by any pastor in common are one parish.

Therefore be it

*Resolved*, That Bylaws 2.5.5–6 be added to Bylaw Section 2.5, “Calling Ministers of Religion by Congregations,” under the new heading as indicated:

**PRESENT/PROPOSED WORDING**

*Calls and multi-congregation parishes*

2.5.5 The total number of congregations regularly cared for (served) by a pastor or pastors constitutes a *parish* as used in Const. Art. V A and as it applies to bylaws dealing with representation at circuit forums (Bylaws 3.1.2.1 [c]; 5.3.2) and district conventions (Bylaw 4.2.2; Const. Art. V A), and in voting for the Synod President (Bylaw 3.12.2.3). However, the called service of a pastor in a designated assisting capacity (Bylaw 2.5.6) does not render the congregations that he assists part of a parish with any other congregations he serves, whether in an assisting or non-assisting capacity.

2.5.6 The call of an ordained minister to a congregation may be designated as in an *assisting capacity* if the call entails service under the supervision of another called pastor of that congregation. A pastor serving in an assisting capacity is not in charge of that congregation (Const. Art. V B 2, XII 10 B b) and is *a* pastor but not “the pastor” of that congregation (Const. Art. V A, XII 10 A). An assisting capacity call does not, therefore, confer that congregation’s pastoral vote or eligibility to serve as circuit pastoral delegate, or cause the congregation assisted to constitute a parish with other congregations served by the assisting pastor. Those rendering assisting service on a regular basis shall be called, installed, and rostered as such. One serving a congregation in an assisting capacity is, with regard to that congregation, an *assisting pastor*.

and be it further

*Resolved*, That Bylaws 3.1.2.1 (c) and (d), regarding the election of circuit delegates, and 3.12.2.3 (a), regarding the election of the Synod President, be amended as follows, to indicate that calls to a congregation *in an assisting capacity* do not confer the congregation’s pastoral vote or eligibility to serve as pastoral delegate:

**PRESENT/PROPOSED WORDING**

3.1.2.1 Elections of voting delegates shall take place in accordance with established policy and procedure.

(c) The privilege of voting shall be exercised by one pastor and one layperson from each member congregation of the circuit, both of whom shall have been elected in the manner prescribed by the congregation. Multi-congregation parishes shall be entitled to a lay vote from each member congregation. *A pastor serving a congregation in an assisting capacity* (Bylaw 2.5.6) is not eligible to cast that congregation’s pastoral vote.

(d) *All pastors who are not advisory members under Article V B of the Constitution* *Each pastor who is serving a congregation of the circuit in a non-assisting capacity and not a specific ministry pastors shall be eligible for election.*
(1) Each voter may write in the names of two such pastors on the initial ballot. The three pastors (or more, in case of a tie vote) who receive the highest number of votes in this preliminary ballot shall be placed on the next ballot.

(2) Each voter shall now vote for only one candidate. Balloting shall continue with the lowest candidate being removed from each succeeding ballot until one pastor shall have received a simple majority of all votes cast, whereupon he shall be declared the pastoral delegate.

(3) The congregation or congregations served (in other than an assisting capacity) by the elected pastoral delegate shall be removed from consideration for supplying any other voting delegate or alternate for that particular convention.

3.12.2.3 The Secretary of the Synod shall compile and maintain the voters list for the election of the President of the Synod. This list and any of its parts shall not be disseminated.

(a) This voters list shall include:

   (1) the pastor of each member congregation or multi-congregation parish (assisting pastors are not eligible)
   (2) a lay person from the congregation or parish

and be it further

Resolved, That Bylaw 3.3.1, regarding the service of the President of the Synod, be revised as follows to incorporate the new language of assisting capacity rather than the now-removed constitutional category of assistant pastor:

PRESENT/PROPOSED WORDING

3.3.1 The President of the Synod shall be a full-time executive and shall serve as a voting member of the Board of Directors of the Synod.

(a) He shall not be in charge of a congregation or hold a chair at any educational institution but may be called as an assistant pastor to a congregation in an assisting capacity, provided such services do not interfere with his official duties as President.

(b) He shall, with the approval of the Board of Directors of the Synod, be empowered to engage sufficient staff to carry out the duties of his office.

and be it further

Resolved, That congregations and district presidents be urged to arrange for those regularly assisting congregations with pastoral service to be called, installed, and rostered as such; and be it finally

Resolved, That LCMS Rosters & Statistics and the Council of Presidents be directed to coordinate changes to the forms and procedures for multi-congregation parish designation and then to assist congregations in adjusting calls and designations as necessary under these newly-adopted bylaws.

Commission on Constitutional Matters

162. College/University Board of Regents Questions (18-2889)

A college/university board of regents of Synod has asked numerous questions concerning the closing of a Concordia System college or university. The CCM has consolidated these questions in order to provide a road map of how Synod’s bylaws designate that a Concordia University may be closed. This road map includes the roles of the board of directors of the Concordia University System, the individual Concordia University’s board of regents, Synod’s Board of Directors, the Council of Presidents, and Synod itself. The
last area of inquiry concerns the paper trail that each agency must provide for the closing process to be valid.

The following are relevant Constitutional Articles and Bylaws, and a definition:

**Article IV  Powers**

The Synod in convention is empowered to and has formed corporate entities which shall have legal powers:

1. To purchase, hold, administer, and sell property of every description in the interest of the Synod;
2. To accept, hold, administer, and, if deemed advisable, dispose of legacies, donations, commercial papers, and legal documents of every description in the interest of its work.

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**Article XI  Rights and Duties of Officers**

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**E. Composition and Duties of the Board of Directors**

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2. The Board of Directors is the legal representative and custodian of all the property of The Lutheran Church—Missouri Synod, directly or by its delegation of such authority to an agency of the Synod. It shall exercise supervision over all property and business affairs of The Lutheran Church—Missouri Synod except in those areas where it has delegated such authority to an agency of the Synod or where the voting members of the Synod through the adoption of bylaws or by other convention action have assigned specific areas of responsibility to separate corporate or trust entities, and as to those the Board of Directors shall have general oversight responsibility as set forth in the Bylaws. For the purposes of this article, The Lutheran Church—Missouri Synod includes both the Synod formed by this Constitution and the Missouri corporation formed by the Synod.

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1.2.1 The following definitions are for use in understanding the terms as used in the Bylaws of The Lutheran Church—Missouri Synod:

(a) **Agency**: An instrumentality other than a congregation or corporate Synod, whether or not separately incorporated, which the Synod in convention or its Board of Directors has caused or authorized to be formed to further the Synod’s Objectives (Constitution Art. III).

(1) Agencies include each board, commission, council, seminary, university, college, district, Concordia Plan Services, and each synodwide corporate entity.

(2) The term “agency of the Synod” does not describe or imply the existence of principal and agency arrangements as defined under civil law.

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(q) **Property of the Synod**: All assets, real or personal, tangible or intangible, whether situated in the United States or elsewhere, titled or held in the name of corporate Synod, its nominee, or an agency of the Synod. “Property of the Synod” does not include any assets held by member congregations, the Lutheran Church Extension Fund—Missouri Synod, or by an agency of the Synod in a fiduciary capacity (including, for purposes of example, the funds managed for the Concordia Plans by Concordia Plan Services and certain funds held by The Lutheran Church—Missouri Synod Foundation).

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1.5.3.5 All agencies of the Synod shall develop policies and procedures for making available official minutes of their meetings. All mission boards and commissions shall develop policies and procedures to make available upon request and at a reasonable price a verbatim copy of the official minutes of their meetings except for executive sessions. Any member of the Synod may request a copy of any official minutes of mission boards or commissions by submitting a written or electronic (via email) request to the Secretary of the Synod, who shall provide such minutes according to the policy of the Board of Directors.
3.3.4 The Board of Directors of the Synod is the legal representative of the Synod and the custodian of all the property of the Synod. It shall be accountable to the Synod in convention for the discharge of its duties.

3.3.4.7 The Board of Directors shall serve as the custodian of all the property of the Synod as defined in Bylaw 1.2.1 (q). Except as otherwise provided in these Bylaws, it shall have the authority and responsibility with respect to the property of the Synod as is generally vested in and imposed upon a board of directors of a corporation.

(b) It may, however, delegate to any agency of the Synod powers and duties with respect to property of the Synod for which such agency of the Synod has direct supervisory responsibility.

(c) Such delegation shall be in writing and shall be subject to change at any time by the Synod’s Board of Directors provided that reasonable deliberations, as determined by the Board of Directors, take place with such agency prior to the change.

3.10.6.4 The board of regents of each institution shall become familiar with and develop an understanding of pertinent policies, standards, and guidelines of the Synod and the Board of Directors of Concordia University System.

(h) It shall take the leadership in assuring the preservation and improvement of the assets of the institution and see to the acquisition, management, use, and disposal of the properties and equipment of the institution within the guidelines set by the Board of Directors of The Lutheran Church—Missouri Synod.

(i) It shall operate and manage the institution as the agent of the Synod, in which ownership is primarily vested and which exercises its ownership through the Board of Directors as custodian of the Synod’s property, the Board of Directors of Concordia University System, and the respective board of regents as the local governing body. Included in the operation and management are such responsibilities as these:

(5) Serving as the governing body corporate of the institution vested with all powers which its members may exercise in law either as directors, trustees, or members of the body corporate, unless in conflict with the laws of the domicile of the institution or its Articles of Incorporation. In such event the board of regents shall have power to perform such acts as may be required by law to effect the corporate existence of the institution.

(6) Establishing and placing a priority on the capital needs of the institution and determining the plans for the maintenance and renovation of the buildings and property and purchase of needed equipment, but having no power by itself to close the institution or to sell all or any part of the property which constitutes the main campus.

3.6.6.1 The Board of Directors of the Concordia University System has authority with respect to the Synod’s colleges and universities.

3.6.6.5 In keeping with the objectives and the Constitution, Bylaws, and resolutions of the Synod, the Board of Directors of Concordia University System shall

(h) have authority, after receiving the consent of the Board of Directors of the Synod by its two-thirds vote and also the consent of either the Council of Presidents by its two-thirds vote or the appropriate board of regents by its two-thirds vote, to consolidate, relocate, separate, or divest a college or university.
**Divest.** Equivalent to devest (q.v.) **Devest.** To deprive or dispossess of a title or right (e.g. an estate). *Black’s Law Dictionary, Fifth Edition* (1979)

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**Question 1:** How are the assets of a University liquidated?

**Opinion:** Synod’s Constitution places the authority of all of Synod’s property with the Synod’s Board of Directors (BOD) except “in those areas where it [the BOD] has delegated such authority to an agency of the Synod or where the voting members of the Synod through the adoption of bylaws or by other convention action have assigned specific areas of responsibility to separate corporate or trust entities, and as to those the Board of Directors shall have general oversight responsibility as set forth in the Bylaws” (Const. Art. XI E 2).

This BOD authority concerning Synod’s property is repeated in Bylaws 3.3.4 and 3.3.4.7. The property of Synod is defined in Bylaw: 1.2.1(q) and includes all property of an agency of Synod. A Concordia University is an agency of Synod, making all the property of the Concordia University property of the Synod. Board of Directors Policies 5.4.1.2f. have addressed, in general, the delegation of property authority to college and university boards of regents, which delegation remains subject to the Bylaw requirement (3.10.6.4[i][6]) that a board of regents has “no power by itself to close the institution or to sell all or any part of the property which constitutes the main campus.”

A board of regents may validly liquidate the property of a college or university under either of two circumstances. It may do so:

1. as part of a divestiture directed by Concordia University System under Bylaw 3.6.6.5 (h); or it may do so
2. having requested and obtained appropriate approvals (Bylaw 3.10.6.4 [i][6]), as when forced to exercise its fiduciary duties in a condition of financial emergency.

As the *by itself* of Bylaw 3.10.6.4[i][6] implies, the execution of a closure or “liquidation” of a college or university (whether initiated by Concordia University System under Bylaw 3.6.6.5 [h] or by the board of regents itself, on account of operating conditions) does rest with the board of regents, as the governing body corporate of the institution (Bylaw 3.10.6.4 [i][3]), but requires the consent of those with oversight authority, namely, the boards of directors of the Synod and of Concordia University System.

Bylaws do not stipulate limits as to how much of the institution’s property may be divested in such a circumstance. There being no limit placed by the Bylaws the CCM can only conclude that the quantity of property and the kind of property that is the subject of the divestiture is the same property to which the above-noted authorities assented.

**Question 2:** (Another avenue of questions asked what paper trail must be established by Synod’s Board of Directors. The questions focus on what can be done in private (executive session) by the BOD and what must be public, and what would constitute a proper form of “consent” allowing a board of regents to act “not on its own.”)

**Opinion:** Synod’s Constitution and bylaws are silent concerning this question. As such, the commission can only conclude that Missouri state law, if there is any state law on point, possibly may govern the answer to this question. The CCM states *possibly* because the Establishment clause of our Federal Constitution as well as the Missouri State Constitution may come into play. What the CCM can say is that the Constitution and Bylaws do not require the BOD to release every facet of its work (or these specific facets) in its public minutes.

While the fact that that BOD as an officer of the Synod (Const. Art. X A) is “in everything pertaining to [its] rights and the performance of [its] duties [is] responsible to the Synod (Const. Art. XI A 1)” implies that the conduct of its responsibilities (Const. Art. XI E 2) must be reviewable by the convention, this does
not imply that the BOD cannot take, when necessary, confidential business actions. The BOD has both a fiduciary duty and a bylaw obligation to avoid “creating potential liability” (Bylaw 1.5.1.3). The BOD is the entity with fiduciary responsibility for the property and business of corporate Synod and must be the entity to determine what is suitable for release to public minutes. Issues surrounding the potential or actual closure of a college or university could understandably be very sensitive, and have the potential, if disclosed prematurely or unnecessarily, to cause significant harm to the business operations of the school, the Concordia University System, and the Synod. The BOD has policies relating to executive session (BOD Policy Manual section 2.4.8) providing for its holding confidential such material, and neither these policies nor their application to material relating to school closure are inconsistent with the Constitution or Bylaws of the Synod.

Bylaw 1.5.3.5 states “[a]ll agencies of the Synod shall develop policies and procedures for making available official minutes of their meetings…” Agencies by their very nature manage property that belongs essentially to the Synod, on behalf of Synod’s constituent congregations, and their actions with regard to that property are to be reported for examination by the Board of Directors and by the Synod as a whole. Corporate Synod and its Board of Directors are not “an agency of the Synod,” Bylaw 1.2.1 (a), and therefore not subject to Bylaw 1.5.3.5.

As a corollary, there are no magic words to signify “consent” to the divesting of property. The CCM would expect “consent” to be worded in language easily understood by whoever must be assured that proper “consent” has been given, such as Concordia University System, Synod’s Board of Directors, or the board of regents of the school.

Question 3: A third line of questions regarded filling vacancies on a board of regents and length of service. These are summarized as follows: In the event that vacancies occur on a board of regents (Bylaw 3.10.6.3), what remedy does a board of regents have if the appointing body fails or neglects to fill the vacancies?

Opinion: The Bylaws of the Synod do not address a remedy for failure to fill a university/college board of regents vacancy. An agency concerned that relevant bylaws are not being carried out as to filling vacancies should contact the appointing body or the President of the Synod under Bylaw 3.3.1.2 (c).

Question 4: According to the Constitution and Bylaws of the Synod, when, and under what circumstances, is a board of regents of a “closed” institution considered dissolved or dismissed?

Opinion: The Bylaws do not go into detail on the topic of the discharge of the members of a board of regents for a closed university/college. The question is one typically dealt with in state nonprofit corporate law.

163. Prior Approval of Adjunct Concordia University System Theological Faculty (18-2891)

The President of the Concordia University System (CUS) posed a question of the commission:

Question: Does Bylaw 3.10.6.7.3 require adjunct as well as full-time theology professors to be vetted in the same manner?

Opinion: In 2013 the Synod in convention restored the process of prior approval for initial appointments of theology faculty at CUS institutions (2013 Proceedings, p. 140) but with a different process than the process appointed for seminary faculties (2016 Bylaw 3.10.5.7.3 [a]). In 2016 the Synod in convention further refined this process by removing the words all initial full-time and thereby extending this process to all appointments and calls without qualification other than the single exception expressed in the referenced Bylaw 3.10.6.7.3. The Board of Directors of the CUS has responsibility, under Bylaw 3.6.6.1, to facilitate the process:

3.6.6.1 The Board of Directors of the Concordia University System has authority with respect to the Synod’s colleges and universities. It shall have the overall responsibility to provide for the education of pre-seminary students, ministers of religion–commissioned, other
professional church workers of the Synod, and others desiring a Christian liberal arts education by facilitating prior approval as set forth in Bylaw 3.10.6.7.3 for theology appointments to college/university faculties and by coordinating the activities of the Synod’s colleges and universities as a unified system of the Synod through their respective boards of regents.

The authority and process delineated in Bylaw 3.10.6.7.3 (adopted 2016, Proceedings, pp. 178–9) clearly places under the purview of this prior approval all manner of appointments and calls related to theological teaching responsibilities, with a single exception (italicized):

3.10.6.7.3 All initial appointments to persons serving on theology faculties, or teaching classes in or cross-listed with the theology department, shall require prior approval by a majority vote of the President of the Synod (or his designee), the chairman of the Council of Presidents (or his designee), and a member of the Concordia University System board selected by the chair, and shall include a thorough theological review. The three voters shall be ordained. The process shall be facilitated by the president of Concordia University System. Initial appointment refers to the initial engagement of any person to teach one or more theology courses, regardless of assigned academic department, other than faculty who teach theology courses no more than one academic year in any three-year period.

2016 Bylaw 3.10.6.7.3 thus—like the corresponding seminary prior approval bylaw, Bylaw 3.10.5.7.3 (a)—requires approval for “all initial appointments,” whether full- or part-time. The bylaw does make exception for college and university faculty who teach theology courses no more than one academic year in any three-year period. Though this provision was granted to give the broadest latitude to the individual school so that timely response may be given to changing conditions and non-traditional formats, it does not relieve the individual board of regents or the president of the school from their solemn responsibility to both the theological integrity of the classroom with respect to our confessional standard as a church (cf. Bylaw 3.10.6.7.2, which applies to all full- and part-time faculty, whether with theological teaching responsibilities or not) and to providing the highest quality education for the benefit of the student.

Absent any other specific exception, the requirement for prior approval also applies to adjunct as well as full-time theological professors and the same process applies to both, and, by extension, to any other category of initial appointment of those who teach theological courses in a college or university within the CUS system.

164. Concordia University System Educational Arrangements with Other Church Bodies (18-2890)

The President of the Concordia University System (CUS) posed questions of the commission, stating initially by way of background the following:

Several of the Concordia universities have entered into or are contemplating an educational relationship with church bodies that are not in fellowship with the Lutheran Church—Missouri Synod. One university has announced that another church body, which ordains women, will recognize the university’s courses (Greek, Hebrew, Church history, etc.) as a portion of the church body’s pre-ministerial training. Similar arrangements are being considered by other universities, with other church bodies with which the Synod is not in fellowship, both Lutheran and Anglican.

Response and discussion of “Background” material:

Synod Bylaws 3.6.6.6 (a) and (b) require the CUS Board, in consultation with the colleges and universities of the Synod, to develop and have in place policies that would assist and ensure that those responsible for the educational programs of the institutions do so in a manner designed to “preserve their Lutheran identity” as relating to the Article III objectives of the Synod’s Constitution. These objectives grow out of the
confessional roots of the Synod in Article II in that they are developed and performed “under Scripture and the Lutheran Confessions” (Article III).

The Concordia University System has particular responsibility “to provide for the education of pre-seminary students, ministers of religion—commissioned, other professional church workers of the Synod” (Bylaw 3.6.6.1). Decisions of colleges and universities in any way impacting such programs—including arrangements with other church bodies to contribute to the training of their workers—must be coordinated with the Concordia University System. Likewise, creation of new programs, if such are conceived for training of extra-synodical church workers, is to be reviewed and approved by CUS (Bylaw 3.6.6.5 [c]).

Preservation of “Lutheran identity” is not a matter of protecting a quaint ethnicity, but rather deals with the truth of the confessional foundations that undergird what we believe, teach and confess. Though another denomination may accept the course work provided at an educational institution of the Synod as satisfactory for their requirements, it goes without saying that what our schools teach is in no way to be adjusted to minimize the truth of our doctrines (cf. Const. Art. III 1). CUS is responsible for assisting the President in his supervision of this area (Bylaw 3.6.6.5 [g]).

Finally, the Synod itself retains authority for ecumenical relations, an authority vested in its President as chief ecumenical officer (Bylaw 3.3.1.1.2 [c]).

The commission addresses both questions in one opinion:

**Question 1:** Would the President of the Synod, as chief ecumenical officer, need to approve such arrangements?

**Question 2:** Do the universities need to communicate the conditions under which such instruction is being offered so that no confusion arises with respect to the respective denominations’ doctrinal confessions and practices?

**Opinion:** If recognition of credits were the extent of the memorandum of understanding, and the content of the teaching were not adjusted to suit heterodox church bodies, the commission does not believe that this would constitute an “ecumenical agreement” requiring such approval. Nonetheless, the Office of the President should certainly be informed in advance of any such potential agreement and be given opportunity to fully address any concerns related thereto. Terms and conditions of any such agreement must be fully disclosed, as they are subject to the proper oversight and/or supervision of the CUS and the President of the Synod. Communication with the Office of the President is an obligation both of the school and of CUS, which has the responsibility to “assist the President of the Synod in monitoring and promoting the ongoing faithfulness of Concordia University System colleges and universities to Article II of the Constitution of the Synod” (Bylaw 3.6.6.5 [g]).

165. **COP Manual Review: Calls vs. Contracts for Ordained and Commissioned** (17-2865)

The commission discussed at some length two documents from the Council of Presidents (COP) Policy Manual, 2018 sections 9.2 and 10.3, entitled “Calls vs. Contracts,” applicable, respectively, to ordained and commissioned ministers, but determined not to address the document in an opinion.

166. **Concordia University Nebraska Bylaws, Revised** (16-2800A)

By a June 23, 2018, e-mail, general counsel for Concordia University Nebraska (CUNE) forwarded a restatement of its bylaws, adopted by the board of regents on May 1, 2018. It was communicated that the concerns raised in the commission’s prior review (Op. 16-2800) would be addressed subsequent to this restatement.

The commission therefore reiterates the necessity of addressing the following concerns related to the university’s articles of incorporation—the last of which underscores that the document presently under review should not have been adopted prior to review and approval by the Commission on Constitutional Matters:
• Article III contains the asset disposition language required by LCMS Bylaw 1.5.3.6 (b) and 2016 Res. 9-02A, although the phrase “to be used for educational purposes as provided by The Lutheran Church—Missouri Synod” is a restriction that needs to be removed.

• The articles do not contain the relationship language required by LCMS Bylaw 1.5.3.6 (a) and 2016 Res. 9-02A: “[A]gencies of the Synod shall comply with the requirements of this bylaw change [including both (a) and (b) of Bylaw 1.5.3.6] in time for the CCM to report the status of compliance to the 2019 convention of the Synod.”

• It is also noted, contra the final paragraph of the Concordia University Nebraska board resolution amending Article V (dated July 29, 2008 and January 31, 2017) that the prior review and approval of the LCMS Commission on Constitutional Matters is required whenever an agency of Synod, like a university, intends to make changes to its articles or bylaws (LCMS Bylaw 3.9.2.2.3 [a]). Article VIII should mention this requirement.

The commission’s previous Op. 16-2800 stated: “With regard to the bylaws, the commission noted that these require extensive updating to reflect the present state of LCMS Bylaws (e.g., to reflect the organization of the colleges and universities under Concordia University System as opposed to under the Board for University Education, to reflect the requirements imposed upon the board of regents by LCMS Bylaws 1.5.3–1.5.3.5, to reproduce or reference the full range of responsibilities assigned a board of regents in LCMS Bylaws 3.10.6.1 and 3.10.6.4–3.10.6.5, etc.).” This remains, in large measure, to be addressed.

With regard to the present document, the commission elaborates the following specific concerns:

- Bylaw 1: CCM Op. 16-2800 noted “that the university is neither an affiliate nor a member of The Lutheran Church—Missouri Synod, but an agency thereof (Bylaw 1.2.1 [a]).”
- The requirement that the two laypersons elected by the Synod be resident freeholders of (i.e., with residence in and having freehold title to property within) Seward County, Nebraska, cannot be imposed on the Synod convention by the university’s bylaws and, as stated, are invalid. The requirement of the former CUNE bylaws was simply that two of the laypersons (including those elected by Synod and district and appointed by the board) be resident freeholders of Seward County. The Synod’s choice of its two elected laypersons cannot be so restricted. Should, following a Synod convention, the board be in a position of lacking two resident freeholders of Seward County, Nebraska—if this is, in fact, a legal requirement that must be retained—it is the board’s responsibility to meet this requirement, not the Synod’s, and the board may satisfy this requirement by its ability to appoint members.
- Bylaw 2 A should reproduce Bylaw 3.10.6.2 in its entirety, or simply cite that the composition and requirements are as stated in the Bylaws of the Synod. Bylaw 3.10.6.2 [7] and [8] are omitted.
- Bylaw 2 C should note that LCMS Bylaws and Board of Directors policies govern meetings, meeting frequency, electronic meetings, and action without a meeting (Bylaw 1.5.3f.). Bylaw 2 D 2 is understood to mean that the regents may exclude all executives and staff from executive sessions, contra the apparent meaning of “all or parts of.” This should be clarified or removed.
- Bylaw 2 E 1 does not specify when this election takes place, and what the period of this organization is (cf. Bylaw 1.5.3.1). The commission presumes that this might take place triennially, after the seating of members elected by the convention of the Synod, but this could stand to be clarified.
- Bylaw 2 E 2 requires the creation of any standing committee to be reported to the President and to the Board of Directors of the Synod (Bylaw 1.5.3.4).
- Bylaw 2 G should more closely and thoroughly reproduce Bylaws 3.10.6.1–5, as they do so at present only in a confusingly partial manner.
- Bylaw 5 should note, as Op. 16-2800 pointed out, that “Amendments to the bylaws also require prior approval by the commission.”

As the university bylaws—apparently as already adopted by the board—were not prior reviewed and approved by the Commission on Constitutional Matters, and as they are not presently in an approved state, the amendments purportedly adopted are not in force or effect. The commission looks forward to
submission of appropriate revisions for review and approval prior to their subsequent adoption. (Bylaw 3.9.2.2.3 [a])

167. Missouri District Bylaws as Adopted (18-2823F)

By an e-mail of April 24, the chairman of the Missouri District Structure Task Force forwarded the Missouri District bylaw proposal as delivered to the convention and subsequently adopted, including a few minor changes relative to the last version reviewed by the commission. These were found to be consistent with the Constitution, Bylaws, and resolutions of the Synod and stand approved. The district is thanked for its cooperation with the review process.

168. English District Bylaws as Adopted (17-2833A)

By an e-mail of June 25, the Secretary of the English District forwarded the English District Bylaws as adopted, with a few changes relative to the last version reviewed by the commission. These were found to be consistent with the Constitution, Bylaws, and resolutions of the Synod and stand approved. The district is thanked for its cooperation with the review process.

169. Minnesota North District Bylaws as Adopted (17-2867A)

By an e-mail of July 24, the Secretary of the Minnesota District forwarded the district’s bylaws as adopted, with a few changes relative to the last version reviewed by the commission. These were found to be consistent with the Constitution, Bylaws, and resolutions of the Synod and stand approved. The district is thanked for its cooperation with the review process.

170. Iowa East District Bylaws as Resubmitted and Finally Adopted (17-2866A)

By an April 19 e-mail, the Secretary of the Iowa East District submitted further changes to the district’s bylaw proposal already submitted. The chairman and secretary of the commission reviewed the changes and the secretary responded, noting two minor items needing further attention:

- In Bylaw 11.4, the possibility needs to be included of the delegates registering by sending the card to the district office in advance to the convention. (LCMS Bylaw 4.2.2 [a])
- In Bylaw 15.2, the district may include, if it wishes, the provision (styled on LCMS Bylaw 7.1.2) that the BOD may, upon CCM approval and by a 2/3 vote, effect such changes in the district Bylaws as are required by the Synod convention’s changes to its own bylaws.

Following the convention, the district sent its bylaws as adopted. These reflected all changes suggested by the commission and stand approved. The commission ratifies the response of the Secretary, and thanks the district for completing the review process by sending its bylaws as adopted for the commission’s files.

171. Texas District Bylaws as Adopted (18-2876B)

By an e-mail of June 22, the Secretary of the Texas District forwarded the district’s bylaws as adopted, containing one change to the bylaws related to the district archivist that had not been prior-approved by the commission. The commission approves the changes, noting, however, that the district needs to consult with Concordia Historical Institute, which is the Department of Archives and History of the Synod, regarding planned changes to archival policies, in accordance with Bylaw 3.6.2.2.1 (a–b). The district is thanked for its cooperation with the review process.

172. New Jersey District Articles of Incorporation (18-2884A)

By an e-mail of May 23, the President of the New Jersey District forwarded the district’s restated articles of incorporation as adopted by the convention but not previously reviewed by the commission in the adopted state. The commission gives its approval to the body of the articles as adopted, but notes with concern the footnote on the word liabilities in Article VIII a, Dissolution.
The commission notes that the footnote does not really deal with the topic of dissolution and, as a footnote, is not a legal part of the articles and would be of no legal force. This passage refers not to a liability but to a *restriction* that would be expected to survive a dissolution, merger, etc., subject to possible *cy prés*. The commission notes that a careful title search and property evaluation are a practical necessity in the acceptance of real property, which can otherwise expose the district to significant liabilities.

173. **Ohio District Articles and Bylaws, Proposed (18-2885)**

By e-mails of April 13 and May 7, respectively, the secretary of the Ohio District forwarded amendments to the district’s articles and bylaws proposed for adoption at the district’s upcoming convention. The Secretary responded with comments on successive drafts, the last of which was found to be fully consistent with Synod’s Constitution, Bylaws, and resolutions, except that in Article VII K 3, the “interval of two or more years” should be an “interval of three or more years,” given the present triennial cycle of the Synod. The articles as proposed were found to satisfy the relationship and asset disposition language requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A. The commission ratifies the response of the Secretary, approving the changes as proposed, and thanks the district for its attention to these matters and for its cooperation with the review process. The district is reminded to submit a clean copy of the bylaws as adopted, and of the articles as finally filed with the state.

174. **Pacific Southwest District Articles of Incorporation, Proposed (18-2886)**

By an e-mail of May 10, the secretary of the Pacific Southwest District forwarded the district’s proposal to restate its articles in terms of the template provided by the commission, which satisfies the relationship and asset disposition language requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A. The Secretary responded that this would be consistent with the Constitution, Bylaws, and resolutions of the Synod. The commission ratifies the response of the Secretary, approving the proposed restated articles, thanks the district for its attention to these matters, and requests a copy of the articles as adopted and filed with the state.

175. **Michigan District Bylaws, Proposed (18-2887)**

By an e-mail of May 21, the Michigan District office forwarded four proposed resolutions amending district Bylaws 5.18a; 15.4; 5.5–6 and 5.13; and 1.3e. The chairman and secretary of the commission reviewed the proposed amendments in light of existing Michigan District bylaws and responded that they were found to be consistent with the Constitution, Bylaws, and resolutions of the Synod. The commission ratifies the response of the Secretary, giving its approval to these changes, and thanks the district for its cooperation with the review process.

176. **Concordia International—Papua New Guinea Articles of Association (18-2892)**

The commission noted that this corporation is organized under Concordia International Foundation, a non-member, public benefit corporation established by the Synod for foreign mission purposes. As such, it does not have the character of a typical domestic agency of the Synod and therefore its governing documents do not meet the various typical requirements of the bylaws conceived for such agencies. The commission notes that the Board of Directors has given its approval, signifying its acceptance of the relationship and dissolution language, which differs from that required by LCMS Bylaw 1.5.3.6. The commission notes the absence of conflict-of-interest provisions, meeting requirements, etc., as typically required of agencies under Bylaw section 1.5. The commission accepts the apparent determination of the board and of Synod’s legal counsel that Synod’s interests are adequately protected by the documents as approved, and that appropriate policies and procedures will be in place despite various (probably necessary) lacunae in the documents.

The commission notes again that the governing documents of Synod’s foreign mission corporations are of a peculiar character and suggests that the Board of Directors might memorialize the convention of the Synod to create bylaw language distinguishing foreign mission corporations from conventional domestic agencies and establishing, for the former, sufficient and achievable requirements.
177. **Central Illinois District Bylaw Addition** (18-2874A)

By a May 23 e-mail, the president of the Central Illinois District forwarded a convention resolution, proposed by the board of directors, that would amend bylaws regarding a social ministry committee. The Secretary responded with the suggestion that “clergyman” might better read “ordained minister from the Synod roster.” The commission ratified the response of the Secretary and approved the slight wording changes made by the convention at the time of the resolution’s adoption. The district is thanked for its cooperation with the review process and reminded to submit a clean copy of its bylaws as adopted for the commission’s files.

178. **Central Illinois District Endowment Bylaws and Articles** (18-2874B)

By a June 6, 2018 e-mail, the chairman of the Central Illinois District Endowment Fund forwarded a draft of his agency’s documents, addressing the commission’s former comments and explaining one issue noted that could not be addressed as suggested. The commission gives its approval to the draft and thanks the agency for its cooperation with the review process.

179. **Concordia University Chicago Articles and Bylaws** (18-2893)

By an August 7 e-mail, the Associate Vice-President for Legal Affairs of Concordia University Chicago forwarded the university’s articles, bylaws, and excerpts of its policies for review.

The commission notes that the articles do not include the relationship or asset disposition language required by Bylaw 1.5.3.6 and 2016 Res. 9-02A, a deficiency the university will need to address.

With regard to the bylaws, the commission notes the following points requiring attention:

- Bylaw II A 2: The president may be called *advisory to* the board but is not an *advisory member* of the board, as the membership of the board are established by the bylaws of the Synod.
- Bylaw II B 1: Members *appointed to the board* are also voting members, as is the member appointed by the President of the Synod. These have three-year terms, but are not elected.
- Bylaw II B 4: The appointee of the President of the Synod is not term-limited.
- Bylaw II B 5: The stipulations of LCMS Bylaws 1.5.7–1 apply also to board-appointed members.
- Bylaw II D 1: See LCMS Bylaw 1.5.3 regarding meeting frequency requirements. Generally, the board should consider the requirements of LCMS Bylaw section 1.5 to see that requirements are being met and that necessary portions are incorporated into the university’s bylaws.
- Bylaw IV: The requirement of LCMS Bylaw 3.9.2.2.3 (a) should be noted.

The university is thanked for submitting its documents for review. The commission will look forward to a proposal addressing the article and bylaw points noted.

180. **Iowa West District Bylaws as Adopted** (17-2846B)

By a July 2 e-mail, the chairman of the Iowa District West bylaw committee forwarded his district’s bylaw changes as adopted, which included a few minor changes from the last reviewed version. The commission gives its approval and thanks the district for its cooperation with the review process.

181. **Correspondence**

The commission reviewed and prepared a response to a request for comment from the task force reviewing Bylaw 3.8.3 and the role of the Board for International Mission as the *only sending agency*.

182. **Adjournment**

With its presently addressable agenda concluded, the commission adjourned at noon on Saturday. The commission has a meeting scheduled September 14–15, 2018 (including a joint meeting with the Council of Presidents). Future meetings are scheduled for January 25–26; either March 1–2 or 22–23, as schedules permit; and May 30, 2019, in conjunction with Floor Committee Weekend.