MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
Internet Conference Meeting (Zoom.us)
September 15, 2020

45. Call to Order and Opening Prayer
Commission Chairman Dr. George Gude called the meeting to order with all members present except for Pastor Owen, who had parish obligations, calling upon Attorney Deadrick to offer the opening prayer.

46. Southern Illinois District Articles of Incorporation (20-2946)
By an August 5, 2020, email, the Secretary of the Southern Illinois District forwarded a proposed restatement of the district’s articles of incorporation, the former attempt at restatement (approved by the commission in Op. 17-2842 and adopted by the district’s 2018 convention) having been rejected by the state due to certain formalities. The commission approves the present proposal for restatement of the district articles for presentation to the district convention and adoption. The district is reminded to file the adopted articles with the state and to forward a copy of the articles as accepted by the state to the commission for its file. The district and its secretary are thanked for facilitating this review and bringing this process to completion.

47. North Dakota District Bylaw Revision, Proposed (20-2948)
By an email of August 25, 2020, the Secretary of the North Dakota District forwarded for the commission’s review a revision of his district’s bylaws, intended principally to incorporate changes necessitated by the 2019 Convention of the Synod and to revise the nomination procedure for district vice-presidents. The commission notes the following points requiring attention:

- District (ND) Bylaw 1.8.5.1 continues to reflect the language of pre-2019 Synod Bylaw 3.1.3, but with the change of “delegates” to “members;” it is inconsistent with the Constitution and Bylaws of the Synod. District Bylaw 1.8.5.1 must be deleted and does not need to be replaced.
- In ND Bylaw 1.8.5.3, “debut” should read “depute” and “advisory delegate” should read “advisory lay delegate.”
- ND Bylaw 1.8.6 should allow for presentation of valid excuses, as does Synod Bylaw 4.2.3.
- ND Bylaw 2.2.1, in reciting by reference the principal duties of the district president, should include also Const. XII 7–9.
- ND Bylaw 2.3.1 (a) must reflect Synod Bylaw 4.3.1, reading in both instances: “an ordained minister with membership in a congregation of the…region of the District…”; likewise, ND Bylaw 2.3.2 should read “…ordained minister from with membership in a congregation of the region in which the vacancy occurs…” This congregational basis of individual region membership should also be reflected in Bylaw 2.9.7.1 (a) and 2.9.7.2, with regard to “within each region.”
- ND Bylaw 2.7.1.2 should clarify that it is not the location of residence that determines membership in the district and eligibility for office, but membership in the district (as a rostered member) or membership in a district congregation (for laypeople).
- In ND Bylaw 2.7.4 (erroneously numbered 1.1.4), subparagraph (b), “government” should read “govern.”
- If the “major geographical areas of the District” in ND Bylaw 2.9.1 are the regions defined in Bylaw 2.3.1 (b), these regional offices would also be based on congregational membership rather than residence. Again, if this is the intent, the language should, for consistency, use the word “region” instead of “geographical area.”
- In ND Bylaw 2.9.6, it needs to be clear that only the one candidate receiving the smallest number of votes is removed per iteration of the presidential ballot.
• In ND Bylaw 2.9.9.1, the sentence, “Nominations for candidates for the office of Circuit Visitors may be submitted by a voting congregation of the circuit or the president, in consultation with the presidium no later than the day prior to the day of the Circuit Forum.” should instead read exactly as does Synod Bylaw 5.2.2 (b).
• In ND Bylaws 3.1.1–2, the reiteration of Synod Bylaws 2.5.2–3 should reflect the 2019 changes to the Bylaws of the Synod.
• ND Bylaw 6.3.2 (c) should read “…for review and approval in advance…”
• ND Bylaw 8.1.1 (e) (proposed) should read: “When necessitated by amendments to the Synod Constitution or Bylaws or otherwise expressly directed by a resolution of the Synod in convention, amendments may be made by a two-thirds majority of the district board of directors. Such amendments shall be drafted by the district Standing Committee on Constitution and Bylaws and shall be reviewed and approved in advance by the LCMS Commission on Constitutional Matters.” Additionally, this provision should not be inserted into the sequence of ND Bylaw 8.1.1’s subparagraphs, which deal with district bylaw amendments adopted by the convention, but should be numbered as a separate item, perhaps 8.1.2.

With the above modifications, the district’s bylaw proposal is approved for presentation to the convention. The district and its secretary are thanked for submitting their documents for review and reminded to submit a clean copy of the district’s bylaws as adopted for the commission’s file.

48. Missouri District Policy Manual (20-2934)

By an e-mail of May 15, 2020, the Secretary of the Missouri District forwarded his district’s policy manual for review. The commission reviewed the general outline of the manual, which resembles in many respects the manuals of the North Dakota and Eastern Districts, reviewed in Op. 17-2843 and Op. 17-2807, as well as that of the Michigan District, reviewed in Op. 15-2770 and Op. 15-2770A. Copies of these related opinions will be provided to the Missouri District along with the following brief review, along with the offer of the Secretary of the Synod to consult further with the district regarding these observations:

• The purpose of a policy manual is to elaborate how the responsibilities assigned to the board of directors by the constituent congregations of the Synod and district, acting in convention, will be carried out. While Section 1 of the policy manual makes such an approach to the mission of the district, subsequent prefatory sections might well be revised to continue this approach, reiterating and developing the responsibilities assigned to the board of directors in the Constitution, Bylaws, and resolutions of the Synod and of the district. Instead, the policy manual approaches the responsibility of the board as to the “stewards” of the district (Policies 5 and 30). This is terminology perhaps suitable to a general not-for-profit but foreign to the Constitution and Bylaws of the Synod. Properly speaking, the district board of directors is responsible to the congregations of the Synod and, in particular, of the district, as these have spoken collectively and primarily through the Constitution, Bylaws, and resolutions of the Synod and of the district, and as they receive and react to reports of the board’s activities. The commission notes that clarity is particularly important at this point, as the board “assume[s] such rights as have been expressly conferred...and in everything pertaining to [its] rights and the performance of its duties [it] is responsible to the Synod [and district]” (Const. Art. XI A 1).
• The difficulty with using a Policy Governance model (Policy 10 and following) in such a committed manner is that it loses sight of the distinction between the primary responsibilities for the district president (“president”) vis-à-vis the District Board of Directors (“board”). Here again, Policy Governance might serve as a rigid model for a general not-for-profit, but not for a district of the Synod, in which the board does not govern all and the president is not strictly or even chiefly the board’s executive. The balance and dynamic between the president and the board have both been clearly delineated in the responsibilities and accountability as set forth in the Synod Bylaws and Article XII of the Synod Constitution. Although it is certainly appropriate for the board to be
concerned with setting policies consistent with the Constitution, Bylaws and resolutions of Synod and to seek assistance from the district president as chief executive (Bylaw 4.4.1) to ensure that such are properly executed within the district, this cannot alter the fact that the primary responsibility for the accomplishment of the board’s duties lies with the board, regardless of whether the district president has agreed to guide and direct implementation of the same. (Bylaw 4.4.1 elaborates the district president’s role as “chief executive” in terms of the execution of resolutions of the district [i.e., district convention], not in terms of the carrying-out of board directives or policies, and specifies that he is to report to the district convention [not to the board].)

• Moreover, the fact that the district president may have agreed to take on this additional responsibility in no way changes the fact that his primary responsibilities are as an elected officer representing the Synod in his district (Bylaw 4.4.2) and for the ecclesiastical supervision of those within his district and under his charge. The board may establish procedures for evaluating the president’s performance of activities for responsibilities outside of those set forth in the Synod’s Constitution and Bylaws (as it endeavors to do in Policy 22.2.1f., 26.4f.); however, such evaluation may in no way address, impair, or interfere with the president’s responsibilities under the Synod’s Constitution and Bylaws, which must take precedence over other activities the board may have delegated to him. These delegated duties are extensive (Sections III and IV), requiring what seems to be a great deal of the attention and energy of the district president, potentially impinging on his primary, ecclesiastical role. Both board and president are constitutionally obligated to prevent this from happening.

• Specifically, Policies 13.2.2, 44.1, and 45.0 fail adequately to express, distinguish, and safeguard the exclusive and primary role of the district president in carrying out his duty of ecclesiastical supervision within the district, which goes far beyond simply making theological pronouncements on behalf of the Synod. Neither the board’s policies nor the executive labor the board expects from the district president dare impinge upon this primary purpose of his office. In the commission’s impression, this manual does not adequately safeguard this distinction of roles.

As the commission has noted in the review of the above-noted policy manuals of other districts, the Constitution and Bylaws of the Synod delineate distinct roles for the boards and presidents of the Synod and of the several districts. While there certainly may be aspects of the Policy Governance model that may help a board focus on governance and effectively develop clear policies, delegate authority, and monitor performance, the model is not directly and strictly applicable to the constitutional design of the Synod and the districts. Practically speaking, the authority, time, and energy of the district president to carry out his primary duty of ecclesiastical supervision, counsel, and care of the district’s congregations and workers must be safeguarded.

The district and its secretary are thanked for providing the district’s policy manual for review.

49. Texas District Bylaw Revision, Proposed (20-2943)

By an e-mail of July 23, 2020, the Texas District Secretary forwarded his board of directors’ proposal for revision of the Texas District Bylaws, notably addressing the preamble revision requested by the commission in Op. 18-2876 and 12-1640, which effort the commission notes with appreciation. The commission notes the following areas calling for further attention:

- A clear statement relating the governing documents of the Synod to those of the district is necessary and suitable for early inclusion in the district’s bylaws, as well as in its articles of incorporation (see below). Article V of the remaining “Preamble” contains a limited statement of this connection; however, the best wording of such a statement may be derived directly from that of Synod Bylaw 4.1.1.1–2: “The Constitution of The Lutheran Church—Missouri Synod is also the Constitution of the Texas District. The Bylaws of the Synod shall be the primary Bylaws of the Texas District. The Constitution and Bylaws of the Synod are hereby included by reference, with amendments adopted by the Synod automatically incorporated herein. Resolutions of the Synod are binding upon the
Texas District.” Such a statement would best precede any substantive content of these subsidiary or secondary district bylaws.

- Likewise, the statement in Bylaw I A, “The Bylaws of The Lutheran Church—Missouri Synod (the “Bylaws of Synod”) are referenced throughout these bylaws and any and all applicable sections as referenced are incorporated herein,” appears to imply that only certain cited sections of the Synod Bylaws are applicable to the district. Synod’s Bylaws in general, however, are primary to the district.

- The commission notes that the change to Texas Bylaw I A, regarding automatic incorporation of changes made by the Synod to its own Bylaws seems to be incorrect. Something like the existing language should remain, as any such changes adopted by the Synod in convention to its own Bylaws do not need to be ratified by the Texas District Board of Directors. Changes to Texas District Bylaws necessitated by amendments or resolutions made by the Synod convention, on the other hand, are to be dealt with under the procedure of Article XV c. This item and the preceding one could be handled by adopting the language suggested under the first bullet and then removing redundant elements of subsequent bylaws.

- At Article III 3 A, the commission notes that the expansion of world mission “through District” needs to be understood in light of or reconciled with Synod Bylaws 4.1.5 and 3.8.3.

- With regard to Article IV, the commission notes that the statement of objectives is generally redundant with, but not identical to, those stated in the district’s articles of incorporation. Further, under objective no. 1, the text is subtly different from that in the articles and, in fact, gives a false impression, by reading “who as congregations or [reads “and” in the articles] as individual members of such congregations.” While the individual members of the congregations would be expected to share the confessional commitment of the congregations, rendering the and of the articles sensible, the or of Bylaw Article IV [1] would be of uncertain implication. The district relates to congregations of the Lutheran confession, not to individuals within congregations which may or may not share in that confession. While the district assuredly does not mean to imply such a relationship, the language is at very least unclear. The commission questions whether individual members of member congregations should even be mentioned as a class in the articles or bylaws of a district.

- With respect to Bylaws 1.009 (b) and 7.007 (a), the term of appointed members of the board of mission administration is limited to three years (Synod Bylaw 4.7.4 [2]).

- In Bylaw 1.027 (a), the Synod’s governing documents no longer distinguish the category of “assistant pastor.” The language here should probably be changed, as in Synod Bylaw 3.3.1 (a), “may be called as an assistant pastor in an assisting capacity” (see Synod Bylaw 2.5.6).

- In Bylaw 1.053, the ranking of vice-presidents requires a separate ballot for each position, as each ranking must be by a majority vote (that is, one plurality ballot does not suffice to rank all the vice-presidents). See the example of Synod Bylaw 3.12.2.7 (g).

- At Bylaw 4.005 (a), the inclusion or omission of properly submitted overtures (i.e., by an author listed in Bylaw 3.1.6.2 and submitted according to the regulations of the district) in the convention Workbook is not a matter of discretionary authority for the district president, except as allowed in Bylaw 3.1.6.2 (a–b). This should be clarified.

- At Bylaw 4.029, it may be helpful to note the periodic election of a member of Synod’s Committee for Convention Nominations by the district (Synod Bylaw 3.12.3.1–2).

- At Bylaw 6.009, the first sentence of the newly added language does not accurately reflect the role of the board of directors as stipulated in Synod Bylaw 4.5 or the pattern of Synod Bylaw 3.3.4.3. Such an expansive description of the board’s duty might be construed to conflict, for example, with the district president’s exclusive role.

- At Bylaw 6.009 (g) and 14.009 (c), the commission questions whether this might refer to “status” or “accommodation” calls, which would be prohibited. The district may, however, (Synod Bylaw 2.11.1 [i]) endorse a specialized ministry, which would enable the person serving in that ministry
position, while employed by a non-calling entity, to be actively rostered as carrying out an aspect of the ministry. It would be best to clarify the language of Bylaw 6.009 (g) and 14.009 (c) to clarify that this is the intent.

- In the language being added to Bylaw 9.001, for clarity’s sake, the word “appointed” should be used rather than “elected” (cf. Synod Bylaw 1.5.1.2 [a]).

The commission thanks the Texas District and its secretary for submitting these documents and requests resubmission, with the above issues addressed, so that it can continue its review. In addition, the commission notes again, as in its Op. 18-2864, that the articles of incorporation of the Texas District lack both the relationship and asset disposition language required by LCMS Bylaw 1.5.3.6 and 2016 Res. 9-02A. The district, which indicated that its legal counsel was exploring the ramifications of such changes at the time of Op. 18-2864A, is reminded of its need either to address these deficiencies or to apply for and receive an exemption from the LCMS Board of Directors, as provided in the noted bylaw. The commission reserves comment on the articles of incorporation, herein included, until such time as a draft addressing these lacunae is submitted.

50. Concordia University, St. Paul, Proposed Revision of Articles of Incorporation, Bylaws, and Policy Manual (20-2944)

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 commission here reviews the first two items, designating the policy manual for review in a subsequent agenda as Ag. 20-2944A.

**Articles:** The commission finds the proposed restated articles to be in harmony with the Constitution, Bylaws, and resolutions of the Synod and approves them for adoption by the board of regents and filing with the State of Minnesota. The proposed restated articles satisfy the relationship and asset disposition requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A.

**Bylaws:** The commission notes the following points needing attention in the restated bylaws:

- Section 2.4 should include 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]).
- Section 2.6: In B III B, the parenthetical phrase “(excluding the person whose membership is in question)” may be removed, as it is a general provision in Synod Bylaw 1.5.7.1 (c)(2) that is not applicable here.
- Section 4.3: The commission finds the language of this section confusing and is unable to discern the intent. It is unclear to the commission what means that removal by the board is “separate from any other process required under the LCMS Governing Documents.” Synod Bylaw 3.11.1 makes staff employment generally “at the pleasure of the appointing authorities;” it is unclear how this citation applies to the rest of the section. Finally, the implication seems to be that the board could at any time remove the president of the institution, without cause. This would appear to conflict with Synod Bylaw 3.10.6.6.1, which has the president of a college or university serving a five-year renewable term, with respect to which removal for cause would be expected to be conducted in accord with Synod Bylaw 3.10.6.7.5 and related bylaws and the Model Operating Procedure Manual. Some clarification of this section is required.

The commission, noting outstanding progress made already in the course of this revision, requests a subsequent draft addressing the above issues, upon which it will be able to conclude its review and approve the bylaw change for adoption by the board of regents.

The board of regents and its president are thanked for carrying out this very significant revision, which has thoroughly addressed the commission’s concerns as expressed in Op. 16-2804, Op. 16-2804A, and Op. 20-2929, and for submitting these documents for review. The university is reminded to file clean copies of the
articles as finally adopted (and, in the case of the articles, when accepted by the State of Minnesota) with the commission. The commission also looks forward to is review of a bylaw draft addressing the few remaining issues.

51. Kansas District Bylaw Revision, Proposed (20-2945)

By an email of August 6, 2020, the President of the Kansas District forwarded a proposed revision of his district’s bylaws for review. The following points were noted by the commission:

- Article II 5: 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 Operations Manual” governs the convention is unclear, unless it contains special rules adopted by or in the tradition of the convention itself. This may be worthy of clarification.
- Article II 8: This paragraph needs to be modified to reflect Synod Bylaw 4.3.1. This could be accomplished by adding a final sentence: “The region membership of an individual is determined by the region of the congregation of which he or she is a member.” Likewise, in Article IV 1.
- Article III 1 a: “voting congregation” would more clearly be stated “member congregation of the district.”
- Article III 2 a: The District Executive Staff, as staff of the district, are not permitted to be members of the board (Synod Bylaw 1.5.1.1). They may be listed as advisors but not advisory members. A member would have the right, for example, to be present for board executive sessions, which may not be desired.
- Article III 2 a, on “Electronic Meetings”: The district should reckon with the possibility of the board needing a secret ballot (final phrase of Bylaw 1.5.3).
- Article III 2 a, on “Actions Using Electronic Ballot”: Synod Bylaw 1.5.3 renders such decisions subject to Synod Board of Directors policies, which require that all voting members of the board cast a vote and that the result of the voting be unanimous. Whatever the law requires, this more stringent requirement is binding on district boards of directors. The final phrase of this paragraph, therefore, should not have been removed.
- Article III 2 b, “VI. Executive Council” and “VII. Emergency meetings”: As a council is defined as a strictly advisory body (Synod Bylaw 1.2.1 [g]), the executive “council” would better be named the executive committee of the board, following the pattern of the Synod Board of Directors and clarifying the applicability of Synod Bylaw 1.5.3.2 to this body, an important element of which—that the committee may not overturn acts of the board—is omitted from the incomplete recitation here.
- Article IV 2 c: It is not as clear as with the district president and vice-presidents how the lay members of the board are nominated. It is necessary to clarify how nominations for these (and other offices, such as district secretary) are handled.
- Article V 2 a: “advisory representative” should read “advisory delegate” (Const. Art. XII 10 b).
- Article V 3: It appears that the bylaw revision as received includes text as struck out (the first instance of “Congregation of a multi-congregation parish…” that is not included in the district bylaws as presently adopted. This would need to be corrected before presentation to the convention, lest confusion result.
- With regard to the second paragraph of Article VII, the district is advised to take into account CCM Op. 17-2863, which clarifies the proper use of the language incorporated here, which is that of Bylaw 3.9.2.2.3 (b).
- Article VIII: The commission notes a “District Operations Manual” which appears to have, at least in part, the character of a board policy manual (as well as something to do with the conduct of a convention, as noted above). The commission requests a copy for review. The commission is at a loss to understand the final sentence, unless it means that the board may not adopt any policy that is contrary to the adopted bylaws of the district. This is at least confusing and will require revision.
The commission thanks the district and its president for submitting the document for review and requests a draft with the above issues addressed, so that it may continue its review and grant its approval.

52. Adjournment and Upcoming Meetings

The commission determined to set Nov. 13–14, 2020, as a tentative date for an in-person meeting in St. Louis, conditions permitting, with Chairman Gude and Secretary Sias to continue to monitor business to determine whether an additional internet conference meeting will be necessary. With time allotted for the present meeting elapsed, Attorney Deadrick offered closing prayer and the commission adjourned.

John W. Sias, Secretary