MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
Phone Conference
July 10, 2017

63. Call to Order
Chairman George Gude called the phone conference to order at 6:00 pm, with all members participating, and offered an opening prayer.

64. Relation of Const. Art. VII 1 and Const. Art. XIII 3 (17-2836)
On June 28, a Hearing Panel of the Synod, under Bylaw 2.14.7.8 [k], requested an opinion of the commission consisting of three questions regarding Const. Art. VII 1 and Const. Art. XIII 3:

1. Are the Bylaws resolutions?
2. What was the intent and meaning of inexpedient, as is expressed in Const. Art. VII 1?
3. In a decision to suspend a congregation for failure to depose a suspended [sic] pastor, whose will has greater authority, a member congregation or Synod through its representative?

Background:
Const. Art. VII 1, under the heading “Relation of the Synod to Its Members,” reads as follows:

In its relation to its members the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the individual congregation’s right of self-government it is but an advisory body. Accordingly, no resolution of the Synod imposing anything upon the individual congregation is of binding force if it is not in accordance with the Word of God or if it appears to be inexpedient as far as the condition of a congregation is concerned.

The meaning and history of interpretation of Const. Art. VII 1 is a broad topic, on which much time and effort has been, and could profitably be, expended. For the sake of a timely response, this opinion will confine itself principally to the relation of Const. Art. VII 1 to the constitutional provision referred to in Question 3, namely, Const. Art. XIII 3. The latter reads as follows:

If the member expelled is a pastor or teacher in a congregation of the Synod, such congregation, unless it has already done so, is held to depose him from office and to deal with him in accordance with the Word of God, notwithstanding an appeal. If it persistently refuses to do so, the respective district is to deal with it. If all negotiations and admonitions fail of their purpose, such congregation forfeits its membership in the Synod.

In the following, the commission has revised the questions for clarity and accuracy, as indicated by the bracketed phrases.

Question 1: Are [the provisions of the Synod Constitution and of] the Bylaws resolutions? [That is, are they to be treated as within the right granted a congregation in Const. Art. VII to find a resolution to be inexpedient and therefore not of binding force?]

Opinion: No.

Leaving aside the question of how the “right of expediency” applies to various types of Synod resolutions, the Constitution of the Synod and its Bylaws clearly do not fall under such a right. The consistent opinion of conventions and the Commission on Constitutional Matters has been summarized in the commission’s Opinion 99-2157 (September 14, 1999):

It should be noted that the second sentence of Article VII states, “…no resolution of the Synod…” [emphasis original to Op. 99-2157]. It does not speak of the Constitution or Bylaws of the Synod.
“The right of a congregation to exercise the right of expediency (Bylaw 1.09b [2016 Bylaw 1.7.2]) applies only to resolutions of the Synod and not to the Constitution and Bylaws” (1969 Res. 5-23 [Proceedings, pp. 119–20]).

The here-quoted preface of the 1969 Res 5-23 applied this principle specifically to Article XIII of the Constitution, as well as to bylaws of the Synod. These, the preface states, “are binding on every member of the Synod, and refusal to comply with the rules and regulations of the Synod constitutes divisive and unbrotherly conduct which destroys the very concept of the Synod as a ‘walking together.’ The right of a congregation to exercise the right of expediency (Bylaw 1.09b [2016 Bylaw 1.7.2]) applies only to resolutions of the Synod and not to the Constitution and Bylaws” [emphasis added]. Self-evidently, to allow each individual congregation to determine to which of the standards of Synod membership it would conform as “expedient to its condition” would render those standards meaningless, frustrating the collective will of the congregations to assemble and maintain the Synod under such standards. This understanding is consistently reinforced in the Bylaws of the Constitution of the Synod:

- Bylaw 1.7.1: “The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod.”
- Bylaw 1.3.4: “Congregations together establish the requirements of membership in the Synod (Constitution Art. VI). In joining the Synod, congregations and other members obligate themselves to fulfill such requirements and to diligently and earnestly promote the purposes of the Synod by word and deed.”
- Bylaw 1.3.4.1: “Members agree to uphold the confessional position of the Synod (Constitution Art. II) and to assist in carrying out the objectives of the Synod (Constitution Art. III), which are objectives of the members themselves. While congregations of the Synod are self-governing (Constitution Art. VII), they, and also individual members, commit themselves as members of the Synod to act in accordance with the Constitution and Bylaws of the Synod under which they have agreed to live and work together and which the congregations alone have the authority to adopt or amend through conventions.”

1 1969 Res. 5-23 is a resolution of particular interpretive force and significance. In it, the convention took up previous opinions by the Commission on Constitutional Matters, rendered June 12, 1967, and June 14, 1968. It ratified these opinions, elaborating a specific constitutional rationale, and incorporated the “basic constitutional requirements [already demonstrated by the opinions] in clear and unmistakable words also in the Bylaws.” By adoption of this resolution, the convention interpreted the Constitution with its “unique and final interpretive power” (CCM Op. 16-2791).

The June 14, 1968 CCM opinion (addressed to President Harms) reads:

You have addressed to the Commission on Constitutional Matters the question: Is it permissible under the Constitution and Bylaws of the Synod for a member congregation to have as its pastor a man who is not a member of the Synod? After thorough study of the Constitution and Bylaws the Commission on Constitutional Matters has come to the conclusion that this is not permissible and that such a congregation cannot remain a member of the Synod or exercise any rights and privileges of membership.

2 1969 Res. 5-23 (Proceedings, p. 120). This passage paraphrases the June 12, 1967 CCM opinion noted above (later cited in CCM Op. 02-2307, October 21–22, 2002), which reads:

The Commission on Constitutional Matters holds that Article XIII, 1 of the Constitution and paragraph 1.05 of the Bylaws of the Synod are binding on every member of the Synod. Refusal to comply with these provisions as well as active promotion of non-compliance constitute divisive and unbrotherly conduct which destroys the very concept of the Synod as ‘a walking together.’ Such conduct, if persisted in despite repeated admonition, is a breach not only of synodical fellowship but of the unity which prevails between Christians and which expresses itself in love. If all efforts at admonition fail, a member persisting in such conduct shall be subject to suspension and to eventual expulsion.
A report on the meaning of Article VII, adopted by the 1944 convention, put it succinctly:

It is self-evident that any person or group of persons who apply for, and are received into, membership of any organization thereby have declared their willingness to abide by the constitution and by-laws of that organization. That is in the very nature of the case. Otherwise an organization and affiliation therewith would serve no real purpose. (1944 Proceedings, pp. 205–6)³

**Question 2:** What was the intent and meaning of “inexpedient,” as is expressed in Const. Art. VII 1?

**Opinion:** “Appears to be inexpedient as far as the condition of the congregation is concerned” translates “für ihre Verhältnisse ungeeignet erscheint.” The commission, responding to a request for reconsideration of Op. 99-2157, already cited, dealt with this question in Op. 09-2573 (Feb. 26–28, 2010):

To understand properly the meaning and use of “inexpedient” constitutionally and historically in the Synod, it is important to realize that the German word ungeeignet in the 1854 Constitution was properly translated “unsuited” into the English (cf. Moving Frontiers, p. 151). An editorial committee in 1923, not the convention of the Synod, changed the word to “inexpedient.” The original word ungeeignet meant “unsuited, not suited for, does not fit.” Therefore it should be noted that the use of the word “inexpedient” in our contemporary culture appears to have a different connotation such as “not advantageous, not profitable, inconvenient.” […]

Likewise, the 1920 English text of Article VII states that no congregation shall be bound by any resolution of the Synod “that to such congregation appears unsuited to its condition” (The Lutheran Witness, XXXVI 20). Therefore, the congregation and not the Synod may assess the congregation’s condition and judge the applicability of any resolution of the Synod. The congregation, not the Synod, determines whether or not a resolution is unsuited. “The Synod, being an advisory body, recognizes the right of a congregation to be the judge of the applicability of the resolution to its local condition” (Bylaw 1.7.2, emphasis added).

A congregation’s “right of expediency”—to determine that “the shoe does not fit,” that something a resolution “imposes on the individual congregation” is “uneigentlich, inapplicable, inexpedient, unsuited,” and, so, to decline to take it on—has, of course, the limits already noted. True doctrine and right practice, drawn clearly from the Word of God and the Lutheran Confessions (the confessional basis of the Synod in Const. Art. II), are never unsuitable to, or an imposition on, any congregation desiring membership in The Lutheran Church—Missouri Synod. “Doctrine may not be accepted or rejected upon the basis of consideration of expediency” (1971 Res. 2-21, Proceedings, p. 118). Likewise, the “right of expediency” does not apply to Synod’s Constitution or its Bylaws—only to resolutions of the Synod, and as to those, only with some significant caveats. Op. 09-2573 concludes:

…the Article VII phrase “inexpedient as far as the condition of a congregation is concerned”:

- is applicable only to resolutions that are adopted by the Synod, not to its Constitution (and, by implication, its Bylaws), which all members have accepted as a condition of membership [emphasis added]. Because the second sentence of Article VII says, “no resolution of the Synod” (cf. also Bylaw 1.7.2), no limitation should be placed on the type or category of resolution that a congregation may wish to consider under this provision. However, because all congregations of the Synod have accepted Article II of the Constitution and thereby have pledged their acceptance of Holy Scripture and the Lutheran Confessions, the Article VII phrase in question may not be applied by congregations to resolutions of the Synod that consist primarily of citations from Holy Scripture or the Lutheran Confessions or simply

³ This resolution, too, has particular interpretive force and significance. The 1944 convention received a report of a task force, commissioned by the 1941 convention, on the meaning of Const. Art. VII. The convention committee on constitutional matters edited the report and the convention, by this resolution, adopted it.
restate the clear teaching of Holy Scripture and the Lutheran Confessions (cf. also Bylaw 1.6.2 quoted in Appendix II). Similarly, since all congregations of the Synod, in becoming members of the Synod, have subscribed to the Constitution of the Synod, the Article VII phrase in question may not be applied by a member congregation to resolutions of the Synod that are primarily explicit reaffirmations of other constitutional positions or provisions.

- deals only with resolutions of the Synod “imposing anything upon the individual congregation” (Article VII). The many resolutions of the Synod that deal with the management and direction of the Synod and its component parts, as distinguished from resolutions that are addressed to its member congregations (see above), are not included in this provision. Moreover, taking the language of this phrase quite literally, it must be said that very few resolutions of the Synod intend to “impose” anything upon its member congregations, inasmuch as the Synod does not exercise “legislative or coercive powers” (Article VII) in relation to its members and clearly recognizes the congregation’s right of self-government; and
- is limited to a congregation’s judgment that a resolution is unsuited or inapplicable to the “condition of the congregation” (Bylaw 1.7.2). The Synod has not limited in any way what a congregation might consider to be such a condition (whether it be a lack of resources, tension within the congregation, or some other important factor).

If a congregation determines that a resolution of the Synod is unsuited or inapplicable as far as the condition of the congregation is concerned, the congregation has also committed itself to “not act arbitrarily, but in accordance with the principles of Christian love and charity” (Bylaw 1.7.2), as well as to respect the collective will of the Synod as expressed in its resolutions (cf. Bylaws 1.7.2 and 1.8.2).

The commission also notes that Article VII states that no resolution of the Synod imposing anything upon the individual congregation is of binding force “if it is not in accordance with the Word of God.” Should a congregation reach this conclusion about any resolution of the Synod, it should also realize that, by becoming a member of the Synod, it has bound itself (to the extent the congregation wishes to carry out the right of brotherly dissent) to express and deal with its dissent according to the provisions of the Bylaws of the Synod. (CCM Op. 09-2573)

**Question 3:** In a decision to suspend a congregation for failure to depose a [pastor who has been expelled from membership in the Synod], whose will has greater authority, a member congregation or Synod through its representative?

**Opinion:** This question commingles two incomparable spheres of right, which must be distinguished in giving an answer:

- The first is the right of a congregation to call and be served by the pastor of its choosing. Here, Synod and its representatives may advise but ultimately lack the “legislative or coercive power” to make a congregation do what Synod thinks best, such as deposing an expelled pastor. Here the congregation is “free” to act according to its will—but let its will, of course, be that of God in heaven (no one has any rights over against God).
- The other sphere is the right of Synod (i.e., the congregations acting together) to set and enforce standards for Synod membership (Const. Art. II, VI, XIII; Bylaw 1.3.4). Here, conversely, the individual congregation has no right or authority to force Synod as a whole to bow to its solitary interpretation. Should such a congregation ignore Synod’s “negotiations and admonitions,” Synod’s collective will, expressed in its Constitution (Art. XIII 3) and carried out by proper authorities, is conclusive.

The above-cited 1969 Res. 5-23, entitled, “To Reiterate in Bylaws that Member Congregations Must Be Served by Members of the Synod” (1969 Proceedings, pp. 119–20) dealt with a topic closely related to that of Const. Art. XIII 3. (The bylaws it enacted stand in only slightly revised form as 2016 Bylaws 2.5.2 and
2.5.4.) The preface of that resolution, while it deals with initial certification for ministry and not with ongoing ecclesiastical supervision, relates obviously to the matter of Const. Art. XIII 3, to the implications of the expulsion of a pastor from membership in the Synod:

One of the very purposes of a synodical fellowship is to provide guidance and help in the exercise of a congregation’s right to call a pastor, and one of the very reasons why a synod exists is to set standards for the parish pastorate so that the individual congregation may be assured that the man whom it calls is qualified to serve as its parish pastor (Charter, Art. II b; Constitution, Article III 3). To this end The Lutheran Church—Missouri Synod establishes procedures for determining whether men meet the standards. One of the advantages which a congregation receives when it joins the Synod is the protection against pastors who do not meet such standards. (1969 Res. 5-23, Proceedings, pp. 119–20)

Const. Art. VII provides: “In its relation to its members the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the individual congregation’s right of self-government it is but an advisory body.” Were the Synod an ecclesiastical government (Kirchenobrigkeit) with legislative or coercive powers, when it determined that a pastor should not be pastor, it could itself remove him from office, or command with force of law that such be done. Synod is not an ecclesiastical government, but advises (albeit in the strongest possible terms) a congregation whose pastor has been removed from membership in the Synod that such a man is no longer suitable to be pastor—that the only appropriate course of action, now, is to “depose him from office and to deal with him in accordance with the Word of God.” Such advice is inherent in the “evangelical supervision, counsel and care” and “protection” (Const. Art. III 8, 9) that are fundamental objectives of the Synod. When Synod gives such advice it is doing what the congregations, including the one in question, have formed it to do, and the provision of such advice, however forceful, cannot be called an exercise of “legislative or coercive powers.” It is an aspect of the ecclesiastical supervision Synod exists to provide. It is an advisory Synod giving critically important advice.

The congregation may decide to depose or not to depose. However, the congregations of the Synod have explicitly declared in the Constitution establishing their synodical union (Const. Art. XIII 3) that the congregation that ignores Synod’s advice in such a matter—continuing to be served by a pastor who has been (for cause and by due process—see Const. Art. XIII 1–2, VI, II) expelled from the Synod, and refusing to “deal with him according to the Word of God”—in so doing, forfeits its membership in the Synod.

It is self-evident that Const. Art. XIII 3 premises a situation in which the congregation finds removing its pastor to be “inexpedient,” in the sense that it will not be persuaded to do so—as in such a case “all negotiations and admonitions have failed of their purpose.” If Const. Art. VII 1 were intended to excuse such a congregation from removal from the Synod, Const. Art. XIII 3 would be rendered meaningless. As we have seen above, however, Const. Art. VII 1’s “right of expediency” does not apply to the Constitution of the Synod. Manifestly Synod has the right, on behalf of all its congregations, to remove a member, including a congregation, that fails to meet the constitutional standards of membership (Const. Art. II, VI, XIII). When Synod, by its constitutional and bylaw mechanisms, removes such a wayward member congregation, it is not “imposing something on the congregation” or exercising “legislative or coercive powers” relative to a congregation’s “right of self-government.” It is simply acknowledging that this congregation no longer walks with Synod, but goes its own way.

There is thus no question, as it was put to the commission, “whose will has greater authority,” but a distinction must be drawn: The congregation may, in the end, ignore Synod’s advice and do as it wishes—the congregation’s individual will may there prevail (but let God’s will be done among us on earth). Self-evidently, however, such a stance is incompatible with continued membership in the Synod—and on that point Synod’s collective will prevails. Nothing in Const. Art. VII 1 allows the will of the individual congregation to trump the collective will of all the congregations of the Synod, as expressed in Const. Art. XIII, including Const. Art. XIII 3, regarding standards for membership in the Synod and the expulsion of
members that do not meet them. To borrow from the 1944 report cited earlier, “Otherwise [the Synod] and affiliation therewith would serve no real purpose.”

64. Review of Draft Bylaw Section 2.14 and 2.17 Standard Operating Procedures Manuals (17-2837 and 17-2838)

The commission reviewed previously distributed drafts of Standard Operating Procedures Manuals for Bylaw sections 2.14 and 2.17, as drafted by the Secretary to address the bylaw changes recently made by the Board of Directors pursuant to 2016 Res. 12-14. Having concluded its review, the commission directed the Secretary to convey the draft manuals to the Council of Presidents for its study and concurrence (Bylaws 2.14.10.3 and 2.17.10.3).

Having addressed all the business on its agenda, the commission adjourned with the benediction at 7:55.

John W. Sias, Secretary