39. Call to Order and Opening Prayer

Commission Chairman Dr. George Gude called the meeting to order with all members present, calling upon the Rev. Larry Peters to offer the opening prayer.

40. Ohio District Bylaw Revision (20-2932)

By a May 11, 2020, e-mail, the Secretary of the Ohio District forwarded for review proposed changes to the district’s Bylaws (a.k.a. the “Ohio District Code of Regulations”). The commission requested and received for examination a copy of the district’s “Covenant of Trust,” dated March 31, 1989, referenced by the district bylaws and dealing with standards of conduct for politicking in connection with the district convention. An updated draft and synopsis of the bylaw changes were received on July 9, 2020; these are the subject of this review.

The commission first notes the insertion of many references to Synod Bylaws, which it understands to be intended as part of the adopted text of the district Bylaws. It further understands these to be intended as helpful references and not, by absence of possibly relevant references, to diminish the force of Synod’s Constitution or Bylaws as they may apply.

At Art. IV B, “the pastor and the other by the lay delegate” might well be replaced by “its pastor and the other by the lay delegate elected and deputed by the congregation or parish,” the exact language of Const. XII 10 a. Here, while the bulk of Bylaw section 2.5 does not apply to this particular item, the commission suspects the reference is to the Bylaw section and should be labeled as such.

In Art. IV C, the now-extraneous word only should be deleted.

In Art. IV D, dealing with conditions for acquiring and holding membership, the item should also include the requirement that changes to existing member congregation constitutions and bylaws must be submitted for the same examination (Synod Bylaw section 2.4).

In Art. VIII A 2, it should be clarified that the standard for region membership is on the basis of congregational membership: “…candidates representative of the five regions of the District, with not more than two from being members of congregations that are part of any one conference region…”

The initial paragraph of Art. XII, if properly understood, should read: “All congregations of the Ohio District shall be divided into five regions which may be described as follows: The Southeast, the Southwest, the Northeast, the North Central and the Northwest. The region to which a person belongs, for purposes of regional service, shall be the region of the congregation of which he or she is a member.”

In Art. XIII, the second paragraph, the final sentence (“Each congregation shall be represented by…”) needs to be revised to correspond to Bylaw 5.3.2: “The circuit forum consists of one pastor and one layperson from each member congregation or multi-congregation parish designated by the congregation or parish. Congregations of a multi-congregation parish not contributing a lay voter may send an advisory representative, with voice but no vote.”

In the following paragraph, dealing with electoral circuits, the word “adjacent” should be included between the words “two” and “visitation.” It would be clearer for this paragraph to follow that dealing with the circuit convocation, rather than preceding it, as the circuit convocation would naturally be a function of a visitation rather than an electoral circuit.

Finally, the commission notes the omission of a reference to the requirement of Synod Bylaw 1.5.2 (a); while not required to be referenced in the district bylaws, the commission wishes to ensure the district is
aware of this bylaw and suggests that its inclusion in the district bylaws may serve as a helpful reminder of this requirement.

The Ohio District and its Secretary are thanked for submitting these documents for review. The bylaw proposal, with the above-noted changes made as indicated, is approved for presentation to the convention. The district is reminded of Bylaw 3.9.2.2.3 (b), as regards any additional changes that may be proposed at the time of its convention. Finally, the commission requests for its files a clean copy of the bylaws as finally adopted by the convention.

41. Indiana District Bylaw Revision (20-2942)

By an April 27, 2020, e-mail, the Secretary of the Indiana District submitted for review bylaw amendments to be proposed to the upcoming convention of the district.

At Bylaw 5.2, it should be made clear that the review and approval required is to be prior to presentation to the convention (Synod Bylaw 3.9.2.2.3 [a]).

In Bylaw 8.1.1.8, the sentence “Ordinarily the electoral circuit and visitation circuit are co-terminus [sic]” would be more clearly stated, “A visitation circuit meeting bylaw requirements for congregation count and confirmed membership may itself be an electoral circuit.”

Region membership of persons, on the district level, is now based on the region membership of the congregation to which the person concerned belongs (Synod Bylaws 4.3.1, 3). It seems unnecessary to deal, as Indiana Bylaw 8.2.1.4 (a), with the addresses of the congregations, unless the regions are determined on such a basis; more likely, the regions are delineated along the boundaries resulting from assignment of congregations to circuits. It is enough to state how the congregations are assigned to regions and then that the region of an individual is determined by the region of the congregation in which an individual holds membership and that such regional membership must be maintained on that basis during the course of one’s tenure in a regional position.

Also regarding regional membership, but in connection with Indiana Bylaw 8.2.1.1 (a) and (d), it is noted that the language, “with residence in the respective region” and “if they move outside of the region,” respectively, reflect the older, residence-based standard. In Bylaw 8.2.1.1 (a), the phrase “with residence in” must be replaced with “with membership in a congregation of.” The language of the noted Synod bylaws could be worked into subparagraphs (c) and (d) as follows:

(c) All officers and members of the B.O.D., councils, and committees shall be members of member congregations of the District upon assuming office and, when appropriate, be members of congregations of designated regions of the District during the course of their tenure.

(d) All officers and members of the B.O.D., councils, and committees who are elected to represent a region of the District shall forfeit their position if they move outside should they cease to hold membership in a congregation of the region to which elected.

Similar language persists in Indiana Bylaw 13.7.8, and should be fixed in a similar manner:

Any office, the election or appointment to which is contingent upon residence congregational membership in a given region, shall be considered vacant when the incumbent moves to another no longer holds membership in a congregation of that region. This office shall be filled according to the manner prescribed.

Bylaws 8.3.2.1 (a) and 13.4.4.10 require similar changes to reflect the changed requirement for regional membership.

With regard to Indiana Bylaw 8.2.1.2–3, etc., the commission notes again for the district’s consideration that a council is by definition an advisory body (Synod Bylaw 1.2.1 [g]). If the function of the councils is more than advisory, as may be suggested by their undifferentiated treatment under Indiana Bylaw 8.2.1.3, then their being termed committees, commissions, or boards may be more appropriate. It is noted in Indiana
Bylaw Chapter 11, that the councils as such have principally advisory and assistive functions. If such assistance is not by nature essentially advisory, this work falls outside the bylaw definition of a council. Furthermore, being a council limits the function of the entity; a council cannot submit overtures, for example (Bylaw 3.1.6.2). Such a limitation may not be the district’s intention.

The commission also notes the language of “Executive Counselor” or “Executive/Counselor” in various locations in the bylaws. This is a title foreign to the Synod Bylaws. The commission understands it in the sense of a “district executive,” executive staff of the district. The commission does not understand circuit visitors (formerly counselors) to be treated as district staff under Bylaws 8.4.1–2, as they are elected officers of the district. In any case, the language is novel and the commission needs to see definitions of “Executive Counselor” and “Executive/Counselor.”

In Bylaw 8.2.4.2 (a), the requirement of Synod Bylaw 1.5.8.1 (a) that copies of the notice be sent to the President and Secretary of the Synod must be included.

In Bylaw 8.3.6.5 (d), the commission is unsure of present practice as regards the various districts and suggests the district confirm the accuracy of this procedure.

In Bylaw 13.5.3.3, the commission notes that this limitation also does not include reconcilers and hearing facilitators.

With regard to Bylaw 13.7.1.1, it would appear that the district does not provide for succession to the office of district president in the case of death, retirement, resignation (or removal from office) of the same, rather designating vice-presidents to act in order of succession. Const. Art. XI C 2 and XII 6 require that, should the office of district president become vacant, “the vice-presidents, in order of their rank of office, advance to the [district president’s] place, with full power, until the expiration of his term of office.” The vice-president advancing to the office of district president would in fact be the district president and not simply an “acting president.” He could, however, perform said duties on a part-time basis only, if acceptable to the district.

The Indiana District and its Secretary are thanked for submitting these documents for review. The commission requests submission of a revised draft addressing the above concerns.

42. SELC District Bylaw Revision (20-2940)

Counsel for the SELC District, by an e-mail of June 24, 2020, forwarded proposed insertions of District Bylaws 10.4.3 and 13.3, dealing, respectively, with electronic means of holding or participating in district board of directors meetings and with the handling of district bylaw amendments necessitated by changes to the Synod Constitution or Bylaws.

With regard to proposed District Bylaw 10.4.3, the commission notes that LCMS Bylaw 1.5.3 and attendant LCMS Board of Directors policies already allow the SELC District Board of Directors to meet electronically, and for members thereof to participate electronically in a physical meeting, as proposed. The proposed District Bylaw 10.4.3 does not appear to contradict LCMS Bylaw 1.5.3 and attendant policies, other than that it would seem to restrict the usage of electronic means of meeting to cases in which an attendant circumstance is found to create a necessity for such usage. The district would by this amendment thus appear to be limiting, contrary to LCMS Bylaw 1.5.3, its board of directors’ freedom to “select a manner of meeting, consistent with [LCMS] Board of Directors policy, that …” (LCMS Bylaw 1.5.3).

The commission suggests that the district board of directors, if it wishes to state more precisely its own procedure for determining whether to meet electronically, or to allow electronic participation, it may more properly do so in its own policies. District bylaws should not curtail the freedom granted it in LCMS Bylaw 1.5.3. The proposed insertion of District Bylaw 10.4.3 is therefore not approved as submitted.

The commission notes an uncertainty about the status of the text shown in blue in the document reflecting “SELC District Bylaws with proposed 6-20-19 amendment changes” and will require clarification of the status of this text.
The commission notes that District Bylaw section 11.5 should be revised to account for the additional advisory delegates sent by those congregations of a multi-congregation parish that do not contribute the lay voting delegate (Const. Art. XII 10 b). This could be remedied easily by adding a sentence at the end of SELC Bylaw 11.5.1: “A congregation that is part of a parish, other than the congregation supplying the voting lay delegate, may elect and depute an advisory lay delegate.”

The commission notes at SELC Bylaws 3.1, 4.1, 5.1, and 12.3.1 (a) that references to regional membership on the basis of membership need to be replaced with references to membership in a congregation of a region (Synod Bylaws 4.3.1, 3)

In SELC Bylaws 11.5.2 and 11.7, “advisory members” should read “advisory delegates.”

The commission notes, with regard to SELC Bylaw 12.3.5, that the procedure for reduction of successive ballots by the “15% rule” applies as a rule only (Bylaw 4.7.3) to the election of positions other than president and vice-president, and that Synod’s Bylaws do not use the 15% rule for president and vice-president elections (Bylaw 3.12.4.2 [e]). Synod’s procedure for election of the President and First Vice-President reduces ballots, when a majority has not been achieved, by removing only the candidate receiving the smallest number of votes.

At Bylaw 13.3, not only prior review, but prior review and approval, are required for proposed bylaw amendments.

The SELC District and its counsel are thanked for submitting these documents for review. The commission requests resubmission of the document with the noted clarifications and issues addressed.

Finally, the commission notes that it understood SELC District to be in the process of amending its articles of incorporation to bring them into alignment with the requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A. The commission requests a copy of this proposal, anticipating that it would be presented to the district’s upcoming convention.

43. North Wisconsin District Bylaw Revision (20-2941)

By an e-mail of June 22, 2020, the office of the North Wisconsin District President forwarded for the commission’s review proposed revisions to the district’s bylaws.

The commission notes, with regard to Bylaw 1.04 (e), that Synod Bylaw 1.5.3 requires quarterly meetings.

The commission notes that, with regard to Bylaw 1.04 (g), permitting informal action by the board of directors, to be as defined by Wis. Stat. §181.72: “Informal action by members or directors. Any action required by the articles of incorporation or bylaws of any corporation or any provision of law to be taken at a meeting or any action which may be taken at a meeting, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the members, directors or members of a committee thereof entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the secretary of state under this chapter.” If that is the sense of “informal action” allowed here—in which case the definition should be borne carefully in mind by the district—it is consistent with LCMS Bylaw 1.5.3 and attendant LCMS Board of Directors policies.

Bylaw 3.01 (c) needs to be revised to reflect 2019 LCMS Bylaws 4.3.1, 3: “shall live within be a member of a member congregation of the region he represents.”

Regarding Bylaw 3.01 (d), the commission notes that requiring a vacancy to be filled by appointment of a candidate receiving a minority of votes in the past election does not reflect the will of the majority of the convention. The position should be filled by appointment, not by a determination made by less than a majority of the district convention. Matters determined by a convention are to be determined by a majority vote (Const. Art. VIII C). See Synod Bylaw 3.3.2.4, in which a vacancy in the office of vice-president is filled by the president in consultation with elected representatives of the region. (CCM Op. 17-2862)
In Bylaw 4.03 (d), it should be clarified that “all non-voting ordained members of the Synod within the district” and “all commissioned members of the Synod within the district” are advisory delegates and that the others listed are advisory representatives.

At Bylaw 5.04 (a), the second sentence appears to have been missing the words “in the respective region” after the word “residing.” Due to a 2019 change to LCMS Bylaws 4.3.1, 3, however, the word residing needs to be replaced with “having membership in a congregation in the respective region.” At Bylaw 5.04 (d), the commission understands that “lien” should read “line.”

In Bylaw 5.06 (a), the last line should read: “the election of circuit visitors-counselors.”

At Bylaw 6.03 (a), the commission notes its previous suggestion of Op. 17-2834A that “While it is allowable for the convention to assign this responsibility to the board of directors or a committee thereof (Bylaw 4.5.1) in district bylaws, it may be wise to establish an independent committee or commission to interpret district documents authoritatively.” Further, it is noted that such a committee is empowered only to interpret the bylaws and resolutions adopted by the district, and that its interpretations of district bylaws cannot be inconsistent with the Synod Constitution, Bylaws, and resolutions and that they are subject, insofar as they depend on the meaning of such documents, to decisions of the LCMS Commission on Constitutional Matters.

At Bylaw 6.04 (a), the changes required by the commission in Op. 17-2834A have not been made in the district bylaws as they presently stand. The commission reiterates that Bylaw 6.04 (a) would properly be amended to read as follows:

(a) Amendments to the Bylaws may be made, provided they are not contrary to the constitution, bylaws or resolutions of the District or Synod, presented in writing to a convention of the district; specified as bylaw amendments and considered by a convention floor committee; adopted by the affirmative vote of a majority of the delegates present and voting. All amendments to the bylaws are required to be reviewed and approved by the Synod’s Commission on Constitutional Matters prior to their submission to the convention to ascertain that proposed amendments are in harmony with the Constitution, Bylaws, and resolutions of the Synod (Synod Bylaw 3.9.2.2.3 [a]).

(b) The district in convention may vote to amend its previously approved bylaw changes or, in unusual circumstances, to amend its bylaws without prior approval provided the resolution is contingent on approval of the Commission of Constitutional Matters (CCM). In that case, the amended articles or bylaws become effective immediately upon, and only upon, approval of the CCM. Should the CCM not approve the adopted changes, the district Board of Directors may modify the amendments to comply with the CCM requirements upon their two-thirds vote (Synod Bylaw 3.9.2.2.3 [b]).

At Bylaw 6.04 (b), the commission notes that such amendments must be reviewed and approved in advance. Otherwise, the proposed addition of Bylaw 6.04 (b) is in order and would properly follow the above two subparagraphs (which replace existing subparagraph 6.04 [a]) as subparagraph (c).

The commission requests resubmission of a bylaw proposal addressing the above issues, so that it may complete a favorable review and approve the result for presentation to the convention.

The commission notes again, as it noted in CCM Op. 18-2896, that the proposed articles approved by the commission in its Op. 17-2834 as containing the language required by LCMS Bylaw 1.5.3.6 and 2016 Res. 9-02A do not appear yet to have been filed with the State of Wisconsin. The commission thanks the district for the submission of its documents for review and looks forward to the district’s subsequent draft.

44. Adjournment and Upcoming Meetings

The commission will continue to arrange a greater number of briefer internet conference meetings to deal with business as it arises. Chairman Gude and Secretary Sias will review the business before the
commission and plan a work schedule. The Secretary has contacted district presidents and secretaries whose conventions are planned from January to May, to encourage the submission of their bylaw revisions and to revisit the state of their articles of incorporation where this appears yet to be necessary. With the time set aside for the present meeting elapsed, Pastor Peters offered closing prayer and the commission adjourned. The committee set its next meeting for Sept. 15, 6 p.m. to 8:30 p.m.

John W. Sias, Secretary