

MINUTES
COMMISSION ON CONSTITUTIONAL MATTERS
Internet Conference Meeting (Zoom.us)
June 16, 2020

26. Call to Order and Opening Prayer

Commission Chairman Dr. George Gude called the meeting to order with all members present, calling on Pastor Bode to open with prayer.

27. District Conventions, Circuit and Advisory Meetings, and Coronavirus Contingencies (20-2938)

The Secretary of the Synod, responding to a number of inquiries from district presidents and secretaries inspired by the COVID-19 pandemic and associated impediments to large physical gatherings, potentially extending to or recurring over the next months or years, requested the following guidance from the commission:

Question 1: In the event that circuit forums, necessary to elect circuit visitors and to select Synod convention representation, or meetings of commissioned ministers and certain ordained ministers to select advisory delegates cannot meet physically, how can their business be conducted?

The Synod's Bylaws have been specifically amended in recent years to allow the (at that time, new) possibility of conducting these specific meetings electronically or "virtually."

The forum of a circuit may meet electronically (Bylaws 3.1.2.1 [a] and 5.2.2 [a]) and, in the context of a meeting, physical or virtual, vote electronically (Bylaw 3.1.2.1 [b] and 5.2.2 [c]). The holding of such a "virtual" meeting presumes that congregations are able properly to designate representation, that someone in the circuit has the wherewithal to facilitate a proper electronic meeting and a means of voting that satisfies the stated requirements, and that the congregational representatives have fair and reasonable opportunity to attend by the means utilized. Attention should be given by the circuit visitor, who is responsible to convene the meeting, to ensure that the vote is and can be exercised only by those properly designated by their congregations-or-parishes to represent them at the forum (Bylaws 3.1.2.1 [c]; 5.3.2), and that all eligible participants have a reasonable and reasonably uniform opportunity for full and fair participation. Careful attention would need to be paid to advance submission and subsequent effective dissemination of names and biographical information on nominees (Bylaws 3.1.2.1 [e] and 5.2.2 [b, d]) to all those attending the meeting as voting and advisory members of the forum.

In a similar case, the commissioned ministers and those ordained ministers ineligible to serve as voting pastoral delegates may meet by electronic means, under Synod Board of Directors policies (specifically, Policy 5.7.8 in the manual available at www.lcms.org/bod), to elect their proportional representation to the Synod convention (Bylaws 3.1.3–3.1.3.1). Concerns similar to those expressed with regard to circuit forums would pertain, and those responsible need to consider the full and fair participation of all eligible participants.

Question 2: In the event that district conventions are prevented from meeting physically by COVID-19 restrictions or similar circumstances, what options are available to the districts, under the Constitution and Bylaws of the Synod, for proper conduct of the business ordinarily conducted through these means?

The Constitution and Bylaws of the Synod provide specific provisions for the conduct of district conventions (Const. Art. XII 10, 13–15; Bylaws 1.3.3, 1.4.1–2; Bylaw sections, 4.2 and 4.7; and, by analogy, Bylaw section 3.1, insofar as it is applicable, and Bylaw section 3.12, in the sense indicated in Bylaw 4.7.1). Like the convention of the Synod, the conventions of the districts are not simply vehicles for accomplishing certain "essential" pieces of business, such as elections and resolutions, couched with extensive "inessential" trappings. Rather, they "*shall* [emphasis added] afford opportunities for worship,

nurture, inspiration, fellowship, and the communication of vital information. They are the principal legislative assemblies, which amend the district's Articles of Incorporation and Bylaws, consider and take action on reports and overtures, and handle appropriate appeals" (Bylaw 4.2.1). Conventions are thus regulated by the Bylaws of the Synod (Bylaw 4.2.1 [a]) and those of the districts, bylaws which may be amended substantially only by or with the specific and express authorization of such conventions (Bylaw chapter 7; Bylaw 4.2.1; Const. Art. XIV).

The Bylaws of the Synod, which govern the districts, do not provide for virtual or electronic conventions, or for doing the business assigned to a convention by means other than meeting; explicit allowance has been made for those meetings which can be conducted electronically (see above), but conventions are not among them.

Robert's Rules, on which the conduct of our conventions, as deliberative assemblies, depends (Bylaw 3.1.9 [i][3]), permits the business of an organization "to be carried out only at a regular or properly called *meeting*—...a single official gathering in one room or area—of the assembly of its members at which a quorum is present." (RONR [11th ed.], p. 97, ll. 11–14) *unless* the bylaws of the organization *explicitly* authorize electronic meeting. The sense behind this rule is the preservation of the fundamental character of a deliberative assembly (*idem*, pp. 1–5).

Our bylaws do not so authorize. Moreover, our conventions are *churchly* deliberative assemblies. Their proper function in pursuit of the aims described above ("worship, nurture, inspiration, fellowship, and the communication of vital information," and only then "tak[ing] action") depends essentially on the voting and advisory delegates being able to interact fully and personally in a manner hardly reproducible by electronic means. The expectation is that the functions assigned to the convention would be taken in a context allowing full and free debate, fellowship, and personal interaction, and not by some impersonal means. Const. Art. VIII A 2 and XII 14 speak of a "constitutional convocation" and "presence" of at least a quorum of representatives. As a practical matter, the size of even the smallest of our district conventions does not seem at all likely to admit the possibility—even if the bylaws were so to authorize, which they do not—of an electronic or virtual meeting that retains the character of a physically gathered, churchly, deliberative assembly.

The commission is aware of the possibility that certain jurisdictions, in state not-for-profit corporate law, may provide mechanisms for electronic meeting of members, or for the doing of business ordinarily conducted in a members' meeting by means other than assembly. Such laws are permissive but not prescriptive; that is, where the Constitution and Bylaws of the Synod have assigned certain functions to be performed exclusively within the context of a gathered convention, such laws, where they might exist, do not require or permit those functions to be exercised otherwise. The Constitution of the Synod is the fundamental agreement of the congregations as to the maintenance of their synodical union, and is also the Constitution of the several districts, as the Synod Bylaws are their primary bylaws (Bylaw 4.1.1.2). Synod and its districts acknowledge civil authority but intend "to retain all authority and autonomy allowed a church" (Bylaw 1.2.1 [f][2]). The considerations involved in the agreed-upon patterns by which the Synod and its districts conduct their churchly work are not vacated by the availability of civil-law alternatives.

The conventions of the Synod and of its districts are churchly, deliberative assemblies, with a specific character described in the Constitution and Bylaws, for which the character of a virtual meeting or of business done without a meeting, potentially relevant civil law options notwithstanding, is not a substitute.

Question 3: Are there limitations on rescheduling a district convention to accommodate a physical meeting at another time?

As to the timing of a district convention, Const. Art. XII 13 requires that it be held in "the year immediately preceding the general convention of the Synod" and states that "only the Synod has the right to make an exception to this rule." This is commonly understood to be the calendar year, in this instance, 2021. Districts have from Jan. 1, 2021 to Dec. 31, 2021 to conduct their regular conventions. While, practically speaking,

there are matters of adequate notice and venue that may limit attempts to reschedule a district convention, should a planned meeting become infeasible, a district convention could—if there is a possibility of fairly attempting to accommodate all stipulated participants, voting and advisory, at another time—be rescheduled within the district convention year of the triennium. The program and accommodations for the meeting may be varied as compelled by circumstance, so long as the essential nature of the convention (above) and of a churchly, deliberative assembly is preserved. Districts need to make a good faith attempt to have a convention, making every reasonable attempt or attempt(s) within the dictates of fairness and good stewardship of the district’s resources.

Should a district be unable to convene or achieve the required quorum at any point during the district convention year, it would simply have no regular convention in this triennium.

There remains the possibility, “in cases of urgent necessity,” for specific business, and by the procedure specified (Const. Art XII 15) of calling a special convention of a district, and these are not limited to the district convention year.

Question 4: In the event that business ordinarily conducted through the above physical meetings cannot be conducted by some other means, and physical gathering cannot be achieved within the time allotted in the triennial cycle for each mechanism, what is the result (e.g., for elected offices)?

Bylaw 3.2.4 provides for terms of office aligned with the regular meeting schedule of the triennial cycle. Its subparagraph (f) provides that “[i]ncumbents shall serve until their successors assume office.” Should a district be unable to meet in the current triennia, the current term of service of all elected incumbents would be extended until the next election can take place and successors can be inducted into office. The rules of succession and vacancy appointment already in place in the districts would pertain, should any incumbent be unable or unwilling to continue in office. As the current term is, in a sense, being extended, any applicable term limits would not remove elected incumbents from office until the corresponding election can take place. As there are, in this situation, no “pending successors-elect,” the usual limitations of Bylaw 3.2.4 (f) and (g) on the starting of new programs and the appointment of new appointees during the “interim” would also not apply.

Should a district that fails to hold a regular convention within the district convention year of the triennium consider it to be of urgent necessity, outside the district convention year of the triennium and in such a situation, to conduct elections, and if the proper procedure would be followed (Const. XII 15), a district could conduct a special (physically convened) convention for this purpose.

Careful attention should be given by the districts and their officers, boards, and commissions, to report to the congregations on their activities and the situation of the district, even if a convention is not certain to take place or possible to convene.

Looking forward to the Synod convention, the principal required function of district conventions is, in those seventeen or eighteen districts electing representatives in a given triennium, the election of members of the Synod Committee for Convention Nominations (Bylaw 3.12.3f.). CCM Op. 12-2653 indicated that when a district convention has failed to elect a member of the CCN, the district board of directors must fill the resulting vacancy “to fulfill the district’s obligation to the Synod.” That provision would be applicable, should a district fail to meet in convention and elect its representative.

Otherwise, the work ordinarily done by a district convention in preparation for the Synod convention (consideration of reports, submission of overtures, discussion and forwarding of suggestions for triennial emphases) is possible to be done by other means (including congregations, circuit forums, church worker conferences, and the district board of directors).

28. Iowa East District Proposed Bylaw Revisions (20-2931)

By an e-mail of May 6, 2020, the Secretary of the Iowa East District submitted two proposed bylaw changes related to district convention and circuit forum representation, both intended to reflect changes made to the Constitution and Bylaws of the Synod by the 2019 convention of the Synod. The commission approved the changes with the following correction:

The change to Iowa East Bylaw 14.3 requires an additional change to correspond to the text of LCMS Bylaw 5.3.2, as revised by the 2019 convention: “...of ~~the one pastor of each congregation;~~ and one lay member person-of from each member congregation or multi-congregation parish...”

With this change made, the proposed amendments are approved for presentation to the district convention. Upon adoption, the district is asked to forward a clean copy of its Bylaws as adopted for the commission’s files. The district and its secretary are thanked for their attention to keeping the district’s Bylaws consistent with Synod governing documents and for providing materials for the required review.

29. Mid-South District Proposed Bylaw Revisions (20-2933)

By an e-mail of May 13, 2020, the Secretary of the Mid-South District submitted a number of proposed bylaw changes intended to reflect changes made to the Constitution and Bylaws of the Synod by the 2019 convention of the Synod. The commission approved the changes with the following correction to Mid-South District Bylaw 3.2.3.4 (b) as follows: “...those ordained ministers ~~not presently serving as voting representatives of congregations~~ not eligible to be elected by congregations as voting representatives, who are members of the Synod within the district.” (Compare LCMS Bylaw 3.1.3, last sentence.)

With this change made, the proposed amendments are approved for presentation to the district board of directors for adoption under its Bylaw 1.1.3. Upon adoption, the district is asked to forward a clean copy of its Bylaws as adopted for the commission’s files. The district and its secretary are thanked for their attention to keeping the district’s Bylaws consistent with Synod governing documents and for providing materials for the required review.

30. Southern Illinois District Proposed Bylaw Revisions (20-2935)

By an e-mail of June 3, 2020, the Secretary of the Southern Illinois District submitted proposed changes to its Bylaws 1.05, 1.23, and 1.33, intended to reflect changes made to the Constitution and Bylaws of the Synod by the 2019 convention of the Synod. The commission approved the changes with the following correction to Southern Illinois District Bylaw 1.33 as follows: each instance of *dual* should read *multi-congregation*, and the second sentences should read “...congregations of a ~~dual~~ multi-congregation parish which do not send a voting lay delegate to the Circuit Forum are entitled to an advisory lay delegate.”

With this change made, the proposed amendments are approved for presentation to the district board of directors for adoption under its Bylaw 12.02. Upon adoption, the district is asked to forward a clean copy of its Bylaws as adopted for the commission’s files. The district and its secretary are thanked for their attention to keeping the district’s Bylaws consistent with Synod governing documents and for providing materials for the required review.

31. Adjournment and Upcoming Meetings

The commission previously set July 31–Aug. 1, 2020, as a tentative date for its summer meeting. The commission now releases this date, intending to arrange a greater number of briefer 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. With its agenda for the present meeting concluded, the commission adjourned.

John W. Sias, *Secretary*