

Questions & Answers Regarding Constitutional Amendment A

Question:

What is the purpose of the constitutional amendment referred to in Resolution 7-21?

Answer:

Resolution 7-21 calls for the amendment of Article XI F 2 of the Constitution, to clarify the role and responsibility of the Synod in convention and of the Board of Directors of the Synod.

Question:

Why was Constitutional Amendment A regarding the Board of Directors proposed by the Convention in Resolution 7-21?

Answer:

The Constitution says that the Board of Directors supervises the property and business affairs of the Synod "except in those areas where it has delegated such authority to an agency of the Synod." The wording proposed by the amendment would read, "except to the extent management authority and duties have been delegated by the Constitution, Bylaws, or resolutions of the Synod to other officers and agencies of the Synod."

The point of confusion in the previous wording is whether this is a reference to areas where the Synod itself has delegated authority elsewhere than to the Board of Directors, or where the Board of Directors itself has delegated its authority?

The amendment was proposed to eliminate the ambiguity of the word "it" in the phrase "except in those areas where it has delegated such authority," specifically to clarify whether the phrase "it has delegated" appearing in Article XI F 2 of the present Constitution refers to the Synod acting in convention or to its Board of Directors. The amendment makes it clear that "it has delegated" refers to the delegation by the Synod in convention, thereby retaining its long standing practice of assigning responsibilities to its Board of Directors, officers and agencies.

Question:

Why is it important that "it has delegated" be clarified?

Answer:

Some have interpreted Article XI F 2 as making the Board of Directors responsible for everything between conventions. This clarification provides for the retention of the historic balance of assigned responsibilities and authority to the Board of Directors, officers and agencies, including the Commission on Constitutional Matters, as defined in the Constitution, Bylaws and Articles of Incorporation of the Synod.

Question:

Does the amendment to the Constitution limit the authority of the Board of Directors?

Answer:

No. The Board continues to have the authority delegated to it by the Bylaws and Articles of Incorporation.

Question:

Was the authority of the Board of Directors changed by the Convention?

Answer:

No. The Board's historic authority was clarified, but not reduced, by the passage of Resolution 7-02A. The change to Bylaw 1-07c recognizes that the Synod over the years has assigned certain management authority and duties to other officers, agencies and corporate or trust entities of the Synod. Such duties are not included in the Board of Directors responsibilities for the management and supervision of the business affairs of the Synod. The Convention action amending Bylaw 3.905d strengthens the Board's role by requiring the Commission on Constitutional Matters to consult with the Board of Directors and/or Synod's legal counsel when opinions pertain primarily to business, legal, finance, civil rights, contracts or property matters.

Question:

What is the role of the Board of Directors of the Synod?

Answer:

The Board of Directors is the legal representative of Synod and the custodian of its property. It generally manages the primary business affairs of the church. Unlike a for-profit corporation and some non-profit corporations, the Board of Directors is not the ultimate authority in the LCMS. Rather, the members of the Synod themselves, acting together in convention, have retained that authority.

Question:

Is it legal to withhold "ultimate authority" from the Synod Board of Directors?

Answer:

Yes. The First Amendment to the United States Constitution requires that the government involve itself in the operation of a church only to the extent necessary to protect the interests of the government. The church is free to organize and govern itself as it deems consistent with its religious beliefs. These issues were studied in detail by Floor Committee 7 and the convention itself. The Synod's legal counsel provided detailed information concerning the requirements of Missouri law both to Floor Committee 7 and to the convention itself.

Question:

What about the Bryan Cave legal opinion?

Answer:

The Bryan Cave opinion did not question whether the church had the right to govern itself as it historically has done. Rather, the opinion questioned whether the governing documents of the Synod, including the Constitution, Bylaws, and Articles of Incorporation adequately notified the state and the public as to how we govern ourselves. The convention amended the Articles of Incorporation and the Bylaws to address the concerns identified by the Bryan Cave opinion. The constitutional amendment proposed by Resolution 7-21 completes those clarifications.

Question:

Does the Amendment change the role of the Commission on Constitutional Matters (CCM)?

Answer:

No. The role of the CCM continues to be limited, as it was before this amendment, to responsibility for interpreting the Bylaws, Constitution, and resolutions of the Synod between conventions. The convention continues to retain the authority to overrule any opinion of the CCM.

Question:

Are the members of the CCM chosen by the president?

Answer:

There are six members of the CCM. The Secretary of the Synod, who is a non-voting member, is elected by the Synod directly. The other five members, three ordained and two lay, are chosen pursuant to the process outlined in the Bylaws. Candidates for the CCM can only be nominated by District Boards of Directors. Of those nominated by the Districts, the Council of Presidents elects five candidates for each vacant position. From those five candidates, the President of the Synod, in consultation with the Vice Presidents of the Synod, appoints the members of the commission.

Question:

Has the authority of the CCM been changed by this constitutional amendment or by other actions taken at the convention?

Answer:

The Constitutional Amendment called for by Resolution 7-21 does not change or modify the authority of the Commission on Constitutional Matters. Resolution 7-02A, adopted by the convention, actually limited the authority of the CCM by adding to Bylaw 3.905 the sentence "When opinions pertain primarily to business, legal, finance, civil rights, contracts or property matters, the commission shall first consult with the Board of Directors and/or Synod's legal counsel."

Question:

So, did the convention in Resolution 7-02A, which amended the Bylaws and Articles of Incorporation, and in Resolution 7-21, which proposed Amendment A to the Constitution, change its historic balance of assigned responsibility and authority to the Board of Directors, officers and agencies?

Answer:

No. The system of checks and balances that has been in place throughout most of the history of the Synod is retained.

Question:

Should member congregations cast an affirmative vote for the proposed amendment?

Answer:

The decision of how a member congregation votes is a matter for each congregation to decide. While the floor committee does recommend adoption, neither it, nor the convention that has passed along this matter for congregational consideration by its 71% vote, can dictate how a congregation votes. As stated previously, this information is being provided for congregations to better understand Constitution Amendment A for ratification considerations.

The Official Ballot must be received by the Office of the Secretary of Synod no later than February 16, 2005. Member congregations are encouraged to exercise their privilege and responsibility in this manner by taking official congregational action by the prescribed date.