

## 10.3 CALLS VS. CONTRACTS FOR MINISTERS OF RELIGION— COMMISSIONED

### Preamble

In recent years there has been some confusion and inconsistency in the rostering of Commissioned Ministers as congregations and schools have moved more to offering rostered workers contracts or appointments rather than calls. The purpose of this document is to address this situation and bring order to our practice.

### Sources Consulted

- 1) Bylaw 2.11, Continued Eligibility of Individual Members, *2019 Handbook of the LCMS*
- 2) Res. 6-14, 1981 Convention
- 3) Res. 5-09A, 1983 Convention
- 4) Rubrics Governing Call and Placement Procedures for Ministers of Religion—Commissioned
- 5) Chapter 1, *2019 LCMS Treasurer's Manual*
- 6) CCM Opinions (1980-2005)
  - a) Ag. 1976 (January 29, 1994)
  - b) Ag. 2041 (August 28, 1996)
  - c) 00-2193 (December 11-12, 2000)
  - d) 00-2217 (December 11-12, 2000)
  - e) 05-2428 (June 30, 2005)

### Definitions

#### Active Member (Bylaw 2.11.1)

To remain on the roster of the Synod as an active member, an ordained or commissioned minister of religion must be a communicant member of a congregation which is a member of the Synod (except as provided in paragraph [c] below) and be regularly performing the duties of one of the following:

- (a) An ordained or commissioned minister serving a congregation of the Synod.
- (b) An ordained or commissioned minister serving an educational institution (an “association school”) solely governed by congregations of the Synod and recognized by a district of the Synod.
- (c) An ordained or commissioned minister serving a congregation that is not a member of the Synod, as approved (on the basis of policies adopted by the Council of Presidents) by the president of the district in which the congregation is located.
- (d) An officer, executive, or professional staff member of the Synod, district, or other agency of the Synod.
- (e) An executive or professional staff member serving a national inter-Lutheran entity referred to in Bylaw 1.3.8.
- (f) A missionary serving under a call by the Synod, including a call by a district.
- (g) A person serving on the faculty or professional staff of an educational institution of the Synod.
- (h) A military or institutional chaplain endorsed by the Synod.
- (i) A person serving in a specialized ministry endorsed by the Synod or by one of its districts.
- (j) An executive or professional staff member called or appointed by an auxiliary (Bylaw section 6.1) or recognized service organization (Bylaw section 6.2).

### **Inactive Members** (Bylaw 2.11.2)

Inactive members may be retained as members of the Synod.

- (a) As such, they have all the rights, privileges, and responsibilities of individual membership in the Synod as defined in the Constitution and Bylaws of the Synod.
- (b) To remain on the roster of the Synod as an inactive member, an ordained or commissioned minister of religion must be a communicant member in good standing of a congregation which is a member of the Synod and must qualify and make application for one of the following categories.
- (c) A member whose active service terminates while awaiting installation to another accepted call to active service shall be retained on the roster as if holding candidate status.
- (d) A member whose active service terminates without prior acceptance of another call to active service has 30 days, if ordained, and 120 days, if commissioned, to apply for inactive status (candidate or emeritus, as appropriate). Should inactive status not be applied for within said period, membership in the Synod is forfeited.
- (e) The district president shall act on all applications within 90 days.
- (f) A member may seek to reverse a denial of emeritus or candidate status, whether initial or continuing, by application for reinstatement to the roster of the Synod (Bylaw 2.18.1).

### **Emeritus Member** (Bylaw 2.11.2.1)

An “emeritus” member is one whose membership is held for retention on the roster upon retirement after reaching the age of 55 or for reasons of total and permanent disability. Any unusual case shall be decided by the Council of Presidents if the appropriate district president so requests.

### **Candidate Member** (Bylaw 2.11.2.2)

A “candidate” member is one who is eligible to perform the duties of any of the offices of ministry specified in Bylaw section 2.11 but who is not currently an active member or an emeritus member.

### **The Position of the Synod**

Res. 6-14 of the 1981 Convention of the Synod states, “A solemn call is an official request, offer, or agreement extended by an eligible calling body in the name of the triune God to a person eligible to receive such a call into an educational ministry of the LCMS. Offers extended to such eligible persons but erroneously referred to as ‘appointments’ or ‘contracts’ are also to be considered calls.” This position was affirmed by the 1983 Convention of the Synod and in several opinions rendered by the Commission on Constitutional Matters since that time.

### **Things the Commissioned Minister Should Consider**

- 1) All certified teachers, directors of Christian education, directors of Christian outreach, deaconesses, parish assistants, directors of church ministry, directors of parish music, and directors of family life ministry who are listed on Synod’s roster (“Lutheran Annual,” under Minister of Religion—Commissioned) as graduates from one of Synod’s educational institutions or who are qualified workers that have completed an approved colloquy or distance learning program and are in the exercise of the ministry also are “ministers of the Gospel” because of specific rulings issued by the IRS. (See 1.905, 1.910 and 1.920. Ref. PLR 92-21025.)<sup>1</sup>

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<sup>1</sup> *Treasurer’s Manual*, The Lutheran Church—Missouri Synod, 2019 edition, p. 1-2.

- 2) In addition to being an ordained or commissioned minister within The Lutheran Church—Missouri Synod, an individual must earn his/her compensation “in the exercise of the ministry” in order to be entitled to the treatment afforded to a “minister of the Gospel” under tax law.<sup>2</sup>
- 3) “In the exercise of the ministry” is explained in this condensed version of an article by Synod’s legal counsel.

The Internal Revenue Code allows a “minister of the Gospel,” under certain circumstances, to exclude from taxable income the value of a parsonage or a housing allowance. To qualify for the exclusion, the home or housing allowance must be provided to a minister and must be part of compensation paid for services as a minister of the Gospel. Being ordained or commissioned or being on a roster is not enough.

If a minister is not conducting activities in the “exercise of his/her ministry,” he/she cannot take advantage of the parsonage or housing allowance exclusion. Both the minister and the employer may be penalized if this requirement is ignored.

The exercise of the ministry includes teaching or holding administrative positions in churches, parochial schools, colleges or universities, and other religious organizations under the authority of a church.

Ministers, congregations and other organizations served by them should consider this:

If a particular position could be performed by someone other than a minister, but the minister’s education and experience contribute significantly to the performance, this should be clearly stated in a written job description or employment agreement. Then the minister can be treated as “in ministry.”

If a minister does not regularly and significantly engage in sacerdotal functions or conduct worship or teach or hold administrative positions in the religious organization, the minister’s employer should not declare a housing allowance for the minister. If it does, it may incur tax penalties or other liabilities.<sup>3</sup>

- 4) The Internal Revenue Code is clear that regardless of whether a minister is an employee or an independent contractor, a minister is treated as self-employed for income tax withholding, Social Security and Medicare tax.<sup>4</sup>
- 5) In view of the above information, the worker is encouraged to discuss with his/her tax consultant the effect that any employment arrangements might have on his/her tax liability.
- 6) Because of the variety of employment arrangements which can be offered and the impact which they can have on a worker’s eligibility to receive benefits from Concordia Plan Services, the worker is encouraged to contact Concordia Plan Services to discuss the effect that the following arrangements might have on his/her membership and benefits prior to accepting a position of service covered by these guidelines.

### **Guidance for District Presidents**

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<sup>2</sup> Ibid., pp. 1-2 - 1-3.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

The following paragraphs are meant to serve as a guideline for district presidents in accurately maintaining their official roster of members. As such, they may not cover every situation which arises within a district. In those instances, the district president will need to consult with the appropriate entity (i.e., Secretary of the Synod, Dept. of Rosters and Statistics, etc.) to determine how to handle a particular situation which is not clearly covered by these guidelines.

- 1) If a person is rostered as a Commissioned Minister and is serving in a position under a Call (Active Status) and accepts a position of service under a contract (which the Synod considers to be a Call), what is that person's roster status? Would he/she continue on Active Status or must he/she apply for Inactive Status to retain his/her membership in the Synod?

Res. 6-14 of the 1981 Convention of the Synod states, "A solemn call is an official request, offer, or agreement extended by a calling body in the name of the triune God to a person eligible to receive such a call into an educational ministry of the LCMS. Offers extended to such eligible persons but erroneously referred to as "appointments" or "contracts" are also to be considered calls." Therefore, the person would continue to hold membership in the Synod as an Active Member. (See also CCM Opinion 00-2193, question 6)

- 2) If a person is rostered as a Commissioned Minister and is currently on Candidate Status and accepts a position of service under a contract (which the Synod considers to be a Call), what is that person's roster status? Should he/she be listed as an Active Member of the Synod, or would he/she continue to hold membership in the Synod as an Inactive Member?

Res. 6-14 of the 1981 Convention of the Synod states, "A solemn call is an official request, offer, or agreement extended by a calling body in the name of the triune God to a person eligible to receive such a call into an educational ministry of the LCMS. Offers extended to such eligible persons but erroneously referred to as "appointments" or "contracts" are also to be considered calls." Therefore, the person's status would change from "Candidate Status" to "Active Status." (See also CCM Opinion 00-2193, question 6)

- 3) If a person is on the roster of the Synod (Active or Candidate Member) and accepts a position of service under a contract (which the Synod considers to be a Call), is that person eligible to take advantage of the housing deduction allowed by the IRS to Ministers of Religion, Ordained and Commissioned? Would the member also be expected to pay the self-employment tax required by Ministers of Religion?

Section 1.110 of the *2019 Treasurer's Manual* states, "All certified teachers, directors of Christian education, directors of Christian outreach, certified lay ministers, deaconesses, parish assistants, certified directors of parish music and director of family life education who are listed on Synod's roster ("Lutheran Annual," under Minister of Religion—Commissioned) as graduates from one of Synod's educational institutions or who are qualified workers that have completed an approved colloquy or distance learning program and are in the exercise of ministry also are "ministers of the Gospel" because of specific rulings issued by the IRS.

Section 1.120 further states, ". . . it should be clear in the following sections that those persons in ministry on Synod's roster are to be treated as Ministers of the Gospel for payroll tax purposes, regardless of whether or not they execute a contract or call document for full-time or part-time status." Therefore, the worker is eligible to take advantage of the housing deduction allowed by the IRS to Ministers of Religion—Ordained and Commissioned, **AND** is also required to pay the self-employment tax required by Ministers of Religion.

- 4) If a person is on the roster of the Synod (Active or Candidate Member) and accepts a position of service under a contract (which the Synod considers to be a Call), is that person eligible to take advantage of the Dispute Resolution Process as outlined in Bylaw 1.10 of the *2019 Handbook of The Lutheran Church—Missouri Synod*?

The Commission on Constitutional Matters opined in Ag. 1976 (January 29, 1994) that, “If the person . . . is now serving in a ministry on contract, that person is eligible to use the synodical Dispute Resolution Process.” Therefore, the answer to the question is “yes.”

- 5) If a person is on the roster of the Synod (Active or Candidate Member) and accepts a position of service under a contract (which the Synod considers to be a Call), is that person eligible to be elected to serve on committees of the District or Synod as a Minister of Religion—Commissioned?

Yes. See the answer to question #1 above.

- 6) If a congregation/school extends a contract (which the Synod considers to be a Call) to a college/university graduate who is properly certified and eligible to receive a call and desires to be a member of the Synod, should the District President and Placement Officer of the college/university view the document as a Call and process it through the normal placement process so that the individual might be rostered, commissioned, and installed in the congregation/school?

Yes. See the answer to question #1 above.

### **Final Items to Consider**

- 1) It should be communicated clearly to congregations seeking to employ rostered Commissioned Ministers (Active Status or Candidate Status) that their offer, regardless of the terminology used (e.g. a Call, a contract, or an appointment), will be considered to be a Call and should be treated as such by the congregation by allowing the worker to claim an IRS housing deduction and by cooperating with the worker’s payment of IRS self-employment tax as a Minister of Religion. In doing so, the worker will assume the responsibilities of membership and be entitled to all of the privileges of membership in the Synod.
- 2) It should be noted that rostering the worker as “Active” does not change the terms of the “contract” or “appointment” offered by the congregation/school. They become the terms of the Call, except where adjustment may be necessary to accommodate IRS housing deduction and self-employment tax benefits or requirements.
- 3) In all cases where a rostered worker (Active Status or Candidate Status) is extended a contract or an appointment (which the Synod considers to be a Call), or a Call itself, there must be an installation for the sake of record and the change in position and/or status must be communicated to the Dept. of Rosters and Statistics.

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