



To: Bishop Bill Gafkjen
From: Josh S. Tatum
Date: March 17, 2020
Re: **Meetings by Electronic Means**

INTRODUCTION

Congregations responding to the COVID-19 outbreak have raised questions about whether they may hold meetings electronically. This memo summarizes congregations' ability to hold Congregation Meetings and Congregation Council meetings remotely. First it addresses issues that apply throughout the Synod. Congregations that have updated their Constitution through the 2019 amendments to the *Model Constitution for Congregations of the ELCA* (or provisions similar to C10.08. and C12.13.) will find all guidance necessary in that section. Next the memo separately provides guidance for congregations in Indiana and Kentucky. Finally, it collects the text of applicable statute and church documents with the most relevant provisions emphasized in bold.

1. **Electronic meetings throughout the Indiana–Kentucky Mission Territory**

Both Indiana and Kentucky laws permit meetings by electronic means, but both require participants to be able to simultaneously hear each other during the meeting. The meeting must therefore be live (not recorded or in writing, e.g., by e-mail or instant messaging). Supplemental tools, like those in which participants may vote electronically or indicate their desire to talk (some conference services call this “raising your hand”) during a telephonic meeting are permitted and useful, especially for larger meetings.

Because electronic meetings are permitted throughout the mission territory, the first place to look is the congregation's constitution. Congregations that have updated their constitutions to conform with the 2019 *Model Constitution for Congregations of the ELCA* have C10.08. that expressly permits holding Congregation Meetings electronically. If the congregation has not yet adopted the 2019 amendments and did not already have provisions addressing electronic Congregation Meetings, see the state-dependent guidance below. The *Model Constitution's* section C12.13 has allowed electronic meetings of Congregation Councils for several years.

Related to the question about whether the law permits an electronic Congregation Meeting or meeting of the Congregation Council is the question of making decisions by other means. Please remember, **decision-making by e-mail or other remote communications that do not allow for live deliberation are not permitted.** Neither model C10.08. nor C12.13. should be read as permitting decision-making by e-mail or



other remote communication that does not allow for live deliberation during which all members participating may simultaneously speak to and hear each other.

As used in this analysis, *participation, meeting, and similar terms* have a narrower meaning than common usage. In a context in which remote meetings are not permitted, persons may use electronic means to observe and, when otherwise permitted, speak. But they may not be counted as present for purposes of a quorum, and they may not vote. Just as someone may “participate” as we commonly understand that term even though they may not be counted for legal purposes, a “meeting” has a narrower legal meaning. Legally, a congregation may only act through a properly called meeting at which a quorum is present. Where the legal requirements are not met but there is a gathering of people—either in person or by electronic means—those participating in the gathering may discuss decisions to be made, listen to announcements and reports, and preliminarily indicate their preferences for those decisions. But any business transacted is null and void unless ratified by a legally called meeting. Persons who take action informally in the absence of legal requirements do so at their own risk.

2. Indiana

Under Indiana’s statute, a member cannot participate in a Congregation Meeting unless the congregation’s articles of incorporation or bylaws (i.e., its congregation constitution) provide for it. Members of a Congregation Council, however, may participate remotely unless the articles of incorporation or bylaws prohibit it.

Indiana congregations that have not adopted C10.08. or a similar provision in their congregation constitutions expressly allowing participation in Congregation Meetings may not allow remote participation under Indiana law. These congregations may bring their constitutions into conformity with the *Model Constitution*, including adopting C10.08 exactly as it appears in the model, under *C16.04. or the congregation’s equivalent by majority vote at any legally called Congregation Meeting after providing thirty days’ notice. The amendment is effective immediately. C10.08. cannot be adopted by itself unless all required provisions (marked by an * in the model) are already in conformity with the 2019 model.

3. Kentucky

Under Kentucky’s statute, the Congregation Council may authorize remote participation by members in a Congregation Meeting. If a congregation’s constitution addresses the topic, its provisions would overrule the statute.

Kentucky congregations that have not yet adopted C10.08. need not do so to hold a Congregation Meeting remotely, though this is recommended. Instead, the



Congregation Council may adopt a resolution permitting remote participation for either a specified meeting or for all meetings in the future.

STATE LAW

1. Indiana Law

Ind. Code §§ 23-17-10-1, -10-2, and -15-1(c) allow congregation and congregation council meetings through “any means of communication by which all members participating may simultaneously hear each other during the meeting.”

1.1. Ind. Code § 23-17-10-1 Annual and regular membership meetings

- (a) A corporation with members must hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.
- (b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.
- (c) Annual and regular membership meetings may be held inside of or outside of Indiana at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation’s principal office.
- (d) At the annual meeting:
 - (1) the president and chief financial officer or the president’s and the chief financial officer’s designees shall report on the activities and financial condition of the corporation; and
 - (2) the members shall consider and act upon other matters as may be raised consistent with the notice requirements of section 5 of this chapter and IC 23-17-11-4(b).
- (e) At regular meetings the members shall consider and act upon matters as may be raised consistent with the notice requirements of section 5 of this chapter and IC 23-17-11-4(b).
- (f) The failure to hold an annual or a regular meeting at a time stated in or fixed in accordance with a corporation’s bylaws does not do any of the following:
 - (1) Affect the validity of any corporate action.
 - (2) Work any forfeiture or dissolution of the corporation.
- (g) If provided in the articles of incorporation or bylaws, a member of a corporation may participate in an annual or a regular**



meeting of the members by or through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member of a corporation participating in a meeting by this means is considered to be present in person at the meeting.

As added by P.L.179-1991, SEC.1.

1.2. Ind. Code § 23-17-10-2 Special meetings

- (a) A corporation with members must hold a special meeting of members as follows:
- (1) On call of the corporation's president or board of directors or other person, including a member or an officer, specifically authorized to do so by the articles of incorporation or bylaws.
 - (2) Except as provided in the articles of incorporation or bylaws of a religious corporation, if the holders of at least ten percent (10%) of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary at least one (1) written demand for the meeting describing the purpose for which the meeting is to be held.
- (b) Unless otherwise provided under section 7 of this chapter, the close of business on the thirtieth day before delivery of the demand for a special meeting to a corporate officer is the record date for the purpose of determining if the ten percent (10%) requirement of subsection (a) has been met.
- (c) If a notice for a special meeting demanded under subsection (a)(2) is not given under section 5 of this chapter within thirty (30) days after the date the written demand is delivered to the corporation's secretary, regardless of the requirements of subsection (d), a person signing the demand may do the following:
- (1) Set the time and place of the meeting.
 - (2) Give notice under section 5 of this chapter.
- (d) A special meeting of members may be held inside or outside of Indiana at the place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, a special meeting shall be held at the corporation's principal office.



- (e) Only those matters that are within the purposes described in the meeting notice required under section 5 of this chapter may be conducted at a special meeting of members.
- (f) **If the articles of incorporation or bylaws provide, a member of a corporation may participate in a special meeting of the members by or through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is considered to be present in person at the meeting.**

As added by P.L.179-1991, SEC.1.

1.3. Ind. Code § 23-17-15-1 Regular and special meetings [of the board of directors—i.e., Congregation Council]; location of meetings; means of participation in meeting

- (a) If the time and place of a directors' meeting is fixed by:
 - (1) bylaws; or
 - (2) the board of directors;the meeting is a regular meeting. All other meetings are special meetings.
- (b) The board of directors may hold regular or special meetings inside or outside of Indiana.
- (c) **Unless articles of incorporation or bylaws provide otherwise, a board of directors may permit a director to:**
 - (1) **participate in a regular or special meeting by; or**
 - (2) **conduct the meeting through the use of;****any means of communication by which all directors participating may simultaneously hear each other during the meeting.** A director participating in a meeting by this means is considered to be present in person at the meeting.

As added by P.L.179-1991, SEC.1.

2. Kentucky Law

Ky. Rev. Stat. § 273.195(2) allows remote meetings of the congregation council as long as each member has an opportunity to participate in the meeting, the congregation (1) “implements reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a member or proxy holder,” (2) “implements reasonable measures to provide” participants “a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting



substantially concurrently with the proceedings,” and (3) “records any vote or other action taken at the meeting by a” council member “by means of remote communication” and “maintain[s] as a record the recorded vote or other action taken.

2.1. Ky. Rev. Stat. § 273.195 Remote communication

- (1) If the board of directors is authorized to determine the place of an annual or special meeting of members, the board of directors, in its sole discretion, may determine that the meeting shall not be held at any place but shall instead be held solely by means of remote communication under subsection(2) of this section.
- (2) If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, **members and proxy holders¹ not physically present at a meeting of members may by means of remote communication:**
 - (a) Participate in a meeting of members; and**
 - (b) Be deemed present in person and vote at a meeting of members, whether such meeting is to be held at a designated place or solely by means of remote communication, if:**
 - 1. The corporation implements reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a member or proxy holder;**
 - 2. The corporation implements reasonable measures to provide members and proxy holders referred to in subparagraph 1. of this paragraph a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings; and**
 - 3. The corporation records any vote or other action taken at the meeting by a member or proxy holder by means of remote communication. The corporation shall maintain as a record the recorded vote or other action taken.**

Effective: June 24, 2015

History: Created 2015 Ky. Acts ch. 34, sec. 74, effective June 24, 2015

¹ Congregation constitutions should not be read to allow for proxy voting.



CHURCH GOVERNING DOCUMENTS AND POLICIES

1.1. *Model Constitution for Congregations of the ELCA*

C10.08. This congregation may hold meetings by remote communication, including electronically and by telephone conference, as long as there is an opportunity for simultaneous aural communication. To the extent permitted by state law, notice of all meetings may be provided electronically.

...

C12.13. The Congregation Council and its committees may hold meetings by remote communication, including electronically and by telephone conference and, to the extent permitted by state law, notice of all meetings may be provided electronically.

1.2. **Indiana–Kentucky Synod Guidelines for Adopting or Amending Congregational Constitutions**

23. Constitutions must require live meetings of council and congregation. Congregation and Congregation Council meetings may be electronic, but a live discussion must be provided for, e.g., teleconference. See C10.08. and C12.13. The absence of provision for an electronic meeting should be read as requiring in-person meetings. Neither model C10.08. nor C12.13. should be read as permitting decision-making by e-mail or other remote communication that does not allow for live deliberation during which all members participating may simultaneously speak to and hear each other.

C10.08. and C12.13 allow electronic and telephone conferences to the extent they are permitted by state law. Ind. Code §§ 23-17-10-1, -10-2, and -15-1(c) allow congregation and congregation council meetings through “any means of communication by which all members participating may simultaneously hear each other during the meeting.” Ky. Rev. Stat. § 273.195(2) allows remote meetings of the congregation council as long as each member has an opportunity to participate in the meeting, the congregation (1) “implements reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a member or proxy holder,” (2) “implements reasonable measures to provide” participants “a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings,” and (3) “records any vote or other action taken at the meeting by a” council



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