

**OPINION**  
**55-17**

February 25, 1955           (OPINION)

CHURCHES

RE: Ministers - Solemnizing Marriages

This is in reply to your letter of February 17, 1955, asking our opinion on whether a man, not a regularly ordained minister, but apparently appointed to serve as pastor of the Belden Apostolic Lutheran Church of Belden, North Dakota, by the governing body thereof is given authority to solemnize marriages by section 14-0309 of the North Dakota Revised Code of 1943.

The statute in its entirety provides:

14-03-09. Who May Solemnize Marriages. Marriages may be solemnized by all judges of courts of record and by all justices of the peace within their respective jurisdictions, by ordained ministers of the gospel and priests of every church, by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches, and by the Society Friends or Quakers according to the form used in its meetings."

The phrase "by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches" was added by Chapter 179, Section 1, Laws of 1939. The obvious purpose of this amendment would appear to be to authorize certain ministers not coming within the definitions of "ordained ministers of the gospel and priests of every church" to solemnize marriages.

This part of the statute would appear to require that the minister concerned not only be serving as pastor of a particular congregation but further that he be licensed by a regular church body of denomination. The ultimate question we thus arrive at is whether this pastor is a minister of the gospel licensed by a regular church body of denomination.

The supreme court of this state has recognized the Lutheran denominations as consisting of confederations or associations of independent congregations, each more or less an autonomous body and more or less loosely confederated, though possessing one or more higher directing and advisory bodies which may, under certain circumstances also be the judicatory of the congregations thus confederated. See Gudmundson v. Thingvalla Lutheran Church, 29 N.D. 291, 150 N.W. 750.

We are unable to interpret the phrase "regular church body or denomination" as used in this statute to include each independent congregation in the usual instance. It is therefore our conclusion that in such usual instance a minister of the Lutheran church must be recognized by and permitted to practice as a minister under the rules of the larger confederation in order to come within this part of the

statute.

From the name of the particular church there concerned it is entirely possible that it belongs to no larger confederation but constitutes a separate regular church body or denomination of itself. If such be the case, this church is regularly established and ruled as an entirely independent church body or denomination and its rules for licensing of ministers have been fulfilled in this instance. It is our opinion that this pastor will qualify under this part of the statute, however, having no knowledge on the organization or rules of this particular church, we can hardly pass on the question of whether this particular minister is so qualified.

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