


MEMORANDUM

TO: Sacha Fleury, James Sadilek & Douglas Stuart
FROM: T. Scott Gilligan 
DATE: September 29, 2009
RE: Minutes of August 7, 2009 Annual Meeting

Gentlemen:

In a September 28, 2009 e-mail to the AWCI Board of Directors, you allege that the AWCI Board has violated Section 1702.54 of the Ohio Revised Code by omitting to attach to the minutes of the annual meeting a **draft** statement written by one of the directors regarding spare parts. It is your contention that if the draft statement is not attached to the minutes, the Board has violated Section 1702.54 of the Ohio Revised Code because the omission to include that statement constitutes a "false entry to be made in the minutes of the meeting." Prior to making slanderous statements alleging illegal activity on the part of the Board, I would advise you to consult with attorneys who represent non-profit associations regarding what should and should not be in the minutes.

As you appear to be unaware, Article XX of the AWCI Bylaws dictates that all parliamentary procedures for AWCI shall be conducted under the rules set forth by *The Standard Code of Parliamentary Procedure* by Alice Sturgis, as revised by the American Institute of Parliamentarians. If you examine the Standard Code, it explains what minutes should contain. Regarding reports, it states as follows:

"Each report should be recorded with the name of the member presenting it, the action taken on the report, and a reference to the file where the report may be found. An important report is sometimes summarized briefly in the minutes and the file reference given for the complete report."

As indicated by the above direction contained in *The Standard Code of Parliamentary Procedure* a report is not attached or included in the minutes. Rather, the minutes should indicate a reference to the file where the report may be found.

It should be noted that although reports are not normally attached or included in the association minutes, the draft statement made by Edward Tope on spare parts did not even constitute a report. It was not being issued by a committee of the association nor was it commissioned by the Board. Rather, it was one director's statement of opinion as to how AWCI should address the spare

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parts issue. As is properly recorded by the minutes, the Board directed that the draft statement be referred to a committee to review. The committee will then use the statement to formulate its own response and report that back to the Board. That response would then be an official committee report which the Board would consider.

As is clear from your veiled threats to pursue legal action against the individual Board members, minutes of non-profit associations can be a significant source of legal liability for associations. For this reason, non-profit association attorneys generally advise that minutes should record only actions, not debates nor discussions¹. In that regard, I have attached an article that appeared in *Association Law & Policy* regarding the legal requirements for meeting minutes. Starting with the paragraph at the bottom of the first column, you will see an important discussion regarding the legal pitfalls of recording debates and discussions.

In this particular instance, no experienced attorney advising a non-profit association would ever recommend that a “draft” statement be attached to the minutes. The draft does not reflect the opinion nor consensus of the Board of Directors. It is merely a statement that was written by one director and which the Board has directed be referred to a committee for review. More importantly, since the statement on spare parts involves antitrust concerns, which are a significant area of potential legal liability for any association, it is all the more reason not to attach a draft to the official minutes of the association.

In conclusion, prior to falsely accusing AWCI Board members of violating Ohio law, please seek the advice of a lawyer experienced in association law who can advise you what should and should not be in the official minutes of the association.

¹). In the chapter entitled “What Minutes Should Contain,” *The Standard Code of Parliamentary Procedure* states: “In general minutes are a record of all actions and proceedings but not a record of discussion.” (Page 190)

COMMENTS ON

Legal Requirements for Meeting Minutes

by *Jed R. Mandel, Esq. of Neal Gerber & Eisenberg, Chicago, IL*

One of the most basic elements of association activity is meeting minutes. And a frequently asked question is what belongs in them and what does not. As is virtually self-evident, the primary purpose of association meeting minutes is to create an official record of the events that transpired at a meeting, particularly for those who were unable to attend the meeting. However, it is important to keep in mind that minutes also serve as legal documents, thus raising a second set of criteria with respect to their appropriate content.

At a minimum, meeting minutes should indicate the time, date, and place of the meeting, the fact that prior notice of the meeting was given, the names of those in attendance, the presence of a quorum, and the official actions taken by meeting participants. Beyond those basic elements, there is some latitude as to what additional material should be included in minutes in order to meet the needs of a particular association, a particular meeting, or the topics discussed.

Meeting minutes have been accorded significant evidentiary weight by many courts and government agencies. Consequently, those who draft meeting minutes should do so with the realization that they ultimately may be examined in an investigation of an association or in litigation involving an association. In view of this potential for legal significance, meeting minutes also provide an opportunity for an organization to create a record of its conscientious compliance with its legal obligations.

Notwithstanding the latitude available to organizations in creating their "record of events," the following suggestion from *Robert's Rules of Order* is worthy of consideration: "In ordinary society meetings and meetings of boards of managers and trustees . . . , there is no object in reporting the debates; the duty of the clerk, in such cases, is mainly to record what is 'done' by the assembly, not what is said by the members."

Thus, in general, it is not necessary, nor is it wise, to include comments about who said what about a particular matter. As for the thought that such

comments will be revealing or informative later, that simply is not true. Comments at a meeting do not necessarily reflect the consensus view. In fact, it often is the minority view that is expressed at meetings, with the majority simply voting in favor or against the proposed action. As an historical record of the debate, meeting minutes can be very skewed. Further, if attendees believe that a record must be made of their positions, as opposed to actions taken, they will be compelled to make speeches for the record.

It also is not necessary to record the mover or seconder of a motion or who voted for and against a motion. However, each member does have the right to have their dissenting vote recorded. Thus, if a member were to request that their negative vote be noted in the minutes, it should be so noted.

From another perspective, when the names of movers, seconders and those opposed and in favor of an action are listed, it provides the "public," including potential plaintiffs in actions against the organization, with a ready list of friends and foes. Moreover, it suggests potential divisiveness within the organization where, to the degree possible, it always is beneficial to give the appearance of a united front.

Lastly, in order to make the minutes as easy as possible to draft and to use, it is a good idea for them to follow the agenda. Each item in the agenda should have a corresponding action item in the minutes. If attendees are interested in the background for a particular item in the minutes, they can refer to the supporting material that accompanied the agenda.

In sum, minutes should include certain basic information as to the meeting (e.g., who attended, etc.) and should report the actions taken at the meeting. In doing so, the minutes should be written accurately and concisely so that any person, whether or not they attended the meeting, would be able to know what took place.

**For more information, contact
Mr. Mandel at 312/269-8042**