

Why Bylaws Matter

Presented by:

Frank Sommerville, JD, CPA

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

(817) 795-5046 – telephone

(800) 556-1869 – facsimile

fsommerville@nonprofitattorney.com

Objective

Many charitable organizations blindly believe that the bylaws that were adopted in 1928 are adequate for their needs. I have heard charities proclaim, “If it isn’t broke, don’t fix it.” So they never review their bylaws because no one reads them anyway. Then disaster hits. A legal problem that could have been solved for under \$2,000.00 suddenly becomes a legal problem costing \$100,000.00. This article will explain why your governing documents require periodic review.

What You Will Learn in This Session

- Why bylaws exist.
- Why they are so IMPORTANT.
- What to do if you have bad bylaws.
- What provisions do you need.
- What provisions you do not need.

TAX EXEMPTION TESTS

To qualify as a tax exempt organization, the organization must pass two tests. First, do the governing documents allow this organization to qualify as tax exempt? This test is called the “organizational test.” Second, is the organization operating within its governing documents and qualifications to be tax exempt? This test is called the “operational test.” All charitable organizations must meet both tests at all times. We will only talk about the first test in this article.

Since the first statute recognizing charities as tax exempt organizations in 1919, the law regarding tax exemption requirements has changed many times. Further, the Internal Revenue Service and courts constantly interpret and re-interpret the tax exemption requirements. As a result, charities are trying to comply with a moving target. If the bylaws fail to meet the requirements, the charity could lose its tax exempt status.

Charities assume that their bylaws pass the organizational test because no one has challenged their tax exempt status. As a result, they have never had them reviewed or tested by a professional.

My law firm reviews bylaws for nonprofit organizations as part of our business. We have found that many older constitutions and bylaws flunk the organizational test. If the charity was examined by the IRS, it would be in big trouble. It could lose its tax exempt status, effective the day it was organized. Donors and members would lose the right to deduct their contributions. The charity would owe back taxes, frequently exceeding the net worth of the organization. This possibility has serious consequences.

One requirement of the organizational test is that the governing documents state that the organization is organized to exclusively pursue exempt functions. The bylaws must prohibit all forms of inurement and private benefit. It must limit lobbying to the statutory limit, while prohibiting all forms of political activity. It must include a conflict of interest policy. It must designate that another tax exempt organization must receive the assets upon dissolution. There are too many requirements to list in this article, but I think I have listed enough to give you the concept. The absence of any one required item is sufficient grounds to revoke the charity’s tax exempt status.

STATE LAWS

The nonprofit corporation law enacted in the state where the charity was incorporated also governs what must be in the bylaws. These state laws contain restrictions that the charity’s bylaws may contain. Further the bylaws must limit the authority of the charity. These state laws become important because the IRS requirements incorporate them. The IRS requires that the bylaws not authorize actions beyond those authorized under state law and the organization’s Articles of Incorporation, now Certificate of Formation in Texas. This is where many charities get into trouble.

Many charities copy their bylaws from their national headquarters, or from another charity. Some buy a guidebook or kit and copy their bylaws from these sources. Often the charity will hire a lawyer to review the bylaws, but that lawyer simply compares the bylaws with a formbook that is out of date. These sources are frequently written for a national audience and pay little attention to the nuances of state nonprofit corporation laws. As a result, the bylaws may contain provisions that are prohibited under their state's law, or contain provisions that exceed those authorized by state law. This carelessness could result in disaster.

INDEMNITY DISASTERS

A frequent problem arises in the bylaw's indemnity provision. An indemnity provision dictates the circumstances when a nonprofit corporation may pay for someone's defense when they are accused of wrongdoing. For example, the indemnity provision may describe when the charity may pay the legal expenses of a board member if that board member gets sued because of her actions as a director.

The IRS states that the indemnity provision may not exceed the indemnity allowed by state nonprofit corporation laws. The state laws vary greatly when it comes to indemnity provisions. For example, Ohio requires the indemnified party to sign a note promising to repay the corporation if he is found by the court or jury to have violated his or her duties. Texas requires a signed statement from the indemnified party that they committed no wrongdoing before they can be indemnified. If the Ohio church copied the indemnity provision from a Texas church, then they would be providing a benefit that exceeds what is allowed under Ohio law. They could lose their tax exempt status because of this provision.

SOLUTION:

I suggest that every charity have their governing documents (articles of incorporation and bylaws) reviewed every three to five years by an attorney familiar with nonprofit laws in your state and the IRS requirements.

SAMPLE NONMEMBER BYLAWS ARE ATTACHED FOR YOUR REFERENCE

MAKING MINUTES MATTER

Meeting minutes preserve actions taken at a meeting for future reference. However, in many nonprofit organizations, the duty to record the minutes becomes the responsibility of an individual with little or no training in recording meeting minutes. As a result, the minutes frequently contain information that is useless or potentially harmful; while at the same time omit critical information. Lest you think that the recording of minutes is routine and easily mastered by anyone, I note that my library contains a 425-page book dedicated solely to corporate minutes. The book contains more than 80 forms that were drafted to assist the corporate secretary in properly recording meeting minutes. While not a substitute for the book, this article provides basic information about recording meeting minutes and how to make them useful.

Overall Goal

The goal of recording minutes is to create a self-contained document that will evidence what actions were taken at a properly noticed and valid meeting. Stated another way, the minutes must contain all of the elements necessary to show that a meeting was properly called and noticed, that a quorum existed at the meeting, and that all decisions were approved by the required number of votes by qualified voters attending the meeting, in person, or, if permitted, by proxy. The meeting minutes should accurately report all decisions that occurred during the meeting.

These rules apply to member meetings, meetings of the board of directors (sometimes called a board of elders, a vestry, a session or a church council), and all committee meetings.

Who records the minutes?

Every nonprofit corporation is required to have a corporate secretary by the state nonprofit corporation statute (“Statute”). While the Statute allows churches to substitute a different name, the duties of the office of secretary in a church must equal or exceed the duties contained in the Statute. In some churches, the office is called "Church Clerk" or other similar terminology. Non-church organizations should use the term “secretary.”

Once the organization has determined the minimum duties of the office of secretary from the Statute, one must also examine the organization's bylaws. The bylaws may add additional duties and/or provide details about how the secretary is to perform his/her duties.

The corporate secretary must record and keep minutes from all corporate meetings. Usually the bylaws also require the corporate secretary to record minutes from board and committee meetings.

The bylaws may authorize others to record minutes if the secretary is unavailable or unwilling to record the minutes. In many cases, the bylaws will authorize the appointment of assistant secretaries to record the minutes. Sometimes the bylaws will authorize the board to appoint a secretary that is separate from the corporate secretary to record its minutes. Frequently

the bylaws will authorize the presiding officer of the meeting to appoint a secretary for recording of the minutes at that particular meeting. In all cases, the recording secretary should turn over the meeting minutes to the corporate secretary after the completion of any corporate meeting.

Calling a Meeting

Every meeting must be called by one authorized to call the meeting under the Statute and the bylaws. Frequently, the bylaws define who is authorized to call a meeting. The type of meeting also determines who is entitled to call a meeting. Regular meetings may be scheduled by a provision in the bylaws. Special meetings usually require some organization officer or a minimum number of members to call the meeting. For example, for a church member meeting, the bylaws may state a regular meeting time, such as the third Wednesday of each month. To continue the example, the bylaws may provide that only the Senior Pastor may call special meetings.

A person authorized to call a meeting must tell the corporate secretary to provide notice of the meeting. It is the secretary's responsibility to provide the proper notice. A proper notice will include the date, time and place of the meeting. If the meeting is a specially called meeting, the notice must usually contain the subject matter of the meeting, and only those matters listed in the notice may be brought up and voted on at meeting. Under the Statute, many states also require a notice to contain special information if certain items are on the agenda of even a regular meeting. For example, many Statutes require the notice to contain the actual proposed amendments to the bylaws in the notice. The secretary should check the applicable Statute every time an unusual topic arises in the agenda.

The secretary must provide every person eligible to attend a meeting with notice of the meeting. If one person eligible to attend the meeting does not receive notice, that person may have the right to have a court void the actions taken at that meeting. As a result, the meeting minutes should include a copy of the actual notice given to each person who was eligible to attend the meeting, along with a list of those receiving notice.

To determine what constitutes a valid notice for a meeting, the secretary must first review the requirements for notice that is contained in the Statute. The Statute contains requirements for the minimum notice that participants must receive. Next, the secretary must review the notice requirements contained in the church's bylaws. If the notice requirement contained in the bylaws exceeds the notice requirements from the Statute, the secretary must follow the bylaws. Conversely, if the notice requirement from the Statute exceeds those contained in the bylaws, the secretary must follow the Statute.

Most Statutes allow for different notice requirement for church member meetings. If the bylaws authorize it, the church may provide notice of member meetings by providing announcements of the meeting at least two Sundays before the date of the meeting. If the bylaws authorize this form of notice to the members, the church secretary must secure a copy of the announcement to be attached to the minutes. If the announcement was oral, the secretary must secure a copy of the audio file containing the announcement on a CD or tape. The CD or tape is then attached to the meeting minutes.

Some Statutes authorize meeting notices to be given by e-mail if the bylaws authorize that type of notice. If an organization utilizes e-mail to notify participants of a meeting, the church must send the e-mail in a form that requires the sender to be notified when the recipient receives and opens the e-mail. The secretary should retain copies of the notices he/she received when the e-mail is received and/or opened.

If the organization provides notice to members by mail, the secretary must retain a copy of the document that was mailed and the mailing list. Both will be attached to the minutes to prove that proper notice was given.

What should the minutes is contain?

The minutes should contain everything that would be necessary to prove that the decisions were made at a properly called and noticed meeting, along with the action taken. At a minimum, the minutes should contain:

1. Date, time and place of the meeting.
2. Who called the meeting.
3. A copy of the notice given to the meeting participants.
4. A description of those entitled to vote at the meeting.
5. The names of all who attended (both members and guests).
6. The secretary's affirmation that a quorum exists, including the number of voters present (in person or by proxy, if permitted) at the meeting and the total number of voters entitled to vote.
7. The presiding officer's call to order.
8. Approval of the last meeting minutes (as modified, if necessary).
9. The exact resolutions presented, plus any amendments.
10. The name of the member introducing the resolution and any second provided the resolution.
11. The exact vote on each resolution that was considered (as modified, if applicable).
12. The names of all nominees for elected offices.
13. The exact vote in each election for office.
14. A copy of any written reports that were received at the meeting.
15. If an oral report was received without a written report, a brief summary of the oral report.
16. Adjournment, including time adjourned and/or time for reconvening the meeting.

What should the minutes not contain?

The minutes should not contain any discussions between members regarding matters placed before them. Stated another way, the minutes should not contain any details about the deliberative process that preceded decisions. The minutes should not include executive sessions, though the minutes should reflect that the members went into and out of executive session. An executive session is a part of a meeting where all guests (except attorneys and advisers as needed for the discussion) are excluded from the room so that the qualified participants may have frank and open discussions about the topic. The contents of the executive session discussion should be kept private and should not be discussed outside the executive session. No decisions should be made while in executive session. Executive sessions should be used for discussion about personnel, legal issues, and potential liability issues that have arisen.

The minutes should not contain any discussions with attorneys, CPAs, and insurance adjusters that may be privileged. As a side note, minutes should include decisions made as a result of the discussion with attorneys, CPAs and adjusters.

Conclusion

Minutes matter. From this article, it may only take a minute to see where your minutes are lacking. Your minutes are a record of the history of your organization, and often play an important role in future events. Care should be taken to maintain accurate minutes of every meeting of your organization. These considerations and “minute essentials” outline from this article should assist any organization to become better equipped to comply with Statutory and bylaws authorities.

**SAMPLE BYLAWS OF
ABC CHARITY**

These Bylaws (referred to as the “Bylaws”) govern the affairs of ABC Charity, a nonprofit corporation (referred to as the “Corporation”) organized under the Texas Organizations Code, Chapter 22, (referred to as the “Act”).

**ARTICLE 1
OFFICES**

1.01. Principal Office. The principal office of the Corporation in the State of Texas shall be located at _____, Texas _____. The Board of Directors may change the location of any office of the Corporation.

1.02. Registered Office and Registered Agent. The Corporation shall comply with the requirements of the Act and maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation’s principal office in Texas. The Board of Directors may change the registered office and the registered agent as provided in the Act.

**ARTICLE 2
NONPROFIT PURPOSES**

2.01. Tax Exemption. This Corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter the “Code”), including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code. Specifically, but not by limitation, the Corporation’s charitable purposes include, but are not limited to, _____.

**ARTICLE 3
MEMBERS AND DIRECTORS**

3.01. Members. The Corporation shall have no members with voting rights as the term “members” is used in the Act.

3.02. Management. The Board of Directors shall manage the affairs of the Corporation.

3.03. Number, Qualifications, and Tenure of Directors. The powers of the Corporation shall be exercised by or under the authority of, and the property, business, and affairs of the Corporation shall be managed under the direction of a board of not less than three (3) and not more than eleven (11) Directors, as may be determined by the Board of Directors from time to time, provided that the number of Directors shall not be decreased to less than three (3) and that no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. The president and each officer shall be a director and count towards the minimum and maximum number allowed under this provision. Each director shall serve for a

term of one (1) year and their election may be staggered in any manner determined by the Board so that, for example, one-third of the directors may be elected each year. No current employee may serve as a director.

3.04. Nomination of Directors. The directors may nominate the successor directors. At any meeting at which the election of a director occurs a director may nominate a person with the second of any other director. In addition to nominations made at meetings, a nominating committee may consider nominees brought by directors.

3.05. Election of Directors. A person who meets any qualification requirements to be a director and who has been duly nominated may be elected as a director. Directors shall be elected by a majority vote of the then existing Board of Directors at the annual meeting of the Board of Directors.

3.06. Vacancies. Vacancies on the Board of Directors shall exist upon: (a) the death, resignation, or removal of any Director; (b) an increase in the authorized number of Directors; or (c) the failure of the Directors to elect the full authorized number of Directors to be voted for at any annual, regular, or special meeting of the Board of Directors at which any Director is to be elected. The Board of Directors may declare the office of a Director vacant if a court adjudges the Director incompetent, if he is convicted of a crime involving moral turpitude, or if he does not accept the office of Director, in writing or by attending a meeting of the Board of Directors, within thirty (30) days notice of election. Any vacancy occurring in the Board of Directors, and any director position to be filled due to an increase in the number of directors, shall be filled by the Board of Directors (subject, however, to the limitations set forth in the Act). A vacancy is filled by the affirmative vote of a majority of the remaining directors, even if it is less than a quorum of the Board of Directors, or if it is a sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of the predecessor in office. Vacancies reducing the number of Directors to less than three (3) shall be filled before the transaction of any other business.

3.07. Annual Meeting. The annual meeting of the Directors shall be held on or before December 31 in the registered office of the Corporation, unless the Board notifies the Directors otherwise. Notice of the annual meeting of the Board of Directors is required at least ten (10) and no more than thirty (30) days in advance of the meeting. Such notice may be in writing, by e-mail, or other reasonable means.

3.08. Regular Meeting. The Board of Directors may provide for regular, quarterly meetings by resolution stating the time and place of such meetings. The meetings shall be held in the registered office of the Corporation, unless the Board of Directors notifies the directors otherwise.

3.09. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the president or any two Directors. A person or persons authorized to call special meetings of the Board of Directors may fix any place within _____ County, Texas, unless a majority of the Board of Directors consents otherwise, in writing. The person or persons calling a special meeting shall notify the Secretary of the information required to be

included in the notice of the meeting. The secretary shall give notice to the Directors as required in the Bylaws.

3.10. Action by Consent of Board Without Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, and with the same force and effect as a unanimous vote of Directors, if all members of the Board consent in writing or by electronic mail to the action. Such consent may be given individually or collectively.

3.11. Notice. Written or printed notice of any special meeting of the Board of Directors shall be delivered to each director not less than ten (10) nor more than thirty (30) days before the date of the meeting. The notice shall state the place, day, and time of the meeting, who called the meeting, and the purpose or purposes for which the meeting is called.

3.12. Quorum. A majority of the number of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The Directors present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough Directors leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of Directors required to constitute a quorum.

3.13. Conduct of Meetings. At every meeting of the Board of Directors, the president of the Corporation shall preside, and if not, the vice president. The secretary of the Corporation shall act as secretary of the Board of Directors. When the secretary is absent from any meeting, the president, or the person presiding, may appoint any person to act as secretary of the meeting.

3.14. Powers of Board of Directors. In addition to the powers and authorities expressly conferred by these Bylaws upon them, the Board may exercise all such powers of the Corporation and do all such lawful acts and things as are not directed or required to be exercised or done by statute, the Articles of Formation, or these Bylaws.

3.15. Duties of Directors. Directors shall discharge their duties, including any duties as committee members, in good faith, with ordinary care, and in a manner they reasonably believe to be in the best interest of the Corporation. Ordinary care is care that ordinarily prudent persons in similar positions would exercise under similar circumstances. In the discharge of any duty imposed or power conferred on Directors, they may in good faith rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by a variety of persons, including officers and employees of the Corporation, professional advisors or experts such as accountants or attorneys. A Director is not relying in good faith if the Director has knowledge concerning a matter in question that renders reliance unwarranted.

Directors are not deemed to have the duties of trustees of a trust with respect to the Corporation or with respect to any property held or administered by the Corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

3.16. Duty to Avoid Improper Distributions. Directors who vote for or assent to improper distributions, are jointly and severally liable to the Corporation for the value of improperly distributed assets, to the extent that debts, obligations, and liabilities of the Corporation are not thereafter paid and discharged. Any distribution made when the Corporation is insolvent, other than in payment of corporate debts, or any distribution that would render the Corporation insolvent is an improper distribution. A distribution made during liquidation without payment and discharge of or provision for all known debts, obligations, and liabilities, is also improper. Directors participating in a Board meeting at which the improper action is taken are presumed to have assented, unless they dissent in writing. The written dissent must be filed with the Secretary before adjournment or mailed to the Secretary by registered mail or email immediately after adjournment.

A Director is not liable if, in voting for or assenting to a distribution, the Director (1) relies in good faith and with ordinary care on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more officers or employees of the Corporation; legal counsel, public accountants, or other persons as to matters the Director reasonably believes are within the person's professional or expert competence; or a committee of the Board of Directors of which the Director is not a member; (2) while acting in good faith and with ordinary care, considers the assets of the Corporation to be at least that of their book value; or (3) in determining whether the Corporation made adequate provision for payment, satisfaction, or discharge of all of its liabilities and obligations, relied in good faith and with ordinary care on financial statements or other information concerning a person who was or became contractually obligated to satisfy or discharge some or all of these liabilities or obligations. Furthermore, Directors are protected from liability if, in the exercise of ordinary care, they acted in good faith and in reliance on the written opinion of an attorney for the Corporation.

Directors who are held liable for an improper distribution are entitled to contribution from persons who accepted or received the improper distributions knowing they were improper. Contribution is in proportion to the amount received by each such person.

3.17. Delegation of Duties. Directors are entitled to select advisors and delegate duties and responsibilities to them, such as the full power and authority to purchase or otherwise acquire stocks, bonds, securities, and other investments on behalf of the Corporation; and to sell, transfer, or otherwise dispose of the Corporation's assets and properties at a time and for a consideration that the advisor deems appropriate. The Directors have no liability for actions taken or omitted by the advisor if the Board of Directors acts in good faith and with ordinary care in selecting the advisor. The Board of Directors may remove or replace the advisor, with or without cause.

3.18. Actions of Board of Directors. The Board of Directors shall try to act by consensus. However, the vote of a majority of Directors present and voting at a meeting at which a quorum is present shall be sufficient to constitute the act of the Board of Directors unless the act of a greater number is required by law or the Bylaws. A Director who is present at a meeting and abstains from a vote is considered to be present and voting for the purpose of determining the decision of the Board of Directors.

3.19. Proxies. A Director may vote by proxy executed in writing by the Director. No proxy shall be valid after three (3) months from the date of its execution.

3.20. Compensation. Directors may not receive salaries for their services as a Director. A Director may serve the Corporation in any other capacity and receive compensation for those services. A Director may be reimbursed expenses incurred by him to attend a Corporation's meeting.

3.21. Removal of Directors. The Board of Directors may vote to remove a Director at any time, with or without good cause. A meeting to consider the removal of a Director may be called with notice to the Board members. The notice of the meeting shall state that the issue of possible removal of the Director will be on the agenda. A Director may be removed by the affirmative vote of a majority of the Board of Directors.

3.22. Advisory Directors. The Board of Directors may elect advisory and/or honorary directors as they see fit. The Advisory and/or Honorary Directors shall have not have a vote, but may attend all Board of Directors meetings and participate in the discussion like the regular directors.

ARTICLE 4 OFFICERS

4.01. Officer Positions. The officers of the Corporation shall be a president, a secretary, a treasurer and one vice president. The Board of Directors may create additional officer positions, define the authority and duties of each such position, and elect or appoint persons to fill the positions. The same person may hold any two or more offices, except the offices of president and secretary shall not be held by the same person.

4.02. General Duties. All officers and agents of the Corporation, as between themselves and the Corporation, shall have such authority, perform such duties, and manage the Corporation as may be provided in these Bylaws or as may be determined by resolution of the Board of Directors not inconsistent with these Bylaws.

4.03. Election and Term of Office. The Board of Directors at its regular annual meeting shall elect the officers of the Corporation. If the election of officers is not held at this meeting, the election shall be held as soon thereafter as conveniently possible. Each officer shall hold office until a successor is duly selected and qualified. An officer may be elected to succeed himself or herself in the same office.

4.04. Removal. The Board of Directors, with or without good cause, may remove any officer elected or appointed by the Board of Directors. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer.

4.05. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Such resignation shall take effect at the time

specified in the notice, and, unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

4.06. Vacancies. The Board of Directors may fill the vacancy in any office for the unexpired portion of that officer's term.

4.07. President. The president shall be the chief executive officer of the Corporation and a member of the Board of Directors. The president shall supervise and control all of the business and affairs of the Corporation. The president shall preside at all meetings of the Board of Directors. The president may execute any deeds, mortgages, bonds, contracts, or other instruments that the Board of Directors has authorized to be executed. However, the president may not execute instruments on behalf of the Corporation if this power is expressly delegated to another officer or agent of the Corporation by the Board of Directors, the Bylaws, or statute. The president shall perform other duties prescribed by the Board of Directors and all duties incident to the office of president.

4.08. Vice President. When the president is absent, is unable to act, or refuses to act, a vice president may perform the duties of the president. When a vice president acts in place of the president, the vice president shall have all the powers of and be subject to all the restrictions upon the president. If there is more than one vice president, the vice presidents shall act in place of the president in the order of the votes received when elected. A vice president shall perform other duties as assigned by the president or Board of Directors.

4.09. Treasurer. The treasurer shall:

- (a) Have charge and custody of and be responsible for all funds and securities of the Corporation.
- (b) Receive and give receipts for moneys due and payable to the Corporation from any source.
- (c) Deposit all moneys in the name of the Corporation in banks, trust companies, or other depositories as provided in the Bylaws or as directed by the Board of Directors or the president.
- (d) Write checks and disburse funds to discharge obligations of the Corporation.
- (e) Maintain the financial books and records of the Corporation.
- (f) Prepare financial reports at least annually.
- (g) Perform other duties as assigned by the president or by the Board of Directors.
- (h) If required by the Board of Directors, give a bond for the faithful discharge of his or her duties in a sum and with a surety as determined by the Board of Directors.

- (i) Perform all the duties incident to the office of treasurer.

4.10. Secretary. The secretary shall:

- (a) Give all notices as provided in the Bylaws or as required by law.
- (b) Take minutes of the meetings of the Board of Directors and keep the minutes as part of the corporate records.
- (c) Maintain custody of the corporate records and of the seal of the Corporation.
- (d) Affix the seal, if any, of the Corporation to all documents as authorized.
- (e) Keep a register of the mailing address of each Director, officer, and employee of the Corporation.
- (f) Perform duties as assigned by the president or by the Board of Directors.
- (g) Perform all duties incident to the office of secretary.

4.11. Assistant Officers. The Board of Directors may appoint one or more assistant secretaries and one or more assistant treasurers. Each assistant secretary and each assistant treasurer shall hold office for such period as the Board of Directors may prescribe. Any assistant secretary may perform any of the duties or exercise any of the powers of the secretary or otherwise as occasion may require in the administration of the business and affairs of the Corporation, and any assistant treasurer may perform any of the duties or exercise any of the powers of the treasurer at the request or in the absence or disability of the treasurer or otherwise as occasion may require in the administration of the business and affairs of the Corporation. Each assistant secretary and each assistant treasurer shall perform such other duties and/or exercise such other powers, if any, as the Board of Directors shall prescribe. To establish the authority of an assistant secretary or an assistant treasurer to take any action on behalf of the Corporation in place of the secretary or the treasurer, as the case may be, it shall not be necessary to furnish proof of any request by, or of the absence or disability of, the secretary or treasurer or any other assistant secretary or assistant treasurer, respectively.

4.12. Disallowed Payments. Any payments made to an officer of the Corporation, such as a expense reimbursement incurred by the officer, which is disallowed in whole or in part as an acceptable expense by the Internal Revenue Service (“IRS”), shall be reimbursed by such officer to the Corporation to the full extent of such disallowance. It shall be the duty of the Directors, as a Board, to enforce payment of each such amount disallowed.

ARTICLE 5 COMMITTEES

5.01. Establishment of Committees. The Board of Directors may adopt a resolution establishing one or more committees delegating specified authority to a committee, and appointing or removing members of a committee. A committee shall include two or more Directors and may include persons who are not Directors. If the Board of Directors delegates any of its authority to a committee, the majority of the committee shall consist of Directors. The Board of Directors may establish qualifications for membership on a committee. The Board of Directors may delegate to the president its power to appoint and remove members of a committee that has not been delegated any authority of the Board of Directors. The establishment of a committee or the delegation of authority to it shall not relieve the Board of Directors, or any individual Director, of any responsibility imposed by the Bylaws or otherwise imposed by law. No committee shall have the authority of the Board of Directors to:

- (a) Amend the Certificate of Formation;
- (b) Adopt a plan of merger or a plan of consolidation with another corporation;
- (c) Authorize the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Corporation;
- (d) Authorize the voluntary dissolution of the Corporation;
- (e) Revoke proceedings for the voluntary dissolution of the Corporation;
- (f) Adopt a plan for the distribution of the assets of the Corporation;
- (g) Amend, alter, or repeal the Bylaws;
- (h) Elect, appoint, or remove a member of a committee or a Director or officer of the Corporation;
- (i) Approve any transaction to which the Corporation is a party and that involves a potential conflict of interest as defined in paragraph 6.05, below; and
- (j) Take any action outside the scope of authority delegated to it by the Board of Directors.

5.02. Term of Office. Each member of a committee shall continue to serve on the committee until a successor is appointed or the committee is terminated. However, the term of a committee member may terminate earlier if the member dies, ceases to qualify, resigns, or is removed as a member. A vacancy on a committee may be filled by an appointment made in the same manner as an original appointment. A person appointed to fill a vacancy on a committee shall serve for the unexpired portion of the terminated committee member's term.

5.03. Chair and Vice-Chair. One member of each committee shall be designated as the chair of the committee and another member of each committee shall be designated as the vice-chair. The chair and vice-chair shall be elected by the members of the committee or appointed by the President of the Corporation. The chair shall call and preside at all meetings of the committee. When the chair is absent, is unable to act, or refuses to act, the vice-chair shall perform the duties of the chair. When a vice-chair acts in place of the chair, the vice-chair shall have all the powers of and be subject to all the restrictions upon the chair.

5.04. Notice of Meetings. Written or printed notice of a committee meeting shall be delivered to each member of a committee not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice shall state the place, day, and time of the meeting, and the purpose or purposes for which the meeting is called.

5.05. Quorum. One half of the number of members of a committee shall constitute a quorum for the transaction of business at any meeting of the committee. The committee members present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough committee members leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of committee members required to constitute a quorum. If a quorum is present at no time during a meeting, the chair may adjourn and reconvene the meeting one time without further notice.

5.06. Actions of Committees. Committees shall try to take action by consensus. However, the vote of a majority of committee members present and voting at a meeting at which a quorum is present shall be sufficient to constitute the act of the committee unless the act of a greater number is required by law or the Bylaws. A committee member who is present at a meeting and abstains from a vote is considered to be present and voting for the purpose of determining the act of the committee.

5.07. Proxies. A committee member may vote by proxy executed in writing by the committee member. No proxy shall be valid after eleven (11) months from the date of its execution.

5.08. Compensation. Committee members may not receive salaries for their services as committee members. The Board of Directors may adopt a resolution providing for payment to committee members of expenses of attendance, if any, for attendance at each meeting of the committee.

5.09 Rules. Each committee may adopt rules for its own operation not inconsistent with the Bylaws or with rules adopted by the Board of Directors.

ARTICLE 6
TRANSACTIONS OF THE CORPORATION

6.01. Contracts. The Board of Directors may authorize any officer or agent of the Corporation to enter into a contract or execute and deliver any instrument in the name of and on behalf of the Corporation. The President and the Secretary may execute contract with a total value of \$5,000 or less without further Board approval. This authority may be limited to a specific contract or instrument or it may extend to any number and type of possible contracts and instruments.

6.02. Deposits. All funds of the Corporation shall be deposited to the credit of the Corporation in banks, trust companies, or other depositories that the Board of Directors selects.

6.03. Gifts. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Corporation.

6.04. Loans and Related Parties. The Corporation shall not make any loan to a Director or officer of the Corporation.

6.05. Affiliated Transactions. No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership or association or other organization in which one or more of its Directors or officers are Directors or officers, or have a financial interest, shall be void or voidable solely for this reason, if:

- (a) The material facts concerning the financial interests are disclosed to the Board of Directors or committee and the Board of Directors or committee authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors or committee members;
- (b) The contract or transaction is fair to the Corporation at the time of the approval. Nothing herein shall prevent retroactive approval of a transaction; or
- (c) The interested Director or committee member that is present may be counted towards a quorum for purposes of voting on the contract or transaction. The interested Director or committee member may participate in the discussion of the matter, but may not vote;

6.06. Prohibited Acts. As long as the Corporation is in existence, and except with the prior approval of the Board of Directors no Director, officer, or committee member of the Corporation shall:

- (a) Do any act in violation of the Bylaws or a binding obligation of the Corporation.
- (b) Do any act with the intention of harming the Corporation or any of its operations.

- (c) Do any act that would make it impossible or unnecessarily difficult to carry on the intended or ordinary business of the Corporation.
- (d) Receive an improper personal benefit from the operation of the Corporation.
- (e) Use the assets of this Corporation, directly or indirectly, for any purpose other than carrying on the business of this Corporation.
- (f) Wrongfully transfer or dispose of Corporation property, including intangible property such as good will.
- (g) Use the name of the Corporation (or any substantially similar name) or any trademark or trade name adopted by the Corporation, except on behalf of the Corporation in the ordinary course of the Corporation's business.
- (h) Disclose any of the Corporation business practices, trade secrets, or any other information not generally known to the business community to any person not authorized to receive it.

ARTICLE 7 BOOKS AND RECORDS

7.01. Required Books and Records. The Corporation shall keep correct and complete books and records of account. The Corporation's books and records shall include:

- (a) A file-endorsed copy of all documents filed with the Texas Secretary of State relating to the Corporation, including, but not limited to, the Articles of Formation, and any articles of amendment, restated articles, articles of merger, articles of consolidation, and statement of change of registered office or registered agent.
- (b) A copy of the Bylaws, and any amended versions or amendments to the Bylaws.
- (c) Minutes of the proceedings of the Board of Directors, and committees having any of the authority of the Board of Directors.
- (d) A list of the names and addresses of the Directors, officers, and any committee members of the Corporation.
- (e) A financial statement showing the assets, liabilities, and net worth of the Corporation at the end of the three most recent fiscal years.
- (f) A financial statement showing the income and expenses of the Corporation for the most recent fiscal years.

(g) All rulings, letters, and other documents relating to the Corporation's federal, state, and local tax status.

(h) The Corporation's federal, state, and local information or income tax returns for each of the Corporation's three most recent tax years.

7.02. **Inspection and Copying.** Only Directors or officers of the Corporation may, as provided below, inspect and receive copies of books and records of the Corporation required to be kept by the Bylaws. No member (as that term is defined and used in the Act), if any exist, may inspect or copy any of the Corporation's books and records. A Director or officer may inspect or receive copies if the person has a proper purpose related to the person's interest in the Corporation and if the person submits a request in writing stating the proper purpose. Only books and records relevant to the proper purpose may be inspected or copied. As a condition precedent to any inspection or copying, the Corporation may require or request that the person to execute a Nondisclosure or Confidentiality Agreement relating to the nondisclosure of the books and records inspected or copied as appropriate under applicable law. A person entitled to inspect the Corporation's books and records may do so at a reasonable time no later than required by Internal Revenue Regulation after the Corporation's receipt of a proper written request. The Board of Directors may establish reasonable fees for copying the Corporation's books and records. The fees may cover the cost of materials and labor, but may not exceed the Internal Revenue Service guidelines for providing copies. The Internal Revenue Service requires that copies to be made available to the legitimate, requesting public. The Corporation shall receive and respond as required by Internal Revenue Service guidelines to requests from the public for copies of the Corporations Form 1023 and Form 990. The Corporation shall maintain a file containing all documents required by the Internal Revenue Service to be made available to the public.

ARTICLE 8 FISCAL YEAR

The fiscal year of the Corporation shall begin on July 1st and end June 30th of each year.

ARTICLE 9 INDEMNIFICATION

9.01. **When Indemnification is Required, Permitted, and Prohibited.**

(a) The Corporation shall indemnify a director, officer, committee member, employee, or agent of the Corporation who was, is, or may be named defendant or respondent in any proceeding as a result of his or her actions or omissions within the scope of his or her official capacity in the Corporation, and such indemnification shall be to the maximum extent allowed by the Act or other applicable law. For the purposes of this article, an agent includes one who is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise. However, the Corporation shall indemnify a person only if he or she acted in good faith and reasonably believed that the conduct was in the Corporation's best interests. In a case of a criminal

proceeding, the person may be indemnified only if he or she had no reasonable cause to believe that the conduct was unlawful. The Corporation shall not indemnify a person who is found liable to the Corporation or is found liable to another on the basis of improperly receiving a personal benefit. A person is conclusively considered to have been found liable in relation to any claim, issue, or matter if a court of competent jurisdiction has adjudged the person liable and all appeals have been exhausted.

(b) The termination of a proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent does not necessarily preclude indemnification by the Corporation.

(c) The Corporation shall pay or reimburse expenses incurred by a Director, officer, committee member, employee, or agent of the Corporation in connection with the person's appearance as a witness or other participation in a proceeding involving or affecting the Corporation when the person is not a named defendant or respondent in the proceeding.

(d) In addition to the situations otherwise described in this paragraph, the Corporation may indemnify a Director, officer, committee member, employee, or agent of the Corporation to the extent permitted by law. However, the Corporation shall not indemnify any person in any situation in which indemnification is prohibited by the terms of paragraph 9.01(a), above.

(e) Before the final disposition of a proceeding, the Corporation may pay indemnification expenses permitted by the Bylaws and authorized by the Corporation. However, the Corporation shall not pay indemnification expenses to a person before the final disposition of a proceeding if: the person is a named defendant or respondent in a proceeding brought by the Corporation or the person is alleged to have improperly received a personal benefit or committed other willful or intentional misconduct.

(f) If the Corporation may indemnify a person under the Bylaws, the person may be indemnified against judgments, penalties, including excise and similar taxes, fines, settlements, and reasonable expenses (including attorney's fees) actually incurred in connection with the proceeding. However, if the proceeding was brought by or on behalf of the Corporation, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

9.02. Procedures Relating to Indemnification Payments.

(a) Before the Corporation may pay any indemnification expenses (including attorney's fees), the Corporation shall specifically determine that indemnification is permissible, authorize indemnification, and determine that expenses to be reimbursed are reasonable, except as provided in paragraph 9.02(c), below. The Corporation may make these determinations and decisions by any one of the following procedures:

(i) Majority vote of a quorum consisting of Directors who, at the time of the vote, are not named defendants or respondents in the proceeding.

(ii) If such a quorum cannot be obtained, by a majority vote of the Board of Directors, designated to act in the matter by a majority vote of all Directors, consisting solely of two or more Directors who at the time of the vote are not named defendants or respondents in the proceeding.

(iii) Determination by special legal counsel selected by the Board of Directors by vote as provided in paragraph 9.02(a)(i) or 9.02(a)(ii), or if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all Directors.

(b) The Corporation shall authorize indemnification and determine that expenses to be reimbursed are reasonable in the same manner that it determines whether indemnification is permissible. If the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination of reasonableness of expenses shall be made in the manner specified by paragraph 9.02(a)(iii), above, governing the selection of special legal counsel. A provision contained in the Articles of Incorporation, the Bylaws or the Board of Directors that requires the indemnification permitted by paragraph 9.01, above, constitutes sufficient authorization of indemnification even though the provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

(c) The Corporation shall pay indemnification expenses before final disposition of a proceeding only after the Corporation determines that the facts then known would not preclude indemnification and the Corporation receives a written affirmation and undertaking from the person to be indemnified. The determination that the facts then known to those making the determination would not preclude indemnification and authorization of payment shall be made in the same manner as a determination that indemnification is permissible under paragraph 9.02(a), above. The person's written affirmation shall state that he or she has met the standard of conduct necessary for indemnification under the Bylaws. The written undertaking shall provide for repayment of the amount paid or reimbursed by the Corporation if it is ultimately determined that the person has not met the requirements for indemnification. The undertaking shall be an unlimited general obligation of the person, but it need not be secured and it may be accepted without reference to financial ability to make repayment.

ARTICLE 10 NOTICES

10.01. Notices. Any notice required or permitted by the Bylaws to be given to a Director, officer, or member of a committee of the Corporation may be given by electronic mail (e-mail) and in any other manner allowed by the Act. If mailed, a notice shall be deemed to be delivered when deposited in the United States mail addressed to the person at his or her address as it appears on the records of the Corporation, with postage prepaid and in a sealed wrapper. If

notice is served by facsimile or email, the person giving notice shall retain records sufficient to prove actual delivery to the appropriate number or email address. A person may designate his or her preferred notice method and shall provide all necessary information regarding the same by giving written notice to the Secretary of the Corporation. Without a preference designation, the person serving the notice shall give notice by mail.

10.02. Signed Waiver of Notice. Whenever any notice is required to be given under the provisions of the Act or under the provisions of the Certificate of Formation or the Bylaws, a waiver in writing signed by a person entitled to receive a notice shall be deemed equivalent to the giving of the notice. A waiver of notice shall be effective whether signed before or after the time stated in the notice being waived.

10.03. Waiver of Notice by Attendance. The attendance of a person at a meeting shall constitute a waiver of notice of the meeting unless the person attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE 11 SPECIAL PROCEDURES CONCERNING MEETINGS

11.01. Meeting by Electronic Means. The Board of Directors, and any committee of the Corporation, may hold a meeting by telephone conference call or other electronic means in which all persons participating in the meeting can hear each other. The notice of a meeting by electronic means conference must state the fact that the meeting will be held by electronic means as well as all other matters required to be included in the notice. Participation of a person in a conference call meeting constitutes presence of that person at the meeting.

11.02. Voting by Proxy. A person who is authorized to exercise a proxy may not exercise the proxy unless the proxy is delivered to the officer presiding at the meeting before the business of the meeting begins. The Secretary or other person taking the minutes of the meeting shall record in the minutes the name of the person who executed the proxy and the name of the person authorized to exercise the proxy. If a person who has duly executed a proxy personally attends a meeting, the proxy shall not be effective for that meeting. A proxy filed with the secretary or other designated officer shall remain in force and effect until the first of the following occurs:

- (a) An instrument revoking the proxy is delivered to the secretary or other designated officer.
- (b) The proxy authority expires under the terms of the proxy.
- (c) The proxy authority expires under the terms of the Bylaws.

**ARTICLE 12
AMENDMENTS TO BYLAWS**

The Board of Directors may alter, amend, or repeal, or enact new Bylaws. The notice of any meeting at which the Bylaws are altered, amended, or repealed, or at which new Bylaws are adopted shall include the text of the proposed Bylaw provisions as well as the text of any existing provisions proposed to be altered, amended, or repealed. Alternatively, the notice may include a fair summary of those provisions.

**ARTICLE 13
MISCELLANEOUS PROVISIONS**

13.01. Legal Authorities Governing Construction of Bylaws. The Bylaws shall be construed in accordance with the laws of the State of Texas. All references in the Bylaws to statutes, regulations, or other sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time.

13.02. Legal Construction. If any Bylaw provision is held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision and the Bylaws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in the Bylaws.

13.03. Headings. The headings used in the Bylaws are used for convenience and shall not be considered in construing the terms of the Bylaws.

13.04. Gender. Wherever the context requires, all words in the Bylaws in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

13.05. Seal. The Board of Directors may provide for a corporate seal.

13.06. Power of Attorney. A person may execute any instrument related to the Corporation by means of a power of attorney if an original executed copy of the power of attorney is provided to the Secretary of the Corporation to be kept with the Corporation records.

13.07. Parties Bound. The Bylaws shall be binding upon and inure to the benefit of the Directors, officers, committee members, employees, and agents of the Corporation and their respective heirs, executors, administrators, legal representatives, successors, and assigns except as otherwise provided in the Bylaws.

CERTIFICATE OF SECRETARY

I hereby certify that I am duly elected and acting Secretary of said corporation and that the foregoing Bylaws, comprised of sixteen (16) pages, constitute the Bylaws of said corporation as duly adopted by the Corporation at a meeting held on the ___ day of _____, 2015.

DATED: _____

[Signature]

[Typed Name]
Secretary of the Corporation

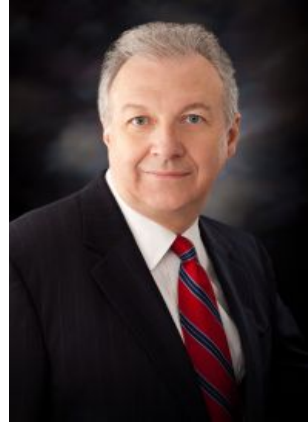
Frank Sommerville

Shareholder

Mr. Sommerville assists in a broad range of legal cases for nonprofit and religious organizations that encompass tax law, employment law and ERISA.

Mr. Sommerville is Board Certified in Tax Law by the Texas Board of Legal Specialization and holds a license as a Certified Public Accountant. He is a member of the American Bar Association. He is a frequent lecturer on nonprofit issues at the University of Texas Law School's Annual Nonprofit Organizations Conferences and the State Bar of Texas Governance of Nonprofit Organizations Courses, including acting as Chair for 2011. He regularly assists churches in preventing litigation, including those that originate with accusations of sexual misconduct.

Mr. Sommerville is a member of the American Bar Association (Litigation and Tax Sections, member of the Exempt Organizations Committee), The State Bar of Texas (Litigation and Tax Sections, 2002-2012: Chairman of the Nonprofit Corporation Subcommittee), Tarrant County Bar Association (Litigation and Tax Sections) and the TSCPA. He served on TSCPA's Texas Tax Institute Committee (Chairman in 2000) and on the Nonprofit Organizations Conference Committee (Chairman for 2009-2010). He was a member of the National Board of Directors for Christian Management Association ("CMA") from 1993 to 1999. He has spoken at numerous CMA national conventions since 1988. Due to his significant contributions to the church administration profession, he was inducted into the National Association for Church Business Administration Hall of Fame in 2003. In 2005, 2006 and 2007, The Church Report, a magazine serving larger churches, named Mr. Sommerville as one of the 50 most influential Christians in America. In 2011, the Evangelical Council for Financial Accountability (ECFA) named Mr.



Contact

FSommerville@wkpz.com

T: (817) 795-5046

F: (800)556-1829

Education

J. D. University of Houston Law Center, 1987

M.P.A. University of Texas at Arlington, 1984

B.S. Texas Wesleyan University, 1974

Community Involvement

- Served on various non-profit organizations' boards as Director, Chairman, Secretary and Treasurer
- Active volunteer with numerous organizations ranging from United Way - Houston, Center for Nonprofit Management (Dallas) and his local church.

Other

"AV" Peer-Review Rated by Martindale-Hubbell®

Contributing author to *PPC's Nonprofit Tax & Governance Guide: Helping Organizations Comply* (2011)

Mosley v. Commissioner, T.C. Memo 1994-457 (trial counsel)

Sommerville to its Panel of Legal Experts to assist Senator Grassley and ECFA's Commission for Accountability and Policy for Religious Organizations.

Admitted to Northern, Eastern, Western and Southern U.S. District Courts of Texas; U.S. Court of Appeals for the 5th Circuit, 8th Circuit and 9th Circuit; and United States Tax Court.

Representative Experience

Warren v. Commissioner, 302 F.3d 1012 (9th Cir. 2002)(oral argument and brief)
Alford v. United States, 116 F.3d 334 (8th Cir. 1997)(oral argument and brief)
United States v. Driscoll, 2006 U.S. Dist. LEXIS 33647 (E.D. Tenn. 2006) (expert witness)
Greene v. Commissioner, T.C. Memo 1996-531 (trial counsel)