

# Are You Represented?

by Erwin A. Young

ARE YOU REPRESENTED? ... A frequently asked question when the subject of By-laws is mentioned! Read on and you will agree the answer is "Yes." This article will explain the reasons for the changes, the history of ATOS organization structure, and the legal background which governed our course.

Thanks to a group of dedicated members who formed the By-laws Committees of ATOS, the three year long job of By-law revision is completed. At the meeting of the Board of Directors held July 25, 1973 in Portland, Oregon, the final draft of the proposed amendments was adopted by unanimous vote.

When A.T.O.E. was organized in 1955, Articles of Incorporation and By-laws were adopted to take care of the needs of the fledgling upstart. They were drafted at that time for the orderly operation of A.T.O.E. as it was at that time envisioned. As we grew, the By-laws were amended as it seemed appropriate to take care of changing conditions. As a result, and quite naturally, ambiguity and contradiction began to be evident. Further, corporate requirements were changed by federal and state law. Thus it soon became evident that a complete review and rewrite would be necessary to bring order and conformity *and* consistency to our "rules of conduct," so to speak.

In the beginning, for instance, chapters were organized on an informal basis. Today, many are incorporated separate entities, with others preparing to do the same. These actions are needed to provide a solid organization base for such projects as owning and installing theatre organs, sponsoring concerts, providing scholarships and other related activities. Corporate structure provides protection for the individual members from personal lia-



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bility and also provides an ensurable entity. All this is a highly desirable state of affairs!

However, while these actions solved some problems, they created others. A major one was the apparent creation of a federation where none in fact existed. In the concern for chapter representation, the By-laws had been amended to make Chapter Chairmen members of the ATOS Board of Directors, with right of proxy in the event they were unable to attend meetings. Unfortunately, this is contrary to the law. A member of a Board of Directors of a corporation in *any* state cannot have a proxy.

Recognizing that this fact would eliminate Chapter Chairmen as ex-officio members of the Board of Directors, a plan was devised that would establish a delegate body consisting of Chapter Chairmen and other chapter delegates as an official policy making body. This proposal was unanimously rejected by those chapters that responded to the suggestion as being too cumbersome and unnecessary.

ATOS is a member organization. It is not a Federation. In the latter form, an organization has as its members other *organizations*, such as Chapters, incorporated or not. It does not have individuals as members. A member organization has as its members the individuals or families of individuals as defined in our By-laws. Each member has certain rights, such as the right to vote, access to the records, etc. You cannot mix up the two! Under this form of corporate organization Chapters as organizations cannot be members. Therefore it was necessary to rewrite and clarify this concept once and for all. This has been done in our new By-laws.

There seems to be concern on the part of a few that Chapters do not now have representation. As *entities* they do *not* for the reasons stated above. However, *every member* of every chapter has representation as an individual and a vote to elect the eight directors. With this in mind, and with the rejection of the delegate body concept, it was still felt desirable to have some type of symposium for Chapter Officers in which official Chapter Policy could be expressed for the benefit of the Board of Directors. This concept was established to give recognition to the importance of Chapter activity on the local level, and to give credence to these organizations' needs, complaints, suggestions and the like. Therefore, while not necessary to so provide for in the By-laws, a meeting of chapter representatives will be held prior to the Board of Directors meeting at each Annual Convention. Chapter Chairmen together with other chapter representatives thus will meet for this purpose. The meeting will be attended by the members of the ATOS Board of Directors and will be chaired by the ATOS President. Resolutions emanating from



this meeting will be considered by the Board of Directors at their meeting which will follow immediately after adjournment of the Chapter Representatives meeting. With this plan, Chapters will have the same opportunity to be heard as before.

While it must be recognized that some of the members who also belong to some of our larger chapters may feel that they have been disenfranchised by the provisions for representation in the new By-laws, it must be remembered that nearly half of our members do not belong to chapters. Some states have barely enough members within their confines to form a chapter (it takes ten), let alone the ability to travel the distances that would be required for them all to meet as a Chapter. Thus, compromises must always be made in order to insure that

members far removed from other members, as well as those who live in close proximity, shall have a medium through which to communicate, to have fellowship and social activities on the mutually pleasing medium of the Theatre Organ, whether they are chapter members or not.

A new provision of the By-laws provides for a nominating committee whose duty it will be to present two nominees for each director to be elected in that year, *all within a definite time frame*. The main purpose of a nominating committee is to *insure* that there will be nominees for each position for whom the members may vote. Without this, it is possible that an organization could find itself unable to perpetuate itself. It further provides that no member who desires to be a nominee will be refused. Some sug-

gested that the country be broken up into areas from which a given number of nominees could be nominated, this to "insure local representation." This would have meant "quartering the country," a more complicated election proceeding, and the possibility of not providing the necessary eight nominees each year as now required. Further, this theory overlooks the fact that once elected, each and every director is a representative to each and every member. Provincialism, a dividing force, thus cannot flourish when nominees are selected from the entire nation and at random. I will state emphatically that every director must feel a distinct and clearly defined duty to be responsible to every member in the decision making process, based not on emotion, but on fact, debate and reason, irregardless of where he hap-

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## A Few Words from Our Attorney

by Charles A. Rummel  
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Charles A. Rummel

The first hope of a lawyer who is requested to represent a nationwide non-profit membership corporation is to discover that the individuals who are to benefit from the effort are reasonably equally dispersed throughout the area in which they are located, or better yet, that the various individuals belong to incorporated entities (chapters) which are themselves of nearly equal size and strength. It was evident that the above considerations, for well understood reasons, did not exist. Moreover, it was learned that there were many individuals, who, for many reasons, did not belong to any organized group (chapters) either by choice or because of geography, but who wished to be associated with ATOS, believing in its principles and purposes.

Having determined that ATOS was in fact an organization of individuals and family members, not equally dispersed throughout the 50 states and countries, five principal guidelines were followed in amending the bylaws to meet the conditions confronting those who were responsible for the changes which were to be made.

The first was to definitely limit

personal responsibility of individuals who voluntarily wished to belong to ATOS. The second was to provide a reasonably workable method of governing the organization and electing to the board of directors men who had the time, talent and funds to be board members of a national organization. The third was to do the overall task without disrupting the continuation of its operations, within the limitations of available funds and volunteer assistance. The fourth was to provide some reasonable procedure by which all of the members could have equal representation (one man — one vote), and to the extent of their interests and funds, could make their wishes known from time to time. The fifth was to insure that the organization had federal and state tax exemption and that donors to the organization would be sure that donations to the organizations were tax deductible.

The task was not easy nor was it quickly accomplished. Fortunately due to the understanding of the problem the changes have been made with a minimum of difficulty. All five of the objectives have been achieved. This does not mean that changes will not have to be made in the future because ATOS is a living, active organization of individuals. □



pens to live.

While we are at it, let's discuss and eliminate the inference that ATOS is a "California organization" without concern for other parts of the country, run by Californians, etc., etc., etc. Now, ATOS happens to be a California Corporation because it was started and is incorporated in California. Had it been organized elsewhere that memorable night in February, 1955, it could have been incorporated in another state. The point is, it has to be a corporation of one of the states. The fact that it is in California, versus, New York, Minnesota or elsewhere, is of no legitimate significance — it does not "belong" to California. It belongs to all the ATOS members everywhere! The same false charge could be made no matter which state it might be.

One of the suggestions the committee received was for a nationwide ATOS Scholarship to be established in the By-laws. This was not done, and for sound and basic reasons. First, should it have been determined that it was a workable idea, it would not need to be included in the By-laws. It could have been done by resolution of the Board of Directors. It was determined that it would have been an extremely difficult program to operate on a national basis. Questions asked that could not be satisfactorily answered included, "How could a meeting of nationwide Scholarship Committee be paid for?" "Who would pay the costs of the Scholarship applicants to attend selection committee and audition meetings?" "Would distance to travel, if cost were to be paid by applicants, eliminate some from competition?" "Inversely, how would committee members' expenses be paid if they were to attend selection auditions in various parts of the country?" "What advantages are there to a National Scholarship program that would be unavailable to Chapter Scholarship programs?" "Inversely, are there disadvantages to Chapter Scholarships that preclude a successful program?" The more this idea was researched, the more it became obvious that the advantages of Chapter Scholarship Programs far outweighed a National Scholarship program, including funding, expense control, auditions, award selectees, distances to travel, to mention nothing of the many, many problems that could result from a scholarship selection that a local group did not agree with. If time provides satis-

factory answers to these many questions, answers that might make a national scholarship program feasible, it can then be reconsidered by the Board of Directors and adopted by resolution.

Student Memberships have been a subject of discussion for some period of time. This, too, has been a difficult matter to resolve, so far as the By-laws are concerned. It would be rare, indeed, to receive a suggestion for By-law consideration that did not have some merit. In this case there is a lot of merit, but inherent are also many, many problems. This proposal included a provision for a reduced amount for dues. It also included a provision that a copy of "THEATRE ORGAN" be included with each student membership. The irrepressible problem of finances immediately comes into play, as well as the identical rights of all members to the same treatment on a reoccurring basis. A member could legitimately ask, "If a student gets the magazine for a reduced fee, why can't I?" The Honorary Member theory is also questionable in this regard, but is a different concept in that it is a one time thing and involves NO dues for only one year. In our attempt to resolve this, we turned to other organizations who had tried to work out an equitable plan toward the same objective. We found none that had been successful, and all of whom had finally rejected the plan as unworkable on a broad base. Again, it was found local units can better handle this proposal on a much more controlled and sound base. For these reasons, the proposal was not included in the By-law amendments at this time. But it would seem desirable to have a national committee appointed to work on this one item exclusively toward conceiving a plan which would be workable with a minimum of problems.

The By-law section relating to Chapters was removed in its entirety. This was shown to a matter better left out of the By-laws and handled by Board Resolution, and they adopted a resolution covering this item. The new regulations include most of the suggestions received from Chapters to provide a better relationship and a better understanding of these relationships by all parties. New procedures for handling grievances have been established and for adjudicating areas of jurisdiction.

Obviously, with the number of indi-

vidual members interested in the ATOS structure as determined by the Articles of Incorporation and the By-laws, it would be impossible to write these documents so that each and every member would find his ideas adopted. The very best that the committee and the Board of Directors could hope to do was to recommend and to adopt, respectively, the By-laws that would best provide for rules and provisions that meet the basic needs of a majority of our members. Those whose suggestions were not included, while they may feel frustrated, should recognize these facts; should recognize that the action was taken following long established legal processes which have been proved by time and experience.

There was yet another problem to resolve. In the attempt to provide Chapter participation in the Board of Directors, Chapter Chairmen were declared to be ex-officio "members" of the Board of Directors, with right of proxy. Such action, while founded with good intent, is contrary to law — the laws of any state. This is based in two concepts of corporate law. First, members of a Board of Directors of a corporation cannot have proxies — they, and they alone, are personally responsible for actions of the Board, being elected by the membership to their respective positions. If a proxy were permissible, the directors when called to answer for an action of the board, could say, "I'm not responsible — I wasn't there — my proxy voted this action which is being questioned!" Obviously, such a possibility is not reasonable. Hence the prohibition against a proxy. Directors only are accountable to the electorate. Second, as new chapters were formed, the ex-officio member provision meant that the new chairmen were also a member of the Board of Directors, thus increasing the number of members automatically. The law provides that the number of members of a Board of Directors, as stated in the bylaws, may be changed only by amending the bylaws and such action may only be taken by a meeting of the members of the corporation, duly called and noticed that such action is to be considered. While it is provided that the Board of Directors may amend other sections of the bylaws, after due and proper notice of such pending action, they cannot amend the article and section which states the