

A Letter from the ATOS Attorney . . .

LAW OFFICES
OF
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Mr. Richard R. Haight, President
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7209 Millcrest Terrace
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RE: Proposed Bylaws of American
Theatre Organ Society
1980 Revision as submitted
by the Ledwon Committee

Dear Mr. Haight,

You have asked me to comment on the above referred to Bylaws which, I understand, were recommended for adoption by one of the Directors of ATOS.

Before commenting on the subject Bylaws it is necessary to consider that the California State Legislature, the State and County Bar Associations and a special study committee from the Stanford Law School had been steadily at work on the revision of California non profit corporation laws for over a year. Up to the time of the study, almost any Bylaws were acceptable for use in California. Very little attention was given in many of the Bylaws to the rights of members.

As a result of great effort, the studied input of the above organizations and many more, the State Legislature enacted and the Governor signed into law the New Non Profit Corporation Law. It became effective on January 1, 1980. Radical changes were made by the new law. Attorneys were cautioned to break the news to their clients so that they would have the opportunity of being acquainted with the problems of "old Bylaws" which did not conform to the new law. Your Board of Directors was notified of the change on January 22, 1980.

Because of the expense involved your Directors were reluctant to immediately rush in and make changes in the Articles and the Bylaws.

The first step was to get an up to date set of your Articles. The result of this inquiry with the Secretary of State developed the disturbing information that through an error, the officers of the Los Angeles Theatre Organ Society, and/or its attorneys, had effectively removed the name of the American Theatre Organ Society from the records of the Secretary of State as well as the State Franchise Tax Board. When the error was discovered and the damage reviewed, every effort was made by the officers and the attorney for the Los Angeles Theatre Organ Society to correct their mistake. It was not, however, until October 27, 1980 that the damage was repaired. Needless to say my own efforts in assisting the attorney for the Los Angeles Theatre Organ Society, the State Franchise Tax Board and the Secretary of State occupied a considerable amount of my time at your expense.

It was in the above setting that the "proposed Bylaws" were developed, considered and rejected by the Board of Directors of the American Theatre Organ Society. The Board and its officers determined that the "proposed" Bylaws of the American Theatre Organ Society as well as

the Articles of Incorporation of the Society should be amended to conform to the new law.

As the attorney for the American Theatre Organ Society I noted the following deficiencies in the "proposed" Bylaws. It appeared that their author had simply overlooked the newly adopted Non Profit Corporation Law or perhaps it had not been called to his attention.

The "proposed" Bylaws by the Ledwon Committee appeared to be deficient in the following particulars which are listed as they appear in the Bylaws and not by order of importance.

ARTICLE II SECTION 3 REMOVAL OF MEMBERS.

The language in the "proposed Bylaws" falls far short of the required language under the new law in that it fails to protect members' rights. It could be the basis of a lawsuit against the corporation as well as the Directors individually.

ARTICLE III SECTION 7 — RECALL OF A REGIONAL DIRECTOR

The "proposed Bylaws" appear to sanction the recalling from office of a "Regional" Director for cause by a regional recall election. There is no authority in the new Non profit Corporation Law for removal of a Director with or without cause. When elected a Director is serving the whole of the membership for a term and not simply a region.

INDEMNIFICATION PROVISIONS

Because of the ever present possibility of a suit being brought against a Director on some complaint by someone, the new law follows the new laws in almost all states to the effect that short of stealing or embezzling funds, a Director will be offered reimbursement for any charge or claims in protecting him as a Director in the discharging of his duties.

The proposed Bylaws carry no similar protection for a Director.

TELEPHONE MEETING OF THE BOARD OF DIRECTORS

In recognition of the expense of travel in holding a Board Meeting but recognizing the importance of Board Meetings where there is a wide dispersal of members and Directors, the new law permits the holding of a telephonic Board Meeting under protective provisions.

The author of the "proposed" Bylaws appears to have overlooked this important feature of the new Nonprofit Law.

It appears to me and I would recommend to you that because of the above specific shortfalls, that the "Proposed Bylaws" of the Ledwon Committee should not be adopted. They would be the cause of many problems.

Yours truly,

Charles A. Rummel