

A Look Back At Some FPLG Favorites From the Past Decade

08.13.24 | Linda J. Rosenthal, JD



Speaking of ten-year anniversaries

Last week, we turned the spotlight on a decade-long debacle at the Exempt Organizations Division (EO) of the IRS: The dismal failure of the Form 1023-EZ experiment. See [The Ten-Year Anniversary of the IRS Form 1023-EZ: No Celebrations in Sight](#) (August 8, 2024) *FPLG Blog* (including links to our 3-part series from September 2014 reporting on the mess as it unfolded.)

To recap: On July 1, 2014, "... against the advice of almost everyone," the federal tax agency had put into motion a plan it hoped would quickly solve a backlog crisis in the processing of new applications for 501(c)(3) tax-exempt status. The "cure" was offering a greatly simplified alternative for smaller organizations: a short-form exemption application combined with a truncated approval process, substituting "attestations" for details and documentary proof. Not only has this new plan failed to solve the backlog problem, but now the nonprofit sector is littered with entities which never should have received tax-exempt status at all. As predicted, the cure has not worked; indeed, the disease has progressed and worsened.

It's not surprising that no one is marking that 2014 launch date with congratulatory speeches and clinking of glasses.

On the other hand, here at For Purpose Law Group, we have good cause to celebrate. Ten years ago, in early summer 2014, we formally leaped into the blogosphere.

There are now over 850 blog posts in our archives. Many of them, of course, relate to the central topic of federal tax exemption law and procedure. But our mission to educate and inform is much broader, reflecting the reality that a wide variety of laws beyond the Internal Revenue Code can and do affect the nonprofit sector. We also like to highlight news, trends, reports, and ideas from thought leaders.

So we'll celebrate by revisiting – from time to time in the upcoming months – some of our favorite posts from years past.

Favorites: The First Picks

It should come as no surprise that many of our earliest blog posts focused on the critical issue of good governance. Our advice, particularly to new organizations: Avoid being strait-jacketed into corporate structures and by governing documents and policies that are unduly restrictive.

It's an important and serious conversation, but that's no reason not to add a lighthearted touch. That's apparent from the titles of these summer 2014 "favorites" selections:

- [*Bylaws are Sometimes Like a Decades-Old Hairstyle*](#) (June 11, 2014)
- [*Who is Robert and Should Nonprofits Follow His Rules Of Order?*](#) (August 28, 2014)

Bylaws Are Not Forever

If you were young in the '80s, you probably had big hair glued in place with "enough hairspray to withstand a Category 4 hurricane." It worked back then but you'd look ridiculous walking around like that nowadays. See our post from June 11, 2014: [*Bylaws are Sometimes Like a Decades-Old Hairstyle*](#).

The same goes for the founding bylaws of a nonprofit organization. There's a reason that most of these formal documents – solemnly approved and preserved in fancy, gold-embossed binders – have amendment clauses. They were meant to work at the start of a fledgling institution's life cycle – but not forever. That's true even if the organizational lore is that they were carefully drafted by trusted and experienced counsel.

But "...more often than not, the first bylaws were not a custom creation. They were probably lifted in large part from dusty form books of one-size-fits-all legal documents. Or they were copied from other organizations, some from different jurisdictions or drafted many years ago when stiffer and more restrictive nonprofit corporation laws were in effect around the nation.

For newer organizations, the internet has actually made this "custom" drafting process worse; there are many more samples available at the click of a mouse, especially from do-it-yourself sites. The organizations themselves or their lawyers "generally cobble together a real mess."

State laws now generally permit considerable leeway and flexibility in nonprofit bylaws, even in the absence of a bylaw clause authorizing changes over time. The bottom line is that an organization's key operating manual should support and advance the charitable mission and programs instead of unduly blocking innovation and progress.

Maybe Too Much "Order" Isn't Good

"Professional parliamentarians love Robert's Rules of Order, but many nonprofit experts are wary: "We have said it before and we will say it again: Most organizations should avoid Robert's Rules of Order like the plague...." (Ah The good old days when "avoiding something like the plague" was a quaint figure of speech.)

There's an unfortunate misconception – for government, for businesses, and for nonprofits – that Robert's Rules of Order is (a) the gold standard for running meetings; and (b) somehow mandatory or at least highly recommended. Neither is true. See [Who is Robert and Should Nonprofits Follow His Rules Of Order?](#), from August 28, 2014.

Published a century and a half ago by Brigadier General Henry Martin Robert as “Pocket Manual of Rules of Order for Deliberative Assemblies,” it was a huge and “... one-size-fits-all tome of extremely formal, rigid procedures....” In our [August 2014 blog post](#), we wrote: “As [one nonprofit commentator recently observed](#): “There is no law mandating that nonprofits must make decisions using Robert's Rules. After all, you're not a parliament. You're an animal shelter, . . . or a theater, or an advocacy organization.”

So – how is that *this* Union warrior devoted his post-combat career to creating the (supposed) definitive guide on conducting orderly and productive meetings?

That's a funny story.

In 1863, then-Colonel Robert “... was [asked to preside](#) over a public meeting.” He had no idea what he was doing; it was a disaster. “Then and there, he decided never to face another meeting until he learned about parliamentary procedure....” With “little available material back then,” he [taught himself basic principles](#). Among the sources he studied and admired was “the [rules of procedure used](#) by the U.S. House of Representatives....” He eventually relied on this framework “... as a guide for his book – with certain changes that he decided were appropriate for ‘[ordinary societies](#).”

Over the following decade, at his military assignments around the U.S. “where he saw ‘[virtual parliamentary anarchy](#),’ he became more determined to fill this void” of information and advice on conducting meetings. In 1876, now-Brigadier General Robert [published his magnum opus](#) officially under that quite formal title beginning “Pocket Manual of”: an odd choice since it was over 600 pages long.

Under a short-form title, “Robert's Rules of Order,” or alternatively “Robert's Rules,” it “[caught on like wildfire](#).” Since then, there have been many new editions: by the General before his 1923 death, by family members and descendants, and most recently, by recognized parliamentarian experts.

The controversy over Robert's Rules continues, with more and more voices arguing against its use. A simple Google search yields a rich bounty of skepticism.

But perhaps the most fundamental problem of Robert's Rules lay in the General's choice of inspiration and wisdom: the 1860's House of Representatives. After all, that was “...the deliberative assembly that [couldn't avert the Civil War](#), so – perhaps – this was a dubious model for conducting harmonious and successful meetings.”

Conclusion

Next up, perhaps in a week or so, “the favorites” will highlight a post or two about board governance; that is, advice on not creating or perpetuating a governing body that is asleep at the wheel.

– *Linda J. Rosenthal, J.D., FPLG Information & Research Director*