

More Tenth-Anniversary FPLG Blog Favorites

10.24.24 | Linda J. Rosenthal, JD



“Admit it. You’ve done it....”

That’s the opening sentence of *Breach of Duty by Ogling the Doughnuts* (October 8, 2014). It’s a lighthearted take on a serious topic; that is, the effective and proper role of the directors of a tax-exempt 501(c)(3) organization.

It was ten years ago this summer that For Purpose Law Group launched its blog. That October 8th post has always been a favorite from the first year.

To celebrate the Tenth Anniversary of FPLG’s blog, we’re plucking some of our favorites from among the 850+ posts in our decade-long archive. See: [A Look Back At Some FPLG Favorites From the Past Decade](#) (August 13, 2024) *FPLG Blog*, including:

- [Bylaws are Sometimes Like a Decades-Old Hairstyle](#) (June 11, 2014) [documents drafted decades ago by a long-gone founder need to be reviewed for some tweaks or – more likely – a major overhaul. Bylaws generally have amendment clauses; they are there for a good reason.]
- [Who is Robert and Should Nonprofits Follow His Rules Of Order?](#) (August 28, 2014) [a set of parliamentary meeting rules drafted by a Civil War general based on his observations of the 1860’s House of Representatives is probably not the best model for conflict-resolution practices in ordinary meetings.]

The common thread in these and other posts from 2014 and later years is “good governance” with a flexible twist. “Avoid being strait-jacketed into corporate structures and by governing documents and policies that are unduly restrictive.” Just because “it’s always been done” like this or that is no reason to continue if it undermines, rather than accomplishes, your critical charitable mission.

What About Those Doughnuts?

What is “it” that we should readily admit doing?

In *Breach of Duty by Ogling the Doughnuts*, a hypothetical nonprofit board meeting opens with the presiding officer asking for approval of the corporate minutes of the last meeting.

The problem: You’re “...busy deciding between the maple-glazed doughnuts and the chocolate-topped ones. So is everyone else around the conference table.” Another reason no one is paying attention is that “...[m]ost charity board members think of the vote to approve the minutes of the last board meeting as a quaint formality, an inconsequential appetizer before the real deal...”

What is that “real deal”? It’s the meaty portions of the board meeting where business is discussed and debated.”

So the perfunctory raising of hands in consent is meaningless at best and a breach of each director’s fiduciary duties at worst. And there are consequences.

“Meeting minutes are much more than routine formalities or handy notes. They are the legally mandated (and official) records and history of an organization ...” which can only act by and through the board of directors. The board then, in turn, may delegate certain authority to act to the officers, employees, and agents – so long as the ultimate control and management remains with the board...”

“Documenting board actions and decisions in writing is a critical function because corporate minutes are legally presumed to be correct and are considered formal evidence of the facts they report. They are *not* mere summaries or casual notes of the proceedings.”

The meeting minutes will “likely be reviewed by government regulators, third parties – friends and foes alike – disgruntled employees, and current and future boards whenever a conflict arises.”

A key example of the importance of corporate minutes is the 2006 California case involving The Disney Co. that we discussed in our October 2014 post. There was a lawsuit by certain board members against others on the question whether a “yes” vote for a certain executive’s hiring and compensation package was a breach of fiduciary duty. Dissenting board members asserted that the majority approving the negotiation had not spent enough time at the key meeting supporting their hiring and payment decision. At trial, the key piece of evidence relied on by the judge to impose liability on the majority directors was the minutes of that meeting.

More Tasty Morsels From the Archive

Taking care with the corporate minutes is important, so we sprinkled tasty morsels about it in the buffet of information offered over the following month or two – and from time to time since then. See, particularly:

- *Fun Facts About Corporate Minutes* (October 24, 2014) [“Seriously, you were expecting fun facts about minutes? We’re more interested than the average law firm in drafting effective corporate documents, but even we don’t think minutes are fun. But they are important” There is no one-size-fits-all formula; no “hard-and-fast rule regarding the level of detail ...” So we’ve provided drafting tips. Create a template and follow it consistently.]

- [Nonprofit Corporate Minutes: What Not To Do](#)(October 27, 2014) [This post includes key mistakes commonly made including six sections of “failing to do” omissions that can have severe consequences.]
- [Just One More Thing About Meetings and Minutes](#) (November 24, 2014) [Discussion of key “nuts and bolts” of meetings: motions vs. resolutions]

Conclusion

In [Board Meetings and Minutes and More](#) (March 1, 2017) *FPLG Blog*, we celebrated the 200 blog-post milestone by revisiting some favorites that appeared often in 2014 – 2016. “We’re proud of the variety of topics covered. Some areas of interest to nonprofits have been covered a bit more extensively than others.” Among the most frequent subjects were: (a) the Johnson Amendment and the politics ban; and (b) naming rights.

“Faithful readers,” we pointed out back then, “may have also noticed [our fascination with board meetings](#) and procedures, minutes and resolutions. Some would say we’ve beaten this dry-as-toast topic into the ground. ‘Some,’ we humbly respond, ‘would be wrong.’ At ten posts and counting,…” we’re just getting started.

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