



Massachusetts Association of Health Boards (MAHB)

Commentary on Compensation of Members, Officers and Directors

BACKGROUND

Articles of Organization (1982)

The Massachusetts Association of Health Boards was officially recognized by the Commonwealth of Massachusetts on September 23, 1982. The founding President was Barbara Kern from the Cohasset Board of Health. The founding Treasurer was Gene McBride, Belmont Board of Health, and the Clerk was Mary Heaton from the Ashland Board of Health. At the time of formation, the application was supported by certain recitations which affirmed it as a 501 (c) (3) exempt not-for-profit corporation. Those recitations are standard and a prerequisite for forming a corporation. In order to form a Corporation in Massachusetts there are several elements that are necessary. One is that you need a **unique name** for the Corporation, so it's not confused with others. The second is that you must state a **purpose** for the Corporation. If the Corporation has more than one class of members the designation of what **types of membership** must be included setting out what the qualifications and rights, including voting rights, for members. The fourth requirement is that if there are **any other provisions** for the conduct and regulation of the business and affairs of the Corporation, for voluntary dissolution, or for limiting defining or regulating the powers of the Corporation or its Directors or members, that also must be stated in the Articles of Organization. The final three requisites are that there must be **bylaws** duly adopted and the **officers** must be duly elected; there must be an effective **date of the corporation's formation** within 30 days of the filing of the corporate papers and; the names, post office address and main residence of each of the initial **directors** have to be set forth.

Under the recitations for MAHB, the mission of the organization was set forth as follows:

“To engage in educational activities within the meaning of section 501c3 of the Internal Revenue Code of 1954, as amended (or corresponding provisions of any future United States internal revenue law) (the “Internal Revenue Code”, including without limitation, the following:

- (a) To foster public health by providing service to boards of health and related agencies, whether public or private, by public education, by publicity and publication and, to the extent permitted by section 501 (c) (3), by advice and appropriate action on legislation and governmental affairs.”

The remaining purposes and powers that were listed were standard IRS 501 (c) (3) language for a non-for-profit corporation.

The Articles of Organization defines three categories of membership. First, “regular members” include any person who was part of a member board. A “member board” is defined as a Town Board of Health or Selectmen acting in that capacity, Health Commissioners, or any legal entity established under G.L. c 111, § 26 *et seq.*, and G.L. c 41, §2 *et seq.* The Articles went on to define a “member in good standing” as originating from a member board which is not more than one year in arrears for the payment of dues. It permitted members in good standing to serve on any committee including the Executive Committee. It entitled each regular member to receive notice of annual and special meetings and gave each board *and* each member of the Executive Committee one vote each at any meetings of the membership. It allowed each regular member to hold any office.

The term “Associate Member” applies to interested individuals who apply to the secretary and are elected by the executive committee and who pay dues. Associate members are also entitled to notice and attendance at any meetings of the Association and to receive publications but may not hold elected office or vote. Associate members are, however , allowed to serve on and vote on MAHB's special committees.¹

A third category of membership is “Honorary Membership.” These are members recommended by the Executive Committee and elected by the Association . They are eligible to receive notice of an attend affairs of the Association and to receive publications. They are not eligible to hold elected office or vote at Association meetings.

Membership lasts until either the member resigns , becomes disqualified or is removed. There are provisions on how to remove a member should that become necessary.

As with all other nonprofits, there is a limitation forbidding the distribution of any of the net earnings , property or other assets to any private person or individual. Further, specifically

¹ The Bylaws set forth a list of three mandatorily created subcommittees: Committee on Governmental Affairs; Program Committee; and Nominating Committee, and such other committees as shall be authorized. *See*, Article IV, Sections 1 – 4.

forbidden are distributions to incorporators, members, employees or officers of this corporation with the exception that the Association is authorized and empowered to, “pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 2 hereof,” which is discussed above. It then has a broad provision forbidding the Association from doing anything which is contrary to 26 U.S.C. § 501 (c)(3) of the Internal Revenue Code. This includes the usual dissolution provisions that assets of the Association shall pay off all obligations and debts, and then all remaining assets should be distributed to other exempt organizations as a charitable donation to further the causes that MAHB supports.

Articles of Amendment (1988)

Subsequent to the formation of the corporation, Articles of Amendment were submitted on September 23, 1988. At that time Marcia Benes served as President. and The purpose for filing this 76-page Amendment was to reflect certain changes in the articles of organization and to amend the bylaws of the organization as a result of an Executive Committee meeting which occurred on July 24, 1986, and ratified by the membership on September 27, 1986.

As constituted in the original Articles of Organization, “regular members” and “member boards” were given potentially duplicate voting rights. The old provision in the original Articles of Organization stated that, “each member board and each member of the executive committee shall be entitled to one vote at any meeting of the membership.” This was clarified by replacing that sentence with the sentence, “[e]ach regular member shall be entitled to one vote at any meeting of the membership,” this eliminated the potential for an executive committee member to cast one vote in that capacity and a second vote in his/her capacity as a member of a “member board.”

This document goes on to amend certain bylaws. Specifically, it replaces wording in Article II, Section 3, as added on September 27, 1986, to change the words “sponsoring members” to the word “sponsors.” The second provision pertaining to the bylaws changes Article III, Section 4 by defining a quorum as 45 regular members at any meeting. Furthermore, it changes Article III, Section 5 by striking the option of having a proxy to cast a vote at a meeting. It then adds a phrase to Article XIII, dealing with amendments.

What makes this particular document valuable to us today is that, aside from laying out the history as to the difficulty the Association was having gathering a quorum, is that the original bylaws which date back to the original formation of MAHB are included as an exhibit, and are evidence of the bylaws at that time. These early bylaws were amended, and the latest 2002 version is given here. There are also a revisions noted September 24, 1994, and again on August 8, 2002. As a point of information there is no obligation for a 501(c)(3) to file amended bylaws with the Secretary of State's office. That is generally reflected in the minutes of whatever meeting they were adopted in.

COMMENTARY

Reflections on Compensation of Members, Officers and Directors

The bylaws clearly lay out rules governing compensation to members, officers, or members of the executive committee.

The language found at Article I, Section 8 governing compensation and expenses has remained the same since the original enacted bylaws.² That provision states:

“8. Compensation and expenses: Members shall not receive any stated salary for their services as such, but the Executive Committee shall have the power and authority, in its exclusive discretion, to contract for and to pay members compensation for unusual or special services rendered to the Association, provided that any compensation shall be reasonable and appropriate to the value of the services rendered by the member.”

A plain language reading of this provision would indicate that while members cannot receive compensation for their services, the Executive Committee is authorized to compensate members for rendering *unusual or special services to the Association*.

Article III, section 4. A., also vests the Executive Committee with the power to manage and conduct business. That provision says, in relevant part:

Executive Committee: The Executive Committee shall have full authority and power to manage and conduct the business and affairs of the Association and to exercise its powers, to control the expenditure of Association funds, It shall determine the general policies, and act for its own interest in any way not inconsistent with the bylaws.

This provision, essentially, gives the Executive Committee the power and authority to spending money on efforts it feels are necessary for the Association. This provision is identical to the original Bylaws Article IV, Section 3. A., except it adds language equating the Executive Committee with a Board of Directors and enumerates that Executive Committee members are “Directors.”

Article III, Section 9 very closely tracks the language of Article 1, Section 8 except it substitutes the word “officers” for the word “members.” That section states:

Compensation and Expenses: Officers shall not receive any stated salary for their services as such, but the Executive Committee shall have the power and authority, in its exclusive discretion, to contract for and to pay officers compensation for unusual or special services rendered to the Association, provided, that any such compensation shall be reasonable and appropriate to the value of the services rendered by the officers.

² In the original Bylaws, this provision was found at Article I, section 7, but with the addition of the “Sponsoring Member” category in 1988, all numbering changed after that new entry.

Obviously, this section should be treated unparallel with the article 1 section dealing with members rather than officers.

Finally, the language of Article VII permits the Executive Committee to enter into contracts or other transactions with any other corporation or firm; even though that firm has a director, officer or other person who stands to gain money or other interest who is also a member of the Executive Committee. As long as the Executive Committee is aware that one of its members has ties to an entity that it is doing business with MAHB through a disclosure, or that the members of the Executive Committee knew in advance of the relationship that such was the case, the transaction is allowed, and is *per se* free of any ethical violation.

This Article states:

“Article VII. Contracts and Dealings with Certain Other Corporations or Firms.

The members of the Executive Committee may be connected with other companies with whom from time to time this Association may have business dealings. No contracts or other transactions between this Association and any other corporation or firm, and no acts of this Association, shall be affected by the fact that a member of the Executive Committee is pecuniary or otherwise interested in or is a director or officer in such other corporation or firm. Any member or the Executive Committee individually, or any firm of which such member of the Executive Committee may be a member, may be a party to or may be pecuniary or otherwise interested in any contract or transaction of this Association, provided that the fact that s/he or such firm or corporation is so interested shall be disclosed or shall have been known to the members of the Executive Committee prior to the meeting at which, or prior to the execution by members of the Executive Committee of written consents by which, action to authorize, ratify or approve such contract or transaction shall be taken. Any member of the Executive Committee may vote upon or give her or his written consent to any contract or other transaction between the Association and any affiliated corporation without regard to the fact that s/he is also a director or officer of such affiliated corporation. Any contract, transaction, or act on behalf of the Association in a matter in which a member of the Executive Committee is personally interested as a member, director, or otherwise not taken if it is violative of the proscriptions in the Articles of Organization against the Association's use or application of its funds for private benefit; and no contract, transaction or act shall be taken on behalf of the Association if such contract, transaction or act is a prohibited transaction under Section 503³ of the Internal Revenue Code, and the

³ This provision cites to 26 U.S.C. §503, which deals with requirements for 501(c)(3) exemptions. It lists six expressly “prohibited transactions,” which come into play when a corporation:

- (1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

Regulations thereunder as they now exist or as they may hereafter be amended. In no event, however, shall any persons or other entity dealing with members of the Executive Committee be obligated to inquire into the authority of the members of the executive Committee to enter into and consummate any contract, transaction, or other action.” (Footnote not in original).

As Amended

While the cited provisions point to the fact that transactions between the Executive Committee of MAHB and various members of that body are permissible under the Bylaws.

It should be noted that the above historical review is of the original 1988 bylaw articles. Other versions include amendments dated “9/27/86, 9/23/89, 9/24/94 and 8/8/2002” shown here, and Draft 6/19/2019.

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- (2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;
 - (3) makes any part of its services available on a preferential basis to;
 - (4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money’s worth, from;
 - (5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money’s worth, to; or
 - (6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 267(c)(4)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.