

# LAW MEMO

## Robert's Rules: An Introduction

In 1862, an obscure army officer presided over a turbulent meeting at his church. The experience, which may sound familiar, left him determined never to attend another meeting until he understood parliamentary procedure.

Although the rules commonly employed by deliberative governmental assemblies dated back to the House of Commons and were first codified in the mid-sixteenth century, he discovered that there were few books available on the subject.

So Henry Martyn Robert wrote *Robert's Rules of Order*. It was an immediate best seller. More than five million copies have been published, and Robert has become one of the most quoted — and misquoted — authors in modern history.

---

Henry Martyn Robert has become one of the most quoted — and misquoted — authors in modern

---

This issue of *Arts Law Memo* summarizes some of the key precepts contained in *Robert's Rules of Order*. It also discusses consensus decision-making, an approach that may often be more appropriate for your organization.

### BYLAWS & STATUTES

Meeting procedures are governed by the organization's bylaws and articles of incorporation, which should be distributed to new board members as part of their orientation materials.

Key provisions include procedures of calling general and special meetings, including proper notice; the number or proportion of members that will constitute a quorum; and procedures for removal of directors.

Bylaws should be consistent with the Missouri or Illinois nonprofit corporation

statutes. Missouri passed a new nonprofit corporation act in 1994; the Illinois statute dates back to 1986.

Both laws are based on a model legislation, which was prepared by the American Bar Association. They reflect the theme of accountability of nonprofit organizations in the areas of conflict of interest, indemnification, disclosure and charitable solicitation. The laws also provide guidance regarding the operation and dissolution of nonprofits.

Generally speaking, a more specific provision will override a less specific one. For example, the state statutes contain proxy provisions. But the organization's bylaws may restrict their use or require votes that include proxies to be unanimous.

Bylaws sometimes reference a specific parliamentary manual, such as *Robert's Rules of Order*. When no authority is named, a meeting is conducted in accordance with standard practices and customs.

### FORMALITY

As Howard H. Oleck and Cami Green note in *Parliamentary Law and Practice for Nonprofit Organizations*, "the technicalities of parliamentary procedure may be relaxed to a certain extent if no unfair advantage is obtained thereby and if the tests of good faith and fairness continue to be met. The courts have held that they will not stand on procedure alone, or put form over substance."

Practically speaking, the smaller the group, the less formal it needs to be. A committee operates less formally than a board of directors, and a board functions less formally than a membership meeting of a national organization or legislative body.

Some organizations designate a parliamentarian, often an attorney, who sits on the board. But, ultimately, it is up to the chair to use common sense. If a Point of Order is raised calling attention to a possible violation of the rules, the

Published by the St. Louis Volunteer Lawyers and Accountants for the Arts (VLAA), *Arts Law Memo* is mailed, free of charge, to more than 650 Missouri and Southwestern Illinois arts organizations, VLAA volunteers, and corporate sponsors.

VLAA helps artists and arts organizations solve and avoid legal and accounting problems by:

- Making referrals to lawyers and accountants;
- Mediating arts-related disputes;
- Publishing *Arts Law Memo* and concise how-to guides;
- Sponsoring seminars and public forums;
- Arranging for guest speakers;
- Maintaining a reference library;
- Operating an arts space clearinghouse;
- Supplying model contracts and other arts law and business materials;
- Facilitating meetings;
- Conducting and disseminating research on issues affecting the arts;
- Contributing articles to publications;
- Collaborating on arts advocacy initiatives;
- Matching volunteers with arts organizations seeking board members; and
- Providing access to the national VLA network.



This issue was prepared by Sue Greenberg, VLAA's executive director. Special thanks to Thomas E. Eichhorst and Miranda Duncan.

*This publication is distributed with the understanding that VLAA is not engaged in rendering legal or accounting counsel. We urge you to seek professional services to address your specific needs.*

### St. Louis Volunteer Lawyers and Accountants for the Arts

3540 Washington  
St. Louis, MO 63103  
314/652-2410  
FAX 314/652-0011  
vlaa@stlrac.org  
www.vlaa.org

© St. Louis Volunteer Lawyers and Accountants for the Arts, 2000

chair should err on the side of too much formality.

A Point of Order does not require a second and is not debatable unless the chair submits it to the members for discussion. Typically, the chair simply makes a ruling.

### **BASIC PRINCIPLES**

Parliamentary procedure is often abused and frequently feared, says Parliamentarian Thomas E. Eichhorst, counsel for the American Optometric Association, which is based in St. Louis. The basic principles to remember, he says, are:

- Justice and courtesy for all;
- Do one thing at a time;
- The majority rules;
- The minority must be heard; and
- The purpose is to facilitate action, not obstruct it.

Meetings provide a crucial forum for information sharing and consensus-building. Well-planned and facilitated meetings allow participants to contribute their best thinking and inspire them to take action.

### **THE AGENDA**

Agendas help groups transact business in an orderly fashion. They should be crafted with care so limited time can be used efficiently. Busy board members need a compelling reason to attend meetings. Otherwise, they might as well stay home or go to work and wait to read the minutes.

The all too familiar board meeting agenda: the call to order, approval of the minutes, treasurer's report, reports of officers and committees, unfinished business, elections (if any), new business, announcements and adjournment, can make for tedium.

According to Nello McDaniel and George Thorn, authors of *Arts Boards: Creating a New Community Equation*, "most board meetings are a series of committee and staff reports in a 'dog and pony' format, or some topics are endlessly rehashed from meeting to meeting without resolution. Or, a lot of good ideas are developed for the staff to accomplish while the board attempts to micro-manage the organization."

McDaniel and Thorn believe board meetings should be re-conceived to

focus on specific agendas or as mini-workshops. Examples include a discussion of the organization's fund raising plan or its educational activities.

Talk about art at every board meeting. Remember, board members agreed to serve because they believe in the mission of the organization and are passionately committed to its success.

### **MOTIONS**

As Eichhorst notes, "the motion is the basic unit of parliamentary business. Before any formal action may be taken, that action must be approved in the form of a motion."

Generally, a motion requires a second. The chair should repeat the motion, verbatim, before calling for debate. It is customary for the maker of the motion to speak first and to allow anyone who has not yet spoken to speak before anyone speaks a second time.

An amendment modifies a motion during debate. The amendment should be germane, Eichhorst says, "it must relate to the question to which it applies," and "an amendment which reverses the sense of the main motion is not in order."

After an amendment is proposed and seconded, discussion of the main motion stops until the amendment is debated, then passed or defeated.

"Generally," Eichhorst says, "members should not 'call the question.' A 'call for the question' is actually a motion to limit debate, must be seconded and voted on immediately and requires 2/3 to pass. The chair should use good judgement and close debate only when no one has anything useful to say."

The motion, including the incorporated amendments, should be repeated before the vote is taken.

### **REPORTS**

Eichhorst offers these procedural points when dealing with committee and other reports:

- It is not necessary to make a motion to receive a report. The report is automatically received when presented.
- Accepting a committee report means that every word has been adopted as policy. This can be confusing. Instead, the committee chair should propose

specific recommendations for board approval in the form of a motion.

- A treasurer's report should not be "accepted" unless it is accompanied by an audit, since the effect of accepting it would be to certify its accuracy.

- Likewise, the nominating committee's report should not be "accepted." That would close nominations and automatically elect the proposed slate, which would be a violation of election procedures outlined in the bylaws.

### **ELECTIONS**

Two points regarding elections made by Eichhorst are:

- A nomination does not require a second. Of course, it requires the consent of the nominee.
- A motion to close nominations is not necessary. As soon as it is clear that there are no further nominations, the chair should move on to the vote.

### **REMOVAL**

Although the Missouri and Illinois statutes technically permit removal of directors or officers with or without cause, experts say there should be "good cause" for removal.

According to Oleck and Green, "What constitutes 'good cause' depends on the nature and circumstances of the organization, but it is not simply a desire by the majority to be rid of an opposing faction." In other words, disagreement or friction is not a justifiable reason for removal.

### **MAIL BALLOTS AND PROXIES**

Voting by mail (or e-mail) should be used only if it is authorized in the organization's bylaws. Its weakness is that it does not allow members to convene to debate before voting. With some restrictions, proxies are allowed by state law. However, a much better approach is to require members to be physically present at the meeting.

### **BYLAW AMENDMENTS**

Written notice of both the meeting and the proposed amendment should be sent to board members in advance. Eichhorst says a negative vote on an amendment to the bylaws can be reconsidered once. A positive vote makes the amendment part of the bylaws and cannot be reconsidered.

# Making Decisions By Voting Or By Consensus

by Miranda Duncan, Community Development Specialist, University Outreach & Extension

Traditionally, groups made decisions by voting and allowed the "majority to rule." Voting makes sense when:

- Many people are involved
- The population is diverse
- Moving forward is more important than settlement
- Before votes are cast there is ample time for dialogue
- The dialogue includes looking at and evaluating a number of options.

The disadvantage of voting is that it leads to an all or nothing, win/lose outcome. What happens to those who voted "nay" and were outnumbered? How committed are they to supporting the outcome? And, what happens to the concerns driving the no-vote. Were those concerns addressed, or will they come back to haunt the yeasayers?

Ample discussion with analysis of alternative courses of action can counteract the disadvantages of voting. Even then, voting might be reserved as a last resort. Clearly, in a small group, consensus is possible and more desirable.

## CONSENSUS DECISION-MAKING

During the past 15 years, making decisions by consensus has gained acceptance, yet a number of misconceptions remain. Consensus is the cooperative development of a decision that is acceptable enough so that all members of the group agree to support the decision. Consensus means that each and every person involved in decision-making has veto power.

Keep in mind, though, that members of the group are team members, not adversaries. Responsible team members use power only to achieve the best results vis-a-vis the group's purpose, not for their own personal gain. In other words, if a team member objects, it behooves the others to find out why and give considerable thought to the concerns expressed by the dissenting member.

The remarkable result of giving individuals veto power is that they rarely use it! If participants are reassured nothing can go forward without their approval, they tend to relax, contributing more to the content and worrying less about procedural matters.

Consensus does not mean there is an absence of conflict. It does mean there is a commitment of time and energy to work through the conflict. Consensus requires taking all concerns into consideration and attempting to find the most universal decision possible. Groups able to make decisions by consensus usually demonstrate:

- Unity of purpose, a basic agreement shared by all in the group regarding goals and purpose of the group
- Commitment to the group, a belief that the group needs have priority over individual needs
- Participation, ideally no formal hierarchy, equal

access to power and to some degree, the group's autonomy from external hierarchic structures

- Recognition that process is as important as outcome
- Underlying attitudes of cooperation, support, trust, respect and good communication
- Understanding and tolerance of differences and acceptance of conflicting views
- Time, willingness and capability to devote time to the process

Factors working against consensus include: competition, individualism, passivity and solution-orientation

## FACILITATING CONSENSUS

There are many techniques to facilitating consensus:

- Frame the dilemma so participants see the big picture and recognize their interdependence: "What decision do we need to make and why do we need to make it?"
- Remove insecurity and make sure all participants have the same key information and have the opportunity to discuss that information together.
- Build little agreements along the way: "So we agree that this is a good way to state the problem we are trying to solve." Or, "At least you do all agree that something has to be done, that things are unacceptable as they are now."
- Motivate creativity by asking "Isn't there anything else you can suggest?" and then allow for a long pregnant pause.
- Summarize and fractionate: "This is what we agree on, and this is still in question. What are the specific causes for concern?" Or, "How can we get the benefit from doing this, but not the detriment?"
- Refer to the mission and purpose of the group for guidance: "If we do this, are we in line with what we are all about?"
- Finally, ask: "What will happen if we can't all agree?" Or, "Do you really need to make a decision on this issue?"

## THE THINKING PROCESS

The important rule of thumb about good decision-making is "Do Not Decide Prematurely." Ultimately, the thinking process for any type of decision is the same:

- Gathering and analyzing relevant information
- Careful framing of the question you want answered
- Discussing values and criteria
- Envisioning various scenarios
- Evaluating consequences of those scenarios
- Making the decision
- Refining specific aspects of the decision and ensuring its implementation.

*This article is part of a longer essay, which is posted on the NEA's website: [arts.endow.gov/pub/Lessons](http://arts.endow.gov/pub/Lessons)*

WHITAKER FOUNDATION  
Publication of *Arts Law Memo* is made possible by grants from the  
Whitaker Foundation, Regional Arts Commission; the Illinois Arts  
Council, a state agency; and the Missouri Arts Council, a state agency.



NONPROFIT ORG.  
U.S. POSTAGE  
PAID  
ST. LOUIS, MO  
PERMIT NO. 3363

3540 WASHINGTON  
ST. LOUIS, MO 63103



## Resources

### BOOKS

#### *Robert's Rules of Order*

First published in 1876, *Robert's Rules of Order* has gone through various editions and reprintings. The official edition, the tenth, is *Robert's Rules of Order Newly Revised*, edited by Henry M. Robert, III and William J. Evans. It is heavy going and is not recommended as a quick reference. Many other books with "Robert's Rules" in the title also are available. Among the best (and most affordable) is *Webster's New World Robert's Rules of Order: Simplified and Applied*. Written in plain English, it uses real-life examples to help illustrate the application of Robert's precepts.

#### *Parliamentary Law and Practice for Nonprofit Organizations*

The second edition of this clear and concise book by Howard L. Oleck and Cami Green was published by The American Law Institute-American Bar Association Committee on Continuing Professional Education in 1991. It sells for \$20 plus \$2.50 for shipping and handling and can be ordered by calling 800/CLE-NEWS, ext. 7000. The stock number is B598.

#### *Facilitator's Guide to Participatory Decision-Making*

Although Sam Kaner and his co-authors wrote this highly recommended book for outside facilitators, the techniques outlined in its well-stocked toolbox will help improve the performance of group leaders.

### **VLAA MEDIATORS AVAILABLE TO FACILITATE MEETINGS**

As part of its Arts Resolution Services, VLAA can provide volunteer mediators to facilitate meetings in the St. Louis metropolitan area. For more information, call 314/652-2410.