

Mark Manley

From: Mark Manley
Sent: Friday, August 21, 2020 11:02 AM
To: Holly L. Ham
Cc: Sandra Trom; Carol Rupp; Penni & Mike Davey; Dan Rakes; Mark Seiter
Subject: RE: AAFPO board training

Dear Ms. Ham,

Thank you for your email. With respect, there was a miscommunication regarding scheduling, cancellation and re-scheduling of the training workshops. In the future, if it appears the Resort, or I personally, have failed to respond to an intended invitation from you or the Board, please reach out directly. It is our intent to work toward continued positive collaboration.

However, based on the current doubt and uncertainty regarding the lawful composition of the AAFPO Board, the Resort will not proceed with any training workshops. Clearly, such training is necessary based on the fundamental lack of understanding of the governing documents, which have guided and fostered a successful relationship between the Resort and AAFPO for the past 24 years.

Roll call at the August 13th Special Meeting revealed you, Mmes. Davey, Rupp and Trom. The Board's analysis consisted of Ms. Davey's cursory statement, "Therefore, we have established a quorum." By declaring a quorum where none existed, the Board misapplied its own Bylaws and ignored other sections compulsory to such determination, as well as written notice from the Board's own ex-officio member.

A quorum of directors is "[a] majority of the number of directors fixed by the bylaws[.]" N.M. S. A. § 53-8-20. A quorum is the number of members of a larger body that must participate for the valid transaction of business. See Black's Law Dictionary 1370 (9th ed. 2009) (defining "quorum" as the "minimum number of members ... who must be present for a deliberative assembly to legally transact business"); 13 Oxford English Dictionary 51 (2d ed. 1989) ("A fixed number of members of any body ... whose presence is necessary for the proper or valid transaction of business"); Webster's New International Dictionary 2046 (2d ed. 1954) ("Such a number of the officers or members of any body as is, when duly assembled, legally competent to transact business").

A quorum is calculated based on the number of members required by the Bylaws, not on the number of members remaining who have been duly elected or appointed. The contrary reading allows less than a majority of members to act as the Board ad infinitum, which dramatically undercuts the significance of the Board quorum requirement by allowing its permanent circumvention. See *New Process Steel, L. P. v. NLRB*, 560 U.S. 674, 679 (2010) (holding "the Board quorum requirement ... should not be read as easily surmounted technical obstacles of little to no import."). The quorum requirement "must be given practical effect rather than swept aside in the face of admittedly difficult circumstances." *Id.* at 688.

"The affairs of the Association shall be managed by a Board of nine (9) directors, each of whom must be a member of the Association in good standing." AAFPO Bylaws – Article VI, Section 1. When you complained the section "makes zero reference to Board quorum," you failed to grasp its importance setting the Board size at nine, thereby determining a quorum of no less than a majority of five. Your approach gives no meaningful effect to the command implicit in the Bylaw's Board quorum requirement that the Board's full power be vested in no fewer than five members. Your reading is structurally implausible, as it would render the provisions of Article VI, Section 1 functionally void.

This Board has long acknowledged its quorum requirement. In fact, only once in the past six years (on March 9, 2017) did the Board even convene with the minimum five members, as required. The Board averaged well over seven

members regularly participating, and eight or more nearly half the time. Convening without a quorum disregards their efforts.

I note in your response you did not address my request to produce correspondence related to the ex parte communications between you, Mmes. Davey, Rupp and Trom. I assume that production is forthcoming, and remind the Board of its duty under AAFPO Bylaws – Article XIV, Section 1(a) and New Mexico law to preserve such materials, the intentional destruction of which can result in an adverse evidentiary inference, and may otherwise be unlawful.

I also observe you failed to address my reminder to the Board of its ongoing fiduciary duty to the membership not to take actions that it has been advised are void and unenforceable. Personal immunity does not extend to damages caused by a Board Member's willful failure to perform their duties, which includes taking unsanctioned and invalid action. When considering a committee recommendation, a "director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted." N.M. S. A. § 53-8-25.1. By extension, this statutory mandate applies to a director acting contrary to or in disregard of knowledge concerning a matter, so as to be unwarranted.

Therefore, as soon as practical, please advise me and Dan Rakes the identity of and contact information for the attorney and/or firm the Board engaged to advise it prior to holding the August 13th Special Meeting, so the Resort may direct appropriate correspondence.

The Resort, and I personally, look forward to working with a properly constituted AAFPO Board in the near future.

Best regards,

Mark Manley

From: Holly L. Ham <holly.l.ham@gmail.com>
Sent: Wednesday, August 19, 2020 10:06 PM
To: Mark Manley <mmanley@AngelFireResort.com>
Cc: Sandra Trom <strom427@gmail.com>; Carol Rupp <carolruppartwork@gmail.com>; Penni & Mike Davey <daveytmp@gmail.com>; Dan Rakes <DanR@AngelFireResort.com>; Mark Seiter <marks@AngelFireResort.com>; Hank Rennar <hsrennar@yahoo.com>
Subject: Fwd: AAFPO board training

Mark M.,

With all due respect, you have incorrect information.

Based on a meeting that I had with Mark Seiter and Kelly Fletcher on July 23rd, Mark suggested training for AAFPO Board members regarding the bankruptcy from 1995, the amended joint plan for reorganization, and other pertinent documents and covenants directing the organization of AAFPO and our relationship with the Resort. Along with the rest of the AAFPO Board, we agreed to the training/workshop and scheduled two separate sessions. In fact, up until today, I was not aware of who would do the "training" - but simply looking forward to collaborating with the Resort.

Regarding your letter sent on August 13th, again, you have incorrect information, this time regarding quorum. You referenced AAFPO Bylaws - Article VI, Section 1, which makes zero reference to Board quorum. See AAFPO Bylaws - Article VII, Section 3 for Board Meeting quorums which state that "A majority of the number of directors shall constitute a quorum for the transaction of business."

At the last AAFPO Board of Directors meeting on August 13th, we had 100% participation - which meant we established a quorum as that is considered a majority of the number of directors. You will be pleased to learn that the

Board unanimously voted to add 4 new directors.

I'm honored to serve on the AAFPO Board of Directors and welcome the opportunity to work together with the Resort.

Regards,
Holly Ham

From: **Mark Manley** <mmanley@angelfireresort.com>
Date: Wed, Aug 19, 2020 at 10:59 AM
Subject: Re: AAFPO board training
To: Holly L. Ham <holly.l.ham@gmail.com>
Cc: strom427@gmail.com <strom427@gmail.com>, carolruppartwork@gmail.com <carolruppartwork@gmail.com>, daveytmp@gmail.com <daveytmp@gmail.com>, Dan Rakes <DanR@angelfireresort.com>

Ms. Ham,

Thank you for your email.

Based upon the cancellation notice sent to the main speaker, Dan Rakes, those involved here at the Resort assumed that AAFPO cancelled the workshops/training. There was no follow up email or invite to Mr. Rakes. Based upon his 23 years' experience with the Resort, AAFPO and the governing documents, clearly, he is the one who needs to present this to the Board. In fact, in the past, he regularly conducted annual governing document training to new and old AAFPO Board members. He agreed to continue this and participate based upon a request from then President, Ginger Lagasse.

As far as rescheduling the workshop in the future, the Resort has not determined whether it will participate in light of recent events. There are legitimate legal concerns. See the attached letter sent on August 13th.

Regards,

Mark