

OISRA Meeting with David Atkin, Attorney Specializing in Nonprofit Law

April 13, 2006
4:12 p.m. – 6:00 p.m

Present:

David Atkin, Attorney Specializing in Nonprofit Law
Richard Sellens, OISRA Alpine Division President, Chairman of Board of Directors
Charlie Wilshire, OISRA Nordic Division President
Jinny Martin, Board Secretary
Bill Martin, Assisting with tape recorder

Purpose of Meeting: Work on new Bylaws so that OISRA is in compliance with the National Model Uniform Nonprofit Corporation Act and all Federal and State laws.

Summary of topics covered

- A. Review the process OISRA has gone through for becoming incorporated as a 501 (c) 3 organization. A 501 (c) 3 classification for an organization is an IRS classification that gives the organization nonprofit, tax-exempt status.**
- B. Analysis of hierarchy of authority of legal documents and discussion of what types of information are found in these documents.**
- C. Make decisions about information that will be in the Bylaws (where there were some options to consider).**
- D. Options for the group of Nordic coaches who want to be separate from the Alpine Division.**

A. Process OISRA has gone through for becoming incorporated as a 501 (c) 3 organization

- June 13, 2001—Nonprofit organization created
- Oct. 9, 2001 – Application went in to IRS
- Feb. 20, 2002—IRS approved application

David showed us the print outs from government websites referencing OISRA: one from the Corporation Division of the Business Registry and one from the Oregon Department of Justice. This information verifies the current legal status of the OISRA organization.

David reviewed the Articles of Incorporation, and explained the four very specific provisions that are required to be in the Articles of 501 (c) 3 corporations. These four provisions are not found in the Bylaws of the organization or anywhere else.

He pointed out that two provisions need to be added to the OISRA Articles of Incorporation. They are the standard provisions of

- Limitation on political activities
- Not organized for profit

Discussion of ways to amend articles:

- The Board of Directors is allowed to amend the Articles, according to state law (Oregon Revised Statutes 65.437).
- However, the OISRA members may feel more comfortable if they vote on the amendments to the Articles—rather than having the Board make the amendments.
- At this time, parts of the OISRA Constitution can be recognized as containing information that governs this organization until it adopts new OISRA Bylaws and Articles of Incorporation. The Constitution states that 2/3 vote of the membership would be required to amend the Constitution. Members may like you to use that process—may be more politically appropriate. Can explain that it is more than we are legally required to do to have them vote on the amendments.
- Member schools and member clubs can vote by email and everyone agreed this would be the preferred way to amend the Articles.
- This amendment process is separate from the process of filing the 8734 form with the IRS for completing the incorporation process—does not have the same timeline.

ACTION ITEM: DAVID WILL PREPARE A ONE-PAGE SET OF AMENDMENTS AND WE WILL SEND THEM OUT FOR PEOPLE TO VOTE “YES” OR “NO” ON THE MOTION TO ADOPT PROPOSED AMENDMENTS TO THE ARTICLES AND FILE THEM WITH THE SECRETARY OF STATE.

- This document will include the two missing provisions
- David will also add two more provisions for our own protection:

- No liability of directors or officers to the corporation so long as they have followed the rules of conduct
- Indemnification of the Board from being sued just because they are on the Board
- David will have document ready by around April 18th.

FINAL STEPS OF BECOMING INCORPORATED AS A 501 (c) 3 ORGANIZATION:

- OISRA is applying to be a public benefit 501 (c) 3 organization.
- OISRA can show that more than 1/3 of its income comes from participation fees, which makes this organization an FASO (Fees and Admissions Supported Organization) Public Charity, as opposed to the alternative, which is a PSO (Publicly Supported Organization).
- When form 8734 is filed with the IRS, it will use Section 509 A 2 as the Public Support Test. This test is an instrument that is used for determining whether an organization has the public charity status of an FASO or a PSO.

B. Analysis of hierarchy of authority of laws and discussion of what types of information are found in different legal documents.

- Overriding authority is State Law. State Law governs Articles.
- Next authority is Articles—they have a specific purpose: to legally define the type of organization (public benefit), provide contact information, and include the provisions as mentioned above. Articles govern Bylaws.
 - Can not have a Constitution
- Next authority is the Bylaws—they set up the structure and governance of the organization: who governs, who is the Board of Directors, who are the officers, who are the members, how the Board and officers are selected, how the Board and officers make decisions.
 - Can only have one set of Bylaws for the organization
- Final level is Policies—everything outside of what is in the above is in official policies. They are brought forth to the board, adopted by a formal resolution that shows in the minutes. Policies can be personnel policies, program policies, financial policies, etc.
 - Policies should not be in the Bylaws.
 - One reason is they don't belong there.
 - Whenever you amend Bylaws, you have to abide by all laws, i.e., you must send a copy to the IRS and get their acknowledgement and approval, and send a copy to the Department of Justice. Each level of government requires a notice period and wait time before approval.

C. Make decisions about information that will be in the Bylaws (where there were some options to consider).

Processes for adopting new Bylaws

- Have to follow the current OISRA rules to make this current change to the Bylaws, but the new Bylaws can include different rules for making future amendments.
- According to the current Combined Bylaws, the existing Combined Executive can adopt the new Bylaws,
- These proposed new Bylaws can be presented at the April 29th meeting, and any changes can be voted on to be adopted at that time.

The Bylaws need to contain information about the Board of Directors:

- Power, purpose, and duties of the Board. The Board does not conduct the daily activities in any way. The Board makes decisions, such as deciding the overriding policy decisions, adopting budgets, approving expenditures, and authorizing programs. Does not have to make all the decisions—can delegate some decision-making to committees (steering committees, etc.) There are general precedents and also direction from State Law.
 - Richard and Jinny answered David Atkin's questions on the following topics (Charlie had left by the time this discussion took place). The draft of the new Bylaws will contain all the details of these decisions, and any of these details can be changed when David Atkin writes up the final draft. Also, the final draft can be changed by the Combined Executive Committees when they go through the process of adopting the new Bylaws.
 - qualifications required for individual Board members
 - composition requirements for the Board.
 - Nordic elects only their Directors for the Board and the alpine elects only theirs.
 - Elections will take place at Fall General meetings.
 - Terms of office—1 year and no limit on successive terms (tell people you are hoping they will stay for more than one term—but is an annual vote)
 - OISRA Officers (President, Secretary, Treasurer) are elected by the Board NOTE: A 501 (c) 3 organization can have only one President. Therefore, the Divisions can not have presidents.
 - Chair of the Board will be selected by the Board
 - Executive Director will be hired by the Board
 - Board is elected by the voting members
 - One of the new Bylaws will state that a policy for the procedure for nominations and election of Directors will be adopted in a formal resolution by the Board of Directors. Then this policy will be put in the "Policies."
 - Bylaws will become effective immediately after adopted
 - Quorum requirements for the Board

- Decision making requirements
- Voting and non-voting members—full and associate members
- Quorum requirements for general membership meeting where voting for Board members takes place
- How program policies and race rules for each division are adopted and changed as needed by the Division Steering Committees of each division
- How to replace an officer who has vacated an office

Distinction between the people who have decision-making duties and those who carry out the decisions by “doing.”

Picture the organization as a circle with a line drawn down the middle: the board’s half of the circle is monitoring, oversight, adopting budgets, has power of the purse strings for operations and expenditures, setting policies, authorizing and reviewing major programs. (In OISRA the major programs are the Alpine and Nordic divisions.)

The other side of that line is everything to do with carrying it out—conducting the activities. Even if some of the board members work on both sides, they need to remember when they are operating as a board and when they are operating on the staff side (as a volunteer or paid). The Executive Director is in charge of all of the doing side of that circle. The President can not be the Executive Director, because the Executive Director works for the Board. The Board makes these overall policy decisions, sets the budget, and the Executive Director is supposed to accomplish the activities within those limits. The two people who have to work together the most closely to make this thing work are the President (speaking for the Board and the members) and the Executive Director (speaking for all the volunteers and the paid staff)—and if you pull this all into one person, you have created a difficult situation.

[Further clarification of the above is being sought and will be made available as soon as it is discovered.]

D. Options for the group of Nordic coaches who want to be separate from the Alpine Division.

Charlie desires to create an informational notice that would outline what would be required to become separate from the Alpine Division.

Reminders: Each 501 (c) 3 corporation can have only one Board and one set of Bylaws. Can have two activities, with two bank accounts, two different steering committees, etc., but they are subject to the control of one Board, and all the money is under the control of that one Board.

OPTION I: One organization. The following are suggested to align with new Bylaws to improve the current organization.

- Will have one combined Board of Directors that has representation from both divisions (will adjust current ratio of members from each division).
- Will continue to have two separate DBA's (Assumed Business Names). The Nordic Division and the Alpine Division have separate accounts.
- Each division has autonomy to develop its own separate organizational structure (can have representation on the Board and reports to the Board). The committees that handle the business of each division will be called "Division Steering Committees."
- Each division will continue to have a fair amount of autonomy about income, expenses and financial activity.
- The OISRA Board will continue to delegate powers of different types of decisions to "division steering committees" and can delegate out other types of decisions with an appeal process to the board.
- **Ultimately, there is one Board that is responsible for the whole organization, and that Board will be a mixed Board**

OPTION II: Two separate organizations. Institute an action to leave OISRA and create a separate organization with its own Board of Directors. Needed considerations for instituting the action of choosing Option II are as follows:

- Go through steps of forming its own Board.
- Writing own bylaws
- Holding first official organizational meeting
- Registering with the State
- Going to the IRS and applying for their own 501 (c) 3
- Confirmation of their own 501 (c) 3 (a multi-year process)
- Would be a totally set up counterpart—decide who will form the new one and how much help would get from the existing one
- Takes about a year to go through all the steps. IRS takes about 6 months of that time—to process back and forth to finish analyzing and investigating group
- Could not have the same name—could change just one initial in OISRA, such as OINSRA
- Also need to get the approval of the State Board of Education

Suggestion by Charlie: Clarify mission statement of OISRA and ask Nordic coaches to clarify in what ways they differ from the OISRA mission statement. This process is very important to Charlie, because the Board decisions must be based on the mission statement.

Those present decided to write new Bylaws under the assumption that there will be some Nordic teams that want to remain members of OISRA, and there will be provisions in the new OISRA Bylaws for this inclusion of Nordic teams.

David recommends a Board Training Seminar—on new Bylaws and on State Law,

- because there is a concern that the group has not understood what the State Law allows or requires.
- Costs about \$200.

- When to do it? In May after new Bylaws? In fall after new election?
- Wait to find out budget
- David can't come to the meeting on April 29—he has a conflict on that date. Pick another time

Other services to consider paying David to do:

- Review contracts we have written
- Be “registered agent”

DEFINITIONS:

A 501 (c) 3 classification for an organization is an IRS classification that gives the organization nonprofit, tax-exempt status.

Articles of Incorporation: The Articles of Incorporation for a 501 (c) 3 organization is a document that legally defines the type of organization, provides contact information, and includes provisions for things such as limitations on political activities, statement that the organization is not organized for profit, and some protections for the Directors and Officers from liability. Submitting the Articles of Incorporation to the IRS is the first step of becoming incorporated as a 501 (c) 3 organization.

Board of Directors: State law requires that a 501 (c) 3 organization must be governed by a Board of Directors. The Board is elected by the voting members of the organization and has the power, purpose, and duties as described in the organization's Bylaws.

Bylaws: The Bylaws of an organization set up the structure and governance of the organization: who governs, who is the Board of Directors, who are the officers, who are the members, how the Board and officers are selected, how the Board and officers make decisions.

Division Steering Committee: The people in each division who carry out the day-to-day business of running each division. Through the Bylaws, the Board of Directors delegates to each Division's Steering Committee the powers to make certain types of decisions. Some decisions made by a Division Steering Committees are final decisions. Other types of decisions made by a Division Steering Committee can be challenged with an appeal process to the Board of Directors.

Division Race Rules and Regulations: Each division has the authority to write all the rules that govern the mechanics of how races are run in that division. Standard Operating Procedures for governing State Championships events are also defined in Division Race Rules and Regulations.

Policies: Any rules and regulations that are not required by State Law or the Articles of Incorporation or Bylaws are found in the Policies. Policies can be personnel policies, program policies, financial policies, etc.