

## **2010-541, Annual Meeting Held Without Proper Notice, Handling of Election of Directors and Bylaw Amendments.** Vol. LI, No. 1, January 2010

### **Question**

Our bylaws do not set a specific annual meeting date. Instead, the board is to set the annual meeting date for some time in January or February and to send out written notice with the call of the meeting to all the members at least two months in advance informing them of the time, date, and location of the meeting. Our annual meeting is our only regular meeting. All other meetings during the year are special meetings. Proposed bylaws amendments may only be considered at the annual meeting and must be submitted within two weeks of the date of that first notice, and another notice is to come out one month before the annual meeting with the text of the proposed bylaws. The bylaws also mandate that the election of officers and directors take place at the annual meeting.

This year, through a calendaring glitch on the part of the secretary, the first, two-month-in-advance notice was not sent out. Only the second one-month-in-advance notice was sent out. Several members complained that, without the two-months-in-advance notice, they were prejudiced because they were not able to present bylaws amendments that addressed important governance issues. Some potential candidates for office asserted they had insufficient time to organize an effective campaign. Other members were unable to change their plans to attend without the full two months' notice.

The meeting took place at the date, time, and location previously voted on by the board and noticed to the members in the one-month-in-advance notice. A quorum was in attendance. Several members at the meeting protested the lack of the first notice, so the body voted to adjourn and hold the continued meeting in three months, and for the secretary to send the proper two-month-in-advance and one-month-in-advance notices. Several members said that this was improper procedure and that the next meeting should not be noticed as a continuation of the original, improperly noticed meeting. Instead, they contend, the following meeting should be held as a special meeting to do the business mandated to be done at the annual meeting (election of directors and officers, consideration of bylaw amendments, and delivery of annual officers' and committee reports) that could not be held because of the improper notice. Their opponents contend that the bylaws mandate that these actions take place only at the annual meeting and cannot take place at a special meeting. The difference is significant, because the notice controversy has stirred up a hornets' nest and some members do not want additional issues to come up, which would be possible if the coming meeting is considered a continued meeting, but not if it is considered a special meeting. Our parliamentary authority is *Robert's Rules of Order Newly Revised*. Who is right?

### **Opinion**

This is obviously a delicate situation. A majority of the committee is of the opinion that, in these circumstances, improper notice of a meeting cannot be "cured" by adjourning the improperly called meeting and holding the adjourned meeting with proper notice. A continued meeting is part of a continuous session with the original meeting. However, a meeting held without proper notice is no meeting at all. "If ... an organization follows the practice of scheduling the dates of its regular meetings by resolution, notice must be sent to *all* members in advance of each regular meeting ..." *RONR* p. 87, l. 22-25 (emphasis added). In this case, none of the members, except for the board members, who set the date, and possibly some of their friends, had proper notice. The other members had some notice, but clearly significantly less than what the bylaws called for. The "annual meeting" was irretrievably tainted by inadequate notice. The improperly noticed meeting has no power to set a date for a continued meeting. This was not a duly called meeting at which a quorum failed to appear, which is specifically empowered to set the date of a continued meeting. *RONR* p. 336, l. 25-p. 337, l. 13. See AIP Opinion 2004-505 (setting an item down for consideration at a continued meeting cannot cure an improper notice of the item at the first meeting; "a previous notice must be given before the issue

requiring notice is brought up at all.”). *RONR*’s discussion of actions possible at an inquorate meeting makes an important distinction between a lack of a quorum at properly called meeting and improper notice. At an inquorate meeting, oral notice cannot be given because an insufficient number of members will be present to allow the notice to be effective. *RONR* p. 337, l. 16. As the original meeting was improperly noticed and some of the members were unable to attend without the proper notice, it cannot set the date for a continued meeting.

The cure for the problems caused by the improper notice is a more difficult issue. New officers and directors must be elected annually and the outgoing officers and directors cannot continue themselves in office perpetually by “neglecting” to send out sufficient notice of the time and location of the annual meeting on the stated date or within the stated time period. There is ample precedent that general parliamentary law allows for a special meeting to be called to hold a special election sometime after the proper time for the annual meeting. *Parliamentary Opinions II* q. 105, pp. 82-83, provides that, when an election cannot be completed at the annual meeting and a continued meeting has not been set (as is the case here, because the attempted continued meeting was invalid because of the original meeting’s improper notice), elections may be held at a special meeting or the next regular meeting, provided that previous notice is given. *See* AIP Opinions Committee q. 2006-514; POII q. 108, pp. 84-85; PO q. 243, p. 127. In this case, the same notice required of the annual meeting should be given for a special meeting to elect new officers. POII q. 109, p. 85 (in case of improper notice of an annual meeting, with full notice elections can take place at the next meeting); PO q. 242, p. 127 (“The rules governing general or regular elections apply as far as practicable to special elections, and should be enforced accordingly.”). Other agenda items that the bylaws allocate only to the annual meeting, but that must take place annually, can also be handled at the special meeting, such as adoption of a budget. Under the standard order of business, reports of officers and committees can occur at any meeting, *RONR* p. 342, l. 14-15, so those reports can also be given at a special meeting.

The bylaws amendments are a more difficult issue. This organization’s bylaws do not allow bylaws amendments at a special meeting and the next annual meeting is a year away. NAP’s *Questions & Answers III* q. 341, p. 96, opines that, if the bylaws provide that they can only be amended at the annual meeting, they cannot be amended at a special meeting following an inquorate annual meeting. In that case, however, the annual meeting was to take place on a fixed date determined by the bylaws. All members were on bylaws notice of the date and, it is presumed, the standard meeting place and time. Technically, notice was only necessary for the bylaws amendments. In this case, the board is to set a date within a mandated timeframe and provide the members adequate notice of that date to do all that must be done at the annual meeting, including bylaw amendments. The board cannot thwart the members’ desire to amend the bylaws at the one annual opportunity to do so by failing to notice a meeting properly within the mandated time period. Much as with the special election of officers mandated to take place at the annual meeting that was not timely held, the amendment of bylaws can also take place at a special meeting in lieu of annual meeting. *See* POII q. 109, p. 85 (“It is now impossible to adhere to the bylaws in all respects, but they should be followed as closely as possible.”). The board should call such a meeting at the soonest opportunity consistent with the notice periods established in the bylaws.

At the next annual meeting, the members may want to consider a provision that, if the annual meeting is not timely held, a special meeting in lieu of annual meeting may be called and may transact all business that would otherwise be addressed at the annual meeting.