

2020-661-1, *Automatic Succession of President-Elect When There Is No Annual Meeting*

QUESTION

I belong to a professional association that holds an annual membership meeting. The parliamentary authority is *AIPSC*. We have a president and a president-elect, who automatically succeeds to the presidency at the end of the president's term. All officers' terms are one year and all but the president are elected annually. The term length is stated precisely. There is no "or until their successors are elected" holdover provision. The officers' terms commence "at the close of business at the annual meeting at which they are elected." This year's meeting was scheduled for May, but it was canceled due to the COVID-19 health care crisis. Does the president-elect succeed the president automatically on the date that the meeting was originally scheduled to end?

OPINION

As to officers' terms, *AIPSC*, p. 184, provides: "Officers are not always elected with the regularity or at the precise time prescribed by law or the bylaws. The ordinary rule in such cases is that the incumbents continue to hold office until their successors are elected or appointed." This provision works together with the provision that officers' and directors' terms are normally stated on the basis of the "official year" and not the calendar year.

AIPSC, pp. 305-06, defines *official year*, as a period that "commences at the time that an event, such as the commencement of an officer's term or annual meeting, is scheduled pursuant to a rule (including a rule permitting such an event to be scheduled within a limited timeframe by a specific body or individual) and runs until the time scheduled for the next such event, when the next such event is approximately one year from the original event. When procedural rules refer to a year and the context does not clearly refer to a calendar year, the year referred to is an official year." These provisions in *AIPSC* are intended to take into account that real life does not occur at precise timed intervals.

The *official year* is a useful concept and describes how most organizations actually conduct themselves. For example, the bylaws could require a meeting in May for election of officers for a one-year term, on a date to be chosen by the board. The directors could choose May 1 in one year and May 30 in the following year, giving officers elected in the first year an effective thirteen-month term. If the terms were based on calendar years, and were exact (disregarding holdover provisions), then officers elected May 1, 2019, would end their terms on May 1, 2020, and leave the organization with no officers until the annual meeting at the end of the month. That's not practical, which is why officers' terms in bylaws are by default considered to be based on official years rather than calendar years.

As to the president-elect, if the annual meeting is canceled, then all of the prior officers and directors, including the president, remain in office as holdovers, until a special election can be safely scheduled, even if that cannot be done until the next annual meeting and the result is a full one-year holdover (resulting in an effective two-year term) for the incumbent officers. The president remains president and the president-elect remains president-elect. See Opinion 2010-541, *Annual Meeting Held without Prior Notice, Handling of Election of Directors and Bylaw Amendments*, 51 (1) PJ p. 27 (2010).

This can result in some gamesmanship. If a special meeting in lieu of annual meeting is held at any time during the following year (e.g., June 2020 through April 2021), a new president-elect

will be elected, and the prior president-elect then becomes president, if only for a truncated term until the next annual meeting. If no special meeting in lieu of annual meeting is held, and there is no meeting until the next annual meeting (*e.g.*, May 2021), some could say that the president-elect, having served two years as president-elect, is unable to ascend to the presidency, and the house of delegates should elect a new president-elect and a new president, just as it would if the president-elect resigned during the middle of the term as president-elect (assuming that the assembly fills that vacancy and not the board). Others could say that the prior president has now completed the holdover term extension and the prior president-elect, having by now waited for two years, should automatically succeed, as intended by the bylaws. Therefore, the 2021 annual meeting would only need to elect a new president-elect.

The Opinion Committee is of the latter opinion. Basic fairness (*AIPSC*, p. 10) would allow the president-elect the opportunity to serve as president, which he or she has been anticipating for two years – as has the association. The alternative would be to hold two elections, one for president-elect and another for a one-year president to fill the vacancy without the development of leadership experience that is the rationale behind having a president-elect. *AIPSC*, p. 177.

The gamesmanship could occur if a faction adverse to the president-elect calls a special meeting in lieu of annual meeting shortly before the next annual meeting, resulting in the prior president-elect serving a very short term as president and the new president-elect serving a very short term as president-elect and then a full term as president. In general, *AIPSC*, disfavors gamesmanship and supports basic fairness. *See AIPSC*, p. 10. *AIPSC*, p. 183, provides that service of a partial term does not count towards an officer's maximum number of terms if there are term limits. *See contra RONR*, pp. 448, 575 (service for more than a half term is considered service of the full term for term limits). On the other hand, *AIPSC*, p. 183, provides that service for more than one-half of a term counts as sufficient service if there is a service in office requirement for a higher office. In both cases, the *AIPSC* rule favors fairness to the incumbent. Basic fairness consistent with *AIPSC* principles similarly requires that a special election for a new president-elect when the annual meeting is cancelled (or there is an incomplete election for some other reason, such as too many candidates running to complete the election before adjournment) must take place during the first half of holdover term. This requirement ensures that the president-elect at the time of the meeting cancellation serves at least half of a term as president, by analogy to the minimum service requirement for qualification for higher office under *AIPSC*, p. 183.

In addition to the *AIPSC* default holdover provision, in this case, because of the “official year,” the terms of the president and president-elect would extend until the next annual meeting, or special meeting in lieu of annual meeting. This is so even if it is clear that there would be no contest for any of the positions. The “official year” in this case (with a bylaw provision saying officers' terms commence at the end of the meeting at which they are elected) runs until the end of next annual meeting (or special meeting in lieu of annual meeting). In that case, if the president remains in office, the president-elect remains in that office because he or she cannot succeed automatically to an office that remains filled. The terms do not turn over at the time that the originally scheduled meeting would have ended if it had been held. It was not held. It did not end, and therefore the “official year” continues until the next annual meeting (or special meeting in lieu of annual meeting) ends. In other words, in this case, the officers' terms start on a conditional date, which can change from year-to-year: “at the close of business at the annual meeting.” In other words, they cannot start until the condition (the end of the annual meeting) has been met.

The result would be the same in this case under *RONR*, because the bylaws language refers to the start of the new officers' terms and *RONR* is clear that "the terms of the outgoing officers end when those of the incoming officers begin." *RONR*, p. 573. The terms of the incumbent officers continue until such time as there are incoming officers.

It should be noted that many state nonprofit corporation statutes have provisions regarding holdover terms for officers and directors. If your state has such a statute, you should review it with legal counsel and take it into consideration in your organization's deliberations about how to handle this issue.