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Community Action Program Legal Services, Inc.

Tips for Attorneys Reviewing CAA Bylaws

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What Laws Apply to the Review of a CAA's Bylaws?

- IRS tax-exempt laws
- State Nonprofit Corporations Act
- Federal CSBG Act
- State CSBG statutes and regulations, if exist
- State CSBG Agreement
- OCS Information Memorandum 82 (non-binding)
- Other federal and state funding source laws and agreements, i.e., Head Start, HUD, etc.

Federal Law, State Law, Articles, Bylaws: Which Takes Precedence?

- Federal law
- State law
- Articles of incorporation (nonprofit CAA)
- Delegation of powers (public CAA)
- Bylaws
- Board resolutions
- Board policies
- Parliamentary procedures
- Contract/grant terms and conditions

Tip #1: Include Articles of Incorporation in Review

- If articles and bylaws not consistent, articles will trump bylaws
- 501(c)(3)s need to include specific purposes language in articles
 - Charitable purposes and fact that purposes limited to those described in section 501(c)(3)
 - No substantial part of activities is influencing legislation

Tip #1: Include Articles of Incorporation in Review

- Other required 501(c)(3) language:
 - No part of earnings inures to benefit of private shareholders or individuals
 - No participation in political campaign activity
 - Upon dissolution, distribution of assets only to 501(c)(3) or to federal, state or local gov't, for public purpose

Tip #2: Avoid Repeating Provisions in Bylaws and Articles

- Common repeated provisions include:
 - Name
 - Purposes
 - Dissolution
- Why?
 - Ensures consistency
 - Results in more efficient board operations
 - Bylaws easier to amend

Tip #3: Know Type of Entity Assisting

- Public CAA (local government entity) v. Private CAA (nonprofit)
- Example: Board powers and duties
 - Nonprofit CAA boards usually have broad powers under state nonprofit corp. law
 - Public CAA tripartite board's powers depend on authority delegated to it by local government

Tip #3: Know Type of Entity Assisting

- **Example cont.:** nonprofit bylaws usually include a general statement of board's authority
 - For example: "The governing body of the corporation shall be the board of directors, which shall have supervision, control and direction over the affairs of the corporation."
 - Even if not stated in bylaws, the board has authority provided in state law, unless bylaws specifically remove that authority
- Bylaws for public CAA boards need to be more specific

Tip #4: Understand CSBG Tripartite Board Requirements

- Federal CSBG Act (42 U.S.C. § 9910) and some state CSBG laws outline tripartite board requirements
 - If state CSBG law or policy is inconsistent with federal CSBG Act, federal CSBG Act governs
- CSBG tripartite board composition requirement:
 - 1/3 public officials or their representatives
 - At least 1/3 low-income representatives
 - Balance from major groups or interests in community served

Tip #5: Understand CSBG Tripartite Board Requirements

- Board members are to be chosen by grantee
 - Must use democratic selection process for low-income board members
 - Public CAA – tripartite board can make recommendations to governing officials
- Important to include general selection language establishing that CAA will vote to seat all members once specific composition requirements met

Tip #6: Public Sector Provision Recommendations

- Under federal law, no longer required to include or be chosen by “chief elected officials”
 - For nonprofit CAAs, best to specify in bylaws that CAA itself elects public official board members – but not specify which ones
 - For public CAAs, since governing officials of city/county usually have final say on decisions affecting CAA, encourage CAA to consider including other public officials on tripartite board

Tip #6: Public Sector Provision **Recommendations**

- CSBG Act says “holding office at time of selection”
 - OCS IM 82 recommends that public officials serve only while they are in office
- Good idea to have specific terms rather than permitting public officials to stay on board as long as they are in public office

Tip #6: Public Sector Provision **Recommendations**

- If elected officials not available, may include appointed officials
- Public officials may designate representatives
- For nonprofit CAAs
 - Generally, if public official designates representative to serve in his/her place, that person (and not public official) is board member
 - Public official or representative must serve CAA’s interests

Tip #7: Low-Income Sector Provision Recommendations

- Nonprofit CAA low-income representatives:
 - Must be democratically selected to assure representative of low-income people in service area
 - If chosen to represent a particular neighborhood, must live there
- Public CAA low-income representatives:
 - Must be representative of low-income individuals and families in service area
 - Must live in service area

Tip #7: Low-Income Sector Provision Recommendations

- Should represent current low-income residents, but don't need to be low-income themselves
 - Best practice: should have at least some (if not all) low-income board members who are low-income themselves

Tip #7: Low-Income Sector Provision Recommendations

- Bylaws may, but do not need to (unless required by state CSBG office), describe democratic selection procedure
 - If not described in bylaws, selection procedure should be described in a separate document referred to in the bylaws and approved by the board

Tip #7: Low-Income Sector Provision Recommendations

- Some possible democratic selection techniques include:
 - Election by ballot or at community meeting
 - Elected by or designated from elected leaders of low-income groups
 - e.g. Head Start Policy Council, neighborhood association, public housing tenants' association, community health center

Tip #7: Low-Income Sector Provision Recommendations

- Should not be chosen simply by CAA board or nominating committee
- Should not be staff of another low-income service provider picked by CAA board or nominating committee or by executive director of other organization board, etc.

Tip #8: Private Sector Provision Recommendations

- Private sector includes officials or members of business, industry, labor, religious, welfare, education, law enforcement, or other major groups and interests in community served
 - May include both public and private sector groups and interests

Tip #8: Private Sector Provision Recommendations

- Check state CSBG statutes/regulations
 - Depending on state laws, board may choose representatives from organizations or individuals
 - If choosing reps from organizations, board has more flexibility if organizations not specified in bylaws

Tip #9: Include Petitions for Board Representation Language

- Federal CSBG Act requires CAA to establish procedures for low-income individuals, community organization, religious organization or representative of low-income organization to petition for representation

Tip #10: Recognize Other Funding Sources' Board Composition Rules

- Example: Head Start Act requires governing body to include:
 - At least one member with financial expertise
 - At least one member who is a licensed attorney familiar with issues that come before the board
 - At least one member with early childhood education expertise

Tip #10: Recognize Other Funding Sources' Board Composition Rules

- Example cont.: Other Head Start board members should:
 - Reflect community and include current or former Head Start parents
 - Be selected for their expertise in education, business administration, or community affairs
- Exception to Head Start requirements: when board members oversee a public entity and are selected to their positions with the public entity by public election or political appointment

Tip #11: Discuss with CAA Board Size Options

- Does state nonprofit or CSBG law specify minimum or maximum number?
 - Bylaws must specify number of board members
 - Usually can specify range
 - Check state nonprofit and CSBG law
- How many is right number?
- Note: Unless state law, articles, or bylaws specify otherwise, *ex officio* board members hold all rights of board members, including voting

Tip #12: Understand Alternate Rules and Use

- Nonprofit CAAs – many state nonprofit corp. laws do not permit alternates who can vote when primary board member can't attend
- Public CAAs can permit alternates to vote when primary board member can't attend

Tip #13: Understand Alternate Rules and Use

- Even if state law permits alternates to vote, best practice – no voting by alternates; instead:
 - Permit alternates to attend meetings and report to primary board member
 - Fill vacancies
 - Permit attendance of board members by telephone if state nonprofit and open meetings laws (if applicable) permit

Tip #14: Discuss Board Members' Terms with CAA

- Federal CSBG Act does not address CAA board members' terms
 - Check state nonprofit corp. and CSBG law
- Specify board members' terms in bylaws
 - May provide for staggered terms
 - Terms can be different lengths for different sectors

Tip #15: Weigh Pros/Cons of Term Limits with CAA

- Federal CSBG Act does not address term limits for CAA board members
 - Check state nonprofit corp. and CSBG law
 - Even if state law doesn't require term limits, CAA may decide to impose them
 - Some CAAs permit board members who have reached their term limits to re-join the board after a break (e.g., 1 year)

Tip #16: Include Removal Provisions

- Specify whether removal can be without cause, or whether it must be for cause
 - If for cause, define or give example(s) of what cause is in bylaws
 - But use “including, but not limited to”
 - Provide notice and opportunity to be heard
 - Require removal for nonattendance at specified number of meetings
- Specify vote needed to remove

Tip #17: Include Provisions for Addressing Board Vacancies

- Specify in bylaws how vacancies in each sector will be filled
 - Board elects replacement board members once chosen through appropriate process
- Specify term length of replacement board member and how partial term counts towards term limits, if any

Tip #18: Establish Process and Procedures for Board Meetings

- Specify minimum frequency
- Specify procedures for annual, regular, special meetings
- Specify form of notice and time periods
 - Specify whether electronic notice can be used (check state law)
 - Permit board members to waive notice (but if subject to state open meetings laws, public can't waive notice under those laws)

Tip #18: Establish Process and Procedures for Board Meetings

- If public CAA, state open meetings law applies
- If private nonprofit CAA, determine whether open meetings law applies
 - Each state law has different language and interpretation

Tip #19: Include Quorum Requirements

- Check state law
- Most state nonprofit corp. laws don't allow nonprofits to set quorums less than 1/3 of voting board members
 - Most nonprofits use majority of board members in office as quorum
 - Depending on state law, default of a "majority" may apply if no bylaw provision
- State specifically needed fraction of voting board members then in office

Tip #20: Include Voting Requirements

- Usually act by affirmative vote of majority at meeting at which quorum is present
 - State nonprofit corp. laws sometimes require super-majority (2/3) in certain cases (e.g., amending articles or bylaws, dissolution)
- CAA can choose to require supermajority

Tip #21: Establish Authority of Board Committees

- Many state nonprofit corp. laws prohibit boards from delegating certain powers to committees (e.g., adopting, amending or repealing bylaws)
- Clearly indicate either in bylaws or resolution adopted by board if committee is advisory (i.e. makes recommendations) or has authority to make decisions
 - Don't say: "subject to ratification by board"
 - All committee recommendations and decisions should be timely reported to full board
- Use committee charters to set out responsibilities

Tip #22: Include Provisions Establishing Board Committees

- Who has authority to create committees and appoint members?
- Who can be on committees?
 - Just board members as voting members?
 - Require that committees reflect tripartite board structure?

Tip #22: Include Provisions Establishing Board Committees

- Be sure committees reflect CAA's current needs and are relevant to its current operations
- Standing committees specified in bylaws, e.g.:
 - Executive
 - Governance – instead of nominating
 - Finance and/or audit
 - Personnel – include EEO functions
- Ad hoc committees created by board resolution

Tip #23: Include Provisions Creating Officers

- Bylaws should specify officers and their duties
 - Nonprofit CAAs: check state nonprofit corp. law as to number and specific officers required
 - State whether one person can hold more than one office
 - Require officers to be board members?
 - Note that board may appoint additional officers not specified in bylaws
- Usually board elects officers by majority vote and they serve for one-year terms
 - Require term limits?

Tip #23: Include Provisions Creating Officers

- Include removal and resignation procedures
- Specify how vacancies filled
- Permit officers to delegate duties to employees or agents in certain cases
- Specify whether officers required to be bonded
- Board can also appoint other agents, employees and define their duties

Tip #24: Include Provision Specifying ED/Board Relationship Provision

Board:

- Appoints & employs ED
- Evaluates ED and sets his/her compensation on an annual basis
- If necessary, can remove ED

Executive Director:

- Acts pursuant to board's direction
- Manages day-to-day affairs
- Implements board goals & policies
- Reports on & advises board and committees re: corp.'s affairs & activities
- Hires, supervises & terminates employees pursuant to board-approved personnel policies

Tip #25: Address Board Compensation

- Bylaws should state that board members will not be compensated for services as board members
- Bylaws should state that board members may be reimbursed for reasonable and documented expenses incurred in course of performing services as board members

Tip #26: Reference Conflict of Interest Policy

- Bylaws should require board to adopt and implement separate conflict of interest policy
 - Review and update periodically
 - Be sure to include in conflict of interest policy other funding source requirements
 - For example, Head Start requirements regarding financial conflicts of interest, board operating independently of staff, & prohibition against employing board members & immediate family members

Tip #27: Include Provision Addressing Signing Checks and Contracts

- Bylaws should include language on who can sign contracts and checks etc.
 - Can specify certain officers to sign in bylaws and let board authorize, by resolution, other officers, employees and agents to sign, or
 - Can leave it general and let board authorize, by resolution, specific people to sign

Tip #28: Describe Procedures for Amending Bylaws

- Check nonprofit corporations laws
- Specify notice required – decide whether to include special notice requirements if state law doesn't require them
- Specify vote required



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