

Legal Issues for Chambers of Commerce

The executive of a Chamber is responsible for managing the day-to-day legal and financial affairs of the organization. Because few Chamber executives are experts in nonprofit or tax-exempt issues, it is advisable to consult an experienced attorney and certified public accountant as needed. The following summary of nonprofit and tax issues for Chambers was prepared by J. Patrick Plunkett, an attorney with the Larkin Hoffman Law Firm.

Introduction

Most Chambers of Commerce are organized as nonprofit, tax-exempt, corporations. It should be noted, however, that “nonprofit” status “tax-exempt” status and are separate and distinct classifications. “Nonprofit” status is obtained by filing Articles of Incorporation as a Minnesota nonprofit corporation with the Minnesota Secretary of State. “Tax-exempt” status is granted by the Internal Revenue Service with respect to federal income taxes; by the Minnesota Department of Revenue with respect to Minnesota income taxes and sales taxes; and by the applicable county with respect to real estate taxes.

Nonprofit Legal Issues

Formation as a Nonprofit Corporation

A Chamber of Commerce is formed by someone (referred to as the “incorporator”) preparing and signing Articles of Incorporation which are then filed with the Minnesota Secretary of State. The Articles of Incorporation must contain the following:

- The name of the Chamber.
- The address of the Chamber (post office box numbers are not acceptable).
- A statement that the Chamber is being formed as a nonprofit corporation pursuant to the Minnesota Nonprofit Corporation Act.
- The name, address and signature of the incorporator.

It is recommended that the incorporator supplement these minimum requirements by including within the Articles of Incorporation a statement setting forth the purposes of the Chamber and the procedures for amending the Articles.

After the Articles of Incorporation are signed by the incorporator, the articles need to be filed with the Minnesota Secretary of State. This can be done in person at 60 Empire Drive, Suite 100, Saint Paul, Minnesota 55103 (North of the State Capital); by U.S. mail addressed to 60 Empire Drive; or electronically at www.sos.state.mn.us. The filing fee is \$90.00.

Each calendar year, a Chamber must file an annual registration with the Secretary of State. A Chamber that fails to file an annual registration will be administratively dissolved, and loses its good standing under Minnesota law. A Chamber can have its good standing restored at any time by filing an annual report with the Minnesota Secretary of State and paying the required reinstatement fee. If a Chamber changes its registered address, it must notify the Minnesota Secretary of State. Both the annual registration and the change of registered address can be done on-line.

More information about the procedures for forming a Chamber of Commerce, and the annual filing requirements can be found on-line at www.sos.state.mn.us.

Powers of Chambers

Minnesota law lists 28 specific powers of Chambers of Commerce. These powers include:

- A Chamber may sue or be sued.
- A Chamber may buy, own, sell, lease, or mortgage real estate, equipment and other property.
- A Chamber may have offices in more than one location.
- A Chamber may employ persons and pay salaries, bonuses, commissions, pensions and fringe benefits.
- A Chamber may conduct business under one or more assumed party names.
- A Chamber may be a member of another organization and may participate in joint ventures and other group activities.
- A Chamber may have one or more subsidiaries.

In addition to these specific powers, Chambers possess all other powers necessary or convenient to carry-out their lawful purposes.

Bylaws

The principal rulebook for governing and managing a nonprofit Chamber is the Chamber's Bylaws. The Bylaws should be periodically reviewed and updated to conform to existing practice and procedures. Alternatively, the practices and procedures of the Chamber should be modified to conform to the Bylaws.

Members

A Chamber's members may have full voting rights, limited voting rights or no voting rights. There may also be various classes of members and members may have different rights and preferences. It is also not unusual to have different dues structures for different classes of members. It is therefore important that the Chamber's Bylaws identify the requirements for membership in the Chamber, and the procedure for accepting a person or organization as a member of the Chamber. Unless the Bylaws provide otherwise, membership in a Chamber is not transferable without the consent of the Chamber.

Generally, membership is for a fixed term such as one year. A member may resign at any time by giving notice to the Chamber. A member may also be expelled or suspended by the Board pursuant to a procedure that is fair and reasonable.

Meetings of members generally are held at a designated location, although the Bylaws may provide for video conferencing and the use of written ballots. Unless the Bylaws provide otherwise, a Chamber with voting members must hold an annual meeting of voting members. If an annual meeting has not taken place for 15 months, fifty members with voting rights, or 10% of the members with voting rights, whichever is less, may call for a meeting of members. Under Minnesota law, the quorum requirement for meetings of members is 10% of the members entitled to vote, although the Bylaws may provide for a greater or lesser quorum amount. Action by members is taken by majority vote of the members present at a duly held meeting unless the Bylaws require a greater percentage. If permitted by the Bylaws, members may vote by proxy.

Board of Directors

A Chamber of Commerce must be managed by or under the direction of a Board of Directors. Normally, directors are elected by the members (on either a contested or a non-contested basis) or by the other directors. In either case, the Bylaws should specify the manner of election. Often, a Chamber will provide for “ex-officio” directors. It is important to realize that ex-officio directors are not “unofficial,” “honorary,” or “nonvoting” directors. Rather, an ex-officio director serves as a director by reason of holding some other office (either within or outside of the Chamber), rather than through the normal election/appointment process.

In addition to specifying the manner of election of directors, the Bylaws should specify the number of directors and their terms of office. A Board of Directors must consist of at least 3 persons. There is no legal maximum on the number of directors. Directors (other than ex-officio directors) must serve for a fixed term, which may not exceed 10 years. Except to the extent provided in the Bylaws, there are no legal limits on the number of terms that a director may serve. The Bylaws may provide for staggered terms of directors so that there are new directors joining the Board each year.

A director may resign at any time by giving notice to the Chamber. It is not necessary that the resignation be accepted. A director may also be removed at any time, with or without cause, by the remaining directors under certain circumstances or by the members with voting rights. Vacancies on the Board of Directors caused by death, resignation or removal of a director may be filled by the remaining directors, or by the members with voting rights.

Generally, the Bylaws provide for regular meetings of the Board of Directors. Unless the Bylaws provide otherwise, a meeting of the Board may be called at any time by any director upon five days’ notice. Minnesota law provides that a quorum for Board meetings is a majority of the directors, although the Bylaws may establish a smaller number (which may not be less than 1/3 of the directors) or a larger number for quorum purposes. If a quorum is present, directors attending the meeting may continue to transact business even though some of the directors leave the meeting thereby reducing the number of directors present to be less than the quorum requirements. The minimum vote required for the Board to take action is a majority of the directors who are present at a duly held meeting, although the Bylaws may require a greater percentage. The Board may also take action by telephone conference or through written or

electronic action signed by all of the directors (the Articles of Incorporation may permit written or electronic action signed by a majority of the directors). In no case, however, may directors vote by proxy.

It the Board votes to take action, directors who are present at the meeting where the action is taken and who fail to vote against the action (unless they are prevented from voting by reason of a conflict of interest), are presumed to have consented to the action.

Minnesota law requires directors to act in good faith and with the care that an ordinarily prudent person would take under like circumstances. This means that a director is required to attend to attend Board meetings, read and understand materials to be presented to the Board, and participate in Board discussions. Directors also owe a duty of loyalty to the Chamber. Directors, members of their families, and their companies should not do business with the Chamber unless all of the facts of the transaction are disclosed to the Board (or one of its committees) and the transaction is approved by a majority of the Board (or such committee).

A director is entitled to be indemnified by the Chamber for any expenses incurred by the director as a result of any legal proceeding brought against the director by reason of his or her service as a director if the director acted in good faith, received no improper personal benefit, in the case of criminal proceedings did not know the conduct was unlawful, and has not been otherwise reimbursed for such expenses. A Chamber may limit or restrict its duty to indemnify directors in the Chamber's Articles of Incorporation or Bylaws. As additional protection for directors of a Chamber of Commerce, Minnesota law provides that a director who serves without compensation is not civilly liable for any act or omission taken by the director in good faith except to the extent the Attorney General of Minnesota claims that the act or omission constitutes a breach of fiduciary duty, or if the act or omission violates federal law. In any event, a Chamber should purchase directors and officers ("D&O") insurance to cover the acts of directors and officers.

The Board of Directors may appoint one or more committees having the authority of the Board with respect to management of any aspect of the Chamber's affairs. It is important that the Bylaws (or the resolution of the Board authorizing the committee) establish rules and procedures addressing the manner of appointment of committee members, the powers of the committee and meetings of the committee.

Officers

Minnesota law requires that one or more persons exercise the functions of President and Treasurer, even if the titles “President” and “Treasurer” are not actually used. Officers are responsible for the hands-on, day-to-day management of the Chamber. Officers owe the same duty to act in good faith and in the best interests of the Chamber as do directors.

In the case of most Chambers, the senior volunteer is given the title of “Chair” or “President” while the senior employee is given the title of “President,” “Executive Vice President” or “Executive Director.” [The Minnesota Chamber of Commerce Executives Association recommends that the senior volunteer be given the title of “Chair” and the senior administrator be given the title of “President.”] Regardless of the titles selected, it is important that the Bylaws clarify the title, duties and responsibilities of each officer. Under Minnesota law, all officers are to be elected by the Board unless the Bylaws reserve that right to the members.

An officer (even one who has a written employment contract) may be removed by the directors or the members with or without cause. Officers may also resign at any time and their resignation need not be accepted. Unless otherwise provided by the Articles of Incorporation, Bylaws or the Board, officers may delegate their duties to one or more other persons.

Books and Records

A Chamber is required by Minnesota law to keep at its registered office, complete and correct copies of its Articles of Incorporation, Bylaws, accounting records, and minutes of meetings of the Board and committees. These records may be inspected by any member of the Chamber for any proper purpose at any reasonable time.

Loans and Guarantees

Minnesota law allows a Chamber to make loans and guarantee obligations of another person or organization if the transaction (or a class of transactions to which the loan or guarantee belongs) is approved by the Board and is in the usual and regular course of activities of the Chamber; is with or for the benefit of a related organization; or has been approved by two-thirds of the members with voting rights. A Chamber may also lend money to, or guarantee the obligation of a director, officer or employee of the Chamber or a related organization if the loan or guarantee may reasonably be expected, in the judgment of the Board, to benefit the Chamber.

Tax Issues

Federal Tax-Exempt Status

Most Chambers of Commerce are classified by the Internal Revenue Service as tax-exempt organizations described in §501(c)(6) of the Internal Revenue Code. In order to qualify as a §501(c)(6) organization, a Chamber of Commerce must exist to promote the common business interests of its members, and not the separate interests of a particular member or group of members. It is not legally required that a Chamber apply to the IRS for tax-exempt status, but most do so. If the Chamber has applied to the IRS and received a determination letter from the IRS that the Chamber is tax-exempt, the letter should be kept in a safe place.

Minnesota Income Tax

Any Chamber that holds an IRS income tax exemption letter is automatically exempt from Minnesota income taxes even if the IRS letter is very old.

Minnesota Sales Tax

Even though Chambers of Commerce may qualify for income tax exemption under the Internal Revenue Code and Minnesota law, purchases by Chambers of Commerce are subject to Minnesota sales and use taxes under the same requirements as “for-profit” businesses. If a Chamber has a separate Foundation which is described in Section 501(c)(3) of the Internal Revenue Code, and which has been granted sales tax exemption, the Chamber may not use the Foundation’s sales tax exemption certificate to purchase items for the Chamber’s own use. For more information regarding Minnesota sales and use taxes go to www.revenue.state.mn.us

Minnesota Real Estate Taxes

Because Chambers of Commerce do not qualify as “institutions of purely-public charity,” they are not entitled to real estate tax exemption.

Non-Deductibility of Lobbying Expenses

A Chamber of Commerce must provide its members with a notice of the percentage of the members’ dues which are not deductible as business expenses because of the Chamber’s lobbying activities. The notice must be provided in a conspicuous and easily recognizable

format. Chambers might consider the following suggested language for membership dues invoices:

“Dues to the (name of Chamber) are not deductible as a charitable contribution for income tax purposes but may be deductible as an ordinary and necessary business expense. A portion of dues, however, is not deductible as an ordinary and necessary business expense to the extent that the (Chamber name) engages in state or federal lobbying. The nondeductible portion for (year) is X%.”

Unrelated Trade or Business Taxes

Chambers of Commerce are required to pay taxes on any net income derived from an activity that is regularly carried on and which is unrelated to the Chamber’s exempt mission (apart from the Chamber’s need for income). Common examples of taxable activities include the sale of goods or services to members or third parties, and the sale of advertising (other than a “qualified sponsorship payment”).

IRS Reporting Requirements

Chambers of Commerce are required to file annually Form 990 (or a variation thereof) with the IRS and the Minnesota Department of Revenue. If a Chamber has income from an unrelated trade or business, the Chamber must also file Form 990-T.