

Legal Update for Education Foundations

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Looking Back

**Assessing the actions of your organization
during the pandemic**



Correcting Defective Corporate Acts

- Business Organizations Code Sections 22.501–22.516
- Procedure to correct the discovery of transactions, board actions or elections that occurred without formal or completed authorization as required by statute or the corporation's governing documents

Correcting Defective Corporate Acts

- Two kinds of defective corporate acts:
 - An election or appointment of directors that is void or voidable due to a failure of authorization, or
 - Any act or transaction that would have been within the power of the corporation but is void or voidable due to a failure of authorization

Correcting Defective Corporate Acts

Board may ratify one or more defective corporate acts by adopting a resolution stating:

- the defective corporate act or acts to be ratified
- the date of each defective corporate act
- the nature of the failure of authorization with respect to each defective corporate act to be ratified, and
- that the board of directors approves the

Tex. Bus. Org. Code
22.503

ratification of the defective corporate act or



Correcting Defective Corporate Acts

Resolution to ratify a defective act must be adopted under the same quorum and voting requirements that would apply to the type of defective corporate act proposed for ratification.

Tex. Bus. Org. Code
22.504



Correcting Defective Corporate Acts

- The validity of each defective corporate act ratified in compliance with the required procedures is retroactive to the time of the defective act.
- Unless successfully challenged in a court proceeding, the act may not be considered void or voidable based on the original lack of authority.

Correcting Defective Corporate Acts

- If the ratified action would have required the filing of an instrument or other document, the corporation must file a certificate of validation
- A certificate of validation can be filed with the Secretary of State

Correcting Defective Corporate Acts

- Certain persons may bring an action in district court to determine the validity of the ratification of the defective act
- The court may order the parties to undertake additional activities or meet additional conditions
- A court proceeding involving a charitable entity requires notice to the Texas Attorney General under Texas Property Code Chapter

Immunity for Disaster Relief Activities

A charitable organization engaged in services to mitigate the effects of a disaster is immune from liability under Chapter 84 and Chapter 79 of the Texas Civil Practices & Remedies Code.



Immunity for Disaster Relief Activities

A person is immune from civil liability for an act or omission that occurs in providing disaster assistance at the request of a charitable organization, except when services are provided with the expectation of compensation.



Looking Around

**Assessing your organization's
current operations and practices**



Meetings by Remote Communication

- A meeting of the board of directors or any committee designated by the board may be held by conference telephone or similar communications equipment, another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination of those means.

- Consent of the meeting participants is not

Meetings by Remote Communication

- A meeting by remote communication must permit each person participating in the meeting to communicate with all other persons participating in the meeting
- If voting occurs at a meeting by remote communication, the organization must:
 - (1) implement reasonable measures to verify that every person voting is sufficiently identified; and
 - (2) keep a record of any vote or other action taken.
- Bus. Org. Code 6.002



Review of Governing Documents

- Articles of Incorporation/Certificate of Formation
- Bylaws
- Memorandums of Understanding



Looking Ahead

New Legislation Affecting Education Foundations



Raffles

Raffle means the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win

Tex. Occ. Code 2002.002



Requirements for a Lawful Raffle

- 501(c)(3) for at least three years
- All proceeds benefit charitable purpose of the organization
- One raffle conducted at a time
- Ticket includes all info required by statute



Number of Raffles Per Year

- Old law: 2 raffles per calendar year in which tickets are sold
- New law: qualified organization may conduct up to 4 raffles per calendar year
- If the award of the raffle prize is delayed to a date in a subsequent year, it is not counted toward the number of raffles in the subsequent year

HB 2757



Raffle Prizes

- No money
- Prepaid or “stored-value” credit card is ok
- Gift certificate – as long as not convertible to cash
- State lottery ticket allowed as a prize – maximum face value increased from \$50,000 to \$75,000
- Value of a raffle prize purchased by the organization may not exceed \$75,000 (previously \$50,000)



Revisions to the Public Information Act

Responding to PIA request when offices are closed:

- If physical office is closed, but staff still required to work, including remotely, then organization shall make a good faith effort to continue responding to requests for public information, to the extent staff have access to public information responsive to a request while its administrative offices are closed.
- Failure to respond to requests may constitute a refusal to request an attorney general's decision or a refusal to supply public information

Revisions to the Public Information Act

- Suspension of PIA requirements allowed for limited amount of time during a catastrophe.
- “Catastrophe” does not mean a period of time when staff is required to work remotely and can access information responsive to a PIA request electronically, even if physical office is closed

SB 1225



Just to Keep it Interesting...

- HCR 61 declared “Chorioactis geaster” the official state mushroom of Texas – also known as the Texas Star or the “devil’s cigar” – this mushroom is found only in Texas and Japan



- SCR 7 designated the Bowie knife as the official knife of Texas



Almost...

- Senate Bill 1678 was intended to protect the personal information of donors by making the information exempt from disclosure under the Texas Public Information Act
- The Bill was passed unanimously by the Senate, but there was no House Committee action.



Thank you for attending!

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