

1831 Oakwood Drive
Fairmont, Minnesota 56031-3225
25 March 2005

The Directors of the Texas VHF-FM Society, Inc.
Post Office Box 82666
Austin, Texas 78708-2666

Ladies and Gentlemen:

I have received a copy of the letter to the Board from Steve Agee, N5ZUA, dated 22 March 2005, in which he threatens legal action against the Society should certain items remain on the agenda of the special meeting to be held 9 April 2005. At the request of President Baumgardner, I have examined the issues Mr. Agee has raised. I believe he is incorrect on nearly all of them.

I am undertaking this analysis as a member of the Society experienced in the principles of parliamentary law. This is not an official response of the Texas VHF-FM Society, Inc. I have not been asked to formulate such a response, and it would not be my place to issue such a response in the absence of a request by the Board of Directors.

The central theme of Mr. Agee's letter is that "the membership has spoken, the issue is not open for interpretation or discussion". It is my opinion that he is incorrect. The various votes taken at the meeting relating to the adoption of the bylaws amendment mandating balloting by mail in some cases were taken after the President ruled that the amendment in question fell under the provisions of paragraph 6.6.3 of the bylaws.

Paragraph 6.6.3 states:

Any proposed change or amendment which will affect existing Society Band Plans, Standards for Coordination, or have an adverse affect on repeater trustees shall automatically be tabled. The determination to table a motion or bring it to a vote shall be made by the society president. This tabled motion shall not be brought before the membership for a vote until the Vested Membership is polled in writing for agreement or non-agreement and the results of the poll are made known to the membership prior to a vote.

This provision confers a right on members of one class: the right to have their opinions officially solicited and reported to the membership prior to a vote being taken, whether they are present at the meeting or not. The amendment offered at the winter meeting removes that right, and so has an adverse effect on repeater trustees. I do not believe that anyone would seriously argue that depriving a member of a right previously granted is not an adverse effect. Therefore, it clearly falls under the provisions of this paragraph.

Mr. Agee's argument that requiring trustees to drive to Austin to vote is an adverse effect is not germane here, for two reasons: first, the right granted is not in relation to voting, and so making it easier for them to vote is not relevant to the question; second, the right to be polled and have their opinions known is specifically required to be done by a poll in writing, and thus they do not have to drive to Austin anyway to exercise this right. Indeed, the existing rule is an example of the very method that Mr. Agee holds up as protecting the rights of all.

Finally, I must make a personal note here. When I come to the meetings of the Texas VHF-FM Society, I must travel approximately 1200 miles. This means that I either must travel by air - which first requires driving over 100 miles in order to get to the airport - with all of the inconvenience that goes along with air travel, or else drive the entire distance. In either case, the effort costs me several hundred dollars and several days. I have no sympathy whatsoever for the argument that driving a couple of hours to Austin in order to participate in a Society meeting is overly burdensome.

The rule created by paragraph 6.6.3 protects the rights of absentee members. As such, it cannot be validly suspended or overridden during a meeting, no matter how large the majority. The tenth edition of Robert's Rules of Order Newly Revised (RONR 10th ed.), the Society's parliamentary authority, states:

Rules protecting absentees or a basic right of the individual member cannot be suspended, even by unanimous consent or an actual unanimous vote.

(RONR 10th ed., p. 255, l. 13-15. Emphasis original.) Any action taken in violation of such a rule is null and void:

The only exceptions to the rule that a point of order must be made at the time of the breach arise in connection with breaches of a continuing nature, in which case a point of order can be made at any time during the continuance of the breach. Instances of this kind occur when:

[...]

(e) any action has been taken in violation of either a rule protecting absentees or a rule protecting a basic right of an individual member (p.255).

In all such cases, it is never too late to raise a point of order since any action so taken is null and void.

(RONR 10th ed., p. 244, l. 4-26.)

The membership may have spoken; however, it did so in violation of the rules it has adopted, and thus, the vote is invalid. Indeed, as noted above, a point of order that the vote taken was in violation of a rule protecting absentees would be sufficient to correct the violation. The purpose of the motion to rescind the appeal is to make this explicit, so

as to preclude any objections that the will of the membership is being ignored through parliamentary maneuvering.

The motion to rescind is used to reverse an action previously taken by the membership. It exists for precisely this purpose; thus, Mr. Agee's contention that "the membership HAS voted on these issues and therefore any action, including a vote to rescind, is illegal" is simply incorrect. Were that the case, there would be no motion to rescind in the first place. The motion to rescind

[c]an also be applied to any precedent created as a result of a ruling of the chair or an appeal that has been taken from a ruling of the chair.

(RONR 10th ed., p. 294, l. 28-30) Thus, the appeal that allowed the adoption of the amendment without the poll of the vested membership required by paragraph 6.6.3 of the bylaws is subject to being rescinded. As noted above, this step is not strictly necessary, but it makes enforcement of the bylaws explicit.

The motion to rescind carries with it a requirement that it be adopted by something greater than was required to adopt the action that is proposed to be rescinded. The notice of intent to adopt the motion to rescind in the call of the special meeting fulfills this requirement, for it serves notice that the action is contemplated, thus allowing those who may have an opinion on the matter to be present at the meeting. This prevents blindsiding the membership with a potentially controversial action, as happened at the winter meeting.

Since the vote to adopt the amendment at the winter meeting was out of order, the amendment is not in effect and does not apply to the special meeting. Even if it were in effect, however, it would not apply to a motion to rescind the appeal. By its own terms, it applies only to elections and amendments to the bylaws; a decision on an appeal, a matter of parliamentary procedure, is neither.

Mr. Agee is correct when he states that the Parliamentarian should not vote or participate in debate. (RONR 10th ed., p. 451, l. 4-15.) I have violated this principle in the past when serving as parliamentarian, and for that, I am sorry. Should I find myself serving in that capacity again, I will bear this rule in mind. Mr. Agee is incorrect, however, when he says that "the Parliamentarian blatantly violated Robert's Rules by [...] offering advice and consent to the President...":

During a meeting the work of the parliamentarian should be limited to giving advice to the chair and, when requested, to any other member.

(RONR 10th ed., p. 450, l. 7-9.) Indeed, Robert's Rules says the parliamentarian should be an active adviser to the chair:

In advising the chair, the parliamentarian should not wait until asked for advice - that may be too late. An experienced parliamentarian will often

see a problem developing and be able to head it off with a few words to the chair.

(RONR 10th ed., p. 450, l. 21-25.)

Mr. Agee, as any other member, may raise a point of order should he feel the parliamentarian is impermissibly participating in the meeting, and I would advise whoever occupies the chair to consider such a point very carefully. I, for one, will appreciate being called on the carpet should I step out of line in this manner in the future.

I recommend that the Society proceed with the special meeting, and its agenda, as they now stand. Should Mr. Agee carry through with his threat to pursue legal action, I would recommend that it be contested with every resource available.

Respectfully,

James R. Maynard, III, K5ZC
Life member, club station trustee,
and past President, Texas VHF-FM
Society
Vice Chairman, Minnesota Repeater
Council
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Parliamentarians

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