Legal Status of the American Accounting Association

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Background

As of the date of this writing (late April 2011), the AAA is in the midst of an election, including proposals to amend the Bylaws. Therefore, after completing the research an email was sent to the AAA leadership – the Executive Committee, and regional and sectional leaders and committee leaders – and posted on the AAA Commons bringing the uncertainty and irregularities of the legal status of the AAA to the attention of the leadership. The attorney for the AAA subsequently reviewed the questions raised, and the attorney’s response was distributed by email. The email to the AAA leadership, the attorney’s responses, and replies to the attorney are given in red. As of the date of publication, the AAA leadership has taken no public steps to remedy the deficiencies of the AAA’s legal status.

Huber’s Email to AAA Leadership

THE PROPOSED AMENDMENT TO THE BYLAWS IS ILLEGAL AND VOTING MUST BE HALTED

The proposed amendments to the Bylaws are “illegal” (not authorized by corporate law) for the following reasons. If the amendments are approved and implemented, it will be subject to legal challenge in a court of competent jurisdiction.

1. The AAA was incorporated as a domestic corporation in Illinois in 2002. The charter specifically states the following:

“OFFICERS AND DIRECTORS

The Board of Directors of the Corporation shall consist of not less than three (3) persons. The number of directors shall be fixed in the By-Laws of this Corporation. Annual elections will be held on the 31st day of December, of each year, or such other date as selected by the Board of Directors. Election shall be by a majority vote of the members of this corporation in attendance at the annual meeting of the membership of this corporation.

The officers of the corporation shall consist of a President, a Vice President, a Vice President – Education, a Vice President – Research, a Vice President – Publications, a Vice President – Finance, a Vice President – International, a Vice President – Sections and Regions, and a Vice President – Professional Relations. The President shall serve for a term of one (1) year, beginning on the first day of the month immediately following his election by a majority of the Members at an annual meeting of the members. All Vice Presidents shall serve for a term of two

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(2) years, beginning the first day of the month immediately following his election by a majority of the Members at an annual meeting of the members.”

EXECUTIVE COMMITTEE AND COUNCIL

The affairs of the corporation shall be managed by the Executive Committee in conjunction with the Council. The Executive Committee shall consist of the officers of the Corporation, and the President-Elect and the immediate Past President.” (emphasis added)

The Rationale given for the amendment appears to be an ill-fated attempt to solve an unsolvable problem. There has been no Corporate Board of Directors elected for at least three years. The terms of the last Board expired long ago. There are no elected directors identified on the annual reports filed with the Secretaries of State of Illinois or Florida.

The AAA was administratively dissolved by the Secretary of State for the State of Illinois on April 1, 1996 for failure to file an annual report. The AAA did not exist as a corporation for over six years, until a new corporation was formed in 2002. It nevertheless continued to operate from 1996 to 2002, which was “illegal.”

The reason for this amendment is that the Executive Committee is well aware that it has been operating without an elected Board of Directors as specified by the Charter for at least three years. (If they are not aware they have some explaining to do.) Without an elected Board of Directors the corporation cannot operate. The Bylaws cannot override the charter to turn the Officers and Executive Committee into the Board of Directors. Merely changing the name of the “Executive Committee” to “Board of Directors” does not make them the Board of Directors. The Charter itself would have to be amended to allow this.

The AAA may even no longer exists as a corporation and may possibly be dissolved by the Illinois Secretary of State as it was in 1996 for failure to file an annual report because there is no elected Board of Directors. Only the Board can call the annual meeting to vote for the Board if the meeting is to be held on a date other than December 31st. Without a Board to call a different date for the annual meeting to vote for the Board, a Board cannot be elected.

Furthermore, the IRS Form 990 incorrectly states that the Officers of the Corporation are the Directors, clearly inconsistent with the charter.

2. The AAA was incorporated in Florida in 1995 as a foreign corporation. It paid a $2,100 penalty for operating in Florida without authorization. Since the Illinois corporation was dissolved in 1996, the AAA’s continued operation from the time of dissolution is without authorization since there can be no foreign corporation if there is no domestic corporation. The new corporation did apply to operate in Florida as a foreign corporation. It is again subject to penalties by the Florida Secretary of State.
I am demanding that the voting be halted and any actions taken to implement the proposed amendment pertaining to the Board of Directors cease immediately.

Copies of the Illinois and Florida corporate documents and select Form 990 pages are attached.

AAA’s Attorney Responses to issues concerning the questionable legal status of the AAA raised by Huber’s research and Huber’s responses

**Attorney Response:**

Is the AAA in good standing with appropriate registration in the State of Illinois where we incorporated and in the State of Florida where we have operated as a "foreign nonprofit corporation" since moving our headquarters to Sarasota, FL?

- Yes, the AAA reports required details annually to both states. The website of the Illinois Secretary of State shows the AAA is in good standing as a domestic nonprofit corporation, and the website of the Florida Secretary of State shows the AAA as being in good standing as a foreign nonprofit corporation.

**Huber Response:**

Of course the FL website says the AAA is in good standing. The FL Secretary of State is not yet aware of the correct facts regarding the dissolution of the old corporation and the incorporation of the new. If the new corporation did not apply to operate in Florida it is operating without authorization and therefore subject to a penalty. Furthermore, all of the assets belong to the old corporation.

Oh, did I forget to tell you that I had talked to the General Counsel for the FL Secretary of State and that, using a hypothetical corporate name, this information was in fact confirmed by the FL Secretary of State?

Likewise, the IL Secretary of State is not yet aware that there has been no elected board of “directors.” (See discussion below regarding directors.)

**Attorney Response:**

If the AAA was not in compliance with reporting requirements in Illinois sometime between 1996 and 2002, was everything the AAA did in that period somehow invalid or illegal?

- Not being incorporated in either state would not render the work of the Association invalid or illegal, as our attorney notes, "unincorporated status is an equally recognized organizational form." The association continued and continues to operate within its bylaws, operational rules and practices.
Huber Response:

I wish to bring to your attention that I am paying attention to the man behind the green curtain. I can see quite clearly through the smoke and mirrors.

First, everyone should note the “Jedi mind trick.” Nothing was said that “the AAA was not in compliance with reporting requirements in Illinois sometime between 1996 and 2002.” So why would they ask that question? In fact, it did not file annual reports in IL during that time period so it could not be within the reporting requirements anyway. They ask a question that not only is not relevant, but that they do not even answer. That is a diversion. Let’s stay focused on the issue.

Second, note the admission that it was, in fact, not operating as a corporation between 1996 and 2002, which is what I stated. Thank you for agreeing with me! The FL Secretary of State will also appreciate that admission since it is now no longer an “allegation.”

Note also that they say “The association continued and continues to operate within its bylaws, operational rules and practices.” That is another diversion to draw the readers’ attention away from the real issue which is whether it continued to operate at all. “The association continued and continues to operate within its bylaws, operational rules and practices” is a joke because there was no corporation to have any bylaws, operational rules or practices. Yes, it continued to operate – illegally – as discussed below.

Did any of you who were members at that time agree for the Association to operate as anything other than a corporation? More important, did any of you even know that what you thought was a corporation was not a corporation but an “unincorporated status?” Shall we take a survey – who knew? Anyone? Anyone? And for this, I do not mean it only rhetorically. I would actually like to receive responses on whether anyone knew or did not know.

The Illinois and Florida Departments of Revenue as well as the IRS and the Sarasota County Tax Appraiser will certainly be interested in the admission that the Association was in an “unincorporated status” from 1996-2002, since it was the old corporation that was given tax-exempt status from both income and property taxes.

Furthermore, that statement is not correct for another reason. While it is correct that “unincorporated status is an equally recognized organizational form,” unfortunately, it was not actually operating as that. It was in fact, operating as a corporation. If it was not operating as a corporation, how could it, e.g., elect an Executive Committee as specified in the charter? If it was not operating as a corporation, then what are the organizational rules of the unincorporated status, who made the rules and when?

The fact is, the Association held itself out to the world as a corporation, not as an “unincorporation.” Did any of the literature say during that time period that the Association was anything other than that it was a 501(c)(3) corporation, incorporated in Illinois in
(incorrectly) 1916? That is certainly what it told the IRS during that time. Did it state anywhere that it was no longer a corporation? Here is a hint. No, it did not.

Play by the rules, people. You cannot claim in your literature and IRS Form 990 that it was a corporation and elect an Executive Committee as specified by the charter on one hand, while on the other hand admit that it was an “unincorporated status.” Pick one.
(No, no matter which one you choose, you lose.)

As the attorney for the association now admits, it was operating in IL from 1996 - 2002 in an “unincorporated status” all the while holding itself out as being an Illinois corporation since 1916. That means it is now subject to oh, just all kinds of penalties. And it will come out of member fees!

Would anyone care to explain to the members why the new corporation was expedited if it had been operating within IL corporate law? There would have been no hurry. But note again the attempted diversion, and the questions it does not answer. Why was it dissolved? Negligence of its then officers? (That, by the way, could be the basis of a lawsuit against those officers, but I will let someone else worry about that.) But, why bother to form a new corporation? If operating as an unincorporated status, why even both to form a new corporation – expedited at that? It was, they claim, operating within the bylaws, etc. Why a new corporation? And why did they not tell you, the members, that there was now, in 2002, a new corporation? Why did they not tell the members that there was a $2,100 penalty – paid with member money – for operating in Florida without authorization?

As Alice said, “It gets curiouser and curiouser.”

**Attorney Response:**

Is it a problem that the Articles of Incorporation establish a "Board of Directors" rather than an Executive Committee? Have we been operating without a necessary Board of Directors?

- The Articles of Incorporation of the AAA refer to a Board of Directors as well as an Executive Committee. Our attorney notes, "The Articles are clear that the governing body of the AAA is the Executive Committee (in conjunction with the Council), and that is how the AAA operates." He further states that, while the wording of our Articles of Incorporation "may be unnecessarily confusing" establishing more straightforward wording would be a "housekeeping matter"; the actual name that a corporation gives to its governing body is not a concern to the AAA's legal status.

**Huber Response:**

Is this the work of the attorney? Another Jedi mind trick? Let’s stay focused. The question is a diversion because the charter did not establish a “‘Board of Directors’ rather than an Executive Committee.” It clearly established both a ‘Board of Directors’ and an Executive Committee – and separated them.
The statement is further incorrect since if the EC were the governing body in the charter, there would not have been a Board of Directors in addition to the EC. The 2002 incorporation identified separate bodies and separate individuals filling the separate roles of the separate bodies. It is not a housekeeping matter. The only way the Executive Committee could be the Board of Directors is if there actually were no Board of Directors.

Now, here is the “kicker.” They say “The Articles are clear that the governing body of the AAA is the Executive Committee…” That is patently incorrect. The articles are clear that “The affairs of the corporation shall be managed by the Executive Committee.” Governing and managing are not interchangeable.

**Attorney Response:**

- In August 17, 2002, during its regular meeting at the Annual Meeting (San Antonio), the AAA Executive Committee voted to designate three positions from the Executive Committee as the Board of Directors of the Association for purposes of registration as a corporation. These positions are the three presidential positions on the Executive Committee.

**Huber Response:**

“Watch! Nothing up my sleeve…..”

The EC does not have the power or authority to do that. Neither the EC nor the Bylaws can designate the EC as the Board of Directors in place of the Board of Directors. It does not matter what anyone wants to designate for registration purposes. If it is contrary to the articles of incorporation it is void. The charter would have to be amended.

The only thing the 2002 meeting by the EC and subsequent amendment to the Bylaws accomplished was to create three new directors, for a total of six.

**Attorney Response:**

- From Minutes of the August 2002 Meeting of the AAA Executive Committee in San Antonio, Texas:

[Item 5]: Establishment of Directors for the Association's Incorporation
Given support from the Council and those attending the Business Meeting:
A motion designating the positions of President, Past President, and President-Elect as Directors of the Association for purposes of corporate registration was made by Joel Demski and seconded by Larry Tomassini. The motion passed unanimously.
**Huber Response:**

See above. While the Bylaws can fix the number by adding to the number of the minimum required three for a not-for-profit corporation, it cannot change the EC into Directors. “For reporting purposes” has no meaning. Motions passing unanimously are quite meaningless.

**Attorney Response:**

Has the AAA operated without a legal governing body?

- No, we have operated with the governing body specified by the bylaws of the Association. We do not have a governing body named "Board of Directors" and that label is not required. For the purposes of incorporation the three presidential positions in our Executive Committee constitute that Board. Those are the Officers referenced in IRS documentation that are reviewed by our auditors.

**Huber Response:**

Unfortunately, even if it is correct that the Association has been operating as specified by the bylaws, that is not equivalent to operating as specified by the charter. And there are two separate issues here anyway. Its operational status between 1996 and 2002, and the existence (or non-existence) of a current Board of Directors along with the attempt to change the EC into the Board of Directors.

They say, “We do not have a governing body named "Board of Directors." Really? Is this the work of an attorney?


“Article 3. The first board of directors shall be ____three____ in number.”


Well, it looks like you actually do have a governing body named "Board of Directors" – at least you are supposed to – so the only thing you are doing here is admitting you have no Board of Directors even though the charter specifies there must be a Board of Directors.

But thank you for admitting it and agreeing with me! You have just admitted it is operating “illegally” since you admitted that you do not now have a governing an elected board of directors even though it is required by the charter!

You mention the IRS documentation – “For purpose of incorporation the three presidential positions in our Executive Committee constitute that Board.” Really? Then why don’t you explain why, on IRS Form 990, every EC member and officer is identified
as a director/trustee? Who voted on making all of *them* directors/trustees in every previous year? How many members are aware that you are telling the IRS that they are directors/trustees when in fact they are not?

**Attorney Response:**

Does the current Bylaws revision recommendation that are part of the currently open ballot have as a goal to correct an existing problem with naming a Board of Directors for purposes of legal incorporation?

- Not at all. As noted above, legal incorporation has been in place for some time and is not a concern. The recommendation of the Governance Review Task Force (GRTF) to change the name of the current Executive Committee to Board of Directors was the result of benchmarking with other organizations conducted by the members of the GRTF (See the [http://aaahq.org/about/directory2011/committee/governance.htm](http://aaahq.org/about/directory2011/committee/governance.htm) for the list of GRTF members and charge to the Task Force, and the AAA Commons at [http://commons.aaahq.org/hives/9f4a86a85a/summary](http://commons.aaahq.org/hives/9f4a86a85a/summary) for GRTF background materials).

- The current Bylaws amendment ballot includes current Bylaws language, recommended changes, and rationale for those changes for the proposed amendments developed by the GRTF and two petition amendments. AAA members eligible to vote have access to that detail in the ballot. Others can access it through governance review space in the AAA Commons as members or guests, should there be interest in additional background.

**Huber Response:**

Benchmarking, EC, Task Forces, Bylaws – nothing overrides the charter. The Association is to comply with the charter. Period. Failure to do so will subject it to legal action.