

MEMORANDUM

TO: AGC Executive Committee

FROM: Angela Otto

DATE: August 2, 2017

CLIENT: Oregon-Columbia Chapter of the Associated General Contractors of America

RE: Tape Recording Board Meetings

During the June 2, 2017 Board of Directors Meeting, I was asked to confirm whether the Board had the authority to and should tape record board meetings to assist in the preparation of meeting minutes.

The short answer is yes, the Board has the authority IF board members are advised that the meeting is being recorded.

Analysis:

The Oregon-Columbia Chapter of the Associated General Contractors of American (the "Association") is a mutual benefit corporation governed by the Oregon Nonprofit Corporation Act, ORS Chapter 65. ORS 65.771(1) requires that the Association keep "as permanent records minutes of all meetings of its members and board of directors, a record of all corporate action taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors in place of the board of directors on behalf of the corporation." Subsection (4) goes on further to require that such records be maintained "in written form or in another form capable of conversion into written form within a reasonable time." ORS 65.771(4). Meeting minutes and records of all actions approved must be maintained for a minimum of the past three years. ORS 65.771(5)(d). These requirements are, in part, to permit a member to inspect such records upon written request under ORS 65.774.

There is nothing in ORS Chapter 65 or the Association's Restated Articles of Incorporation or Amended and Restated Bylaws that prevents the tape recording of board meetings. ORS 165.540, however, prohibits the tape recording of any such meeting absent informed consent:

(1)...a person may not:

*** (c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if not all participants in the conversation are specifically informed that their conversation is being obtained.

(6) The prohibitions in subsection (1)(c) of this section do not

apply to persons who intercept or attempt to intercept with an unconcealed recording device the oral communications that are part of any of the following proceedings:

*** (c) Private meetings or conferences if all others involved knew or reasonably should have known that the recording was being made.

As such, so long as all of the participants in the board meeting are alerted to the fact that the meeting will be tape recorded, the meeting may be tape recorded.

Under Section 3.7 of the Amended and Restated Bylaws, the Board has the authority to elect to tape record the board meetings or to delegate such election to an executive committee. Based on the broad authority granted under Section 5.1 of the Amended and Restated Bylaws, the Executive Committee could make such decision on behalf of the Board. If either the Board or the Executive Committee opts to begin tape recording board meetings, I recommend making a record of such action consistent with ORS 65.771. Furthermore, if either the Board or the Executive Committee opts to tape record board meetings, all notices of each board meeting should include a statement that such board meetings will be tape recorded. In addition, as guests often attend board meetings, I further recommend announcing that the board meeting will be tape recorded at the beginning of each meeting to ensure compliance with ORS 165.540.

Finally, note that tape recordings are not intended to take the place of written meeting minutes. See ORS 65.771(4). As such, although the tape recordings can act as a stop-gap, formal written meeting minutes should still be prepared following each board meeting.