

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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June 1, 2007

Opinion No. 07-85

National Civil Rights Museum

QUESTIONS

1. Is the National Civil Rights Museum in compliance with Tennessee statutes?
2. Can the statutes be circumvented without legislative action relative to board membership and private ownership?
3. In light of (a) Tenn. Code Ann. § 48-58-105, and (b) a provision in the bylaws of the Museum Foundation that provides that no director can serve more than ten (10) years except by two thirds (2/3) vote of the board membership, is it legal for a member of the board of directors to serve more than fifteen (15) years?

OPINIONS

1. There is no Tennessee statute that specifically mentions the National Civil Rights Museum. As a nonprofit corporation, the National Civil Rights Museum falls within the ambit of a number of statutes pertaining to such corporations. It is, however, outside the scope of this opinion to make a factual determination regarding the operations of the National Civil Rights Museum.
2. This question is pretermitted by our response to Question no. 1.
3. Under this scenario, no violation of Tenn. Code Ann. § 48-58-105 would result. Service of more than fifteen (15) consecutive years by a director without the approval of two-thirds (2/3) vote of the board membership would, however, violate the corporate bylaws.

ANALYSIS

1 and 2. No Tennessee statute specifically mentions or names the National Civil Rights Museum or the Museum Foundation.¹ While there has been legislation in the past authorizing

¹It is our understanding that the National Civil Rights Museum, located in Memphis, is owned by the State of Tennessee. The property is currently leased to, and operated by, the Lorraine Civil Rights Museum Foundation, a nonprofit corporation incorporated under the laws of Tennessee in 1982, and registered with the Secretary of State's Office.

funding for the museum,² this legislation does not establish specific statutory powers, duties, and responsibilities according to which the Museum Foundation is required to function. Moreover, the question of whether the museum, a nonprofit corporation, is in compliance with state law would require an investigative audit of the past dealings of the museum and its board of directors. Such a factual inquiry is beyond the scope of this opinion letter.

3. Your next question asks whether service on the board of directors of the Museum Foundation for more than fifteen (15) consecutive years without the approval of a two-thirds (2/3) vote of the board membership would violate either Tenn. Code Ann. § 48-58-105 or the Museum Foundation bylaws. Tenn. Code Ann. § 48-58-105, which governs terms of office for directors of nonprofit corporations, states as follows:

(a) The charter or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five (5) years. In the absence of any term specified in the charter or bylaws, the term of each director shall be one (1) year. Directors may be elected for successive terms.

(b) Except in the case of designated or appointed directors, a decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in the charter or bylaws:

(1) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(2) The term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until a successor is elected, designated or appointed and qualifies, or until there is a decrease in the number of directors.

We have been provided with a partial copy of the by-laws of the Museum Foundation. Article I, Section 2 of the bylaws states, in pertinent part, "No Director shall be elected to serve for more than ten (10) consecutive years as a Director of the Corporation, unless the Board of Directors

²See, e.g., 1986 Public Acts, ch. 861 (authorizing the issuance and sale of bonds in an amount not to exceed ten million dollars for the establishment of an educational center and memorial in the City of Memphis for the civil rights movement).

by the affirmative vote of a two-thirds (2/3) majority authorizes the election of such Director to serve an additional term or terms as a director of the Corporation.”

Tenn. Code Ann. § 48-58-105 pertains to the term of office of a director of a nonprofit corporation, not to the number of consecutive years a director may serve on a corporate board. The statute limits the director’s term of office to no more than five (5) years’ duration. Tenn. Code Ann. § 48-58-105, however, places no limit on the total number of consecutive years a director may serve on a corporate board of directors. Nor does the statute limit the number of consecutive terms a director may serve on a board. Service of fifteen (15) consecutive years on a board of directors would not, therefore, violate Tenn. Code Ann. § 48-58-105.

With regard to the provision of the Museum Foundation bylaws stating that no director can serve more than ten (10) consecutive years except by two thirds (2/3) vote of the board membership, assuming a director served more than ten (10) consecutive years without the approval of two-thirds (2/3) vote of the board membership, the director would appear to run afoul of this provision of the bylaws. It should be noted, however, that with regard to procedural formalities such as this one, courts will often recognize a corporation’s authority to ratify, and thereby cure, such procedural defects by means of a vote of approval held after the fact.³

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³See *Nevins v. Bryan*, 885 A.2d 233, 244-248 (Del. Ch. 2005)(approving, in case involving non-profit corporation, “cure by ratification” of voidable acts--those found to have been performed in the interest of the corporation but beyond the authority of management--as opposed to void acts--those which are *ultra vires*, fraudulent, or gifts or waste of corporate assets). See also *Melrose v. Capitol City Motor Lodge, Inc.*, 705 N.E.2d 985, 992 (Ind. 1998); *Whitten v. Harold Austin Const.*, 55 Ark. App. 409, 415, 935 S.W.2d 579, 583 (1996).

Requested by:

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