

ATOS ANNUAL COMMITTEE/OFFICER ACTIVITY REPORT FORM (2014)

Name of Activity: **BYLAWS & POLICIES**
(Please fill out separate form for each activity.)

Committee Chair/Officer Name: **R. Jelani Eddington**

Date of Report: **June 18, 2014**

1. Actions completed since the mid-year meeting: (Please bullet actions completed.)

- Updated research from January 2011 memo relating to the question of reincorporation of ATOS from California to Delaware, and discussed the same with the Chairman and the President/CE (see below)
- Researched questions regarding the use of the George Wright Memorial Fellowship fund.

2. Actions begun but incomplete since the mid-year meeting: (Please bullet actions begun.)

- Ongoing process of reviewing and advising Board on issues relating to bylaws and policies.

3. Goals to be reached by the 2014 Annual Meeting: (Please bullet goals.)

4. Amount budgeted for your committee: **\$0.00**. Amount expended by your committee: **\$0.00**

5. Comments: (Any bulleted special notations, problems, or suggestions should be included here.)

Reincorporation Question:

As noted above, on January 31, 2011 I circulated a memo to then-Chairman Michael Hartley relating to the suggestion that ATOS reincorporate from California to Delaware. This question first arose as part of the strategic planning process and has recurred with some frequency since. Each time the question has arisen since then (in March 2011, December 2013, and June 2014), I have updated the memo.

As explained in that 9-page memo, I strongly recommend **against** reincorporation for several reasons including the following: **First**, under decades-old IRS precedent and other federal laws, reincorporation will cause ATOS to lose its 501(c)(3) recognition, requiring ATOS to reapply to the IRS—a process that can take over a year to complete. **Second**, there is no material advantage to Delaware corporate law which, in essence, is substantively identical to California corporate law. **Third**, any change in the state of incorporation will entail a substantial investment of time and money to rewrite bylaws and policies to ensure compliance with the laws of Delaware (or whatever the new jurisdiction might be).

The potential loss of ATOS's 501(c)(3) recognition was also recently confirmed on June 10, 2014 by Attorney Ben Strauss of Pepper Hamilton LLP—a Wilmington (DE) law firm approached by the Chairman and President/CE to gather information regarding a possible reincorporation.

In light of the research circulated to the board on several occasions regarding this issue, I respectfully reiterate my strong recommendation that the board not pursue reincorporation.

George Wright Memorial Fellowship:

For the reasons set forth in the attached memo, I respectfully request that the board adopt the proposed policy clarifying the use of the George Wright Memorial Fellowship.

6. Motions:

I move that the policy proposal relating to the GWMF fund be adopted as provided in the accompanying memo.

MEMO TO THE ATOS BOARD OF DIRECTORS

TO: Bob Dilworth, Chairman of the Board

FROM: R. Jelani Eddington, Legal Advisor, Bylaws & Policies Committee

DATE: June 18, 2014

RE: George Wright Memorial Fellowship

BACKGROUND

The George Wright Memorial Fellowship (GWMF) fund was established in August 2001 in order to increase participation in ATOS by young theatre organ enthusiasts by providing an opportunity for qualified applicants to attend their first ATOS convention.

In 2009 at the annual board meeting in Cleveland, ATOS adopted and codified the GWMF policy which, with the two amendments discussed below, has remained unchanged for roughly five years. Since the inception of the fund, it has been the policy that a “maximum number of candidates shall be selected for the Fellowship depending on the interest and earnings accrued from the Fund.”¹ At a minimum, current policy requires that **at least one** candidate be selected in each year.² Moreover, in the event that awarding the fellowship required expenditure of an amount greater than the earnings of the fund, ATOS policy directs that principal may be used, so long as the principal is not diminished below \$22,000.³

In 2012, the board discussed amending the policy to expand the possible uses for the fund. In particular, the consensus of the board was that the original intention was to attract young enthusiasts to ATOS, and that many previous GWMF recipients attended the convention but had little involvement in ATOS thereafter. It was the view of the board that expanding use of the funds to include the Summer Youth Adventure and Technical Experience could attract more young people to ATOS and provide a greater opportunity for young people to become—and remain—involved in ATOS. The board unanimously adopted that amendment.

In 2013, the board—sensitive to budgetary constraints—adopted a policy that added the following language: “Distribution of the revenue from the Fund shall be redirected to help fund the Young Theatre Organist Competition.”⁴ However, the board did not repeal the balance of the policy, nor did it adopt any other policies altering the use of the GWMF fund. Nor did the board clarify how this provision would work in conjunction with the other parts of the policy.

In 2014, a question arose regarding the permissible uses of the GWMF fund. Some board members felt that ¶ 24(e) precluded the use of funds for **any recipient for any purpose**, contending that **all** earnings of the GWMF fund be directed to the Young Theatre Organist Competition. On the other hand, other directors felt that—given that nothing else in the policy had been amended—¶ 24(e) should be read in conjunction with ¶¶ 24(a)-(d), and the term “revenue” interpreted to mean those earnings available **after** the maximum number of candidates had been selected for the fellowship.

It is the view of the Bylaws & Policies Chairman that the latter interpretation is much more consonant with the overall purpose of the fund as originally established. Such an interpretation allows use of the GWMF fund to help defray expenses of the Young Theatre Organist Competition, but while still giving effect to the policy directive that **at least one candidate** (and indeed “a maximum number of candidates”) be selected for the Fellowship.

¹ ATOS Policy ¶ 24(b)

² *Id.* ¶ 24(c)

³ *Id.*

⁴ *Id.* ¶ 24(e)

Adopting the former position essentially eliminates the GWMF program altogether by directing ***all funds*** to the YTOC. Elimination of the GWMF has never been discussed or seriously considered by the board.

In order to eliminate any confusion going forward, it is my recommendation that the board adopt the policy change outlined below.

CURRENT POLICY ¶ 24:

GEORGE WRIGHT MEMORIAL FELLOWSHIP

(a) The George Wright Memorial Fellowship Fund (hereafter "Fund") has been established to increase youth participation in ATOS, as well as youth attendance at conventions, the Summer Youth Adventure, and the Technical Experience. The Fund shall provide financial assistance to anyone between the ages of 15 and 24 to attend an ATOS Annual Convention, the Summer Youth Adventure, or the Technical Experience.

(b) A maximum number of candidates shall be selected for the Fellowship depending on the interest and earnings accrued from the Fund. The number of candidates available for the Fellowship shall be determined each year by the ATOS Treasurer, based on the interest and earnings accrued from the Fund. Any funds for the Fellowship that are not used in any given year shall be carried over for use the following year.

(c) If the GWMF Subcommittee determines that there are qualified candidates in any given year, at least one candidate shall be selected for that year's award. In the event that naming such an award requires an expenditure of an amount greater than the interest and earnings accrued from the Fund, any such excess shall be paid out of the principal of the Fund, provided that the principal of the Fund not be diminished to a level below \$22,000.

(d) The GWMF Subcommittee shall develop and publish rules and procedures for the administration of the Fellowship and of the Fund.

(e) Distribution of the revenue from the Fund shall be redirected to help fund the Young Theatre Organist Competition.

PROPOSED AMENDED POLICY ¶ 24 (changes highlighted and italicized)

GEORGE WRIGHT MEMORIAL FELLOWSHIP

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(b) A maximum number of candidates shall be selected for the Fellowship depending on the interest and earnings accrued from the Fund. The number of candidates available for the Fellowship shall be determined each year by the ATOS Treasurer, based on the interest and earnings accrued from the Fund. ***Any funds for the Fellowship that are not used in any given year shall be carried over for use the following year.***

(c) If the GWMF Subcommittee determines that there are qualified candidates in any given year, at least one candidate shall be selected for that year's award. In the event that naming such an award requires an expenditure of an amount greater than the interest and earnings accrued from the Fund, any such excess shall be paid out of the principal of the Fund, provided that the principal of the Fund not be diminished to a level below \$22,000.

(d) The GWMF Subcommittee shall develop and publish rules and procedures for the administration of the Fellowship and of the Fund.

(e) Any interest and earnings from the Fund that have not been disbursed in any given year may be used to support that year's Young Theatre Organist Competition.

For the foregoing reasons, I respectfully place the following motion before the board:

MOTION: That ATOS Policy ¶ 24 is amended as provided in the June 18, 2014 memo from the Bylaws & Policies Committee.