

ATOS MID-YEAR COMMITTEE/OFFICER ACTIVITY REPORT FORM

Name of Activity: **BYLAWS & POLICIES COMMITTEE**

(Please fill out separate form for each activity.)

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

Date of Report: **January 19, 2010**

1. Actions completed since the 2009 Annual Meeting: (Please bullet actions completed.)

- **Revised bylaws and policies affected by Board action.**
- **Drafted for Board review and action a Contract Administration policy (attached)**
- **Drafted for Board review and action a proposal to clarify rogue references to the former position of "ATOS President."**
- **Drafted for Board information and eventual publication in the Journal an ATOS Corporate Profile**

2. Actions begun but incomplete since the 2009 Annual Meeting: (Please bullet actions begun.)

- **Ongoing process of updating and modifying out-dated or superceded Policies.**

3. Goals to be reached by the 2010 Annual Meeting: (Please bullet goals.)

- **Implementation of Contract Administration policy and procedures.**

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.)

- **I strongly urge adoption of a unified approach to executing contracts and other documents with legal significance. A separate proposal on point is attached.**

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## REPORT TO THE ATOS BOARD OF DIRECTORS

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**TO:** COL(R) Michael W. Hartley, Chairman,  
Mr. Bob Evans, Secretary,  
and ATOS Board Of Directors

**FROM:** R. Jelani Eddington, Chairperson, Bylaws & Policies Committee

**DATE:** January 19, 2010

**RE:** POLICY CHANGE & CONTRACT ADMINISTRATION PROPOSAL

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### BACKGROUND

This memo presents two action items for the Board.

First, despite the Board's diligence in renaming the previous office of President to Chairman Of The Board in September 2008, some stray references to the prior "President" remain. The proposal will remedy that problem by declaring that all such references are amended to or interpreted as "Chairman Of The Board".

Second, As indicated in my email of January 13, 2010, I am concerned with the lack of unified approach in executing contracts and other legal documents binding on ATOS. While we currently have a policy in place generally requiring signature by the Chairman, we have no process for meaningful review of documents legally binding on ATOS.

Over the past several months and years, several important contract administration issues have arisen, including:

- Execution of a settlement agreement for the NYTOS litigation without prior disclosure to the Board
- Uncoordinated approach to executing Executive Staff and Editor contracts
- Execution of sub-contracts (graphic design services) without Board review
- Resistance to reviewing prior to signing an extensive \$100,000+ real estate lease agreement for space in a Chicago warehouse
- Execution of Deeds of Gift without Board review
- Negotiation of contracts for ATOS partnership with the Allen Organ Company
- Non-delivery to the Secretary of Deeds of Gift binding on ATOS

In short, Directors and staff members have negotiated and executed obligations binding on ATOS even without prior Board review. This lack of consistency is troubling because **even someone without actual express authority of the Board can nonetheless bind ATOS legally if they appear to have authority to speak for the Board.**

As a remedy, I propose that we centralize our contract review process such that a Contract Administrator with some legal experience (or in his/her absence or disability the ATOS attorney) review each contract or agreement prior to acceptance. Such a procedure is in effect in other organizations. The Contract Administrator would have primary responsibility for making appropriate recommendations to the Board concerning the agreement in question, and the Board would retain final authority to accept or reject the document.

### I. REFERENCE TO PRE-SEPTEMBER 2008 POSITION OF "PRESIDENT"

Some documents, including the ATOS Convention Handbook and the Endowment Fund Resolution and Declaration of Trust, still refer to the previous position of "President" or "ATOS President." On September 1, 2008, the Board changed its corporate structure to eliminate the term "President" and replace it with the term "Chairman Of The Board." A new non-Board position of "President & CEO" was created. The previous position of "President" no longer exists.

Although the Board changed its Bylaws and Policies to reflect the change, some stray references to "President" remain. To avoid any further confusion, I recommend adoption of the following new policy:

**¶ 5(r). Chairman Of The Board. Unless the context clearly requires otherwise, all references made prior to September 1, 2008 in any and all documents, including without limitation the ATOS Convention Handbook, the Endowment Fund Resolution And Declaration Of Trust, and/or any job descriptions, to the "President" or "ATOS President" shall be amended to or interpreted as referring to the ATOS Chairman Of The Board.**

## **II. CONTRACT ADMINISTRATION**

Our current policy ¶ 1(c) reads:

*c. All agreements and contracts will be approved and signed by the Chairman unless the Board has specifically delegated this responsibility in writing to another official for a specified activity or program (e.g. The Convention Planning Coordinator). A copy of each such document signed by the Chairman will be maintained by the Secretary. (Board Meeting Minutes, January 7, 2006, St. Louis, Missouri)*

I propose that the above policy be replaced with the language below. Please note that the policy is the "default rule", which could be changed by Board action in any appropriate circumstances in which it would be advantageous to dispense with the outlined procedure.

Proposed policy ¶ 1(c):

**c. Unless the Board of Directors otherwise provides in advance in writing, all of the following shall apply.**

**(i) A Contract Administrator shall have the primary responsibility for reviewing and making appropriate recommendations to the Board concerning all contracts, agreements, or other documents with legal significance purporting to bind ATOS to any other party (herein "Legal Documents"). A Legal Document shall not include any check. The Contract Administrator may be a Director, staff member, or other member of ATOS, provided that he or she has reasonable experience in matters relating to reviewing, negotiating, and drafting Legal Documents.**

**(ii) No Legal Document shall be signed, approved, executed, or accepted in any manner without the prior review of the Contract Administrator, or in his or her absence or disability, the ATOS attorney. The Contract Administrator shall, upon reviewing any such Legal Document, make any appropriate recommendations to the Board concerning such document, and such document shall not be signed, approved, executed, or accepted prior to the Board's approval or rejection of the document. A Legal Document or any modification thereof may be drafted by a person other than the Contract Administrator, provided that it is reviewed by the Contract Administrator and Board in the manner provided herein prior to signature, execution, or acceptance of such draft or modification.**

**(iii) In cases where time is of the essence, the Contract Administrator may report to the Executive Committee rather than the Board concerning the Legal Document, and the Executive Committee may give its approval of such document, provided that the Executive Committee promptly inform the Board in writing of its approval and the reasons therefor as soon as practicable, but in all events prior to the signature, execution, or acceptance of such document.**

**(iv) Any Legal Document that is accepted or approved by the Board, or in its absence the Executive Committee, shall be signed by the Chairman, unless the Board has previously specifically delegated such signature authority in writing to another person for a specified activity or program (e.g., the Convention Planning Coordinator). The originals of all signed Legal Documents shall be promptly sent to the ATOS Secretary upon execution for appropriate filing.**