Bylaws of The Humane Society of the United States

HUMANEWATCH.ORG

Washington, D.C.
October, 1980

The Humane Society of the United States
2100 L Street, NW
Washington, D.C. 20037
(202) 452-1100

ARTICLE IX—USE OF FUNDS

All available funds of the Society shall be used for the immediate relief of suffering and the vigorous prosecution of humane education except as otherwise provided by law or the specific terms of a gift or mandate of a donor. Nothing in this section shall, however, be construed so as to prevent the Board of Directors from establishing prudent reserves for the operating expenses of the Society or from prudently investing any surplus funds of the Society to produce additional income, nor construed to prevent the members of the Society at a meeting or through a referendum from authorizing the Directors to transfer funds from operating funds to an Endowment Fund and placing funds of the Society therein. Should an Endowment Fund be established, no Director or officer of the Society shall be liable to any one with respect to any action taken or omitted to be taken by him in good faith in accordance with the direction of the Board of Directors of the Society with respect to any investment made on behalf of the Society. In connection with any investment made, the Directors shall use the same degree of care and skill in making investments as a prudent man would use under the circumstances in the conduct of his own affairs. Nothing contained herein shall be construed as relieving a Director or officer from liability for his own negligent failure to act, or his own willful misconduct.

ARTICLE X—TRANSFER OF SECURITIES

Any two persons, being President, Secretary, Treasurer, or Assistant Secretary or Assistant Treasurer, shall have the joint authority to execute, under seal, such form of transfer and assignment as may be customary or necessary to constitute a regular transfer of any stocks or other registered securities standing in the name of the Society. They may from time to time execute and deliver on behalf of the Society proxies on any and all stock owned by the Society.

ARTICLE XI—MISCELLANEOUS

Section 1. All meetings of the members of the Society, its Board of Directors and its committees shall be conducted pursuant to Roberts Rules of Order as set forth in the last published revision thereof.

Section 2. The fiscal year of the Society shall commence on January first of each year.

ARTICLE XII—AMENDMENTS

These Bylaws may be altered, amended, added to or repealed only by referendum procedure established by Article V of these Bylaws and by an affirmative vote of two-thirds (⅔) of those members voting thereon.

ARTICLE I—OFFICES

The principal office of The Humane Society of the United States shall be located in Washington, District of Columbia. The Society may establish and maintain subsidiary offices at other places.

ARTICLE II—CORPORATE SEAL

The corporate seal of the Society shall be circular in form and shall have inscribed thereon the name of the Society, the year of its organization and the words "Corporate Seal, Delaware." The Society may alter and change said seal at its pleasure. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced otherwise.

ARTICLE III—MEMBERS

Section 1. The Society shall have the following classes of annual membership:

Single	$10	Sustaining	$ 100
Dual	18	Sponsor	500
Donor	25	Patron	1,000
Supporting	50		

Members shall pay to the Treasurer of the Society or to the Treasurer of an incorporated Branch of the Society annual dues in accordance with their selected class of membership. Such dues shall be due and payable with the application for membership and thereafter on the anniversary date of the election to membership. Any member failing to pay his dues on or before the date when they are payable shall not be a member in good standing.

Section 2. Any person who has been elected a member of the Society shall be deemed to have automatically applied for membership in the State Branch of the state in which the member resides, and any person elected a member of a Branch shall be deemed to have automatically applied for Society membership.

Section 3. No person shall be a member of the Society unless elected to membership by the Board of Directors of the Society and, if the application for membership is made through a Branch, by the Board of Directors of the Branch. The Board of Directors may reject any application for membership for reasonable cause. The Board may also expel a member for reasonable cause. Any person refused membership or expelled may appeal such rejection or expulsion to the members at the ensuing annual meeting of the members of the Society by addressing a notice of appeal to the Secretary of the Society at least 10 days before such meeting. The members may at such meeting by a majority vote overrule any such rejection or expulsion. Their decision shall be final.

Section 4. Each Branch shall promptly send to the Society the name, mailing address, and forty percent (40%) of the annual dues of every member who pays dues to the Branch and the Treasurer of the Society shall promptly send to the appropriate Branch the name, mailing address and sixty percent (60%) of the annual dues of every member who pays dues to the Society and who resides in the state in which a Branch exists.

Section 5. All members who have been in good standing for six months shall be entitled to cast one vote at any meeting of the Society and in any referendum or other election as provided by these Bylaws. A dual family membership shall entitle each of 2 members of a family to a single vote. For the purposes of this section, a member shall be deemed to have become a member on the date his application was received by the Secretary or Executive Director of a Branch or by the President of the Society, whichever is earlier.

ARTICLE IV—MEETINGS OF MEMBERS

Section 1. The annual meetings of members of the Society for the purpose of transacting business authorized to be transacted by the members shall be held at such time and place as shall be specified by the Board of Directors.

Section 2. Special meetings of the members shall be held in Washington, District of Columbia, and may be called at any time by the Board of Directors or by any 50 members upon their filing with the Secretary of the Society a request in writing for the meeting, stating the purpose or purposes of the proposed meeting. The agenda of any special meeting shall be confined to the subjects stated in the call for the meeting. Special meetings requested by members shall be held not less than 30 days nor more than 60 days after the filing of the request.

Section 3. Advance notice of all meetings of members shall be given by the Secretary of the Society. All such notices shall be sent by mail at least 20 days in advance of the date set for the meeting to the last known post office address of each member who will be entitled to vote at the date of the meeting.

Section 4. At any meeting of the members, unless otherwise required by statute or these Bylaws, those members present in person shall have authority to transact all business that may come before the meeting. Voting by proxy shall not be permitted.

Section 5. There shall be elected annually to serve a term of one year a Nominating Committee of six (6) persons. Members in attendance at the Annual Meeting of members of the Society shall elect to this Committee two

tors, acting in meeting or by mail ballot, for the unexpired term.

Section 3. The Chairman of the Board shall preside over all meetings of members of the Society, the Board, and the Executive Committee and shall be, ex officio, with vote, a member of all committees of the Board, except the Elections Committee.

Section 4. The Vice Chairman shall fill all functions of the Chairman when the latter is incapacitated, is unavailable, or for any other reason cannot serve.

Section 5. The President shall be the principal executive officer of the Society and shall be responsible only to the Board of Directors. He shall conduct the activities and business of the Society in accordance with principles and policies prescribed by the Board of Directors. His salary shall be determined by the Board. He shall employ and have full authority over other staff members and shall determine the duties and, within the limits of a budget approved by the Board, the compensation of all such staff members. He shall, a reasonable time before the beginning of each fiscal year of the Society, submit to the Board a written budget and program proposal for the ensuing year. The Board shall approve or amend and adopt a budget for the ensuing year and the President shall operate within said adopted budget. The President shall deliver to the annual meeting of the members of the Society a comprehensive report of the work done in the preceding year and an outline of plans for the ensuing year. The President may participate in any meeting of the Board of Directors or any committee of the Board, but without vote.

Section 6. The Secretary shall take and preserve minutes of all meetings of the members of the Society and of the Board, shall notify all members and Directors of annual and special meetings, and shall perform other duties assigned by the Board. He shall cause a record of all actions taken at all membership, Board and Executive Committee meetings to be mailed to any member upon request. In the absence of the Secretary from any meeting, the presiding officer shall appoint a temporary secretary to record the minutes and such minutes shall be transmitted to the Secretary.

Section 7. The Treasurer shall have custody of all funds and securities of the Society, shall disburse funds in accordance with a budget approved by the Board, and shall submit to the Board and to the annual meeting of the members of the Society an annual report, audited by an accountant selected by the Board, of the income and expenditures of the Society for the preceding year and of its assets and liabilities as at the end of the period under review. He shall make the report available to any member upon request at any time. The Treasurer may authorize other persons to sign checks and perform other functions of his office subject to the approval of the Board of Directors.

to each Director a report of the tabulated result of such vote, the ballots of which shall be produced at the following meeting of the Board of Directors.

Section 11. Seven of the members of the Board of Directors shall constitute a quorum. An affirmative vote by a majority of those present shall be required for adoption or approval by it of any matter upon which it undertakes to act.

Section 12. If any Director shall be absent from three consecutive regular meetings, such Director may be deemed to have resigned from office and in that event the vacancy so caused shall be filled as herein provided for filling of vacancies in the membership of the Board of Directors.

ARTICLE VII—COMMITTEES

Section 1. The Board of Directors may have an Executive Committee composed of 9 or more of their number. The Executive Committee shall have and may exercise all of the powers of the Board of Directors when the Board is not in session, except the power to elect and remove officers and such powers, if any, as the Board may specifically reserve to itself or as may be specifically assigned to any other committee or any officer of the Society. The Executive Committee shall make and adopt such rules and regulations as it may deem prudent for its management.

Section 2. The Board of Directors may provide for such other committees or other bodies of Directors and members as it shall deem desirable. The Board of Directors may delegate to such committees such duties and powers from time to time as it shall deem necessary or desirable.

ARTICLE VIII—OFFICERS

Section 1. At each annual organization meeting of the Board of Directors, or in default of election at such meeting, then at an adjournment thereof, or at any meeting of the Board of Directors duly called for the purpose of election of officers, the Board of Directors shall elect a Chairman of the Board, a Vice Chairman of the Board, a President, a Secretary and a Treasurer. The Board may also elect such other officers as the business of the Society may require. No person shall be eligible to hold office who is not a member of this Society at the time of his appointment. All the officers shall hold office at the pleasure of the Board of Directors but in no case beyond the time when their respective successors shall be elected and shall qualify. Any officer may be removed from office by the Board of Directors at any time.

Section 2. Whenever any vacancy shall occur in any office created by these Bylaws, or by the Board of Directors, the vacancy may be filled by the Board of Directors.

(2) members who have been in good standing for at least two (2) years. The Board of Directors at its Annual Organization Meeting shall elect four (4) members, two (2) of whom shall be Directors and two (2) shall be other members of the Society, all four (4) having been members in good standing of the Society for at least two (2) years. At least sixty (60) days before the Annual Meeting, the Committee shall nominate at least seven candidates for full term membership on the Board of Directors. The Committee shall notify the Secretary of the Society of its nominations. Any 250 members in good standing may also nominate one or more candidates for membership on the Board by written petition filed with the Secretary at least forty-five (45) days before the Annual Meeting. A list of those nominees selected by the Nominating Committee will be available to any member upon request made to the Secretary of the Society.

Section 6. Within sixty (60) days following each Annual Meeting of members of the Society, the Chairman of the Board of Directors shall appoint an Elections Committee consisting of the Secretary of the Society and three members of the Society, none of whom shall be Directors. At least thirty (30) days before the next Annual Meeting, said Secretary shall cause to be sent to each member of the Society entitled to vote a list of all the nominees for election, the position they were nominated to fill, a reasonable amount of biographical information, and a ballot to cast a vote in said election. Ballots shall be returned to and retained unopened by the Elections Committee not less than fifteen (15) days before the Annual Meeting. Not more than ten (10) days after the closing date of voting in said election, the Committee shall open, count, and record the number of said ballots. The Committee shall deliver said ballots together with a certification of the results of said election to the Secretary of the Society for retention in its records. The candidates, in number necessary to fill the terms of office as Director of the Society voted upon in said election, who each shall have received a greater number of votes than each of the remainder of the candidates, shall be elected to said office. At the said Annual Meeting, the Committee shall announce the results of the election and the names of the candidates who shall have been elected to said office pursuant to the provisions of these Bylaws.

ARTICLE V—REFERENDUMS

Section 1. In addition to the right to vote at regular or special meetings of the Society, members shall be entitled to vote in a referendum. A referendum may be initiated on the following questions, and no other:

a. To authorize the transfer of operating funds to an Endowment Fund, as provided in Article IX;

b. Any question which the Board of Directors or an Annual Meeting of the Society shall decide to submit to referendum;

c. The amendment of these Bylaws.

Section 2. A referendum may be initiated by: (a) any special or annual meeting of the Society; (b) the Board of Directors; (c) petition of any 50 members in good standing, submitted to the Secretary of the Society in writing and stating precisely the motion or resolution to be voted upon.

Section 3. When a referendum has been initiated, the Secretary of the Society shall submit the question to all members eligible to vote with a ballot within 60 days, specifying the address to which the ballot shall be returned. The majority vote of those returning ballots to the specified address within 30 days from the date of the mailing of the ballots shall decide the issue, except an issue of amendment of the Bylaws, which shall be governed by the provisions of Article XII of the Bylaws.

Section 4. A referendum shall not impair the powers of the Board of Directors, as set forth in Article VI, except as they are modified in Article IX, and except as the powers of the Board may be modified by a change in these Bylaws.

ARTICLE VI—DIRECTORS

Section 1. The concerns, direction and management of the affairs of the Society shall be vested in the Board of Directors, who shall pursue such policies and principles as shall be in accordance with the provisions of the Articles of Incorporation and these Bylaws, and the statutes of Delaware.

Section 2. The Board of Directors shall be composed of no more than 24 members, but no act of this Society shall be void because, at any time, there may be fewer than 24 Directors in office. No person shall be eligible to serve as a Director who is receiving compensation for services from this or any other humane organization. No elected Director shall be qualified to serve in that capacity until he becomes a dues paying member of the Society.

Section 3. The Board of Directors shall be divided into three classes and shall be elected in accordance with the provisions in Article IV of these Bylaws. One-third of the membership of the Board of Directors shall be elected each year for a term of three years. Each Director shall hold office for three years and until his successor shall be chosen. Directors shall be eligible for re-election.

Section 4. In the event any Director shall by death, resignation, incapacity to act or otherwise, cease to be a Director during his or her term, his or her successor may be chosen by the Board to serve out the balance of the Director's unexpired term. In no case may a person be appointed to serve as a Director who is ineligible for election as a Director.

Section 5. Directors shall be entitled to reimbursement for necessary expenses incurred in fulfilling their duties.

Section 6. A regular Annual Organization Meeting of the Board of Directors shall be held at the Annual Meeting of the members of the Society, after announcement of the results of election of Directors, or on the day following adjournment. The annual organization meeting shall be held in the city or town where the Annual Meeting of members is held. In addition, the Board of Directors shall hold a regular meeting in the sixth month following the annual organization meeting.

Section 7. All meetings of the Board of Directors shall be held at such time as the Chairman of the Board shall from time to time order, subject to Sections 6 and 8 of this Article. All meetings of the Board of Directors, except the annual organization meeting, shall be held in Washington, District of Columbia, unless the Chairman of the Board proposes another place and a majority of the Board of Directors agree in writing to the place proposed.

Section 8. Special meetings of the Board of Directors shall be ordered by the Chairman of the Board when requested to do so in writing by any five or more Directors and may be ordered by the Chairman of the Board upon his own initiative. A special meeting requested by five or more Directors shall be called to be held not more than 45 days after the written request has been delivered to the Chairman of the Board.

Section 9. Notice of all meetings shall be mailed to Directors by the Secretary of the Society at least 20 days in advance of the meeting, except that no notice shall be required for any meeting at which all of the Directors are present and any meeting may be held without notice provided every Director shall waive in writing the notice otherwise required.

Section 10. The Board of Directors may, without meeting together, transact business by mail, by voting upon resolutions or motions having been initiated by any three Directors. The Secretary shall, within 5 days after receipt of such a motion or resolution, promptly mail the text of such a motion or resolution to all Directors. Ten days thereafter, the Secretary shall mail ballots to all Directors, including any comments received by the Secretary from any Director. If within twenty days thereafter a majority of the members of the Board of Directors shall send in writing to the Secretary their vote in favor of any such resolution or motion, said resolution or motion shall be deemed carried, otherwise it shall fail; provided, however, that no such affirmative action shall go into effect for five days after the Secretary, by registered or certified mail, shall have sent

BYLAWS

OF THE HUMANE SOCIETY OF THE UNITED STATES

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vent the Board of Directors from establishing prudent reserves for the operating expenses of the Society or from prudently investing any surplus funds of the Society to produce additional income, nor construed to prevent the members of the Society at a meeting or through a referendum from authorizing the Directors to transfer funds from operating funds to an Endowment Fund and placing funds of the Society therein. Should an Endowment Fund be established, no Director or officer of the Society shall be liable to anyone with respect to any action taken or omitted to be taken by him in good faith in accordance with the direction of the Board of Directors of the Society with respect to any investment made on behalf of the Society. In connection with any investment made, the Directors shall use the same degree of care and skill in making investments as a prudent man would use under the circumstances in the conduct of his own affairs. Nothing contained herein shall be construed as relieving a Director or officer from liability for his own negligent failure to act, or his own willful misconduct.

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Any two persons, being President, Secretary, Treasurer, or Assistant Secretary or Assistant Treasurer, shall have the joint authority to execute, under seal, such form of transfer and assignment as may be customary or necessary to constitute a regular transfer of any stocks or other registered securities standing in the name of the Society. They may from time to time execute and deliver on behalf of the Society proxies on any and all stock owned by the Society.

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Section 2. The fiscal year of the Society shall commence on January first of each year.

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ARTICLE III—MEMBERS

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Members shall pay to the Treasurer of the Society annual dues in accordance with their selected class of membership. Such dues shall be due and payable with the application for membership and thereafter on the anniversary date of the election to membership. Any member failing to pay his dues on or before the date when they are payable shall not be a member in good standing.

Section 2. No person shall be a member of the Society unless elected to membership by the Board of Directors of the Society. The Board of Directors may reject any application for membership for reasonable cause. The Board may also expel a member for reasonable cause.

Section 3. All members who have been in good standing for six months shall be entitled to cast one vote at any meeting of the Society and in any referendum or other election as provided by these Bylaws. A dual membership shall entitle each of 2 members of a family to a single vote. For the purposes of this section, a member shall be deemed to have become a member on the date his application was received by the Society.

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Section 1. The annual meetings of members of the Society for the purpose of transacting business authorized to be transacted by the members shall be held at such time and place as shall be specified by the Board of Directors.

Section 2. Special meetings of the members shall be held in Washington, District of Columbia, and may be called at any time by the Board of Directors or by any 50 members upon their filing with the Secretary of the Society a request in writing for the meeting, stating the purpose or purposes of the proposed meeting. The agenda of any special meeting shall be confined to the subjects stated in the call for the meeting. Special meetings requested by members shall be held not less than 30 days nor more than 60 days after the filing of the request.

Section 3. Advance notice of all meetings of members shall be given by the Secretary of the Society. All such notices shall be sent by mail at least 20 days in advance of the date set for the meeting to the last known post office address of each member who will be entitled to vote at the date of the meeting.

Section 4. At any meeting of the members, unless otherwise required by statute or these Bylaws, those members present in person shall have authority to transact all business that may come before the meeting. Voting by proxy shall not be permitted.

Section 5. There shall be elected annually to serve a term of one year a Nominating Committee of six (6) persons. Members in attendance at the Annual Meeting of members of the Society shall elect to this Committee two (2) members who have been in good standing for at least two (2) years. The Board of Directors at its Annual Organization Meeting shall elect four (4) members, two (2) of whom shall be Directors and two (2) shall be other members of the Society, all four (4) having been members in good standing of the Society for at least two (2) years. At least sixty (60) days before the Annual Meeting, the Committee shall nominate at least seven candidates for full term membership on the Board of Directors. The Committee shall notify the Secretary of the Society of its nominations. Any 250 members in good standing may also nominate one or more candidates for membership on the Board by written petition filed with the Secretary at least forty-five (45) days before the Annual Meeting. A list of those nominees selected by the Nominating Committee will be available to any member upon request made to the Secretary of the Society.

Section 6. Within sixty (60) days following each Annual Meeting

Section 5. The President shall be the principal executive officer of the Society and shall be responsible only to the Board of Directors. He shall conduct the activities and business of the Society in accordance with principles and policies prescribed by the Board of Directors. His salary shall be determined by the Board. He shall employ and have full authority over other staff members and shall determine the duties and, within the limits of a budget approved by the Board, the compensation of all such staff members. He shall, a reasonable time before the beginning of each fiscal year of the Society, submit to the Board a written budget and program proposal for the ensuing year. The Board shall approve or amend and adopt a budget for the ensuing year and the President shall operate within said adopted budget. The President shall deliver to the annual meeting of the members of the Society a comprehensive report of the work done in the preceding year and an outline of plans for the ensuing year. The President may participate in any meeting of the Board of Directors or any committee of the Board, but without vote.

Section 6. The Secretary shall take and preserve minutes of all meetings of the members of the Society and of the Board, shall notify all members and Directors of annual and special meetings, and shall perform other duties assigned by the Board. He shall cause a record of all actions taken at all membership, Board and Executive Committee meetings to be mailed to any member upon request. In the absence of the Secretary from any meeting, the presiding officer shall appoint a temporary secretary to record the minutes and such minutes shall be transmitted to the Secretary.

Section 7. The Treasurer shall have custody of all funds and securities of the Society, shall disburse funds in accordance with a budget approved by the Board, and shall submit to the Board and to the annual meeting of the members of the Society an annual report, audited by an accountant selected by the Board, of the income and expenditures of the Society for the preceding year and of its assets and liabilities as at the end of the period under review. He shall make the report available to any member upon request at any time. The Treasurer may authorize other persons to sign checks and perform other functions of his office subject to the approval of the Board of Directors.

ARTICLE IX—USE OF FUNDS

All available funds of the Society shall be used for the immediate relief of suffering and the vigorous prosecution of humane education except as otherwise provided by law or the specific terms of a gift or mandate of a donor. Nothing in this section shall, however, be construed so as to pre-

ARTICLE VII—COMMITTEES

Section 1. The Board of Directors may have an Executive Committee composed of 9 or more of their number. The Executive Committee shall have and may exercise all of the powers of the Board of Directors when the Board is not in session, except the power to elect and remove officers and such powers, if any, as the Board may specifically reserve to itself or as may be specifically assigned to any other committee or any officer of the Society. The Executive Committee shall make and adopt such rules and regulations as it may deem prudent for its management.

Section 2. The Board of Directors may provide for such other committees or other bodies of Directors and members as it shall deem desirable. The Board of Directors may delegate to such committees such duties and powers from time to time as it shall deem necessary or desirable.

ARTICLE VIII—OFFICERS

Section 1. At each annual organization meeting of the Board of Directors, or in default of election at such meeting, then at an adjournment thereof, or at any meeting of the Board of Directors duly called for the purpose of election of officers, the Board of Directors shall elect a Chairman of the Board, a Vice Chairman of the Board, a President, a Secretary and a Treasurer. The Board may also elect such other officers as the business of the Society may require. No person shall be eligible to hold office who is not a member of this Society at the time of his appointment. All the officers shall hold office at the pleasure of the Board of Directors but in no case beyond the time when their respective successors shall be elected and shall qualify. Any officer may be removed from office by the Board of Directors at any time.

Section 2. Whenever any vacancy shall occur in any office created by these Bylaws, or by the Board of Directors, the vacancy may be filled by the Board of Directors, acting in meeting or by mail ballot, for the unexpired term.

Section 3. The Chairman of the Board shall preside over all meetings of members of the Society, the Board, and the Executive Committee and shall be, ex officio, with vote, a member of all committees of the Board, except the Elections Committee.

Section 4. The Vice Chairman shall fill all functions of the Chairman when the latter is incapacitated, is unavailable, or for any other reason cannot serve.

of members of the Society, the Chairman of the Board of Directors shall appoint an Elections Committee consisting of the Secretary of the Society and three members of the Society, none of whom shall be Directors. At least thirty (30) days before the next Annual Meeting, said Secretary shall cause to be sent to each member of the Society entitled to vote a list of all the nominees for election, the position they were nominated to fill, a reasonable amount of biographical information, and a ballot to cast a vote in said election. Ballots shall be returned to the Elections Committee not less than fifteen (15) days before the Annual Meeting. The Committee shall open, count, and record the number of said ballots. The Committee shall deliver a certification of the results of said election to the Secretary of the Society for retention in its records. The candidates, in number necessary to fill the terms of office as Director of the Society voted upon in said election, who each shall have received a greater number of votes than each of the remainder of the candidates, shall be elected to said office. At the said Annual Meeting, the Committee shall announce the results of the election and the names of the candidates who shall have been elected to said office pursuant to the provisions of these Bylaws.

ARTICLE V—REFERENDUMS

Section 1. In addition to the right to vote at regular or special meetings of the Society, members shall be entitled to vote in a referendum. A referendum may be initiated on the following questions, and no other:

a. To authorize the transfer of operating funds to an Endowment Fund, as provided in Article IX;

b. Any question which the Board of Directors or an Annual Meeting of the Society shall decide to submit to referendum;

c. The amendment of these Bylaws.

Section 2. A referendum may be initiated by: (a) any special or annual meeting of the Society; (b) the Board of Directors; (c) petition of any 50 members in good standing, submitted to the Secretary of the Society in writing and stating precisely the motion or resolution to be voted upon.

Section 3. When a referendum has been initiated, the Secretary of the Society shall submit the question to all members eligible to vote with a ballot within 60 days, specifying the address to which the ballot shall be returned. The majority vote of those returning ballots to the specified address within 30 days from the date of the mailing of the ballots shall decide the issue, except an issue of amendment of the Bylaws, which shall be governed by the provisions of Article XII of the Bylaws.

Section 4. A referendum shall not impair the powers of the Board of Directors, as set forth in Article VI, except as they are modified in Arti-

cle IX, and except as the powers of the Board may be modified by a change in these Bylaws.

ARTICLE VI—DIRECTORS

Section 1. The concerns, direction and management of the affairs of the Society shall be vested in the Board of Directors, who shall pursue such policies and principles as shall be in accordance with the provisions of the Articles of Incorporation and these Bylaws, and the statutes of Delaware.

Section 2. The Board of Directors shall be composed of no more than 24 members, but no act of this Society shall be void because, at any time, there may be fewer than 24 Directors in office. No person shall be eligible to serve as a Director who is receiving compensation for services from this or any other humane organization. No elected Director shall be qualified to serve in that capacity until he becomes a dues paying member of the Society.

Section 3. The Board of Directors shall be divided into three classes and shall be elected in accordance with the provisions in Article IV of these Bylaws. One-third of the membership of the Board of Directors shall be elected each year for a term of three years. Each Director shall hold office for three years and until his successor shall be chosen. Directors shall be eligible for re-election.

Section 4. In the event any Director shall by death, resignation, incapacity to act or otherwise, cease to be a Director during his or her term, his or her successor may be chosen by the Board to serve out the balance of the Director's unexpired term. In no case may a person be appointed to serve as a Director who is ineligible for election as a Director.

Section 5. Directors shall be entitled to reimbursement for necessary expenses incurred in fulfilling their duties.

Section 6. A regular Annual Organization Meeting of the Board of Directors shall be held at the Annual Meeting of the members of the Society, after announcement of the results of election of Directors, or on the day following adjournment. The annual organization meeting shall be held in the city or town where the Annual Meeting of members is held. In addition, the Board of Directors shall hold a regular meeting in the sixth month following the annual organization meeting.

Section 7. All meetings of the Board of Directors shall be held at such time as the Chairman of the Board shall from time to time order, subject to Sections 6 and 8 of this Article. All meetings of the Board of Directors, except the annual organization meeting, shall be held in Washington, District of Columbia, unless the Chairman of the Board proposes another place and a majority of the Board of Directors agree in writing to the place proposed.

Section 8. Special meetings of the Board of Directors shall be ordered by the Chairman of the Board when requested to do so in writing by any five or more Directors and may be ordered by the Chairman of the Board upon his own initiative. A special meeting requested by five or more Directors shall be called to be held not more than 45 days after the written request has been delivered to the Chairman of the Board.

Section 9. Notice of all meetings shall be mailed to Directors by the Secretary of the Society at least 20 days in advance of the meeting, except that no notice shall be required for any meeting at which all of the Directors are present and any meeting may be held without notice provided every Director shall waive in writing the notice otherwise required.

Section 10. The Board of Directors may, without meeting together, transact business by mail, by voting upon resolutions or motions having been initiated by any three Directors. The Secretary shall, within 5 days after receipt of such a motion or resolution, promptly mail the text of such a motion or resolution to all Directors. Ten days thereafter, the Secretary shall mail ballots to all Directors, including any comments received by the Secretary from any Director. If within twenty days thereafter a majority of the members of the Board of Directors shall send in writing to the Secretary their vote in favor of any such resolution or motion, said resolution or motion shall be deemed carried, otherwise it shall fail; provided, however, that no such affirmative action shall go into effect for five days after the Secretary, by registered or certified mail, shall have sent to each Director a report of the tabulated result of such vote, the ballots of which shall be produced at the following meeting of the Board of Directors.

Section 11. Seven of the members of the Board of Directors shall constitute a quorum. An affirmative vote by a majority of those present shall be required for adoption or approval by it of any matter upon which it undertakes to act.

Section 12. If any Director shall be absent from three consecutive regular meetings, such Director may be deemed to have resigned from office and in that event the vacancy so caused shall be filled as herein provided for filling of vacancies in the membership of the Board of Directors.

SELECTION OF DIRECTORS—NOMINATING COMMITTEE

The Nominating Committee met twice during 1987. The Committee's duties are to propose to the Board a slate of directors in the class to be elected by the stockholders at each Annual Meeting and to propose candidates to fill vacancies on the Board.

The Committee will consider candidates proposed by stockholders in accordance with the following procedures:

> Nominations should be addressed to the Secretary of the Nominating Committee, Mobil Corporation, Room 2535, 150 East 42nd Street, New York, New York 10017-5666. Nominations should describe the qualifications of the candidate and should be accompanied by a written statement that the candidate is both willing and affirmatively desirous of serving. Candidates must be endorsed by a member of the Nominating Committee or be supported by the holders of not less than 200 shares. This number was fixed by the Nominating Committee in August 1979 and is subject to periodic review.

Nominations by stockholders may also be made in the manner described below which is set forth in the last full paragraph of Section 1 of Article III of the By-Laws, as amended, which was approved by the stockholders on February 22, 1985:

> Subject to the rights of holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, nominations for the election of Directors may be made by the Board of Directors or a committee appointed by the Board of Directors or by any stockholder entitled to vote in the election of Directors generally. However, any stockholder entitled to vote in the election of Directors generally may nominate one or more persons for election as Directors at a meeting only if written notice of such stockholder's intent to make such nomination or nominations has been given, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Corporation not later than (i) with respect to an election to be held at an annual meeting of stockholders, ninety days prior to the anniversary date of the immediately preceding annual meeting, and (ii) with respect to an election to be held at a special meeting of stockholders for the election of Directors, the close of business on the tenth day following the date on which notice of such meeting is first given to stockholders. Each such notice shall set forth: (a) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated; (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (d) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission; and (e) the consent of each nominee to serve as a Director of the Corporation if so elected. The presiding officer of the meeting may refuse to acknowledge the nomination of any person not made in compliance with the foregoing procedure.

OTHER COMMITTEES OF THE BOARD

Audit. The Audit Committee met three times during 1987. Pursuant to Board authorization the Committee reviews with the independent auditors and with Mobil's General Auditor the general scope of their respective audit coverages. Such reviews include consideration of Mobil's accounting practices, procedures and system of internal accounting controls and of any significant problems encountered. The Committee also recommends to the Board the appointment of Mobil's principal independent auditors. At least annually, the Committee reviews the services performed and the fees charged by the independent auditors engaged by Mobil and its principal subsidiaries and determines whether the non-audit services rendered by the independent auditors compromise their independence.

The independent auditors and Mobil's General Auditor have direct access to the Committee and may discuss with it any matters which may arise in connection with audits, the maintenance of internal accounting controls or any other matter relating to Mobil's financial affairs. Furthermore, the Committee may authorize the independent auditors to investigate any matters which the Committee deems appropriate and may present its recommendations and conclusions to the Board.

The Humane Society of the United States
Treasurers Office
Bethesda Center

FULL DISCLOSURE POLICY

The following policies and procedures are recommended as a means of monitoring all situations and transactions which might involve a member of the Board of Directors, Officer or Senior Staff member in any conflicts of interest, or the appearance thereof.

1. When, at any time, a matter comes before the Board of Directors, or any Committee thereof, or if the Society enters a financial transaction , which may involve a Board Member, Officer, or Senior Staff member in any possible conflict of interest, or the appearance thereof, including without limitation any transaction between the Society and another corporation, firm, association or entity in which a Board Member , Officer or Senior Staff member has a direct or indirect substantial financial interest, or any transaction which may result in a Board Member's, Officer's, or Senior Staff member's immediate family receiving any pecuniary profit, it shall be the duty of such Board Member, Officer or Senior Staff member to disclose such interest to the Board or Committee thereof promptly and fully. Such disclosure shall be recorded in the minutes of the meeting of the Board of Directors or Committee thereof at which such disclosure is made. A Board Member, Officer or Senior Staff member shall be deemed to have a direct or indirect substantial financial interest in any corporation, firm, association or other entity in which the Board Member, Officer or Senior Staff member together with all members of the Board Member's, Officer's or Senior Staff member's immediate family have an aggregate beneficial equity interest of 10 percent or more.

2. Any Board Members, Officers or Senior Staff members having any possible conflicts of interest with respect to any matter before the Board or any Committee thereof shall not vote or participate in the deliberation of or use their personal influence in such matter, or be counted in determining the existence of a quorum for purposes of any action of the Board or Committee thereof with respect to such matter. In connection with the approval of any transaction by the Board or Committee thereof in which any Board Member, Officer or Senior Staff member has any possible conflict of interest, the Board or Committee thereof must determine that in its judgment such transaction is at least as fair and reasonable to the Society as would otherwise then be obtainable by it.

3. The foregoing requirement shall not be construed as preventing the interested Board Members, Officers or Senior Staff members from answering questions addressed to them by other Board Members or persons invited by the Board or Committee thereof to participate in the discussion.

4. For purposes of this resolution, the term "immediate Family" in respect of any person shall mean the parents and spouse of such person and all dependents of either of such person's parents or such person's spouse.

5. The minutes of the meeting should reflect the fact that the Board Member, Officer or Senior Staff member made a full disclosure, the quorum constituted, the results of the vote, and the fact that the particular Board Member abstained from voting.

6. Each year following the annual meeting, the Treasurer will send each member of the Board of Directors, Officer and Senior Staff member a questionnaire which is to be completed and returned to the Treasurer within three (3) weeks after its receipt. Copies of the completed questionnaires shall be retained in the Societies's files and a summary report transmitted to the Chairman of the Audit Committee.

The Humane Society
of the United States

FULL DISCLOSURE QUESTIONNAIRE

This questionnaire is being sent pursuant to the Full Disclosure Policy adopted by the Board of Directors on _____19___, a copy of which is enclosed. Please complete it to the best of your knowledge and return it to the Treasurer in the envelope provided.

****

1. I have read the Full Disclosure Policy of The Humane Society of the United States and agree to comply with all of its terms to the best of my ability. If I have any questions about the interpretation of the resolution I will immediately communicate them to the President or Chairman.

2. With respect to any corporation or other entity which has engaged during the past year or is engaging in any transaction with The Humane Society of the United States at this time (except as noted below):

a. I am not an officer or director with respect to any such entity.

b. Neither I nor any member of my immediate family have a substantial financial interest (direct or indirect) in any such entity.

c. Neither I nor any member of my immediate family have accepted personal gifts or gratuities or derived any other benefit of more than nominal value during the past year from any such entity.

d. I am employee of such entity but have received no personal gain from such transactions.

If you have any explanation, qualification or other remarks regarding items a. through d. above please note them here.

Remarks:_____

_____

_____

Name_____Signature_____

Date_____19_____

TERMS OF DIRECTORS OF
THE HUMANE SOCIETY OF THE UNITED STATES

Expiration 1990

Carol Browning	Ogden, Utah
Irene Evans	Washington, D.C.
Paul H. Heneks Mich. Hum. Soc.	Birmingham, Michigan
Gisela Hunnicutt ?	Towaco, ~~New Jersey~~ Fla.
Amy Freeman Lee	San Antonio, Texas
Jack W. Lydman	Washington, D.C.
Susan Selby Pepperdine	Fairway, Kansas
Brook Speidel	Washington, D.C.

If the 4 of us checked are ousted, that will leave no "loyal opposition."

Expiration 1991

Coleman Burke	Short Hills, New Jersey
Alice R. Garey	Arroyo Grande, California
Jane Goodall	Tucson, Arizona
Marilyn G. Seyler	Mansfield, Ohio
Carroll S. Thrift	Knoxville, Tennessee
Viola Weber	McLean, Virginia
Marilyn E. Wilhelm	Houston, Texas
K. William Wiseman	Arrowsic, Maine

Expiration 1992

Regina B. Frankenberg	New York, New York
Harold Gardiner	Salt Lake City, Utah
Leslie R. Inglis	Patriot, Indiana
Virginia (Pat) Lynch	San Francisco, California
O. J. Ramsey	Sacramento, California
Robert B. Sorock	Bloomfield Hills, Michigan
John E. Taft	Ojai, California
Robert F. Welborn	Denver, Colorado

1989

THE HUMANE SOCIETY OF THE UNITED STATES
BOARD OF DIRECTORS

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Ogden, UT 84403
801/479-3754

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202/338-8037

Miss Regina Bauer Frankenberg
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212/288-4126

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713/626-2532

K. William Wiseman
P.O. Box 120
Woolwich, ME 04579
207/443-3979

11/89

CONFIDENTIAL

The Humane Society of the United States
Meeting of the Compensation Committee
Washington, D.C.
September 7, 1988

Present: Robert B. Sorock, Marilyn Seyler, Hal Gardiner, Bill Wiseman, Susan Pepperdine (Mr. Hoyt was included in portions of the meeting not dealing with his personal compensation.)

Chairman Bob Sorock called the meeting to order at 9:40 a.m.

The committee reviewed the 1981 job evaluation survey conducted by Walter Larke Sorg Associates.

The committee recommended that the president work with competent outside personnel consultants and legal advisors regarding establishment of job descriptions and written annual performance reviews separate from salary reviews. Based on the outcome of this consultation, the 1981 job evaluation survey may need to be reviewed with supervisors and updated as needed.

The committee reviewed the compensation figures for the senior staff.

The committee requested that Mr. Hoyt obtain full information from Mr. Madden on any personal legal business he conducts and the amount of HSUS resources required to perform that business.

The committee recommended that Mr. Hoyt and Mr. Irwin have their personal attorneys draw up proposed employment contracts by December 31, 1988, which will then be negotiated by the Compensation Commitee with review by outside counsel before the April 1989 board meeting. Mr. Hoyt's contract will include a lease agreement with adequate provision for disposition of the house. These agreements will then be presented for approval by the board at the April meeting.

The committee agreed to investigate whether to sell the Germantown house and buy a more appropriate house or whether to sell the house and provide Mr. Hoyt a method for purchasing his own residence.

The committee agreed to consult with Thomas Havey & Co. and Deloitte Haskins and Sells concerning the appropriate rental value of the Germantown house.

The committee approved that pension reserves for all staff be based on the amounts reported on the W-2, effective on 1988 salaries.

The committee agreed with Mr. Hoyt's recommendation to increase Mr. Irwin's salary by $5,000 in 1988 retroactive to January 1 and continuing into 1989, and that he also receive a $5,000 bonus this year, in appreciation of his outstanding work during the year.

The committee agreed to set a tentative meeting date of January 9, 1989.

The meeting was adjourned at 1:50 p.m.

Susan Pepperdine

Susan Pepperdine

CODE OF CONDUCT AND ETHICAL STANDARDS FOR HSUS DIRECTORS, OFFICERS, AND STAFF

I.

Statement of Purpose

The maintenance of high standards of honesty, integrity, impartiality, and conduct by HSUS Officers, staff members and members of the Board of Directors is essential to assure both the proper performance of HSUS business and continued public confidence in HSUS. The avoidance of misconduct and actual or apparent conflicts of interest on the part of HSUS officers, staff members and directors is essential to the maintenance of these standards. This Code thus prescribes standards of conduct and outlines the ethical responsibilities of all HSUS officers, staff members and directors. While this Code applies to all persons holding positions at HSUS, it is designed to be particularly applicable to HSUS "insiders"--HSUS' high-ranking officers and directors, who, due to their positions of authority and of wide discretion, and their contacts with major donors, are particularly apt to find themselves facing ethical dilemmas.

II.

Definitions

<u>CONFLICT OF INTEREST</u> means a situation in which an officer's, staff member's or director's private interest, of a financial or personal nature or of a nature affecting the judgment or loyalty to HSUS, whether it be a conflicting,

inconsistent, diverse or other interest tending to impair the efficient and impartial conduct of his or her official duties or responsibilities. Financial interest also includes interests of the officer's, staff member's, or director's spouse, child or member of his or her immediate household. Specific types of conduct constituting a conflict of interest are set forth and prohibited under Section V, below.

DISQUALIFIED PERSON means any person who (1) has, or is seeking to obtain, contractual or other business or financial relations with HSUS; (2) has interests which may be substantially affected by the performance of the officer's, staff member's or director's official duties; or (3) who is in any way attempting to influence the officer's, staff member's or director's official duties. Examples of a disqualified person include, but are not limited to the following:

(1) A person who is doing business with or has or is seeking a contract or business relationship with HSUS; or

(2) A person who seeks to influence the conduct of HSUS business.

INSIDER is an HSUS director, officer, or staff member who, due to his or her position of authority and discretion within the organization has the ability to control or otherwise influence the actions of HSUS so as to cause a benefit to be intentionally conferred upon such director, officer, or staff member, or upon any other person, by HSUS.

HSUS insiders include all members of the HSUS Board of Directors, all officers authorized under Article VIII, §1 of the HSUS By-laws and by the HSUS Board of Directors, and all "senior staff"--the Vice-Presidents and other heads of HSUS departments or divisions.

PRIVATE INUREMENT is the acquisition or use of HSUS funds, resources, or benefits, or funds, resources or benefits intended for the benefit of HSUS, by an HSUS officer, staff member, or director for personal benefit, where such funds or resources are not received as compensation in the normal course of business for goods or services provided to HSUS by the recipient. The abuse of authority or discretion by an HSUS insider for purposes of private inurement is strictly prohibited.

SELF-DEALING TRANSACTION means any direct or indirect:

(1) sale or exchange, or leasing, of property between HSUS and an HSUS insider;

(2) lending of money or other extension of credit between HSUS and an HSUS insider;

(3) furnishing of goods or facilities between HSUS and an HSUS insider; or

(4) transfer to, or use by or for the benefit of, an HSUS insider of the income or assets of HSUS.

(5) Any other transaction between HSUS and an HSUS insider in which the insider has a financial or personal interest.

Self-dealing transactions between HSUS and an HSUS insider are inherently suspect, and must be brought to the attention of the Board of Directors for review and approval or disapproval. Examples of self-dealing include:

(1) the sale or exchange of real or personal property between HSUS and an HSUS insider;

(2) the transfer of real or personal property by an HSUS insider to HSUS where HSUS assumes a mortgage or similar lien which was placed on the property prior to the transfer;

(3) the lending of money by HSUS to an HSUS insider, (particularly where the loan is to be repaid at an interest rate below the current market rate,) and, except where furnished as part of the compensation of an HSUS employee, the furnishing of significant goods, services, and facilities to an HSUS employee; or

(4) the providing of a guarantee by HSUS with respect to a loan negotiated between an HSUS insider and a lending institution.

This list of examples is provided for purposes of clarification, and is not meant to be an exclusive list of transactions constituting self-dealing.

III.

General Standards of Ethical Conduct

(a) All HSUS officers, staff members and directors shall conduct themselves at all times in a manner that reflects creditably on HSUS, and shall abide by the spirit as well as the letter of this Code of Conduct. HSUS officers, staff members and directors shall not attempt to do something indirectly that may not be done directly.

(b) All HSUS officers, staff members and directors will be held to the highest standard of trust to the organization, and will use their abilities to the benefit of HSUS.

(c) No HSUS officer, staff member, or director shall take part in any self-dealing transaction, or in any transaction which results in private inurement to said officer, staff member, or director, except and unless such transaction is part of the compensation of an officer or staff member, or constitutes or is part of the reimbursement of a director for necessary expenses incurred in fulfilling his or her duties in accordance with Article VI, §5 of the By-laws.

(d) No HSUS officer, staff member or director shall directly or indirectly use, or allow the use of, HSUS property of any kind for other than officially approved activities.

All HSUS officers, staff members and directors have an affirmative duty to protect and conserve HSUS property, including equipment, supplies, and any other property entrusted to them.

(e) No HSUS officer, staff member or director shall use inside information obtained as a result of his or her relationship with HSUS for private inurement for himself or herself or another person either directly or indirectly.

(f) HSUS officers, staff members and directors shall conduct themselves in such a manner that the work of HSUS is effectively accomplished, and shall avoid any action which may adversely affect the confidence of the public in the integrity of HSUS.

(g) No financial transactions shall be permitted between HSUS officers, staff members, and directors.

(h) Any proposed financial transactions between donors or members and any officer or staff member must be promptly reported to the Board for approval or disapproval.

(i) No officer or staff member shall consent to be appointed as an Executor, Trustee, Agent, Fiduciary, or Personal Representative of any HSUS member or donor except with the approval of the General Counsel. Any fees must be promptly disclosed to the Board of Directors.

IV.

Gifts, Gratuities, and Bequests

(a) Under no circumstances shall any HSUS officer, staff member, or director solicit any gift, gratuity, or bequest for himself or herself. Unless permitted by paragraph (b) of this section, no HSUS officer, staff member, or director shall accept for himself or herself, directly or indirectly, any gift, gratuity, bequest, favor, or entertainment of significant value, or any loan or discount not available to the general public, or any other thing of significant monetary value from any disqualified person.

(b) The gift, gratuity and bequest provisions of paragraph (a) shall not apply to:

(1) the acceptance of food and refreshments of nominal value on infrequent occasions; or

(2) the acceptance of unsolicited advertising or promotional material of nominal value such as pens, calendars, and other similar items; or

(3) obvious family or personal relationships where circumstances make it clear that it is these relationships rather than the business of the persons concerned which are the motivating factors.

V.

Conflicts of Interest

(a) No HSUS officer, staff member or director shall act in an official capacity on a matter in which he or she has a personal financial interest without prior disclosure to and approval by the Board of Directors.

(b) No HSUS officer, staff member, or director shall accept any compensation from a source outside HSUS for performance of HSUS-related duties without prior disclosure.

(c) No HSUS officer, staff member, or director shall have a direct or indirect financial interest which conflicts substantially, or appears to conflict substantially, with his or her HSUS duties and responsibilities, nor shall any HSUS officer, staff member, or director accept any fee, compensation, or gift of monetary value in circumstances in which the acceptance may result in, or create the appearance of, a conflict of interest, without prior disclosure.

(d) As to paragraphs (b) and (c) above, such matters involving HSUS staff members must be promptly disclosed to the President, and if approved, subsequently reported by him to the Board of Directors.

(e) No HSUS officer, staff member, or director shall engage, directly or indirectly, in a financial transaction as a result of, or primarily relying on, information obtained through his or her relationship with HSUS.

(f) No HSUS officer, staff member or director shall engage in any outside activity or employment not compatible with the full and proper discharge of his or her HSUS responsibilities.

(g) Any donation from HSUS to organizations with which any HSUS officer, staff member or director is affiliated must be disclosed to the Board of Directors.

(h) No HSUS officer, staff member, or director shall knowingly accept any financial benefit from a donation which has been earmarked for specific purposes intended to benefit a particular officer, staff member or director, without prior disclosure to, and approval by, the Board of Directors.

Summary

An HSUS director, officer, or staff member with discretionary authority, shall discharge his or her duties:

(a) in good faith;

(b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) in a manner in which the director, officer, or staff member reasonably believes to be in the best interests of HSUS and its members.

This is the "report" the lights said was not a real report.

REPORT OF THE INVESTMENT COMMITTEE
Hal Gardiner, chairman
29 October 89

1. HISTORY

This committee was previously chaired by former HSUS board member, John (Speedy) Mettler (in the investment business in NYC,) (before that, oversight was by board member Bill Kerber). Mettler was assisted by Paul Irwin who has managed HSUS investments daily since he became Treasurer. Investment details at Bethesda are now being managed day-to-day by our controller, Mr Thomas J Huntt, also advised by Mr. Irwin.

During the past few years, HSUS has experienced explosive growth of dues, contributions and bequests. Not only was the Bethesda facility not in place and staffed and organized as it is today, but personnel and computers were not geared up to track in management style the real estate, gold coins, jewelry and other donations received.

During the Board conflict of last year, questions were raised about properly recorded donations, and real estate and tangible personal property such as jewels and coins acquired by gift not being listed. In order to determine the structure of HSUS investments, a new Investment Committee was named by Mr. Wiseman and this Committee met January 10 and October 5.

2. HSUS INVESTMENT STRUCTURE

A. General Fund. This contains operating cash, a liquid asset account with an overnight sweep that moves all newly deposited cash in transit into an interest bearing account. Money also flows into "rolling" CD's (short term CD's that are rolled over upon maturity) and a Riggs bank money market account primarily made up of government securities. Also moving through this field are Funds in Transit (cash rec'd, yet to be placed) and Securities in Transit. (donors' stocks & bonds where decision is yet to be made whether to cash in or hold them).

B Board Restricted Funds. These include the Wright-Goode Education Fund, Irene/Oliver Evans Fund & the Frankenberg Fund, -- the use and disposition of the latter three bequests being governed by instructions from or permission granted by the donors. Invested in government & public securities, money market CD's and other vehicles, these funds earn interest and steadily increase in value.

In this group, securities in two other Bequest Reserve Funds are managed by two highly professional and experienced investment advisers: Hovey Youngman (Mr Bob Youngman), 305 E 46 St, NYC since 31Jan85, and Inverness Counsel, 1600 Bdwy, Denver (Mr Richd P Kopp). (Speedy Mettler had introduced HSUS to Clem Cleveland, then pres., Cleveland Mgt, Denver, with whom Mr. Kopp was also associated as vice pres.) In 1988 Cleveland Mgt became part of Inverness, a 20-yr old company with other offices in NYC, Texas & Geneva that manage portfolios over $1 billion.

C. Bethesda Building Fund A valuable annuity from one of our great ladies is earning interest toward our plan to own this facility on Grosvenor Lane.

D. Endowment Annuity & Trust Funds In this group are some fifteen separate funds of varying types and amounts whose proceeds are invested and managed for growth and income.

E. Miscellaneous Real Estate HSUS owns and operates certain real properties (such as our headquarters building, the Norma Terris facility, etc.) which the company occupies as offices, educational facilities, etc. These are not regarded as investments but are business buildings in daily use. However, also, on any given day, HSUS may receive gifts of condominiums, homes, motor vehicles, land, buildings and other property located anywhere in the continental U.S., which can often include furniture and leases.

Before a gift of real property can be valued or converted into cash, it is absolutely essential that an experienced person from HSUS travel to that location wherever it may be, see the property first hand, try to get a sense of its possible value, find an appraiser and perhaps list it with a realtor. Delay is natural in this process.

F. Miscellaneous Jewelry & Coins, Etc. Other tangible items of personal property which HSUS receives and which require valuation, management and decision include jewelry, watches, coins, bullion and etc.

3. PRESENT STATUS OF INVESTMENTS

a. Meeting of 5 October 89. This was a highly productive all-day examination of our investments. During the morning we received Bob Youngman's presentation; the afternoon was spent with Dick Kopp. Fundamental HSUS investment policies and philosophies were restated and reaffirmed.

b. The Valdez Principles. Led by Mr. Irwin, a candid conversation discussed these new dicta of the Real World. The Valdez Principles mandate avoiding investments where elements of subject organizations might be engaged in the use or abuse of animals. Care must also be taken with portfolio securities where problems of ethics or conscience might arise. Concern with such "problems of ethical portfolios or conscience portfolios" -- translate in plain English into "the moralistic notion of purified investments" conduct that will support HSUS determination to maintain a conscientious, reasonable profile.

OFFICERS

The Humane Society of the United States

K. William Wiseman, Chairman of the Board
O.J. Ramsey, Vice Chairman
Amy Freeman Lee, Secretary
John A. Hoyt, President
Paul G. Irwin, Executive Vice President; Treasurer
Patrick B. Parkes, Assistant Secretary; Assistant Treasurer
Marcia Glaser, Assistant Secretary
Thomas Huntt, Assistant Treasurer
Samuel Trevino, Assistant Treasurer

National Association for Humane and Environmental Education

John A. Hoyt, Chairman of the Board and President
Murdaugh Stuart Madden, Vice President
Patrick B. Parkes, Secretary
Paul G. Irwin, Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

Center for the Respect of Life and Environment

Robert F. Welborn, Chairman
K. William Wiseman, Vice Chairman
John A. Hoyt, President
Paul G. Irwin, Secretary-Treasurer

Officers of Subsidiary Corporations

National Humane Education Center

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
Patrick B. Parkes, Secretary
Paul G. Irwin, Treasurer
R. Dale Hylton, Assistant Vice President
Marcia Glaser, Assistant Secretary

HSUS California Branch, Inc.

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
Patrick B. Parkes, Secretary-Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

HSUS Connecticut Branch, Inc.

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
Patrick B. Parkes, Secretary-Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

HSUS New Jersey Branch, Inc.

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
Patrick B. Parkes, Secretary-Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

Humane Society of the United States, Virginia Branch, Inc.

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
R. Dale Hylton, Assistant Vice President
Patrick B. Parkes, Secretary-Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

Animal-Kind – group I co-founded in 1973, now dormant

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
Susan Pepperdine, Vice President
Patrick B. Parkes, Secretary-Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

HSUS Vice Presidents
(Appointed October 1988)

Patricia Forkan, Senior Vice President
Murdaugh Stuart Madden, Vice President; General Counsel
Patrick B. Parkes, Vice President/Field Services
John W. Grandy, Vice President/Wildlife & Environment
Phyllis Wright, Vice President/Companion Animals
Michael W. Fox, Vice President/Farm Animals & Bioethics

Note: They removed my name from Animal-Kind list, but when I objected, they put me back on. How do I know if checks are run through it – I never see papers

HSUS COMMITTEES

A. Creation and Transaction of Business:

1. Committee composition:
   a. Members are to be nominated by the Chairperson of the Board and approved by the Board at the annual organizational meeting.
   b. Nominations are to include designations of committee Chairpeople.
   c. Chairperson of the Board is a voting member of all committees, according to the by-laws.
   d. President may attend meetings of all committees even if he is not a voting member. He may also be a voting member of committee if appointed as such.
2. All committees are to meet at least annually.
3. Minutes of all meetings are to be recorded.
4. Results of meetings are to be reported to the full Board at the next Board meeting.
5. Unless otherwise mandated, quorums of all committees shall be a simple majority of all members (both voting and non-voting).
6. All committees are to be empowered to transact business by mail or telephone at the discretion of the Chairperson, but minutes must be taken of such action(s) and the quorum requirements must be met.

7. The HSUS shall pay all the necessary and proper expenses incurred by directors in the discharge of their duties as committee members.

B. Names, Composition, and Duties of Specific Committees:

1. Alice Morgan Wright-Edith Goode Fund Committee:

a. Composition: Two directors; Chairperson of the Board (ex-officio); President (voting); Treasurer (voting); General Counsel (non-voting).

b. Duties: This committee shall be empowered to make allocations consistent with the terms of the trust.

2. Audit Committee:

a. Composition: Three directors; Chairperson of the Board (ex-officio); President (non-voting); Treasurer (non-voting).

b. Duties:

1. To recommend to the Board the company to annually audit the books of HSUS.

2. To meet with the general auditor to determine the scope of the audit and the fee to be paid.

3. To review and analyze the results of the audit and to report thereon to the Board.

Notice how chm, pres. + treas, can sit in on committees —

3. Compensation Committee:

a. Composition: Four directors; Chairperson of the Board (ex-officio); President (non-voting).

b. Duties:

1. To review the president's compensation annually and recommend changes to the Board for ratification.

2. To annually review the salaries of senior staff who report directly to the president and advise the president concerning those salaries, but without diluting the president's authority.

3. To set and review (at least annually) guidelines for the president concerning salaries by job classification at all levels of the organization and assuring they comply with all legal requirements, but without diluting the president's authority.

4. To negotiate written employment contracts between HSUS and the president and executive vice president, to be reviewed by outside counsel and submitted to the Board for approval; to review such contracts as necessary from time to time and make appropriate recommendations to the Board.

4. Executive Committee;

   a. Composition: Nine or more members of the Board; Chairperson of the Board (ex-officio); President (non-voting).

   b. Duties: To transact all the business of the full Board to the full extent permitted by the by-laws.

5. Investment Committee:

   a. Composition: Two directors; Chairperson of the Board (ex-officio); President (non-voting); Treasurer (voting).

   b. Duties: To review and analyze as often as prudent the investments of The HSUS and to make recommendations thereon to the full Board.

6. Legal/Ethics/By-laws Committee:

   a. Composition: Two directors; Chairperson of the Board (ex-officio); President (non-voting; General Counsel (non-voting).

   b. Duties:

      1. To promulgate and periodically review legal and ethical guidelines for the conduct of business by the Board of Directors; Officers, and Staff of HSUS.

      2. To review the by-laws of The HSUS and recommend necessary changes to the Board.

7. Pension Trust Committee:

   a. Composition: Two directors; Chairperson of the Board (ex-officio); President (non-voting); Treasurer (non-voting); Controller (non-voting).

   b. Duties:

      1. To review and analyze as often as prudent the investments of the Trust and to make recommendations thereon to the full Board.

      2. To review and make recommendations to the Board concerning pension trust benefits.

8. Planning and Policy Committee:

   a. Composition: Nine or more directors; Chairman of the Board (ex-officio); President (non-voting); Treasurer (non-voting). In addition, all senior staff members designated by the President shall be non-voting members.

   b. Duties: To review all aspects of the activities of HSUS, including monitoring progress toward agreed goals, establishing future goals and the means to accomplish them, periodically reviewing and updating the HSUS's policies, and recommending necessary changes to the Board.

The Humane Society of the United States
Meeting of the Executive Committee
Washington, D.C.
September 15, 1989

A meeting of the Executive Committee of the Board of Directors of The Humane Society of the United States was held on Friday, September 15, 1989 at the headquarters offices of the Society in Washington, D.C.

Members Present — K. William Wiseman (presiding), Harold Gardiner, Jack W. Lydman, Marilyn Seyler, Robert Sorock, Robert F. Welborn

Members Absent — Amy Freeman Lee, Virginia (Pat) Lynch, O.J. Ramsey

Others Present — John A. Hoyt, Paul G. Irwin

Chairman Wiseman called the meeting to order at 9:30 a.m. Regrets for absence of Dr. Lee and Mr. Ramsey because of other commitments were given. The committee wished Mrs. Lynch a rapid recovery to good health.

Minutes — Minutes of the meeting of the Executive Committee, held on February 9, 1989, were approved as distributed on motion by Mrs. Seyler, seconded and carried.

Employment Agreements — The chairman called on Mr. Sorock, chairman of the Compensation Committee, to present proposed employment agreements between the President and Executive Vice President/Treasurer and the Society and said that Mr. Welborn had some reservation with regard to the motion adopted by the Board of Directors at its meeting in April 1989 to authorize the Executive Committee to act on the employment agreements.

Mr. Sorock commented that the Compensation Committee had met a few times and also by conference call. After review by outside counsel the contracts had been sent both to members of the Compensation Committee and the Executive Committee. He had not received comments from anyone on the Compensation Committee, but he had seen a letter from Mrs. Pepperdine to the Chairman of the Board. Mr. Sorock felt that the board had been given a substantial summary of the provisions of the contracts and had delegated to the Executive Committee specific authority to take action on them.

A motion by Mr. Lydman that the contracts be approved by the Executive Committee was seconded.

Mr. Lydman moved that both contracts be amended to delete from the first sentence of Article 6 (Noncompetition) the following: "and for a period of two (2) years following any voluntary resignation of his employment with the Society, or termination under 4.3 above." The motion was seconded and approved.

Mr. Welborn made a substitute motion that the Executive Committee approve the contracts and to submit them to the Board of Directors for ratification. The motion failed to receive a second.

On Mr. Lydman's motion to approve the contracts, as amended, there were four votes in favor, one abstaining.

On motion by Mr. Welborn, seconded and adopted unanimously, the payment of attorney fees for preparation of the employment agreements with Mr. Hoyt and Mr. Irwin was approved.

Participation In Other Organizations — Mr. Hoyt requested review and approval by the committee of his affiliation with a number of other organizations. On motion by Mr. Gardiner, seconded and carried, approval was given to Mr. Hoyt's continuing participation in the following:

any compensation any HSUS or subsidiary funds or funds of funds

President and Director:
World Society for the Protection of Animals, London, England
Center for Respect of Life and Environment, Washington, D.C.
National Association for Humane and Environmental Education, East Haddam, Connecticut
National Humane Education Center, Washington, D.C.

Director:
Earthday 1990, Stanford University, California
National Society for Animal Protection, Detroit, Michigan
Council for Livestock Protection
National Trust for Animal Protection (serves as Chairman)

Member:
National Coalition to Protect Our Pets
Honorary Committee and the Special Council on Sustainable Development, Global Tomorrow Coalition, Washington, D.C.

Advisor:
Editorial Advisory Board, E Magazine, Westport, Connecticut
Animal Rights International, New York, New York

Mr. Irwin requested review and approval by the committee of his affiliation with a number of other organizations. On motion by

Mr. Gardiner, seconded and carried, approval was given to Mr. Irwin's continuing participation in the following:

Director:
The American Bible Society
The Wilhelm Scholê, Houston, Texas
World Society for the Protection of Animals, London, England
Theodore Roosevelt National Bank, Washington, D.C.

Planning and Policy Committee — Mr. Lydman reviewed discussions of the September 13-14 meeting of the Planning and Policy Committee, which related primarily to broadening the Society's constituency and program activities to involve organizations in the environmental movement and their including animals in their concern.

On motion by Mr. Lydman, seconded and carried, the Executive Committee approved a proposal for an annual alternatives award to recognize an individual or institution that has made a special contribution, through active work in the laboratory, to the development and validation of alternatives to animal use in research or testing.

It was the consensus that the text of a policy statement on "Humane Sustainable Agriculture" and proposed revisions of the current policy statements on "Animals in Biomedical Research and Testing" and "Fur Trapping and Ranching" will be mailed to members of the Board of Directors prior to their meeting on October 29, 1989, for final action.

Following a recess for lunch, a representative from the company which has obtained directors liability insurance for HSUS met with the Committee to review provisions of the coverage purchased. A written synopsis of coverage and exclusions that may or may not apply will be provided to directors.

President's Report — Mr. Hoyt reported he had received a letter from the president of the Boehm Company expressing a desire to give both Mr. Hoyt and Mr. Irwin a replica of the James Herriot Award. On motion by Mr. Gardiner, seconded and carried, approval was given for Mr. Hoyt and Mr. Irwin to accept these personal gifts from Boehm.

Mr. Hoyt reviewed the history of development of a system for moving small animals through ritual slaughter to eliminate their being shackled and hoisted and his efforts to secure endorsement by rabbinical authorities of such a conveyor system

that is operational at a plant in New York state. His editorial in the last issue of the HSUS magazine urging their formal endorsement, he said, is now being viewed as anti-Semitic. There was discussion regarding whether efforts should continue to secure endorsement of this equipment or whether another approach should be taken. It was the consensus to wait to see what formal response is made during the next few months.

Treasurer's Report — Mr. Irwin stated that revenues for the first six months of 1989 have been $6.2 million, total expenditures were $4.9 million, with an excess of revenue over expenditures of $1.25 million. An excess of income over expense is also anticipated at the end of the third quarter.

A history of revenue from 1979 through 1988 prepared by Mr. Huntt was reviewed, showing the significant growth in revenue, membership and assets. It is expected that the constituency will be well over a million people by the first of the year.

Mr. Irwin reported a budget for 1990 projecting $12.4 million in revenue and expenditures of $12.3 million was approved by the budget committee for recommendation to the Executive Committee and adoption by the Board of Directors. It was the sense of the meeting this proposed budget be recommended to the Board for approval at the next meeting in Houston.

There was discussion of the feasibility of sponsorship by HSUS of a trip by animal-protection technical people and interested members to the Soviet Union to give support and technical advice to developing groups in that country. It was the consensus that further study will be given to the proposal.

Prospective Staff Changes — Mr. Hoyt said that consideration is being given to Roger Kindler, Associate General Counsel, becoming HSUS Vice President and General Counsel effective January 1, 1990. Mr. Madden would continue with a title of "Senior Counsel," "Of Counsel," or "Special Counsel" and Vice President status. Another major change will take place with retirement by Vice President Patrick Parkes in July 1990. Dr. Randall Lockwood is being considered to assume administration of the regional office and investigations program as well as to continue development of the higher education program.

Mr. Hoyt stated that recommendations on both changes will be presented to the Board of Directors for action in October.

Proposed Affiliate

Mr. Hoyt suggested that HSUS influence could be enhanced by entering into an affiliate status at a few very key levels, such as the current relationship of HSUS with the Center for Respect of Life and Environment. The Interfaith Council for the Protection of Animals and Nature, under the direction of Lew Regenstein, is a potential candidate for such an affiliate status. Mr. Hoyt said he had been invited to write the foreword for a book authored by Mr. Regenstein. He said there is also the possibility of an affiliate relationship occurring with the new organization being put together by Mr. David Wills, former Michigan Humane Society executive director, and Mr. Sorock, former chairman of the board of the Michigan Humane Society. It was the consensus that the potential for a one-year "trial" affiliation with the Interfaith Council should be given consideration at the meeting of the Board of Directors in October.

Center for Respect of Life and the Environment (CRLE)

A recommended Memorandum of Understanding between the HSUS and CRLE will be presented at a meeting of the Center's Board on September 16 and a meeting of CRLE advisors is scheduled to be held on October 1, Mr. Hoyt said. A new associate director of the Center will begin work on October 1 and will seek to bring greater visibility and fundraising potential to CRLE. A revised brochure and other materials will be available for the next meeting of the HSUS Board.

Future Meetings

The following meetings were announced:

Board of Directors, October 29, 1989,
Westin Galleria, Houston, Texas
Directors and Senior Staff, May 3-4, 1990,
Airlie House, Airlie, Virginia
Board of Directors, May 5, 1990,
Washington, D.C. (hotel to be selected)

Adjournment

There being no further business, the meeting adjourned at 4:35 p.m.

Marcia Glaser, Assistant Secretary

MINUTES
HSUS COMPENSATION COMMITTEE
at HSUS Hq WashnDC Mon 9 Jan 89

(as taken by Susan Pepperdine, with closing minutes by Hal Gardiner)

Present: Robert Sorock, chrmn, K Wm Wiseman, Marilyn Seyler, Susan Pepperdine, Hal Gardiner, with intermittent participation by John Hoyt

Meeting called to order 9:10am.

Minutes of Sep 7 88 meeting were approved

Motions:

Hal Gardiner moved that the committee contact attorney Jake Stein for his advice as to which qualified attorney we might choose to help review for the Committee, the employment contracts which had been created by attorneys for Mr Hoyt and Mr Irwin, and which are now before the Committee. Motion was to convey further to Mr Stein the concern of the Committee that the attorney chosen would need the full confidence of the Board, no matter whether the individual selected might be Mr. Stein himself, someone from Mr Stein's firm, Stein, Mitchell & Menzines, or an attorney outside his firm. Motion approved.

Marilyn Seyler moved that Mr. Hoyt's imputed monthly rent of the Seneca Road property be revised to $1550, based on average of suggested figures received from two competent outside consultants: (Havey Company & Deloitte, Haskins & Sells). Motion approved.

The Committee stated for the record it would be receptive to sale of the Germantown House at appropriate time, also to compensating Mr Hoyt for the difference, through additional salary.

An estimate of $35,331.54 in proposed repairs, renovation and maintenance of the Germantown house was considered by the Committee. Pending future disposition of the house, the proposal will be considered further.

Based on the investigation into situation of the daily work of the HSUS General Counsel, it was determined that Mr. Madden conducts only a small amount of personal business on HSUS premises and during business hours. As detailed in the report on these matters received from Mr. Madden, he utilizes his own office furniture, telephone and stationery.

Mr. Madden's report also points out these same personal operating arrangements represent a further genuinely beneficial interest to HSUS in that they convey the impression to several certain outside individuals and organizations with which HSUS is frequently involved, that Mr. Madden is an outside consultant to HSUS.

Since if he were to pay a small amount of rent, it would be offset by the value of equipment Mr. Madden is providing, the Committee recommended leaving the matter as it has existed up 'til this time.

Mr. Hoyt joined the Committee for intensive discussion of the house he occupies on Seneca Road, now owned by HSUS.

Mr. Hoyt said he would not be unhappy if the Committee declared the HSUS will be out of the business of owning homes such as his. He is agreeable to vacating those premises either by Dec 31, 1989, or Dec 31, 1990, or whichever other dates might conform to the feelings of the Committee.

As the discussion began, the Committee first decided to recommend to the Board that Mr. Hoyt will vacate the Germantown house with a target date of Jan 1, 1990. This would give Mr. Hoyt a year to make an intelligent decision about his future place of residence. Further that a commensurate increase in Mr. Hoyt's salary will offset $6000 per year for 3 years ('87, '88. '89) and thus bring his salary up by $18,000.

Further discussion ensued concerning the expenditure of $35,000 which Mr. Hoyt feels is urgently needed for maintenance of the house. It was felt by some Committee members that we might recommend to the Board that these dollars be expended now, based on the following rationale:

1. HSUS owns the house. It demonstrably needs mainenance. An amount has been presented. The priorities of spending the money on the various maintenance items needs to be determined. These will be supported by an on-the-spot examination of the premises (planned to be made by Committee members Wed afternoon Feb 8, prior to Exec Committee meeting).

2. Needed improvements and renovations of the house made now, in the manner of preventive maintenance, will materially enhance resistance of its structure to deterioriation and weather, as well as improve its appearance and hopefully its future salability when the time comes for HSUS put it on the market.

3. Mr. Hoyt will obtain a second estimate from qualified tradesmen regarding the work which he feels should be done.

4. The house was purchased from Mr. Hoyt by HSUS for $310,000. Two appraisals were presented to the Committee, the consensus of both seeming to conjecture that present value of the house is around $390,000.

5. Should Mr. and Mrs. Hoyt contemplate residing in these premises for the next two or three years, the proposed improvements will enhance their living environment and provide surroundings of discernment and style, appropriate to the home of the principal executive of the leading organization in its field.

6. Through discussion by the Committee a tentative projection of an additional $2000 expense for annual summer season yard maintenance by outside parties was agreed on as a further recommendation to the Board. This expenditure will provide professional appearance and regular attention to lawns, shrubs, trees and surroundings.

left for airport

With departure of Ms Pepperdine, Mr. Sorock and Ms Seyler, in the manner of a de facto adjournment, the Committee meeting continued until 6:30pm with Mr. Hoyt, Mr. Gardiner and Mr. Wiseman involved in fevered, page-by-page scrutiny & discussion of each of the Committee's reactions to the proposed Employment Agreements. The meeting thereupon moved to dinner at Luigi's until 9pm where intense conversation continued concerning Mr. Hoyt's future tenure on Seneca Road and aspects of proposed repairs thereto.

MINUTES
OF THE HSUS SELECT COMMITTEE
TUES 31 JAN 89
FURTHER IN RE: THE BRIGHTWATER MATTER

Present: Joe Ramsey, chrmn, Harold H Gardiner, Susan Pepperdine, Robert Sorock, K Wm Wiseman.

Mr Ramsey called the meeting to order via AT&T at 12p PST, to resolve decisions on Brightwater for presentation to the Exec Com meeting 9Feb89 & Spring Board Meeting 13Apr89.

Subject matter: Chairman's ltr to Select Committee 25Jan; his memo to Roger A Kindler 23Jan, draft of proposed Irwin Trust Declaration; copy of 9Dec86 Brightwater Lease Agreement & Aug85 Brightwater Club By-Laws, all previously transmitted UPS to Committee members.

Vote: Upon motion by Bob Sorock and affirmative vote from Gardiner, Sorock and Wiseman and negative vote from Susan Pepperdine, the Committee will recommend approval of the following four actions to the Executive Committee and Spring Board Meeting:

(1) Per advice from Roger Kindler and Murdaugh Madden, (HSUS General Counsel), the Committee will recommend that Paul Irwin's expenses from his past and future involvements with the Brightwater property be reimbursed to him by HSUS, instead of being handled by an interest free loan to Mr. Irwin.

(2) To demonstrate his custody and continued interest in the Brightwater Leasehold, and to continue nurturing the relationship with Reverend and Mrs. Butler, it is evident Mr. Irwin must appear from time to time at the Brightwater property. Irwin also needs to maintain contact with the Butlers. As result of these necessary activities no monetary obligations will be incurred by either HSUS or Mr. Irwin, except that Mr. Irwin will submit his periodic expense accounts to HSUS which will then reimburse him for the necessary costs he incurred during such trips and activities.

(3) However should Mr. Irwin and/or his family visit Brightwater for his or their personal use and enjoyment, he will owe HSUS a fair and reasonable per diem reimbursement for each of those days of such use. Further, he will not be reimbursed by HSUS for his travel to and from Brightwater or for his other related costs.

(4) Accordingly the Committee will request the Executive Committee and Board of Directors to approve:

(a) The Leasehold agreement of 9Dec86 between the Brightwater Club and Paul and Jean Irwin,

(b) Placing that Leasehold agreement in trust for the benefit of HSUS by means of a Declaration of Trust, draft of which has been proposed by HSUS counsel,

(c) Resolution of any remaining questions of future disposition of the Brightwater leasehold.

Adjourn: 12:40p PST.

BOARD OF DIRECTORS

The Humane Society of the United States

YEARS OF SERVICE

Amory, Cleveland	1962-1970	NY
Anderson, Joyce (Mrs. Clyde)	1982-1983	UT
Andrews, Larry	1956-1958	AZ
Appleby, Charles Herbert	1954-1956	NY
Babcock, Dr. Myra	1954-1966	MI
Benning, Rosemary (Mrs. Arthur)	1976-1985	CA
Boggs, C. Edward	1959-1963	WI
Bostick, Edward M.	1957-1967	VA
Bowman, Samuel A.	1974-1988	NY
Brennan, William J.	1954-1955	NY
Bretz, Mrs. C.E.	1955-1957	OK
Browning, Carol (Mrs. John)	1981-	UT
Brunn, Paul A.	1954-1955	NY
Burke, Coleman	1967-	NY
Cammack, Tess (Mrs. Morris)	1979-1981	FL
Caras, Roger	1970-1972	NY
Castro, Raul	1971-1974	AZ
Chenoweth, Robert J.	1954-1976	MO
Conlon, Jack	1980-1986	FL
Cowden, Norton R.	1955-1956	CA
Cowell, Thaddeus G.	1967-1969	CT
Crawford, Leila Appleby (Mrs. Robert)	1956-1958	NY
Culver, Delos E.	1954-1958	PA
Dawson, Donald S.	1975-1984	MD
Doyle, Dr. John H.	1973-1982	KY
Evans, Irene (Mrs. Oliver)	1976-	DC
Evans, Oliver M.	1954-1963; 1967-1975	MO/DC
Fesmire, Anna (Mrs. James)	1974-1986	NC
Fitz-Hugh, Mildred	1954-1960	IL

Frankenberg, Regina Bauer	1983-	NY
Gardiner, Harold H.	1971-	UT
Garey, Alice R.	1985-	CA
Gilbert, Amanda Blake (Mrs. Frank)	1972-1984	AZ
Gilmore, Joyce Mertz (Mrs. Robert)	1969-1974	NY
Gilmore, Robert W.	1974-1984	NY
Goodall, Dr. Jane	1987-	AZ
Goode, Edith J.	1955-1956; 1958-1967	DC
Griswold, Charlotte (Mrs. Matthew)	1973-1976	CT
Gude, Rep. Gilbert	1974-1977	MD
Hall, Winifred (Mrs. G. Martel)	1965-1972	TX
Hall, Leonard	1970-1974	MO
Hawn, Dodie (Mrs. John)	1972-1979	TX
Heneks, Paul	1987-1990	MI
Herrick, Charles N.	1964-1965	CT
Hunnicutt, Gisela	1981-	NJ
Jencks, David	1974-1977	MI
Kelly, John	1986-1989	MI
Kelty, Perc	1966-1971	OH
Kerber, William	1966-1978; 1984-1989	DC
Kerr, Frederic D.	1960-1969	CA
Korsan, Grace Conahan (Mrs. Robert)	1956-1974	MO
Landis, James M.	1959-1960	NY
Lee, Dr. Amy Freeman	1969-	TX
Lydman, Jack W.	1982-	DC
Lynch, Virginia (Mrs. Thomas)	1972-	CA
Marshak, Dr. Robert R.	1978-1982	PA
Marty, Carl O.	1966-1968	WI
Mason, Cherie (Mrs. Kenneth)	1983-1987	ME
McCormick, Brooks	1977-1980	IL
Mehorter, Dr. James T.	1957-1968	VT

Mettler III, John W.	1977-1988	NY
Milliken, Virginia (Mrs. George F.)	1959-1967	NY
Mosher, John G.	1984-1987	MD
Nelson, Sen. Gaylord	1970-1973	WI
Neuberger, Sen. Richard	1956-1958	OR
Pepperdine, Susan (Mrs. Larry)	1984-	KS
Poling, Rev. David	1968-1974	NY/NM
Prime, Mrs. Inga	1980-1984	CO
Ramsey, O.J.	1977-	CA
Redman, Arthur P.	1956-1962	WA
Russell, Rev. Robert A.	1955-1956	CO
Sadowsky, Joseph	1955-1957	IA
Sawyer, Marian (Mrs. R. Alger)	1954-1958	NY
Seyler, Mrs. Marilyn G.	1982-	OH
Shawley, Thelma (Mrs. Chester)	1969-1975	IN
Sichel, Jacques V.	1961-1980	NJ
Smith, Everett	1969-1987	CT
Sorock, Robert B.	1987-	MI
Speidel, Brook (Mrs. Joseph)	1984-	DC
Thomsen, F.L.	1963-1966	FL
Thrift, Carroll S.	1988-	TN
Voss, Elsa H. (Mrs. Edward)	1955-1969	MD
Wager, D. Collis	1955-1973	NY
Wagner, Alice (Mrs. Leslie)	1959-1960; 1968-1972	NJ
Weber, Viola (Mrs. Henry)	1987-	VA
Welborn, Robert F.	1972-1979; 1980-	CO
Wendelken, Dick	1976-1976	CA
Westerlund, Dr. Stuart	1971-1972	OK
Winemiller, G. Martin	1961-1965	OH
Wilhelm, Marilyn	1988-	TX
Wiseman, K. William	1973-	CT/ME

BOARD OF DIRECTORS

The Humane Society of the United States

TERMS OF OFFICE

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Babcock, Dr. Myra	1954-1966
Benning, Rosemary (Mrs. Arthur)	1976-1985
Boggs, C. Edward	1959-1963
Bostick, Edward M.	1957-1967
Bowman, Samuel A.	1974-1988
Brennan, William J.	1954-1955
Bretz, Mrs. C.E.	1955-1957
Browning, Carol (Mrs. John)	1981-
Brunn, Paul A.	1954-1955
Burke, Coleman	1967-
Cammack, Tess (Mrs. Morris)	1979-1981
Caras, Roger	1970-1972
Castro, Raul	1971-1974
Chenoweth, Robert J.	1954-1976
Conlon, Jack	1980-1986
Cowden, Norton R.	1955-1956

Cowell, Thaddeus G.	1967-1969
Crawford, Leila Appleby (Mrs. Robert)	1956-1958
Culver, Delos E.	1954-1958
Dawson, Donald S.	1975-1984
Doyle, Dr. John H.	1973-1982
Evans, Irene (Mrs. Oliver)	1976-
Evans, Oliver M.	1954-1963; 1967-1975
Fesmire, Anna (Mrs. James)	1974-1986
Fitz-Hugh, Mildred	1954-1960
Frankenberg, Regina Bauer	1983-
Gardiner, Harold H.	1971-
Garey, Alice R.	1985-
Gilbert, Amanda Blake (Mrs. Frank)	1972-1984
Gilmore, Joyce Mertz (Mrs. Robert)	1969-1974
Gilmore, Robert W.	1974-1984
Goodall, Dr. Jane	1987-
Goode, Edith J.	1955-1956; 1958-1967
Griswold, Charlotte (Mrs. Matthew)	1973-1976
Gude, Rep. Gilbert	1974-1977
Hall, Winifred (Mrs. G. Martel)	1965-1972
Hall, Leonard	1970-1974
Hawn, Dodie (Mrs. John)	1972-1979

Heneks, Paul	1987-
Herrick, Charles N.	1964-1965
Hunnicutt, Gisela	1981-
Inglis, Leslie R.	1989-
Jencks, David	1974-1977
Kelly, John	1986-1989
Kelty, Perc	1966-1971
Kerber, William	1966-1978; 1984-1989
Kerr, Frederic D.	1960-1969
Korsan, Grace Conahan (Mrs. Robert)	1956-1974
Landis, James M.	1959-1960
Lee, Dr. Amy Freeman	1969-
Lydman, Jack W.	1982-
Lynch, Virginia (Mrs. Thomas)	1972-
Marshak, Dr. Robert R.	1978-1982
Marty, Carl O.	1966-1968
Mason, Cherie (Mrs. Kenneth)	1983-1987
McCormick, Brooks	1977-1980
Mehorter, Dr. James T.	1957-1968
Mettler III, John W.	1977-1988
Milliken, Virginia (Mrs. George F.)	1959-1967
Mosher, John G.	1984-1987

Nelson, Sen. Gaylord	1970-1973
Neuberger, Sen. Richard	1956-1958
Pepperdine, Susan (Mrs. Larry)	1984-
Poling, Rev. David	1968-1974
Prime, Mrs. Inga	1980-1984
Ramsey, O.J.	1977-
Redman, Arthur P.	1956-1962
Russell, Rev. Robert A.	1955-1956
Sadowsky, Joseph	1955-1957
Sawyer, Marian (Mrs. R. Alger)	1954-1958
Seyler, Mrs. Marilyn G.	1982-
Shawley, Thelma (Mrs. Chester)	1969-1975
Sichel, Jacques V.	1961-1980
Smith, Everett	1969-1987
Sorock, Robert B.	1987-
Speidel, Brook (Mrs. Joseph)	1984-
Taft, John E.	1989-
Thomsen, F.L.	1963-1966
Thrift, Carroll S.	1988-
Voss, Elsa H. (Mrs. Edward)	1955-1969
Wager, D. Collis	1955-1973
Wagner, Alice (Mrs. Leslie)	1959-1960; 1968-1972

Weber, Viola (Mrs. Henry)	1987-
Welborn, Robert F.	1972-1979; 1980-
Wendelken, Dick	1976-1976
Westerlund, Dr. Stuart	1971-1972
Winemiller, G. Martin	1961-1965
Wilhelm, Marilyn	1988-
Wiseman, K. William	1973-

The Humane Society of the United States
Committees of The HSUS and Board of Directors
1988-1989

Alice Morgan Wright-
Edith Goode Trust
Jack Lydman, Chairman
John Hoyt
Paul Irwin
Pat Lynch
Murdaugh Madden (NV)

Audit/Budget
O.J. Ramsey, Chairman
Gisela Hunnicutt
Carroll Thrift
Paul Irwin (NV)

Compensation
Robert Sorock, Chairman
Hal Gardiner
Susan Pepperdine
Marilyn Seyler

Executive Committee
K. William Wiseman, Chairman
Hal Gardiner
Amy Freeman Lee
Jack Lydman
Pat Lynch
O.J. Ramsey
Marilyn Seyler
Robert Sorock
Robert Welborn
John Hoyt (NV)
Paul Irwin (NV)

Investments
Hal Gardiner, Chairman
William Kerber
Paul Irwin

Legal, Bylaws and Ethics
Amy Freeman Lee, Chairman
O.J. Ramsey
Murdaugh S. Madden (NV)

Pension Trust Committee
Robert Sorock, Chairman
Alice Garey
Paul Irwin (NV)
Tom Huntt (NV)

Planning and Policy
Jack Lydman, Chairman
Carol Browning
Hal Gardiner
Alice Garey
Gisela Hunnicutt
John Kelly
Pat Lynch
Susan Pepperdine
O.J. Ramsey
Marilyn Seyler
Carroll Thrift
Viola Weber
Marilyn Wilhelm

Regional Committee
Patrick Parkes, Chairman
Nina Austenberg
Frantz Dantzler
John Dommers
Charlene Drennon
Paul Irwin
Wendell Maddox
William Meade
Marc Paulhus
Sandy Rowland
Phyllis Wright

Nominating Committee
Hal Gardiner, Chairman
Alice Garey
H.I. (Sonny) Bloch
Robert Heinich
Susan Ricketts
Elizabeth Sills

Elections Committee
Amy Freeman Lee, Chairman
Dina McDaniel
Susan Schultz
Kay Smart

The Chairman...shall be, ex officio, with vote, a member of all committees of the Board, except the Elections Committee. (Bylaws, Art. VIII, Sec. 3)
The President may participate in any meeting of the Board of Directors or any committee of the Board, but without vote. (Bylaws, Art. VIII, Sec. 5)
NV = Non-voting
2/89

The Humane Society of the United States
Meeting of the Executive Committee
Washington, D.C.
February 9, 1989

A meeting of the Executive Committee of the Board of Directors of The Humane Society of the United States was held on Thursday, February 9, 1989, at the headquarters offices of the Society, 2100 L Street, N.W., Washington, D.C.

Members Present: K. William Wiseman (presiding), Harold Gardiner, Jack W. Lydman, Virginia (Pat) Lynch, O.J. Ramsey, Marilyn Seyler, Robert Sorock

Members Absent: Amy Freeman Lee, Robert F. Welborn

Others Present: John A. Hoyt, Paul G. Irwin, Murdaugh Stuart Madden, Janet D. Frake

Chairman Wiseman called the meeting to order at 9:30 a.m. and expressed regrets for absence from Dr. Lee and Mr. Welborn.

Minutes — Minutes of the meeting of the Board of Directors held on October 16, 1988, were reviewed and no revisions or comments were offered. It was the consensus the Executive Committee should approve only its own minutes; action on the minutes of the October 16, 1988 meeting of the Board of Directors should be included in the agenda of the next meeting of the Board of Directors.

Board Manual — It was the sense of the meeting a paper distributed by Chairman Wiseman titled "Responsibilities of Directors" be included in a Board Manual of documents to be compiled and distributed prior to the mid-year meeting of the Board of Directors.

Committee Reports — Reports were presented by Committee chairpersons:

Executive Committee — On motion by Mr. Ramsey, seconded and carried unanimously, Section B(4)(a) of the document titled "HSUS Committees" relating to creation of and transaction of business by the Executive Committee was amended to read:

> Composition: Nine or more members of the Board; Chairperson of the Board (ex-officio); President (non-voting); Treasurer (non-voting).

Alice Morgan Wright-Edith Goode Trust Fund — A report on allocations made under terms of this Trust was given by Mr. Lydman, who stated that written minutes will be provided for the meeting of the Board.

Budget-Audit — Mr. Ramsey reported for the committee and will recommend to the full Board a plan of this committee's specific duties and guidelines for operation.

Compensation — Mr. Sorock reported on matters discussed by the committee in meetings held on September 7, 1988, January 9, 1989, and February 8, 1989.

It was moved and seconded to approve the expenditure of up to $5,000 per year for normal maintenance charges on the Germantown property, any additional expenditures to be approved by the Executive Committee or, in the case of an emergency, by the Chairman of the Board of Directors. The motion carried.

It was moved by Mr. Gardiner and seconded that the Executive Committee recommend approval of the proposed expenditure of $20,000 for refurbishing and maintenance of the Germantown property to the full Board at the April meeting. Motion carried.

It was requested that the minutes reflect the excellent, responsible job of the Compensation Committee.

It was moved to approve the job description/salary evaluation study project being undertaken by JKL Associates at a cost of $13,000. The motion carried.

It was moved to approve an imputed rent of $1,550 per month for 1989 on the Germantown property. The motion was seconded and approved.

On motion by Mr. Ramsey, and seconded, with respect to Mr. Madden's occasional use of his office and staff for personal legal business and The HSUS having the benefit of the furniture and equipment in the Legal Department that Mr. Madden has supplied, it should be treated as a complete offset. The motion carried unanimously.

Investments — On motion, seconded and carried, the report of the committee by Mr. Gardiner was accepted with appreciation for a job well done.

Legal/Ethics/Bylaws — It was reported that the committee plans to meet by telephone conference call this afternoon. A draft of a proposed code of conduct is expected to be available for the meeting of the Board of Directors in April.

Directors Liability Insurance — Mr. Madden reported a meeting had taken place with Mr. Pat Givens in Mr. Irwin's office. Applications were sent and quotes have been received from two or three companies. The cost ranges between $12-18 thousand per year for insurance of $1 million per event per director, with a total payment of $5 million. Mr. Irwin will make a final selection, which should be completed by the April meeting.

Amendments to Corporate Charter — Amendments to the corporate charter, which each Director had received, were filed with the Secretary of State of Delaware on January 13 after the assents were received from Directors.

Full Disclosure Policy — On motion by Mr. Ramsey, seconded and carried unanimously, a proposed full disclosure policy as a means of monitoring situations and transactions which might involve Directors, Officers or key staff members in conflicts of interest, or the appearance thereof, was referred to the Legal/Ethics/Bylaws Committee for review and recommendation to the Board.

Brightwater — Mr. Irwin excused himself from the meeting during this discussion, which was presented by Mr. Ramsey, chairman of the former Select Committee.

On motion by Mr. Lydman and seconded, the committee approved unanimously recommendation of the following to the mid-year meeting of the Board of Directors:

(1) That Paul Irwin's expenses from his past and future involvements with the Brightwater property be reimbursed to him by HSUS, instead of being handled by an interest free laon to Mr. Irwin;

(2) That to demonstrate his custody and continued interest in the Brightwater Leasehold, and to continue nurturing the relationship with Reverend and Mrs. Butler, it is evident that Mr. Irwin must appear from time to time at the Brightwater property. Mr. Irwin also needs to maintain contact with the Butlers. As a result of these necessary activities no monetary obligations will be incurred by either HSUS or Mr. Irwin, except that Mr. Irwin will submit his periodic expense accounts to HSUS which will then reimburse him for the necessary costs he incurred during such trips and activities;

(3) That should Mr. Irwin and/or his family visit Brightwater for his or their personal use and enjoyment, he will owe HSUS a fair and reasonable per diem reimbursement for each of those days of such use. Further, he will not be reimbursed by HSUS for his travel to and from Brightwater or for his other related costs;

(4) That the Leasehold Agreement and other relevant documents, such as the land contract, be placed in trust for the benefit of HSUS by means of a Declaration of Trust, a draft of which has been proposed by HSUS counsel.

The committee excused Miss Glaser and Mrs. Frake to meet in executive session.

Treasurer's Report
Paul G. Irwin

Mr. Irwin informed the committee that it appeared that 1988 would provide again an excess of income over expense after all bills have been paid. He stated further the Society was diligently working to close the books for 1988 and that the independent audit being performed by Thomas Havey & Co. was well underway. He stated that full financial reports would be available for the Directors at the April meeting.

President's Report
John A. Hoyt

1989 Annual Conference

Mr. Hoyt reported on plans for the 1989 HSUS annual conference, which will be held at the Houston Galleria, Houston, Texas on October 26-28. The theme selected for the conference is "Sharing the Earth." The keynote speaker will be Mr. Jeremy Rifkin, president of the Foundation for Economic Trends. Dr. Amy Freeman Lee will serve as program moderator. Additional proposed speakers are the Reverend Andrew Linzey, who is chaplain and Director of Studies at the Center for the Study of Theology at the University of Essex.

It was moved, seconded and unanimously approved that Dr. Roger Payne, a marine mammals specialist, will be the recipient of the Joseph Wood Krutch Medal for 1989. Dr. Payne will also be the presenter at the Friday evening session.

It was moved, seconded and unanimously approved that the 1989 James Herriot Award be presented to H.I. (Sonny) Bloch. Mr. Bloch has been associated with The HSUS during the past

several years as host of the weekly television series "Living With Animals".

Other details of the conference are still in the process of being developed by the staff.

Bequest — Mr. Hoyt reported that he and Mrs. Hoyt had been named beneficiaries in the Will of Mrs. Kathryn DeVed. Upon motion by Mr. Ramsey, seconded by Mr. Gardiner, the executive committee unanimously approved Mr. and Mrs. Hoyt receiving a bequest from Mrs. DeVed in the amount of $5,000 and a well used cedar chest.

Personnel — Mr. Hoyt discussed with the committee various personnel matters.

Adjournment — There being no further business, the meeting adjourned at 5:10 p.m.

Marcia Glaser
Assistant Secretary

REPORT OF COMMITTEE ON COMMITTEES

A. Creation and Transaction of Business:

1. Committee composition:

   a. Members are to be nominated by the Chairperson of the Board and approved by the Board at the annual organizational meeting.

   b. Nominations are to include designations of committee Chairpeople.

   c. Chairperson of the Board is a voting member of all committees, according to the by-laws.

   d. President may attend meetings of all committees even if he is not a voting member. He may also be a voting member of committee if appointed as such.

2. All committees are to meet at least annually.

3. Minutes of all meetings are to be recorded.

4. Results of meetings are to be reported to the full Board at the next Board meeting.

5. Unless otherwise mandated, quorums of all committees shall be a simple majority of all members (both voting and non-voting).

6. All committees are to be empowered to transact business by mail or telephone at the discretion of the Chairperson, but minutes must be taken of such action(s) and the quorum requirements must be met.

7. The HSUS shall pay all the necessary & proper expenses incurred by directors in the discharge of their duties as committee members.

B. Names, Composition, and Duties of Specific Committees:

1. Alice Morgan Wright Committee:

   a. Composition: Two directors; Chairperson of the Board (ex-officio); President (voting); General Counsel (voting).

   Lyndon Lynch

   b. Duties: This committee shall be empowered to make allocations consistent with the terms of the trust.

2. Audit Committee:

   a. Composition: Three directors; Chairperson of the Board (ex-officio); president (non-voting); Treasurer (non-voting).

   Penney Thrift Gisela

   b. Duties:

      1. To recommend to the Board the company to annually audit the books of HSUS.

      2. To meet with the general auditor to determine the scope of the audit and the fee to be paid.

      3. To review and analyze the results of the audit and to report thereon to the Board.

3. Compensation Committee:

   a. Composition: Four directors; Chairperson of the Board (ex-officio); President (non-voting).

   Sorock
   Gardner
   Seyler
   Pappadine

   b. Duties:

      1. To review the president's compensation annually and recommend changes to the Board for ratification.

      2. To annually review the salaries of senior staff who report directly to the president and advise the president concerning those salaries, but without diluting the president's authority.

      3. To set and review (at least annually) guidelines for the president concerning salaries by job classification at all levels of the organization and assuring they comply with all legal requirements, but without diluting the president's authority.

      4. To negotiate written employment contracts between HSUS and the president and executive vice president, to be reviewed by outside counsel; to review such contracts as necessary from time to time.

4. Executive Committee;

   a. Composition: Nine or more members of the Board; Chairperson of the Board (ex-officio); President (non-voting).

   b. Duties: To transact all the business of the full Board to the full extent permitted by the by-laws.

all officers
all chairman
other ex. bd.

Ramsey
Lydman
Welborn
Sorach
Lynch
Gardiner
Lee
C-Wiseman
Seyler

5. Investment Committee:

   a. Composition: Two directors; Chairperson of the Board (ex-officio); President (non-voting); Treasurer (voting).

   b. Duties: To review and analyze as often as prudent the investments of The HSUS and to make recommendations thereon to the full Board.

C-gardiner
Korber

6. Legal/Ethics/By-laws Committee:

   a. Composition: Two directors; Chairperson of the Board (ex-officio); President (non-voting; General Counsel (non-voting).

   b. Duties:

      1. To promulgate and periodically review legal and ethical guidelines for the conduct of business by the Board of Directors; Officers, and Staff of HSUS.

      2. To review the by-laws of The HSUS and

C-Lee
Ramsey
(mandling

recommend necessary changes to the Board.

7. Pension Trust Committee:

a. Composition: Two directors; Chairperson of the Board (ex-officio); president (non-voting); Treasurer (non-voting); Comptroller (non-voting).

Sorock
Garey.

b. Duties:

1. To review and analyze as often as prudent the investments of the Trust and to make recommendations thereon to the full Board.

2. To review and make recommendations to the Board concerning pension trust benefits.

8. Planning and Policy Committee:

a. Composition: Nine or more directors; Chairman of the Board (ex-officio); President (non-voting); Treasurer (non-voting). In addition, all senior staff members designated by the President shall be non-voting members.

Lydman
Garey
Sufler
Hunicutt
Pappendine
Gardiner
Weber D
Kelly
Brooking
Welborn
Ramey
Lynch

b. Duties: To review all aspects of the activities of HSUS, including monitoring progress toward agreed goals, establishing future goals and the means to accomplish them, periodically reviewing and updating the HSUS's policies, and recommending necessary changes to the Board.

The Humane Society of the United States
Meeting of the Compensation Committee
Washington, D.C.
September 7, 1988

Present: Robert B. Sorock, Marilyn Seyler, Hal Gardiner, Bill Wiseman, Susan Pepperdine (Mr. Hoyt was included in portions of the meeting not dealing with his personal compensation.)

Chairman Bob Sorock called the meeting to order at 9:40 a.m.

The committee reviewed the 1981 job evaluation survey conducted by Walter Larke Sorg Associates.

The committee recommended that the president work with competent outside personnel consultants and legal advisors regarding establishment of job descriptions and written annual performance reviews separate from salary reviews. Based on the outcome of this consultation, the 1981 job evaluation survey may need to be reviewed with supervisors and updated as needed.

The committee reviewed the compensation figures for the senior staff.

The committee requested that Mr. Hoyt obtain full information from Mr. Madden on any personal legal business he conducts and the amount of HSUS resources required to perform that business.

The committee recommended that Mr. Hoyt and Mr. Irwin have their personal attorneys draw up proposed employment contracts by December 31, 1988, which will then be negotiated by the Compensation Commitee with review by outside counsel before the April 1989 board meeting. Mr. Hoyt's contract will include a lease agreement with adequate provision for disposition of the house. These agreements will then be presented for approval by the board at the April meeting.

The committee agreed to investigate whether to sell the Germantown house and buy a more appropriate house or whether to sell the house and provide Mr. Hoyt a method for purchasing his own residence.

The committee agreed to consult with Thomas Havey & Co. and Deloitte Haskins and Sells concerning the appropriate rental value of the Germantown house.

The committee approved that pension reserves for all staff be based on the amounts reported on the W-2, effective on 1988 salaries.

The committee agreed with Mr. Hoyt's recommendation to increase Mr. Irwin's salary by $5,000 in 1988 retroactive to January 1 and continuing into 1989, and that he also receive a $5,000 bonus this year, in appreciation of his outstanding work during the year.

The committee agreed to set a tentative meeting date of January 9, 1989.

The meeting was adjourned at 1:50 p.m.

Susan Pepperdine

The Humane Society of the United States
Meeting of the Compensation Committee
Washington, D.C.
September 7, 1988

Present: Robert B. Sorock, Marilyn Seyler, Hal Gardiner, Bill Wiseman, Susan Pepperdine (Mr. Hoyt was included in portions of the meeting not dealing with his personal compensation.)

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The meeting was adjourned at 1:50 p.m.

Susan Pepperdine

The Humane Society of the United States
Annual Organization Meeting of the Board of Directors
Hyatt Regency Crystal City
Arlington, Virginia
Sunday, October 16, 1988

AGENDA

9:30 a.m.	Call to Order	K. William Wiseman
	✓ Introduction of New Directors Marilyn Wilhelm Carroll Thrift	
9:40 a.m.	✓ Election of Officers - The Humane Society of the U.S. - National Humane Education Center - National Association for the Advancement of Humane Education	K. William Wiseman
	✓ Election of Officers of Branches	
	✓ Election of Directors and members to the Nominating Committee	
10:00 a.m.	✓ Approval of Minutes of Board of Directors Meeting, July 30, 1988	
10:15 a.m.	✓ Report of Committees	
11:00 a.m.	✓ Appointments to Committees	now $400
	✓ Adoption of Corporate Resolutions	
	✓ Approval to continue Adm. James C. Shaw as Consultant ✓ all Hoyt's compensation out of HSUS funds	$3600 yr. $150 mo. for Mrs. Meyers
11:15 a.m.	President's Report	John A. Hoyt
	✓ Presentation and Discussion of Program Goals and Objectives: 1988-1992	
	Relationship of HSUS to the World Society for the Protection of Animals and other consortium efforts	
12:15 p.m.	✓ Recess for Lunch	
1:30 p.m.	Treasurer's Report	Paul G. Irwin
1:45 p.m.	Review and Adoption of 1989 Budget	Paul G. Irwin

Wiseman / Ramsey

COMMITTEES--General Guidelines:

1. All to meet at least annually.

2. Minutes of all meetings to be recorded.

3. Results of meetings to be reported at next following Board meeting.

4. Committee membership--to be nominated by chairmen and approved by Board at annual organization meeting. Nominations to include designations of committee chairmen.

5. Unless otherwise mandated, quorums of all committees shall be a simple majority of all members.

6. All committees, including the executive committee, should be empowered to transact business by mail or telephone at the discretion of the chairman, but such action(s) must be minuted and the quorum requirements must be met.

Committees and Duties:

1. Executive Committee

Duties and composition as specified in By-Laws. However, a quorum requires presence of at least five of the committee members.

2. Planning and Policy Committee

Duties: To review all aspects of the society's activities including:

--monitoring progress toward agreed goals,

--establishment of future goals and the means to accomplish them,

--periodic review and updating of the society's policies,

--and to recommend necessary changes to the Board.

Composition: Nine directors. In addition, all senior staff designated by the President to serve on this committee shall be non-voting members. A quorum will require five voting and four non-voting members. (In addition, any director may attend and vote, but will not count toward a quorum.)

3. Audit Committee

Duties: 1) Recommend to the Board the company to audit the Society's books.

2) To meet with the General Auditor to determine the scope of the audit and the fee to be paid.

3) To review the results of the audit and to report thereon to the Board.

Membership: Three directors (one of whom is chairman).
President (non-voting).
Treasurer (non-voting). if Treas. is bd mbr?

The Audit Committee should be separate from the Investment Committee because there could be a conflict of interest between the two functions; indeed, the audit committee might occasionally wish to review the activities of the investment committee.

5. Compensation Committee

Duties: As determined at recent Board meeting; i.e.,
--to review the President's compensation annually and recommend necessary changes to the Board for ratification,

--and to periodically review salaries of senior staff who report directly to the President and advise the President concerning those salaries. (But without diluting the President's mandated right to determine these salaries.)

personnel dir?

Nominating Committee

Investment (Finance)

Pension + Trust

Bylaws

Names and addresses of the principal officers
and members of the "Deferred Compensation Committee"

JOHN A. HOYT,
President
The Humane Society of the United States
2100 L Street, N.W.
Washington, D.C. 20037

PAUL G. IRWIN
Treasurer
The Humane Society of the United States
2100 L Street, N.W.
Washington, D.C. 20037

K. WILLIAM WISEMAN
Chairman of the Board of Directors
and member of the Deferred Compensation Committee" of
The Humane Society of the United States
P.O. Box 120
Woolwich, ME 04579

JACK W. LYDMAN
Member of the Board of Directors and a member
of the "Deferred Compensation Committee" of
The Humane Society of the United States
2815 Q Street, N.W.
Washington, D.C. 20007

COLEMAN BURKE
Former Chairman of the Board of Directors and a
member of the "Deferred Compensation Committee" of
The Humane Society of the United States
45 Stewart Road
Short Hills, NJ 07078

1986

THE HUMANE SOCIETY OF THE UNITED STATES
BOARD OF DIRECTORS

Coleman Burke, Esq.
45 Stewart Road
Short Hills, NJ 07078
201/379-4228
305/278-0189
hired Hoyt — now has Alzheimer's

Mr. Samuel A. Bowman
Tucker, Anthony & R.L. Day, Inc.
120 Broadway, 33nd Floor
New York, NY 10271
212/618-7400
dumped 1989

Dr. Carol Browning
6182 South 2855 East
Ogden, UT 84403
801/479-3754
dumped 1990

Mrs. Oliver M. Evans
3045 P Street, NW
Washington, DC 20007
202/338-8037
re-elected '90 never attends mtg.

Miss Regina Bauer Frankenberg
31 East 72nd Street, Apt 9B
New York, NY 10021
212/288-4126
recluse — attends no mtgs.

Mr. Harold H. Gardiner
Gardiner - A Marketing Company
P.O. Box 30
Salt Lake City, UT 84110
801/364-5600
"spacecadet"

Miss Alice R. Garey
2030 Carriage Lane
Arroyo Grande, UT 93420
805/489-5382

Ms. Gisela H. ~~Karlan~~ Hunnicutt
6 Pepper Road
~~Towaco, NJ~~ 07082
201/263-8255
Fla.
dumped 1990

Mr. John Kelly
WXYZ-TV
20777 West Ten Mile Road
Southfield, MI 48037
313/827-7777
dropped off — re-elected 1990 (former Mich. Humane)

Mr. William Kerber
4000 Cathedral Avenue, NW
Washington, DC 20016
202/338-7654
died 1990

Dr. Amy Freeman Lee
127 Canterbury Hill
San Antonio, TX 78209
512/826-1747
re-elected 1990 rec'd $25,000 chair in her honor

Mr. Jack W. Lydman
2815 Que Street, NW
Washington, DC 20007
202/965-1310
re-elected 1990 — on Deferred Comp Committee

Mrs. Virginia Lynch
98 Clarendon Avenue
San Francisco, CA 94114
415/566-6616
opposed some actions but won't vote against Hoyt

Mrs. Cherie Mason
Goose Cove Road
Sunset, ME 04683
207/348-6971
resigned 1987

Mr. John W. Mettler, III
Seminole Asset Management, Inc.
950 Third Avenue
New York, NY 10022
212/752-1855 212 734 3529
dumped 1989

Mr. John G. Mosher
United States Information Agency
400 C Street, SW, Room 500
Washington, D.C. 20547
202/485-2775
resigned

Mrs. Susan Pepperdine
5831 Sunrise Drive
Fairway, KS 66205
913/831-0725
dumped 1990

O. J. Ramsey, Esq.
Ramsey, Scott, Morrison & Keddy
10399 Old Placerville Road
Sacramento, CA 95827
916/362-8800

Mrs. Marilyn G. Seyler
815 Dickson Parkway
Mansfield, OH 44907
419/756-7559
opposes actions but won't speak out

Mr. Everett Smith, Jr.
Quaker Lane
Greenwich, CT 06830
203/661-0004
resigned 1987

Mrs. Brook Speidel
2531 Eye Street, NW
Washington, DC 20037
202/965-5646
dropped 1990

Robert F. Welborn, Esq.
Welborn, Dufford, Brown & Tooley
1700 Broadway
Denver, CO 80290-1199
303/861-8013

Mr. K. William Wiseman
P.O. Box 120
Woolwich, ME 04579
207/443-3979
Chairman

11/86

The Humane Society of the United States
Nominating Committee
1989-1990

HSUS board mbr

Ms. Alice Garey (Chair)
2030 Carriage Lane
Arroyo Grande, CA 93420
805/489-5382

O.J. Ramsey, Esq.
Ramsey, Morrison, Keddy & Wallis
10399 Old Placerville Road
Sacramento, CA 95827
916/362-8800

Mr. Charles Baldwin
2835 Coit, N.E.
Grand Rapids, MI 49505
616/361-5993

Ms. Gloria Boeke
9560 Majestic Oak Circle
San Antonio, TX 78255
512/698-0778

Ms. Rosemary Lowe
104 La Placita Circle
Santa Fe, NM 87501
505/988-1617 (?)

Mrs. Marge Wright
Arizona Humane Society
9226 North 13th Avenue
Phoenix, AZ 85021
602/997-7585
602/840-2775 (H)

HSUS Directors whose terms expire October 1990

Carol Browning, Ogden, Utah — dropped
Irene Evans, Washington, D.C. — re-elected, never attended a mtg.
Paul Heneks, Birmingham, Michigan — Mich. Humane
Gisela Hunnicutt, Stuart, Florida — dropped
Amy Freeman Lee, San Antonio, Texas — re-elected
Jack W. Lydman, Washington, D.C. — re-elected (Deferred Comp Comm)
Susan Pepperdine, Fairway, Kansas — dropped
Brook Speidel, Washington, D.C. — dropped

THE HUMANE SOCIETY OF THE UNITED STATES
PLANNING AND POLICY COMMITTEE
SEPTEMBER 6-7, 1990

Agenda

9:30 a.m.	Call to Order	Jack Lydman, Chairman
	- Introduction of new staff and guests	John A. Hoyt
	- Approval of minutes of meeting of April 4-5, 1990	
9:45 a.m.	HSUS International Activities and Programs - WSPA, European Office, etc.	John A. Hoyt
10:15 a.m.	Kuki Gallman Black Rhino Project	John A. Hoyt Sally Randel
11:00 a.m.	Update on Wildlife Refuge Coalition	John Grandy Jan Hartke
	Jay Kirkpatrick/HSUS Immuno-Contraception Development	John Grandy
	Predator Control Rangeland Management	John Grandy
11:30 a.m.	Cruelty Investigations - Philosophy and Structure	Paul G. Irwin David Wills
12:00 noon	HSUS Annual Conference and Annual Meeting Schedule - Joseph Wood Krutch and James Herriot Award Recipients - Vegetarian Menu	John A. Hoyt
12:15 p.m.	Lunch	
1:00 p.m.	Overpopulation of Companion Animals -- AKC/HSUS Joint Initiative	John A. Hoyt Phyllis Wright
1:30 p.m.	Secondary Teacher Packets/ HSUS Student Membership	Patty Finch
2:15 p.m.	HSUS Biomedical (Physicians) Advisory Committee	John A. Hoyt David Wiebers Martin Stephens

3:00 p.m.	Butler Property - Conceptual Development	John A. Hoyt Paul G. Irwin
3:30 p.m.	Euthanasia Policy	Patti Forkan Phyllis Wright
4:00 p.m.	Current Campaigns - "Beautiful Choice" - Fur Campaign - Tuna-Dolphin - Other fund-raising activities	Patti Forkan
4:30 p.m.	Update on Humane Sustainable Agriculture Program	Michael Fox Gail Black
5:00 p.m.	Adjournment	

N.B. If the meeting agenda is not completed on Thursday, September 6, the meeting will reconvene at 9:30 a.m. on Friday, September 7. If the agenda is completed as expected, members of the Board of Directors will be taken to Bethesda on Friday morning for an on-site visit to HSUS facilities there.

The Humane Society of the United States
Meeting of the Planning and Policy Committee
Washington, D.C.
September 6-7, 1990

A meeting of the Planning and Policy Committee of The Humane Society of the United States was held on September 6-7, 1990 at the headquarters offices of the Society in Washington, D.C.

Members Present Jack W. Lydman (presiding), Hal Gardiner, Alice Garey, Gisela Hunnicutt, Les Inglis, Virginia (Pat) Lynch, Marilyn Seyler, K.W. Wiseman (ex officio)

Members Absent Carol Browning, Susan Pepperdine, O.J. Ramsey, John Taft, Carroll Thrift, Viola Weber, Marilyn Wilhelm

Others Present John A. Hoyt, Paul Irwin, Patricia Forkan, Roger Kindler, Dale Didion, Patty Finch, Michael Fox, Janet Frake, Marcia Glaser, John Grandy, Jan Hartke, Thomas Huntt, Arthur Keefe, Randall Lockwood, Murdaugh Madden, David Wills, Phyllis Wright

Chairman Lydman called the meeting to order at 9:30 a.m. on Thursday, September 6. Ms. Frake acted as recording secretary for the meeting. Mr. Hoyt introduced David Wills, who joined the staff on September 1 as Vice President for Investigations. Minutes of the last meeting of the committee, held on April 4-5, 1990 were approved.

HSUS International Activities and Programs

Mr. Hoyt spoke of the inevitability of The HSUS having to reach beyond the borders of the United States because the issues are international in scope and impact and, in many cases, are problems that emanate out of other countries. As an example, he pointed out the fundamental question of overpopulation and its effects on the environment and habitat. The World Society for the Protection of Animals is a federation of mostly small societies, with a few large groups like The HSUS, and is not as strong or effective as needed. Mr. Hoyt said he is thinking of forming The Humane Society International, an international arm of The HSUS, to meet this need and provide the opportunity to make an impact on effective international cooperation. This would be a self-controlled organization, the board of directors being comprised of persons currently on the board and staff of The HSUS, and could also help satisfy some technical requirements for HSUS being represented at various international meetings and functions. He invited reaction and comments to this concept and stated that the subject will be included on the agenda of the committee's meeting next spring.

Mr. Hoyt announced that Betsy Dribben, former HSUS government relations director, is now working part-time for The HSUS in Bonn, representing our interests through direct contact with parliaments in the European community. Various staff members reported on program areas in which they have been involved internationally, including the tuna-dolphin issue, the anti-fur and cosmetics campaigns, humane education in Costa Rica, endangered species, trade in wild birds and other animals, and the environmental impact of a developing livestock industry in Africa. Mr. Hoyt also stated that he and Mr. Irwin were invited, and have accepted, to attend the 125th anniversary celebration of the Soviet Society for Animal Protection in Moscow in December.

Kuki Gallmann Black Rhino Project — Mr. Hoyt introduced Ms. Sally Randel, who has been working with The HSUS on the "Beautiful Choice" campaign. She provided background information on a proposed project in Kenya to help protect some of the black rhino who are becoming endangered. It is proposed to build a stone wall and electric fencing over a three-year period around a portion of the 100,000 acre Gallmann ranch to prevent poaching and to control migration of the black rhino within the confines of the project. It was stressed that no commitment should be made to such a private undertaking without careful consideration of the political implications. Mr. Hoyt is seeking governmental approval and support through a letter from Dr. Richard Leakey. Ms. Randel described several possible funding proposals for new monies to underwrite the project.

It was resolved that in principle the committee is favorably inclined to HSUS participation in this project and recommends that the project be further defined through development of a specific proposal before proceeding with a final decision.

Wildlife Refuges Coalition — A commitment has been made by Director John Taft and the Conservation Endowment Fund to renew funding for the coalition for another year in the amount of $25,000. Mr. Irwin emphasized that The HSUS is committed to a policy of no hunting or trapping on wildlife refuges.

Mr. Hoyt announced that an HSUS donor in Wyoming has pledged the amount of $300,000 over a five-year period to provide funding for a regional office that would serve Wyoming, Idaho and Montana.

Innumo-Contraception Development — Dr. Grandy reported on work being done by Dr. Jay Kirkpatrick in developing the technology for a contraception procedure for wild horses. This procedure has also been used successfully on white-tailed deer. A grant proposal is being developed to modify this technology so that it can be used in field situations. The HSUS is actively supporting this project.

Predator Control — A mailing was done recently regarding the federal Animal Damage Control program of the U.S. Department of Agriculture. A beneficial effect on the issue is being experienced, especially in terms of the number of petitions and postcards that are being returned expressing opposition to the program.

Cruelty Investigations — Mr. Irwin spoke about the investigations program and the anticipated future emphasis on coordination of HSUS efforts in this area in serving the needs of program departments. The pursuit of investigations should become much more aggressive and directed toward a specific goal. Investigations will now be separate from field services and Mr. Irwin will have oversight of the Field Services, Investigations, and Companion Animals sections.

Annual Conferences — Mr. Hoyt reviewed plans for the annual conference in October and announced that awards will be presented to the following: Denis Hayes, recipient of the Krutch medal; Walter Cronkite, recipient of the James Herriot award; and Astrid Lindgren, who will receive a special Krutch medal next spring when Mr. Hoyt travels to Stockholm. Additional recognition will be made of actress Ana-Alicia and Oakland Athletics manager Tony LaRussa for their participation in campaigns of the HSUS.

An abbreviated two-day conference/symposium will be held in Washington, D.C. in October 1991 in conjunction with the awards banquet and annual meeting of members. Russell Train will be the Krutch medalist and Roger Caras has been selected to receive the Herriot award. Regional conferences are being scheduled throughout the year to increase membership participation.

The question of serving only a vegetarian meal at the awards banquet was discussed extensively. There being no consensus, the question was tabled for further discussion at the April 1991 meeting of the committee.

Companion Animals — Mr. Hoyt and Ms. Wright reported on meetings that are being held with representatives of the American Kennel Club for confidential discussions of possible solutions to the problems created by puppy mills.

Student Membership — There was discussion of the possibility of student membership. It was noted that an amendment of the bylaws would be required to create another class of annual membership. It was also agreed that $10 is an amount that most students would find acceptable. The discussion then centered on the publications or other materials that would be made available to student members.

It was the consensus that the committee favors in principle the concept of student membership at a level consistent with the bylaws but referred back to staff the question of feasibility and content of a student membership package.

Biomedical Advisory Committee — Dr. David Wiebers and Dr. Martin Stephens met with the committee to present the rationale for an advisory body to be known as the HSUS Scientific Advisory Council. The proposed council would enhance the HSUS's credibility and effectiveness with the scientific community through support from and the advice of several respected physicians, PhD's, and at least one veterinarian. Membership of the council would be composed of persons who have been identified as HSUS members, under the chairmanship of Dr. Wiebers. This body is envisioned as independent of the board, with the specific charge of advising the staff regarding issues relating to the use of animals. The three areas of psychological research, addiction research and head trauma research have been identified for emphasis. Further information on composition of the Scientific Advisory Council will be presented to the Board.

Russell and Burch Award — Dr. Stephens gave a report on development of criteria for the Russell and Burch award. There was extensive discussion of the possible advantages of a monetary prize being attached to the award. It was the consensus that the staff will give additional attention to the proposal and present a more definitive proposal to the meeting of the Board in October.

Recess — The committee recessed at 5:00 p.m. and was again called to order at 9:30 a.m. on Friday, September 7.

Humane Sustainable Agriculture — Ms. Gail Black presented a report on the results of a poll taken of state departments of agriculture to determine which states have current and/or pending legislation on organic food and livestock production. There has been a significant increase in the number of states, primarily because of health reasons. HSUS is becoming more widely known as taking the lead in promoting animal concerns in this area.

Butler Property — Mr. Irwin reported on the intention of the Reverend and Mrs. George Butler to leave most of their estate to The HSUS. The basic asset is a 170-acre farm in southern Vermont which has been kept in a pristine, natural state. The estimated value of the property, with improvements, is approximately $1 million. Mr. and Mrs. Butler have agreed to deed 25 acres to the Society in the near future. They wish to retain a life estate in the residence they have on the property, with the rest being made available to the HSUS upon their deaths, together with other assets going into a trust fund. Another source of funding would be from a trust fund established by Mr. Butler's sister. The Butler will includes a provision that the HSUS is not committed to development of the center in perpetuity.

Mr. Hoyt spoke of use of the property as beginning with the transfer there next year of Marc Paulhus as director of an HSUS New England Regional Office, working closely with other regional office staff who would continue to be located at East Haddam, Connecticut. This proposed facility in Vermont is viewed as a National Environmental Education Center with a strong academic liaison and focus, which Mr. Paulhus would explore and develop with the five colleges in that immediate area. The first facility to be constructed on the 25-acre parcel would be a building to serve as a residence and office for Mr. Paulhus's use in beginning to coordinate activities in 1992. Mr. Hoyt indicated he plans to appoint a committee of staff members who have a particular interest in this to prepare a written plan of the potential use and programs.

Euthanasia Policy — Dr. Lockwood expressed the growing concern of regional office staff regarding the potential for criticism of actions taken in the disposition of animals, particularly those considered exotics, seized as a result of investigations. Most animals who are involved in such circumstances face fairly limited options and are euthanized or

kept for long periods of time in usually unsuitable facilities. Mr. Hoyt suggested the staff undertake to develop a position and a fairly definitive statement on this. A decision could be made then regarding whether this would be a public or operational policy.

It was the consensus the staff should prepare a policy statement for discussion and action at the meeting in April 1991 which would also include the importance of consideration being given to the quality of life and stewardship of financial resources.

Current Campaigns Ms. Forkan presented a review of activities and plans for future advertising and other promotion of the "Beautiful Choice" campaign, including a Close Up report and directory of participating companies. Cosmetics distributors are now becoming interested and there is also the possibility of pet products and household cleaning products being involved in the future.

She reported that Chicken of the Sea and Star Kist now feature "dolphin free" tuna, but Bumble Bee does not yet conform to that policy. It was recommended by the committee that an announcement of this be made in the HSUS magazine or other means to inform the public.

The anti-fur campaign will be featured on billboards in at least 17 cities this year. It was emphasized by Dr. Grandy that the furriers are just waiting for HSUS to go on to something else and they will rebound in their promotion and sales of fur.

Adjournment There being no further business, the meeting adjourned at 12:30 p.m.

Marcia Glaser, Assistant Secretary

TO: The HSUS Board & Executive Staff
FROM: Anna Fesmire
DATE: 10 June 1981
SUBJECT: Response to Item 2 on the Agenda of the Special Meeting of the Executive Committee: Policy Statement Relative to Board/Staff Relationship

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As a board member whose involvement with HSUS programs and staff predates my election to the board in 1974, I should like to offer the following comments regarding the "proper relationship between board members and staff affecting organizational programming and activities":

1) The most pressing matter at the present time is a need for a change in the way the board is given information regarding HSUS programming and activities. A change is needed in the kinds of questions the board is asked to consider. Something seems amiss when the board is encouraged to devote considerable time to the contemplation of designs for a new logo or wall mural for the headquarters building, but is not included in a decision to make significant reductions in staff and programs in response to a deficit.

2) The board should have a clear understanding of the organization's administrative hierarchy and the distribution of authority commensurate with responsibility. The board should also know what systems are in place within the organization that allow programs to be executed with maximum efficiency. For example, the board should know that there is an effective training and orientation program for new staff members, a fair system of compensation (based upon program priority, experience, credentials, and responsibility), an effective system for evaluating every employee's performance in his job, and some regular procedure for rewarding excellence and discouraging poor performances.

3) The board should know who plans the budgets and what their criteria are for increasing or reducing certain items from year to year. With the exception of certain programs, we have no clear understanding of the portions of our resources that are being devoted to each of our various programs. The board should establish annual and long-term program priorities and the budget should reflect these.

The attached articles from the March 1981 issue of The Board Letter give some good suggestions for "functional accounting" and organizational planning and the role of the voluntary board."

I would hope the executive committee might pass a resolution in support of these proposed changes in the way The HSUS Board executes its vital function in providing direction for the Society's

programming and activities. I believe these changes will make our short-term and long-range planning more effective and, it is hoped, enable us to foresee and forestall abrupt curtailments in programs due to a mounting defecit. I also believe these changes might permit board members to feel a greater sense of participation in The HSUS's programming and thus serve as an incentive for a greater number to attend board and committee meetings on a regular basis.

One further thought: I think the board should consider establishing some type of orientation program for new board members to help them apprehend the history of The HSUS and the significant place it has come to occupy in the humane movement both in America and abroad.

duca associates philanthropic consultants, p.o. box 6[illegible], denver co 80206, 303 388 3[illegible]

March 20, 1981.

Here is the first issue of THE BOARD LETTER, sent to you with our compliments. Your request for it shows that you recognize the importance of boardmanship education. We know that you will look it over carefully.

That's the first step to building your board's effectiveness -- the next is making sure that each of your board members receives every issue of THE BOARD LETTER at home or at the office, where it will command attention in a receptive atmosphere and keep all of your board members involved in your organization away from the board meetings.

It's your opportunity to share information important to the effectiveness of your organization's management with your entire board of directors - to help these volunteers do their jobs better. They'll appreciate your attention. You'll appreciate the results.

Coming issues will cover the role of the board in fund raising, staff and board relations, committee structures, more on finance and budgeting, the role of a board in planning deferred gifts programs, volunteer recruitment, tips on running efficient board meetings, board orientation and more - all written by experts in their fields.

Be sure that no one misses this important information and the greater sense of involvement that THE BOARD LETTER brings. Enclose a list of all your board members with their complete home or office addresses with the order form. Duca Associates guarantees the confidentiality of your list. It will not be made available to anyone for direct mail purpose.

Sincerely yours,

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Functional Accounting: A Management Tool

by Zedell Loomis, C.P.A.

Characteristic of not-for-profit organizations is their stewardship responsibilities to their members and donors. Inherent in this responsibility is fund accounting and functional accounting, peculiarities of not-for-profit organizations.

Fund accounting refers to a system of accounting in which separate records are kept for different funds such as, unrestricted gifts, endowment, physical plant. Functional accounting is a system of accounting where the various costs of each program within an organization are accounted for separately. Both systems encourage a high degree of accountability from an organization.

From here on we will concentrate on functional expense reporting and its value to the management of a not-for-profit organization. The illustration on the opposite page shows what an expense statement in a functional format looks like. The letters (A), (B), (C), etc. on the sample statement should be noted as they are points for reference in the explanation of this statement.

Interpreting a functional expense statement requires an understanding of its format. Most not-for-profit organizations have two functions: program services (see A on the illustration) which offer services to the community, and supporting services (see B) which provide for the day-to-day operations or maintenance of an organization. It takes more time to record expenses in a functional manner and therefore it costs an organization. For some small organizations with a single program the extra time associated with functional accounting may not prove cost-effective. However, it is critical for an organization with multiple programs to maintain a functional accounting system; for them the benefits exceed the costs.

An organization's management, including its board of directors, should know not only the costs associated with providing services to the community, but also the costs of maintaining itself. These costs are only guesswork unless an organization separates its expenses into different funds (see A and B).

An organization can benefit from this type of accounting system in planning its financing. It is a tool for determining the amount of fees per program that may be charged recipients. Management can compute a program's unit cost by dividing the total cost of a program (see E of Program A) by the number of recipients. That unit cost could become the fee for services under Program A. If management chooses not to charge service fees, then a program's unit cost becomes a point for negotiation with funding sources. A funding agency may be asked to support X% of the cost of providing services to recipients.

The largest cost to any service organization is likely to be its salaries and related expenses (see C). The sample statement shows personnel costs at about 40% of the total functional expenses (see D) and is unusually low. Typically personnel will be 50% to 65% of total functional expenses. (Organizations that are volunteer intensive such as Big Brothers/Big Sisters or scouting organizations will have a lower percent of personnel expenses.) Because the personnel costs of providing services are often high, it becomes even more important to show how those expenses are spread over a number of programs (see C). Not-for-profits must be accountable to their publics, they must continually justify their expenditures. A functional accounting system helps do that.

To arrive at a unit personnel cost per program (see C) an organization's management must require its staff to keep track of the time they spend on various activities. Staff time must be analyzed; how many hours per day in a week are spent in signing payroll (see B, Management and General), or writing a proposal (see B, Fundraising), or training volunteers (see A), or instructing children (see A), etc. Time spent on each activity is recorded under the appropriate fund (see A and B) and multiplied by an individual's hourly rate. It is not necessary to keep time analysis records for every week of the year. A random week out of each quarter will provide an appropriate average

Another benefit of functional expense statements is its budgeting value. The future costs of providing similar programs

cont'd. on pg. 6.

VOLUNTARY HEALTH AND WELFARE SERVICE STATE AFFILIATE, INC.

Statement of Functional Expenses
Year ended December 31, 19X2 with Comparative Totals for 19X1

	(A) Program Services					(B) Supporting Services			Total Program and Supporting Services Expenses	
	Program A	Program B	Program C	Program D	Total	Management and General	Fund Raising	Total	19X2	19X1
Salaries	$ 4,500	$29,100	$25,100	$26,900	$ 85,600	$33,100	$36,800	$ 69,900	$155,500	$143,300
Employee benefits	400	1,400	1,400	1,400	4,600	2,200	1,500	3,700	8,300	7,500
Payroll taxes, etc.	200	1,600	1,300	1,400	4,500	1,800	1,800	3,600	8,100	7,500
(C) Total salaries and related expenses	$ 5,100	$32,100	$27,800	$29,700	$ 94,700	$37,100	$40,100	$ 77,200	$171,900	$158,300
(F) Professional fees	100	1,000	300	800	2,200	2,600	800	3,400	5,600	5,300
(G) Supplies	200	1,300	1,300	1,300	4,100	1,800	1,700	3,500	7,600	7,100
Telephone	200	1,300	1,000	1,100	3,600	1,500	2,300	3,800	7,400	6,800
Postage and shipping	200	1,700	1,300	900	4,100	1,300	3,000	4,300	8,400	8,000
Occupancy	250	1,300	1,100	1,250	3,900	1,500	1,350	2,850	6,750	6,300
Rental and maintenance of equipment	250	1,300	1,100	1,250	3,900	1,500	1,350	2,850	6,750	6,300
Printing and publications	100	2,400	1,400	400	4,300	300	1,600	1,900	6,200	5,800
Travel	300	2,200	2,000	2,200	6,700	2,300	3,000	5,300	12,000	11,300
Conferences, conventions & meetings	800	1,900	7,100	2,000	11,800	5,200	7,700	12,900	24,700	15,600
Specific assistance to individuals	400	5,600	4,300	1,100	11,400	—	—	—	11,400	18,400
Membership dues	—	500	—	—	500	—	—	—	500	500
Awards and grants—										
To National Headquarters	10,000	—	—	—	10,000	—	—	—	10,000	—
To individuals and other organizations	123,200	900	11,900	14,400	150,400	—	—	—	150,400	144,300
Miscellaneous	100	400	600	400	1,500	1,600	2,100	3,700	5,200	6,400
Total before depreciation	$141,200	$53,900	$61,200	$56,800	$313,100	$56,700	$65,000	$121,700	$434,800	$400,400
Depreciation of buildings and equipment	200	500	600	1,000	2,300	700	400	1,100	3,400	3,200
(D) Total functional expenses (E)	$141,400	$54,400	$61,800	$57,800	$315,400	$57,400	$65,400	$122,800	$438,200	$403,600

(See accompanying notes to financial statements.)

From Standards of Accounting and Financial Reporting For Voluntary Health and Welfare Organizations Revised 1974

cont'd. from pg. 3.

offices of your local government or the law library of a nearby university.

Nancy Buchanan is a free-lance researcher and writer who lives in Boulder, CO. She has an A.B. in English literature and an M.A. in Librarianship. She has been a public librarian and has served on a board or two including experience in founding a not-for-profit organization.

cont'd. from pg. 4.

(see A) can be computed by adding inflationary factors to each line item (see F and G) within a program and adding that sum to the total (see E). Management would also take into account which program services may be cut back and which may be increased. Because all the line item expenses (see F and G) of conducting each program are known, total program and unit costs can be projected realistically. Functional expense statements provide more reliable budgeting.

A statement of functional expenses shows the programmatic emphasis within an organization. For example, figures may show an organization is more in the business of providing supportive services than providing community services. (This information would be evident under (A) and (B).) If an organization has said its purpose is to focus on a certain type of program (see A Program C) and its functional expense statement says otherwise (see D Program C), then management should reevaluate its goals. Functional accounting is an important way for organizations to keep in touch with what they are doing.

Zedell Loomis began her accounting career with one of the big-ten accounting firms; spent two years as Financial Director of Mile High United Way where she helped hundreds of not-for-profit organizations with accounting systems, budgets, and audits. She is presently partner of Rosemary E. Weiss & Company (accountants), Denver, CO.

Organizational Planning And The Role Of A Voluntary Board

By William R. Conrad, Jr.

There is current discussion in voluntarism as to what role the board of directors plays in an organization's planning process. While the majority feels that planning involvement should be minimal, others say it should be extensive. At the same time, there seems to be universal agreement that a board of directors sets policy and that its most important decision is the hiring of the chief staff executive. Interestingly a paradox arises: planning, policy setting, and hiring the chief staff executive are seldom seen by a board as interrelated functions. However, policy cannot be defined nor a chief staff executive hired outside of the planning process; they are planning issues.

The Institute feels that the first and most important policy that a board makes is to determine the planning framework of its organization. Unless the planning framework is established, decision-making is at best guesswork.

If planning is so important, why is it so little appears to be done in the voluntary field? I suggest there are three basic reasons: (1) fear of change and accountability; (2) the myth of non-measurability; and (3) the profusion and confusion of planning language. Let me explain what I mean by each of these.

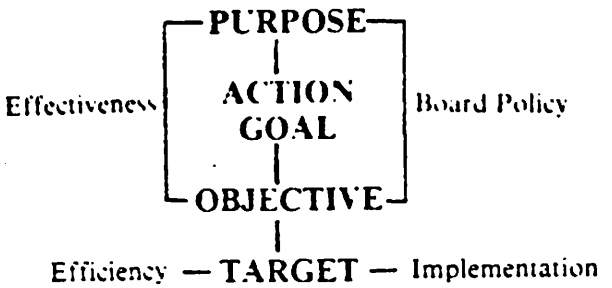
(1) There is security in ambiguity - for both a board and staff. A board can find comfort in glittering generalities, about the good things it is doing in the community. Boards tend to focus on inputs rather than results. It is far easier to relate to counselling 300 people than the results expected from counselling 300 people. When results are demanded, board and staff suddenly must be accountable. This can be a dramatic change, fearsomely resisted.

(2) Voluntary organizations, especially human service ones, often say their programs cannot be measured. Perhaps results cannot always be measured exactly. However, services can be measured. The decision to offer a program should be based on data that evidences a need and priority. The program is then designed to

have an impact on the data with projected results. There are four points for measurement: (a.) data - why a program is offered; (b.) program and priority - why the program is expected to impact on the data and what priority is placed on the program; (c.) expected results - what is expected to result from the program; and (d.) implementation - how the program is to be implemented, the step-by-step process. The only point which may be difficult to measure exactly is (c.). The other three can be measured.

(3) One has only to look at the literature and seminars on planning to understand what I mean by profusion and confusion. Consider mission, goals, objectives, targets, action steps, long-range planning, purpose, operational goals, innovative objectives, strategic planning, etc. Add to this MBO, ZBB, PPBS, PERT, CPM, KFA, MBR, etc. It is no wonder that boards and staff cannot communicate with each other, let alone among themselves. There is a veritable "Tower of Babel" in the language of planning. Unless an organization clearly defines its language, communication and decision-making fail.

This short article cannot be definitive in planning. However, I recommend that an organization creates a "Hierarchy of Planning," the plan of how an organization is to plan. The following abbreviated example is the "Hierarchy of Planning" used by the Institute for Voluntary Organizations.



In this example, *purpose* is the statement(s) which describes what an oranization is expected to do and the clients it has selected. *Action goal* is long-term (three to five years), long-range, or strategic planning. *Objective* refers to services and/or programs and represents one year's fiscal period (twelve months). *Target* is the step-by-step process of implementing the objectives. *Effectiveness* is as Drucker states, "doing the right things." Always the first planning question a board should ask itself, "should we be doing this?" *Efficiency* is defined by Drucker as "doing things right." After deciding what to do, then efficiency is doing them the best way possible at the lowest practical cost. *Board policy* is what a board of directors decides. *Implementation* is how the objectives are put in action.

An executive once said, "I'm too busy to plan." Another, "we plan all the time; it's just that nothing seems to get done." Planning is in between. It is not a luxury. Today money is tight and in the near future, only those organizations that can justify their continued existence will survive. This is the task of planning. William Penn said it well: "Method(planning) goes far to prevent trouble in business; for it makes the task easy, hinders confusion, saves abundance of time, and instructs those who have business pending, what to do and what to hope."

William R. Conrad, Jr. is currently President of the Institute of Voluntary Organizations. He has over 20 years of voluntary organization experience; is a certified social worker; serves on voluntary boards of directors; co-authored "The Effective Voluntary Board of Directors: What It Is and How It Works," 1976, Swallow Press. Mr. Conrad is an Adjunct Assistant Professor in the Social Work Education and Applied Behavioral Science Division of George Williams College.

The Institute for Voluntary Organizations is a Chicago based not-for-profit organization that provides advisory services to voluntary organizations' management.

THE HUMANE SOCIETY OF THE UNITED STATES
MEETING OF THE BOARD OF DIRECTORS
WASHINGTON, D.C.
APRIL 6-7, 1990

AGENDA

Friday, April 6

9:30 a.m.	Call to Order	K. William Wiseman Chairman
	Approval of Minutes of Board Meeting of October 29, 1989	
9:40 a.m.	Introduction of new staff member Dale Didion Welcome to newly appointed Vice Presidents Roger A. Kindler and Randall Lockwood	
9:45 a.m.	Report of Planning and Policy Committee	Jack W. Lydman
	Recommendations requiring Board action	
11:00 a.m.	President's Report	John A. Hoyt

- Change from Annual to Biennial Conference
- 1990 Annual Conference
- 1990 Krutch Medal Recipient (Dennis Hayes)
- 1990 James Herriot Award Recipient
- Environmental Activities
  - Earth Day 1990
  - Caring for Creation Conference
  - E Magazine
  - Global Tomorrow Coalition
- Interfaith Council for the Protection of Animals and Nature
- HSUS Headquarters Building Wall Mural
- March For the Animals

11:30 a.m. Report of Senior Vice President Patricia Forkan

Program and Communications Section
- Cosmetics Campaign
- AAA Survey Report
- National Poll Information
- Earth Day Activities and Materials

12:30 p.m. Recess for Lunch

1:30 p.m.	Report of Vice President/ Wildlife and Environment	Dr. John W. Grandy
2:00 p.m.	Report of Vice President/ Farm Animals and Bioethics - Center for Respect of Life and Environment	Dr. Michael W. Fox
2:30 p.m.	Report of Vice President/ Field Services	Patrick Parkes
2:45 p.m.	Report of Vice President/ Companion Animals	Phyllis Wright
3:00 p.m.	Report of Vice President/ Government Relations	Dale Didion
3:15 p.m.	Report of Director/ Higher Education	Dr. Randall Lockwood
3:30 p.m.	Report of Executive Director, NAHEE	Patty Finch
3:45 p.m.	Report of General Counsel	Roger A. Kindler
4:00 p.m.	Recess	
4:15 p.m.	Compensation Committee Report	Robert Sorock Chairman
5:00 p.m.	Recess	

Saturday, April 7

9:30 a.m.	Reconvening of Meeting	K. William Wiseman Chairman
9:35 a.m.	Report of the President Needing Board Action	John A. Hoyt
9:45 a.m.	Report of Treasurer/ Executive Vice President - Financial Report for 1989 - Financial Report 1990 Year to Date - Corporate Resolutions	Paul G. Irwin

10:15 a.m.	Audit Committee Report - Audit Report - Appointment of Auditor	Joe Ramsey Chairman Paul G. Irwin
10:45 a.m.	Investments Committee Report	Hal Gardiner Chairman
11:00 a.m.	Pension Trust Committee	Alice Garey Chair
11:15 a.m.	Legal, Bylaws and Ethics Committee Report	Joe Ramsey
11:45 a.m.	Miscellaneous Business - Approval of Applications for Membership	
12:00 p.m.	Adjournment	

THE HUMANE SOCIETY OF THE UNITED STATES
PLANNING AND POLICY COMMITTEE
WASHINGTON, D.C.
APRIL 4-5, 1990

AGENDA

Wednesday, April 4

9:30 a.m.	Call to Order Approval of minutes of meeting of September 13-14, 1989	Jack W. Lydman Chairman
9:40 a.m.	Introduction of new staff member Dale Didion	
9:45 a.m.	Overview of Important Events and Activities	John A. Hoyt
10:00 a.m.	Proposed Text for Revised Animal Rights Pamphlet	John A. Hoyt Roger A. Kindler
11:00 a.m.	Proposed Joint Resolutions by Animal Protection Organizations	John A. Hoyt
12:15 p.m.	Recess for Lunch	
1:30 p.m.	Proposed Joint Resolutions (continued)	
2:00 p.m.	Proposed Campaign Against Addiction Research on Animals	Patricia Forkan Dr. Martin Stephens Dr. Brandon Reines
3:00 p.m.	Cat Licensing	Phyllis Wright Roger A. Kindler Ann Church
4:00 p.m.	AAA Survey Report and National Poll Results	Patricia Forkan Helen Mitternight
5:00 p.m.	Recess	

Thursday, April 5

9:30 a.m. Update on Miscellaneous Items Discussed at Previous Meeting

- E Magazine
- Anti-Fur Campaign
- Listing of African Elephant as Endangered Species
- Annual Alternatives Award
- Humane Sustainable Agriculture Program
- Livestock Auctions and Transportation
- PetLine

10:30 a.m. Miscellaneous Items

Adjournment

The Humane Society of the United States
Meeting of the Board of Directors
Newport, Rhode Island
October 14 and 16, 1971

A regular meeting of the Board of Directors of The Humane Society of the United States was held in conjunction with the 1971 Annual Meeting and Conference on the dates of Thursday, October 14 and Saturday, October 16, 1971 at the Sheraton-Islander Inn, Newport, Rhode Island.

Members Present: Coleman Burke (presiding), Roger Caras, Judge Raul Castro, R. J. Chenoweth, Harold Gardiner, Mrs. Joyce Gilmore, Leonard Hall, Mrs. Winifred Hall, Perc Kelty, William Kerber, Mrs. Grace Korsan, Dr. Amy Freeman Lee, Mrs. Thelma Shawley, Jacques Sichel, Everett Smith, Jr., D. Collis Wager, Mrs. Alice Wagner, Dr. Stuart Westerlund.

Members Absent: Oliver Evans, Sen. Gaylord Nelson, Rev. David Poling.

Others ~~Staff~~ Present: John A. Hoyt, Murdaugh S. Madden, General Counsel; Mel L. Morse, and Lynne Fowlow, Patrick Parkes.

Chairman Burke called the meeting to order at 3:10 P. M. on October 14. The proposed agenda was adopted, with latitude given the Chairman to change the order.

ANIMAL CHARITY LEAGUE CORRESPONDENCE Background was given on correspondence from Mr. and Mrs. Perc Kelty of Animal Charity League, Youngstown, Ohio, regarding their dissatisfaction with the program and policy of The HSUS and its president, John Hoyt. Mr. ~~Perc~~ Kelty read a statement to the Board outlining ACL's objections to HSUS programs. Following this, the subject was opened to discussion.

Another valiant effort. He resigned either Saturday or Sunday

~~Among other objections,~~ Mr. Kelty, particularly objected strongly to ~~a~~ the nomination, ~~of new~~ as candidates for election to the Board, of persons ~~Board members~~ who were not members ~~in good standing~~ of The HSUS ~~before~~ at the time of their nomination~~s~~, as provided in the bylaws of The HSUS. It was noted that three directors had received gift memberships, namely Judge Raul Castro, Dr. Stuart Westerlund and Rev. David Poling. These memberships were backdated and notification of this action was sent to members of the Board. Lengthy discussion on whether or not to change the bylaws to enable the nominating of potential Board members who are not actually members in good standing of the Society was deferred to the meeting of the Bylaws Committee on Friday, October 15 and further disucxion of the Board on Saturday, October 16.

~~(Lynne's note: Should I expand on the specific objections as set forth in Kelty letter to Coleman Burke and as read by Perc Kelty at the meeting?)~~

Mr. Kelty requested that these minutes contain his dissenting view ~~with the other Board members~~ concerning the election of ~~new~~ Board members out of ~~accordance~~ conformance with existing HSUS bylaws.

It was the sense of the Board that the new members be seated for the balance of this meeting.

At the close of this item of business, President Hoyt was asked to leave the room, whereupon the Chairman asked for a vote of confidence for President Hoyt. It was given with one dissent from Mr. Perc Kelty.

INTRODUCTION OF NEW DIRECTORS

Judge Raul Castro, Phoenix Arizona. (few words)

Mr. Harold Gardiner, Salt Lake City, Utah (few words)

Dr. Stuart Westerlund, Tulsa, Oklahoma (few words)

MINUTES OF PREVIOUS MEETING

The minutes of the Executive Committee Meeting held in New York on September 18 were approved as distributed.

TREASURERS REPORT

The Treasurer's Report as distributed by William Kerber was received and filed.

NOTE: Roger Caras announced that a new organization was being formed (WCSRC?). No research will be carried on except with the approval of a committee, one member of which will be an HSUS staff person. Officers will select the participant on this committee.

1972 BUDGET

A proposed special project for 1972 will be the formation of a committee to study the use of animals in biomedical research and testing laboratories. The Board approved the proposed Chairmanship of Mr. Oliver Evans. Additionally, a staff person will be hired on a project basis with a knowledge of medical research who can communicate with vets and medical people. (figure?)

NHEC BUDGET It is hoped that, under the continued efforts of the Director of NHEC, ~~that~~ the $60,000 deficit figure budgeted for the coming year can be substantially reduced. Progress has been good at the Center and continued success of their stepped up programs is anticipated. The Board of Directors will stand behind its efforts. The proposed 1972 budget for the HSUS and the NHEC was unanimously approved.

STAFF REPORTS Staff reports were given by Karl Nordling, Hal Perry, Dale Hylton, John Inman, Sue Pressman, ~~and~~ Frank McMahon and Burton Parks.

COMMITTEE REPORTS Branch and Affiliates Committee: It was the sense of the Branch meeting that any action to terminate the Affiliate Program be deferred to a future Board of Directors ~~of~~ or Executive Committee meeting for further study.

Long Range Strategy and Planning: This Committee is discontinued, with its responsibilities falling to the Policy and Program Committee.

Finance Committee: No securities are to be sold at the present time. Discussion of transfer of HSUS securities to a custody account handled by the bank ~~is~~ was deferred to a future meeting of the Finance Committee.

Bylaws Committee: ~~3~~ three proposals were made at the Bylaws Committee meeting on Thursday, October 14 to ~~change~~ amend the bylaws of The HSUS. ~~They are: (Pat~~ (1) has details)

The Humane Society of the United States

Deferred Compensation Committee

August 25, 1987

Washington, D.C.

The meeting of the Deferred Compensation Committee was called to order at approximately 4:00 p.m. by the vice-chairman K. William Wiseman. Other committee members present were Jack Lydman, secretary. John A. Hoyt and Paul G. Irwin were also in attendance.

Mr. Irwin reviewed in great detail the circumstances and complexities relating to a property in Maine being donated to The HSUS by Mr. and Mrs. [redacted]. Because of a special restriction preventing an organization from becoming the owner of record, Mr. Irwin, choosing not to jeopardize significant other benefits being realized by The HSUS from Mr. and Mrs. [redacted] and Mr. [redacted] sister Dr. [redacted], proceeded to become the owner of this property in deference to Mr. [redacted] insistence.

Since Mr. Irwin does not have a personal interest in the ownership of this particular property, it was the consensus of the committee that The HSUS should reimburse Mr. Irwin his personal financial investment in this property in the amount of $85 - $90,000 and that he continue to be the owner of record and serve as agent for The HSUS.

Mr. Irwin was instructed to seek counsel for effecting the above and review the same with the Society's auditors and to prepare a memorandum detailing the history surrounding this property which shall be made a part of these minutes.

It was noted that Mr. Irwin had reviewed this matter in great detail with committee chairman Coleman Burke who has indicated his support of The HSUS accepting the financial responsibility for the expenditures made by Mr. Irwin in purchasing this property and remodeling the small cabin located thereon.

Respectfully submitted,

Jack W. Lydman

Jack. W. Lydman
Secretary

NOTE: NAMES HAVE BEEN REMOVED TO RESERVE PRIVACY. THEY HAVE BEEN DISCLOSED TO COMMITTEE AND MR METTLER. PGI

MEMORANDUM FOR FILE

FROM: Paul G. Irwin

DATE: September 3, 1987

RE: [redacted]/[redacted] Relationship with The Humane Society of the United States

In 1983, Mr. Hoyt and I were contacted by the Reverend [redacted] (present age 80) of [redacted], [redacted], regarding estate planning for himself and his sister, Dr. [redacted] (present age 82). Up to that point the HSUS has had some involvement with Mr. [redacted] because of his involvement with the [redacted] County Humane Society. Mr. [redacted] was a member of the HSUS at that time and had made small financial contributions in support of our efforts over the years. Dr. [redacted] was not known to us at that time and had not been a supporter of our work.

Mr. [redacted] informed us that his sister had an eighty-five acre tract of land in Seabrook, Maryland, and asked us if we might have an interest in establishing a national headquarters facility in Prince George's County area. We did not indicate interest in the establishment of such a facility in that geographical area. However, we did inform Mr. [redacted] that we would be more than pleased to discuss the situation with Dr. [redacted] because there were ways in which she could give a tract of land to the HSUS and receive a benefit through a planned gift. I then proceeded to have extensive conversations with Dr. [redacted] regarding the possibility and did succeed in setting up an irrevocable unitrust involving land. That land has now been liquidated for $800,000 and is funding a unitrust for the benefit of HSUS and for Dr. [redacted] and her beneficiaries.

Over the course of a long period of time, I was able to win Dr. [redacted] confidence to the extent that she has made me executor of her will. Further, she has provided a revocable trust of $350,000 held by the HSUS. Furthermore, the HSUS is a significant beneficary in her will. Also, she has executed documents in her resident state of [redacted] providing me with a general power of attorney regarding her affairs.

While these negotiations were in progress, and beginning in 1983, Mr. [redacted] stated that he was interested in providing his property in [redacted] for utilization by HSUS. He envisioned an environmental training center being established in the [redacted] setting. Through very careful negotiations, and certainly

tenuous at times, we have succeeded in convincing Mr. [redacted] to will his property in [redacted] to the HSUS with the provision that it may be sold and the proceeds used for general operational expenditures. However, he is asking in his will that we consider the utilization of that property for an environmental education program if it is feasible. Mr. [redacted] has also suggested that the HSUS will be a general beneficiary of his estate beyond the [redacted] holding.

At the beginning part of this whole process Mr. [redacted] introduced the idea to Mr. John Hoyt and myself that he would like to donate his summer property in the vicinity of Bath, Maine to the HSUS. He has been the owner of a ninety-nine year lease of that property since 1931. It is a part of a 125-acre tract of land which was purchased by a number of divinity students. Mr. [redacted] leased portion of the property amounts to approximately eleven acres and has 750 feet of ocean frontage. There is a general statement in the lease agreement that the individual leases would pass from generation to generation and at each point of passing a new 99-year lease would be established. Consequently, the leases were designed to remain in the possession of the various leasors in perpetuity. Mr. [redacted] approached the association of leasors, known as Brightwater, Inc., with the proposition, that since he did not have children, he wished to donate his property to the HSUS. The Brightwater group unanimously disagreed. Mr. [redacted] then approached John Hoyt and myself and encouraged us as individuals to buy the Brightwater property for $50,000. In return he would make an annuity gift to the HSUS in the amount of $50,000. He in fact completed this gift in 1986. The Hoyt and Irwin families visited the site in the summer of 1984. The Hoyt's were totally convinced that they had nc interest in utilizing the property. The Irwin family was not vigorously interested either although we have had a desire to have a place in Maine again. I sought to utilize the situation to suggest to [redacted] that it did not seem possible nor feasible that the Hoyt and Irwin families could share equity participation in the Brightwater situation. Mr. [redacted] was unable to accept the notion that we would not want to be involved in this haven. Consequently, he vigorously pressed me to pursue the possibility of gaining the leasehold. At this point, it became evident, and subsequently far more evident, that [redacted] had an irrational mental attachment to the Brightwater scene. Because we were dealing in a situation that stood to benefit the HSUS with approximately $2,000,000, I was not willing to jeopardize a complex series of gifts over the minor situation that the Brightwater represented.

Mr. [redacted] again approached the Brightwater group and proposed the Irwin family as successor to his leasehold. The fact of the matter is the Brightwater group did not want interlopers but rather wanted to have the leasehold passed down "inside the family." This reluctance on the part of Brightwater only served to intensify Mr. [redacted] strong intention that he would have his way. He retained legal counsel and proceeded with action against Brightwater to force the Irwin qualification. In point of fact Brightwater did not have legal standing to refuse the Irwin family membership. After an acrimonious twenty months, the Brightwater group finally agreed to accept the Irwins but, I may add, with extreme reluctance. To say the least, the Irwin family found itself in an unpleasant environment.

To help you better understand Mr. [redacted] frame of mind in this entire process, he proposed that he would adopt me. I, then becoming an adopted son, would be automatically qualified for the continuing of the lease. The only way I was able to turn Mr. [redacted] from this idea was to inform him that my father, who was living at the time, would be unable to accept such an act and, therefore, I would have to refuse such a proposition. Mr. [redacted] then proposed that he would adopt one of my children and pass him the leasehold. That issue was also skirted. I finally had to insist that the only way the process could come to fruition would be through our acceptance on our own merits by the Brightwater group.

Our leasehold in Brightwater carries no possibility for financial appreciation. A person can only sell his property for the money expended plus an inflation factor. Obviously, therefore, I did not involve myself in the situation with the notion of any financial gain.

The problems at Brightwater have been legion. When the leasehold was transferred to us, the cabin was marginally habitable. It had no foundation under it, it was sagging dangerously, and provided none of the physical comforts that most of us would desire. We proceeded to have the cabin remodeled with an adequate foundation placed under it. Brightwater has succeeded in creating enormous hassles with the town authorities, has sought to thwart building permits and has generally tried to make this into a situation as uncomfortable as possible. I suppose a normal person would have walked away from the situation a long time ago. However, I was and remain convinced that my involvement in the Brightwater situation is an important factor in a significant asset possibility for the HSUS.

I want to clearly state that John Hoyt never instructed me to involve myself in this proposition. He certainly

understood my sentiments in the venture and knew of the risks involved if I had let it alone.

Mr. Hoyt discussed the whole situation with a committee of the Board of Directors of the HSUS who are responsible for acting upon such situations. The committee said that they would be amenable to seek a means whereby I could become the agent for the HSUS in Brightwater and that the property through an agency agreement could become the property of the HSUS and would be held as an asset until the death of Mr. [redacted]. The matter was tabled for further discussion until the entire committee could meet and agree upon a course of direction.

The Humane Society of the United States

Deferred Compensation Committee

Washington, D.C.

April 22, 1987

The meeting of the Deferred Compensation Committee was called to order at approximately 5:00 p.m. by the chairman, Coleman Burke. Other committee members present were K. William Wiseman, vice-chairman, and Jack Lydman, secretary. John A. Hoyt, HSUS president and Paul G. Irwin, HSUS executive vice-president and treasurer were also in attendance.

Mr. Irwin reported to the committee regarding the purchase of a property to serve as a residence for HSUS president John A. Hoyt in lieu of other compensation at this time. He indicated that for the present time Mr. Hoyt would prefer to continue residing at this present residence at 14670 Seneca Road, Germantown, Maryland. By unanimous consent, the committee authorized Mr. Irwin to act as agent for the Board of Directors in arranging for the purchase of the house currently owned by Mr. Hoyt, the amount of that purchase to be $310,000 based on an appraisal made by the Long and Foster Real Estate Inc., estimating the value of the Hoyt residence to be in the range of $310,000 - $335,000.

It was noted that the purchase of Mr. Hoyt's home was being undertaken in part due to the fact that Mrs. Irene Evans had transferred as a gift to The HSUS a note in the amount of $100,000 owed by Mr. Hoyt. It was the opinion of the committee that it was not desirable that this indebtedness to The HSUS by Mr. Hoyt should continue to exist. It was, therefore, the wish of the committee that the purchase of Mr. Hoyt's home be expedited and the note now due The HSUS by Mr. Hoyt be paid in full at the earliest possible date.

It was agreed that Mr. Hoyt and his family will occupy this residence rent free in lieu of other compensation except that The HSUS auditors will establish a monthly rental figure for the purpose of IRS reporting. All utilities and minor maintance will be paid by Mr. Hoyt. Capital improvements and property taxes will be paid by The HSUS.

The committee also approved the payment of Mr. Irwin's salary increase for 1987 in the amount of $5,000 from the National Association for the Advancement of Humane Education account.

Respectfully submitted,

Jack W. Lydman
Secretary

The Humane Society of the United States
Deferred Compensation Committee
July 24, 1986
New York, New York

The meeting of the Deferred Compensation Committee was called to order at 12:30p.m. by the chairman, Coleman Burke. Other committee members present were K. William Wiseman, vice-chairman and Jack Lydman, secretary. John A. Hoyt, HSUS president and Paul G. Irwin, HSUS executive president and treasurer were also present.

Mr. Hoyt reviewed in detail Mrs. Oliver Evans' gift of her residence at 3045 P Street NW, Washington, D.C.to the HSUS on January 10, 1980 and her desire that it become a residence for The HSUS president, (copy attached). Mr. Hoyt noted that in deeding this residence to the HSUS, Mrs. Evans retained a life interest in the house in which she continues to reside. Mr. Hoyt further noted that in expressing her desire that her home at 3045 P Street be used as a residence, such had in no way been made a condition of the gift.

The committee discussed in detail the appropriateness of providing a residence for the HSUS president and explored the various ways in which such a residence would serve to enhance the work and activities of HSUS directly.

Upon motion, duly secounded and approved unanimously, it was voted to purchase a property to serve as a residence for The HSUS president no later than May 1,1987, details of such purchase to be approved by the committee at a later date. It was further noted that when the house located at 3045 P Street N.W., becomes available further consideration will be given to using this house as the president's home. Mr. Irwin was designated to work with Mr. Hoyt in recommending a suitable residence for purchase by The HSUS.

The committee also approved the transfer of ownership of personal life insurance policies currently owned by The HSUS to Mr. Hoyt and Mr. Irwin respectively, with the understanding that The HSUS will continue to pay the premiums for both policies until the retirement or termination of employment of either individually. In so authorizing this transfer, the committee noted with appreciation the outstanding leadership and extraordinary efforts of both men on behalf of The HSUS.

The committee noted for the record that it is empowered by the Board of Directors of The HSUS to act on its behalf in matters pertaining to compensation and benefits for HSUS staff personnel. (Minutes of the Meeting of the Board of Directors, September 9,1983.)

Respectfully submitted,

Jack W. Lydman

Jack W. Lydman
Secretary

The Humane Society of the United States
2100 L Street, N.W.
Washington, D.C. 20037
(202) 452-1100

OFFICERS

Coleman Burke
Chairman of the Board

K. William Wiseman
Vice Chairman

Dr. Amy Freeman Lee
Secretary

John A. Hoyt
President

Paul G. Irwin
Vice President/Treasurer

Murdaugh Stuart Madden
Vice President/ General Counsel

Patrick B. Parkes
Vice President/Field Services

Patricia Forkan
Vice President/Program and Communications

Dr. John W. Grandy
Vice President/ Wildlife and Environment

Phyllis Wright
Vice President/ Companion Animals

Dr. Michael W. Fox
Scientific Director

DIRECTORS

Rosemary Benning
Samuel A. Bowman
Dr. Carol Browning
Coleman Burke
Jack Conlon
Irene Evans
Anna Fesmire
Regina B. Frankenberg
Harold H. Gardiner
Gisela H. Karlan
William Kerber
Dr. Amy Freeman Lee
Jack W. Lydman
Virginia Lynch
Cherie Mason
John W. Mettler, III
John G. Mosher
D.J. Ramsey
Susan Selby
Marilyn G. Seyler
Everett Smith, Jr.
Brook Speidel
Robert F. Welborn
K. William Wiseman

HONORARY DIRECTORS

Ida Flemming
Virginia Milliken

Memo to: File

From: Coleman Burke, Chairman

Date: January 2, 1985

Over the past several years the HSUS has been providing automobiles to John A. Hoyt, Paul G. Irwin and Phyllis E. Wright as a part of their annual compensation. These automobiles have been purchased and maintained by the Society for both personal and business utilization.

Because of changes in the Internal Revenue Service codes relating to Society owned vehicles and upon recommendations of our auditors, it is advisable that the Society discontinue providing automobiles for Mr. Hoyt, Mr. Irwin and Miss Wright.

In light of this change, I hereby authorize that a travel allowance in the amount of $9,000.00 be paid to Mr. Hoyt and Mr. Irwin. I further authorize that a travel allowance be paid to Miss Wright in the amount of $5,000.00

It is understood that the travel allowance for Mr. Hoyt and Mr. Irwin will be paid from funds in the account of The National Humane Education Center, Inc. Miss Wright's travel allowance will be paid from HSUS funds.

Coleman Burke

Coleman Burke, Chairman

The Humane Society of the United States
Deferred Compensation Committee
Thursday, September 13, 1984
Washington, D.C.

The meeting of the Deferred Compensation Committee was called to order by Chairman Coleman Burke. Other committee members present were K. William Wiseman and Jack W. Lydman. Also present were HSUS President John A. Hoyt and HSUS Vice President/Treasurer Paul G. Irwin.

Mr. Hoyt reviewed with the committee proposed deferred compensation plans for Patricia Forkan, HSUS Vice President, Program and Communications; John W. Grandy, HSUS Vice President, Wildlife and Environment; and Patrick B. Parkes, HSUS Vice President, Field Services. In lieu of salary increases for 1985, deferred compensation in the amount of $5,000 for each of the above-named persons was approved to be paid annually to the Aetna Life Insurance and Annuity Company until either the retirement or termination of the employee.

The committee also approved an additional payment of $2,000 annually to the Aetna Life Insurance and Annuity Company for Paul G. Irwin, HSUS Vice President/Treasurer.

The committee unanimously voted to amend previous deferred compensation agreements with John A. Hoyt, HSUS President; Paul G. Irwin, HSUS Vice President/Treasurer; and Phyllis Wright, HSUS Vice President, Companion Animals, to authorize and approve the payment of the full cash value or death benefit resulting from those policies to any of the above employees or his or her beneficiary over a ten-year period, commencing with either the retirement of the employee or his or her death, whichever occurs first. Each of these policies is funded annually with Connecticut Mutual Life Insurance Company at the following fixed premiums:

John A. Hoyt	-	$4,196.00
Paul G. Irwin	-	$2,877.00
Phyllis Wright	-	$2,588.00

The previous agreements specified a fixed amount to be paid each employee or his or her beneficiary annually for a ten-year period as follows:

John A. Hoyt	-	$10,000.00
Paul G. Irwin	-	$10,000.00
Phyllis Wright	-	$5,000.00

These amounts will now be determined by the cash value of the policy plus accrued interest over the ten-year period

following retirement. In the event of the death of the employee, the beneficiary shall receive the entire death benefit plus accrued interest paid over the ten-year period.

As regards this agreement, retirement shall be at the option of the employee with approval of The HSUS Board of Directors or upon the employee's termination by the Board.

The committee approved a direct payment of these benefits by Connecticut Mutual Life Insurance Company to each of the above employees, or his or her beneficiary, over the ten-year period following retirement or death.

The committee takes this action to increase the retirement and/or death benefit of the above employees recognizing that deferred compensation benefits currently being paid in lieu of salary increases do not credit the employee's basic pension program. The committee also wishes to acknowledge that the long, faithful and devoted service of each of these employees merits this action.

Copies of the original agreements are attached.

Respectfully submitted,

Jack W. Lydman
Secretary

The Humane Society of the United States
Deferred Compensation Committee
Friday, December 2, 1983
New York, New York

The initial meeting of The Humane Society of the United States Deferred Compensation Committee was convened at 12:30 p.m. in the law offices of Burke and Burke, 529 Fifth Avenue, December 2, 1983. Present were committee members Coleman Burke, William Wiseman, and Jack Lydman; also HSUS president John A. Hoyt and HSUS Vice President/Treasurer Paul G. Irwin. The following officers of the committee were chosen: Chairman, Coleman Burke; Vice-Chairman, William Wiseman; Secretary, Jack Lydman.

Mr. Hoyt reviewed with the committee members the need for a deferred compensation plan for senior staff personnel. Following discussion, Mr. Hoyt reviewed with the committee a Deferred Compensation Plan submitted by Aetna Life Insurance and Annuity Company. Upon a motion by William Wiseman, seconded by Jack Lydman, the Aetna Deferred Compensation Plan was unanimously approved and adopted.

Upon recommendation of Mr. Hoyt, the following amounts were approved for deferred compensation for three senior staff persons: $5,000, John A. Hoyt; $5,000, Paul G. Irwin; $5,000, Phyllis Wright. These amounts will be paid to Aetna Life Insurance and Annuity Company annually until either the retirement or termination of employment of each of the three above employees.

The committee also approved unanimously the payment by the Aetna Life Insurance and Annuity Company of benefits becoming due or to become due directly to any HSUS employee, his or her beneficiary, executor, or assigns receiving benefits under this Deferred Compensation Plan unless otherwise notified by action of The HSUS Board of Directors. A copy of the authorization letter to the Aetna Company is attached.

Mr. Hoyt reminded the committee that it was also created to "consult with and advise the President regarding staff compensation as the need may arise."

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jack H. Lydman

Secretary

Moved and seconded that the Board of Directors authorize the establishment of a Deferred Compensation Plan to be administered by a Deferred Compensation Committee comprised of the Chairman of the Board, Coleman Burke; the Vice Chairman, K. William Wiseman; and director Jack Lydman.

As regards matters relating to the establishment and administration of the Deferred Compensation Plan, the Committee is empowered to act in all matters on behalf of the Board of Directors.

This Committee may also from time to time be constituted a Compensation Committee to consult with and advise the President regarding staff compensation as the need may arise.

Adopted by Executive Committee,
HSUS Board of Directors,
September 9, 1983

The Humane Society of the United States
Meeting of the Board of Directors
Washington, D.C.
July 30, 1988

A meeting of the Board of Directors of The Humane Society of the United States was held on Saturday, July 30, 1988, at the headquarters offices of the Society, 2100 L Street, N.W., Washington, D.C.

Directors Present: K. William Wiseman (presiding), Samuel Bowman, Carol Browning, Harold Gardiner, Alice Garey, Paul Heneks, Gisela Hunnicutt, William Kerber, Amy Freeman Lee, Jack Lydman, Virginia (Pat) Lynch, John Mettler III, Susan Pepperdine, O.J. Ramsey, Marilyn Seyler, Robert Sorock, Brook Speidel, Viola Weber

Directors Absent: Coleman Burke, Irene Evans, Regina Bauer Frankenberg, Jane Goodall, John Kelly, Robert Welborn

Others Present: John A. Hoyt, Paul Irwin, Murdaugh Stuart Madden, Jacob Stein, Bardyl Tirana, Nile Webb

The meeting was called to order by the chairman at 10:00 a.m. on Saturday, July 30. Jacob A. Stein, independent counsel to the Select Committee, was introduced by Mr. Wiseman who also expressed appreciation for Mr. Stein undertaking the task of preparing a report for the Select Committee.

Minutes of Meeting Of April 20-21 — Dr. Lee moved that minutes of the Mid-Year Meeting of the Board of Directors held on April 20-21 which had been circulated by mail to all Directors be approved. The motion carried with 11 votes for; 4 opposed; 2 abstaining.

Form of the Minutes — Dr. Lee moved that minutes of this meeting include only the actions taken and not the discussion, with votes of directors for and against recorded. The motion carried with 12 votes for; 5 opposed. It was agreed, however, that any director could request his particular comments be made a part of the record.

Report of Select Committee — The Select Committee reported through Mr. Ramsey a series of resolutions, which were thoroughly discussed, and adopted.

1. Resolved, that the total compensation of the president and senior staff officers should be reported privately to the board as one-line budget items. Adopted unanimously.

2. Resolved, that HSUS obtain appropriate errors and omissions insurance covering officers and directors. Adopted unanimously.

3. Resolved, that a Compensation Committee be formed, taking the place of the Deferred Compensation Committee, with duties to:

1. Review the president's compensation annually and recommend changes to the board for ratification;

2. Annually review the salaries of senior staff who report directly to the president and advise the president concerning those salaries, but without diluting the president's authority;

3. Set and review at least annually guidelines for the president concerning salaries by job classification at all levels of the organization and assuring they comply with all legal requirements, but without diluting the president's authority;

4. Negotiate written employment contracts between HSUS and the president and executive vice president, to be reviewed by outside counsel.

Adopted unanimously.

4. Resolved, that no financial transactions, including gifts, should be allowed between staff members and board members. This resolution is prospective; however, all existing financial arrangements are to be disclosed to the board.

$25,000 HSUS [illegible]

Dr. Lee: I resent consummately Mr. Tirana's statement regarding a gift made toward a chair at my college: "Dr. Lee apparently shows no concern that this took place." I want the record to show I show no concern because no money left this organization to go to any .... No member had intestinal fortitude to face me with this. If this persists I shall have my own attorney take this up.

The motion was adopted with 16 votes for; 1 abstaining.

5. Resolved, that any proposed financial transactions, including gifts, between donors or members and any staff member must be promptly reported to the board for approval or disapproval. Adopted with 16 votes for; 1 abstaining.

6. Resolved, that no staff member shall consent to be appointed as a personal representative of any member or donor

except with the approval of general counsel. Any fees or bequests must be disclosed to the board and must be turned over to The HSUS unless the board deems otherwise. Adopted unanimously.

7. Resolved, that payment be made of the Tirana fees, the current amount being $34,710.99, as requested in a letter dated May 11, 1988; that a disbursement be made to pay reasonable legal fees of Hoyt/Irwin incurred and to be incurred, the current amount being $11,483.99; and that no consideration will be given to having individuals reimburse The HSUS for any legal fees. The motion carried with 10 votes for; 1 against, 2 abstaining; 4 not voting.

8. Resolved, that the Deferred Compensation Committee be replaced by a standing new Compensation Committee with Bob Sorock as chairman, Hal Gardiner, Susan Pepperdine, Marilyn Seyler and Bill Wiseman as members to serve until the annual meeting of members in 1989. The motion was adopted with 10 votes for; 6 against; 1 abstaining.

9. Resolved, that The HSUS will pay for the reasonable travel expenses incurred by spouses of the president and senior staff members where their participation is useful and significant to The HSUS, providing advance written approval is obtained from the chairman for the president's spouse and from the president for senior staff spouses' expenses. Adopted unanimously.

10. Resolved, that The HSUS will disengage from the transaction involving Brightwater, including repayment by Mr. Irwin of the $85,000. The motion carried with 15 votes for; 2 abstaining.

11. Resolved, that in the belief that Paul Irwin entered into the Brightwater transaction with the best interests of The HSUS in mind, the terms by which HSUS will disengage from the Brightwater transaction shall include a plan to safeguard Mr. Irwin from any personal financial loss he might otherwise incur as a result of that transaction, with the expectation that he will continue to exert his best efforts to assure future monetary benefits to The HSUS. Such terms should include an interest-free loan, if appropriate, to Mr. Irwin to cover the purchase price and his expenses. Collateral other than Brightwater would be required to secure the loan. The loan shall not exceed $110,000, which includes the purchase price and anticipated expenses at this time. Such terms shall be negotiated by the Select Committee with the advice of HSUS general counsel. The motion was adopted with 11 votes for; 3 against; 3 abstaining.

12. Dr. Lee moved adoption of a resolution: that the board of directors go on record officially they really believe beyond a reasonable doubt the transaction of Brightwater was entered into with the best interests of The HSUS and, further, that both Messrs. Hoyt and Irwin be given a vote of confidence in their complete integrity in this arrangement. The motion was adopted with 11 votes for; none opposed; 6 abstaining.

Mr. Ramsey moved adoption of the following resolutions recommended by the Select Committee:

13. Resolved, that the action of the Deferred Compensation Committee with respect to Mr. Hoyt's house in Germantown, Maryland, be confirmed. The motion carried with 10 votes for; 6 against; 1 abstaining. Ms. Hunnicutt stated she would like the record to show she was advised by counsel to vote no on this motion.

14. Resolved, that an agreement be negotiated between Mr. Hoyt and The HSUS, represented by the Compensation Committee with the advice of HSUS general counsel, in order to cover the disposition of the Germantown home in the event of Mr. Hoyt's death, incapacitation, removal to another residence, or termination of employment. Adopted unanimously.

15. Resolved, that the board ratify all remaining actions of the Deferred Compensation Committee as reflected in that committee's minutes other than the Brightwater and Hoyt residence transactions which are dealt with in other motions.

Mr. Mettler asked that the following statement be included in the record:

JOHN W. METTLER III
950 Third Avenue
New York, N.Y. 10022
(212) 752-1855

Memo to: Board of Directors HSUS CONFIDENTIAL

Date: July 30, 1988

After reading the report prepared by Mr. Stein for the "Select Committee", I would like to make some observations which I feel will help some of you focus on specific subjects which caused some of the Directors of the HSUS serious concerns.

Some questions raised which are of central importance are as follows:

1. The HSUS purchase of the Hoyt property.
2. The Irwin purchase of the Brightwater property.
3. The Hoyt and Irwin insurance policies.
4. The Hoyt and Irwin payments from NHEC and NAAHE.
5. Irwin's withdrawal of funds from the Mellon Bank.

My major concern was the irresponsible and damaging conduct by two members of the Deferred Compensation Committee, Mr. Wiseman and Mr. Lydman, in ignoring their duty to keep the Board of Directors of The HSUS informed. I quote for you excerpts from pages 11 and 12 of Mr. Stein's report.

> The non-committee directors retain a duty to assure themselves that the committee is acting in a procedurally correct manner and that its ultimate decisions are within the scope of its delegated powers. In this context, directors are protected from liability primarily by virtue of their right to rely on reports by those to whom the primary responsibility has been delegated. This protection is statutory. Section 141 (e) of Delaware's General Corporation Law provides: "A member of the Board of Directors of any corporation organized under this chapter, or a member of any committee designated by the Board of Directors shall, in the performance of its duties, be fully protected in relying in good faith upon the books of account or reports made to the corporation by any of its officers, or by an independent certified public accountant, or by an appraiser selected with reasonable care by the Board of Directors or by any such committee, or in relying in good faith upon other records of the corporation." The provision has been construed to permit reliance on informal oral reports. In order to comply with this duty, there must be a corresponding duty of reporting on the part of the committees.

In this context, I specifically refer to items 1-5 (listed above) which were never reported to the Board of Directors until December 12, 1987.

Concerning John Hoyt's house, I refer you to page 24 of the Stein report.

> A strong objection has been raised by Mr. Mettler and others concerning the fact that the Board was not kept advised by the Hoyt transaction. The simple response is that the Board should have been advised.

Concerning Paul Irwin's purchase of Brightwater I quote you from page 29 of Mr. Stein's report.

> Because of the restrictions on the use of Brightwater it is doubtful that the property can be utilized by anyone other than Mr. Irwin. The General Counsel was not consulted concerning Brightwater. He should have been. ... Members of the Board have a justifiable complaint that they were not told of the transaction. Where the treasurer writes checks to himself concerning transactions of this kind great care must be exercised otherwise the treasurer's actions are difficult to justify.

Concerning Paul Irwin's withdrawal of funds from the annuity trust at Mellon Bank, I quote from page 34 and 36 of the Stein report.

> Funds from the annuity trust at Mellon Bank were withdrawn by Mr. Irwin, deposited to the NHEC account and subsequently disbursed to Messrs. Hoyt and Irwin. The treasurer has placed himself in transactions that raise justifiable concern. The General Counsel was not consulted. The Board received no contemporaneous notice. The problem with it all is that it was concealed from the full Board of HSUS. It also involved complicated financial transactions and the opening and closing of bank accounts.

It is also necessary to point out that the Deferred Compensation Committee did not inform the Board of the insurance policies which were transferred over to Messrs. Hoyt and Irwin amounting in face value to hundreds of thousands of dollars.

I would like to quote you part of a letter written to the Select Committee by Bill Kerber on May 10, 1988 about the Michigan Humane Society.

> I still am very mystified by the first mimeographed report we received - very wordy about our great purpose which was the result of John, Paul, Bill Wiseman and Jack Lydman's six month period of negotiations without authority from the Board.

This once again shows that the same individuals have continued to withhold important information from the Board of Directors.

Again, I quote from page 45 of the Stein Report "the complaint that the Board was not kept advised is a justifiable complaint", and from pages 48 and 49 "It is not unreasonable for directors to assume that their colleagues will inform them in meetings of the Board of important decisions taken in committee meetings".

We directors are accountable to our members and it is our duty to see that as much money as possible goes to the benefit of animals. Because the aforementioned members of the Deferred Compensation Committee, Mr. Wiseman and Mr. Lydman, have taken it upon themselves to make important decisions confiding only in Mr. Hoyt and Mr. Irwin, they have effectively eliminated or bypassed the Board of Directors. Whether or not this is illegal I will leave to the judgement of the lawyers. All I know is that they have both embarassed and undermined the Board of Directors.

In his speech on December 12, 1988 to the Board, Mr. Wiseman chastised some of us for wasting both time and money with our questions. I conclude that it is Mr. Wiseman himself and Mr. Lydman by their unforgiveable arrogance have probably caused the HSUS to spend over $250,000 in professional fees to bring to the Board information which they deliberately withheld. I feel that we Directors have gone through enough agony because of these two men and that they should be censured by this board for their omissions.

Finally, I feel that the events of the last year will strengthen the procedures and policies of the Humane Society of the United States. Whether or not it will strengthen the leadership remains to be seen. I feel that two of your directors Mr. Bowman and myself, by bringing these items to your attention have served your Board well. The fact that neither of us will be renominated shows you that your present board leaders prefer to rule without opposition.

(signed) John W. Mettler III

Mr. Ramsey (for the record): I think you have said it; you're entitled to make your statement. Criticism of the Deferred Compensation Committee should be to all members of the committee. What is important is we vote on the matter before us.

The motion carried with 9 votes for; 7 against, 1 not voting.

16. Resolved, that The HSUS formally accept the report of Deloitte Haskins & Sells but directs the soon to be appointed Audit Committee to analyze the report in detail and submit its own report with specific recommendations for implementation to the full board as soon as reasonably practical. Adopted unanimously.

Mr. Madden asked that the words "minutes of the compensation committee are filed with the legal department" be deleted from the management response to the Deloitte Haskins & Sells report because they were not so filed in the past. It was the consensus the word "now" be included so that the text reads "are now filed...".

17. Resolved, that the office of treasurer remain a staff position; however, it is recommended that the Audit Committee adopt procedures that clearly define the treasurer's role and the authority of the office. Adopted unanimously.

18. Resolved, that any donation from The HSUS to organizations with which any board member is knowingly affiliated must be approved in advance by the board. Adopted unanimously.

19. In recognition of the fact that the chief legal officer of an organization has the primary duty to represent and protect the organization itself, Resolved, that all future business dealings between members of staff and The HSUS, board members and The HSUS, or between staff members and board members must be cleared in advance by HSUS general counsel. This would include all matters in which there is even a suggestion of self-dealing, private inurement or conflict of interest that might appear. Further, the general counsel shall prepare a code of conduct for the staff and board. Adopted unanimously.

20. Resolved, that the board directs the Audit Committee as part of its activities to clearly define authority for the disbursement of funds from accounts. Adopted unanimously.

Mr. Ramsey (for the record): I want to express appreciation not only to you, Jake, but to Nile and Tom for working

overtime with our committee and making our job much easier. They really were great, especially Nile. Without explanation or detail, some delay was caused in his effort early in the game. I'm sure there is no dissent from this comment.

21. Mr. Gardiner moved that the normal check signing authority be extended to the HSUS controller, Thomas Huntt. Adopted unanimously.

22. Ms. Pepperdine moved that the charter of The Humane Society of the United States be amended to take advantage of recent changes in Delaware law to limit the liability of Directors for monetary claims for breach of duty of care. Adopted unanimously.

23. Ms. Hunnicutt moved that the Bylaws of The HSUS be amended to provide that The Humane Society of the United States will itself, out of its treasury, indemnify Directors, Officers and employees for any liability incurred when acting on behalf of the Society. Adopted unanimously.

President's Report
John A. Hoyt

Mr. Hoyt requested it be noted in the record that during the time that John Mettler has been chairman of the finance committee, the board has received no report and there has been no communication of the committee's activities. He was making no suggestion of deception or malfeasance, he stated, but he did not think the committee has reported any of its actions.

Second, Mr. Hoyt expanded upon comments of Dr. Lee earlier in the meeting relative to the chair created in her honor and our recognition of the contribution she has made to arts and humane ethics. He reviewed actions taken in September 1986 by the Program and Policy Committee and the Executive Committee. At no time, he stated, did Dr. Lee approach him or Paul Irwin regarding this chair as the approach was made by the president of the university. Mr. Hoyt had suggested it would be perhaps a bit difficult for The HSUS to make such a contribution, but because of his association with the Elinor Patterson Baker Trust, he would approach them as to whether they would be willing to make a grant in that regard. Obviously, he said, he wanted HSUS to get a pat on the back for creating a chair having to do with humane ethics. The recommendation for this grant was one of three presented to the trust by Mr. Hoyt and it was from this trust those funds were made available. Dr. Lee did not want money taken from any HSUS funds. The HSUS,

he said, should be proud of the fact we have this association with Incarnate Word College and this relationship with Amy Freeman Lee, who has been the single most articulate spokesperson throughout the 18 years of his service and the 20 years of her service to HSUS.

Dr. Lee: I not only didn't suggest this but didn't know about it until it was well on the way. When I found he had set the wheels in motion, I made it clear I wouldn't permit one penny from The HSUS. One salient characteristic of that chair is that whoever occupies it has to agree on reverence for life in perpetuity. I cannot tell you how much distress this has caused me. No one had the character to come to me. I respect them not at all.

Mr. Hoyt concluded by reporting that in spite of the distractions, disruptions and emotional drain the last several months have caused, things are progressing well with our programs. The staff has been attentive to those challenges that have come and not been involved with the controversy although there has been some awareness of it.

A retreat of senior staff and program people was held in June which resulted in papers which set forth program projections for the next five years. These papers will be sent within the next month with a cover letter for study and consideration by members of the board of directors.

Treasurer's Report
Paul G. Irwin

Financial statements for the six months ending June 30, 1988 were distributed. Mr. Irwin introduced Mr. Thomas Huntt, who has joined HSUS as controller, and presented a brief background of his previous experience and positions. By January 1, 1989 financial information will be computerized and major changes are expected in the reporting structure of finances. He reported that income is most acceptable, with very good returns to enable programs. There is a current excess of revenue over expense of $1.5 million. A budget for 1989 will be presented at the October meeting of the Board, he stated. The report was accepted with comments by Mr. Wiseman regarding the tremendous burden Mr. Irwin has been carrying.

Other

Mr. Hoyt stated that, in consultation with the chairman, the next meeting of the board is scheduled to be held on Sunday,

The Humane Society of the United States
Meeting of the Executive Committee
Washington, D.C.
September 15, 1989

A meeting of the Executive Committee of the Board of Directors of The Humane Society of the United States was held on Friday, September 15, 1989 at the headquarters offices of the Society in Washington, D.C.

Members Present — K. William Wiseman (presiding), Harold Gardiner, Jack W. Lydman, Marilyn Seyler, Robert Sorock, Robert F. Welborn

Members Absent — Amy Freeman Lee, Virginia (Pat) Lynch, O.J. Ramsey

Others Present — John A. Hoyt, Paul G. Irwin

Chairman Wiseman called the meeting to order at 9:30 a.m. Regrets for absence of Dr. Lee and Mr. Ramsey because of other commitments were given. The committee wished Mrs. Lynch a rapid recovery to good health.

Minutes — Minutes of the meeting of the Executive Committee, held on February 9, 1989, were approved as distributed on motion by Mrs. Seyler, seconded and carried.

Employment Agreements — The chairman called on Mr. Sorock, chairman of the Compensation Committee, to present proposed employment agreements between the President and Executive Vice President/Treasurer and the Society and said that Mr. Welborn had some reservation with regard to the motion adopted by the Board of Directors at its meeting in April 1989 to authorize the Executive Committee to act on the employment agreements.

Mr. Sorock commented that the Compensation Committee had met a few times and also by conference call. After review by outside counsel the contracts had been sent both to members of the Compensation Committee and the Executive Committee. He had not received comments from anyone on the Compensation Committee, but he had seen a letter from Mrs. Pepperdine to the Chairman of the Board. Mr. Sorock felt that the board had been given a substantial summary of the provisions of the contracts and had delegated to the Executive Committee specific authority to take action on them.

A motion by Mr. Lydman that the contracts be approved by the Executive Committee was seconded.

Mr. Lydman moved that both contracts be amended to delete from the first sentence of Article 6 (Noncompetition) the following: "and for a period of two (2) years following any voluntary resignation of his employment with the Society, or termination under 4.3 above." The motion was seconded and approved.

Mr. Welborn made a substitute motion that the Executive Committee approve the contracts and to submit them to the Board of Directors for ratification. The motion failed to receive a second.

On Mr. Lydman's motion to approve the contracts, as amended, there were four votes in favor, one abstaining.

On motion by Mr. Welborn, seconded and adopted unanimously, the payment of attorney fees for preparation of the employment agreements with Mr. Hoyt and Mr. Irwin was approved.

Participation In Other Organizations — Mr. Hoyt requested review and approval by the committee of his affiliation with a number of other organizations. On motion by Mr. Gardiner, seconded and carried, approval was given to Mr. Hoyt's continuing participation in the following:

President and Director:
World Society for the Protection of Animals, London, England
Center for Respect of Life and Environment, Washington, D.C.
National Association for Humane and Environmental Education, East Haddam, Connecticut
National Humane Education Center, Washington, D.C.

Director:
Earthday 1990, Stanford University, California
National Society for Animal Protection, Detroit, Michigan
Council for Livestock Protection
National Trust for Animal Protection (serves as Chairman)

Member:
National Coalition to Protect Our Pets
Honorary Committee and the Special Council on Sustainable Development, Global Tomorrow Coalition, Washington, D.C.

Advisor:
Editorial Advisory Board, E Magazine, Westport, Connecticut
Animal Rights International, New York, New York

Mr. Irwin requested review and approval by the committee of his affiliation with a number of other organizations. On motion by

Mr. Gardiner, seconded and carried, approval was given to Mr. Irwin's continuing participation in the following:

Director:
The American Bible Society
The Wilhelm Scholê, Houston, Texas
World Society for the Protection of Animals, London, England
Theodore Roosevelt National Bank, Washington, D.C.

Planning and Policy Committee — Mr. Lydman reviewed discussions of the September 13-14 meeting of the Planning and Policy Committee, which related primarily to broadening the Society's constituency and program activities to involve organizations in the environmental movement and their including animals in their concern.

On motion by Mr. Lydman, seconded and carried, the Executive Committee approved a proposal for an annual alternatives award to recognize an individual or institution that has made a special contribution, through active work in the laboratory, to the development and validation of alternatives to animal use in research or testing.

It was the consensus that the text of a policy statement on "Humane Sustainable Agriculture" and proposed revisions of the current policy statements on "Animals in Biomedical Research and Testing" and "Fur Trapping and Ranching" will be mailed to members of the Board of Directors prior to their meeting on October 29, 1989, for final action.

Following a recess for lunch, a representative from the company which has obtained directors liability insurance for HSUS met with the Committee to review provisions of the coverage purchased. A written synopsis of coverage and exclusions that may or may not apply will be provided to directors.

President's Report — Mr. Hoyt reported he had received a letter from the president of the Boehm Company expressing a desire to give both Mr. Hoyt and Mr. Irwin a replica of the James Herriot Award. On motion by Mr. Gardiner, seconded and carried, approval was given for Mr. Hoyt and Mr. Irwin to accept these personal gifts from Boehm.

Mr. Hoyt reviewed the history of development of a system for moving small animals through ritual slaughter to eliminate their being shackled and hoisted and his efforts to secure endorsement by rabbinical authorities of such a conveyor system

that is operational at a plant in New York state. His editorial in the last issue of the HSUS magazine urging their formal endorsement, he said, is now being viewed as anti-Semitic. There was discussion regarding whether efforts should continue to secure endorsement of this equipment or whether another approach should be taken. It was the consensus to wait to see what formal response is made during the next few months.

Treasurer's Report — Mr. Irwin stated that revenues for the first six months of 1989 have been $6.2 million, total expenditures were $4.9 million, with an excess of revenue over expenditures of $1.25 million. An excess of income over expense is also anticipated at the end of the third quarter.

A history of revenue from 1979 through 1988 prepared by Mr. Huntt was reviewed, showing the significant growth in revenue, membership and assets. It is expected that the constituency will be well over a million people by the first of the year.

Mr. Irwin reported a budget for 1990 projecting $12.4 million in revenue and expenditures of $12.3 million was approved by the budget committee for recommendation to the Executive Committee and adoption by the Board of Directors. It was the sense of the meeting this proposed budget be recommended to the Board for approval at the next meeting in Houston.

There was discussion of the feasibility of sponsorship by HSUS of a trip by animal-protection technical people and interested members to the Soviet Union to give support and technical advice to developing groups in that country. It was the consensus that further study will be given to the proposal.

Prospective Staff Changes — Mr. Hoyt said that consideration is being given to Roger Kindler, Associate General Counsel, becoming HSUS Vice President and General Counsel effective January 1, 1990. Mr. Madden would continue with a title of "Senior Counsel," "Of Counsel," or "Special Counsel" and Vice President status. Another major change will take place with retirement by Vice President Patrick Parkes in July 1990. Dr. Randall Lockwood is being considered to assume administration of the regional office and investigations program as well as to continue development of the higher education program.

Mr. Hoyt stated that recommendations on both changes will be presented to the Board of Directors for action in October.

Proposed Affiliate

Mr. Hoyt suggested that HSUS influence could be enhanced by entering into an affiliate status at a few very key levels, such as the current relationship of HSUS with the Center for Respect of Life and Environment. The Interfaith Council for the Protection of Animals and Nature, under the direction of Lew Regenstein, is a potential candidate for such an affiliate status. Mr. Hoyt said he had been invited to write the foreword for a book authored by Mr. Regenstein. He said there is also the possibility of an affiliate relationship occurring with the new organization being put together by Mr. David Wills, former Michigan Humane Society executive director, and Mr. Sorock, former chairman of the board of the Michigan Humane Society. It was the consensus that the potential for a one-year "trial" affiliation with the Interfaith Council should be given consideration at the meeting of the Board of Directors in October.

Center for Respect of Life and the Environment (CRLE)

A recommended Memorandum of Understanding between the HSUS and CRLE will be presented at a meeting of the Center's Board on September 16 and a meeting of CRLE advisors is scheduled to be held on October 1, Mr. Hoyt said. A new associate director of the Center will begin work on October 1 and will seek to bring greater visibility and fundraising potential to CRLE. A revised brochure and other materials will be available for the next meeting of the HSUS Board.

Future Meetings

The following meetings were announced:

Board of Directors, October 29, 1989,
Westin Galleria, Houston, Texas
Directors and Senior Staff, May 3-4, 1990,
Airlie House, Airlie, Virginia
Board of Directors, May 5, 1990,
Washington, D.C. (hotel to be selected)

Adjournment

There being no further business, the meeting adjourned at 4:35 p.m.

Marcia Glaser, Assistant Secretary

The Humane Society of the United States
Meeting of the Board of Directors
Phoenix, Arizona
October 17, 1987

The regular annual organization meeting of the Board of Directors of The Humane Society of the United States was held on Saturday, October 17, 1987, at the Adams Hilton Hotel, Phoenix, Arizona.

Directors Present — Coleman Burke, Samuel Bowman, Dr. Carol Browning, Harold Gardiner, Alice Garey, Gisela Hunnicutt, John Kelly, Dr. Amy Freeman Lee, Jack Lydman, Virginia (Pat) Lynch, Susan Pepperdine, O. J. Ramsey, Marilyn Seyler, Robert B. Sorock, K. William Wiseman

Directors Absent — Irene Evans, Regina B. Frankenberg, Paul Heneks, William Kerber, John W. Mettler III, Brook Speidel, Robert F. Welborn

Others Present — John A. Hoyt, Paul G. Irwin, Patricia Forkan, Murdaugh Stuart Madden, Patrick B. Parkes

The meeting was called to order at 9:18 a.m. by Coleman Burke.

Appointment of New Chairman — On motion, seconded and carried, Coleman Burke was declared Chairman Emeritus, unanimously and by acclaim. Mr. Burke was commended for his twenty years of leadership. On motion, seconded and carried, K. William Wiseman was elected Chairman. Mr. Wiseman then assumed the Chair.

Election of Officers — On separate motions, each seconded and carried, the following officers of The Humane Society of the United States were elected: K. William Wiseman, Chairman of the Board; O. J. Ramsey, Vice Chairman; Dr. Amy Freeman Lee, Secretary; John A. Hoyt, President; Paul G. Irwin, Executive Vice President and Treasurer; Patrick B. Parkes, Assistant Secretary and Assistant Treasurer; Marcia Glaser, Assistant Secretary; Samuel Trevino, Assistant Treasurer.

On motion, seconded and carried, the following officers of the National Humane Education Center were elected: John A. Hoyt, President; Murdaugh Stuart Madden, Vice President; Patrick B. Parkes, Secretary; Paul G. Irwin, Treasurer; R. Dale Hylton, Assistant Vice President.

On motion, seconded and carried, the following officers of the National Association for the Advancement of Humane Education were elected: John A. Hoyt, Chairman of the Board and President; Murdaugh Stuart Madden, Vice President; Patrick B. Parkes, Secretary; Paul G. Irwin, Treasurer.

On motion, seconded and carried, the following officers of the Center for the Respect of Life and Environment were elected: Robert F. Welborn, Chairman; K. William Wiseman, Vice-Chairman; John A. Hoyt, President; Paul G. Irwin, Secretary-Treasurer.

On motion, seconded and carried, officers of state branch subsidiary corporations were elected as follows: John A. Hoyt, President; Murdaugh Stuart Madden, Vice President; Patrick B. Parkes, Secretary-Treasurer.

Resignations

Mrs. Cherie Mason has expressed her regret that due to her involvement at the state level, she is unable to continue as a member of the board. Everett Smith, Jr. also submitted his resignation, with regrets. On motion, seconded and carried, the resignations were accepted. Letters of appreciation will be sent to Mrs. Mason and Mr. Smith on behalf of the board.

Election of Directors

Mr. Hoyt proposed as a candidate for election to the board Jane Goodall, naturalist and activist on behalf of chimpanzees used in research and other activities. On motion by Dr. Amy Freeman Lee, seconded and carried, Jane Goodall was elected to fill the remaining year in the term of Everett Smith.

Viola Weber of McLean, Virginia was proposed as a candidate for election to the board in recognition of her efforts in the protection of mourning doves. On motion, seconded and carried, Mrs. Weber was elected to fill the term vacated by Cherie Mason.

Nominating Committee

On motion, seconded and carried, Ms. Bette Bronson of St.Charles, Missouri and Ms. Linda Ford of Knoxville, Tennessee were elected from the membership to serve on this committee. Other at-large members having been elected at the Annual Membership Meeting were Mr. Warren Brodrick of Santa Clara, California and Ms. Wanda Nash of Marshall, Michigan.

Motion was made and seconded to elect directors Dr. Amy Freeman Lee (Chair) and Mr. Harold Gardiner to represent the Board of Directors on the Nominating Committee. Another motion was made and seconded to elect an alternate slate of directors, Dr. Carol Browning (Chair) and Ms. Susan Pepperdine, to this committee. After discussion and voting, the election of Dr. Amy Freeman Lee (Chair) and Mr. Harold Gardiner carried with a majority of eight to five.

Corporate Resolutions

Following separate reading and discussion, on motion, seconded and carried, resolutions attached to these minutes, relating to signatures required for executing releases, signing deeds, transferring stocks, and other corporate business, were adopted.

Other Business

There was discussion of the oversight of fiscal procedures by the auditors, how the Nominating Committee functions, and the criteria by which its nominees are evaluated. Further discussion involved criteria used for board selection, the need for directors to suggest and recommend appropriate nominees, the advisability of a personal meeting with candidates for the board, and the proper roles of a member of The HSUS board of directors.

Adjournment

There being no further business, the meeting adjourned at 11:06 a.m.

Respectfully submitted,

Susan Schultz
Secretary Pro Tem

CORPORATE RESOLUTIONS
(Adopted 10/17/87)
Phoenix, Arizona

It is hereby resolved that William Wiseman, Chairman of the Board of Directors; John A. Hoyt, President; Paul G. Irwin, Executive Vice President and Treasurer; Patrick B. Parkes, Vice President/Field Services, Assistant Secretary, and Assistant Treasurer; Murdaugh Stuart Madden, Vice President/General Counsel; and Sam Trevino, Assistant Treasurer, or any one of them, is authorized to sign the necessary receipts and releases for gifts and bequests.

It is hereby resolved that William Wiseman, Chairman of the Board of Directors; John A. Hoyt, President; Paul G. Irwin, Executive Vice President and Treasurer; Patrick B. Parkes, Vice President/Field Services, Assistant Secretary, and Assistant Treasurer; Murdaugh Stuart Madden, Vice President/General Counsel, or any one of them, is authorized to execute on behalf of The Humane Society of the United States any and all deeds, quit claims or other instrument or document which might be required in connection with the acquisition or transfer of real or personal property which is to be or has been received by The Humane Society of the United States by way of gift, bequest, or other interest in an estate or trust, PROVIDED, HOWEVER, that in the event said transaction involves the assumption of any obligation or indebtedness on the part of The Humane Society of the United States (other than the standard, routine covenants and/or warranties), the signatures of two of them shall be required.

It is hereby resolved that any two of the following officers, to wit: President, Secretary, Treasurer, Assistant Secretary, and Assistant Treasurer shall have the joint authority to execute, under seal, such form of transfer and assignment as may be necessary or customary to constitute a regular transfer of any stocks or other registered securities standing in the name of the Society. They may from time to time execute and deliver on behalf of the Society proxies on any and all stock owned by the Society.

It is hereby resolved that any two of the following officers, to wit: President, Treasurer, Assistant Treasurer, and Vice President/General Counsel of this Corporation be, and they hereby are, fully authorized and empowered to buy, hold and sell certificates of deposit; open savings accounts wherever and whenever deemed necessary and in connection therewith to make deposits, withdrawals, and close said accounts.

It is hereby resolved by the Board of Directors of The Humane Society of the United States that any two of the following officers of The HSUS: Chairman of the Board, President, Treasurer, and the General Counsel, are hereby authorized to borrow money and obtain credit for The HSUS upon any terms, and may make and deliver, in connection therewith, notes, agreements, and any other obligations of The HSUS, in form satisfactory to the lending institution; and they are further authorized to execute and deliver any and all other instruments which may be required by the lending institution in connection with any of the foregoing matters, and affix thereto the seal of The HSUS, except that amounts beyond $250,000.00 must have the authorization of the Executive Committee of the Board of Directors.

Loans over
$250,000
have the resolution
apply.

AUDIT

RESOLUTION ESTABLISHING OVERSIGHT COMMITTEE

BE IT RESOLVED, that the Board of Directors of HSUS does hereby establish pursuant to Section 2 of Article VII of the By-Laws a special committee (the "Oversight Committee"), whose members shall be Susan Pepperdine, Robert B. Sorock and John W. Mettler, and does further delegate to the Oversight Committee full power and authority: (A) to investigate, for the period from January 1, 1980 to the date of the final report of the Oversight Committee, (1) any potential or actual conflicts of interest of any director; (2) the compensation, benefits, receipts, any potential or actual conflicts of interest and the terms and conditions of employment of the President, the Executive Vice President and any other officer or employee, (3) any relationships between donors having contributed $1,000 or more in their lifetime to HSUS and any director, officer or employee of HSUS, (4) any relationships between vendors having received $1,000 or more since January 1, 1980 from HSUS, its subsidiaries and trusts, funds or other entities which HSUS controls directly or indirectly, (5) the expenditure of funds donated by or at the request or through the influence of HSUS, and (6) the reporting of financial information to the Board of Directors, including both receipts and expenditures, for all corporations, trusts, funds or other entities which HSUS controls directly or indirectly; (B) to engage a "big eight" firm of certified public accountants, or other nationally prominent firm if a "big eight" is not available, to perform an audit and examination and report to the Board of Directors; (C) to obligate up to $100,000 of the funds of HSUS as and for the expenses of the investigation, audit and examination, in addition to the time and internal expense of HSUS staff directed to assist by the Oversight Committee; and (D) to do any and all other acts necessary to make a full report to the Board of Directors on the management of the financial affairs of HSUS, with recommendations for such action, if any, as may be appropriate;

FURTHER RESOLVED, that the Oversight Committee is directed to consult with and seek the advice of Murdaught Stuart Madden, General Counsel, and Silverstein and Mullens, counsel to certain individual directors, and that the final opinions and advice of counsel shall be included in the report of the Oversight Committee to the Board of Directors; and

FURTHER RESOLVED, that the Oversight Committee shall report to the Board of Directors in writing by March 31, 1988, so that the directors may have adequate opportunity to consider the report in advance of their April, 1988 meeting.

October 16, following the annual conference, at the Hyatt Regency Crystal City, Arlington, Virginia. This will make it possible for staff to be present to speak to programs as well as provide additional time for the many items to be considered.

There being no further business, the meeting adjourned at 4:45 p.m.

Marcia Glaser
Assistant Secretary

MINUTES
HSUS COMPENSATION COMMITTEE
at HSUS Hq WashnDC Mon 9 Jan 89

(as taken by Susan Pepperdine, with closing minutes by Hal Gardiner)

Present: Robert Sorock, chrmn, K Wm Wiseman, Marilyn Seyler, Susan Pepperdine, Hal Gardiner, with intermittent participation by John Hoyt

Meeting called to order 9:10am.

Minutes of Sep 7 88 meeting were approved

Motions:

Hal Gardiner moved that the committee contact attorney Jake Stein for his advice as to which qualified attorney we might choose to help review for the Committee, the employment contracts which had been created by attorneys for Mr Hoyt and Mr Irwin, and which are now before the Committee. Motion was to convey further to Mr Stein the concern of the Committee that the attorney chosen would need the full confidence of the Board, no matter whether the individual selected might be Mr. Stein himself, someone from Mr Stein's firm, Stein, Mitchell & Menzines, or an attorney outside his firm. Motion approved.

Marilyn Seyler moved that Mr. Hoyt's imputed monthly rent of the Seneca Road property be revised to $1550, based on average of suggested figures received from two competent outside consultants: (Havey Company & Deloitte, Haskins & Sells). Motion approved.

The Committee stated for the record it would be receptive to sale of the Germantown House at appropriate time, also to compensating Mr Hoyt for the difference, through additional salary.

An estimate of $35,331.54 in proposed repairs, renovation and maintenance of the Germantown house was considered by the Committee. Pending future disposition of the house, the proposal will be considered further.

Based on the investigation into situation of the daily work of the HSUS General Counsel, it was determined that Mr. Madden conducts only a small amount of personal business on HSUS premises and during business hours. As detailed in the report on these matters received from Mr. Madden, he utilizes his own office furniture, telephone and stationery.

Mr. Madden's report also points out these same personal operating arrangements represent a further genuinely beneficial interest to HSUS in that they convey the impression to several certain outside individuals and organizations with which HSUS is frequently involved, that Mr. Madden is an outside consultant to HSUS.

Since if he were to pay a small amount of rent, it would be offset by the value of equipment Mr. Madden is providing, the Committee recommended leaving the matter as it has existed up 'til this time.

Mr. Hoyt joined the Committee for intensive discussion of the house he occupies on Seneca Road, now owned by HSUS.

Mr. Hoyt said he would not be unhappy if the Committee declared the HSUS will be out of the business of owning homes such as his. He is agreeable to vacating those premises either by Dec 31, 1989, or Dec 31, 1990, or whichever other dates might conform to the feelings of the Committee.

As the discussion began, the Committee first decided to recommend to the Board that Mr. Hoyt will vacate the Germantown house with a target date of Jan 1, 1990. This would give Mr. Hoyt a year to make an intelligent decision about his future place of residence. Further that a commensurate increase in Mr. Hoyt's salary will offset $6000 per year for 3 years ('87, '88. '89) and thus bring his salary up by $18,000.

Further discussion ensued concerning the expenditure of $35,000 which Mr. Hoyt feels is urgently needed for maintenance of the house. It was felt by some Committee members that we might recommend to the Board that these dollars be expended now, based on the following rationale:

1. HSUS owns the house. It demonstrably needs mainenance. An amount has been presented. The priorities of spending the money on the various maintenance items needs to be determined. These will be supported by an on-the-spot examination of the premises (planned to be made by Committee members Wed afternoon Feb 8, prior to Exec Committee meeting).

2. Needed improvements and renovations of the house made now, in the manner of preventive maintenance, will materially enhance resistance of its structure to deterioriation and weather, as well as improve its appearance and hopefully its future salability when the time comes for HSUS put it on the market.

3. Mr. Hoyt will obtain a second estimate from qualified tradesmen regarding the work which he feels should be done.

4. The house was purchased from Mr. Hoyt by HSUS for $310,000. Two appraisals were presented to the Committee, the consensus of both seeming to conjecture that present value of the house is around $390,000.

5. Should Mr. and Mrs. Hoyt contemplate residing in these premises for the next two or three years, the proposed improvements will enhance their living environment and provide surroundings of discernment and style, appropriate to the home of the principal executive of the leading organization in its field.

6. Through discussion by the Committee a tentative projection of an additional $2000 expense for annual summer season yard maintenance by outside parties was agreed on as a further recommendation to the Board. This expenditure will provide professional appearance and regular attention to lawns, shrubs, trees and surroundings.

left for airport

With departure of Ms Pepperdine, Mr. Sorock and Ms Seyler, in the manner of a de facto adjournment, the Committee meeting continued until 6:30pm with Mr. Hoyt, Mr. Gardiner and Mr. Wiseman involved in fevered, page-by-page scrutiny & discussion of each of the Committee's reactions to the proposed Employment Agreements. The meeting thereupon moved to dinner at Luigi's until 9pm where intense conversation continued concerning Mr. Hoyt's future tenure on Seneca Road and aspects of proposed repairs thereto.

BOARD OF DIRECTORS

Summary of Deloitte Haskins & Sells Observation(s) and Recommendation(s):

DH&S notes that the Board has a fiduciary responsibility to protect the interests of the public and is responsible to creditors for actions of the Society but does not have a policy requiring Board approval for unusual or in excess of certain dollar amounts. They also note that the Board appointed an audit committee. They also recommend that the Society establish a limit on the dollar amount and type of transaction that management is authorized to transact and that Board approval of transactions outside the established limits be documented in the Board minutes. They conclude by recommending a list of duties for the audit committee as exerpted from the Treadway Commission.

Managements Response

It is well that the Board realize its responsibilities to the public and creditors of the Society. It is also good that the Board have guidelines governing the powers of management. The question becomes "what is good management and what is interference". It is not good management to take away all of the decision making power from management nor is it wise to give management unlimited power. Management is hired by the Board to conduct the day to day activities of the Society and the Board must provide guidelines as to the latitude the Board wants management to have over the resourses of the Society.

The Board should consider the recommendations of DH&S regarding the duties of the audit committee in consideration of the time members are willing to give and what the Board expects the committee to accomplish.

Hoyt house

wh. if John died?
incompac.?
quit job?

HSNS out 210,000

100,000 loan - tax deduction

John get loan

educ, inst + church
on campus com. salary

anything over $250,000

CONFIDENTIAL

The Humane Society of the United States
Meeting of the Compensation Committee
Washington, D.C.
September 7, 1988

Present: Robert B. Sorock, Marilyn Seyler, Hal Gardiner, Bill Wiseman, Susan Pepperdine (Mr. Hoyt was included in portions of the meeting not dealing with his personal compensation.)

Chairman Bob Sorock called the meeting to order at 9:40 a.m.

The committee reviewed the 1981 job evaluation survey conducted by Walter Larke Sorg Associates.

The committee recommended that the president work with competent outside personnel consultants and legal advisors regarding establishment of job descriptions and written annual performance reviews separate from salary reviews. Based on the outcome of this consultation, the 1981 job evaluation survey may need to be reviewed with supervisors and updated as needed.

The committee reviewed the compensation figures for the senior staff.

The committee requested that Mr. Hoyt obtain full information from Mr. Madden on any personal legal business he conducts and the amount of HSUS resources required to perform that business.

The committee recommended that Mr. Hoyt and Mr. Irwin have their personal attorneys draw up proposed employment contracts by December 31, 1988, which will then be negotiated by the Compensation Commitee with review by outside counsel before the April 1989 board meeting. Mr. Hoyt's contract will include a lease agreement with adequate provision for disposition of the house. These agreements will then be presented for approval by the board at the April meeting.

The committee agreed to investigate whether to sell the Germantown house and buy a more appropriate house or whether to sell the house and provide Mr. Hoyt a method for purchasing his own residence.

The committee agreed to consult with Thomas Havey & Co. and Deloitte Haskins and Sells concerning the appropriate rental value of the Germantown house.

The committee approved that pension reserves for all staff be based on the amounts reported on the W-2, effective on 1988 salaries.

The committee agreed with Mr. Hoyt's recommendation to increase Mr. Irwin's salary by $5,000 in 1988 retroactive to January 1 and continuing into 1989, and that he also receive a $5,000 bonus this year, in appreciation of his outstanding work during the year.

The committee agreed to set a tentative meeting date of January 9, 1989.

The meeting was adjourned at 1:50 p.m.

Susan Pepperdine

Susan Pepperdine

The Humane Society of the United States
Annual Organization Meeting of the Board of Directors
Westin Galleria Hotel
Houston, Texas
Sunday, October 29, 1989

Agenda

9:30 a.m.	Call to Order	K. William Wiseman
	Introduction of New Directors - Leslie R. Inglis - John E. Taft	
9:40 a.m.	Approval of Minutes of Meeting of Board of Directors, April 13-14, 1989	
9:45 a.m.	Approval of Policy Statements	
10:15 a.m.	Staff Reports	
11:00 a.m.	Center for Respect of Life and Environment	
11:15 a.m.	Review of Annual Conference - Future Conferences	
12:00 noon	Recess for Lunch	
1:00 p.m.	President's Report	
1:45 p.m.	Treasurer's Report - Review and Adoption of 1990 Budget	
2:15 p.m.	Compensation Committee Report	
2:30 p.m.	Other Committee Reports	
3:00 p.m.	Election of Officers - The Humane Society of the United States - National Humane Education Center - National Association for Humane and Environmental Education	
	Election of Officers of Branches	
	Election of Directors and Members to the Nominating Committee	
	Election of HSUS Members	

Adoption of Corporate Resolutions

Appointments to Committees

3:15 p.m. Other Business

4:00 p.m. Adjournment

Future Meetings

Executive Committee	Date Not Determined
Directors and Senior Staff	May 3-4, 1990
Board of Directors	May 5, 1990

The Humane Society of the United States
Mid-Year Meeting of the Board of Directors
Washington, D.C.
April 20-21, 1988

The regular mid-year meeting of the Board of Directors of The Humane Society of the United States was held on April 20-21, 1988, at the headquarters offices of the Society, 2100 L Street, N.W., Washington, D.C.

Directors Present K. William Wiseman (presiding), Samuel Bowman, Coleman Burke, Harold Gardiner, Alice Garey, Paul Heneks, Gisela Hunnicutt, William Kerber, Amy Freeman Lee, Jack Lydman, John Mettler, Susan Pepperdine, O.J. Ramsey, Robert Sorock, Brook Speidel, Viola Weber

Directors Absent Carol Browning, Irene Evans, Regina Bauer Frankenberg, Jane Goodall, John Kelly, Virginia Lynch, Marilyn G. Seyler, Robert F. Welborn

Others Present John A. Hoyt, Paul G. Irwin, Samuel Evans, Murdaugh Stuart Madden, Theodore Sonde, Bardyl Tirana

The meeting was called to order at 10:00 a.m. on Wednesday, April 20, 1988. The minutes of that session are the official transcript provided by Marilyn Feldman, of Friedli, Wolff & Pastore, official court reporters. This transcript contains only a record of the motions made during the proceedings:

Mr. Mettler: I would like to move that Ms. Harmon be allowed to remain in this meeting as a representative of the Audit Committee. Her report is preliminary and she will be able to complete her report in full at a later date.

Ms. Speidel: Second it.

Chairman Wiseman: All those in favor of this motion? Four, I see. All those opposed? 1, 2, 3, 4, 5, 6, 10, I believe. Thank you. The motion is not endorsed.

Ms. Speidel: I just wanted to make sure the pro and con names would be taken down for future reference when the votes come. Is that possible?

Chairman Wiseman: By all means. Mr. Burke, Dr. Lee, Viola Weber, Paul Heneks, Joe Ramsey, Alice Garey, Jack Lydman, Bob Sorock, Harold H. Gardiner, William Kerber.

So Ms. Harmon, we will be in touch, I imagine, after lunch.

(Off the record at 10:15 a.m.)

Chairman Wiseman: The approval of the minutes of the special meeting of the Board held on December 12, 1987 was moved by Mr. Joe Ramsey and seconded by Mr. John Mettler. All those in favor of the approval of the minutes? Unanimously.

(Off the record.)

Dr. Lee: I would like to state on the record, Mr. Chairman, that I support your comments 100 percent. I'm appalled by the language. I want it also to be known that I resent in an absolutely consummate manner the reference made regarding the donation to my Chair. While my financial status is not anybody's business, thanks to my late grandmother, Mrs. Freeman, I'm in a position not to take money but to give it. I'm also appalled that in my absence this came up. I find that they lack courage to face me. I didn't ride up here 1600 miles for nothing. I'm here. Anybody that has anything to say to me, I'm here.

(Off the record.) (Lunch recess taken from 12:30 to 1:30 p.m.)

This changed 2-1 votes "against" to 3-2 votes "for"

Chairman Wiseman: I would entertain a motion that we create such a committee to handle this matter to report back to us as soon as they can and I would nominate Mr. Joe Ramsey as its chairman and Mr. Hal Gardiner and the three members of the Audit Committee in order to provide continuity. This Select Committee would supersede the Audit Committee. (Mettler, Sorock, Pepperdine)

Mr. Lydman: I shall move the resolution.

Dr. Lee: I second.

(Off the record.)

Chairman Wiseman: We have a motion before us. All those in favor of this proposal, the motion which is on the table, please say aye. This is to vote in favor of Jack Lydman's motion that we have a special committee. Nine. All those opposed?

Mr. Bowman: I abstain.

Ms. Pepperdine: I will also abstain.

Mr. Mettler: I will abstain.

Ms. Hunnicutt: I abstain also. I have to talk to my attorney.

Chairman Wiseman: We have four abstain and one oppose.

(Off the record.)

Chairman Wiseman: We have in our midst Ms. Harmon, who is the author of the report we have been discussing all day, and she is here to answer questions about her report that members of the Board may have.

(Off the record.)

(Proceedings recessed at 5:05 p.m. to continue Thursday, April 21, 1988.)

The meeting was called to order at 9:47 a.m., on Thursday, April 21, with Mr. Wiseman presiding. Ms. Susan Schultz acted as secretary pro tem.

Committee on Committees — Mr. Ramsey presented his report, followed by discussion on the structuring of committees.

Treasurer's Report — Mr. Irwin reviewed The HSUS Revenue and Financial Statement for the period of January 1-March 31, 1988. After discussion, the report was accepted.

Vote on Motion on Special Committee — At Mr. Kerber's request, the assembly was asked that he be allowed to change his vote that was recorded yesterday. There was no dissent among the members.

President's Report — Prior to his report, Mr. Hoyt extended a special thanks to the HSUS staff, and Paul Irwin in particular, for their extra labors during his absence.

Due to the excessive heat in the fifth floor conference room, it was decided that the possibility of adding an auxiliary air conditioning unit would be explored.

Following discussion about the garden and Mr. Kerber's request that the bricks be repaired, Mr. Hoyt indicated they would be.

Mr. Hoyt announced that the fifth floor conference room has been named the Coleman Burke Conference Room, as a tribute to Mr. Burke's long dedication and service to The HSUS.

During his report, Mr. Hoyt covered the upcoming HSUS Staff Retreat, the 1988 Annual Conference, the WSPA/HSUS Relationship and Programs, as well as coalition activities of ProPets and Animal Rights International. "Animal Justice/Political Reality" will be the theme of the 1988 Annual Conference, to be held October 12, 13, 14, and 15 in Washington, D.C. Jane Goodall will be the recipient of the Krutch Medal; Betty White will be the recipient of the Herriot Award.

Staff Reports

Dr. Grandy reported on the activities of the Wildlife and Environment Division, including "nuisance" wildlife and deer management conferences sponsored by The HSUS, and increased activity of the Captive Wildlife Department. Recent victories include the ruling that The HSUS does have standing to sue in the National Wildlife Refuge System suit; the decision to have humane shipments of wild birds and mammals put into effect, regulations which had been delayed six years--this decision the result of a suit against the Department of the Interior.

Patricia Forkan and Dr. Grandy reported on the upcoming fur campaign. Discussion followed concerning both the direction of the campaign and the manner in which it would be implemented. Mr. Hoyt indicated that relative to the fur campaign, we could anticipate expenditures of money not now budgeted. Following discussion, it was moved, seconded and carried that $100,000 be added to the budget for The HSUS Fur Campaign.

Mr. Parkes reported on activities of the regional offices, including the raid in Ellenville, New York, the enactment of a law regulating puppy mills in Kansas, and the halting of the introduction of dog racing in Missouri. Other activities included a dog fighting raid, investigation into horse racing and abuse of whipping. Following discussion about the size of The HSUS investigative staff, it was determined that the issue of expanding the investigative staff at the national level will be addressed at the next Program and Policy meeting.

In Phyllis Wright's absence, Mr. Parkes reported on the success of the "Be A Pal" campaign.

Ms. Forkan reported on major programs and activities of the Program and Communications Division, covering such issues as pound seizure, tuna porpoise, Draize and LD-50 testing.

Dr. Fox reported on the activities of the Farm Animal/Bioethics Department, including tracking the research of genetic

animals, and linking with the organic farm movement to develop recommended humane guidelines for raising dairy animals.

Mr. Madden reported on the activities of the Legal Department, and the fact that the "Sam the Chimp" case in Ohio had been resolved.

Miscellaneous Business — It was decided that the next meeting of the Board of Directors would be held the first week in August, and that it would take the place of the regular September Executive Committee meeting. A special effort will be made to present a preliminary budget at this meeting.

Adjournment — There being no further business, the meeting adjourned at 3:20 p.m.

Marcia Glaser
Assistant Secretary

(The above-referenced August meeting has been scheduled to be held on July 30-31, 1988.)

Finance Report — Mr. Irwin reported that for the first nine months of 1987, The HSUS realized an operating excess of $654,000.

1988 Budget — The proposed 1988 budget was presented by Mr. Irwin. Two changes relating to the MHS/HSUS merger were discussed, with the decision being reached to hold in the budget $250,000 allocated for the Center for the Advancement of Animal Protection to develop specific projects to submit for the Board's approval, including some previously contemplated with MHS. Following discussion, on motion, seconded and carried, a proposed budget in the amount of $9,449,377 was approved for fiscal year 1988.

President's Report
John A. Hoyt

ProPets Coalition — It was agreed that HSUS would continue participating in the ProPets Coalition for the coming year.

Council for Livestock Protection — The new conveyor system for animals in Kosher slaughter is not yet finalized. The delay is due in some measure to the personal problem of the Council's executive director whose removal will be suggested when Mr. Hoyt meets with the Council's board of directors on his return from Europe. The conveyor system itself, however, is completed and in operation at Utica Veal, Utica, New York. When two shortcomings in the system are corrected, it is hoped that the joint statement of acceptance by the Rabbinical Council and the Synagogue Council of America will be issued.

WSPA International Fur Campaign — The HSUS has joined with WSPA in a major effort attacking the wearing of furs, both trapped and ranch-raised. Patricia Forkan will serve as chairman of the WSPA anti-fur campaign. We will participate in that campaign under the guidance of WSPA.

Living With Animals — The HSUS will no longer continue as sole underwriter of "Living With Animals." As approved in the 1988 budget, funding of "Living With Animals" will be reduced from $220,000 to $100,000. Other potential sponsors of the series must be approved by The HSUS.

Jennifer Graham Lawsuit — Mr. Ramsey reported on a major lawsuit he has undertaken on behalf of The HSUS challenging the requirement that high school students must dissect animals. Mr. Ramsey commended Roger Kindler for his efforts in the suit. Support for the HSUS position has been received from both scientists and theologians.

Executive Vice President/Treasurer
Paul G. Irwin

Membership — A mailing in excess of 8 million pieces will be sent at Christmas. We are expanding our advertising campaign to include major publications such as Reader's Digest. The constituency is currently 681,411, including 67,403 new members since reported a year ago. The HSUS continues to experience significant growth.

Renewable Natural Resources Center — The HSUS office at the Center opened September 1, 1987, on schedule. It is hoped that at least part of the Board of Directors meeting to be held in April can be held at the site.

Other Items — An office condominium has been acquired in New Jersey for the Mid-Atlantic Regional Office. Two safaris are planned for 1988: one in March to be conducted by Dr. Grandy, the second in June by Mr. Irwin.

Staff Reports

Staff reports were incorporated in the Report of the President. Separate reports were presented by Patricia Forkan and Patty Finch and Bill DeRosa of NAAHE.

PAL Campaign — Safeway has agreed to put the "Be A Pal" slogan and coupon on all its shopping bags during the month of April.

National Association for the Advancement of Humane Education — The October 14 symposium was well received, with registration exceeding 170. Participation in the joint program with the General Federation of Women's Clubs continues to increase. Holt, Rinehart, and Winston publishing company has approached NAAHE concerning a new biology textbook in which they want to include alternatives to dissection. Congratulations were extended NAAHE for the fine work being done.

Other Business

Auditor

On motion, seconded and carried, Thomas Havey & Company is retained as auditor for the forthcoming fiscal year.

Consultant

On motion, seconded and carried, Rear Admiral James C. Shaw (Ret.) was continued as a consultant for the forthcoming fiscal year.

1988 Krutch Medalist

On motion, seconded and carried, the recommendation of Jane Goodall as 1988 Joseph Wood Krutch Medalist was approved.

1988 Herriot Award Recipient

On motion, seconded and carried, the recommendation of Willard Scott as 1988 Herriot Award recipient was approved.

Statement of Principles and Beliefs

Because the staff has not had an opportunity to give attention to proposed revisions, the matter was deferred to the next Policy and Planning Committee meeting.

Future Meetings

The following meetings have been scheduled:

Policy and Planning	April 20, 21, 1988
Board of Directors	April 21, 22, 1988

Adjournment

There being no further business, the meeting adjourned at 4:42 p.m.

Respectfully submitted,

Susan Schultz
Secretary Pro Tem

Amended Minutes of HSUS Board of Directors Meeting
October 15, 1987, Phoenix, Arizona

Michigan Humane Society/HSUS Union

Insert after first #:

Amy Freeman Lee then denounced her peers, lecturing them on their misunderstanding of the proper role of trustees or directors. (Ms. Lee had not attended either of the two previous meetings concerning the proposed merger.)

President Hoyt then informed the Board that he was ashamed of them, was distressed and disheartened, and that the Board was out of line in questioning him about David Wills, since the By-laws gave him, as President, the sole authority in dealing with the staff and personnel. He suggested that if they didn't like the way he was doing things, they could do without him, and implied that several members of the staff would go with him. This attack was supported with enthusiasm by Paul Irwin.

Brook Speidel then stated that she was offended by the remarks of President Hoyt and Ms. Lee and that had been given legal advice that it was not only her right but her duty to raise the questions that had been brought up.

5/19/90

Dear Vince,

Here are the latest board meeting minutes from the session I was unable to attend. I thought you'd want to add them to the records since they show the same pattern is continuing.

Also, I checked my Harmon report copies and none have the missing page. Maybe we never had it — I don't recall it being mentioned.

Again, thank you for your efforts.

Regards,

Susan

RECEIVED
MAY 30 1990
VINCENT J. FULLER

The Humane Society of the United States
Meeting of the Board of Directors
Washington, D.C.
April 6-7, 1990

The regular mid-year meeting of the Board of Directors of The Humane Society of the United States was held on Friday and Saturday, April 6-7, 1990, at the Society's headquarters offices in Washington, D.C.

Directors Present K. William Wiseman (presiding), Harold Gardiner, Alice Garey, Gisela Hunnicutt, Leslie Inglis, Jack Lydman, Virginia Lynch, O.J. Ramsey, Marilyn Seyler, Robert Sorock, John Taft, Carroll Thrift, Robert Welborn, Marilyn Wilhelm

Directors Absent Coleman Burke, Carol Browning, Irene Evans, Regina Frankenberg, Jane Goodall, Paul Heneks, Amy Freeman Lee, Susan Pepperdine, Brook Speidel, Viola Weber

Others Present John A. Hoyt, Paul Irwin, Patricia Forkan, Roger Kindler, Dale Didion, Patty Finch, Michael Fox, John W. Grandy, Thomas Huntt, Randall Lockwood, Murdaugh Madden, Patrick Parkes, Phyllis Wright

The meeting was called to order at 9:30 a.m. On motion by Mr. Lydman, seconded and carried, minutes of the meeting of October 19, 1989 were approved as distributed.

Mr. Hoyt introduced Mr. Didion, who has been employed as vice president for government relations, and informed the directors that Mr. Arthur Keefe has been employed as the director of development.

Mr. Kindler and Dr. Lockwood were welcomed in their new capacity as vice presidents.

On motion by Mr. Welborn, seconded and carried unanimously, the board of directors expressed deep appreciation to Mr. Parkes and admiration for his 27 years of dedication to this organization and wished him well for the years ahead.

Planning and Policy Committee Report Mr. Lydman presented the report of the April 4-5, 1990 meeting of the committee.

It was the recommendation of the committee that text proposed to replace that of the present HSUS publication on animal rights be

approved. The text for a revised brochure stating the HSUS position on animal rights was approved on motion by Mr. Welborn, seconded and carried.

The committee recommended adoption of a series of resolutions generated by representatives of The HSUS, ASPCA and MSPCA to promote and guide individual and group efforts on behalf of animals. After approval of the statements by the respective boards of the organizations participating in this project, it would be the intention to invite endorsement of these statements by additional groups. It was recommended that the resolution on Non-Violence be the lead resolution. On motion by Mr. Inglis, seconded and carried, the proposed joint resolutions were adopted.

Following discussion, on motion by Mrs. Seyler, seconded and carried, it was determined that a campaign be conducted to promote cosmetic and personal-care products that have not been tested on animals, with every effort being made to ensure it is recognized that HSUS endorsement is for the product and not the participating company.

It was the recommendation of the committee that a campaign be developed against animal addiction research. On motion by Ms. Wilhelm, seconded and carried, the board endorsed the recommendation and approved preparation of a campaign against intentional animal drug addiction research, with a report to be made to the board by staff on developments.

A thorough discussion was held on the question of whether the HSUS should oppose or approve the wearing of fake fur as an alternative to the wearing of fur. It was the consensus of the meeting that while The HSUS should not actively promote fake fur, neither should we oppose this effort to provide an alternative to real fur.

President's Report

Mr. Hoyt recommended that the traditional HSUS annual conference be scheduled on a biennial basis at which time the annual meeting of HSUS members would also be held. A symposium would be scheduled as well as several workshops, followed by the annual membership meeting and a banquet. The purpose of this

change is to reduce the expense associated with annual conferences and, hopefully, to increase overall attendance by holding regional conferences. Two or three regions could combine to produce a joint regional conference during the spring months. The New England and Mid-Atlantic Regional Offices have proposed scheduling such a joint conference in May 1991. A commitment has been made to hold this first symposium/annual membership meeting in Washington, D.C., at the Embassy Row Hotel on October 11-13, 1991.

Plans for the program for the 1990 conference, to be held at the Holiday Inn Golden Gateway in San Francisco, California, on October 25-27 are going forward. Mr. Denis Hayes, cochairman of Earth Day 1990, will be the recipient of the Joseph Wood Krutch Medal. The recipient of the Herriot award has not been selected and it was the consensus that the president be given latitude to make the decision from among the candidates being considered.

Preparations for HSUS participation in observance of Earth Day 1990 are being completed. Mr. Hoyt will be a speaker on the steps of the Capitol and HSUS will have a tent on the Mall where materials from HSUS and the World Society for the Protection of Animals will be distributed to persons attending the rally. HSUS will also be a participant in and sponsor of the May 16-19 Caring for Creation inter-continental conference in conjunction with dedication of the Washington National Cathedral. The premiere issue of E Magazine carried a tribute to HSUS and an acknowledgment of financial support to enable its publication.

Mr. Hoyt reported he has been invited to be a member of the Board of Directors of Global Tomorrow Coalition. He has also become an advisor to the African Wildlife Foundation.

Executive Session — The chairman excused members of the staff while the Board met in executive session. Minutes of that session are appended.

Following a recess for lunch after the executive session, Mr. Hoyt resumed his report.

A "March for the Animals" will be held in Washington on June 10. The HSUS is planning to participate on a limited basis and has made a financial contribution in support of this event.

Staff Reports

Brief reports were received from senior staff on a wide variety of projects and campaigns being planned for future activities as well as those currently being carried out. No actions were taken.

The meeting was recessed at 4:15 p.m. in order to recognize the 20th anniversary of Mr. Hoyt's presidency of The HSUS. The meeting was reconvened at 9:30 a.m. on Saturday, April 7.

Directors Present: Mr. Wiseman (presiding), Mr. Gardiner, Ms. Garey, Ms. Hunnicutt, Mr. Inglis, Mr. Lydman, Mrs. Lynch, Mr. Ramsey, Mrs. Seyler, Mr. Taft, Mr. Thrift, Ms. Wilhelm

Others Present: Mr. Hoyt, Mr. Irwin, Mr. Kindler, Mr. Huntt

Indemnification Resolution: Mr. Kindler presented a proposed resolution addressing indemnification. There was a discussion with regard to including coverage of employees and agents in the resolution.

On motion by Mr. Inglis, seconded and carried, it was Resolved, that the Board of Directors of The Humane Society of the United States declares it advisable and accordingly resolves that the corporation, to the extent legally permissible, shall exercise its power to indemnify officers, directors, employees or agents in accordance with the provisions of Section 145 of the Delaware Corporation Law, and shall, to the extent legally permissible, exercise its power to advance expenses to officers, directors, employees or agents in accordance with the terms of Section 145(e) of the Delaware Corporation Law, specifically reserving to the Board of Directors the right to set terms and conditions for the advancement of such expenses to employees and agents of the corporation in accordance with said Section 145(e).

Wall Mural: The Board received a report from Mr. Hoyt and Mr. Kindler on feasibility of a mural on the west wall of the HSUS headquarters building. It was the consensus of the meeting not to pursue this project further due to the excessive cost of the proposed project.

On motion by Mr. Inglis, seconded and carried, it was moved that the higher education department make a recommendation to the

planning and policy committee on a proposal that a contest for artwork be conducted through art colleges and universities with all entries becoming the property of The HSUS.

Walter J. Klein Film Proposal — There was discussion of a proposal from the Walter J. Klein Company to produce a "World Animal and Environmental Quiz" for broadcast on cable TV. Ms. Candice Bergen has agreed to be the host for this film, which would be expected to have a commercial sponsor. It was the consensus that if it is possible for Ms. Bergen to do the film with a commercial sponsor, the Klein company be urged to seek funding, but it is not appropriate at this time to increase the HSUS budget to finance this film.

Confirmation of Vice Presidents — Mr. Hoyt reviewed service of Ms. Patty Finch as director of the National Association for Humane and Environmental Education and Mr. Thomas Huntt as HSUS controller. He also reviewed employment of Mr. Dale Didion as vice president for government relations and Mr. Jan Hartke as vice president for environment.

On motion by Mr. Ramsey, seconded and carried, the appointment as vice presidents by Mr. Hoyt of the following was confirmed: Ms. Patty Finch, vice president for youth education; Mr. Thomas J. Huntt, vice president and controller; Mr. Dale Didion, vice president for government relations; Mr. Jan Hartke, vice president for environment.

Treasurer's Report — Mr. Irwin reported that enough votes of members of the Renewable Natural Resources Foundation have been secured to permit HSUS to become a member. Membership in the Foundation will allow construction and ownership of office facilities by HSUS at the Center in Bethesda, Maryland.

The Treasurer's Report and audited financial statements for the fiscal year of 1989 were presented to directors present. A statement of revenue and expenditures for the three months ended March 31, 1990 was also distributed.

On motion, seconded and carried, the following resolutions were adopted to supersede existing authorizations:

It is hereby resolved that K. William Wiseman, Chairman of the Board of Directors; John A. Hoyt, President; Paul G. Irwin,

Executive Vice President and Treasurer; Roger A. Kindler, Vice President/General Counsel; Murdaugh Stuart Madden, Vice President/Senior Counsel; or any one of them, is authorized to execute on behalf of The Humane Society of the United States any and all deeds, quit claims or other instrument or document which might be required in connection with the acquisition or transfer of real or personal property which is to be or has been received by The Humane Society of the United States by way of gift, bequest, or other interest in an estate or trust, PROVIDED, HOWEVER, that in the event said transaction involves the assumption of any obligation or indebtedness on the part of The Humane Society of the United States (other than standard, routine covenants and/or warranties), the signatures of two of them shall be required.

It is hereby resolved that K. William Wiseman, Chairman of the Board of Directors; John A. Hoyt, President; Paul G. Irwin, Executive Vice President and Treasurer; Roger A. Kindler, Vice President/General Counsel; Murdaugh Stuart Madden, Vice President/Senior Counsel; Thomas J. Huntt, Vice President/ Controller; Samuel Trevino, Assistant Treasurer; or any one of them, is authorized to sign the necessary receipts and releases for gifts and bequests.

Audit Committee — Mr. Inglis reported a meeting was held with the auditor on April 5 and the audit report for 1989 was received by the committee. It was agreed the audit report be recommended to the board for acceptance. A copy of the report was distributed to directors present.

On recommendation of the committee, the firm of Thomas Havey & Company was selected as auditor for the year.

Legal, Bylaws & Ethics Committee — Mr. Ramsey presented the report of the committee on the proposed "Code of Conduct and Ethical Standards." On motion by Mr. Lydman, seconded and carried, and with the understanding that some changes in Section III will be presented for consideration by the Board in October, the "Code of Conduct and Ethical Standards for HSUS Directors, Officers and Staff" was adopted.

Mr. Ramsey reviewed proposed bylaw revisions. On motion by Mrs. Seyler, seconded and carried, the General Counsel was instructed to prepare appropriate resolutions to initiate amendment of certain provisions of the bylaws.

Mr. Ramsey reported that matters referred to the committee at the last meeting of the board relating to correspondence between Director Pepperdine and the Chairman of the Board had been considered and the committee recommended that none of the suggestions be adopted. On motion by Mr. Lydman, seconded and carried, the committee recommendation was approved.

Pension Trust Committee — Ms. Garey distributed to directors present copies of the booklet describing the HSUS pension program. She stated there is no action to propose and formal recommendations for changes will be made in writing on behalf of the committee when such amendments are necessary.

Investment Committee — No recommended action was proposed by the investment committee. A report on investments will be prepared and circulated to the entire board of directors prior to the next meeting in October.

Miscellaneous — On motion by Mrs. Seyler, seconded and carried, all persons having applied for membership since the last meeting were approved.

Mr. Irwin reported that the Full Disclosure Questionnaires requested of directors and officers are on file in the Treasurer's Office and that all members of the board are in compliance.

Meeting Dates — The following meeting dates were announced:

Planning and Policy Committee:	September 6-7
Audit Committee:	September 7
Budget Committee:	September 7
Executive Committee:	September 8
Board of Directors:	October 28

Adjournment — There being no further business, the meeting adjourned at 12:20 p.m.

Marcia Glaser, Assistant Secretary

Minutes
Executive Session
Board of Directors
April 6, 1990

At the request of the Chairman, members of the staff were excused from the meeting with the exception of the president John A. Hoyt; executive vice-president/treasurer Paul G. Irwin; vice-president/general counsel Roger Kindler; and controller Thomas Huntt. The chairman then called upon Robert Sorock, chairman of the Compensation Committee, to present the report of the committee.

Mr. Sorock reported that the committee had requested the president to prepare a proposal which would serve to provide employees of twenty years or more a benefit for continuing hospitalization/medical insurance coverage following retirement. The committee approved for recommendation to the Board of Directors "A Proposal for an Employee Severance Benefit" (copy attached) for employees retiring after age sixty (60) who have been employed by the Society for at least twenty (20) years. It was noted that this benefit did not restrict the use of the money for hospital/medical insurance costs, but noted that this benefit should be understood to fulfill any further obligation on the part of the Society to provide such coverage beyond an employee's retirement.

It was moved, seconded and unanimously approved to adopt and implement "A Proposal for an Employee Severance Benefit." The president was instructed to work out the details for putting the approved benefit program into operation with the assistance of other appropriate staff.

Mr. Sorock reported that the Salary Survey Study undertaken approximately one year ago had been completed and reviewed by the committee. While this study does not provide specific guidelines for individual salaries, it does provide an effective measurement for evaluating the relative equity and competitiveness of HSUS staff salaries when compared to other similar organizations. The committee also noted that this study provides the president a useful guide in helping to establish salaries for specific job categories.

The committee reviewed with the president the salaries of the senior staff and other employees receiving compensation in excess of $25,000 and expressed its satisfaction with the compensation currently being paid.

At the request of the chairman, Messrs. Hoyt, Irwin, Kindler and Huntt were excused from the meeting. Mr. Sorock reported to the Board that Mr. Hoyt had received no monetary increase in salary since 1986, the Seneca Road house having been provided as a rent-free residence for the president and his family since May of 1987. After considerable discussion, it was unanimously approved that Mr. Hoyt be granted a salary increase for 1990 retroactive to January 1, the amount of the increase having been communicated by chairman Wiseman to Mr. Huntt by memorandum dated April 10, 1990 and made a part of the permanent records of the meeting of the Board of Directors.

It was further the consensus of the meeting that Mr. Hoyt's salary be reviewed annually by the Compensation Committee and that the committee review other available salary surveys for executives holding positions comparable to that of Mr. Hoyt.

There being no further matters to report, the chairman thanked Mr. Sorock and other committee members for their work.

The resignation of Mr. Heneks from the board was accepted with regret and appreciation for his service. On motion, seconded and carried, Mr. John Kelly of West Bloomfield, Michigan, was elected to fill Mr. Heneks' term, which expires in October 1990.

A Proposal
for an
Employee Severance Benefit

The Board of Directors of The Humane Society of the United States, desiring to encourage the long-term employment of dedicated and conscientious employees, and wishing to express its appreciation for the devoted service of employees having served this organization faithfully and productively for a minimum of twenty years continuous employment, does hereby approve the following resolution:

1) Any person having been in the continuous employment of The Humane Society of the United States for a minimum of twenty (20) years; and having reached his or her sixtieth (60th) year of age; is hereby, upon formal retirement, entitled to an Employee Severance Benefit equal to two percent (2%) of the annual compensation being paid at age sixty (60) for each year of continuous employment. (Compensation is defined as the figure on which pension benefit is based at age sixty (60).)

2) Such benefit shall in no way affect or reduce any other compensation or other benefit to which the employee is already entitled, but shall be regarded as separate and distinct.

3) Such benefit shall be payable in full on the date of formal retirement after age sixty (60), but may, at the employee's option, be payable over a period not to exceed ten (10) years in equal annual amounts, the number of years being determined at the time the payment is initially due.

4) If an employee elects to have multiple annual payments, the Society shall purchase an annuity at the time of retirement, guaranteeing the balance of payments for the number of years elected. In the event of the employee's death prior to the term of the annuity, the balance shall be paid to his or her survivors for the years remaining under the annuity agreement.

5) It is intended that this Employee Severance Benefit shall assist the employee in providing for continuing health and hospitalization benefits beyond employment though no restrictions are placed on the purpose for which the employee chooses to use this benefit.

The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037
(202) 452-1100

December 8, 1989

OFFICERS

K. William Wiseman
Chairman of the Board

Coleman Burke, Esq.
Chairman Emeritus

O.J. Ramsey, Esq.
Vice Chairman

Dr. Amy Freeman Lee
Secretary

John A. Hoyt
President

Paul G. Irwin
Executive Vice President/ Treasurer

Patricia Forkan
Senior Vice President

Murdaugh Stuart Madden, Esq.
Vice President/General Counsel

Patrick B. Parkes
Vice President/Field Services

Dr. John W. Grandy
Vice President/Wildlife & Environment

Phyllis Wright
Vice President/Companion Animals

Dr. Michael W. Fox
Vice President/Farm Animals & Bioethics

DIRECTORS

Dr. Carol Browning
Coleman Burke, Esq.
Irene Evans
Regina Bauer Frankenberg
Harold H. Gardiner
Alice R. Garey
Dr. Jane Goodall
Paul Heneks
Gisela Hunnicutt
John Kelly
William Kerber
Dr. Amy Freeman Lee
Jack W. Lydman
Virginia Lynch
Susan Pepperdine
O.J. Ramsey, Esq.
Marilyn G. Seyler
Robert Sorock
Brook Speidel
Carroll Thrift
Viola Weber
Robert F. Welborn, Esq.
Marilyn Wilhelm
K. William Wiseman

HONORARY DIRECTORS

Aida Flemming
Virginia Milliken
Andrew Wyeth

Dear HSUS Director:

Enclosed are minutes, with attachments, of the annual organization meeting of the HSUS board of directors, held in Houston on October 29. Also enclosed are several additional documents relating to HSUS business.

For Directors who were not able to attend, I am forwarding a copy of the President's annual report to the membership, which includes senior staff reports.

If you have questions or comments about the "Code of Conduct and Ethical Standards," please send them to Dr. Lee, chairman of the Legal, Bylaws and Ethics Committee. Questions you might have after reading the booklet on "Directors and Officers Liability Loss Prevention..." should be directed either to Mr. Wiseman or Mr. Irwin.

You may wish to put some documents, such as the list of committee appointments, in other sections of your Board manual. If you would like to have additional copies of any of these materials, please let me know.

Sincerely,

Marcia Glaser

Marcia Glaser
Assistant Secretary

TERMS OF DIRECTORS OF
THE HUMANE SOCIETY OF THE UNITED STATES

Expiration 1990

Carol Browning	Ogden, Utah
Irene Evans	Washington, D.C.
Paul H. Heneks	Birmingham, Michigan
Gisela Hunnicutt	Stuart, Florida
Amy Freeman Lee	San Antonio, Texas
Jack W. Lydman	Washington, D.C.
Susan Pepperdine	Fairway, Kansas
Brook Speidel	Washington, D.C.

Expiration 1991

Coleman Burke	Short Hills, New Jersey
Alice R. Garey	Arroyo Grande, California
Jane Goodall	Tucson, Arizona
Marilyn G. Seyler	Mansfield, Ohio
Carroll S. Thrift	Knoxville, Tennessee
Viola Weber	McLean, Virginia
Marilyn E. Wilhelm	Houston, Texas
K. William Wiseman	Arrowsic, Maine

Expiration 1992

Regina Bauer Frankenberg	New York, New York
Harold Gardiner	Salt Lake City, Utah
Leslie R. Inglis	Patriot, Indiana
Virginia (Pat) Lynch	San Francisco, California
O. J. Ramsey	Sacramento, California
Robert B. Sorock	Bloomfield Hills, Michigan
John E. Taft	Ojai, California
Robert F. Welborn	Denver, Colorado

The Humane Society of the United States
Annual Membership Meeting
Houston, Texas
October 28, 1989

The annual meeting of members of The Humane Society of the United States was held at the Westin Galleria Hotel, Houston, Texas, on Saturday, October 28, 1989. Mr. K. William Wiseman, Chairman, called the meeting to order at 11:10 a.m.

President John A. Hoyt presented a comprehensive report of programs and activities during the past year and stressed the need for the Society to bring its message and concern for animals into ecological and environmental concerns. Copies of the report were made available to all attendees at the close of the meeting.

Executive Vice President/Treasurer Paul Irwin delivered the Treasurer's Report. He noted that the constituency of the Society is now over 1,300,000 and a budget in excess of $12 million will be presented to the Board of Directors.

Dr. Amy Freeman Lee, Secretary, reported for the Elections Committee. Ballots for the election of Directors were mailed on August 25, 1989, to all members eligible to vote, with 16,681 ballots counted after the closing date of voting, October 10, 1989. The following incumbents were re-elected to three-year terms expiring in 1992: Regina Bauer Frankenberg, Harold H. Gardiner, Virginia (Pat) Lynch, O.J. Ramsey, Esq., Robert B. Sorock, Robert F. Welborn, Esq. In addition, Leslie Inglis and John Taft were elected to the Board for three-year terms expiring in 1992 to replace John Kelly and William Kerber. At the close of the report, the Chairman introduced Mr. Inglis and Mr. Taft and extended his congratulations on their election to the Board of Directors.

In accordance with Article IV, Section 5 of the Bylaws, the Chairman asked for nominations of two members to serve on the Nominating Committee for 1989-90. The following were nominated: Ms. Gloria Boeke, of San Antonio, Texas, and Mr. Charles Baldwin, of Grand Rapids, Michigan. On motion, seconded and carried, the Secretary was instructed to cast a unanimous ballot for the two members nominated.

There being no further business, the Chairman adjourned the meeting at 12:05 p.m.

Respectfully submitted,

Marcia Glaser
Assistant Secretary

The Humane Society of the United States
Board of Directors Annual Organization Meeting
Houston, Texas
October 29, 1989

The regular annual organization meeting of the Board of Directors of The Humane Society of the United States was held on Sunday, October 29, 1989 at the Westin Galleria Hotel, Houston, Texas.

Directors Present K. William Wiseman (presiding), Carol Browning, Alice Garey, Gisela Hunnicutt, Leslie Inglis, Amy Freeman Lee, Jack Lydman, Susan Pepperdine, O.J. Ramsey, Robert Sorock, John Taft, Carroll Thrift, Viola Weber, Marilyn Wilhelm

Directors Absent Coleman Burke, Irene Evans, Regina Bauer Frankenberg, Harold Gardiner, Jane Goodall, Paul Heneks, Virginia Lynch, Marilyn Seyler, Brook Speidel, Robert Welborn

Others Present John A. Hoyt, Paul Irwin, Murdaugh Stuart Madden, Roger Kindler, Thomas Huntt

Chairman Wiseman called the meeting to order at 9:30 a.m. He introduced Mr. Inglis and Mr. Taft, newly elected members of the board of directors, and welcomed them. Mr. Hoyt introduced Mr. Roger Kindler, Associate General Counsel, and announced he will take the position of HSUS General Counsel effective January 1, with Mr. Madden continuing with HSUS in the position of Senior Counsel.

Minutes of Previous Meeting On motion by Mr. Lydman, seconded and carried, minutes of the meeting of the board held on April 13-14 were approved.

Election of Officers Ms. Garey moved election of the following as officers of The HSUS: K. William Wiseman, Chairman; O.J. Ramsey, Vice Chairman; Amy Freeman Lee, Secretary; John A. Hoyt, President; Paul G. Irwin, Executive Vice President and Treasurer; Patrick B. Parkes, Assistant Secretary and Assistant Treasurer; Marcia Glaser, Assistant Secretary; Thomas Huntt, Assistant Treasurer; Samuel Trevino, Assistant Treasurer. The motion carried unanimously.

Mr. Inglis moved election of officers of subsidiary corporations as follows:

National Association for Humane and Environmental Education: John A. Hoyt, Chairman and President; Murdaugh S. Madden, Vice President; Patrick B. Parkes, Secretary; Paul G. Irwin, Treasurer; Marcia Glaser, Assistant Secretary, Assistant Treasurer

Center for the Respect of Life and Environment:
Robert F. Welborn, Chairman; K. William Wiseman, Vice Chairman; John A. Hoyt, President; Paul G. Irwin, Secretary-Treasurer

National Humane Education Center:
John A. Hoyt, President; Murdaugh S. Madden, Vice President; Patrick B. Parkes, Secretary; Paul G. Irwin, Treasurer; R. Dale Hylton, Assistant Vice President; Marcia Glaser, Assistant Secretary

HSUS California Branch; HSUS Connecticut Branch; HSUS New Jersey Branch; HSUS Virginia Branch:
John A. Hoyt, President; Murdaugh S. Madden, Vice President; Patrick B. Parkes, Secretary-Treasurer; Marcia Glaser, Assistant Secretary, Assistant Treasurer

Animal-Kind:
John A. Hoyt, President; Murdaugh S. Madden, Vice President; Susan Pepperdine, Vice President; Patrick B. Parkes, Secretary-Treasurer; Marcia Glaser, Assistant Secretary, Assistant Treasurer

Elections to the Nominating Committee — On motion by Dr. Lee and approved, the following were elected to serve as members of the Nominating Committee for 1989-1990: Alice Garey (chair); O.J. Ramsey; Rosemary Lowe, Santa Fe, New Mexico; Marge Wright, Phoenix, Arizona. Other members of the committee, elected at the annual meeting of members, are Charles Baldwin, Grand Rapids, Michigan, and Gloria Boeke, San Antonio, Texas.

Election of Members — On motion by Ms. Wilhelm and carried, all persons having qualified for membership since the last meeting of the board of directors were approved.

Committee Appointments — The Chairman presented a list of appointments to board committees. Dr. Lee moved that the proposed committee appointments be approved. The motion carried with Dr. Browning and Ms. Pepperdine casting negative votes.

Corporate Resolutions — On motion, carried unanimously, the resolutions attached to these minutes authorizing the transaction of business by the officers were adopted.

Auditor — No action was taken to appoint an auditor as it was determined that this appointment was made at the April 1989 meeting of the board. In

the future, it is expected that the Audit/Budget committee's recommendation of an auditor will be considered by the board at the mid-year meeting rather than at the annual organization meeting.

President's Report — Mr. Hoyt reported on discussions which had been held with members of the board relative to appointment of Roger Kindler as General Counsel. He also reported that Randall Lockwood has accepted responsibility for the HSUS field service program, working with and supervising regional directors and having oversight of the investigators. Both positions, he noted, have traditionally carried the designation of vice president. On motion by Mr. Ramsey and carried, the board of directors confirmed appointment of Roger Kindler as Vice President/General Counsel and Randall Lockwood as Vice President/Field Services, effective January 1.

Mr. Madden will continue to have primary responsibility in association with Mr. Irwin for the bequest program and will also be available to assist in other activities carried out by the legal department.

Mr. Hoyt recognized the pro bono work provided by Mr. Ramsey, in association with Roger Kindler, on the Jenifer Graham case and expressed the appreciation of the board and staff for that extraordinary contribution of time on this project.

The March for the Animals, scheduled to be held in Washington, D.C., on June 10, 1990 continues to be received with a lack of enthusiasm. The HSUS will plan to publicize the event in its quarterly magazine and will make a contribution of $5,000 but this is not to be a major activity.

Mr. Hoyt reviewed a proposal that HSUS enter into an affiliate relationship with the Interfaith Council for the Protection of Animals and Nature. The Council would maintain its corporate identity, with Mr. Hoyt and Mr. Irwin becoming officers. A publisher will be sought for a book written by Lewis Regenstein, a founder of the Council, titled "Replenish the Earth." A commitment of $25,000 would be made to support activities of the Council and Mr. Regenstein, who would be a participant in the HSUS conference program for 1990. On motion by Mr. Lydman, and carried, approval was given to the HSUS entering into a one-year affiliate status with the Interfaith Council for the Protection of Animals and Nature, beginning immediately.

A request for proposals from artists for a mural on the west wall of the headquarters building has been published, with the prospect of a recommended design proposal being reviewed by the

executive committee at their meeting in February. Work on the mural would be completed during the summer of 1990. It was the consensus Dr. Lee, Mr. Hoyt and Mr. Kindler should review the process that has gone forward and make a further report by mail or to the executive committee.

Treasurer's Report — Mr. Irwin and Mr. Huntt circulated a report of revenue and expenditures and comparison to budget for the nine months ended September 30, 1989. Mr. Irwin stated the HSUS is conducting an aggressive mailing program and it is expected the year will be completed with an excess of income over expense.

A proposed budget for 1990 was presented by Mr. Irwin. On motion by Mr. Inglis, and carried, a budget of $12,388,544 was approved for 1990.

A booklet titled "Directors & Officers Liability Loss Prevention for Non-profit Organizations" was distributed. Directors were asked to communicate to Mr. Irwin or Mr. Wiseman any questions they might have after reading the booklet.

Issues Raised by Director Pepperdine — Ms. Pepperdine presented her concerns from a letter of August 29, 1989 to other board members that the nominating process is not independent, that board members should be limited in the number of consecutive terms of service, with a year's break between eligibility to serve, and that more nominations should be made than there are positions to fill on the board to give members something to evaluate. On motion by Mr. Ramsey, and carried, these questions on composition of the board were referred to the bylaws, ethics and legal committee for in-depth review.

Ms. Pepperdine reviewed her request in the same letter for a financial accounting of expenses in regard to operation of the select committee established by the board in April 1988 followed by a review by outside legal counsel of potential liability of directors. On a motion by Ms. Pepperdine that the financial accounting be done, there were two votes for the motion, ten votes against, and one abstention.

Compensation Committee — Mr. Sorock reviewed the terms of employment agreements which the executive committee had been authorized to negotiate and approve between Mr. Hoyt and Mr. Irwin and the HSUS. Dr. Lee made a motion that the board of directors acknowledges, recognizes and endorses the deliberations and actions of the compensation and executive committees, and of the chairman of the board, in

negotiating, approving and executing the employment agreements between HSUS and its president, John Hoyt, and its executive vice president and treasurer, Paul Irwin. The motion carried with eleven votes for, Dr. Browning and Ms. Pepperdine opposed.

Vice Presidents Forkan, Fox, Grandy, Parkes and Wright and Ms. Finch were invited to join the meeting following a recess for lunch.

Center for the Respect of Life and Environment — Dr. Fox described videotapes and monographs that have been produced and are being distributed by the Center. He also reported on development of the St. Francis Animal Sanctuary, an animal shelter and education center in Assisi, Italy to promote the teachings of St. Francis as they relate to animals and creation and where literature in different languages may be distributed to visitors.

Dr. Rick Clugston has been hired with the primary responsibility of fund raising for the Center and to develop, in collaboration with members of the board of advisors, a model curriculum on environmental concerns for the Meadowcreek Project in Arkansas. Discussions have also been held regarding working with other groups in efforts to restore the high plains.

Staff Reports — Ms. Finch made a brief report on continuing development of the Adopt A Teacher program and continuing interest and support from the General Federation of Women's Clubs.

Ms. Forkan stressed her concern with HSUS carrying out a public program to repeal the Case-Javits amendments to the federal humane slaughter act. It was the consensus to exercise the greatest caution and to consider other approaches on obtaining endorsement of the newly developed conveyor system by rabbinical authorities. HSUS involvement in environmental issues is being well received and plans are being made to develop participation by local humane societies and animal shelters in observing Earth Day 1990.

It was the consensus to adopt criteria for use by HSUS staff in discussing the merits of conducting state referendums when they are proposed in various states on animal issues.

Annual Conference — Mr. Hoyt presented for consideration a proposal that the annual conference be held on a biennial basis, with a one-day symposium being scheduled in alternate years in conjunction with the annual membership meeting. On motion by Mr. Lydman, and

carried, a decision regarding the scheduling of future HSUS conferences is left to the discretion of the chairman of the board, president, and executive vice president.

Planning and Policy Committee Report — Mr. Lydman submitted policy statements on "Animals in Biomedical Research and Testing," "Fur Trapping and Ranching," and "Humane Sustainable Agriculture," which had been approved by the executive committee at its meeting in September and then circulated to the board of directors. On motion by Mr. Lydman, and carried, these policy statements were adopted.

The Senior Staff were excused from the meeting.

Audit Committee — Mr. Thrift reported the committee had met in April and September. They met with the auditor, reviewed the audit, and recommended retaining Thomas Havey & Company as auditor for the year. He noted that recommendations regarding managerial procedures made by the auditor have been implemented.

Alice Morgan Wright-Edith Goode Fund — Mr. Lydman reviewed the origins of this trust fund and past distribution of the annual trust income. A grant has been made each year to the World Society for the Protection of Animals to further their international program. The committee recommends this year that funding to WSPA be reduced to permit a grant of $10,000 to be made to the National Society for Animal Protection, of Clawson, Michigan, recently formed by David Wills and some of his former staff associates from the Michigan Humane Society and Director Sorock. On motion by Mr. Lydman, and carried, the proposed distributions from the Alice Morgan Wright-Edith Goode Fund were approved.

Legal, Bylaws and Ethics — Dr. Lee reported the committee had met several times over the past months by telephone. She presented a "Code of Conduct and Ethical Standards for HSUS Directors, Officers, and Staff" with the recommendation the board accept it in its present form. It was the consensus to distribute the proposed "Code of Conduct" to all members of the board, with a request that comments be directed to the committee chairman, Dr. Lee.

Investment Committee — Mr. Irwin circulated copies of a report received from Mr. Gardiner, committee chairman. Mr. Inglis made a motion that the board requests the investment committee to provide a comprehensive report on its deliberations and recommendations and the recommendations of its advisors to be mailed to all directors sufficiently in advance of the October 1990 meeting of

the board to allow detailed review by board members. The motion carried unanimously.

Memorandum of Understanding — Without objection, a memorandum of understanding between The Humane Society of the United States and the Center for the Respect of Life and Environment was referred to the chairman of the board for signature.

Future Meetings — It was the consensus that future meetings be scheduled for the following dates:

Executive Committee: February 2, 1990, Washington, D.C.
Planning and Policy Committee: April 4-5, 1990, Washington, D.C.
Board of Directors: April 6-7, 1990, Washington, D.C.

Adjournment — There being no further business, the meeting adjourned at 3:50 p.m.

Marcia Glaser, Assistant Secretary

OFFICERS
(Elected October 1989)

The Humane Society of the United States

K. William Wiseman, Chairman of the Board
O.J. Ramsey, Vice Chairman
Amy Freeman Lee, Secretary
John A. Hoyt, President
Paul G. Irwin, Executive Vice President; Treasurer
Patrick B. Parkes, Assistant Secretary; Assistant Treasurer
Marcia Glaser, Assistant Secretary
Thomas Huntt, Assistant Treasurer
Samuel Trevino, Assistant Treasurer

National Association for Humane and Environmental Education

John A. Hoyt, Chairman of the Board and President
Murdaugh Stuart Madden, Vice President
Patrick B. Parkes, Secretary
Paul G. Irwin, Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

Center for the Respect of Life and Environment

Robert F. Welborn, Chairman
K. William Wiseman, Vice Chairman
John A. Hoyt, President
Paul G. Irwin, Secretary-Treasurer

Officers of Subsidiary Corporations

National Humane Education Center

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
Patrick B. Parkes, Secretary
Paul G. Irwin, Treasurer
R. Dale Hylton, Assistant Vice President
Marcia Glaser, Assistant Secretary

HSUS California Branch, Inc.

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
Patrick B. Parkes, Secretary-Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

HSUS Connecticut Branch, Inc.

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
Patrick B. Parkes, Secretary-Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

HSUS New Jersey Branch, Inc.

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
Patrick B. Parkes, Secretary-Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

Humane Society of the United States, Virginia Branch, Inc.

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
R. Dale Hylton, Assistant Vice President
Patrick B. Parkes, Secretary-Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

Animal-Kind

John A. Hoyt, President
Murdaugh Stuart Madden, Vice President
Susan Pepperdine, Vice President
Patrick B. Parkes, Secretary-Treasurer
Marcia Glaser, Assistant Secretary; Assistant Treasurer

HSUS Vice Presidents
(Appointed October 1989)

Patricia Forkan, Senior Vice President
Murdaugh Stuart Madden, Vice President/General Counsel
Patrick B. Parkes, Vice President/Field Services
John W. Grandy, Vice President/Wildlife & Environment
Phyllis Wright, Vice President/Companion Animals
Michael W. Fox, Vice President/Farm Animals & Bioethics

(Effective January 1990)
Roger A. Kindler, Vice President/General Counsel
Randall Lockwood, Vice President/Field Services

The Humane Society of the United States
Committees of The HSUS and Board of Directors
1989-1990

Alice Morgan Wright-
Edith Goode Trust
Jack Lydman, Chair
John Hoyt
Paul Irwin
Pat Lynch
Murdaugh Madden (NV)

Audit/Budget
O.J. Ramsey, Chair
Gisela Hunnicutt
Les Inglis
Paul Irwin (NV)
Tom Huntt (NV)

Compensation
Robert Sorock, Chair
Hal Gardiner
Carroll Thrift
Marilyn Seyler

Executive Committee
K. William Wiseman, Chair
Hal Gardiner
Alice Garey
Amy Freeman Lee
Jack Lydman
Pat Lynch
O.J. Ramsey
Marilyn Seyler
Robert Sorock
Robert Welborn
John Hoyt (NV)
Paul Irwin (NV)

Investments
Hal Gardiner, Chair
John Taft
Paul Irwin

Legal, Bylaws and Ethics
Amy Freeman Lee, Chair
O.J. Ramsey
Murdaugh S. Madden (NV)
Roger Kindler (NV)

Pension Trust Committee
Alice Garey, Chair
Robert Sorock
Paul Irwin (NV)
Tom Huntt (NV)

Planning and Policy
Jack Lydman, Chair
Carol Browning
Hal Gardiner
Alice Garey
Gisela Hunnicutt
Les Inglis
Pat Lynch
Susan Pepperdine
O.J. Ramsey
Marilyn Seyler
John Taft
Carroll Thrift
Viola Weber
Marilyn Wilhelm

Regional Committee
Patrick Parkes, Chair
Nina Austenberg
Frantz Dantzler
Charlene Drennon
Paul Irwin
Randy Lockwood
Wendell Maddox
William Meade
Marc Paulhus
Sandy Rowland
Phyllis Wright

Nominating Committee
Alice Garey, Chair
O.J. Ramsey, Esq.
Charles Baldwin
Gloria Boeke
Rosemary Lowe
Marge Wright

Elections Committee
Amy Freeman Lee, Chair
Kay Benedict
Dina McDaniel
Susan Schultz

The Chairman...shall be, ex officio, with vote, a member of all committees of the Board, except the Elections Committee. (Bylaws, Art. VIII, Sec. 3)
The President may participate in any meeting of the Board of Directors or any committee of the Board, but without vote. (Bylaws, Art. VIII, Sec. 5)
NV = Non-voting

11/89

CORPORATE RESOLUTIONS
(Adopted October 29, 1989)

It is hereby resolved that K. William Wiseman, Chairman of the Board of Directors; John A. Hoyt, President; Paul G. Irwin, Executive Vice President and Treasurer; Patrick B. Parkes, Vice President/Field Services, Assistant Secretary and Assistant Treasurer; Murdaugh Stuart Madden, Vice President/General Counsel; or any one of them, is authorized to execute on behalf of The Humane Society of the United States any and all deeds, quit claims or other instrument or document which might be required in connection with the acquisition or transfer of real or personal property which is to be or has been received by The Humane Society of the United States by way of gift, bequest, or other interest in an estate or trust, PROVIDED, HOWEVER, that in the event said transaction involves the assumption of any obligation or indebtedness on the part of The Humane Society of the United States (other than standard, routine covenants and/or warranties), the signatures of two of them shall be required.

It is hereby resolved that K. William Wiseman, Chairman of the Board of Directors; John A. Hoyt, President; Paul G. Irwin, Executive Vice President and Treasurer; Patrick B. Parkes, Vice President/Field Services, Assistant Secretary, and Assistant Treasurer; Murdaugh Stuart Madden, Vice President/General Counsel; Thomas Huntt, Assistant Treasurer; Samuel Trevino, Assistant Treasurer; or any one of them, is authorized to sign the necessary receipts and releases for gifts and bequests.

It is hereby resolved that any two of the following officers, to wit: President, Secretary, Treasurer, Assistant Secretary, and Assistant Treasurer shall have the joint authority to execute, under seal, such form of transfer and assignment as may be necessary or customary to constitute a regular transfer of any stocks or other registered securities standing in the name of the Society. They may from time to time execute and deliver on behalf of the Society proxies on any and all stock owned by the Society.

It is hereby resolved that any two of the following officers, to wit: President, Treasurer, Assistant Treasurer, and Vice President/General Counsel of this Corporation be, and they hereby are, fully authorized and empowered to buy, hold and sell certificates of deposit; open savings accounts wherever and whenever deemed necessary and in connection therewith to make deposits, withdrawals, and close said accounts.

Corporate Resolutions (continued)
October 29, 1989

It is hereby resolved by the Board of Directors of The Humane Society of the United States that any two of the following officers of The HSUS: Chairman of the Board, President, Treasurer, and the Vice President/General Counsel, are hereby authorized to borrow money and obtain credit for The HSUS upon any terms, and may make and deliver, in connection therewith, notes, agreements, and any other obligations of The HSUS, in form satisfactory to the lending institution; and they are further authorized to execute and deliver any and all other instruments which may be required by the lending institution in connection with any of the foregoing matters, and affix thereto the seal of The HSUS, except that amounts beyond $250,000.00 must have the authorization of either the Board of Directors or its Executive Committee.

REFERENDUM CRITERIA

Referendums, or initiatives, have become a common method for bypassing the state legislature in order to put the issue before the public. Unfortunately, many animal welfare referendums have been defeated. Before The HSUS is involved in further referendum issues, we want to help educate local activists to the need to adequately plan and prepare for the huge referendum effort they may undertake. We would also like the backers of an initiative effort to share their strategy regarding the following:

WHY A REFERENDUM?

Referendums are major political campaigns involving great expense and extensive hours of work. **One should only be attempted if there is no chance of passing the bill through the regular legislative process.** Consider the following:

-- Is the general public already familar with your issue? Can it be simply presented to the voters and not be easily distorted by the opposition?

-- Is it true that all efforts to get the issue enacted through the regular legislative process have been exhausted? If only one or two obstacles exist in the legislature, have ways around them been tried? If as much effort were put into getting the bill enacted through the legislature as it will take to get a referendum passed, would the bill still not pass?

-- Does adequate grassroots interest exist? In other words, is a large percentage of the general public interested in this issue, or is it just an effort being undertaken by a few concerned people? If interest is very high and momentum is on your side, why not continue to work for a state law instead of risking the loss of a referendum?

--Do key local and national groups support the effort? This would include more than a majority of the animal welfare groups in the state and almost all the national humane organizations. Do related groups such as veterinarians, environmental organizations, law enforcement officials, government agencies, also support your effort?

-- Is the referendum process a viable one in your state? Not all state laws allow for citizen initiatives - or else have such stringent requirements that such an effort is too difficult to undertake. (For example, so many signatures have to be collected

in such a short time, your issue could never get on the ballot.) If you try and fail to gain sufficient signatures, that effort could be viewed negatively.

-- Has a professional polling organization polled the general public? Do the results indicate the high possibility of an election victory?

WHAT IF YOU LOSE?

If a referendum is defeated by the voters, the legislative process is no longer an option. Legislators will not advance your cause after the public "has spoken."

-- What are the possible ramifications should your issue lose? Is the risk involved worth having the legislative process no longer as an option? Also, your lose will have a negative impact on other state or local communities contemplating similar legislation. Can you justify taking such a gamble?

STRATEGY

A state-wide referendum should be planned, staffed, financed and run just like a state-wide campaign for governor, senator or other state office.

-- Timing - Is your campaign strategy going to allow you sufficient time to collect signatures and mount an effective campaign? Is there enough time to organize an effective strategy or are you already hurrying to meet deadlines?

-- Is this a good election date for your issue to be voted on? Will other referendums be on the ballot that day? If yes, will those referendums have a negative or positive impact on your issue? Is this an off-year election? Is that a negative or positive for you? Will any other issues be on the ballot to bring your voters --or the opposition-- out on election day?

-- Issue Definition - Has your referendum question been worded so that it will withstand legal challenges once passed? Is it worded so that the voters will clearly understand it and be inclined to vote the way you want them to vote? (If in doubt, voters will cast a negative vote.)

-- Will the referendum accomplish your goal or will other efforts be needed as well? Will enabling legislation be required? Will regulations also be mandated? Must funding be fought for via the legislative process? Can you expect regulations to be written properly or will that require a whole separate effort as well?

-- Staffing and Consultants - In addition to the activists pursuing the referendum, will professional political campaign staff be hired? Will a professional fundraiser be used? Will a media expert be available? Have polling experts given advice on

necessary steps and strategies to be undertaken?

-- Will your referendum cost taxpayers money? If so, how much? Will that affect the referendum's chances?

-- Is your campaign strategy in place? Do you know what must be accomplished each month of the campaign, who will do it and where the funds to pay for it are coming from? Do you have an overall campaign strategy to get your issue across to the public and also adequately respond to the media attacks from the opposition?

FUNDING

Referendum campaigns are very expensive. It has been estimated that a well run state wide campaign costs a minimum of one million dollars. Other experts recommend that $1 is needed for each vote you must win, or at least $.31 cents per registered voter.

-- Are you aware of how much your campaign will cost and know where you will be able to raise the necessary funds? Have you had initial contacts with major donors who have given you firm commitments for sums you expect?

-- Have you researched the cost of print and other media advertising and understand what portion of your budget must be allocated for this?

-- Do you know the law in your state regulating fundraising techniques and understand how to comply with record-keeping requirements?

-- Do you have a realistic plan for fundraising and know you will be able to raise the funds necessary to finance the campaign you have planned?

THE OPPOSITION

-- Do you understand who your opponents will be and have you assessed their strengths and weaknesses? Are you aware of which major national organizations may assist in defeating you?

-- Have you anticipated the oppostions's plans to discredit your issue? Do you know how to respond to such claims? Can you afford to purchase necessary media time?

-- Do you know the position of the state government agency most affected by the issue? Will it be for, against, or neutral? Will this agency take an active roll in the initiative effort? Will elected officials take a position for or against? Can you expect to have favorable press and possibly editorials endorsing your position?

The Humane Society of the United States
Policy Statement on
Animals in Biomedical Research and Testing

The Humane Society of the United States (HSUS) recognizes that some scientific research and testing on animals has benefited humans and animals and that such research and testing continues to rely on animal subjects to a large extent. Nevertheless, The HSUS believes that the status quo relating to the use of animals in research and testing is unacceptable.

While conditions for the housing and care of animals are improving, millions of animals are still housed under highly artificial conditions that preclude normal behavior and impair psychological well-being. Despite existing safeguards, many animals continue to be subjected to procedures that are painful or scientifically questionable. While limited progress has been made in reducing and replacing the use of animals in laboratories, on the whole the scientific community's efforts on alternatives have been inadequate.

The HSUS believes that the evaluation of proposed plans for research and testing should carefully address the following questions: Can the proposed use of animals be <u>replaced</u> by non-animal methods that would yield comparable or superior results? If not, can the proposed number of animals be <u>reduced</u> to a minimum without compromising the results? Can the proposed procedure be <u>refined</u> so that any pain, suffering, or deprivation experienced by the animals be minimized without

compromising the results? These principles--replacing, reducing, and refining animal use--constitute the 3Rs of the alternatives approach.

The HSUS also believes that safeguards should prevent certain experiments from being conducted on animals, regardless of the state of alternatives.. These include experiments that are unnecessarily duplicative of other studies; scientifically or medically trivial, dubious, or otherwise unnecessary; extremely painful or stressful; or otherwise fail to balance scientific aims and the public's concern for animals.

The HSUS contends that a rigorously applied humane approach can benefit both animal welfare and human health, without compromising either. Refinements of procedures can decrease stress and its confounding effects on experimental variables. Reductions in animal numbers can, in some cases, decrease research costs without compromising research quality. Replacements of animal subjects can be less costly and time-consuming and can yield greater accuracy and reliability. Conversely, an overreliance on animal subjects in research and testing can hinder the advancement of health, safety, and knowledge.

The HSUS believes that the research community should vigorously promote the development, validation, implementation, and application of research and testing techniques that are replacement alternatives, especially in the area of toxicity

testing, where existing animal-based methods have been criticized by many scientists as well as by animal protectionists. Animals should be housed in a manner that accommodates their species-typical activities and promotes their psychological well-being. Animals should be protected by meaningful and well-enforced regulations during experimental manipulations, not only before and after such manipulations. Biomedical professionals should devise, for each laboratory species, standardized recommendations regarding anesthetic/ analgesic doses and other methods to alleviate pain caused by various procedures.

The HSUS also contends that ethical issues in biomedical research and testing are important to the education of all health care professionals involved in animal research and testing and these issues should be a part of all human and animal health science curricula.

Therefore, The HSUS advocates a rigorous ethical evaluation of animal research and testing procedures; a commitment to the alternatives approach of replacement, reduction, and refinement; and an end to the suffering of animals in biomedical research and testing.

10/89

The Humane Society of the United States
Policy Statement on
Fur, Trapping, and Ranching

The Humane Society of the United States (HSUS) is unequivocally opposed to the trapping, rearing and killing of animals for the production of fur apparel and accessories. The HSUS believes that such exploitation and killing of animals for their fur causes needless and unjustifiable suffering and death and is, therefore, inconsistent with the aims of a civilized society.

The HSUS finds no justification for any form of trapping except in those rare cases when such trapping demonstrably benefits animals or provides necessary benefits to ecological systems. This kind of trapping may be conducted only after less intrusive alternatives have been attempted and exhausted and must be done responsibly, efficiently, and by a humane method that captures the animal alive and without injury or produces rapid loss of consciousness and painless death.

The Humane Society of the United States especially believes there should be an immediate and absolute ban on the steel-jaw leghold trap.

In addition to opposing commercial and sport trapping, The HSUS opposes the existence and operation of fur "ranches," where fur-bearing animals are bred, raised and killed.*

The Humane Society of the United States will continue its educational, legal, and legislative efforts to end the rearing, trapping and killing of animals for their fur.

10/89

* Explanatory note to policy statement:

Fur "ranches" are not covered by either state or federal humane regulations. The HSUS views these so-called ranches as fur factories, which maintain animals for their entire lives in small, cramped pens, and which result in needless and unjustifiable suffering and cruelty. The breeding of fur-ranched animals sometimes causes mutations, deformities, and painful physical disorders and the confinement of these animals is unnatural and, therefore, cruel. Moreover, the methods of killing these animals often are inhumane.

The Humane Society of the United States
Policy Statement on
Humane Sustainable Agriculture

In an effort to meet the threat of world food shortages and an ever-increasing population, agriculture's primary task has been to achieve an efficient agriculture that increases output and lowers production costs. Measuring agriculture primarily by productivity and economic efficiency has created a host of social, environmental and economic problems.

Chemically treated crop monocultures and high density livestock and poultry production systems have seriously polluted aquatic ecosystems, demineralized and organically impoverished the soil, contaminated drinking water and endangered human, wildlife and farm animal health.

These systems have created agricologenic disease, or producer-induced disease. Agricologenic disease is any disease or pest infestation that directly results from ecologically unsound production systems that depend upon the use of antibiotics, hormones, pesticides, herbicides, synthetic fertilizers and the relatively new application of biotechnology.

Humane sustainable agriculture addresses these problems by analyzing all the costs and benefits in the raising of crops and animals, social and environmental as well as private, long-term as well as immediate, those that can be given monetary value as well as those that cannot.

Humane sustainable agriculture is farming with compassion and consideration for land and animals. It is environmentally sound land management. It is agriculture that joins together productivity and economic efficiency with our related goals of more empathic husbandry of crops and livestock, and careful stewardship of resources--soil, water, air, and protection of wildlife and wildlands. Humane sustainable agriculture embraces the principle of raising animals under conditions that satisfy their behavioral requirements just as the land is treated in accordance with the ecological requirements of sound agricultural stewardship.

The Humane Society of the United States enthusiastically supports farmers who espouse humane, ecologically sound production systems which avoid dependence upon antibiotics, hormones, pesticides, herbicides, synthetic fertilizers and inappropriate biotechnologies.

In an effort to raise awareness of agriculture's significant impact on the environment, wildlife, human health and farm animals, The Humane Society encourages its members to choose agricultural products that come from humane sustainable systems of agriculture. Humane sustainable agriculture systems promote healthful conditions for the land, farm animals, wildlife and environment and allow for the maintenance of natural ecosystems. Humane sustainable agriculture offers society a way by which we may "eat with

conscience"--a way to support compassionate stewardship of our finite resources and the environment.

In sum, a humane sustainable agriculture is a life-enhancing food production system that embraces the ecological principles of optimal planetary biodiversity and climatic stability; the ethics of social justice and environmental and consumer health; and the goals of economic stability, national security and world peace.

10/89

I have an copy of this -

DIRECTORS & OFFICERS LIABILITY LOSS PREVENTION FOR NON-PROFIT ORGANIZATIONS

CHUBB

DIRECTORS & OFFICERS LIABILITY LOSS PREVENTION FOR NON-PROFIT ORGANIZATIONS

Prepared by

Dan A. Bailey
Arter & Hadden

for

Chubb Group of Insurance Companies

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[Note: The views expressed herein are those of the author and may or may not reflect the views of any members of the Chubb Group of Insurance Companies]

Preface

Directors, Officers and Trustees of non-profit organizations face personal liability for their actions as board members. In performing their duties, individuals face greater personal risks than insurance coverage alone can minimize.

As one of the leading providers of directors and officers (D&O) liability coverage, the Chubb Group of Insurance Companies believes that the long term solution lies in knowledgeable governance and sound risk management practices.

Chubb has commissioned Dan A. Bailey, a partner in the law firm of Arter & Hadden, to prepare this exclusive D&O liability loss prevention handbook for non-profit organizations. This booklet is designed to help those in positions of responsibility protect themselves against litigation arising out of their conduct as trustees or board members. It reviews the general principles governing D&O liability, provides a thorough analysis of many potential exposures and suggests step-by-step loss prevention procedures.

We feel this brochure, the first of its kind, offers important guidance and will act as a practical resource to those in positions of responsibility within your organization. It is intended as a general resource to help you develop effective loss prevention strategies. It is not a substitute for prudent legal advice. We encourage you to seek legal advice from competent counsel for all specific issues which arise as you design and implement your loss prevention procedures.

Table of Contents

Page

Introduction 5

Management of Non-Profit Organizations 6

General Principles Governing D&O Liability 7

Basic Duties 7

1. Duty of Diligence 7
2. Duty of Loyalty 7
3. Duty of Obedience 8

Business Judgment Rule 8

Composition of Board of Directors 10

1. Director Attributes 10
2. Independent Directors 10
3. Size of Board 10
4. Self-evaluation 11

Education 12

1. Mission of Organization 12
2. Factual Orientation 12
3. Legal Orientation 12
4. Training Seminars 13
5. Internal Guidelines 13

Actions by Directors 14

1. Procedural Considerations 14
2. Presentation of Information 14
3. Conduct of Meeting 15
4. Documentation 15

Delegation of Responsibility 17

1. Board Committees 17

(continued)

Page

2. Management Delegation 17

3. Staff Selection and Overhead Controls 18

4. Reliance 18

5. Use of Legal Counsel 19

Conflicts of Interest 20

Loss Prevention Guidelines for Special Risks 21

Employment-Related Claims 21

1. Education 21

2. Proper documentation 21

3. Grievance procedures 22

4. Common sense 22

Anti-Trust Claims 22

1. Identify Risks 22

2. Competent Counsel 23

3. Affirmative Repudiation 23

4. Sensitivity of Risk 23

Claims Against Health Care Providers 23

1. Quality Assurance Programs 23

2. Risk Management Programs 24

3. Collection and Reimbursement Practices 24

Maximize Legal Protections 25

Maximize Indemnification Protection 25

Elimination or Limitation of Liability 26

D&O Insurance 26

Document Retention Program 27

Legal Audit 28

Introduction

An effective D&O loss prevention program by a non-profit organization may accomplish numerous objectives, including:

— Reduce the liability exposure not only of the directors and officers, but also the organization to the extent the organization may indemnify losses incurred by management.

— Improve the organization's ability to recruit qualified directors and officers.

— Avoid time consuming, distracting and potentially embarrassing claims and litigation.

— Enhance the defense of claims and reduce the potential recovery by a claimant.

— Improve the organization's ability to obtain favorable D&O insurance coverage at reasonable costs.

The following discussion identifies various areas in which D&O loss prevention opportunities exist and should be considered. Although much of this discussion relates to the protection of directors, the same general principles equally apply to the protection of officers, who are held to a similar standard of conduct as directors.

Although some D&O loss prevention concepts are somewhat obvious, many others may be inconsistent with an organization's historical procedures. Management may have difficulty objectively evaluating the necessity and appropriateness of some loss prevention concepts. Accordingly, outside consultants may be useful to assist management in evaluating, structuring or implementing D&O programs specifically tailored to the particular organization.

CHUBB

Management of Non-Profit Organizations

Non-profit organizations should be operated and managed with the same degree of care as for-profit corporations.

Most non-profit organizations have as directors individuals with substantial experience and expertise in business matters. Too frequently, though, those individuals abandon their business approach to decision making when they sit on the board of the non-profit organization. This type of approach to service on the non-profit board is contrary to the director's legal and moral duty to act like a business person, using the same degree of commitment, attention and care as directors of for-profit corporations. Ironically, a non-profit directorship is often more demanding than its for-profit counterpart because some of the work will be unfamiliar and the business of the organization may be conducted under less efficient conditions than in business corporations.

Directors should demand that the organization be operated much like a for-profit business enterprise. For example, formal and well-defined operating procedures should be established, strong financial controls and systems should be implemented (including regular preparation of balance sheet and income statements rather than use of mere budgets), and risk management and loss control programs should be adopted.

Non-profit D&O's often ignore prudent business procedures in the mistaken belief that there is minimal, if any, exposure arising out of the mismanagement of a non-profit organization. This myth is apparently based upon the lack of profit oriented shareholders in the non-profit setting. However, non-profit organizations have numerous constituents who may have standing to prosecute claims for mismanagement. Every non-profit organization is operated for the benefit of some group of persons. Those intended beneficiaries, together with employees, creditors, customers, members, state regulators, and others are all potential plaintiffs against D&O's of non-profit organizations. Recent surveys indicate that more than 50% of claims against D&O's of for-profit corporations are brought by persons other than shareholders of the corporation. Although claims against non-profit D&O's are brought with less frequency than are claims against for-profit D&O's, such claims are certainly not uncommon and should be a concern to non-profit managers.

General Principles Governing D&O Liability

The fundamental responsibility of directors and officers is to represent prudently the interests of the organization's members and other constituencies in directing the business and affairs of the organization within the law.

Basic Duties

Directors and officers are subject to three basic duties in performing their responsibilities:

1. *Duty of Diligence.* Directors and officers generally must act with the care that a reasonably prudent person in a similar position would use under similar circumstances. They must perform their duties in good faith and in a manner they reasonably believe to be in the best interest of the corporation. Prior to making a business decision, D&O's must inform themselves of all material information reasonably available to them.

This duty requires not only reasonable behavior with respect to matters submitted for approval, but also requires reasonable inquiry and monitoring of corporate affairs. Although directors and officers are not insurers of the integrity of their subordinates or of general organizational performance, they are required to implement reasonable programs to promote appropriate organizational conduct and to identify improper conduct.

In some jurisdictions, this duty of diligence may be higher for D&O's of charitable or other types of non-profit entities. The higher standard of care is similar to the high fiduciary duty owed by trustees to beneficiaries of the trust they administer. The justification for this higher standard is the perception that the non-profit D&O's are entrusted with assets and responsibilities for the benefit of people who have little or no input into the selection of the D&O's.

2. *Duty of Loyalty.* Directors and officers are required to refrain from engaging in personal activities which would injure or take advantage of the organization. They are prohibited from using their position of trust and confidence to further their private interests. This duty requires an undivided and unselfish loyalty to the organization and demands that there be no conflict between one's duty to the organization and self-interest. Examples of prohibited conduct in this regard include:

— D&O's may not realize secret profits or unfair gain through personal transactions with or on behalf of the organization.

— D&O's may not compete with the organization to its detriment.

— D&O's may not usurp an opportunity of the organization.
— D&O's may not realize personal gain from the use of material, non-public information.
— D&O's should avoid even the appearance of a conflict of interest.

3. *Duty of Obedience.* Directors and officers are required to perform their duties in accordance with applicable statutes and the terms of the organization's charter. D&O's may be liable if they authorize an act which is beyond the powers conferred upon a corporation by its charter or by the laws of the state of incorporation.

Non-profit organizations are frequently regulated by a multitude of statutes, rules and regulations with which outside directors are typically unfamiliar. For example, charitable organizations may be subject to statutes regulating fund raising, political and business activities; hospitals may be subject to complex Medicaid reporting requirements; and publicly supported organizations may be subject to unusual terms and restrictions in various grant or financial assistance documents.

If the non-profit organization is exempt from federal or state income tax or if contributions to it are intended to be tax deductible, a myriad of additional restrictions and requirements may apply. For example, the corporation may jeopardize its tax exempt status if its earnings privately inure to the benefit of any individual, it if is operated for non-charitable purposes, if it engages in certain types of political or legislative activities, if it fails to file or obtain required returns or certificates or if as a private foundation it violates any of a series of rules prohibiting the appearance of self-dealing, large business holdings and the like. Failure to comply with these technical requirements may subject the D&O's to personal liability for the damage thereby caused to the organization and perhaps others.

Business Judgment Rule

Directors are presumed to have acted properly and to have satisfied these three basic duties if the Business Judgment Rule ("BJR") applies. The BJR recognizes that not all decisions of directors will result in benefit to the organization and that directors will be personally liable for loss to the organization only if the elements of the defense are not satisfied.

To obtain the benefit of this important defense, directors must act in good faith and with a reasonable basis for believing that their conduct is in the lawful and legitimate furtherance of the organization's purposes and must exercise their honest business judgment after due consideration of what they reasonably believe to be the relevant factors.

Five elements of the BJR are generally recognized:

a. *Business decision.* The BJR protects directors against claims for wrongful acts, but not against claims for failure to act. Inaction by directors is protected by the BJR only if it is a result of a conscious decision to refrain from acting.

b. *Disinterestedness.* The BJR protects directors who are disinterested and independent with respect to the challenged action. For this purpose disinterested directors are those who neither appear on both sides of the transaction nor expect to derive any personal financial benefit from it in the sense of self-dealing, as opposed to a benefit which inures to the corporation or all the stockholders generally.

c. *Due care.* The BJR protects directors if they reached an informed decision after making a reasonable effort to ascertain and consider all relevant information reasonably available to them and after reasonably deliberating the decision.

d. *Good faith.* The BJR protects directors if they acted with a good faith belief that their business decision was in the best interests of the corporation. The protection will not apply if the directors acted solely or primarily to preserve their positions or otherwise to benefit themselves.

e. *No abuse of discretion.* The BJR protects directors against honest errors of judgment, but does not provide protection for decisions that cannot be supported by some rational basis and are egregious on their face.

Composition of Board of Directors

Directors should be selected and maintained with a view towards creating the most effective and efficient board possible.

Too frequently, directors of non-profit organizations are selected based upon personal relationships or other contacts, upon the director's perceived ability to raise or donate money or upon the director's visibility in the community. Where possible the size and composition of the board should be consciously evaluated and determined based upon the organization's unique requirements. Matters which should be considered with respect to the composition of a board of directors include:

1. *Director Attributes.* The qualities of an effective director include strength of character, an inquiring and independent mind, practical wisdom and mature judgment. An ideal director should also have vision, keen insight, imagination, resourcefulness in dealing with unusual situations and a cooperative attitude. A director should have sufficient time and interest to devote the necessary energies to the required job. Careful scrutiny should be give to the wisdom of selecting a director who is serving on more than three or four boards. Persons possessing expertise or experience in different substantive areas affecting the organization may provide greater breadth to the board.

2. *Independent Directors.* To be truly effective, a board must be independent from management and not merely rubber-stamp the recommendations of the executive officers. Directors should constructively challenge the officers and scrutinize carefully the materials furnished to them. If they are not provided sufficent information, they should demand it. If they do not understand some portion of the information, they should find out what it means.

When selecting these directors, the organization should closely examine the candidate's background and other business affiliations to avoid potential conflicts of interest. For example, the candidate should not have an ownership interest in or management position with a company having substantial dealings with the organization.

3. *Size of Board.* Traditionally, boards for non-profit corporations have been quite large, frequently exceeding 30 members. It is questionable whether such a large board is the most effective and efficient in fulfilling directorial responsibilities. Detailed and challenging dialogue by all directors is unlikely and quite time consuming with such large boards. Accordingly, smaller boards should be considered, provided diversified and independent representation on the board is not unduly sacrificed.

4. *Self-evaluation.* The board should periodically analyze its performance and the performance of individual members. The evaluation of board performance should be performed by members of the board, by management and, where possible, by outside consultants. The evaluation of individual members may be performed by the nominating committee, by all directors anonymously, or (where staggered terms are used) by directors not up for re-election. Evaluations should cover such topics as attendance at board and committee meetings, participation in board discussions, contribution of constructive criticisms and suggestions, preparedness for meetings and availability to management.

The evaluations should be reviewed by the nominating committee. If deficiencies are identified, the matter should be discussed personally with the derelict director, giving the person the option of improving performance or resigning. Ultimately, the nominating committee should withhold the names of those persons who are not qualified for re-election based upon performance.

Education

A corporation should develop a thorough orientation for new D&O's and an on-going commitment to educating D&O's to the particular operations of the organization, the competitive and regulatory environment in which the organization exists, the nature of the industry in which the organization operates, and the legal arena in which the organization conducts its activities and in which the D&O's serve as fiduciaries.

To fulfill their legal responsibilities, directors and officers must have an intimate familiarity with the organization and their legal powers, duties and restrictions. Because both the factual and legal environment in which the organization operates and in which D&O's serve is constantly changing, the need for education is continual.

1. *Mission of Organization.* Unlike for-profit corporations, the basic mission of many non-profit organizations may not be intuitive. Therefore, D&O's must first identify, then periodically evaluate and, where appropriate, revise the fundamental purpose of the organization. A short, concise mission statement, which can then be implemented through interim objectives and policies, is recommended. D&O's should continually seek information as to whether the constituents of the organization are obtaining from the organization what they want or need and whether it is time for a change in policy to improve the organization's effectiveness.

2. *Factual Orientation.* Formal orientation programs are particularly necessary for new directors and officers. D&O's may be personally liable for wrongful conduct regardless of how new they are to their position. New directors should become familiar with basic corporate records and minutes of recent board and committee meetings, corporate disclosure documents (if available), recent annual reports, board structure and board committee organization, biographical data of the current board and current management personnel, planning documents and studies, management letters from independent auditors, information concerning facilities of the organization (including a tour when possible), and information concerning the organization's outlook with respect to current prospects and problems, critical issues and long-range objectives.

3. *Legal Orientation.* The orientation or on-going education of directors with respect to applicable legal principles must be tailored to the unique set of legal standards relevant to the particular organization and its directors and officers. The standards depend, among other things, upon the nature of the company's business, degree of charitable and for-profit activities undertaken, the state of its incorpo-

ration, the locations where it transacts business, the industry in which it competes, and the terms of its articles of incorporation, its bylaws and other internal documents.

The fundamental duties of directors and officers should be reviewed and understood. Legal guidelines should be presented, ranging from basic operational procedures such as always indicating on any executed document the capacity in which the director or officer executes the document, to a more in-depth review of the important statutes, rules and regulations restricting or regulating the conduct and operations of the company.

4. *Training Seminars.* These educational programs can also include training to enhance their skills as directors. Outside consultants are available to conduct seminars intended to develop directorial skills, similar to programs of continuing education for other types of professionals.

5. *Internal Guidelines.* The board should not only educate itself, but assure proper education of officers and employees. Among other things, directors should develop, publicize, maintain and enforce appropriate management policy statements or guidelines defining ethical standards and legal guidelines with respect to various potentially sensitive or misunderstood areas, including:

— possible conflicts or interest;
— antitrust laws;
— proper accounting and financial integrity;
— payments that may be unlawful or unethical, including bribes and kickbacks;
— political contributions;
— confidentiality of corporate information;
— misappropriation of corporate assets or opportunity.

These statements or guidelines should be developed with the assistance of legal experts and should be circulated to all potentially affected personnel. Each appropriate employee, including new employees, should sign a statement acknowledging their understanding of the policy and agreeing to abide by it. The organization should periodically review and update these statements or guidelines in view of new legal developments. Any updated material should be redistributed to and recertified by each employee.

Although aggressive implementation and enforcement of these statements and guidelines will not stop determined wrongdoers, they will educate and guide the vast majority of employees on avoiding illegal conduct and may prevent the organization and its management from being charged with wrongdoing (or at least mitigate the severity of sanctions imposed) when a subordinate employee violates the guidelines.

Actions by Directors

Any action taken by directors must be an informed decision following a thorough, well-documented investigation of all relevant facts reasonably available and applicable law.

1. *Procedural Considerations.* The board should periodically review and agree upon various procedural issues relating to board meetings, including the frequency and scheduling of regular board meetings, the timing and content of notice of meetings, and the persons other than directors who should attend the meetings.

a. *Board Meetings.* Attendance at board meetings is imperative to keep directors informed and to provide the directors with the opportunity for meaningful input into the decision making process. Accordingly, both regular and special board meetings should be scheduled with a view towards maximizing attendance. Regular meeting dates should be established and communicated to the directors well in advance, preferably at least as a full year schedule. Special meetings should be scheduled only after the directors have been polled to determine their availability at one of several times and the directors should be notified of the selected date as early as possible.

b. *Attendance by non-directors.* Although no one other than the directors has a legal right to attend a board meeting, officers or other key members of management should either be invited to the meeting or instructed to remain available if needed during the meeting. Employees and outside advisors, including lawyers and accountants who have been involved in, are knowledgeable about or consulted in connection with a particular transaction under consideration by the board, should also either attend the meeting or remain available as needed.

c. *Duration of meetings.* Although the quantity of time spent on a particular decision does not necessarily equate to quality of time, it is important to schedule adequate time for directors to completely analyze and discuss the matter under consideration. Discussion should not be arbitrarily terminated and no director should be deprived of an opportunity to question any aspect of the decision.

2. *Presentation of Information.* Adequate information concerning all important matters requiring board attention should be distributed to the board in time to permit a review of the information before any vote is taken. Procedures should be implemented by the board to assure that sufficient information is disseminated in a timely manner.

For regular board meetings, a detailed agenda, sufficient background information, and copies of the minutes of all committee meet-

ings and minutes of the previous board meeting should be distributed to the directors approximately one week in advance of the meeting, although less time may be required in rare emergencies. For special meetings, circumstances usually will not permit as much advance notice or planning. However, whenever possible, information should be provided to directors before the meeting even if expensive courier service is required.

If advanced dissemination of information cannot be achieved, adequate time should be set aside at the meeting to permit directors to review and understand the information presented. If for any reason a director has not received sufficient information or time to evaluate the information, action by the board should be delayed until the information is made available in a timely fashion.

The information distributed to directors should include, where available, written reports or memoranda from management which describe the subject transaction and which set forth management's recommendations and the reasons therefor. In addition, copies of the operative documents (e.g. merger agreement, contract, letter of intent, etc.), and executive summary of the documents, if they are particularly long, complex or technical; written reports from outside advisors and proposed resolutions relating to the transaction should also be distributed in advance.

A director should carefully and critically analyze these documents prior to the board meeting. Directors should plan on devoting a sufficient amount of time in preparation for each meeting to become conversant with the matters presented for consideration.

3. *Conduct of Meeting.* Board meetings should be conducted in an unbiased manner. For example, the board chairman should remain neutral as much as possible and encourage open discussion.

It is essential that directors be provided ample opportunity to actively question and challenge management and outside advisors in connection with the transaction. The purpose of the meeting is not so much to act as a single unit but rather to exercise a healthy skepticism towards the proposal and to hear different viewpoints and ideas. Directors should demand and the management should facilitate the existence of such an environment. Unchallenged reliance upon management recommendations subjects directors to potential liability.

Inevitably, not all directors will ultimately agree with the board decision. The dissenting director must affirmatively vote against the proposal if a legal defense based upon such dissent is to be established. Mere abstention from the vote is deemed by the courts to be tantamount to approval of the transaction.

4. *Documentation.* Maintenance of accurate and complete minutes of all board and committee deliberations and other documents

relating to director or officer conduct is one of the most important and most frequently neglected areas of loss prevention. At a minimum, board minutes should document the matters discussed, record any instructions given to management, and set forth any resolutions passed, actions taken or other decisions made. The following are some fundamental principles which should be considered when preparing minutes:

— Minutes should clearly and concisely set forth exactly what action occurred at the meeting, including any limitations placed on the action taken or authority granted and any conscious decision not to act.

— Minutes should describe what matters were considered and discussed and what authorities were relied upon in reaching the decision of the board.

— If documents are incorporated by reference or attached to the minutes, they should be clearly identified in the minutes themselves.

— Minutes should be reviewed prior to their finalization not only by the directors, but also by legal counsel.

— Minutes should reflect the results of any vote taken and identify by name all directors who voted against an approved transaction.

Directors should carefully review not only minutes of meetings which they attend, assuring themselves that the minutes accurately document what transpired at the meeting and the individual's participation therein, but also the minutes of any meeting which they did not attend. If the absent director dissents or disagrees with actions taken at the meeting, the objections should be placed in writing and submitted to the board for their information and for filing in the organization's minute book.

All documents prepared by or relating to directors and officers should be prepared with the expectation that the document will be closely scrutinized in the future for evidence of wrongdoing. Imprecise wording, inflammatory or vulgar phrases, and ambiguous language should be avoided. A document which appears innocent when prepared may appear quite differently when read in a different context at a later date.

Delegation of Responsibility

Although directors may not abrogate their duties, they may rely in good faith on advice or input from board committees, officers, employees or outside experts.

1. *Board Committees.* The use of board committees permits a small number of directors to perform a more in-depth analysis of a particular matter than would otherwise be practicable for the entire board. Use of an executive committee permits emergency action to be authorized between regular board meetings, although the full board should review and, if appropriate, ratify the committee's interim action.

An active committee structure should be encouraged, particularly for large boards. Director appointment to the various committees should be considered in view of each director's special talents, experience or expertise. A formal program of rotating directors among committees may also be advisable.

The board should consider periodically what committees it needs and what functions it wishes to delegate to each. The most common are an executive, audit, compensation and nominating committee. Depending upon the organization, other possible board committees include a planning, public policy, finance, technology, conflict of interest, and social responsibility committee.

2. *Management Delegation.* Too frequently, boards of non-profit organizations become involved in routine corporate operational matters because the organization's staff is incapable or unwilling to assume that responsibility. The board should not engage in direct management of the organization. However, the board has responsibility for monitoring the day-to-day conduct of the organization by assuring that satisfactory executive management personnel and policies are in place. Essential to the fulfillment of this responsibility is the periodic performance evaluation of executive management (particularly the chief executive officer) and the assurance that clear job descriptions and decision making procedures are implemented. Officers, in turn, have similar responsibilities with respect to their subordinates.

To avoid someone operating outside of the scope of his or her duties or neglecting an area of responsibility within the scope of such duties, clearly defined job descriptions should be prepared and disseminated to all management personnel. In addition, authority and responsibility as between the board and management should be clearly documented and understood. This is especially true with respect to significant matters in which both directors and management have substantial involvement, such as acquisition evaluations, personnel poli-

cies and major capital expenditures. Similarly defined descriptions of authority and responsibility of the organization's staff and volunteers should be prepared and understood by all involved parties.

3. *Staff Selection and Overhead Controls.* For many non-profit organizations, two of the most important board functions are the selection of staff and the implementation of overhead controls. Most non-profit organizations have limited resources and a relatively small number of paid staff members to perform the day-to-day activities of the corporation. Accordingly, it is essential that each staff member be productive, efficient and needed. Staff compensation and other overhead expenses can easily consume much of an organization's available funds without producing identifiable benefits to constituents of the organization. Directors should closely monitor the use of the organization's limited resources to ensure their efficient and effective deployment and to prevent the organizational mission from simply becoming the continued existence of a meaningless entity.

4. *Reliance.* Directors are entitled to the so-called reliance defense, which permits directors to rely in good faith upon officers, committees or agents of the organization when making board decisions. If applicable, the defense establishes that the directors acted in good faith and with due care, although, if liability is imposed without regard to good faith or due care, the relevance of such reliance may be minimized. The following summarizes the generally recognized elements of a defense of reliance:

a. *Select component experts.* A person upon whom the directors or officers rely should be reasonably viewed as competent, experienced and reputable in the area of advice. If the expert has a personal interest in the subject matter of the advice rendered, his competence may be compromised. However, if reasonable inquiry by the directors would not have disclosed that conflict of interest, the directors may be able to rely in good faith on the advice given.

b. *Full disclosure.* Directors may rely on the advice of an expert only if they disclose to the expert all relevant facts known to the directors.

c. *Nature of advice.* The advice relied upon must be rendered within the scope of the expert's expertise. For example, if the defense is based upon the advice of legal counsel, a legal, non-factual question should be central to the advice rendered.

d. *Nature of reliance.* Directors must follow the rendered advice in good faith and with due care. The defense is not available if the subject matter of the advice is otherwise clear or unambiguous, or the advice is clearly unreasonable or obviously repugnant to the plain facts of the case. Directors have some oversight obligation to become

reasonably familiar with the advice before they are entitled to rely on it. Similar principles apply to reliance upon officers, committees or agents of the corporation.

5. *Use of Legal Counsel.* From a loss prevention standpoint, perhaps the most important advice to directors is rendered by legal counsel. Counsel should be consulted and used frequently. Qualified counsel can help make board decisions as impregnable as possible. Legal advice not only helps guide directors into legally acceptable conduct, but also improves the directors' ability to defend their conduct if their actions are taken in reliance upon the legal advice.

Proper use of legal counsel can serve an important loss prevention role for officers also. For example, representations and advice by officers or staff concerning the tax, probate or other legal consequences or contributions to the corporation should be approved by legal counsel. If the organization distributes technical advice or information or publicizes potentially sensitive information, legal counsel should be consulted to evaluate potential liability exposure for rendering professional services or disseminating defamatory material.

Where possible, only qualified counsel with substantial experience and a recognized expertise in the subject area should be relied upon. The board should not feel compelled to use the same counsel for all legal issues, but should seek the most competent counsel reasonably available for the issue under consideration.

If a director or officer meets resistance from other members of management in seeking legal advice, the director or officer should persist in the request. Such resistance may suggest a problem exists which needs the critical review of independent legal counsel.

Conflicts of Interest

Board decisions must be made by disinterested directors. Even the appearance of a conflict of interest should be avoided, if possible, and disclosed if unavoidable.

Consistent with their duty of loyalty, directors and officers should avoid placing themselves or other representatives of the organization in a situation where their personal interest may, or appears to, conflict with the best interests of the organization. This restriction applies not only to obvious conflict situations where an individual is directly involved in both sides of a transaction, but also in more subtle situations. For example, if a director has a close relationship with a person dealing with the organization, the true independence of that director may be subsequently challenged. If an actual or perceived conflict exists, the directors and officers may be required to prove the intrinsic fairness of the challenged transaction to avoid liability.

Directors and officers should heighten their sensitivity towards conflict issues. Because individuals frequently do not focus on perceived conflicts, frequent inquiries and reminders concerning potential conflict situations are suggested.

Where a potential conflict is identified, the director or officer with the conflict should be removed from the decision making process, if at all possible. For example, a majority of disinterested directors should approve transactions directly affecting employee directors, such as decisions with respect to compensation arrangements and employment contracts. The director with the conflict should not only refrain from voting but also be excused from any board discussion involving the proposed transaction. When that director must unavoidably participate in the corporate decision, full disclosure of the conflict should be made not only to other persons involved in the decision making process, but also to members of the organization, when appropriate.

A particularly sensitive area of potential liability exposure exists when directors or officers also serve as plan fiduciaries of employee benefit plans for the organization. Such individuals are subject to inherent conflicts of interest when balancing the sometimes competing interests of the organization and plan participants. For example, decisions relating to the timing and method of the organization's funding of the plan present clear conflicts which must be addressed from the standpoint of both the corporation and the plan.

In summary, when an actual, perceived or potential conflict is identified by any person, the following steps should be taken:

— Precisely identify the actual, perceived or potential conflict;

— Fully disclose the conflict to legal counsel and, where appropriate,

to some or all board members together with an evaluation of the effect and seriousness of the conflict; and

— Develop an appropriate response, including where necessary, disqualification from voting and discussion, disclosure to the members of the organization or other remedial action.

When in doubt as to whether a conflict exists, advice from legal counsel should be obtained.

Loss Prevention Guidelines for Special Risks

The following summarizes some loss prevention guidelines with respect to selective, particularly acute D&O risks for certain types of non-profit organizations.

Employment-Related Claims

Employment-related claims, including claims for wrongful discharge, discrimination and defamation, represent one of the fastest growing areas of officer liability. Legislative and judicially established rules in this area are not always intuitive and are sometimes contrary to how many officers would like to or have historically handled employment related matters. The following is a summary of some suggested loss prevention procedures in this area:

1. *Education.* Persons having control of employment-related decisions should be educated as to the legal restrictions applicable to employment relationships. Rapidly changing legal standards in such areas as wrongful discharge and discrimination necessitate continuing educational procedures. In-house training sessions, informational material and detailed employment procedural manuals should be used to improve the sensitivity and knowledge of all management-level employees. Managers should be strongly encouraged to request guidance from competent legal counsel if the person is uncertain about a specific situation.

2. *Proper documentation.* All employment-related documents should be periodically reviewed for appropriateness in light of then existing employment law standards. Procedures for distribution of those documents should also be periodically examined and amended where appropriate.

A complete and accurate employment history for each employee should be maintained when at all possible, including detailed records establishing what the employee was told and what documents and

other information were provided to the employee concerning the employment relationship. Performance and behavior deficiencies and disciplinary actions or criticisms should also be documented.

All written statements which may reasonably be reviewed by employees (including employee handbooks, personnel policies, job advertisements, hiring correspondence and notices on bulletin boards or in newsletters) should be examined by legal counsel or other knowledgeable experts.

3. *Grievance procedures.* The organization should establish and maintain a well-defined, independent, confidential and accessible grievance procedure which gives employees the appearance that their grievances will be dealt with fairly and quickly.

4. *Common sense.* All management personnel should be sensitized to potential employee claims and encouraged to use common sense and courtesy when dealing with employees. Acts which have the appearance of impropriety, even if otherwise justified, should be avoided. For example, employees should not be discharged, even if for valid reasons, on the day after the person returns from jury duty or a pregnancy leave of absence. Inflammatory or sexually oriented materials or comments should be eliminated in the work environment.

Employee complaints should be listened to and appropriately addressed. Simply giving the employee attention and recognition may avoid expensive and distracting litigation.

Anti-Trust Claims

Directors and officers who authorize, direct or participate in a violation of the anti-trust laws may be personally liable for such violation, even if the individual's involvement was the mere acquiescence or ratification of the illegal activity. D&O's may potentially be liable for the anti-competitive actions of their subordinates if the D&O discovers unlawful activity by the subordinate and does not repudiate the activity.

Because violators of the anti-trust laws may be subject to treble damages, criminal fines and imprisonment, methods to minimize personal exposure in this area should be pursued and aggressively enforced. The following is a summary of some suggested loss prevention procedures:

1. *Identify Risks.* Non-profit organizations should identify what, if any, areas of their operations are potentially subject to anti-trust risks. Once identified, those areas of risk should be communicated to appropriate managers and staff of the organization with specific, well defined guidelines as to permissible and impermissible conduct in that area. For example, trade associations with numerous members of the same industry should maintain and enforce explicit rules concern-

ing topics and issues which should not be discussed by its members or staff.

2. *Competent Counsel.* To evaluate and address anti-trust risks, qualified counsel with expertise not only in general anti-trust law, but also in the unique areas of exposure faced by the organization should be retained and consulted as necessary. The anti-trust laws are difficult to apply with certainty to specific factual situations. Subtle provisions in the applicable statutes, rules or regulations or obscure case law which may be directly applicable to the situation in question can be easily overlooked by legal counsel not intimately familiar with the interpretation and application of these complex laws.

3. *Affirmative Repudiation.* If a person discovers an actual or potential anti-trust law violation or concludes that continued participation would or may constitute such a violation, the person should immediately and expressly notify the "co-conspirators" in unequivocal terms of the person's withdrawal from the anti-competitive activity. Consideration should also be given to notifying the perceived victims and perhaps the government of such conduct as well. A private, uncommunicated decision to withdraw from the illegal conduct is not effective. When violations are discovered, prompt and unconditional termination of the practice through the most effectively explicit terms is essential.

4. *Sensitivity to Risk.* D&O's should exercise caution and general common sense when dealing in areas with potential anti-trust risk. The anti-trust laws are fundamentally intended to eliminate anti-competitive activity. Therefore, when it is impossible or impractical to obtain competent legal advice on a specific matter, D&O's should examine the situation from the standpoint of whether one may perceive a potential anti-competitive result from the proposed activity. Even the appearance of impropriety in this area should be avoided since certain conduct constitutes per se violations of the anti-trust laws regardless of the person's intent. Particularly sensitive areas include activities with other persons and entities relating to prices for goods and services or allocation of markets.

Claims Against Health Care Providers

The following is a summary of some suggested loss prevention procedures uniquely applicable to health care entities:

1. *Quality Assurance Programs.* Peer review and medical audit programs are standard procedures today because of accreditation standards and state licensure requirements. Meaningful and effective evaluation and response of those programs should also be standard procedure. If an audit suggests there may be a problem, the board should require immediate attention by the medical staff to the poten-

tial problem and, where appropriate, extraordinary re-audit or other follow-up reports to assure the matter has been adequately addressed.

In reviewing the institution's quality of care, comparative indexes of comparable facilities should be obtained or prepared and reviewed by the board. In addition, the board should regularly receive reports from appropriate medical staff committees on customary indicators of quality in hospitals, such as rate of infection, post surgical problems, autopsy rate and infant and maternal mortality. Even though the board may consist primarily of persons other than medical professionals, the board should not be hesitant to challenge conclusions or practices which appear suspect.

The importance of effective quality assurance programs is heightened by the economic incentives now being imposed on health care providers to treat patients at the lowest possible cost. These incentive programs create an appearance that the provider may be sacrificing quality of care for economic reward. Persuasive evidence to the contrary is an important element of loss prevention.

The board should also implement a functioning peer review program and oversee the procedures for selecting, appointing and disciplining medical staff members. This is a direct, non-delegable responsibility of the board, which should approve the final action with respect to the appointment or disciplining of the medical staff. The board should periodically confirm that the defined peer review system of hearings and appeals is, in fact, actively in use.

2. *Risk Management Programs.* Health care facilities have a number of high liability risks, including the areas of defective or improper equipment, negligent drug handling, failure to warn regarding the risk of treatment, negligent monitoring of a patient's condition, negligent supervision of a patient, protecting the mentally ill patient, physical condition of premises, infection and non-physical injuries. Appropriate risk management programs should be implemented by the board in each of the areas where the board perceives high liability risk. Those programs should be periodically reviewed to determine their effectiveness and the necessity for change.

3. *Collection and Reimbursement Practices.* Financial controls and systems which adequately address the unique needs of health care entities should be implemented and closely monitored. Because of the complex medicaid/medicare regulatory environment, which frequently represents a large percentage of a hospital's revenue, the board should be certain that an efficient collection and reimbursement system is in use and that periodic changes in the regulatory environment are promptly identified and appropriately addressed.

Maximize Legal Protections

Organizations should take necessary steps to provide a legal environment consistent with maximizing protection to directors and officers.

Maximize Indemnification Protection

The internal indemnification provisions of the organization should be reviewed in light of applicable state law to insure that they provide the maximum protection permitted by law. Suggested provisions to maximize indemnification rights include:

— The articles of incorporation or by-laws should provide for indemnification to the full extent permitted by law.

— The provisions should require indemnification, rather than merely permit the organization to indemnify.

— The provisions should require the advancement of defense expenses, subject only to an unsecured obligation to repay the expenses if a court subsequently determines the indemnification was not permitted.

— The provisions may shift the burden of proof to the organization to prove that the director and office is not entitled to the requested indemnification.

— The provisions may require the organization to reimburse the director and officer for any expenses incurred in a claim against the corporation for such indemnification if the director or officer is successful in whole or in part.

— The provisions may provide that the director or officer has a right to an appeal or an independent *de novo* determination as to indemnification entitlement.

— The provisions may expressly state that the indemnification rights constitute a contract, intended to be retroactive to events occurring prior to its adoption and shall continue to exist after the rescission or restrictive modification of the provision with respect to events occurring prior to that rescission or modification. Alternatively, a separate indemnification contract could be executed by the organization and the director or officer.

— The provisions may provide that any director or officer who serves a subsidiary of the organization or any employee benefit plan of the organization or such subsidiary is deemed to be providing such service at the request of the organization.

To avoid any argument that the expanded indemnification protection is unfair, the organization may obtain member approval for the indemnification provision, even if unnecessary under the state law. To assure adequate funding for any indemnification claim, the organiza-

tion may secure its indemnification obligation by establishing a reserve fund, providing a guarantee by a related entity or agency, or by purchasing a surety bond, letter of credit or other similar financial instrument.

In addition to maximizing the non-profit organization's indemnification provision, consideration should be given to extending indemnification protection afforded by a for-profit corporation to individuals serving at its request as D&O's of non-profit organizations. Although legally permitted in most states, this outside directorship protection should be specifically mandated by corporate documentation, including documentation that the for-profit corporation expressly requests the individual to undertake such non-profit service.

Elimination or Limitation of Liability

Recent legislation in most states permits the limitation or elimination of certain types of director (and in some instances officer) liability. Many of these statutes require the amendment of the corporation's articles of incorporation or bylaws to authorize and define the scope of this liability restriction. The corporation law of the state of incorporation should be reviewed to determine what, if any, affirmative action is required to implement this liability reduction.

For those states which require affirmative action, the applicable amendment should limit or eliminate director (and where permitted officer) liability to the full extent permitted by law and should further provide that any repeal or modification of that provision shall not adversely affect any exemption from liability, limitation of liability or other right of a director or officer with respect to any matter occurring prior to such repeal or modification.

Some state statutes permit the elimination or limitation of liability only for D&O's who are considered "volunteers" and are not compensated. To avoid any suggestion that such a statute is inapplicable, outside directors and other volunteers of non-profit corporations subject to such a statute should avoid even the appearance of any compensation by declining expense reimbursements, free meals and other similar gratuities unless the statute expressly permits such payments.

D&O Insurance

Indemnification by the organization is generally considered, by itself, inadequate protection against director and officer liability because, among other reasons, indemnification may not be available for the following reasons:

— The organizatoin may become insolvent or may not have sufficient resources to pay the losses and expenses incurred by the directors and officers.

— Either the applicable law or the corporation's internal indemnifica-

tion provisions may be modified to limit or prohibit the expected indemnification.

— The composition or attitude of the organization's board of directors may change so that the board is no longer sympathetic to the prior officer and director and thus does not make the necessary determination to authorize the indemnification.

— As a matter of policy, the organization may deem it inappropriate to use contributed funds for such indemnification.

— Because of public policy considerations and statutory limitations, some claims may be insurable but not indemnifiable. For example, settlements and judgments in derivative suits are not indemnifiable in many states and loss arising from violation of the federal securities laws may not be indemnifiable, although such items may be insured.

— D&O insurance also transfers to the insurer the organization's financial risk of funding its indemnification obligation.

As an alternative or supplement to the non-profit organization obtaining D&O insurance, directors who are also covered by a for-profit D&O insurance policy should consider seeking extension of the for-profit coverage to service as a non-profit director.

D&O insurance is somewhat unique in nature and creates complex legal, underwriting and management issues which are difficult to identify and analyze without the assistance of knowledgeable experts.

Document Retention Program

To guarantee that valuable documents are not destroyed and that potentially harmful documents are not retained, a document retention program should be established. This program should define the administrative procedures for retaining documents relating to the organization and the actions of the board, including financial and legal documents, personnel records and other files of the organization.

This program should include procedures for periodic review of documents to determine those that should be retained and those which should be destroyed. Such determination should be made in light of state laws and evidentiary rules which may apply, the degree to which the documents are superfluous and unnecessary, and the possibility that the documents may be misconstrued or confusing. When in doubt, the document should be retained.

Such a document retention program should be implemented not only by the organization, but also by individual directors and officers with respect to documents in their personal files.

Legal Audit

A non-profit organization may use a "legal audit" to inspect and evaluate its legal structure, its pending litigation and potential claims and its internal policies, procedures and guidelines with a view to avoiding future D&O claims. Risk management techniques, including indemnification provisions and D&O insurance policies can also be reviewed for scope and adequacy.

In addition to identifying potential problem areas, a legal audit emphasizes to all participants the necessity for compliance with all legal requirements at all times and the importance of preventive planning.

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NONTAX CONSIDERATIONS BEFORE INCORPORATION

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1

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Nontax Considerations Before Incorporation

I. DECIDING WHETHER TO START A NONPROFIT ENTERPRISE
- A. Preliminary Considerations §1.1
- B. Client Interview Checklist §1.2

II. DECIDING WHETHER TO INCORPORATE OR ADOPT AN ALTERNATIVE FORM §1.3
- A. The Unincorporated Association §1.4
- B. The Trust §1.5
- C. The Corporation §1.6
- D. Possibility of Organizing as Business Corporation §1.7

III. CHOOSING THE RIGHT TYPE OF NONPROFIT CORPORATION §1.8
- A. Public Benefit, Mutual Benefit, and Religious Corporations
  1. Basis for Classification §1.9
  2. Table: Comparison of Public Benefit, Mutual Benefit, and Religious Corporations §1.10
- B. Cooperative Corporations §1.11
- C. Corporations Sole §1.12
- D. Other Special-Purpose Corporations §1.13
- E. Foreign Nonprofit Corporations §1.14

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IV. SALES OF MEMBERSHIPS UNDER THE CORPORATE SECURITIES LAW §1.15

I. DECIDING WHETHER TO START A NONPROFIT ENTERPRISE

§1.1 A. Preliminary Considerations

When a client approaches counsel with questions about starting a nonprofit enterprise, the attorney's first step should be to discuss with the client whether there should be such an enterprise and, if so, whether it should be organized for profit or as a nonprofit enterprise.

(1) *Should there be an enterprise?* A successful nonprofit enterprise must have a useful purpose, committed people, and appropriate resources. Many nonprofit enterprises fail because of an ill-considered purpose or one that is already adequately served by others; because the organizers lose interest, move, or divert their time, energy, and money to other causes; or because sufficient funds cannot be raised. Questions such as the following should be discussed thoroughly with the client:

What is the purpose to be served? Is there a need? What is the community to be served? What other organizations are already serving similar purposes? What is the commitment and staying power of the organizers and participants? Who will administer the enterprise on a day-to-day basis? Are qualified and interested directors available? Will they be willing to make the commitments necessary for a successful enterprise?

What is the projected first-year budget? How will the necessary resources be raised? What are the long-range plans for financing the enterprise?

(2) *Should the enterprise be a nonprofit one?* In many cases it will be clear that the enterprise should be nonprofit; for example, if it has a manifest charitable, religious, or mutual benefit purpose, or if tax-exempt status will be necessary to attract funds. In some cases, however, such as a scientific research enterprise, or a proprietary hospital or school, the answer may be less clear. Depending on the circumstances, some or many of the following questions may be relevant:

Is nonprofit status important for obtaining special treatment in a particular area? Possible areas include Social Security (42 USC §410(a)(8)(B)); unemployment insurance (IRC §3306(c)(8)); minimum wage (see 29 USC §203r); federal securities regulation (15 USC §77c(a)(4)); antitrust (see, *e.g.*, *Marjorie Webster Junior College v Middle States Ass'n of Colleges & Secondary Schools, Inc.* (DC Cir 1970) 432 F2d 650, cert denied (1970) 400 US 965); unfair competition (15 USC

§§44–45; see *Community Blood Bank v FTC* (8th Cir 1969) 405 F2d 1011); copyright (17 USC §§110, 111(a)(4), 112(b), 118(d)(3)); postal rates (39 USC §3626); government contracts (see, *e.g.*, 32 CFR §§5–116.4, 4–118); property taxes (Cal Const art XIII, §§4(b), 5; Rev & T C §§213.6–217, 221–222, 231); sales taxes (Rev & T C §§6361, 6363, 6363.5–6363.6, 6365, 6366.3, 6370, 6370.5, 6374–6375, 6376.5).

Will outside funding, such as grants, depend on nonprofit status? On the other hand, is it important to be able to raise equity capital from investors? Will fund-raising assistance be available? If so, what state, city, and county regulations will apply?

Will qualified and motivated directors be more easily attracted to serve if the enterprise is nonprofit? For officers and managers, will a salary be adequate incentive or will stock incentives be important?

Is the client aware that more rigorous investment standards may be applied to a nonprofit enterprise (see §5.45), or that the enterprise may be subject to supervision by the Attorney General (see chap 8)? Will it be difficult for the nonprofit enterprise to keep up with the paperwork required by the IRS and the Franchise Tax Board (see chaps 2, 4)?

Will the rules against distributions by nonprofit corporations (see §1.10) and against the inurement of benefits to an individual (see §4.18) cause any problems?

If a product is to be marketed, will people be more likely to buy from an organization that has nonprofit status? Will the sales tax differences between profit and nonprofit groups be important? If technology is to be developed, what form of licensing will be best suited to the organization? (For example, a nonprofit organization might consider nonexclusive licensing important to give the public the maximum benefit from the technology, while a business enterprise might want an exclusive license, to ensure reasonable royalties.)

For further discussion of these and other considerations, see generally Oleck, Nonprofit Corporations, Organizations and Associations, pp 20–43, 225–236 (4th ed 1980); Hansmann, *The Role of Nonprofit Enterprise*, 89 Yale LJ 835 (1980); 3 Marsh's California Corporation Law, chap XXII, *Nonprofit Corporations* (2d ed 1981); Hansmann, *Reforming Nonprofit Corporation Law*, 129 U Pa L Rev 497 (1981); Henn & Pfeifer, *Nonprofit Groups: Factors Influencing Choice of Form*, 11 Wake Forest L Rev 181 (1975); Ellman, *Another Theory of Nonprofit Corporations*, 80 Mich L Rev 999 (1982); Ellman, *On Developing a Law of Nonprofit Corporations*, 1979 Ariz St LJ 153; Fryer & Haglund, *New California Nonprofit Corporation Law: A Unique Approach*, 7 Pepperdine L Rev 1 (1979); Permut, *Consumer Perceptions of Nonprofit Enterprise: A Comment on Hansmann*, 90 Yale LJ 1623 (1981); Hans-

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§1.2 B. Client Interview Checklist

The questions in this checklist are intended to help the attorney obtain the facts necessary to analyze the client's situation. Questions 1 through 10 are primarily related to the choice of legal entity; for discussion see §§1.3–1.14. Questions 11 through 26 assume that the corporate form of organization has been selected. The answers to these questions will be useful in preparing the articles of incorporation, bylaws, and minutes of the first meeting (see chap 3 for forms) and in starting operations.

The initial attorney-client discussion of a project often takes place before the client has considered many of the matters mentioned in the checklist. In such cases, the checklist may help identify key issues that the attorney and client need to resolve soon after their initial meeting.

QUESTIONS AFFECTING CHOICE OF LEGAL ENTITY

1. What purpose or purposes will be served by the organization?
2. In what types of activities will the organization engage?

Comment: Trusts are well suited for the passive management of money or property, but not for active operations.

3. Will the organization's activities involve significant risk of contract, tort, or other type of liability?

Comment: If so, incorporation is the most effective protection against personal liability of participants.

4. Will the organization have members?

Comment: Trusts are not well suited for membership organizations.

5. Will the organization be divided (geographically or otherwise) into chapters or other groups?

Comment: Controlling legal relationships among related organizations is most easily accomplished through the corporate form.

6. Will the organization engage in any activities for profit?

Comment: An unincorporated association that carries on any activities for profit risks characterization as a partnership, which could subject members to unlimited personal liability for the organization's obligations.

7. Will the organization own any real property?

Comment: The ability of unincorporated associations to deal with real property is limited by statute. Corp C §§20001–20002.

8. Will it be important for the organization to obtain tax-exempt status? (See chap 4.)
9. Will the tax deductibility of contributions to the organization be important? (See chap 2.)
10. Will it be important for the organization to qualify for reduced-rate mailing privileges?

Comment: Questions 8 through 10 should not affect the choice of legal entity, but should be considered in formulating the organization's purposes. See §§3.11–3.13.

QUESTIONS AFFECTING CORPORATE ARTICLES, BYLAWS, AND OPERATIONS

11. What provisions will be made for distribution of assets on dissolution?

Comment: The requirements for public benefit, mutual benefit, and religious corporations are different on this point; see chap 12.

12. What will be the corporation's name?
13. If the corporation's purposes include any public purpose, provide a brief description of each public purpose.
14. What will be the name and California address (if an individual) or name and state of incorporation (if a corporation) of the corporation's agent for service of process in California? Name and address of incorporator (if any)?

Comment: Questions 12 through 14 are intended to provide basic information required in the articles of incorporation. The availability of one or more acceptable names should be checked promptly with the Secretary of State (see §3.3).

15. Is it anticipated that the corporation will be deemed to be a private foundation (see §§2.14–2.15)?

Comment: Private foundations often include provisions in their articles of incorporation covering the special restrictions that the IRC imposes on private foundations.

16. How many directors will there be initially? Ultimately?

17. How will directors be elected or selected, and what will be their term of office?

Comment: See chap 5 for discussion of directors generally. Questions 16 and 17 are intended to provide information that must be included in the bylaws (see chap 3).

18. Is it anticipated that any director or relative of a director will be compensated for services rendered to the corporation (as employee, independent contractor, or otherwise), other than for serving as a director?

Comment: No more than 49 percent of the directors of a nonprofit public benefit corporation may be "interested persons." Corp C §5227; see §5.3.

19. Will any director engage in any transaction with the corporation *(e.g.*, loan, lease of property, rendering of services for compensation)?

Comment: Any proposed transaction should be reviewed for compliance with the applicable limits on "self-dealing" transactions with, and loans to, directors. Corp C §§5233, 5236, 7233, 7235, 9243. (See §§5.51–5.61 for discussion.)

20. Will the corporation have members? If so, will there be more than one class of members?

Comment: Nonprofit corporations are no longer required to have members; see §6.3. If there are classes of members, the rights and duties of each class should be set forth in the articles of incorporation or bylaws; see chap 3.

21. What will be the procedures (criteria, fees, etc.) for admitting new members? What persons or group will decide on admission?
22. Will memberships be transferable or redeemable and, if so, under what conditions?
23. Will dues, assessments, or fees be levied on members?
24. What procedures will be provided for the termination of members?

Comment: The answers to questions 21 through 24 (see chap 6 for discussion) will supply information needed for preparing the articles and bylaws (see chap 3).

25. Will there be any special procedures applicable to voting by members (*e.g.*, use of delegates, special quorum or supermajority requirements, use of cumulative voting)?

Comment: For discussion see chap 7. This information is needed for preparing the bylaws.

26. Who will be the corporation's initial directors and officers? Their addresses?
27. What will be the corporation's fiscal year?

Comment: Questions 26 and 27 will provide information necessary in preparing the minutes of the initial meeting of the board of directors (see chap 3).

28. Does this corporation have a parent corporation? If so, what is the name of the parent corporation, and what is the reason for or nature of the relationship?
29. Who will be the person for the attorney to contact?

§1.3 II. DECIDING WHETHER TO INCORPORATE OR ADOPT AN ALTERNATIVE FORM

Nonprofit organizations may be variously designated as associations, clubs, cooperatives, foundations, unions, lodges, or funds. However, there are only three basic forms of legal organization: the unincorporated association (see §1.5), the trust (see §1.6), and the corporation (see §1.7). Most California nonprofit corporations are either public benefit corporations, mutual benefit corporations, or religious corporations. Corp C §§5000–9927. Although the client will ultimately decide which form best suits the needs of the enterprise, this decision should be made only after discussing with the attorney the key attributes of each of the three alternatives.

Major factors that usually influence the choice of legal entity include ease and cost of formation; flexibility in management and operation; capacity to make contracts, own property, and exercise other legal rights; and limitations on personal liability of the directors and members. The importance of each factor will vary depending on the organization's intended purposes and activities.

§1.4 A. The Unincorporated Association

The term "nonprofit association" means an unincorporated association of natural persons formed for some purpose other than profit. Corp C §21000. This form of organization is used most commonly by small local clubs and societies, labor unions, and fraternal organizations. Like corporations, nonprofit unincorporated associations are creatures of statute; see Corp C §§21000–21401. They are not partnerships (although quite similar), because they lack the essential partnership attribute of carrying on a business "for profit." Corp C §15006.

Nonprofit associations may (but need not) register their names and insignia with the Secretary of State and prevent registration of any de-

ceptively similar name or insignia or unauthorized use of the registered name or insignia. Corp C §§21300–21310.

Advantages and disadvantages. The major advantages of the unincorporated association are the relative ease with which it can be organized, the informality with which it can act, and the absence of statutorily mandated formalities or standards of conduct applicable to directors. These matters, as well as the association's purposes and the rights, obligations, and authority of its members, directors, and officers are governed by the principles of agency and contract law and by implied and express agreements among the members (whether oral or embodied in a constitution, articles of association, bylaws, or other document). The major disadvantages are the uncertainty as to the law applicable and the difficulty of drafting comprehensive documents for the association that would relieve some of the uncertainty.

Several uncoordinated statutory provisions define some but not all of the attributes of nonprofit unincorporated associations. For example, an unincorporated association has the capacity to enter into contracts (see Com C §1201(28)–(30)), to acquire and deal with such real and personal property "as may be necessary for [its] business purposes and objects" (Corp C §20001), and to sue and be sued in the name of the association (CCP §388). Associations are also included within the definition of "persons" who may register and protect trademarks and service marks. Bus & P C §14204. An association is liable to nonmembers for acts and omissions of its officers, agents, and employees acting within the scope of their authority to the same extent as if it were a natural person. Corp C §24001. However, consenting members may also be liable, even though the association itself can be sued in its own name under CCP §388. See *Jardine v Superior Court* (1931) 213 C 301, 2 P2d 756.

This potential personal liability of members for the association's obligations is the most troublesome uncertainty. Unless there has been an express written assumption, an association's members are insulated from personal liability for the association's debts in respect to land or buildings for association purposes. Corp C §§21100–21101. Beyond these narrow limits, however, association members who expressly or impliedly consent to or participate in a transaction by the association may become personally liable on any resulting obligation. *Leake v City of Venice* (1920) 50 CA 462, 195 P 440; *Security First Nat'l Bank v Cooper* (1944) 62 CA2d 653, 145 P2d 722; see 59 Ops Cal Atty Gen 165 (1976). What constitutes sufficient implied consent or participation to expose a member to personal liability is a factual question. Although the mere fact of joining, belonging to, or signing the bylaws of an association does not create a presumption

that the member consented to the incurring of any obligation (Corp C §21102), the liability of members who go beyond "mere" membership (*e.g.*, members who participate in the selection of directors or officers) is determined on a case-by-case basis.

In addition, there are no statutory provisions giving the officers, directors, or members of a nonprofit association implied or apparent authority to act for it. Accordingly, under general agency principles an association's officers and directors must have express or clearly implied authorization or express subsequent ratification of acts performed as agent of the association, a disability that may cause problems when dealing with banks and other organizations requiring clear indication of agents' authority. This uncertainty has been alleviated to some extent with respect to real property transactions; see Corp C §20002.

The drafting of a comprehensive constitution or other governing document can be a formidable task, given the numerous rights, obligations, and procedures to be defined and the absence of any statutory norms. Although short, simple documents (or even no documents) may be used, this approach will inevitably leave key issues to be resolved by mutual agreement or by reference to ill-defined common law principles.

The inadequacy of the statutory scheme and the resulting uncertainties make the unincorporated association less than desirable for most nonprofit enterprises.

Incorporating a nonprofit association. An existing nonprofit association may change its status to that of a public benefit corporation (Corp C §5121), a mutual benefit corporation (Corp C §7121), or a religious corporation (Corp C §9121), depending on the organization's purpose. A change to corporate status requires authorization in accordance with the association's rules and procedures. Corp C §§5121(a), 7121(a), 9121(a). For filing requirements and effect of the change, see Corp C §§5121(b)–(g), 7121(b)–(g), 9121(b)–(g).

§1.5 B. The Trust

Trusts are essentially property management devices in which one person, the trustee, holds legal title to the trust property subject to an equitable obligation to use or hold it for the benefit of another person, the beneficiary. See Restatement (Second) of Trusts §2 (1959). Thus a trust is not a suitable vehicle for a nonprofit organization intended to be for the mutual benefit of the members. This section deals with charitable trusts formed to benefit an indefinite class of persons.

Charitable trusts are highly favored in the law: they are not subject to the rule against perpetuities (CC §715) and will not be allowed to fail for want of a trustee (CC §2289; Restatement (Second) of Trusts

§§2, 32–33, 353 (1959)) or for lack of a detailed plan of execution (*Estate of Butin* (1947) 81 CA2d 76, 183 P2d 304). To qualify for this preferred legal status, a trust's purposes must be exclusively and clearly charitable, and its beneficiaries must be either the public or some definite class or part thereof or institutions devoted to the public welfare. *Estate of Graham* (1923) 63 CA 41, 218 P 84.

The major advantage of the charitable trust or foundation is that it can be established and operated relatively quickly and inexpensively, without having to comply with any statutorily required formalities. Its best application is probably in the family foundation, where it may allow the family to retain control and also permit certain tax benefits.

When a client is considering organizing a nonprofit charitable enterprise as a trust, the initial focus should be on the intended activities. The trust may be an appropriate vehicle if the organization is intended mainly to hold, manage, or distribute property, but it is usually inappropriate if the organization intends to engage in other types of activities.

A major disadvantage of the trust is the trustee's risk of liability. Trustees are personally liable to third parties on all trust obligations, including contracts and torts, unless expressly exempted by contract with the third party, and are also obligated to reimburse the trust estate for all losses (including failure to make a profit) resulting from the trustee's failure to manage the estate with reasonable skill, prudence, and diligence. CC §§2236–2238, 2259, 2261–2262. See *Lynch v John M. Redfield Found.* (1970) 9 CA3d 293, 88 CR 86. Trustees may be personally liable even with respect to duties that have been delegated to others, and are also subject to a virtual prohibition on self-dealing transactions, even if beneficial to the trust estate, except with the consent of the trust beneficiaries. CC §2230. For charitable trusts, consent by the Attorney General (and perhaps court consent) is required, since there is no defined beneficiary capable of giving consent.

Charitable trusts must be registered with the Attorney General's Registrar of Charitable Trusts and are subject to the Attorney General's continuing supervision. Govt C §§12580–12597; see Bell & Bell, *Supervision of Charitable Trusts in California*, 32 Hastings LJ 433 (1980). (Although charitable corporations are also supervised by the Attorney General (see chap 8), the standards for trustees are more stringent and less clearly defined than those applicable to directors of charitable nonprofit corporations.)

Another major disadvantage of the trust form is its inflexibility. A trust is not recommended if the organization plans to have members or wants community involvement, since input from members or community is inconsistent with trustee control. Moreover, in trusts there is always

the potential problem of successor trustees. Even for a family foundation, where family control and tax benefits are desired, there may be better ways of achieving the same ends. In general, the trust form should be avoided unless it suits a specific purpose better than any other form.

§1.6 C. The Corporation

The corporate form of organization offers one major advantage over the two alternatives discussed above: it is a recognized and well-understood legal entity governed by relatively clear statutory norms in such important areas as permitted activities, director and member liability and indemnification, director standards of conduct, and internal governance. Potential disadvantages of incorporation include certain built-in costs of formation, the necessity of observing corporate formalities, and (for some organizations) the burden imposed on directors by statutory standards of conduct. Except in the cases of small clubs or similar organizations and passive charitable foundations, these disadvantages will usually be outweighed by the substantial advantages inherent in the corporate form.

§1.7 D. Possibility of Organizing as Business Corporation

The importance of obtaining tax-exempt status (see chaps 2, 4) precludes many nonprofit organizations from being formed as business corporations under the General Corporation Law (Corp C §§ 100–2319). However, any nonprofit organization that is not tax exempt and does not anticipate the need to become so might consider organizing under this law. Business corporations are not required to operate at a profit, and if profits are not earned, income or franchise taxes are minimal. The main advantage in most instances would be the more liberal standards of conduct afforded under the General Corporation Law.

CAVEAT: A business corporation that holds any assets for charitable or eleemosynary purposes, however, is subject to supervision by the California Attorney General with respect to those assets, and the Attorney General may apply the strict standards of conduct for charitable trustees (see §1.5) to the directors' conduct. In such a case, the less rigorous standards of conduct for directors of nonprofit corporations (see §§ 5.43–5.45) may be preferable.

§1.8 III. CHOOSING THE RIGHT TYPE OF NONPROFIT CORPORATION

In addition to the three major types of nonprofit corporations recognized in California (see §1.9), there are also several minor types of nonprofit corporations for special purposes under California law (see §§ 1.11–

1.13). It is also possible to operate a foreign nonprofit corporation in California (see §1.14).

A. Public Benefit, Mutual Benefit, and Religious Corporations

§1.9 1. Basis for Classification

Most California nonprofit corporations fall within one of three major classifications: public benefit, mutual benefit, or religious. Each of these types of nonprofit corporations is governed by a separate self-contained part of the Nonprofit Corporation Law, known respectively as the Nonprofit Public Benefit Corporation Law (Corp C §§5110–6910), the Nonprofit Mutual Benefit Corporation Law (Corp C §§7110–8910), and the Nonprofit Religious Corporation Law (Corp C §§9110–9690). The three types of nonprofit corporations differ from one another primarily in the purposes they may have, the way their assets may be distributed, and the extent to which they are subject to statutory or administrative regulation.

Public benefit corporations may be formed for public or charitable purposes, may not make any distribution of corporate assets to members at any time, and are subject to extensive governmental regulation and supervision. Mutual benefit corporations may be formed for any lawful purpose, may make distributions of corporate assets to members upon dissolution (but not before), and are subject to less stringent state regulation and supervision. Religious corporations may be formed primarily or exclusively for religious purposes, may not make any distribution of corporate assets to members at any time, and are subject to minimal governmental control and supervision.

A corporation's classification usually depends on its purposes. Thus, incorporated charitable organizations such as foundations, community chests, and hospitals are generally classified as public benefit corporations; societies, fraternal orders, trade and homeowners associations, clubs, and similar organizations conducted for the benefit of their members are usually organized as mutual benefit corporations; and churches, seminaries, and other religious organizations are usually formed as religious corporations.

There is some overlap among the three main types of nonprofit corporations. For example, a corporation with religious and charitable purposes could organize as a public benefit corporation, but it would be unlikely to do so because public benefit corporations are subject to stricter statutory standards and more extensive Attorney General supervision than are religious corporations. Similarly, a corporation with public or charitable purposes seeking to avoid the relatively strict standards of

a public benefit corporation could be formed as a mutual benefit corporation if its assets were not irrevocably dedicated to charitable, religious, or public purposes—if, for example, the articles of incorporation permitted distribution of the assets to members on dissolution. This would also be unlikely to occur, since the corporation would be ineligible for a charitable income tax exemption (see §4.3), and as to any assets held in charitable trust, it would be regulated much as if it were a public benefit corporation. Corp C §§7238, 7240.

Some clients representing religious groups may wish to consider forming a corporation sole (Corp C §§10000–10015) as an alternative or a supplement to a religious corporation. See §1.12.

§1.10 2. Table: Comparison of Public Benefit, Mutual Benefit, and Religious Corporations

The attributes of public benefit, mutual benefit, and religious corporations are discussed in detail in later chapters of this book. The table on the next page provides a quick-reference summary and comparison of the three types of nonprofit corporations in a few key areas.

Table: Comparison of Public Benefit, Mutual Benefit, and Religious Corporations

	(A) PUBLIC BENEFIT CORPORATION	(B) MUTUAL BENEFIT CORPORATION	(C) RELIGIOUS CORPORATION
1. Purposes	Any public or charitable purpose. Corp C §5111.	Any lawful purpose, except that a corporation whose assets are irrevocably dedicated to charitable, public, or religious purposes and which must distribute its assets to similar organization on dissolution cannot be a mutual benefit corporation. Corp C §7111	Purposes must be primarily or exclusively religious. Corp C §9111.
2. Members	Corporation may, but need not, have one or more classes of statutory members (persons with voting rights, see Corp C §5056), and may refer to others as "members" if desired. Corporation may specify qualifications for membership (including fees), rights of members, and transferability of memberships. Corp C §§5310-5354	Same as public benefit corporation. Corp C §§7310-7354	Same as public benefit corporation. Corp C §§9310-9353.

3. Distributions to Members	No distribution may be made to members. Corp C §5410. Creditors, directors, members, or Attorney General (AG) may recover improper distributions on behalf of corporation. Corp C §5420.	Distributions to members permitted only on dissolution or, subject to limitations, in connection with repurchase or redemption of memberships. Corp C §§7410-7414. Nonconsenting creditors may sue on behalf of corporation to recover improper distributions from recipients who had knowledge of facts indicating impropriety. Corp C §7420.	No distributions may be made to members. Creditors, directors, or a specified minimum number of members may recover improper distributions on behalf of corporation. Corp C §9610.
4. Directors a. Selection and Term	If corporation has members, directors are elected by members for terms of up to 3 years, class voting is permissible, up to 1/3 may be selected by other means. If corporation has no members, directors may be elected by board of directors or by any other means specified in the articles or bylaws and may have terms of up to 6 years. Corp C §5220. Directors may fill board vacancies. Corp C §5224.	Same as public benefit corporation. Corp C §§7220, 7224.	Articles or bylaws may provide for tenure, election, selection, designation, removal, and resignation of directors. Corp C §9220.
b. "Interested Persons" Limitation	No more than 49% of directors may be "interested persons" (persons compensated for services other than as a director, or their close relatives). Corp C §5227.	No "interested persons" limitation.	No "interested persons" limitation.

	(A) PUBLIC BENEFIT CORPORATION	(B) MUTUAL BENEFIT CORPORATION	(C) RELIGIOUS CORPORATION
5. Directors' Standards of Conduct, Liability (See also §5.42) **a. Duty of Care**	General standard of care same as General Corporation Law Corp C §309, *i.e.*, must act in good faith, in manner believed to be in corporation's best interest, and with care of a prudent person; may rely on reliable officers, employees, outside experts and responsible committees of directors. Corp C §5231	Same as public benefit corporation. Corp C §7231.	General standard of care less stringent than General Corporation Law. Must act in good faith, in manner believed to be in corporation's best interest, and with care appropriate under the circumstances; may rely on reliable officers, employees, outside experts, responsible committees of directors, and religious authorities. Corp C §9241
b. Investment Standards	Special standards apply to investment of funds. Corp C §5240	No special standards for investments	General standard of care applies to investments. Corp C §9250.
c. Duty of Loyalty ("Self-Dealing")	Interested directors may be liable for "self-dealing" transaction unless it is (1) approved by AG or court, or (2) approved in advance by noninterested directors, who have determined that it if fair and reasonable to and for benefit of corporation and that no better arrangement is available. Corp C §5233.	"Self-dealing" type transaction is not void or voidable (1) if it is approved by members, (2) if it is approved by noninterested directors and is just and reasonable to the corporation, or (3) if the person asserting its validity establishes that it was just and reasonable to the corporation. Corp C §7233.	Generally same as public benefit corporation except that transaction approved by directors may be for corporation's benefit or in furtherance of corporation's religious purposes. Corp C §9243.

d. Loans and Guaranties	Loans and guaranties to officers and directors prohibited; directors may be liable for approving improper loans, guaranties, distributions. Corp C §§5236-5237.	Loans and guaranties to officers and directors not prohibited if statutory standards are met. Corp C §7235.	Loans and guaranties to officers and directors governed by directors' general duty of care. Corp C §9241.
e. Indemnification	Indemnification of directors' litigation expenses permitted, required, or prohibited depending on statutory conditions. Corp C §5238.	Same as public benefit corporation. Corp C §7237.	Same as public benefit corporation. Corp C §9246(h)(2)(i).
f. Insurance	Insurance permissible except with respect to "self-dealing" transactions. Corp C §5238(i)	Insurance permissible. Corp C §7237(i)	Same as public benefit corporation. Corp C §9246(i)
g. Special Rules	Not applicable.	Standards of Public Benefit Corporation Law apply to directors' conduct as to assets held in charitable trust. Corp C §7238	Not applicable.
6. Attorney General (AG) Supervision a. Reports and Filings	Initial and periodic filings with AG required. Corp C §6324(a). Govt C §§12580-12597	Initial and periodic filings with AG required as to assets held in charitable trust. Corp C §8324(a). Govt C §§12580-12597	No reports to AG required. Govt C §12583
b. Investigation	AG may examine corporation at any time to ascertain condition of its affairs, compliance with its purposes, and compliance with trusts it has assumed. Corp C §5250; Govt C §12588	No AG powers except as to assets held in charitable trust, to which public benefit corporation rules (see Column A) apply. Corp C §§7142, 7238, 7240, 8324(a); Govt C §§12580-12597.	AG has no powers in noncriminal matters except as expressly empowered by statute (see 6 c. below). Corp C §9230(a).

	(A) PUBLIC BENEFIT CORPORATION	(B) MUTUAL BENEFIT CORPORATION	(C) RELIGIOUS CORPORATION
c. Power To Bring Suit (1) Against the Corporation	AG may institute proceedings to correct departure from corporate purposes or failure to comply with trust assumed by corporation Corp C §5250, Govt C §12591 AG may initiate or intervene in proceedings to remove directors (Corp C §5223), appoint provisional directors (Corp C §5225), or compel corporation to hold membership meeting or conduct written ballot (Corp C §§5510, 5515) AG may sue for failing to comply with statutes (Corp C §6216) and may seek corporation's involuntary dissolution (Corp C §§6510(a)(5), 6511) AG may bring quo warranto action to challenge unlawful acts or usurpation of powers by corporation or its directors. CCP §803.	No specific power except with respect to assets held in charitable trust, see Corp C §7142. AG may bring quo warranto action under CCP §803 to challenge unlawful acts or usurpation of powers by corporation or its directors AG may file complaint for involuntary dissolution Corp C §8511	AG may institute quo warranto proceedings (CCP §803) to challenge classification as religious corporation Corp C §9230(b) AG may represent state agencies empowered to challenge status or regulate type of activities engaged in Corp C §9230(c) AG may bring action to enforce specific charitable purposes for which property was solicited and received from general public Corp C §9230(d) AG may bring action to compel compliance with reporting requirements Corp C §9660

(2) Against Directors (a) Challenging Election	AG may institute quo warranto action challenging director's right to hold office (CCP §803) or intervene in action challenging director's election or appointment (Corp C §5617).	AG may institute quo warranto action challenging director's right to hold office (CCP §803) or, if assets held in charitable trust, may intervene in action challenging director's election or appointment (Corp C §7616).	AG may institute quo warranto action challenging director's right to hold office. CCP §803.
(b) Breach of Duty	AG may initiate proceedings against director for breach of standards of conduct Corp C §§5223, 5237(c)(3)	If assets held in charitable trust, AG may initiate or intervene in action to remove director for breach of standards of conduct Corp C §7223	AG may initiate or intervene in action to remove director for fraudulent acts. Corp C §9223
(3) To Recover Improper Distributions	AG may initiate or intervene in proceedings to recover improper distributions Corp C §§5420, 6719, 6721	No specific power granted AG to initiate or intervene in actions to recover improper distributions	No specific power granted AG to initiate or intervene in actions to recover improper distributions
d. Major Corporate Changes—Notice or Consent Required	Notice to or consent of AG required for change of status (Corp C §5813.5), sale of substantially all assets (Corp C §5913), merger with another corporation (Corp C §6010), voluntary dissolution (Corp C §§6611, 6617), and disposition of assets on dissolution (Corp C §6716)	Notice to or consent of AG required for disposition of any assets held in charitable trust (Corp C §7913), certain mergers (Corp C §8010), certain dissolutions (Corp C §§8510(e), 8610-8617, 8716)	Notice to or consent of AG required for disposition of substantially all assets (Corp C §9633), certain mergers (Corp C §9640(b)), and certain dissolutions (Corp C §9660)
e. Other Notice Requirements	AG should be given notice of any proceedings in which AG may intervene or which AG could have initiated (6.c. above); see *e.g.*, Corp C §5223(b).	AG should be given notice of any proceedings in which AG may intervene or which AG could have initiated (6.c. above); see, *e.g.*, Corp C §7223(c)	AG should be given notice of any proceedings in which AG may intervene or which AG could have initiated (6.c. above); see, *e.g.*, Corp C §9223(b)

§1.11 B. Cooperative Corporations

A cooperative corporation (Corp C §§12200–12704, effective Jan. 1, 1984) is a special form of corporation that may be formed for any lawful purpose, but it must be organized and must conduct its business primarily for the mutual benefit of its members as patrons of the corporation. Corp C §12201. The law authorizing such corporations is intended primarily to apply to consumer cooperatives, but it also applies to other cooperatives that elect to incorporate under it. Corp C §12200. The corporate earnings, savings, or benefits are to be used for the members' general welfare or proportionately and equitably distributed to them, based on their patronage of the corporation. Corp C §§12201, 12451. If the client wants to offer limited patronage refunds or dividends to the members during operations, the cooperative corporation may be the best form to select. On most other points the law is similar or identical to that governing mutual benefit corporations.

§1.12 C. Corporations Sole

The corporation sole is a special nonprofit corporation that can be formed by the presiding officer of a religious denomination, society, or church to manage its affairs. This special form of corporation continues to be governed by the earlier law, Corp C §§10000–10015. Examples of corporations sole are the Catholic Church and the Episcopal Church.

For a religious group whose ruling authority is centralized in one individual, the corporation sole may be preferable to the religious corporation, since it is subject to even fewer governmental controls. Compare Corp C §§10000–10015 with Corp C §§9110–9690.

§1.13 D. Other Special-Purpose Corporations

In connection with the adoption of the present Nonprofit Corporation Law, a number of prior statutes covering special-purpose nonprofit corporations have been either repealed or amended to incorporate by reference portions of the Nonprofit Corporation Law. The following special-purpose corporations are referred to in the Nonprofit Corporation Law and, in some cases, governed in part by special statutory provisions:

—Corporations for charitable or eleemosynary purposes are subject to the Public Benefit Corporation Law or the Religious Corporation Law, depending on whether the purpose is charitable or religious. Corp C §10200.

—Societies for the prevention of cruelty to children and animals are subject to the Public Benefit Corporation Law as well as special provisions

regarding formation and operation. Corp C §§10400–10406; CC §§607d–607g.

—Port and terminal protection and development corporations are subject to the Mutual Benefit Corporation Law as well as special provisions regarding participation by public agencies. Corp C §§10700–10703.

—Nonprofit medical, hospital, or legal services corporations are subject to the Public Benefit Corporation Law or the Mutual Benefit Corporation Law, depending on the corporation's purposes, and are also subject to special provisions regarding formation and operation. Corp C §§10810–10841.

—Chambers of commerce, boards of trade, mechanics' institutes, and similar organizations, if organized with capital stock, are subject to the General Corporation Law; if organized without capital stock, they are subject to the Mutual Benefit Corporation Law. Corp C §12000.

—Under the Fish Marketing Act (Corp C §§13200–13356), fish-marketing associations or corporations, even though deemed to be nonprofit (Corp C §13203), are governed by the General Corporation Law except where it is inconsistent with express provisions of the Fish Marketing Act. Corp C §13204.

—"Small business development corporations" that come under the California Small Business Development Corporation Law (Corp C §§14000–14131) are subject to special provisions of that law regarding purpose, formation, and operation, and are also subject to the Public Benefit Corporation Law except where it is inconsistent with express provisions of the Small Business Development Corporation Law. Corp C §14080.

—Mutual water companies may be formed under either the Mutual Benefit Corporation Law or the General Corporation Law. If formed under the General Corporation Law, they are subject to special provisions regarding quorum requirements and cumulative voting. Corp C §§602(a), 708(d). In either case, they are subject to special provisions regarding scope of operation and transfer and assessment of shares. CC §§330.24–331.

The foregoing list is not exhaustive; for example, see Ins C §§10970–10976 regarding fraternal benefit societies and Ins C §§11400–11407 regarding firemen's, policemen's, and peace officers' benefit and relief associations.

§1.14 E. Foreign Nonprofit Corporations

Foreign nonprofit corporations are expressly exempt from the "pseudo-corporation" statute making California law applicable to foreign business corporations whose activities and shareholders are located in California.

Corp C §2115. Therefore, a foreign nonprofit corporation may apparently look to the law of the state in which it is organized for rules governing management, standards of conduct, distributions, and similar matters. This seems to suggest that some of the rigors of complying with the California Nonprofit Corporation Law (e.g., the director "self-dealing" provisions) could be avoided by incorporating in another state. However, in most instances this is probably not the case.

If a foreign corporation does any business or holds any property in California for charitable or eleemosynary purposes (other than religious purposes), it is subject to the Uniform Supervision of Trustees for Charitable Purposes Act (Govt C §§12580–12597), which requires the periodic filing of reports with the California Attorney General and gives the Attorney General power to investigate the corporation's affairs to verify compliance with its stated purposes and with the terms of any charitable trusts it has assumed. This power is undoubtedly broad enough to allow the Attorney General to prosecute for any perceived violations of applicable fiduciary standards. The fiduciary standards applied would probably be the strict California standards for charitable trustees. CC §§2228–2240, 2258–2264. Although these standards have been expressly made inapplicable to directors of California nonprofit corporations (Corp C §§5230(b), 7230(b), 9240(b)), there is no such exemption for directors of foreign nonprofit corporations.

In addition, foreign nonprofit corporations transacting intrastate business must qualify to do business and designate an agent for service of process in California in the same manner as foreign business corporations. Corp C §§6910, 8910; see Corp C §§2100–2107, 2109–2114.

In most instances, there is no advantage but there may be several disadvantages for a California group to organize in another state as a nonprofit corporation.

§1.15 IV. SALES OF MEMBERSHIPS UNDER THE CORPORATE SECURITIES LAW

If the organization expects to charge membership fees or assess dues, the attorney should be aware of the impact of the Corporate Securities Law of 1968 (Corp C §§25000–25705), under which the offer or sale in California of any security must be qualified with the California Department of Corporations unless an exemption from qualification is available. Corp C §§25110, 25120, 25130. A "security" for this purpose includes a membership in an incorporated or unincorporated association. Corp C §25019.

Nondebt securities are exempt from qualification if the issuer is either (a) organized exclusively for educational, benevolent, social, fraternal,

religious, charitable, or reformatory purposes and not for pecuniary profit, if no part of the issuer's net earnings inures to the benefit of any private shareholder or individual; or (b) organized as a chamber of commerce or trade or professional association.

This exemption does not apply if there is a promoter who expects to be remunerated by the organization or make a profit from the organization's activities. Corp C §25102(j).

For further discussion, see §§3.367–3.368.

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Nontax Considerations Before Incorporation

Deciding Whether To Start a Nonprofit Enterprise
[§1.1] Preliminary Considerations
Deciding Whether To Incorporate or Adopt an Alternative Form
[§1.5] The Trust
Choosing the Right Type of Nonprofit Corporation
Public Benefit, Mutual Benefit, and Religious Corporations
[§1.10] Table: Comparison of Public Benefit, Mutual Benefit, and Religious Corporations
[§1.11] Cooperative Corporations
[§1.13] Other Special-Purpose Corporations
[§1.14] Foreign Nonprofit Corporations
[§1.15] Sales of Memberships Under the Corporate Securities Law

DECIDING WHETHER TO START A NONPROFIT ENTERPRISE

[§1.1] Preliminary Considerations

(2) *Should the enterprise be a nonprofit one?* The list of areas in which nonprofit status affords special treatment should include additional references to property tax benefits under Cal Const art XIII, §§3(d), (e), (f), 4(d), and Rev & T C §§202(a)(2), 203, 206–206.2, and 207.

In addition to the considerations enumerated in Book §1.1, the attorney should determine whether the requirement that the organization serve a public purpose (and the prohibition against serving a private purpose) (see §§4.3, 4.18) would create problems because of significant or substantial private purposes.

Effective January 1, 1989, 17 USC §111(a)(4) is renumbered as 17 USC §111(a)(5).

The reference in Book §1.1 should be updated as follows: Oleck, Nonprofit Corporations, Organizations and Associations (5th ed 1988).

DECIDING WHETHER TO INCORPORATE OR ADOPT AN ALTERNATIVE FORM

[§1.5] The Trust

In 1986 the California legislature significantly changed the law of trusts, including charitable trusts. A new Division 9 was added to the Probate Code (Stats 1986, ch 820, §40) to be cited as the "Trust Law" (Prob C §§15000–18201). Prob C §15000. Many sections of the Civil Code that formerly governed trusts and trustees were repealed; the new law continues some former provisions and contains modified and new provisions as well. The new provisions are operative July 1, 1987, and generally apply to all trusts regardless of when created. Prob C 15001(a). The law applies to all proceedings concerning trusts, including those commenced before July 1, 1987, unless, in the opinion of the court, application of the new law would substantially interfere with the effective conduct of proceedings or the rights of the parties or other interested persons. Prob C §15001(b). Except to the extent modified by statute, the common law of trusts continues to apply. Prob C §15002. The law applies to charitable trusts that are subject to the jurisdiction of the Attorney General, to the extent that it is not in conflict with the Uniform Supervision of Trustees for Charitable Purposes Act (Govt C §§12580–12598). Prob C §15004. Civil Code §§2230, 2236–2238, 2259, and 2261–226, discussed in Book §1.5, on the standard of care applicable to trustees and the trustee's liability, are repealed operative July 1, 1987. The discussions in Book §1.5 of the standard of care for trustees and the trustee's liability should be modified as described below.

The statutory standard of care that a trustee must now exercise in administering a trust is

> the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust determined from the trust instrument.

Prob C §16040(a). A similar standard is imposed with respect to a trustee's duty to invest trust assets. Prob C §16040(b). These duties are essentially the same as the trustee's duties under former law, except that the trustee's duties have been given statutory definition with respect to all administrative obligations.

The liability of a trustee to the trust beneficiaries for a breach of trust, including a breach that results from an act of a cotrustee or an agent employed by a trustee, is defined in the new Trust Law. Generally, a trustee

is not liable for the act of an agent, except when: (1) The trustee has the power to direct the act of the agent; (2) the trustee delegates an act that the trustee may not delegate; (3) the trustee did not reasonably select or retain the agent; (4) the trustee did not adequately supervise the agent; (5) the trustee concealed the act of the agent; or (6) the trustee, knowing of the act of the agent, did not take reasonable steps to redress it. Prob C §16401. A trustee is only liable for a breach of trust committed by a co-trustee when: (1) The trustee participates in the breach; (2) the trustee improperly delegates the administration of the trust to the cotrustee; (3) the trustee approves, acquiesces in, or conceals a cotrustee's breach; (4) the trustee negligently enables the cotrustee to commit the breach; or (5) the trustee neglects to take reasonable steps to compel a redress of the breach. Prob C §16402. These provisions for agents or cotrustees apply to acts or omissions occurring after June 30, 1987. Former law governs previous acts or omissions. Prob C §§16401(c) 16402(c). If a trustee has acted reasonably and in good faith under the circumstances as known to the trustee, a court has the discretion to excuse the trustee, in whole or in part, from liability for breach of trust. Prob C §16440(b).

In a proceeding involving a charitable trust, the Attorney General must be given at least 30 days' notice before a hearing on a petition unless the Attorney General waives notice. Prob C §17203(c). The Attorney General may file a petition in an action involving a charitable trust when the liability of a trustee for breach of trust is at issue. Prob C §17210.

A trustee is generally not personally liable on a contract that is entered after June 30, 1987, in the course of administration of a trust, unless the trustee fails to disclose the identity of the trust. Prob C §18000. A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee is personally at fault. Prob C §18001. A trustee is not personally liable for a tort committed in the course of administration of the trust unless the trustee was personally at fault. Prob C §18002.

Effective January 1, 1988, the reference in Book §1.5 to Govt C §§12580–12597 should be to Govt C §§12580–12598.

CHOOSING THE RIGHT TYPE OF NONPROFIT CORPORATION

Public Benefit, Mutual Benefit, and Religious Corporations

[§1.10] Table: Comparison of Public Benefit, Mutual Benefit, and Religious Corporations

4. Directors

a. Selection and Term

The terms of directors of nonprofit mutual benefit associations are no longer the same as those of public benefit corporations. Corporations Code

§7220 was amended, effective January 1, 1988, to provide that the term of directors of nonprofit mutual benefit associations is up to six years if there are no members and up to four years if the corporation has members.

5. Directors' Standards of Conduct, Liability

a. Duty of Care

Effective January 27, 1987, the general standard of care to which corporate directors must adhere, set forth in Corp C §309, was amended to provide that directors must act both in the interests of the corporation and in the interests of its shareholders. In enacting this amendment, the legislature stated its intent not to change existing case law or statutory law regarding a director's duty of loyalty. Stats 1987, ch 1203 §4. Corporations Code §5231, governing directors of a public benefit corporation, was not amended. The liability of uncompensated directors, officers, and trustees of public benefit corporations and religious corporations to third parties is limited for acts and omissions occurring after December 31, 1988, under Corp C §§5239 and 9247. See Supp §§5.43, 5.64, for discussion.

6. Attorney General (AG) Supervision

a. Reports and Filings

b. Investigation

Effective January 1, 1988, the references in Table part 6, a-b to Govt C §§12580–12597 should be to Govt C §§12580–12598.

[§1.11] Cooperative Corporations

Effective January 1, 1987, the Corp C §12200 definition of cooperative corporations is extended expressly to include consumer cooperatives and cooperatives formed for the purpose of recycling or treating hazardous waste, as well as other cooperatives that elect to incorporate under the law authorizing cooperative corporations (Corp C §§12200–12704).

[§1.13] Other Special-Purpose Corporations

Corporations Code §10200 cited in the second paragraph is limited to corporations in existence on December 31, 1979.

[§1.14] Foreign Nonprofit Corporations

Operative July 1, 1987, CC §§2228–2240 and 2258–2264, dealing with fiduciary standards applicable to charitable trustees, are repealed. Many of these provisions have been reenacted as part of the 1986 Trust Law (Prob C §§15000–18201). See Prob C §§15600–15804 (standard of care and duties) and 16000–16105 (special provisions for charitable trusts). For brief discussion of the new standards, see Supp §1.5.

Effective January 1, 1988, the reference in Book §1.14 to Govt C §§12580–12597 should be to Govt C §§12580–12598.

[§1.15] SALES OF MEMBERSHIPS UNDER THE CORPORATE SECURITIES LAW

The citation to Corp C 25102(j) in Book §1.15 is inaccurate. The correct citation is Corp C §25100(j).

Article 7

UNIFORM SUPERVISION OF TRUSTEES FOR CHARITABLE PURPOSES ACT

Sec.
12580. Citation.
12581. Application of article.
12582. Trustee defined.
12582.1. Charitable corporation defined.
12583. Trustees to whom article does not apply.
12584. Establishment of register of charitable corporations and trustees.
12585. Filing of copy of articles of incorporation or instrument providing for trustee's title, powers or duties.
12586. Filing of additional reports as to nature of assets held and administration thereof; rules and regulations; time for filing.
12587. Additional rules and regulatons.
12588. Investigation of transactions and relationships of corporations and trustees; authority to require persons to give information, produce books, etc.
12589. Order setting forth time and place when attendance required; obedience of orders; review.
12590. Public inspection of register and reports.
12591. Proceedings to secure compliance with article; powers of attorney general; jurisdiction of court.
12592. Application of article.
12593. Furnishing copies of instruments and records to attorney general; duty of custodian of records.
12594. Filing of applications for tax exemption.
12595. Construction of act.
12596. Limitation of action by attorney general.
12597. Provision in judgment in action to secure compliance to pay reasonable expenses incurred by state.

Article 7 was added by Stats.1959, c. 1258, p. 3396, § 2, eff. June 30, 1959.

Former Article 7, added by Stats.1955, c. 1820, p. 3358, § 1, relating to the same subject matter, was repealed by Stats.1959, c. 1258, p. 3396, § 1, eff. June 30, 1959.

UNIFORM SUPERVISION OF TRUSTEES FOR CHARITABLE PURPOSES ACT

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 7.

Jurisdiction	Statutory Citation
California	West's Ann.Gov.Code, §§ 12580 to 12597.
Illinois	S.H.A. ch. 14, §§ 51 to 64.
Michigan	M.C.L.A. §§ 14.251 to 14.266.
Oregon	ORS 128.610 to 128.990.

Cross References

Nonprofit mutual benefit corporations.
Holding assets in charitable trust: examination and corrective action, see Corporations Code § 7240.
Indemnification of officials, compliance with this article, see Corporations Code § 8324.
Nonprofit public benefit corporations.
Actions, see Corporations Code §§ 5142, 5223, 5225, 5233, 5237, 5238.
Duties, generally, see Corporations Code §§ 5120, 5226, 5250, 5510, 5617.
Reports, see Corporations Code § 6324.
Organization qualified to solicit donations of salvageable personal property, see Welfare and Institutions Code § 148.2.
Trusts for educational and related institutions, special proceedings to determine law and facts, see Education Code § 21180 et seq.

Administrative Code References

Rules and regulations, see 11 Cal.Adm.Code 300 et seq..

Law Review Commentaries

Charitable trusts. (1957) 32 S.Bar J. 722.

Making the most of charitable trusts. Thomas T. Adams. (1970) 56 A.B.A.J. 572.

Library References

Attorney General ⟹6, 7.
Charities ⟹43.

C.J.S. Attorney General §§ 7 to 15.
C.J.S. Charities § 49.

§ 12580. Citation

This article may be cited as the Uniform Supervision of Trustees for Charitable Purposes Act.

(Added by Stats.1959, c. 1258, p. 3396, § 2, eff. June 30, 1959.)

Historical Note

Former § 12580, relating to same subject matter, added by Stats.1955, c. 1820, p. 3358, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Cross References

Fiduciaries' wartime substitution law, see Code of Civil Procedure § 1700 et seq.

Law Review Commentaries

Background and effect of 1959 addition. (1959) 34 S.Bar J. 697.

Background and general effect of 1955 addition. Rev. of 1955 Code Leg. (Univ. of Calif.Ext.1955) page 210.

Charitable trusts in California. (1955) 30 S.Bar J. 425.

Duties and powers of charitable fiduciaries. Marion R. Fremont-Smith (1960) 13 U.C.L.A.Law Rev. 1041.

History of supervision of charitable trusts and corporations in California. Wallace Howland (1966) 13 U.C.L.A.Law Rev. 1029.

Selected problems of California charitable corporation administration (1966) 13 U.C.L.A.Law Rev. 1123.

Library References

Charities ⟹33.

C.J.S. Charities § 25.

§ 12581. Application of article

This article applies to all charitable corporations and trustees holding property for charitable purposes over which the state or the Attorney General has enforcement or supervisory powers. The provisions of this article shall not apply to any committee as defined in Section 82013 which is required to and does file any statement pursuant to the provisions of Article 2 (commencing with Section 84200) of Chapter 4 of Title 9.

(Added by Stats.1959, c. 1258, p. 3396, § 2, eff. June 30, 1959. Amended by Stats.1978, c. 1287, p. 4213, § 28.)

Historical Note

The 1978 amendment added the second sentence.

Former § 12581, relating to same subject matter, added by Stats.1955, c. 1820, p. 3358, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Library References

Charities ⟹33.

C.J.S. Charities § 25.

Notes of Decisions

1. In general

Any nomination of a distributee by dissolving nonprofit corporation is not binding upon the court, and such a nomination should not prevent attorney general from exercising his discretion in preliminarily determining whether there are other charitable corporations or organizations that would qualify as potential cy pres beneficiaries and, if there are any, to bring those to the court's attention. Veterans' Industries, Inc., of Long Beach, Cal. v. Lynch (1970) 88 Cal.Rptr. 303, 8 C.A.3d 902.

§ 12582. Trustee defined

"Trustee" means (a) any individual, group of individuals, corporation, or other legal entity holding property in trust pursuant to any charitable trust, (b) any corporation which has accepted property to be used for a particular charitable corporate purpose as distinguished from the general purposes of the corporation, and (c) a corporation formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.

(Added by Stats.1959, c. 1258, p. 3396, § 2, eff. June 30, 1959.)

Historical Note

Former § 12582, relating to same subject matter, added by Stats.1955, c. 1820, p. 3358, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Library References

Charities ⟹18.

C.J.S. Charities §§ 5, 24.

§ 12582.1. Charitable corporation defined

"Charitable corporation" means any nonprofit corporation organized under the laws of this State for charitable or eleemosynary purposes and any similar foreign corporation doing business or holding property in this State for such purposes.

(Added by Stats.1959, c. 1258, p. 3397, § 2, eff. June 30, 1959.)

Library References

Charities ⇐39.

C.J.S. Charities § 68.

§ 12583. Trustees to whom article does not apply

This article does not apply to the United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions, to any religious corporation sole or other religious corporation or organization which holds property for religious purposes, or to any officer, director, or trustee thereof who holds property for like purposes, to a cemetery corporation regulated under Chapter 19 of Division 3 of the Business and Professions Code [1], or to any committee as defined in Section 82013 which is required to and does file any statement pursuant to the provisions of Article 2 (commencing with Section 84200) of Chapter 4 of Title 9, or to a charitable corporation organized and operated primarily as a religious organization, educational institution, hospital, or a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code.

(Added by Stats.1959, c. 1258, p. 3397, § 2, eff. June 30, 1959. Amended by Stats.1978, c. 1287, p. 4214, § 29; Stats.1979, c. 186, § 1.)

[1] Bus. & Prof.C. § 9600 et seq.

Historical Note

The 1978 amendment inserted the provision relating to committees filing any statement pursuant to Article 2 of Chapter 4 of Title 9.

The 1979 amendment included, at the end of the section, health care service plan licensed pursuant to H. & S.C. § 1349.

Former § 12583, relating to same subject matter, added by Stats.1955, c. 1820, p. 3358, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Law Review Commentaries

History of supervision of charitable trusts and corporations in California. Wallace Howland (1966) 13 U.C.L.A.Law Rev. 1029.

Library References

Charities ⇐18.

C.J.S. Charities §§ 5, 24.

§ 12584. Establishment of register of charitable corporations and trustees

The Attorney General shall establish and maintain a register of charitable corporations and trustees subject to this article and of the

particular trust or other relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register.

(Added by Stats.1959, c. 1258, p. 3397, § 2, eff. June 30, 1959.)

Historical Note

Former § 12584, relating to same subject matter, added by Stats.1955, c. 1820, p. 3358, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Library References

Attorney General ⟹6.
Charities ⟹42.

C.J.S. Attorney General §§ 7 to 15.
C.J.S. Charities § 53 et seq.

§ 12585. Filing of copy of articles of incorporation or instrument providing for trustee's title, powers or duties

Every charitable corporation and trustee subject to this article who has received property for charitable purposes shall file with the Attorney General, within six months after any part of the income or principal is authorized or required to be applied to a charitable purpose, a copy of the articles of incorporation or other instrument providing for his title, powers or duties. If any part of the income or principal is authorized or required to be applied to a charitable purpose at the time this article takes effect, the filing shall be made within six months thereafter.

(Added by Stats.1959, c. 1258, p. 3397, § 2, eff. June 30, 1959.)

Historical Note

Former § 12585, relating to same subject matter, added by Stats.1955, c. 1820, p. 3358, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Cross References

Loss of exemption by charitable corporation for failure to file registration or periodic report, see Revenue and Taxation Code § 23703.

Administrative Code References

Filing trust instrument, see 11 Cal.Adm.Code 300 et seq.

Library References

Charities ⟹24.

C.J.S. Charities § 28.

§ 12586. Filing of additional reports as to nature of assets held and administration thereof; rules and regulations; time for filing

(a) Except as otherwise provided and except corporate trustees which are subject to the jurisdiction of the Superintendent of Banks

of the State of California or to the Comptroller of Currency of the United States, every charitable corporation and trustee subject to this article shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation or trustee, in accordance with rules and regulations of the Attorney General.

(b) The Attorney General shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. He may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends (1) that he shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable him to ascertain whether they are being properly administered, and (2) that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his office.

(c) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the Attorney General, may be filed as a report required by this section.

(d) The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as herein provided, shall be filed not later than four (4) months and fifteen (15) days following the close of the first calendar or fiscal year in which any part of the income or principal is authorized or required to be applied to a charitable purpose. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this article takes effect, the first report shall be filed at the close of the calendar or fiscal year in which it was registered with the Attorney General or not later than four (4) months and fifteen (15) days following the close of such calendar or fiscal period.

(Added by Stats.1959, c. 1258, p. 3397, § 2, eff. June 30, 1959. Amended by Stats.1976, c. 1320, p. 6919, § 6; Stats.1978, c. 1346, p. 4409, § 8.)

Historical Note

The 1976 amendment designated the provision on periodic written reports as (i) and added a (ii) which required the filing of "an authorization for disclosure to the Attorney General of financial records of the charitable corporation or trustee pursuant to Section 7473", in subd. (a).

The 1978 amendment deleted all the changes made by the 1976 amendment.

Former § 12586, relating to same subject matter, added by Stats.1955, c. 1820, p. 3358, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Cross References

California Right to Financial Privacy Act, see § 7460 et seq.
Loss of exemption by charitable corporation for failure to file registration or periodic report, see Revenue and Taxation Code § 23703.

Administrative Code References

Filing written reports, rules and regulations, see 11 Cal.Adm.Code 301 et seq.

Library References

Charities ⟹43.

C.J.S. Charities § 49.

§ 12587. Additional rules and regulations

The Attorney General may make additional rules and regulations necessary for the administration of this article.

(Added by Stats.1959, c. 1258, p. 3398, § 2, eff. June 30, 1959.)

Historical Note

Former § 12587, relating to same subject matter, added by Stats.1955, c. 1820, p. 3359, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Administrative Code References

Filing written reports, rules and regulations, see 11 Cal.Adm.Code 301 et seq.

Library References

Attorney General ⟹6.
Charities ⟹42.

C.J.S. Attorney General §§ 7 to 15.
C.J.S. Charities § 53 et seq.

§ 12588. Investigation of transactions and relationships of corporations and trustees; authority to require persons to give information, produce books, etc.

The Attorney General may investigate transactions and relationships of corporations and trustees subject to this article for the purpose of ascertaining whether or not the purposes of the corporation or trust are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to pro-

duce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear.

(Added by Stats.1959, c. 1258, p. 3398, § 2, eff. June 30, 1959.)

Historical Note

Former § 12588, relating to same subject matter, added by Stats.1955, c. 1820, p. 3359, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Law Review Commentaries

Cy pres and the discriminatory trust. (1972) 23 Hast.L.J. 604.

Library References

Administrative Law and Procedure ⟹357.
Attorney General ⟹6.
Charities ⟹42.

C.J.S. Public Administrative Bodies and Procedure § 86.
C.J.S. Attorney General §§ 7 to 15.
C.J.S. Charities § 53 et seq.

Notes of Decisions

1. In general

Absent some conflict of interest, the law does not presume that trustees of a charitable trust will fail to manage the trust corpus in the best interests of the beneficiary, and, indeed, public agencies are charged with the duty to see that they do. Matter of Getty's Estate (1978) 149 Cal. Rptr. 656, 85 C.A.3d 755.

§ 12589. Order setting forth time and place when attendance required; obedience of orders; review

When the Attorney General requires the attendance of any person, as provided in Section 12588, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the Attorney General, obedience to the order may be enforced by the superior court in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend or postpone all or any part of its provisions.

(Added by Stats.1959, c. 1258, p. 3399, § 2, eff. June 30, 1959.)

Historical Note

Former § 12589, relating to same subject matter, added by Stats.1955, c. 1820, p. 3360, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Cross References

Disobedience to subpoena, see Code of Civil Procedure § 1991 et seq.

Library References

Administrative Law and Procedure ⟹357.
Attorney General ⟹6.
Charities ⟹42.

C.J.S. Public Administrative Bodies and Procedure § 86.
C.J.S. Attorney General §§ 7 to 15.
C.J.S. Charities § 53 et seq.

§ 12590. Public inspection of register and reports

Subject to reasonable rules and regulations adopted by the Attorney General, the register, copies of instruments, and the reports filed with the Attorney General shall be open to public inspection. The Attorney General shall withhold from public inspection any instrument so filed whose content is not exclusively for charitable purposes.

(Added by Stats.1959, c. 1258, p. 3399, § 2, eff. June 30, 1959.)

Historical Note

Former § 12590, relating to same subject matter, added by Stats.1955, c. 1820, p. 3360, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Law Review Commentaries

History of supervision of charitable trusts and corporations in California. Wallace Howland (1966) 13 U.C.L.A.Law Rev. 1029.

Library References

Records ⟹54.

C.J.S. Records § 36.

§ 12591. Proceedings to secure compliance with article; powers of attorney general; jurisdiction of court

The Attorney General may institute appropriate proceedings to secure compliance with this article and to invoke the jurisdiction of the court. The powers and duties of the Attorney General provided in this article are in addition to his existing powers and duties. Nothing in this article shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that no court shall have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings.

(Added by Stats.1959, c. 1258, p. 3399, § 2, eff. June 30, 1959.)

Historical Note

Former § 12591, relating to same subject matter, added by Stats.1955, c. 1820, p. 3360, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Library References

Attorney General ⟹6, 9.
Charities ⟹43.

C.J.S. Attorney General §§ 7 to 15.
C.J.S. Charities § 49.

Notes of Decisions

1. Construction and application

Right of attorney general to sue or enforce charitable trust is not exclusive; other responsible individuals may be permitted to sue on behalf of charity. San Diego County Council, Boy Scouts of America v. City of Escondido (1971) 92 Cal.Rptr. 186, 14 C.A.3d 189.

Rule that court will appoint successor trustee if appointed trustee of charitable trusts for benefit of public in general is not performing his duties and property will not be allowed to revert to grantor or his heirs unless grant or devise clearly manifests such an intent applies where trustee is a political subdivision. Hart v. Los Angeles County (1968) 67 Cal.Rptr. 242, 260 C.A.2d 512.

Uniform Supervision of Trustees for Charitable Purposes Act authorizing attorney general to supervise charitable trusts does not preclude trustees from bringing action to enforce trust. Holt v. College of Osteopathic Physicians and Surgeons (1964) 40 Cal.Rptr. 244, 394 P. 2d 932, 61 C.2d 750.

This section, giving attorney general right to institute proceedings to secure compliance with act respecting charity funds, provides for scrutiny by attorney general of fiduciaries' dealings with charitable funds, and does not prohibit attorney general's participation in proceedings to probate contested will which left a bequest to charity. In re Ventura's Estate (1963) 31 Cal.Rptr. 490, 217 C.A.2d 50.

§ 12592. Application of article

This article shall apply regardless of any contrary provisions of any instrument.

(Added by Stats.1959, c. 1258, p. 3399, § 2, eff. June 30, 1959.)

Historical Note

Former § 12592, relating to same subject matter, added by Stats.1955, c. 1820, p. 3360, § 1, was repealed by Stats.1959, c. 1258, p. 3390, § 1.

Library References

Charities ⇐42.

C.J.S. Charities § 53 et seq.

Notes of Decisions

1. In general

Where will creating charitable trust for benefit of public generally provided that county of Los Angeles should be beneficiary provided that, if county should fail to perform conditions imposed, property should be distributed to state for same uses and stated that testator's son had been amply provided for during testator's life, property would continue in trust for benefit of public even if county failed to perform and son as sole legal heir of decedent did not have standing to bring action against county on ground that it was not complying with trust provisions. Hart v. Los Angeles County (1968) 67 Cal.Rptr. 242, 260 C.A.2d 512.

§ 12593. Furnishing copies of instruments and records to attorney general; duty of custodian of records

Every person who offers for probate any instrument which establishes a testamentary trust of property for charitable purposes or who records in any county or city and county any inter vivos transfer of property for charitable purposes shall furnish a copy of such document to the Attorney General. The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts

shall furnish such copies of papers, records and files of his office relating to the subject of this article as the Attorney General requires.

(Added by Stats.1959, c. 1258, p. 3399, § 2, eff. June 30, 1959.)

Historical Note

Former § 12593, relating to furnishing of records by the custodian of records, added by Stats.1955, c. 1820, p. 3360, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Library References

Attorney General ⟹6.
Charities ⟹42.
Records ⟹54.

C.J.S. Attorney General §§ 7 to 15.
C.J.S. Charities § 53 et seq.
C.J.S. Records § 36.

§ 12594. Filing of applications for tax exemption

Every officer, agency, board, or commission of this State receiving applications for exemption from taxation of any corporation, charitable trust or similar relationship in which the corporation or trustee is subject to this article shall annually file with the Attorney General a list of all applications received during the year.

(Added by Stats.1959, c. 1258, p. 3399, § 2, eff. June 30, 1959.)

Historical Note

Former § 12594, relating to same subject matter, added by Stats.1955, c. 1820, p. 3360, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Cross References

Loss of exemption by charitable corporation for failure to file registration or periodic report, see Revenue and Taxation Code § 23703.

Library References

Taxation ⟹241.1(1).

C.J.S. Taxation § 282 et seq.

§ 12595. Construction of act

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(Added by Stats.1959, c. 1258, p. 3399, § 2, eff. June 30, 1959.)

Historical Note

Former § 12595, relating to same subject matter, added by Stats.1955, c. 1820, p. 3360, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1.

Library References

Charities ⟹3.

C.J.S. Charities § 4.

Notes of Decisions

1. Construction and application

Complaint of minority trustees of charitable corporation stated cause of action against majority trustees for enjoining threatened breach of charitable trust, where complaint alleged that majority trustees threatened to repudiate charitable purpose of corporation to conduct osteo-

pathic medical and surgical college and to convert corporation into school teaching nonosteopathic medicine and surgery according to allopathic school of medicine.

Holt v. College of Osteopathic Physicians and Surgeons (1964) 40 Cal.Rptr. 244, 394 P.2d 932, 61 C.2d 750.

§ 12596. Limitation of action by attorney general

Any action brought by the Attorney General against trustees or other persons holding property in trust for charitable purposes or against any charitable corporation or any director or officer thereof to enforce a charitable trust or to impress property with a trust for charitable purposes or to recover property or the proceeds thereof for and on behalf of any charitable trust or corporation, may be brought at any time within ten (10) years after the cause of action shall have accrued.

(Added by Stats.1965, c. 1129, p. 2776, § 1.)

Historical Note

Former § 12596, which related to the duration of former Article 7, added by Stats.1955, c. 1820, p. 3361, amended by Stats.1957, c. 2024, p. 3595, § 1, was repealed by Stats.1959, c. 1258, p. 3396, § 1, effective June 30, 1959.

Law Review Commentaries

Background and general effect of 1965 addition. Rev. of 1965 Code Leg. (Cont. Educ. of Bar, 1965) page 135.

Library References

Attorney General ⟹6, 9.
Charities ⟹49, 50.

C.J.S. Attorney General §§ 7 to 15.
C.J.S. Charities §§ 58, 60 et seq.

§ 12597. Provision in judgment in action to secure compliance to pay reasonable expenses incurred by state

In any proceeding brought by the Attorney General to secure compliance with the provisions of Sections 12584 to 12587, inclusive, or any regulation issued pursuant thereto, the judgment, if in favor of the state, shall provide that the person having the responsibility or duty to comply with such provisions on behalf of any charitable trust or charitable corporation, shall pay the reasonable expense necessarily incurred by the state in the investigation and prosecution of such action.

(Added by Stats.1969, c. 490, p. 1098, § 1.)

Library References

Charities ⟹50.

C.J.S. Charities § 60 et seq.

Medi-Cal plan and shall cooperate with such officials in coordinating any federal and state investigations or prosecutions involving the same suspects or allegations.

(g) The bureau shall safeguard the privacy rights of all individuals and shall provide safeguards to prevent the misuse of information under its control, and all agencies which are required to report complaints alleging abuse or neglect of patients shall maintain the confidentiality of those reports until such time as the report becomes a matter of public record.

(h) The bureau shall offer training programs to local law enforcement and prosecutorial personnel in investigating and prosecuting crimes against elders and dependent adults, and to the State Department of Health Services, the State Department of Social Services, the county adult protective services agencies and to the Long-Term Care Ombudsman in evaluating and documenting criminal abuse against elders and dependent adults.

(i) The state Long-Term Care Ombudsman, the Licensing and Certification Division in the Department of Health Services, and the Statistical Services Bureau in the State Department of Social Services shall report to the bureau all instances of abuse and neglect of elders and dependent adults, as defined in Section 15610 of the Welfare and Institutions Code, which come to their attention.

(j) The bureau shall annually submit to the Legislature a report on the nature and extent of crimes in this state against patients in health facilities receiving payments from the Medi-Cal program and the response of the criminal justice system to those crimes.

(k) The bureau shall collect information on a statewide basis regarding cases of abuse and neglect of patients in health facilities receiving payments from the Medi-Cal program for the primary purpose of analyzing the information it collects and disseminating its conclusions to local law enforcement agencies and to regulatory and licensing authorities.

(*l*) For purposes of this section, "bureau" means the Bureau of Medi-Cal Fraud in the Office of the Attorney General.

(Added by Stats.1987, c. 637, § 1.)

For another section of the same number, added by Stats.1987, c. 445, § 2, see § 12528, ante

Historical Note

1987 Legislation

Stats.1987, c. 637, § 9, provides:

"The Attorney General's Office is responsible for carrying out the provisions of this act only to the extent that funds are appropriated or federal financial participation is available, or any combination thereof."

ARTICLE 4. SUPERVISION OF DISTRICT ATTORNEYS

§ 12554. Repealed by Stats.1982, c. 147, p. 187, § 1, eff. April 5, 1982

ARTICLE 7. UNIFORM SUPERVISION OF TRUSTEES FOR CHARITABLE PURPOSES ACT

Section
12598. Supervision of charitable trusts; enforcement.

Administrative Code References

Corporations, health care service plans, mutual benefit plans, see 10 Cal.Adm.Code 1300.43.13.

Designation and approval of horsemens' welfare fund, see 4 Cal.Adm.Code 2049.

Law Review Commentaries

Mrs. Buck's Millions. Peter Allen (1984) 4 Cal.Lawyer No. 10, p. 29.

Supervision of charitable trusts in California. Lisa M. Bell and Robert B. Bell (1980) 32 Hast.L.J. 433.

Trustees', directors' and attorneys' fees for services rendered to charitable trusts and corporations. (1980) 16 C.W.L.R. 129.

Library References

Recommendation proposing the trust law, 18 Cal.L.Rev. Comm. Reports 501 (1986).

UNIFORM SUPERVISION OF TRUSTEES FOR CHARITABLE PURPOSES ACT

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 7B.

Jurisdiction	Statutory Citation
California	West's Ann.Cal.Gov. Code, §§ 12580 to 12598.

Asterisks * * * indicate deletions by amendment

Jurisdiction	Statutory Citation
Illinois	S.H.A. ch. 14, ¶¶51 to 64.
Michigan	M.C.L.A. §§ 14.251 to 14.266.
Oregon	ORS 128.610 to 128.990.

§ 12580. Citation

Cross References

Trust law generally, application to charitable trusts, see Probate Code § 15004.

§ 12582.1. Charitable corporation defined

Notes of Decisions

1. In general

Where society's articles of incorporation as whole indicated that society was formed for educational purposes, for advancement of knowledge, and for educational welfare of mankind, and where actual conduct of society was to disseminate publications of strictly educational nature, that is, publications limited to informing readers on any literary, philosophical, religious, scientific, historical, political and other subjects, society was "charitable corporation" within meaning of this section governing charitable corporations. Younger v. Wisdom Soc. (1981) 175 Cal.Rptr. 542, 121 C.A.3d 683.

§ 12583. Trustees to whom article does not apply

Law Review Commentaries

Government protection of church assets from fiscal abuse: Constitutionality of attorney general enforcement under the religion clauses of the first amendment. (1980) 53 So.Cal.L.R. 1277.

§ 12598. Supervision of charitable trusts; enforcement

Text of section operative until July 1, 1989.

(a) The primary responsibility for supervising charitable trusts in California, for insuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities. These powers include, but are not limited to, charitable trust enforcement actions under all of the following:

(1) This article.

(2) Chapter 1 (commencing with Section 2215) and Chapter 2 (commencing with Section 2250) of Title 8 of Part 4 of Division 3 of the Civil Code.

(3) Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code.

(4) Sections 328, 1080, 15004, 15409, 15680 to 15685, 16060 to 16062, 16064, and 17200 to 17210, inclusive, of the Probate Code.

(5) Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, and Sections 17500 and 17535 of the Business and Professions Code.

(6) Sections 319, 326.5, and 532d of the Penal Code.

(b) The Attorney General shall be entitled to recover from defendants named in a charitable trust enforcement action all actual costs incurred in conducting that action, including the costs of auditors, consultants, and experts employed or retained to assist with the investigation, preparation, and presentation in court of the charitable trust enforcement action.

(c) Costs shall be recovered by the Attorney General pursuant to court order. At the time of entering judgment or approving settlement of a charitable trust enforcement action, as defined in subdivision (a), the court shall make findings on whether the Attorney General's action has resulted in pecuniary benefits or corrected a breach of trust for any charitable organization, or charitable purpose. If the court finds in the affirmative, the court shall award recovery of costs in the charitable trust enforcement action to the Attorney General and shall order that costs be paid by the charitable organization and the individuals named as defendants in or otherwise subject to the action, in a manner that the court finds to be equitable and fair. The court shall not award costs pursuant to this subdivision which exceed one-third of the pecuniary benefit to any charitable organization or charitable purpose realized by the Attorney General's action.

(d) All moneys received by the Department of Justice pursuant to this section shall be deposited into the General Fund and shall be used to offset the costs of future charitable trust enforcement actions by the Attorney General.

(e) Upon a finding by the court that a lawsuit filed by the Attorney General was frivolous or brought in bad faith, the court may award the defendant charity the costs of that action.

(Added by Stats.1987, c. 892, § 2.)

For text of section operative July 1, 1989, see § 12598, post.

§ 12598. Supervision of charitable trusts; enforcement

Text of section operative July 1, 1989.

(a) The primary responsibility for supervising charitable trusts in California, for insuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities. These powers include, but are not limited to, charitable trust enforcement actions under all of the following:

(1) This article.

(2) * * * Title 8 (commencing with Section 2223) of Part 4 of Division 3 of the Civil Code.

(3) Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code.

(4) Sections 8111, 11703, 15004, 15409, 15680 to 15685, 16060 to 16062, 16064, and 17200 to 17210, inclusive, of the Probate Code.

(5) Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, and Sections 17500 and 17535 of the Business and Professions Code.

(6) Sections 319, 326.5, and 532d of the Penal Code.

(b) The Attorney General shall be entitled to recover from defendants named in a charitable trust enforcement action all actual costs incurred in conducting that action, including the costs of auditors, consultants, and experts employed or retained to assist with the investigation, preparation, and presentation in court of the charitable trust enforcement action.

(c) Costs shall be recovered by the Attorney General pursuant to court order. At the time of entering judgment or approving settlement of a charitable trust enforcement action, as defined in subdivision (a), the court shall make findings on whether the Attorney General's action has resulted in pecuniary benefits or corrected a breach of trust for any charitable organization, or charitable purpose. If the court finds in the affirmative, the court shall award recovery of costs in the charitable trust enforcement action to the Attorney General and shall order that costs be paid by the charitable organization and the individuals named as defendants in or otherwise subject to the action, in a manner that the court finds to be equitable and fair. The court shall not award costs pursuant to this subdivision which exceed one-third of the pecuniary benefit to any charitable organization or charitable purpose realized by the Attorney General's action.

(d) All moneys received by the Department of Justice pursuant to this section shall be deposited into the General Fund and shall be used to offset the costs of future charitable trust enforcement actions by the Attorney General.

(e) Upon a finding by the court that a lawsuit filed by the Attorney General was frivolous or brought in bad faith, the court may award the defendant charity the costs of that action.

(Added by Stats.1987, c. 892, § 2. Amended by Stats.1988, c. 1199, § 15, operative July 1, 1989.)

For text of section operative until July 1, 1989, see § 12598, ante.

Law Revision Commission Comment
1988 Amendment

Section 12598 is amended to correct section references [19 Cal.L.Rev.Comm. Reports 1037 (1988)].

Historical Note

1987 Legislation

Section 1 of Stats.1987, c. 892 provides:

"It is the intent of the Legislature to require that the fiscal burden of supervising charities within the State of California be shared by the charitable organizations and individuals whose conduct makes necessary charitable trust enforcement actions by the Attorney General. The Attorney General's powers and authority with respect to regulation of religious corporations is governed by Section 9230 of the Government Code and nothing in this act is intended to alter or supersede that section.

"It is the purpose of this act to allow the Attorney General to recover, by court order, all of the actual costs

incurred by his or her office in conducting any charitable trust enforcement action that results in pecuniary benefits for charity. These recoverable costs shall include costs of audits performed by the Attorney General in preparing the charitable trust enforcement action.

"It is the purpose of this act to require a court, at the time of entering judgment or approving settlement in a pending charitable trust enforcement case, to award recovery of costs to the Attorney General which shall be paid by the charitable organization and the individuals that are named as defendants in the action, pursuant to direction of the court."

ARTICLE 8. ENVIRONMENTAL ACTIONS

Law Review Commentaries

Emergency environmental health protection in California. (1982) 16 U.S.F.L Rev. 539.

§§ 12620 to 12627.

See Special Pamphlet for 1988 General Election, preceding Volume 1, for text or Historical Note relating to these sections.

ARTICLE 9. FALSE CLAIMS ACTIONS

Section

12650. Definitions.
12651. Acts subjecting person to treble damages, costs and civil penalties; exceptions.
12652. Attorney general investigations and prosecutions, powers of prosecuting authority; civil actions by individuals as qui tam plaintiff; jurisdiction of courts.
12653. Employer interference with employee disclosures, etc.; liability of employer; remedies of employee.
12654. Limitation of actions; activities antedating this article; burden of proof.
12655. Remedies under other laws; severability of provisions; liberality of article construction.

Article 9 was added by Stats.1987, c. 1420, § 1.

§ 12650. Definitions

For purposes of this article:

(a) "Claim" includes any request or demand for money, property, or services made to any employee, officer, or agent of the state or of any political subdivision, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the state (hereinafter "state funds") or by any political subdivision thereof (hereinafter "political subdivision funds").

(b) "Knowing" and "knowingly" mean that a person, with respect to information, does any of the following:

(1) Has actual knowledge of the information.

(2) Acts in deliberate ignorance of the truth or falsity of the information.

(3) Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required.

(c) "Political subdivision" includes any city, city and county, county, tax or assessment district, or other legally authorized local governmental entity with jurisdictional boundaries.

(d) "Prosecuting authority" refers to the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of, or in the name of, a particular political subdivision.

(e) "Person" includes any natural person, corporation, firm, association, organization, partnership, business, or trust.

(Added by Stats.1987, c. 1420, § 1.)

§ 12651. Acts subjecting person to treble damages, costs and civil penalties; exceptions

(a) Any person who commits any of the following acts shall be liable to the state or to the political subdivision for three times the amount of damages which the state or the political subdivision sustains because of the act of that person. A person who commits any of the following acts shall

priety of self-dealing transactions, they assume the responsibility of establishing to an independent body (a court in litigation, an independent board committee, or disinterested ratifying shareholders) that the transaction is fully fair. *Merritt v. Colonial Foods, Inc.*, 505 A. 2d 757 (Del. Ch. 1986).

3. Effect of section.—A transaction that was approved by shareholders is not thereby removed from judicial scrutiny for fairness. Rather, Section 144 (a) (2) merely removes an "interested director" cloud and prevents invalidation of the agreement "solely" because of the involvement of such a director or officer. *Fliegler v. Lawrence*, Del. Supr., 361 A. 2d 218 (1976).

§ 145. Indemnification of officers, directors, employees and agents; insurance

(a) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or

agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

(e) Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified

by the corporation as authorized in this Section. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(h) For purposes of this Section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this Section, references to "other enterprises" shall include employee benefit plans; references to "fines"

shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Section.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(As amended by Ch. 186, Laws of 1967, Ch. 421, Laws of 1970, Ch. 437, Laws of 1974, Ch. 25, Laws of 1981, Ch. 112, Laws of 1983 and Ch. 289, Laws of 1986.)

DECISIONS

1. In general.
2. Fraud.
3. Success on merits.
4. Employee or agent.
5. Interest.
6. Role in litigation.

1. In General.—" . . . [T]he objective of the indemnification provision is to assure that indemnification can or will be invoked by the corporation for its directors and officers who incur expenses in proving their honesty and integrity . . . unless they fail to meet minimum qualifications touching upon the concept of wrongdoing. . . . Applying its own version of the 'no wrongdoing' concept, each subsection of § 145 contains a test which must be met in order for the officer or director to be eligible for indemnification under that subsection." *Green v. Westcap Corp. of Delaware*, 492 A. 2d 260, 264 (Del. Super. 1985) (cites omitted).

The reference in Sec. 145(c) to subsections (a) and (b) is merely for the purpose of defining the type of "action, suit or proceeding" to which (c) will apply. It does not incorporate into (c) as elements for recovery thereunder the requirements of proof mentioned in (a) and (b) because those requirements do not define the types of "action, suit or proceeding" covered by (a) and (b). *Id.*

It is irrelevant to an indemnification claim that the judge who directed a judgment of acquittal in a criminal action against a corporate officer noted that in finding him not guilty of the criminal charge he did not find him to be totally innocent, and that he believed the officer would be punished in pending civil actions. Indemnification was sought only for the successful defense of the criminal charge, and the result would not establish a right to indemnification for expenses incurred in any other litigation. *Ibid.*

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NOTES

6

THE DUTIES AND LIABILITIES OF OFFICERS AND DIRECTORS, INCLUDING A REVIEW OF INDEMNIFICATION AND INSURANCE

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THE DUTIES AND LIABILITIES OF OFFICERS AND DIRECTORS, INCLUDING A REVIEW OF INDEMNIFICATION AND INSURANCE

I. The Duty of Obedience

A. The duty of obedience still retains its vitality in the nonprofit area. Alco Gravure, Inc. v. The Knapp Foundation, 64 N.Y.2d 458, 479 N.E.2d 752, 490 N.Y.S.2d 116 (1985); Holt v. College of Osteopathic Physicians, 40 Cal. Rptr. 244, 394 A.2d 932 (1964); Commonwealth of Pennsylvania v. Barnes Foundation, 398 Pa. 158, 159 A.2d 500,505 (1960).

B. The duty requires directors to carry out the purposes of the organization.

1. Purposes may be expressed in the charter or by-laws.

2. Courts may also look to other evidence of purposes and may scrutinize the organization's activities. Queen of Angels Hospital v. Younger, 66 Cal. App.3d 359, 136 Cal. Rptr. 36 (1977); In the Matter of Multiple Sclerosis Service Organization of New York, Inc., 68 N.Y.2d 32, 496 N.E.2d 861, 505 N.Y.S.2d 841 (1986).

C. This duty may be familiar to non-lawyers in its guise as the "mission" upon which nonprofit boards lavish so much attention.

D. A principal rationale of the duty is the reliance of donors on an organization's faithfulness to its purpose. Trustees of Rutgers College v. Richman, et al., 41 N.J.Super. 259, 125 A.2d 10, 26 (1956).

E. The duty places outer limits on what an organization may do by way of modifying activities without invocation of some representative of the public interest. Directors, however, remain free to effect significant changes without such intervention. Attorney General v. Hahnemann Hospital, 397 Mass. 843, 494 N.E.2d 1011 (1986)("those who give to a home for abandoned animals do not anticipate a future board amending the charity's purpose to become research vivisectionists", n. 18 at 1021); Holden Hospital Corporation v. Southern Illinois Hospital Corporation, 22 Ill.2d 150, 174 N.E.2d 793 (1961); City of Paterson v. Paterson General Hospital, 97 N.J.Super. 514, 235 A.2d 487 (1967); Denckla v. The Independence Foundation, 193 A.2d 538 (1963).

F. An additional element of this duty -- the only one that survives for business corporations -- is that of law compliance, an obligation on the part of directors to see that an organization conducts its activities lawfully.

1. Some law compliance obligations affect virtually all nonprofits (e.g., withholding and employment tax requirements, Rev. Rul. 84-83, I.R.B. 1984-24, 13; Hildebrand, Jr. v. U.S., 563 F.Supp. 1255

(D.N.J. 1983)) while others (e.g., complying with state solicitation laws) affect only particular institutions (i.e., those that engage in charitable solicitations).

2. Directors should be aware of and have systems for monitoring both laws generally applicable to exempt organizations and ones with special significance for a particular type of institution.

3. Directors are not responsible for technical compliance with every facet of every complex or obscure regulatory scheme. Corporate Director's Guidebook, 33 Business Lawyer 1591 (1978).

II. The Duty of Care

A. After years of debate, there is now substantial agreement on the governing standard of care. Bright, New Investment Management Tools and Strategies, Non-Profit Organizations, Current Issues and Developments 12 (PLI, 1984); Troyer, Slocomb and Boisture, Divestment of South African Investments: The Legal Implications for Foundations, Other Charitable Institutions and Pension Funds, 74 Georgetown L.J. 127 (1985).

B. That standard is the corporate standard reflected in the minority of states with explicit statutory standards of care and in the few cases from those states that have addressed duty of care issues under common law. See, e.g., New York

Not-for-Profit Corporation Law ("NPCL"), §717; California Nonprofit Corporation Law §5231; see also Graham Bros. Co. v. Galloway Woman's College, 812 S.W. 837 (1935); Beard v. Achenbach Memorial Hospital Association. 170 F.2d 859 (10th Cir. 1948); Midlantic National Bank v. Frank G. Thompson Foundation, 170 N.J.Super. 128, 405 A.2d 866 (1979).

C. The following exposition of the standard is §8.30 in the ABA's proposed Revised Model Nonprofit Corporation Act (RMNCA). Although many of the standards differ in specifics, they all possess substantial common elements; the proposed RMNCA contains all the elements in virtually all the extant variants.

"Section 8.30 GENERAL STANDARDS FOR DIRECTORS

(a) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

1. Good Faith means honesty of intention, openness and fair dealing. Often, some objective evidence of good faith is required. Virginia Mason Hospital Ass'n. v. Larson, et al., 114 P.2d 976 (1941).

2. Best interests reflects the duty of loyalty (discussed in II, below).

3. Ordinarily Prudent Person connotes two distinct concepts:

(a) Ordinary does not mean mediocre; it means simply that a director is not expected to possess special skills.

(b) Prudence means that directors are expected to possess and exercise sound practical judgment and common sense but this should not be equated with excessive caution.

4. Care incorporates a number of related ideas.

(a) "Diligence". Nonprofit directors spend almost as much time on their duties as business corporation directors in preparing for and attending meetings and fulfilling other tasks.

(b) "Attentiveness" means directors must be alert to potential problems and incorporates the concept of due inquiry. A principal way of fulfilling this duty is by assuring a flow of adequate information to the Board -- internal financial controls, other reporting systems and law-compliance mechanisms.

5. "Like Position" and "Similar Circumstances". These elements make the standard a flexible one, adapted to the varied situations in which individuals serving as directors of different organizations find themselves.

(a) "Like Position" suggests an evalation of conduct based on facts when a decision is made and reflects as well distinctions among directors in terms of their individual characteristics. Conduct is measured with respect to the particular organization a director serves, not some theoretical entity.

(b) "Similar Circumstances" reflects the enormous variations in settings in which decisions are made, how the settings differ from each other and from the decision-making context of business organizations (e.g., employee-directors, because of their presumptively greater knowledge, may have a higher duty.)

(i) Among other things, nonprofit directors' unique functions in resource acquisition should be taken into account. Official Comment §8.30 RMNCA;

(ii) The standard also should reflect the typically uncompensated service of nonprofit directors. See, e.g., John A. Creighton Home for Poor Working Girls' Trust v. Waltman, 140 Neb. 3, 299 N.W. 261 (1941); Midlantic National Bank v. Frank G. Thompson Foundation, supra at 871.

(c) Nevertheless, all directors must be active functioning members. Ray et al. v. Homewood Hospital, Inc. et al., 27 N.W.2d 409 (1947).

6. Delegation and Reliance. These concepts are incorporated into the prevailing standards because board effectiveness and performance are maximized when the full board relies on others (a committee, officers or outside experts) to collect and evaluate information and/or to act for it in particular instances. Indeed, given the average nonprofit board size, this is a necessity, even when trust law concepts are applied. Midlantic National Bank v. Frank G. Thompson Foundation, 170 N.J.Super. 128, 405 A.2d 866 (1979); Attorney General v. Olson, et al., Trustees, 191 N.E.2d 132 (1963).

(a) The general standard of care must be exercised by the board in the selection and surveillance process.

(b) When that is done, directors bear no liability for actions or omissions of delegates.

(c) State laws preclude delegates from exercising authority to undertake certain types of action, e.g., authorizing fundamental corporate changes (sales, dissolutions, etc.), amending the charter, modifying rights of members (if any), fixing director compensation, and the like.

(d) Directors and officers, when exercising delegated authority (e.g., when serving on a board committee) remain subject to the standards of care.

(e) States vary considerably in the scope of permitted reliance (e.g., New York's provision is much more circumscribed than the Model Act; California's is more extensive). But, such statutory provisions, in effect, are a "safe harbor" and should not preclude otherwise appropriate reliance or delegation.

III. The Business Judgment Rule

A. The business judgment rule, as the name suggests, is intended to afford directors total protection from liability for business judgments so long as the judgment has a plausible

basis of rationality, involves no conflicting interest, and is a reasonably informed one. American Law Institute, Principles of Corporate Governance: Analysis and Recommendations, Tentative Draft No. 4 (April 12, 1985), §4.01(c).

B. Its rationale is that business organizations perform best, in economic terms, when their directors remain largely unfettered. Fischel, The Business Judgment Rule and the Trans Union Case, 40 Business Lawyer 1437 (1985).

C. Because this rationale is not easily transposed to the nonprofit context, it is unclear to what extent the rule applies to nonprofit organizations, RMNCA, §8.30, Official Comment §3, although some courts have done so. Graham Bros. Co. v. Galloway Women's College, supra; Creighton Home v. Waltman, supra; Beard v. Achenbach, supra; Yarnall Warehouse & Transfer, Inc. v. Three Ivory Bros. Moving Co., 226 So.2d 887 (Fla. 1969); Edson v. Griffin Hospital, 21 Conn.Sup. 55, 144 A.2d 341 (1958).

D. An alternative rationale for applying the rule may be found in the volunteer nature of directors' service (see, e.g., Cross v. Midtown Club, Inc., et al., 33 Conn.Sup. 150, 365 A.2d 1227 (1976)), the desire to stimulate non-economic risk-taking (see, e.g., Simon, Charity and Dynasty Under the Federal Tax System, 5 The Probate Lawyer 1 (1978)), or the similarity of economic decisions made by business and nonprofit boards alike.

NON-PROFIT CORPORATIONS, ORGANIZATIONS, AND ASSOCIATIONS

Third Edition

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22

TRUSTEES AND DIRECTORS: SELECTION, STATUS, AND REMOVAL

§ 190. What Is the Status of a Trustee or Director?

In business organizations, a *director* is a person elected or appointed according to law, authorized to manage and direct the affairs of a corporation or company.[1] A director is an *officer* of the organization.[2]

The body of persons elected by the shareholders (members) to manage the affairs of the corporation, by whatever name this body may be called, is the board of directors.[3]

In non-profit organizations, these same terms often are used to designate the persons who are to manage and direct the organization affairs.[4]

A *director* of a corporation is a representative of the members. His status is akin to that of an elected legislator, but it also has many of the characteristics of an agent's position, and many of those of a trustee's position in a trust of property. But while a director's status resembles all of these, it is a distinct, special kind of status in itself.[5] In the last

[1] 12A Words and Phrases 156 (with 1972 supp.); 2 Oleck, Modern Corporation Law, c. 41 (1965 supp.); Brandt v. Godwin, 3 N.Y.S. 807, 809 (1889); State v. Manning, 220 Iowa 525, 259 N.W. 213 (1935); Colonial Capital Co. v. General Motors Corp., 29 F.R.D. 514, 517 (D.C., Conn. 1961). Utilities Comm. v. General Tel. Co. of S.E., 189 S.E. 2d 705 (N.C. 1972); Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

[2] State v. Whitmore, 126 Ohio St. 381, 185 N.E. 547, 551 (1933).

[3] Restatement, Conflict of Laws, Sec. 164 a. Arizona and Mississippi do not expressly require a board of directors. See, Kessler, Statutory Requirement of a Board of Directors: A Corporate Anachronism, 27 U. Chi. L. Rev. 696, 712, n. 76 (1960).

[4] Balmford v. Grand Lodge A.O.U.W., 16 Misc. 4, 37 N.Y.S. 645, 646 (1896); and see (must have management and directory powers) Greek Catholic Congregation of B. of O. v. Plummer, 338 Pa. 373, 12 A. 2d 435, 440, 127 *A.L.R.* 1008 (1940); and see, Ohio Rev. Code §1702.30.

[5] Briggs v. Spaulding, 141 U.S. 132, 147, 11 S.Ct. 924,35 L.Ed. 662 (1891); Stevens on Corporations, Sec. 143 (2d ed. 1949).

analysis, it is the status needed by a representative, as a practical matter, to carry on the affairs of the group which he represents.[6]

Even in business corporations, directors often are called *trustees*.

Use the title of "trustees." In non-profit organizations, the term *trustees* conveys the idea of the functions of the officers of the board better than the word *directors* does. In most non-profit organizations, the title of trustee is preferred.

Other terms also may be used, such as *councilor, governor, steward, guardian, warden, foreman*, or *master*.[7]

The general authority and status of trustees of a non-profit corporation are similar to those of directors of other corporations, except that they are somewhat limited in their power to deal with the corporation's property.[8] In dealings with property, the express consent of the general membership (*e.g.*, two-thirds vote) often is required.[9]

A strong indication of the *trustee of property* nature of a director's position is apparent in that statutes often permit non-members of non-profit corporations to be directors or officers.[10]

De facto directors or trustees. Persons who exercise the functions of directors under some seeming authority, despite their lack of true legal election or the like, are *de facto* directors. (See Section 193, below.)

This designation should not be confused with that of a *de facto corporation* (defectively incorporated). (See Section 122.)[11]

De facto directors may bind the corporation, although their tenure of office is open to direct attack[12] and sometimes to collateral attack.[13] But

[6] Henn, Corporations, Sec. 208 (2d ed. 1970); Pepper v. Litton, 308 U.S. 295, 60 S.Ct. 238, 84 L.Ed. 281 (1939); Haluka v. Baker, 66 Ohio App. 308, 34 N.E. 2d 68, 70 (1941).

[7] N.Y. Gen. Corp. L. Sec. 3 (13); Ohio Rev. Code Sec. 1702.01 (K); *In re* Lake Placid Co., 274 A.D. 205, 81 N.Y.S. 2d 36 (1948); Balmford Case, above, n. 4; Plainview Plumbing & H. Co. v. Ethical Culture Society of L.I., Inc., 24 Misc. 2d 1005, 205 N.Y.S. 2d 419 (1960).

[8] Van Campen v. Olean General Hospital, 210 A.D. 204, 205 N.Y.S. 554 (1924), affd. without opinion, 239 N.Y. 615, 147 N.E. 219 (1925).

[9] See n. 8, above; N.Y. Not-For-Profit Corp. L. §509. But contra: Ohio Rev. Code Sec. 1702.36.

[10] N.Y. N-P-C L §701. And see, same rule for business corporations: People v. Lihme, 269 Ill. 351, 109 N.E. 1051, 1054 (1915).

[11] See, Ridout v. State, 161 Tenn. 248, 30 S.W. 2d 255, 257, 71 *A.L.R.* 830 (1930); Eaker v. Common School Dist. No. 73, 62 S.W. 2d 778, 783 (Mo. App. 1933); Anno., 37 A.L.R. 3rd 277 (1971) as to de facto corporations.

[12] Young v. Janas, 34 Del. Ch. 287, 103 A. 2d 299 (1954); Stevens on Corporations, Sec. 160 (2d ed. 1949).

[13] Matter of George Ringler & Co., 204 N.Y. 30, 97 N.E. 593 (1912).

a person who wrongfully assumes the powers of a director may not use his de facto status as a defense for his acts.[14]

One who assumes to act as a director has the duties of a director.[15]

Trustee status in a non-profit organization is not the same thing as the special status of a trustee of an express, private trust deed or indenture. Thus a church organization "trustee" or "steward" does not have personal responsibility and liability for a defective gate on church property, which fell and injured a child.[16] So, too, a bequest to the trustees of an institution is a bequest to the institution.[17]

§ 191. Board Management of Corporate Affairs

Status as a director means status as a member of the *board of directors.* This is important because the *board*—not the individual acts of directors—must govern the corporation. [The importance of meetings in enabling directors to act is discussed in Section 155, above.]

Bylaws, the charter, or statutes may and do require that decision of certain special matters be made by the members. But general, routine management of affairs lies in the hands of the board of directors.[18]

Even if directors wish to do so, they may not lawfully abdicate their authority or duties, in favor of anyone else.[19] The nature of the general management of a corporation is that the directors shall do the managing, in their own good discretion, except as the charter or bylaws provide otherwise, or as statutes require members' consents for special matters. To this the members agree by the very *contract of membership.* The relation of the members to the routine management of affairs is one primarily of request or suggestion.[20]

An agreement to place managing (directing) authority in one person, or even in one group of members, is illegal.[21] (An *executive committee* is a

[14] Stevens on Corporations, 744 (2d ed. 1949). See as to duplicating of elections, East End Church of God v. Logan, 102 Ohio App. 552, 131 N.E. 2d 439 (1956).

[15] *Ibid.*, Henn, Corporations, Secs. 231-242 (2d ed. 1970).

[16] Foppiano v. Baker, 3 Mo. App. 560 (1877, appendix digest).

[17] New York Institution for Blind v. How's Executors, 10 N.Y. (6 Seld.) 84, 92(1854).

[18] 2 Oleck, Modern Corporation Law, c. 41(1959); Ohio Rev. Code, Sec. 1702.30; Church v. Young, 21 Ohio N.P. (n.s.) 569 (1919); Kaplan v. Block, 183 Va. 327, 31 S.E. 2d 893 (1944); N.Y. Gen. Corp. L. Sec. 28; Gumpert v. Bon Ami Co., 251 F. 2d 735 (2d Cir. 1958); D'Arcangelo v. D'Arcangelo, 137 N.J. Eq. 63, 43 A. 2d 169(1945).

[19] Wheeler v. Layman Foundation, 188 Ga., 267; 3 S.E. 2d 645 (1939).

[20] Lord v. Equitable Life Assur. Society, 194 N.Y. 212, 228; 87 N.E. 443; 22 *L.R.A.* (n.s.) 420 (1909).; Anderson v. Grantsville North Willow Irrig. Co., 51 Utah 137; 169 P. 168 (1917).

[21] See, Abbey v. Meyerson, 274 A.D. 389; 83 N.Y.S. 2d 503; aff'd., 299 N.Y. 557; 85 N.E. 2d 789 (1949).

special case, and is treated below, in the chapter on committees.) An agreement for a director to be only nominal, while others actually run the corporation, is illegal.[22]

Directors must exercise reasonable care and high good faith in corporate affairs.[23] They may (and should) ask the advice and informative guidance of others.[24] But they must use their own judgment in coming to final decisions.[25] The members may not "sterilize" (make sterile or futile) the board of directors.[26]

Thus, in a non-profit corporation, the power of control of day-to-day affairs rests in the board of directors. The members ordinarily cannot bind the corporation by contract.[27] On the other hand, the directors and officers are representatives, and their acts are subject to fair criticism by the members.[28]

Directors are presumed to use a reasonable degree of care and diligence, and are presumed to have a reasonably accurate knowledge of corporate affairs.[29]

All these rules suggest that it is unwise to attempt to vest too many specific control powers in the general membership. Aside from the clumsiness of a pure mass-meeting type of management, it is illegal if it makes puppets of the directors. However, attempts at such a system are common in non-profit organizations. They seem very democratic and unobjectionable on casual inspection, but they often result in confusion and acrimonious disputes.

§ 192. Fiduciary Status of Directors

A director is a *fiduciary*.[30] A *fiduciary* holds a character status analogous to (but not quite as strict as) that of a trustee of an express

[22] Jackson v. Hooper, 76 N.J. Eq. 592; 75 A. 568 (1910); Manson v. Curtis, 223 N.Y. 313; 119 N.E. 559 (1918); Home Tel. Co. v. Darley, 355 F. Supp. 992 (D.C. Miss. 1973); Chris-Craft Ind., Inc. v. Piper Aircraft Corp. 480 F. 2d 341 (2d Cir. 1973).

[23] State *ex rel.* Blackwood v. Brast, 98 W. Va. 596; 127 S.E. 507 (1925).

[24] Miller v. Vanderlip, 285 N.Y. 116; 33 N.E. 2d 51 (1941).

[25] See, Marvin v. Solventol Chem. Pdts., Inc., 298 Mich. 296; 298 N.W. 782 (1941).

[26] Manson v. Curtis, n. 11, above; N.Y. Gen. Corp. L. § 27.

[27] Clifford v. Firemen's Mut. Benev. Assn., 233 A.D. 260; 249 N.Y.S. 713 (1931).

[28] People *ex rel.* Ward v. Uptown Assn., 26 A.D. 297; 49 N.Y.S. 881 (1898).

[29] Leterman v. Pink, 249 A.D. 164; 291 N.Y.S. 249 (1936).

[30] Pepper v. Litton, 308 U.S. 295; 60 S.Ct. 238; 84 L.Ed. 281 (1939).

trust of property.[31] It involves in essence a duty to act for the good of others rather than for one's own benefit.[32]

The chief fiduciary duty of a director is to exercise his powers for the benefit of the corporation.[33] He must exercise these powers for the benefit of all the members—not for only some of them[34]—with full honesty and reasonable efficiency.[35]

A director may, however, take advantage of an opportunity for personal benefit that arises because of his position, provided that no personal seizing of a corporate opportunity, or the like, is involved.[36] (See the next chapter.)

Breach of faith. Unfortunately, there are cases of breach of fiduciary duty by directors.[37] Some states hold directors personally liable only for "gross negligence."[38] Most states hold them personally liable for "ordinary negligence" in managing corporate affairs.[39]

Failure to properly supervise subordinates, or to use due care in choosing them, results in personal liability.[40] Good faith or good intentions do not purge improper conduct.[41] [See, below, Section 202.]

"Proprietary" attitudes. Some trustees and officers of non-profit organizations develop what can only be called a "proprietary" attitude, as though they were owners of the organization, not its servants. The improper and reprehensible nature of such an attitude, and of the decisions that flow from it, are obvious.

[31] Svanoe v. Jurgens, 144 Ill. 507; 33 N.E. 955 (1893).

[32] Haluka v. Baker, 66 Ohio App. 308; 34 N.E. 2d 68, 70 (1941). And see, Trustees of Jesse P. Williams Hospital v. Nisbet, 191 Ga. 821; 14 S.E. 2d 64, 76 (1941); and note, 59 Yale L.J. 151 (1949).

[33] See, Citizens State Bank v. Adams, 140 Fla. 578; 193 S. 281 (1939); Pepper v. Litton, n. 19, above; Enyart v. Merrick, 148 Ore. 321; 34 P. 2d 629 (1934); United States v. Byrum, 408 U.S. 125 (1972).

[34] Atkins v. Hughes, 208 Calif. 508; 282 P. 787 (1929).

[35] First Mortgage Bond Homestead Assn. v. Baker, 157 Md. 309; 145 A. 876 (1929).

[36] See, Solimine v. Hollander, 128 N.J. Eq. 228; 16 A. 2d 203 (1940).

[37] See cases cited in, 2 Oleck, Modern Corporation Law, Sec. 961 (1965 supp.). See, for example, Arkansas Valley Agric. Soc. v. Eichholtz, 45 Kan. 164, 25 P. 613 (1891).

[38] Burkhart v. Smith, 161 Md. 398, 157 A. 299 (1931); Spiegel v. Beacon Participations, Inc., 297 Mass. 398, 8 N.E. 2d 895 (1937).

[39] Lippitt v. Ashley, 89 Conn. 451, 94 A. 995 (1915); Anderson v. Bundy, 161 Va. 1, 171 S.E. 501 (1933); Atherton v. Anderson, 99 F. 2d 883 (6th Cir. 1938).

[40] Briggs v. Spaulding, above n. 5; Rhoads, Personal Liability of Directors for Corporate Mismanagement, 65 U. Pa. L. Rev. 128 (1916); Note, 82 U. Pa. L. Rev. 364 (1934); Douglas, Directors Who Do Not Direct, 47 Harv. L. Rev. 1305 (1934).

[41] Manson v. Curtis, 223 N.Y. 313, 119 N.E. 559 (1918).

It is well for such persons to be reminded of the law applicable to high-handed use of managerial status. Statutes governing false statements, entries, or reports, of course, are stringent,[42] and misconduct results in personal liability.[43]

Public authorities and courts are particularly stern in case of abuse of powers by trustees or officers of charitable (*e.g.*, religious, educational, etc.) organizations. For example, under the Ohio statutes, any interested persons may complain to the attorney-general. He will then begin court procedures in which the court may make any order suited to the situation.[44]

Any arrangement or contract of the organization in which a situation of conflicting loyalties is found will be subjected to strict scrutiny by the courts. Then the persons who seek to maintain the transaction must maintain the burden of proof of its propriety.[45]

§ 193. Qualifications of Directors

The charter or bylaws of non-profit corporations may establish the qualifications and classifications of directors.[46] *Classification* usually means division into not more than five *periods of office*, setting up a rotation of elections and maintaining continuity of some experienced directors in office.

In most states, all directors must be over the age of 21 years, at least one must be a resident of the United States, and at least one must be a resident of the state of incorporation.[47]

Delaware and a few other states do not require state residence. Such absence of local attachment is unhealthy. The practice represents a rather commercial bidding for corporate business (and income) by these states. Such practice is especially foreign to the non-profit corporation concept of organization for social benefit.

The number and residences of the original directors usually must be stated in the certificate of incorporation.[48]

[42] Ohio Rev. Code Secs. 1702.54, 1702.56.

[43] *Ibid.*, Sec. 1702.55. See, Oleck, Proprietary Mentality and New Non-Profit Laws, 20 Clev. St. L. Rev. 145 (1971).

[44] *Ibid.*, Sec. 1713.31.

[45] Geddes v. Anaconda Copper Min. Co., 254 U.S. 590, 41 S.Ct. 209, 65 L.Ed. 425 (1921).

[46] N.Y. Not-For-Profit Corp. L. §701; Ohio Rev. Code §1702.27. (C).

[47] N.Y. Gen. Corp. L. §27. Need only one resident of the state; Ohio Rev. Code §1702.13. May be minors: Opinions Minn. Att'y-Gen. 102-E (June 25, 1951); Myott v. Greer, 204 Mass. 389, 90 N.E. 895 (1910).

[48] N.Y. Not-For-Profit Corp. L. §402; N.J. Rev. Stat. (1937, as amended) tit. 15.

If unqualified persons are elected as directors (*e.g.*, even in the charter) they are *de facto* directors.[49] But they may be removed from office.[50]

Directors in most states need not be members.[51]

Moral and personal-history qualifications may be—and often are—established for directors.[52]

Foreigners may be directors, provided usually that at least one director be a citizen.[53]

Married women may be directors, simply because no law seems to say that they may not be.[54]

§ 194. Number of Directors

For non-profit corporations most states require that there be at least three directors, while many require five.[55] Many states require that the charter set a maximum of from 15 to 21.[56]

For some special kinds of corporations—for example, cemetery corporations—special provisions concerning the number of directors may be made.[57]

Five incorporators usually are required, but only three directors. For the special corporations such as cemetery corporations, seven incorporators and three directors may be specified.[58]

Bylaws may make more specific numerical rules within the range permitted by the statutes.[59]

Many statutes also make special rules for changes in the number of directors.[60] Detailed procedures are specified in some statutes.[61]

[49] Demarest v. Flack, 128 N.Y. 205; 28 N.E. 645 (1891). And see c. 8, and § 147, above.

[50] *In re* Ringler & Co., 204 N.Y. 30; 97 N.E. 593 (1912).

[51] N.Y. Not-For-Profit Corp. L. §701.

[52] *In re* Haecker, 212 A.D. 167; 207 N.Y.S. 56L (1925).

[53] Opinions N.Y. Att'y-Gen. (Jan. 17, 1912).

[54] See state statute requirements, listed in 2 Oleck, Modern Corporation Law, c. 39 (1965 supp.).

[55] N.Y. Not-For-Profit Corp. L. §702; Ohio Rev. Code § 1702.27 (A).

[56] *Ibid.* (minimum of three) (N.Y.).

[57] *Ibid.*, §1401 (u) (u).

[58] N. 55-57, above.

[59] N.Y. Not-For-Profit Corp. L. §702.

[60] *Ibid.* §801.

[61] Ohio Rev. Code §1702.27(B).

§ 195. Trustee-Directors in Charge of Property

A few states, by statute, permit the appointment of individual or corporate trustees to hold and care for the property of the corporation. New York, for example, approves if the charter or an amendment thereto so provides (excepting a YMCA). The charter must also provide rules for the trustees' selection and for the appointment of their successors. Specific powers and duties of the directors may then be vested in these *trustees*, concerning the specific property.[62]

These trustees thus closely resemble the trustees of an unincorporated association.[63]

A *group* (*e.g.*, such as a committee) that has autonomy (*e.g.*, over a welfare fund, or grievance committee for several branches of an organization) may be sued *as an entity*, in the group name.[63a]

§ 196. Directors' Terms of Office

No precise limit to a director's term of office usually is found in non-profit-corporation statutes. This usually is left to the bylaws, but the New York statute now sets a limit of five years in some cases.[64]

A *rotating* system of elections now is widespread. It calls for election of at least one director every year. If a board consists of three members, three years is the term of office of any director. This method gives some assurance of continuity of experienced directors in office.[65]

Another widely used system involves annual elections for the entire board.

Hold-over directors. If elections of new directors are not held in due course, the old directors continue in office on a hold-over status with their normal, full powers.[66] Hold-over status continues until successors are duly elected.[67]

In such circumstances, the members should call a special election meeting (pursuant, where applicable, to statutory authority).[68]

[62] N.Y. Not-For-Profit Corp. L. §514.

[63] See c. 3, above.

[63a] Marsh v. General Grievance Committee, 1 Ohio St. 2d 165, 205 N.E. 2d 571 (1965).

[64] N.Y. N-P-C L. §703(b); Ohio Rev. Code § 1702.28.

[65] See, Ohio Rev. Code §1702.28.

[66] N.Y. Gen. Corp. L. §21.

[67] *Ibid:* Eberts Cadillac Co. v. Miller, 159 N.W. 2d 217 (Mich. App. 1968).

[68] *Ibid.* §22. See c. 15, above. And see, *In re* Atwater, 85 N.Y.S. 2d 738 (1948).

23

TRUSTEES AND DIRECTORS: POWERS, DUTIES, AND LIABILITIES

§201. Trustees' and Directors' Powers, In General

The *status* of a corporate director or trustee, in the sense of his position in the organization, is discussed in the preceding chapter.

In corporation law, the word *power* means the legal right or capacity to act in a particular manner or in respect to a particular subject.[1]

Power theories. Under the minority view, the powers of directors or trustees of a corporation are deemed to be derived directly from the state, not delegated by the members. This is the so-called *concession*, or *fiat*, or *franchise* doctrine.[2] In most jurisdictions the prevailing view is that corporate powers are vested in the *artificial legal entity*, and thus in the general membership, by statute. This is variously called the *realist*, or *enterprise*, or *symbol* theory.[3] Under it, the members delegate powers to the directors.

Yet, even where articles or bylaws limit the powers of directors. such provisions must not be inconsistent with laws.[4]

Another, not inconsistent, view is the *contract* theory, whereby the corporation, the members, and the state are deemed to contract for the grant and exercise of corporate authority.[5]

[1] See, Freligh v. Saugerties, 70 Hun (N.Y.) 589, 24 N.Y.S. 182 (1893); Bradley v. State *ex rel.* Hill, 111 Ga. 168, 36 S.E. 630 (1900).

[2] See, Henn, Corporations, Sec. 78 (2d ed. 1970).

[3] *Ibid.*, Stevens on Corporations, Sec. 1 (2d ed. 1949); 1 Hornstein, Corporation Law & Practice, Sec. 12 (1959); Coastal Pharmaceutical Co. v. Goldman, 213 Va. 831, 195 S.E. 2d 848 (1973).

[4] N.Y. Genl. Corp. L. Sec. 13, (2); N.C. Gen. Stat. Sec. 55-7 (7).

[5] Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 4 L.Ed. 629, (1819).

Generally, the *entity* theory of corporate "personality" is not extended to unincorporated associations, which are viewed as *aggregate* groups similar to partnerships, as yet. Recent statutes and cases contrary to this view (see Sections 31, 32, above) are not yet numerous nor conclusive enough to change the basic legal view of associations.

Basic rule. All these doctrines point to one major concept, of prime importance in non-profit organizations. That is the basic rule that the legal entity (of the organization), rather than the board of directors, is the holder of legal power. The powers of the directors are not inherent in them, but inherently are in the organization as such.

Interpretation of statutes. In reading statutes that define the authority (powers) of trustees of non-profit organizations, the above-stated principles must be kept in mind.

Thus, in a typical statute (Ohio's), trustees are defined as "the persons vested with the authority to conduct the affairs of the corporation . . ."[6] And (in the same statute) it is stated that "Except where the law, the articles, or the regulations (bylaws) require that action be otherwise authorized or taken, all of the authority of a corporation shall be exercised by its trustees."[7]

These provisions were based on the Model Act of the American Law Institute, of which the "management - oriented" leaning has been remarked upon elsewhere herein.[8]

Ownership is in the members; operation is by trustees. Underlying most non-profit statutes and case law is the idea that directors or trustees are to *exercise the powers* (operate) the organization, but are *not* to *own* it. Their powers are managerial, *not proprietary*, in nature.

For example, the trustees, not the members, are the proper persons to bring or defend suits in the corporation name.[9] A suit brought or defended by hundreds or thousands of members would be a mess.

But the power to act on behalf of an organization does not give to the agents ownership powers or rights within the organization.

The members, not the trustees, constitute the *body corporate* in most non-profit, as well as business, corporations. Statutes, as well as case law, usually vest in the members the fundamental power to

[6]Ohio Rev. Code Sec. 1702.01 (K).

[7]*Ibid.*, Sec. 1702.30.

[8]Model Non-Profit Corp. Act Sec. 17.

[9]Church v. Young, 21 Ohio N.P. (n.s.) 569, 29 Ohio Dec. 477, (1919).

adopt or change rules (*e.g.*, articles and bylaws) for the government of most kinds of corporations.[10] They, rather than the trustees, have this fundamental power to adopt or change purposes and rules.[11]

A gross misconception is inherent in the Model Non-Profit Corporations Act, where it grants the basic powers to directors unless the articles or bylaws provide otherwise. Those few states that have blindly followed this "model" violate the essential idea of a non-profit (tax exempt) organization. They thereby encourage use of non-profit form for "proprietary" purposes.[11a]

There is tendency enough, in many people, to seize for themselves powers or property given into their trust, without active encouragement of that tendency. Ownership by management, in most non-profit organizations, is a flat contradiction of the *pro bono publico* idea that is the essence of group activity not for profit.

Trust nature of trustees' or directors' powers. Illumination of the real nature of a trustee's or director's powers is found in statutes dealing with charitable, rather than "merely non-profit," organizations.

For example, a trustee of a non-profit *educational* corporation may not be given any compensation, and is not eligible to hold any office or agency to which a salary or emolument is attached, under the Ohio statute.[12]

Special, limited provision is made for *fiscal trustees* who may hold and manage the endowment of a Y.W.C.A.[13]

In an incorporated *charitable trust (foundation)*, the trustees are the members of the corporation.[14]

In *credit unions*, the directors have special powers.[15] So, too, do the trustees of non-profit medical care corporations.[16] Where a cor-

[10] Ohio Rev. Code Secs. 1702.04 (B), 1702.10. But control vests in trustees in a Y.M.C.A., Ohio Rev. Code Sec. 1715.24; Maxwell v. Northwest Ind., Inc., 339 N.Y.S. 2d 347 (1972).

[11] Veterans of World War I v. Levy, 70 Ohio L. Abs. 49, 118 N.E. 2d 670, (1954).

[11a] See, Oleck, Proprietary Mentality and the New Non-Profit Corporation Laws, 20 Clev St. L. Rev. 145 (1971).

[12] Ohio Rev. Code Sec. 1713.30.

[13] *Ibid.* Secs. 1715.29-1715.31.

[14] *Ibid.* Sec. 1719.01.

[15] *Ibid.* Sec. 1733.11.

[16] *Ibid.*, c. 1737.

poration has only trustees, and no members, the trustees are deemed to be members when statutes speak of members.[17]

The implication of these illustrations is that a trustee or director of most non-profit organizations has fiduciary management, not ownership, powers.

Board powers summarized. In general, the board of trustees or directors has the power and duty to carry on whatever transactions the corporation itself has the power and desire to carry on.[18] The power of the board is supreme in ordinary matters, so long as it is exercised lawfully and in lawful transactions.[19] Nor will the courts interfere unless illegal action, or action in bad faith, is shown.[20]

In extraordinary matters, however, the board may not govern, but the will of the general membership must rule—unless the charter or bylaws expressly permit the directors to do so. In such matters as a radical change of fundamental policy or purposes, or in dissolution or merger of the corporation, or matters of like importance, the power of decision rests in the members.[21]

Within the *purposes* and *powers* of the organization, the directors are free to change policies and short-range purposes. But unless the charter or bylaws expressly permit, they may not perform acts that amount to changes in fundamental purposes or methods of the organization.[22]

§ 202. Directors' Standards of Diligence and Care (Personal Liability)

The degree of diligence, skill, and care required of directors always is a relative matter. It depends on the organization's character, purpose, size, financial means, location, charter and bylaw provisions, and many other factors. In general, the directors must meet the standards applicable to agents who are almost trustees.[23]

[17] *Ibid.* Sec. 1702.14.

[18] Templeman v. Grant, 75 Colo. 519; 227 P. 555 (1924); Berkeley County Court v. Martinsburg & P. Turnpike Co., 94 W. Va. 246; 115 S.E. 448 (1922).

[19] Ayres v. Hadaway, 303 Mich. 589; 6 N.W. 2d 905 (1942). But conditions attached to a gift must be followed: Ohio Society for Crippled Children v. McElroy 175 Ohio St. 49, 191 N.E. 2d 543, 100 A.L.R. 2d 1202 (1963).

[20] Conrick v. Houston Civic Opera Assn., 99 S.W. 2d 382 (Tex. Civ. App. 1936); Levin v. Sinai Hospital, 186 Md. App. 174; 46 A. 2d 298 (1946) Central N.Y. Bridge Ass'n., Inc. v. American Contract Bridge League, Inc., 339 N.Y.S. 2d 438 (N.Y. Sup. 1972) (not-for-profit corporation's actions may be in excess of granted powers and *ultra vires*).

[21] Commercial National Bank v. Weinhard, 192 U.S. 243; 24 S.Ct. 253; 48 L.Ed. 425 (1904); and see, Ballantine, *Corporations* 120 (rev. ed., 1946).

[22] See n. 21, above; Manson v. Curtis, 223 N.Y. 313; 119 N.E. 559 (1918).

[23] See, Briggs v. Spaulding, 141 U.S. 132, 147, 11 S.Ct. 924; 35 L.Ed. 662 (1891); Citizens Building, Loan & Sav. Assn. v. Coriell, 34 N.J. Eq. 383, 392 (1881); Home Tel. Co. v. Darley, 355 F. Supp. 992 (D.C. Miss. 1973).

Directors are usually held to the standard of diligence, skill, and care of an *ordinary man* in a like situation.[24] This is a vague enough standard to make it necessary to decide practically every case on its own peculiar facts. (See, above, Section 190.)

If a director is to serve as such in a full-time capacity, he is held to the standard applicable to a man who is running his own business.[25] This high standard seldom applies in non-profit corporations, where directors usually are part-time voluntary servants, deriving no pecuniary benefits from their work. But on the other hand, the fact that they may be mere "window dressing" for the organization does not justify allowing them to act carelessly or with gross stupidity.[26]

A director is not ordinarily subject to the full liability of a trustee. He is entitled to rely on the reports of officers and accountants, and on the advice of lawyers, within reasonable limits.[27] But he cannot escape personal liability by not attending meetings and by ignoring corporate affairs.[28] If directors omit the reasonable precautions established by the bylaws, or by ordinary common sense, they may be grossly negligent, and may be held personally liable for resulting injuries or losses to the corporation.[29]

So long as a director exercises reasonable diligence and care, he is free from personal liability—when his poor judgment causes loss or injury to the corporation.[30] *Good faith* is the principal (but not the sole) test of the adequacy of a director's care and diligence.[31]

Of course, a director is not responsible for acts of other directors committed before he took office.[32]

Incompetence of a director is in itself no cause for him to be held personally liable for any losses caused by his inadequacy. The same is true of simple negligence, if it is not gross. The members have no one to blame

[24] Syracuse Television, Inc. v. Channel 9, Syracuse, Inc., 273 N.Y.S. 2d 16 (N.Y. Sup. Ct. 1966); Weidner v. Engelhart, 176 N.W. 2d 509 (No. Dak. 1970); Anderson v. Akers, 7 F. Supp. 924 (D.C., Ky. 1934); modified, 86 F. 2d 518 (6th Cir. 1936)(directors of unsound mind, relieved of liability).

[25] People v. Mancuso, 255 N.Y. 463, 469; 175 N.E. 177; 76 *A.L.R.* 514 (1931).

[26] Gibbons v. Anderson, 80 F. 345, 350 (W.D. Mich. 1897); Cushing, "The Liability of the Inactive Corporate Director," 8 *Columbia L. Rev.* 18 (1908); and see, above, §149.

[27] Pool v. Pool, 22 S. 2d 131 (La. App. 1945); Litwin v. Allen, 25 N.Y.S. 2d 667, 719 (1940).

[28] Bowerman v. Hamner, 250 U.S. 504, 513; 39 S.Ct. 549; 63 L.Ed. 1113 (1919).

[29] Charitable Corp. v. Sutton, 2 Atk. 400; 26 Engl. Reprint 642; Briggs case, n. 23, above. A minority of the board members may enjoin a threatened breach of trust by the majority; the power of the attorney-general is not exclusive. Holt v. College of Osteopathic Phys. & Surg., 61 Cal. 2d 750, 394 P. 2d 932, 40 Cal. Rptr. 244 (1964), noted, 16 Hastings L.J. 479 and 629 (1965).

[30] See Abbot v. Waltham Watch Co., 260 Mass. 81; 156 N.E. 897 (1927).

[31] Rous v. Carlisle, 14 N.Y.S. 2d 498; aff'd., 15 N.Y.S. 2d 721 (1939); Goff v. Emde, 32 Ohio App. 216; 167 N.E. 699 (1928).

[32] Solimine v. Hollander, 128 N.J. Eq. 228; 16 A. 2d 203 (1940).

but themselves if they elect incompetents or careless bunglers. Their only real relief is to choose better men at the next election, unless the bylaws permit earlier replacement of an incompetent or negligent director.

Statutory standards. The relative freedom from all personal liability enjoyed by directors of non-profit corporations is clarified by statutes in a number of states. The New York statute provides:[33]

> A director or officer shall not be liable under this Section if, in the circumstances, he discharged his duty to the corporation under Section 717 (Duty of Directors and Officers).

The Ohio statute exempts members, trustees, and officers from personal liability, similarly. Then it goes on, to hold personally liable, trustees who vote for or assent to: distribution of assets to members, contrary to law or the articles, improper distributions in dissolution, or improper loans; or trustees who fail to dissent promptly (and in writing) where impropriety occurs; or members who receive improper distribution; and then the statute permits contribution among trustees or members who may be found liable, sets a two-year statute of limitations (measured from the time of the violation), and gives credit rights against the corporation as well.[34]

In addition, as in most states, the Ohio statutes provide for fines to be imposed on persons who make or assist in making or filing false reports or certificates.[35]

Other statutes specifically exempt non-profit corporations from certain statutory proceedings to enforce personal liability of directors, which proceedings are available for business corporations.[36]

Constitutional immunities as to testimony suspended. In many states, and in the federal courts, statutes now suspend the Constitutional privilege to refuse to testify on the ground of self-incrimination. These complusory-testimony statutes apply to directors. They deny the right to refuse to testify (granted by the Fifth Amendment), but grant immunity from prosecution for any criminal conduct revealed by such forced testimony.[37]

[33] N.Y. Not-For-Profit Corp. L. §719(e). Knowingly misleading conduct results in liability. First Natl. Bank v. Level Club, 241 A.D. 433; 272 N.Y.S. 273 (1934).

[34] Ohio Rev. Code Sec. 1702.55.

[35] *Ibid.*, Secs. 1702.56, 1702.99. As to false entries and statements, see, *Ibid.* Sec. 1702.54.

[36] N.Y. Gen. Corp. L. §130; Walker Memorial Baptist Church v. Saunders, 173 Misc. 455; 17 N.Y.S. 2d 842 (1940); affd. without op., 259 A.D. 1010; 21 N.Y.S. 2d 512 (1940); revd. on other gds., 285 N.Y. 462; 35 N.E. 2d 42 (1941); rehearing den., 286 N.Y. 607; 35 N.E. 2d 944 (1941).

[37] N.Y. Gen. Corp. L. §131; Ohio Rev. Code §§2945.44; 3901.23.

Joint liability. If directors are personally liable (in case of fraud or bad faith, they are jointly and severally liable), this means that a complaining party then may sue one of them, any of them, or all of them, as he chooses. Whichever one he sues is fully liable for the full amount of the loss suffered by the plaintiff.[38]

Criminal liability. Corporate crimes are discussed in Chapter 10, above.

A much-quoted case ruled that an officer or a director of a non-profit corporation is not personally criminally liable for the violation of a penal statute by the corporation.[39] This should not be misunderstood. It means only that the criminal act of a non-profit corporation ordinarily should not be imputed to an innocent director or officer. It does not mean that a director is immune against criminal liability for criminal conduct which he commits, aids, tolerates, or condones.

§ 203. Record of Personal Conduct

The one sure way for a director to protect himself against unfair personal liability is this. He must make sure that the written record indicates his good faith.

Whenever a matter arises in which any doubt of personal conduct may result, the director should insist that his views and acts be recorded. Thus, in a meeting, if a proposal is made which he believes to be of questionable propriety, he should state his dissent and objection. And he should make sure that his protest is recorded in the minutes.

Whenever a director doubts the propriety of a contemplated corporate action, he should see that a written record of objection is made, in verifiable form. This can be done by letter, memorandum, or other writing. Ordinarily such a paper would be objectionable as *self-serving evidence*, but it is both proper and desirable for self-defense purposes. Self-serving evidence is admissible when it is a part of the whole transaction (*res gestae*), when it is not a mere fabrication, when it is acquiesced in by the other persons concerned, and when it is relevant.[40]

[38] Kugelman v. Hirschman, 22 Misc. 533; 49 N.Y.S. 1012 (1898); and see, above, at n.34.

[39] People v. Smith, 190 Misc. 871; 74 N.Y.S. 2d 845 (1947).

[40] Richardson, *Evidence* §§415-419 (7th ed., 1948); Ohio Rev. Code §1702.55 (C). Directors have both the power and the duty to inspect records. Hyman v. Jewish Chronic Disease Hospital, 15 N.Y. 2d 317, 206 N.E. 2d 338 (1965).

§ 204. Directors' Duty to Report (Annual)

One of the paramount duties of directors of non-profit corporations is to report to the members their activities and the state of corporate finances and affairs. A director's freedom from liability for corporate debts may depend upon his filing of an annual report.[40a]

Directors of most non-profit organizations must report at least once a year, and more frequent reports are usually desirable. Statutes often require at least an annual report. The New York statute provides as follows:[41]

519. Annual report of directors

(a) The board shall present at the annual meeting of members a report, verified by the president and treasurer or by a majority of the directors, or certified by an independent public or certified public accountant, or a firm of such accountants selected by the board, showing in appropriate detail the following:

(1) The assets and liabilities, including the trust funds, of the corporation as of the end of a 12-month fiscal period terminating not more than six months prior to said meeting.

(2) The principal changes in assets and liabilities, including trust funds, during the year immediately preceding the date of the report.

(3) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report.

(4) The expenses or disbursements of the corporation, for both general and restricted purposes, during the year immediately preceding the date of the report.

(5) The number of members of the corporation as of the date of the report, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report, and a statement of the place where the names and places of residence of the current members may be found.

(b) The annual report of directors shall be filed with the records of the corporation, and either a copy or an abstract thereof entered in the minutes of the proceeding of the annual meeting of members.

(c) The board of a corporation having no members shall direct the president and treasurer to present at the annual meeting of the board a report in accordance with paragraph (a), but omitting the requirement of subparagraph (5). This report shall be filed with the minutes of the annual meeting of the board.

[40a] Mountain States Supply, Inc. v. Mountain States Feed and Livestock Co., 425 P. 2d 75 (Mont. 1967).

[41] N.Y. Not-For-Profit Corp. L. §519; Ohio Rev. Code §1702.16 requires an "annual meeting."

The annual report must be available for inspection by the members. A bylaw that bars access to it, or to lists of members, is invalid.[42]

The right of directors to inspect and make extracts of records of the corporation usually is absolute.[43] A director may inspect them even in order to organize a rival corporation, but in such circumstances he will not be permitted to copy the lists.[44]

The New York statute requires directors to file an adequate *report*, not necessarily an accountant's detailed statement.[45]

The making of false reports, or the failure to make reports lawfully required by a public officer, or the keeping of false financial records, is a crime.[46]

§205. Compensation of Directors or Officers

Basic in any non-profit corporation is the rule that directors and officers make no pecuniary profit out of the corporation.[47] This does not mean they may not receive salary or compensation for services.

A typical statute provides:[48]

> The fixing of salaries of officers, if not done in the bylaws, shall require the affirmative vote of a majority of the entire board, unless a higher proportion is set by the certificate of incorporation or bylaws.

The statute clearly permits compensation to directors or officers only in accordance with rules deliberately adopted.[49]

The prohibition against payment of compensation to trustees of educational charitable corporations, found in some states (*e.g.*, Ohio Rev. Code §1713.30), also often forbids such trustees to be officers or agents of the corporation.

Even when proper bylaw authority exists some states require that there be an express contract for the payment of compensation, even for

[42] Davids v. Sillcox, 297 N.Y. 355, 79 N.E. 2d 440 (1948).

[43] Henshaw v. American Cement Corp., 252 A. 2d 125 (Del. Ch. 1969)(based on 8 Del. C. §220); Pilat v. Broach Systems, Inc., 108 N.J. Super. 88, 260 A. 2d 13 (1969); Leisner v. Kent Investors, Inc., 307 N.Y.S. 2d 293 (Sup. Ct. 1970); Javits v. Investors League, 92 N.Y.S. 2d 267 (1949); but see, Ohio Rev. Code §1702.15.

[44] Ibid.

[45] Hamilton v. Patrolmen's Benevolent Assn., 88 N.Y.S. 2d 683 (1949); and, above N.Y.N-P-C-L §519(a).

[46] See c. 1, above; and n. 35, above.

[47] N.Y. Penal L. §665.

[48] N.Y. Not-For-Profit Corp. L. §115.

[49] Hawaiian Intnatl. Finances, Inc. v. Pablo, 488 P. 2d 1172 (Hawaii 1971); Knapp v. Rochester Dog Protective Assn., 235 A.D. 436; 257 N.Y.S. 356 (1932).

extraordinary services.[50] No state permits compensation merely because the services were rendered with expectation of payment.[51] Payment for past services must rest both on proper authority and on an actual or implied agreement.[52]

If the board is empowered to grant salaries, only it—not the president—may do so.[53]

Obviously, agreements among directors or officers to award salaries to each other (based on what amounts to a division of profits) are against public policy and are void.[54]

The reasonableness of compensation voted by directors to a director may be scrutinized by the courts. If it is unreasonable, wasteful, excessive, or in any way improper, the court may order it returned to the corporation.[55]

The rights of officers are discussed in Chapter 23 below.

It should be quite clear that bylaws must be carefully drawn to govern the compensation of directors and officers. Approval of such bylaws by the membership is the best method. Approval by the directors alone is a constant source of suspicion and dispute.

Directors' fees. With the bylaw authorization required by statute, it is quite proper to grant fees to directors for attending meetings.[56] But the directors may not vote such fees for themselves.[57] Fees vary from about $10 per meeting to as high as $200.

Expense accounts. Payment of reasonable expense accounts for executives is valid if properly authorized.[58] The principle is that an employer may reimburse an employee for money he lays out on the employer's behalf. The outlay to be repayable must have been expressly or impliedly authorized by the employer.[59]

[50] Dixmoor Golf Club, Inc. v. Evans, 325 Ill. 612; 156 N.E. 785 (1927).

[51] Alexander v. Equitable Life Assur. Soc., 233 N.Y. 300; 135 N.E. 509 (1922); revg., 196 A.D. 963; 188 N.Y.S. 908 (1921).

[52] Stafford's Estate v. Progressive Natl. Farm Loan Assn., 207 La. 1097; 22 S. 2d 622 (1945).

[53] Vredenburg v. Internatl. Trade Exhibition, Inc., 166 La. 390; 117 S. 437 (1928).

[54] Pence v. West Side Hospital, 265 Ill. App. 560 (1932).

[55] Albers v. Villa Moret, 46 Calif. App. 2d 54; 115 P. 2d 238 (1941); Worley v. Dunkle, 62 A. 2d 699 (N.J. Eq. 1948). Rogers v. Hill, 289 U.S. 582; 53 S.Ct. 731 (1933); revg., 60 F. 2d 109 (1932).

[56] See, 19 *C.J.S.*, "Corporations," §805.

[57] *In re* Aksel Arnessen, 127 *N.Y.L.J.* 1359, col. 5 (Apr. 4, 1952) (unrep. decis., Supr. Ct.).

[58] See, Cohn v. Columbia Pictures Corp., 128 *N.Y.L.J.* 725, col. 3 (Oct. 7, 1952) (unrep. decis., Supr. Ct.).

[59] Flynn v. Hurd, 118 N.Y. 19 (1889); revg. 40 Hun (N.Y.) 637 (1886).

POINTS TO REMEMBER

Routine affairs are for the board of trustees or directors to decide.

Extraordinary affairs are for the members to decide.

Fundamental changes in policy or purposes must be approved by the general membership.

An honest director who uses reasonable care and diligence has no personal liability for corporate debts or obligations.

Directors guilty of fraud or bad faith are personally, jointly, and severally liable.

Insist on written record of objections to doubtful decisions or acts.

Be sure to prepare and file at least an annual report on the organization's finances and affairs.

Provide in the bylaws for compensation of directors and officers. Provide also for reimbursement of litigation expenses.

Do not give compensation to trustees of charitable organizations, directly or indirectly.

Include power in the bylaws for directors and officers to deal with the corporation. But include protective restrictions. Generally discourage such transactions.

Do not allow use of the organization as a tax dodge or business holding device by anyone or any group.

Do not allow trustees or officers to make the organization a proprietary device. Use trustees' and/or members' proper powers to prevent abuse.

Kansas City
Association of
Trusts and
Foundations

THE IMPORTANCE OF BOARD EFFECTIVENESS IN NOT-FOR-PROFIT ORGANIZATIONS

John P. Mascotte

March 11, 1985
Arthur Mag Conference Center • Kansas City, Missouri

On March 11, 1985, the Kansas City Association of Trusts & Foundations sponsored a meeting at the Arthur Mag Conference Center for the Association Board and representatives of grant recipient organizations entitled, "The Importance of Board Effectiveness in Not-For-Profit Organizations." Ninety-five representatives were in attendance. The featured speaker was Mr. John P. Mascotte, Chairman of the Board and CEO of the Continental Insurance Company (formerly Senior Vice-President of Mutual Benefit Life in Kansas City).

The purpose of the program was two-fold:

* To emphasize the critical and varied role which boards play in the effective functioning of their agencies; and,

* To make it clear to all recipient agencies that the Association holds the agency board responsible for monitoring any Member Trust grants it receives.

Our Directors recognize that philanthropy can be no better than the boards of directors which oversee the effective use of foundation monies in meeting community needs. While executive directors have an important role, it is still the board's judgement and leadership which mold the agency and its role in the community. A board is not only essential to the effectiveness of the agency, but ultimately determines the impact it will have on the community.

We were gratified with the enthusiastic response to Mr. Mascotte's presentation and are pleased to make this written transcript available to share with your fellow Board members. Your interest and participation in the program was much appreciated.

James P. Sunderland
Chairman

Adele Hall
Vice Chairman &
Program Chairman

It is terrific to be back in Kansas City and have the chance to see so many old friends.

Today I have been asked to talk with you about the effectiveness of Boards of not-for-profits in Kansas City. I'd like to address this topic by discussing two questions. The first of these: Do Boards of Directors really play a significant part in the overall operation of not-for-profits? In other words, do Boards really matter? And if they do, the second question concerns what steps can be taken to ensure their increased effectiveness.

The first question is really not rhetorical. I think it's one that perhaps the not-for-profit organizations in Kansas City might well benefit from focusing on before we talk about how the Boards might be improved. I'd like to spend a few moments this morning sharing some ideas on that most fundamental question of whether Boards matter in the first place.

It seems to me that any not-for-profit organization possesses three resources as it attempts to address the functions for which it was organized. The first, of course, would be the whole range of financial assets that a not-for-profit possesses - be it cash or its opportunity to obtain cash from committed supporters, its facility, or other capital assets. The second category of resources are those human skills represented on its staff and on its Board. What I think is largely overlooked in analyzing performance of not-for-profits is that third resource category - the "ownership" of a social problem or the responsibility for meeting a community need.

I would suggest that in answering the question whether the Boards of not-for-profits really matter, you can look at the three resources of any not-for-profit and reach some rather significant conclusions. First, the Board clearly is charged with the responsibility of overseeing the financial resources of a not-for-profit. Secondly, through its executive director, a Board is clearly charged with overseeing the effective utilization of its staff resources. In both of these instances the Board is largely delegating the responsibility to those who are directly associated with the organization on a full time basis. However, the third resource, "ownership" of a problem is a resource that only the Board can

effectively control. I would suggest to you that the creation and nurturing of that third resource cannot, in fact, be delegated to the staff.

I'd like to speak rather specifically today about what I mean by the "ownership" of a problem, that third resource of a not-for-profit. I'd like to tell you what I believe that really means and why it is so critical for Boards to understand their key role in managing it.

I think there are three observations with respect to the so called "ownership" of the problem issue. The first, of course, is the definition of what many of us call "turf". What is the proper way of defining the role of a given not-for-profit in Kansas City? For example, does the Board correctly perceive its mission consistent with what is needed in the community? Does it take into account the positioning of other not-for-profits which might be in similar or, at least, related areas of concern? For example, at what point does Children's Mercy Hospital begin to define its role in terms of providing superior health care services for children? To what extent, if any, does that definition then begin to bump up against or intrude upon competing institutions in Kansas City?

It's been over five years now since I've had the great privilege of being heavily involved in activities in Kansas City, but I will suggest to you that there are many areas such as hospital care, drug abuse programs, and certain inner city and neighborhood revitalization efforts which clearly indicated to me a significant amount of overlap exists. Only a Board of a not-for-profit can adequately examine the issue of definition, if you will, of purpose. Only the Board can really stake out and articulate what is the proper "turf" of a not-for-profit, and I think that's a critical issue.

Just as critical, and the second of the three "ownership" of the problem pieces, relates to the issue of legitimization. It is increasingly evident to me that by visibly and vocally committing oneself to a not-for-profit, a board member is placing his or her personal stature at the disposal of that not-for-profit and, in effect, is legitimizing its role. How often have you received a letter requesting that you financially support an organization and your eyes rather quickly glance down to see who's associated with this organization? Who are the board

members that feel this particular not-for-profit is important enough to make it worthy to be associated with their names? A board member is really making sort of a public statement about what is important to him or her in the very process of becoming affiliated with an institution. We expect things from not-for-profit board members in terms of their affirmation of the validity of a not-for-profit's goals, so that the legitimizing role, I would suggest, is an extremely important one. Important not only because it gives the agency its starting legitimacy, but also because it is necessary to sustain this whole motion of "ownership" of the problem.

The third point on this business of effective "ownership" of a problem has to do with the community's respect for the organization's contributions to solve a perceived need and with the critical issue of self-evaluation. However well intended a not-for-profit's objectives might have been when it was set up, has the Board taken the time to go back and look squarely at whether or not the agency or institution is really meeting its objectives? In my choice of words, is there really a job to be done today of the kind that was envisioned when the not-for-profit was set up? I have probably seen or participated in the creation of at least ten not-for-profit organizations in my seven year span in Kansas City. I cannot recall a single elimination of a not-for-profit. Unfortunately, these insitutions tend to take on a life of their own because, in my judgement, Boards are all too frequently willing to skip over their responsibility for sitting down and asking the tough questions - is there a job to be done and does this not-for-profit have the resources, both human and financial, to do it well? Both this question and that of the quality of service are ones you can't ask the staff to do. You'd be asking someone to pass judgement on his or her own activities, and it would be grossly unfair of not-for-profit Boards to allow staff of the organization to justify their own continued existence. Yet, how many times have you participated in a not-for-profit in which there's sort of a general sense of smiling and back patting once a year, typically at the time the budget is approved, and an assertion that somehow those lofty goals that we all want were in fact achieved.

I guess what I'm focusing on here is something that Peter Drucker summed up pretty well in a distinction he made a few years ago in a text that he

was writing for managers. He asked his readers to distinguish between two very critical things: DOING THINGS RIGHT AND DOING THE RIGHT THINGS. It seems to me that it is clearly the function of the staff of a not-for-profit organization to DO THINGS RIGHT, to understand the charge as it has been sketched out and flushed out by the Board and to take those steps in the utilization of the human and financial resources available to execute the strategy of the Board effectively. At the same time it is absolutely imperative that the Board assign to itself the question of what is the RIGHT THING TO DO? So, in summary, it is the Board's job to make sure that the organization is DOING THE RIGHT THINGS and that it is the staff's responsibility to make sure that those THINGS ARE DONE RIGHT. In my judgement, based on my period of time in Kansas City, board members in that regard are not hard enough on themselves. There is typically an assumption that the purpose and values of the institution are somehow predetermined or are givens. If one is not coming in at its beginning, one tends to accept a position on a Board almost by saying, "I'll simply live and work inside whatever boundaries this organization is already operating in". Further, members may fear it would be perceived as sort of ungentlemanly or unladylike to analyze at the end of the year what the organization is trying to accomplish and whether it is really doing the best job of accomplishing it?

Why is it important to ask the hard questions? The answer is simple - public confidence determines public support. Many of the problems in funding the old Philharmonic grew out of a sense that somehow that Institution was simply not doing the job of meeting community needs as sufficiently as I think the community believed they needed to be achieved. I think there are a number of organizations that chronically complain of the difficulty of achieving their objectives, of the difficulty of finding new people to support it, of meeting budgets, and of getting effective community response to their programs. They'd do well if they sat down and said, "How accurately do we measure our performance as opposed to how the community perceives the delivery of that performance?" As you could imagine, if the staff and, particularly the Board, is giving itself A+ in delivery when the community is in fact rating it D-, there is going to be a huge problem of perception that will begin to manifest itself in dozens of ways - difficulty in getting new board members; a tendency on

the part of the staff to become more entrenched; certainly a tendency not to strike out and establish new agendas for the organization, but to stay inside the hardened little shell of the initital activity. Finally, and worse than anything else, there develops a "Bunker" mentality that becomes very defensive and says we must guard this against all intrusion even if it appears that someone else is beginning to offer an alternative to what we do that is in fact more efficient, more effective, and better for the community.

Let me conclude my answer to this first question, are board members important? I think they are absolutely critical because they provide an orderly and necessary review and control of financial resources and because they select and monitor the executive director. Like an old washer woman, they exist to constantly nag, probe, and challenge the initial thrust and charter of a not-for-profit. They exist to critically examine what the size and scope of the "ownership" of its particular problem is and how the delivery of service is working.

Given the need for the Board, how do we go about making Boards better? I think there are a series of things you can do. First, there ought to be criteria for selecting board members and those ought to grow out of the nature of the problem being addressed by the organization. There are lots of different people in Kansas City with different skills. Some have access to certain fund raising capabilities, others have excellent communication capabilities, still others have important contacts into various segments of the community such as to the public sector and to various minority groups. For example, I would suggest that you might well look for different criteria if you were recruiting for board membership at Children's Mercy Hospital or the Folly Theatre than you would if you were seeking to obtain a strong neighborhood presence for a neighborhood improvement association. Uniform criteria for board membership completely misses the point we were discussing a moment ago about that all important role of the Board to define and keep analyzing and testing the organization's primary reason for existence.

As you begin to develop that list of candidates who might be true believers and who might be board members that could really commit themselves in a meaningful and effective way to the success of your

particular not-for-profit, you might want to take a leaf out of one of Kansas City's most effective and certainly one of its wisest superstars in the not-for-profit arena. That's Dr. Charles Kimball. Dr. Kimball came to Kansas City with a vision of the Midwest Research Institute and I think has taught all of us a great lesson with respect to how to effectively utilize board members.

What Charlie Kimball did was to develop a large advisory board of one hundred which provided Midwest Research with varied insights, great contacts, and a broad base for legitimizing the agency's role. The advisory group also became a training ground and cadre for appointment to the Executive Committee, a group of twelve to fifteen people who actually became involved in the day to day running of the Institute. This was an excellent way to screen the true believers and still have the advantage of the broader group's limited involvement.

Secondly, I think it is perfectly fair, appropriate, and indeed necessary when recruiting or evaluating board members to have performance objectives. What are the specific duties you want each board member to participate in (fund raising, helping to manage the staff, and so forth)? How much time is going to be asked of a board member - all day, once a month, two luncheons a month? Do you intend to expect more from the chairman of committees in your not-for-profit than you do from normal board members? I happen to be a firm believer in the jist of Eric Hoffer's book that there are a minimum number of true believers. A not-for-profit would be really successful if it can aggregate a small number of people who are so dedicated and so committed to the goals and objectives of the not-for-profit that they can take their bundle of particular talents and constantly energize the agency. Thus, it seems to me, that it is perfectly legitimate to test someone's commitment by saying, "We'd like you to become interested in this and we think that a good measure of your interest would be your willingness to commit X hours a month to do this particular kind of work". The great risk, of course, is that when you begin to establish standards and suggest performance objectives, a great many folks that you might ask to become board members are going to turn you down. They're going to say, "If it's going to mean that much commitment, I'd rather not". So be it! If there is a single theme that I'd like you to take home with you,

it is that not-for-profits traditionally waste too much time getting luke warm consent in board memberships and then pay a heavy price for not having the kind of drive in those institutions that they really need in order to be successful. If the job isn't worth doing well, it isn't worth doing at all and you're much better off using the screening process that allows you to determine that up front. If you are going to have standards of performance and if you are going to ask for performance objectives, I think you have to be willing to appraise board members each year. In a very careful and in a very, I hope, sensitive way, you have to deliver messages to non-performing board members that if they have found that their interests have shifted elsewhere, they really ought to consider leaving the Board. There is an enormous problem with deadwood in institutions. I would also suggest to you that, in many cases, there are not-for-profits in Kansas City that exists for the simple reason that the board members involved are too embarrassed because of social peer relationships to shut them down, or fold them into another not-for-profit, or coordinate their activities more effectively with other not-for-profits.

The third issue with respect to what steps you can take to increase Board effectiveness has to do with the selection and management of the chief executive. In no case is the risk of success or failure perhaps more clearly pinpointed in one specific Board act than in the selection and the annual review of the performance of the executive director. I'm afraid that in the selection process of executive directors, there is a tendency to be misguided or soft as opposed to hard and disciplined. Any job, even one that sometimes has as broad a charter as many not-for-profits do, needs a set of selection criteria. Without criteria, it will be impossible for the Board to effectively evaluate the incumbent in that position. More importantly, it will be impossible for the incumbent to understand whether he or she is adequately doing his or her job. It is simply not enough to say that you wish the position to provide neighborhood housing support for the city, that you wish the position to contribute to the arts activities of the city, that you wish it to tackle the issue of child abuse. Of course, it all goes back to that issue of what is the problem and what is the need that this organization is trying to seize "ownership" of? The more specific the charter of the

organization; the more specific will be the criteria for the selection of its chief staff person.

Before we move away from how to select and how to manage the chief executive, I want to share a few thoughts on age, enthusiasm and insight. I think age is misunderstood in not-for-profits. I will say that my own bias suggests that age and enthusiasm are frequently linked. I've known a number of chief executives of not-for-profits in their late 50's and 60's, and some even in their 70's, who bring such an intense level of commitment to their work, that they are able to generate the kind of enthusiasm that is necessary to fuel a not-for-profit. But, on the other hand, I must tell you that they are the exceptions and that the most effective staff people that I have found in not-for-profit organizations tend to be those who are young enough and enthusiastic enough to sustain the emotional drive of a not-for-profit. Each case will differ but this issue needs to be carefully examined. The real effectiveness of the not-for-profit has to come from a very strongly motivated full-time staff person.

I think most not-for-profit work is frankly a good deal more difficult than most of us in the business community realize. It is hard to be motivated and to run an organization effectively when it exists in an environment that is frequently highly nebulous. The most striking successes that I can think of in Kansas City have typically come when motivated board members with the right kinds of objectives have been able to associate themselves with staff people who have an enormous amount of energy to focus on a specific problem. I really would ask, without hopefully appearing to be guilty of age discrimination in any way, if any of you in the process of selecting or evaluating your chief executive put a premium on enthusiasm level?

With respect to insight, let's look at the third of those criteria for the selection of a chief executive. I think it is awfully important to be comfortable with what Denver psychologist, Dr. Robert Merrill, calls the Platinum Rule. All of you know the Golden Rule. Dr. Merrill, who has been dealing with interpersonal relationship issues in the management area for years and years, has evolved one called the Platinum Rule which briefly stated says, "Do unto others as they would do unto themselves." I think it is very important for the chief executive of any

not-for-profit to have a sufficient amount of insight into his or her own character to really be able to put themselves in the board members' shoes. There is no other area in which fundamental disagreement on policy can be so cleverly hidden than in a not-for-profit. If people disagree, those disagreements simply don't surface well because there's a great desire not to be offensive. There's frequently a feeling that, "Gee, I don't really own this problem on a full time basis as a board member, whereas the staff person has to live here everyday. I feel very strongly about this, but I just don't think it's worth my time to run the risk of engaging in confrontation to really open up and air this issue." If a staff person can be exceptionally insightful to those kinds of signals from a board member, I would suggest that is a quality and a resource that is literally without measure.

In terms of managing the chief executive, I would return to exactly the same three criteria that I used in suggesting the selection of board members. That is, you have to have performance objectives, they have to be laid out, preferably in writing, for the chief staff person. There has to be an appraisal against those objectives each year, and finally, you have to decide, (and this is somewhat different than a board member, although certainly related) what your chief staff person's primary function is - such as being a fund raiser or being a service provider. This is a decision to which there is no right answer, but a Board would do well to understand what it is really looking for from a chief staff person. Many chief staff people are good because they are very effective at raising funds. There is nothing wrong with that. Indeed, if that is one of the primary needs of the not-for-profit organization, it may be critical; but there are many other not-for-profits which legitimately can say that the board members can, in some aggregated fashion, work to achieve the funding goals of the organization. What we need is someone to be able to provide a superb level of service. If that's what your not-for-profit needs, a superb provision of service, then you might do well to focus in advance on the fact that your chief staff person may well have more skill at service provision than at fund raising, and you ought not to beat that person over the head if, in fact, they deliver one of those skills as opposed to the other. Understand what you need and make sure you recruit and manage with that in mind.

One last point before we conclude today and that is one that I would file under the general category of fighting bureaucracy. Just a couple of observations about how to make Boards more effective beyond the initial selection of board members and then the selection and management of the chief executive of the organization. There are several golden rules: (1) set administrative cost goals, and (2) decide in advance what percentage of your gross receipts is really an appropriate amount for you to spend to simply sustain the institution. I'm not going to suggest any arbitrary figure (that will obviously vary by necessity based on the goal of your not-for-profit), but if you find yourself at the end of three, four, or five years, paying a larger and larger percentage of your gross receipts into the mere administrative activities of the not-for-profit, I think you are getting a flashing red light that says the Board ought to go off in a corner somewhere and begin to ask some tough questions. Good jobs tend to get done very efficiently. You have to decide what the proper level of efficiency is for your institution, commit yourselves to trying to deliver that level of service inside that guideline, and begin asking the hard questions when you fail to reach your goal. Number two, and this might seem somewhat contradictory to my last point, do not manage to a business oriented bottom line. The whole notion of not-for-profits, it seems to me, is embraced in that rather casual but descriptive title. If you are engaged in supporting a not-for-profit organization, remember that title and don't use a business type of mentality which somehow seeks to maximize bottom line efficiency. I think there is no such thing in not-for-profits. Not-for-profits ought to be measured on a proper definition of the goal or objective they are seeking to achieve and the efficiency with which they can achieve it and not on whether they have managed to somehow use a business technique in the management of the activity. I would further suggest to you that perhaps the greatest reason for steering clear of too much for profit or bottom line mentality is that, frankly, you will begin to erode the very principal of the not-for-profit. The ownership of a problem that is truly a social (or cultural or educational) problem by definition lies outside the ability to maximize the bottom line. When you begin to discuss a genuine social need in terms of profit orientation, you begin to undercut the very moral strength which leads the organization to operate in the first place. Thirdly, and lastly, don't allow the

administrative structure to trivialize the goals of the organization. If you have a staff that spends a great deal of time worrying about how it's organized, if you have a staff that spends a great deal of time worrying about how many meetings it's going to have to attend with other groups in order to ally efforts and link arms to achieve broad scale goals, if you find yourself spending too much time concerned with administering the costs of the not-for-profit instead of analyzing and being able to see clear-cut achievement of its goals, then you are allowing the process to become more important than the output.

I guess all of this could be summarized by simply saying that it is very critical to make sure that you constantly go back to the source - what are we trying to accomplish, what are the resources we need to accomplish it, both human and financial? Where are those few true believers, those people in this community that have such a passionate commitment to this problem that they will be willing to energize this institution and legitimize this institution by their own hard work?

In my view, quite candidly, there are too many not-for-profit organizations in the United States, too many in Kansas City. Many of them were started by well-meaning, but misguided people who after the initial energy and enthusiasm of getting started, failed to continue to sharply define what they were trying to achieve, and have wound up defending a small piece of sometimes irrational "turf". In many instances, not-for-profits should re-examine their very nature for existence, re-examine whether or not they really can find enough committed true believers to sustain that not-for-profit at the Board level. If they can, that re-energizing should occur, and if they can't, then that not-for-profit, it seems to me, should seek another institution with which it can align itself or it should go out of business.

I realize that I have set some very tough conceptual standards. People who aren't committed, who accept Board jobs for social or ego reasons, aren't doing the organization or the community a favor. I don't mean to denegrate or minimize the good efforts and the contributions of anyone associated with any not-for-profit. Having said that, I want to come back to the original point. Any not-for-profit that's really worth its salt, that really seeks to achieve something, is going to succeed only if and to

the extent that it can obtain a seasoned, tough, disciplined Board that will commit itself to articulating and then re-articulating the goals for which it was brought into existence. There are not lots of people who will make that commitment. I suggest that as you examine your own not-for-profit, you ask yourself that question, however terrifying it may be, and then analyze your future in light of the honest answers you give yourself.. Thank you very much.

JOHN P. MASCOTTE

is Chairman of the Board and CEO of the Continental Corporation in New York City. Continental Corporation is the fifth largest U.S. property casualty insurer. It conducts business in more than 100 countries and is the largest writer of foreign-based reinsurance.

Mr. Mascotte earned Bachelor Degrees in Accounting and Philosophy from St. Joseph College in Indiana. He earned his LLB from the University of Virginia in 1964. He serves as director of a number of national corporations, among them Hallmark Cards, Inc.

During his career in Kansas City as Executive Vice-President of Mutual Benefit Life (1974 to 1981), Mr. Mascotte was an active Kansas City civic leader and did much to improve the quality of life. He worked hard to strengthen many area not-for-profits and long advocated the important role not-for-profits play in the community's vitality. In particular, he lent his time and talents to strengthening neighborhood revitalization efforts in our metropolitan area.

Mr. Mascotte, his wife Sara, and four children reside in Rye, New York.

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MOBILIZATION FOR ANIMALS

P.O. BOX 1679, COLUMBUS, OH 43216 614/267-6993

ANIMAL WELFARE ORGANIZATIONS
A FIRST ANNUAL FINANCIAL REPORT

The greatest threat to the advancement of the cause of the animals at this point may not be from those involved in the abuse of animals, but from those organizations within the animal rights and welfare movement who are charged with the responsibility of preventing the abuse and ending the suffering.

Much progress has been made, particularly in the last five to ten years, in reaching the public, making the treatment of animals a political issue, informing legislators, and bringing animal issues to the attention of the media. But this has been accomplished almost entirely by the new, active animal rights groups which have arisen in the past ten years, and not by large, wealthy, conservative animal organizations which have been in existence for decades or even centuries.

Most of the large, established organizations have become businesses which happen to be involved with animals, rather than functioning as what is needed: active, risk-taking, campaigning working groups for animals. Though many of these groups were founded as radical, active, caring entities, meaning to do everything possible for animals at every moment, they have undergone a tragic transformation which betrays the intentions of their founders, the desires of their members, and the needs of the animals.

Hundreds of millions of dollars have been built up as assets by these animal welfare corporations, with all the accompaniments of such business structures. Money is spent to purchase large office buildings, to pay high executive salaries, and to engage in endless misleading fundraising efforts. Many large organizations do not even function as non-profit organizations in the strictest sense, routinely taking in far more money than they use each year to help animals. What funds are spent are often used to maintain bloated, inactive, managerial structures, to pay ever-increasing salaries and benefits, and to continue to promote and enrich the organization. What funds are not spent for these purposes are often invested in companies which abuse animals.

A further tragedy is that over the past few years, many of the newer animal rights groups are losing their will and their ability to be different, becoming like the larger organizations either in an effort to gain favor with the animal welfare corporations, or in hopes that they may receive small grants from them. By encouraging this, the main business entities of the animal welfare world ensure that no one will seriously disturb the system, and they will be able to continue to function as they have without interference or questions.

So while the large animal welfare corporations, seeking grants from foundations and commercial businesses, avoid activities which might impede funding from such sources, newer animal rights groups, seeking support from the animal welfare corporations, avoid activities which might annoy those large groups. The animals continue to suffer.

We are not suggesting that all animal rights and welfare organizations have fallen into this pattern of tragedy and deception; many have, but some have not. The important thing at this stage is for activists, and the public at large, to be able to determine what an organization's status is, and if it is on the wrong path, to take action to change it.

QUESTIONS, INFORMATION AND ACTION

This report is intended as the first overview of financial status among major animal rights and welfare organizations. We hope to issue a report of this nature each year. This first report is by necessity preliminary, covering only a few of the major areas of importance, and only the wealthiest and most visible of animal groups. Subsequent reports will be broader in scope, and wider in coverage.

Last year we presented a Five-Point Plan of Unity, Accountability and Action for the Animals, which is reproduced later in this report. The Five-Point Plan covers methods of achieving cooperation and unity, means of intensifying action to end animal suffering, and suggestions for openness and honesty among groups, as well as dealing with financial matters. We are centering these annual reports on finances, as we feel that an organization's financial structure reveals its general propensity for action, its willingness to make public details of its operations, and its orientation either toward the welfare of animals or toward the accumulation of corporate wealth.

The report covers the following areas: 1. Compensation, both by heads of organizations, and general among organizations; 2. Fund Balances, a representation of the total assets of a corporation once liabilities have been deducted; 3. Excess of Income Over Expenditures, in other words, the "profit" a company makes in a given year; and 4. Selected Stock and Bond Holdings.

Information relating to the first three categories was assembled from official Form 990's and other documents filed by organizations with the Internal Revenue Service, and with state offices in New York, California, Illinois, Massachusetts, Pennsylvania and several other states. Information on stock holdings came from the same sources, with information on the companies in which stocks were held coming from individual company annual reports, directories of animal laboratories and testing institutions, business reference books and subsidiary and product listings and descriptions.

We reviewed financial information on approximately one hundred animal organizations, and this report contains the information on each which is relevant to the categories established. Obviously, it is not a comprehensive report on all organizations involved in animal welfare work, but those which have achieved a certain degree of wealth, visibility, or both. **The statistics and information in this report represent, unless otherwise indicated, the reporting year 1983.** Since there is a lapse of time between the end of the fiscal year, filing, and availability, this lapse of time will always be present in these reports, though we hope to shorten time between availability and disclosure in subsequent reports.

We were able to get at least some financial data on all organizations for this reporting period, with one exception, People for the Ethical Treatment of Animals (PETA), on which there is no recent financial data available from any source (see note on this organization in the section on individual organizations later in the report).

We have included in this report only those organizations specifically involved with animal rights, welfare, or protection work, and have not included data on organizations which are environmental in nature, or on wildlife organizations which are concerned primarily with species of animals rather than the suffering of individual animals.

For reference, and to fulfill the commitment of Mobilization for Animals to the Five-Point Plan, we have included statistics from the Mobilization in each category examined. A copy of Mobilization for Animals' last financial report is filed with the New York State Department of State, and may be obtained by writing to New York State, Department of State, Office of Charities Registration, Albany, NY 12231.

We have done our best with limited resources and volunteer staff members to assure that every detail of this report is absolutely correct. If you find any errors, or have any suggestions, please let us know. In case there has been an error of any kind, we recommend that you contact the IRS or the head of the animal organization in question to confirm data before taking action on anything from this report.

FUND BALANCES

The Fifteen Wealthiest Animal Organizations (from available records)

Massachusetts Society for the Prevention of Cruelty to Animals	$43,769,227
North Shore Animal League (New York)	15,130,772
Animal Rescue League (Boston) (1982)	12,906,693
Humane Society of the United States (D.C.)	11,406,544
Bide-a-Wee Home Association (New York)	11,003,265
Connecticut Humane Society	8,477,529
San Francisco Society for the Prevention of Cruelty to Animals	7,778,632
Anti-Cruelty Society (Chicago)	6,553,285
American Society for the Prevention of Cruelty to Animals (New York)	6,089,178
Los Angeles Society for the Prevention of Cruelty to Animals	4,442,562
American Anti-Vivisection Society (Pennsylvania)	2,899,974
New England Anti-Vivisection Society (Boston)	2,835,643
Peninsula Humane Society (California)	2,734,770
National Anti-Vivisection Society (Chicago)	2,394,408
American Humane Association (Denver)	2,275,286

NOTES: Information was not available for People for the Ethical Treatment of Animals (PETA).

Mobilization for Animals' Fund Balance for this reporting period (1983) was $5,039.

Remember that this is information for the 1983 reporting year, and that current figures may be different. For example, the Animal Protection Institute will reportedly be receiving a bequest of anywhere from $7,000,000 - $20,000,000 in the near future, but this will not be reflected on official returns for at least two years, if this information is correct.

EXCESS OF INCOME OVER EXPENDITURES

Organizations which had an income of over one million dollars more than they spent during the one-year reporting period (from available records)

	Revenue	Expenditures	Excess ("Profit")
North Shore Animal League	16,280,217	10,770,064	5,510,153
New England Anti-Vivisection Society	2,538,013	460,035	2,077,978
Humane Society of the United States	5,985,061	4,165,615	1,819,446
Bide-a-Wee Home Association	4,911,269	3,198,503	1,712,766
National Anti-Vivisection Society	2,675,071	1,521,222	1,153,849

NOTES: No information on revenues or expenditures was available for People for the Ethical Treatment of Animals.

Mobilization for Animals' Revenue for this reporting period was $326,221; Expenditures were $334,552. There was no excess; the deficit was $8,331.

This is information for one year alone. It is important to remember that many organizations have a record of excess income like this year after year, perpertually adding to their assets at the expense of urgently needed expenditures for animals. And organizations which are not on this list may have a total in excess income of $1,000,000 over two or three years. In next year's report, we will cover excess income of smaller amounts, and will report on cumulative excess income over a period of years.

ANNUAL COMPENSATION

Heads of Organizations earning over $40,000 per year (from available records)

Humane Society of the United States (John Hoyt) $100,965
Animal Protection Institute (Belton Mouras) 100,035
Massachusetts SPCA (David Claflin) . . . 77,120
National Anti-Vivisection Society (George Trapp) 66,444
American Society for the Prevention of Cruelty to Animals (John Kullberg) 64,849
San Francisco SPCA (Richard Avenzino) 60,200
American Humane Association (Martin Passaglia) 56,404
Animal Rescue League (Arthur Slade) . . 45,200
Friends of Animals (Alice Herrington) . . 44,000

NOTES: Compensation figures include base salary, contribution to employee benefit plan, and expense account, where such information was available.

Compensation figures were not available from the Anti-Cruelty Society, Bide-a-Wee Home Association or People for the Ethical Treatment of Animals. Total compensation could not be determined from material filed by the International Fund for Animal Welfare.

The largest single payment (other than annual) during this reporting period was $126,145.00 paid by United Action for Animals to its President, Eleanor Seiling, in addition to her regular salary.

Mobilization for Animals had no salaries during this reporting period.

$40,000 was chosen as a cut-off as most of the salaries examined were in the $30,000-$39,000 range, with little difference between them. With information largely unavailable on differences in some non-salary benefits, presentation of information about salaries at that level might have been misleading in terms of the reality of compensation.

ANNUAL COMPENSATION

Employees of Organizations earning over $40,000 per year (from available records)

John Hoyt (President, Humane Society of the United States) $100,965
Belton Mouras (President, Animal Protection Institute) 100,035
David Claflin (Executive Director, Massachusetts SPCA) 77,120
Paul Irwin (Treasurer, Humane Society of the United States) 72,417
Murdaugh Madden (Vice President, Humane Society of the United States) 69,219
George Trapp (Managing Director, National Anti-Vivisection Society) 66,444
John Kullberg (Executive Director, American Society for the Prevention of Cruelty to Animals) 64,849
Richard Avanzino (President, San Francisco SPCA) 60,200
Martin Passaglia (Executive Director, American Humane Association) 56,404
John Grandy (Vice President, Humane Society of the United States) 53,740
Patrick Parkes (Vice President, Humane Society of the United States) 50,335
Michael Fox (Scientific Director, Humane Society of the United States) (1982) 46,692
Patricia Forkan (Vice President, Humane Society of the United States) 46,659
Arthur Slade (President, Animal Rescue League) 45,200
Alice Herrington (President, Friends of Animals) . . 44,000

NOTES: See notes under Annual Compensation, Heads of Organization.

Compensation for medical (i.e. veterinary) and related direct care personnel at animal hospitals and similar facilities has not been included.

ORGANIZATIONS WITH INVESTMENTS IN COMPANIES WHICH DO TOXICOLOGY TESTING AND/OR EXPERIMENTS ON ANIMALS (from available records)

(in alphabetical order)

American Anti-Vivisection Society
Animal Rescue League
Humane Society of the United States
Los Angeles SPCA
National Anti-Vivisection Society
North Shore Animal League
New England Anti-Vivisection Society

NOTES: No listings of specific stock and bond holdings were available for the American Humane Association, Animal Protection Institute, ASPCA, Anti-Cruelty Society, Bide-a-Wee Home Association, Friends of Animals, International Fund for Animal Welfare, Massachusetts SPCA, Peninsula Humane Society, People for the Ethical Treatment of Animals or San Francisco SPCA.

Mobilization for Animals has no stock or bond holdings.

The Second Annual Financial Report will also include stock and bond holdings in companies which abuse wildlife or farm animals.

COMMENTS AND OBSERVATIONS

The major respect in which the movement to end animal suffering is different from all other efforts to achieve significant social change is that we have numerous organizations holding endless millions of dollars in their vaults (figuratively speaking), rather than the funds being used to aggressively deal with the issues and help animals.

Animals suffer and die while organizations continue to build up their bank accounts, and spend time dealing with investments and raising funds for which they have no need, rather than doing everything possible at every moment to end the agony and horror in which animals are immersed.

The wealthiest organizations are also the most highly-visible to the public, since most of them spend large amounts of money sending out direct-mail pieces to make even more money for themselves. As a result, people who want to help animals contribute to and support these organizations rather than others. Since there is only a certain amount of money available in our society from people who want to help animals, that means that the money contributed to such organizations, if not used by them, will not be used to help animals at all. In this way, some organizations are actually preventing an end to the suffering, by hoarding funds which might otherwise be given to groups which actually want to use it to help end the suffering now. In fact, it might be said that the surest way such organizations can make certain they continue to receive money is to make certain that the suffering continues.

Each year, many important bills come to congress and to state legislatures which can either help or hurt animals. Each year, endless millions of stray animals need to be fed, or housed, or have services established to find them homes. There is a desperate need for low-cost spay-neuter clinics in communities throughout the nation which do not have them. Millions upon millions of animals suffer and die in laboratories and on factory farms each year. In laboratories alone, three animals die every second, because the public has not been informed sufficiently, because there has not been enough pressure to stop the horrors. Wild animals are being slaughtered at an increasinging rate. What little protection for animals exists is almost meaningless because of a lack of enforcement.

In light of all this, it is a betrayal of the animals to continue business as usual. In many ways, the protection of animals is now going backwards, because those who abuse animals are using vast energies and vast amounts of money to combat our efforts, while many of the major animal organizations tend to their investments, and enlarge their direct-mail campaigns, while not even using what funds they already have to help animals.

Certainly, all animal organization do "something". It is necessary for them to do something, even if it is merely sending out brochures and mailings with horrifying photographs, in order to retain their tax-exempt status and be able to collect funds. The question is not whether they do anything, as it would be hard to have millions of dollars donated for this purpose and do nothing at all, but whether they do enough to justify the vast amounts of money they have, and the additional money they claim to need.

It is generally true that organizations become more conservative and less active with time. As organizations grow, as time passes, as the founders die, or leave, or retire, the interests of the organization as an entity become as important, perhaps more important, than the principles on which the organization was founded. Many older organizations have now reached a point where the survival of the organization as a profitable business is more important to the people working within it than is the suffering of the animals which should be at the heart of every action the organization takes.

It is this development into profitable corporate entities which results in organizations taking in more money each year than they can even spend, or want to spend, while they continue to work at raising even more. So the raising of money becomes an end in itself, not connected in any way to helping animals. In a given year, if an organization takes in a million dollars more than it uses (or a half million, or less), money clearly given to help animals, not to invest or put in a bank account, or if the organization uses it to increase already-high corporate salaries, or raise additional funds it does not need, either the organization is failing in its responsibilities, is not doing what it should, or is taking money that another organization could use more productively, to actually help animals.

Because such organizations function now as businesses rather than activist efforts for animals, salaries for those who run them are now equal to the salary paid to the Vice President of the United States ($100,000) in some cases, and slightly lower but still high in others. Many of those who head animal organizations apparently are no longer primarily involved because of their concern for animals, but are managers running a business, who expect to be paid their "market value" as they would in any corporation.

There now appears to be a complete division between the love for animals that brought such organizations into existence and their present state, which allows them to raise money with the stated intention of preventing animals from suffering, and then investing that money in companies which profit from torturing animals to death. This dimension to the problem

makes it even clearer that some organizations involved in animal welfare activities may be as great a contributing factor to the suffering as those who cause it directly. Not only is money contributed to them not used to actively work to help animals, it is invested in ways which directly hurt animals.

In this regard, it is unimportant whether organizations which have such investments know that the companies involved are doing these things to animals or not. They **should** know. With the vast amounts of money they take in, and the large number of staff members they employ, if they care about animals enough, they would use the funds they received instead of adding to their assets, and if they care at all, they should clearly make certain they are not investing in companies which inflict agony on animals. It should not be up to a research effort like this to uncover things of their nature. We, and the animals, have a right to expect that any organization concerned with animals finds out about companies in which it intends to invest, before spending funds contributed to help animals to enrich businesses which hurt them. But this is a logical result of the business orientation of giant animal welfare corporations. What has been of concern is simply whether the investments will make even more money, to be hoarded with the rest, not whether the investments are made in such a way that they do not further increase animal suffering.

And what is now happening is that such large amounts of money have become seductive tools to distract the energies of newer animal rights organizations. Large animal welfare corporations give small grants to impoverished animal groups or publications, which, eager for such funds, refrain from criticizing the large groups, or even slavishly congratulate and support whatever the animal corporations do, to gain greater favor with them. Small groups and large increase their jealousy of one another, and secrecy becomes the rule. And those small goups which get large enough to, try to emulate the fund-raising success of the large ones, using the same methods, with the eventual results predestined.

In order to chart progress and changes, enlarge the scope of our inquiry, and make additional realities clear, we will cover a wider range of organizations in the Second Annual Financial Report, and will include transfers of money between animals organizations, financial data on smaller as well as larger groups, and responses (or refusals to respond) to questions on related matters.

NOTES AND COMMENTS ON INDIVIDUAL ORGANIZATIONS

American Anti-Vivisection Society — The wealthiest of the Anti-Vivisection Societies in the U.S., AAVS has substantial stock and bond holding in the following companies which do toxicology testing and/or experiments on animals: DuPont, Exxon, General Motors, Mobil and PPG.

The American Anti-Vivisection Society works closely with People for the Ethical Treatment of Animals (PETA) on a variety of projects, and with the National and New England Anti-Vivisection Societies.

Animal Rescue League — The third-wealthiest animal group in America, the Animal Rescue League has significant stock holdings in the following companies which do pharmaceutical or toxicology testing on animals: Exxon, Mobil, Monsanto, Squibb and Warner Lambert.

Humane Society of the United States — Perhaps the most currently successful business among all animal organizations, HSUS owns a multi-story office building in a prime location in downtown Washington, D.C., has rapidly increasing assets ($3 million in 1976 as opposed to $11 million in 1983, an average increase in assets of $1 million per year), the highest executive salaries (among animal groups) at every level, and the largest portfolio of securities in animal-abusing companies of any organization for which details were available.

The Humane Society of the United States has substantial holdings in the following companies which do toxicology testing and/or experiments on animals: DuPont, Eastman Kodak, Exxon, General Motors, IBM, Mobil, Occidental Petroleum, Proctor & Gamble, Standard Oil of California, Standard Oil of Indiana and Union Carbide.

HSUS has an aggressive fund-raising program and is currently seeking to further increase its already large income from bequests by entering into a collaborative arrangement with several other large animal welfare organizations.

HSUS provides money to Animal Rights Network to publish *Agenda* magazine. In the current (March/April) issue of *Agenda*, there are no less than six separate articles about HSUS and its activities, with the address of the organization given in four separate places in this issue alone. *Agenda* refused to print the Five-Point Plan, even as an advertisement paid for by Mobilization for Animals (in fact, *Agenda* now refuses to accept any advertisement from the Mobilization, regardless of content).

Los Angeles SPCA — The Los Angeles SPCA has stock holdings in IBM and Standard Oil of California, which do toxicology testing and/or experiments on animals.

National Anti-Vivisection Society — The National Anti-Vivisection Society has substantial investments in the following companies which do toxicology testing and/or experiments on animals: American Cyanimid, General Foods, General Motors, Standard Oil of California and Union Carbide.

George Trapp, Managing Director of NAVS, is the highest-paid (twice as much as any other) of the heads of anti-vivisection groups in America. The head of the Washington NAVS office, Donald Barnes, who conducted or supervised painful experiments on animals for sixteen years, is employed at an undisclosed salary.

NAVS provides money for Animal Rights Network to publish *Agenda* magazine. *Agenda* prints full-page material on NAVS, in which funds are solicited for that organizations. *Agenda* refuses to print material from Mobilization for Animals' national office.

Agenda and its development provides a case history of the influence of business and money on animal rights activities. In its current (March/April) issue, there are numerous articles on the activities of such animal welfare corporations as the Humane Society of the United States and the National Anti-Vivisection Society, which provide *Agenda* with money, as well as reports on the activities of other large, wealthy organizations, but virtually no material on the activities of local humane societies or SPCAs which do not give *Agenda* money. In the same issue, aside from one vague, three-line note, *Agenda* completely ignored the many World Week for Laboratory Animals actions planned for cities throughout the U.S. by various animal rights groups for April 20-27, providing no information which would enable people to participate. The same issue begins with an editorial ironically entitled "Money Changes Everything," in which editor Jim Mason declares *Agenda's* intention of seeking further grants and donations from wealthy organizations, and an editorial by editor Doug Moss congratulating the large organizations on what they are doing. Though *Agenda* once was at least an independent voice in animal work, many feel it is now simply a public relations tool of the large animal welfare corporations, and a narrow, partisan device for the expression of its editors' personal likes and dislikes.

New England Anti-Vivisection Society — NEAVS had the largest percentage excess of income over expenditures of any group examined, spending less than 20% of the funds it received in the reporting year. Its head, Robert Ford, receives a part-time salary of $18,333 per year (he is employed full-time as a judge) for work "as required". Lisa Roberts of NEAVS receives a part-time salary for work "as required" of $20,000.

Along with both the American and National Anti-Vivisection Societies, NEAVS has substantial investments in companies which do toxicology testing and/or experiments on animals. NEAVS' holding are in Occidental Petroleum, Mobil and Halliburton.

North Shore Animal League — The North Shore Animal League, second wealthiest animal organization in America, has holding in the following companies which do toxicology testing and/or experiments on animals: General Motors, RJ Reynolds and Shell.

People for the Ethical Treatment of Animals — There is no recent financial information whatsoever available on People for the Ethical Treatment of Animals (PETA), the only tax-exempt organization we know of in animal work for which this is the case.

Though PETA became tax-exempt in March 1982, it has filed no financial data for any period since July of that year. It did not file the Form 990 with the Internal Revenue Service for either 1983 or 1984. Though it incorporated in Delaware in 1980, a state chosen by many companies since it has few filing requirements, no documents were available there beyond its initial incorporation papers. It is also impossible to determine if the annual membership meetings to elect directors, specified in the by-laws, have been held. No PETA members with whom we have had contact have been notified of any such meetings.

People for the Ethical Treatment of Animals maintains an address in Washington, D.C. and one in Maryland, but it is not registered with the Department of Consumer and Regulatory Affairs in Washington, D.C., and has no reports on file with the State of Maryland. Though all organizations which do considerable fund-raising in New York State, which PETA does, are required to have financial materials in file in that state, it has never filed a financial report with the state of New York.

PETA does very high-volume direct-mail fund-raising, for which they employ a professional fund-raiser, Richard Parker & Associates. Parker also owns the PETA mailing list, and is paid 15% of all money which is contributed to PETA in these mailings. Mailings are currently being done to 500,000 to 1,000,000 persons at a time, generating substantial amounts of money. In addition to the 15% paid to Parker & Associates, copywriters, designers, computer, mailing and processing services are paid from the contributions. What the rest is spent for cannot be determined in the absence of any financial data.

Ingrid Newkirk, director of PETA, ignored repeated requests for information.

WHAT YOU CAN DO

1. Encourage all organizations with which you have contact to endorse and support the Five-Point Plan for the Animals. The Plan is the clearest indication of whether an organization is oriented more toward helping animals or succeeding as a business.
2. Write to as many organizations as you can, and insist on being sent a complete and specific list of all their investments. Demand that those with investments in animal-abusing companies sell them immediately.
3. Whever you get a letter or request from a group asking for money, ask first for a statement of assets, income and expenditures. Do not contribute to or support organizations which do not have financial data on file, or will not send it to you. If it is from one of the larger organizations, make certain you know what investments they hold. If it is from one of the smaller groups, make certain you know which of the larger groups may have provided them with funds recently, and the nature of their current relationship with such groups.
4. Send us any financial data, related information, and responses (or notice of refusal to respond) to requests for information or other correspondence from organizations on financial matters. If you have access to financial information within an organization which you feel should be made known, please send it to us. We will maintain your confidentiality fervently if you request it. Perhaps the main problem we face is secrecy; we depend on you to help us solve that problem.
5. Give us your reactions to this report, and your suggestions for future reports.
6. Help Mobilization for Animals help the animals. We are the only mass direct action coordinating body in America, the only organization doing serious continuing grassroots organizing for the animals on a national basis, and the only structure intent on internal reform through providing information such as this report. We need your support and encouragement to be able to continue.

If you would like the address of any organization mentioned in this report, or any other organization, or would like specific information on any animal organization, contact Mobilization for Animals.

A FIVE-POINT PLAN OF UNITY, ACCOUNTABILITY AND ACTION FOR THE ANIMALS

We call upon all organizations to do the following:

1. To agree to and set as immediate policy the practices of sending to their mailing lists the literature and mailing pieces of other organizations, at cost.
2. To disclose, freely and upon request to anyone who asks for it, the following information:
   A. The precise salaries of the ten highest-paid persons employed by the organization.
   B. A specific listing of all assets, investments, stock and bond holdings, cash accounts, and properties, with the value of each.
   C. A specific listing of all legacies, bequests, and grants received each year (with the exception of cases where anonymity has been requested by the donor).
3. To provide, at cost, photographs, documents, reports, and information relating to animals when requested by other organizations and individuals.
4. To, in each issue of every regular publication printed by any organization, devote a substantial portion of the available space to the activities of other animal organizations.
5. Each organization to agree to make definite and productive use, to benefit animals, within a period of twelve months, of all liquid assets in excess of what is necessary to meet the operating expenses of the organization for one year, on the basis of its current budget.

The only relevant questions which relate to the Five-Point Plan are:

How will it hurt the animals to agree to do these things?

How will it help the animals **not** to agree to do these things.

A list of those organizations endorsing the Five-Point Plan will be printed in the Second Annual Financial Report.

COUNCIL OF BETTER BUSINESS BUREAUS
Philanthropic Advisory Service

REPORT

ANIMAL PROTECTION INSTITUTE OF AMERICA

FEBRUARY 1990

2831 Fruitridge Road
P.O. Box 22505
Sacramento, CA 95822

(916) 731-5521

Expiration Date: February 1991

BACKGROUND AND ACTIVITIES

Animal Protection Institute of America (API) was incorporated as a national nonprofit organization in 1968 in California. Its stated purpose is "to eliminate and alleviate fear, pain and suffering among animals everywhere by humane education."

API reports its activities and programs include furthering humane education through brochures, magazines, posters, teaching kits, and films; investigating regional and national animal abuse cases; working with other humane organizations on similar concerns; serving as a humane education resource for both the public and private sector, and monitoring national and international legislation concerning animal welfare.

During 1988, API continued its public education and advocacy for humane pet care, homeless pets, laboratory and factory farm animals, and protection of endangered species, wild horses, and animals victimized by steel-jaw leghold traps. API reports it is circulating a "clear seas petition" to protect sea animals and seabirds from destructive harvesting technologies. Among its humane education publications are Mainstream and A.P.E. Vine.

In fiscal year 1988, API' s program expenses were public education $1,313,424 and other program services $629,445.

GOVERNANCE AND STAFF

API is governed by a seven-member board of directors which met three times in fiscal 1988 with all members in attendance. A four-member executive committee met four times during the same period with all members in attendance. Mr. Kenneth Guerrero is chairman of the board. Mr. Duf Fischer, executive director, heads the 23-member paid staff.

FUND RAISING AND TAX STATUS

API raises funds through direct mail and grant proposals. As reported in the 1988 audit report, sources of income were contributions 85%, bequests 13%, and other income 2%. Fundraising costs were 14% of related contributions, which totaled $2,628,030. (Related contributions are funds received as a result of fund raising activities.)

As noted in API's 1988 audit report, API incurred joint costs of $1,175,481 for educational mailings that included fund-raising appeals. Of those costs, $325,077 was allocated to fund-raising expense, $762,301 was allocated to public education, $83,872 was allocated to other program services and $4,231 was allocated to administration.

Animal Protection Institute of America is tax exempt under section 501 (c) (3) of the Internal Revenue Code and is not a private foundation. It is eligible to receive contributions deductible for donors for federal income tax purposes.

The information contained herein has been compiled from sources deemed to be reliable and, while not guaranteed, is believed to be factual and accurate. It is not intended to recommend or deprecate, and is furnished solely to assist you in exercising your own judgment.
THIS REPORT IS NOT TO BE USED FOR SALES OR PROMOTIONAL PURPOSES.

FINANCIAL

According to the audited financial statements for the year ended December 31, 1988, total income was $2,687,750. As a percentage of this amount, expenses were program services 72%, fund raising 14%, and management and general 13%. Income exceeded expenses by $19,065 or 1% of total income.

Beginning of the year fund balance was $208,656 and end of the year fund balance (net worth) was $227,721. As of December 31, 1988, assets totaled $304,531, offset by liabilities of $76,810.

PAS COMMENT

This report reflects the results of an evaluation of materials provided voluntarily by the organization within the past year. This evaluation was completed in relation to the 22 CBBB Standards for Charitable Solicitations addressing public accountability, use of funds, solicitations and informational materials, fund raising, and governance.

Animal Protection Institute of America meets the CBBB Standards for Charitable Solicitations.

Detailed information, including API's complete audited financial statements, is on file with PAS. An organization's practices may change at any time without notice. This report is published solely to assist donors in exercising their own judgment.

amc 2/13/90
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Chronicle of Philanthropy 9/87

WATCHDOG WATCH

Following are summaries of recent reports by the National Charities Information Bureau and the Council of Better Business Bureaus' Philanthropic Advisory Service.

These two private organizations report on whether or not charities meet standards for fund raising, governance, financial management, and public information. The organizations do not approve or disapprove charities, but urge potential donors to evaluate the importance of variations from the standards.

They also note that charities' practices may change at any time.

For organizations that do not meet the standards, information is given only on those standards that are not met. Those organizations meet all the other standards.

Copies of the full reports, as well as the standards and reports on other charities, are available from the Council of Better Business Bureaus, Philanthropic Advisory Service, 4200 Wilson Boulevard, Arlington, Va. 22203, and the National Charities Information Bureau, 19 Union Square West, New York 10003.

BETTER BUSINESS BUREAU

Dedication and Everlasting Love to Animals, P.O. Box 9, Glendale, Cal. 91209. Does not meet the standards calling for soliciting organizations to provide on request an annual report and a complete financial statement. Does not meet the standard calling for organizations to substantiate their application of funds to programs and activities described in solicitations. Does not meet the standard calling for adequate control over disbursements because the organization does not have a current, board-approved budget. Does not have an independent governing body because more than 20 per cent of the total voting membership of the board is directly or indirectly compensated.

Freedom from Hunger Foundation, 1644 Da-Vinci Court, Davis, Cal. 95616. Meets all standards.

Goodwill Industries of America, 9200 Wisconsin Avenue, Bethesda, Md. 20814-3896. Meets all standards.

Help Hospitalized Veterans, 708 West Redwood Street, San Diego 92103. Meets all

NATIONAL CHARITIES INFORMATION BUREAU

American Mental Health Fund, Woodburn Medical Park, 3299 Woodburn Road, Suite 335, Annandale, Va. 22003-1275. Meets all standards.

Center for Population Options, 1012 14th Street, N.W., Suite 1200, Washington 20005; (202) 347-5700. Meets all standards.

Humane Society of the United States, 2100 L Street, N.W., Washington 20037. Does not meet the standard calling for no material conflicts of interest involving board or staff members, because a compensation committee established by the board did not report to the full board the purchase of the president's home as part of his compensation.

Medical Aid for El Salvador, 6030 Wilshire Boulevard, Suite 200, Los Angeles 90036. Does not meet the standard calling for at least two board meetings a year, nor the standard calling for at least 60 per cent of annual expenses to be applied to program costs. Did not make available an audited financial statement and a budget as standards require.

National Council on Crime and Delinquency, 77 Maiden Lane, San Francisco 94108. Does not meet standard calling for the organization to hold two meetings of its board each year, each with a majority of board members in attendance.

National Emergency Medicine Association Inc., and its project **National Heart Research,** 306 West Joppa Road, Baltimore 21204. Does not meet the standard calling for at least 60 per cent of annual expenses to be applied to program costs. Does not meet the standard calling for organization's annual report to include a list of board members and audited financial statements. Organization's activities were not found to be entirely consistent with statement of purpose, as required by standards. Promotional information did not meet the standard requiring the charity to describe accurately how contributed funds have been used.

BILLS IN CONGRESS

Following is a summary of bills introduced in Congress that are of interest to non-profit organizations. Copies of bills may be obtained from Senators (Washington 20510).

SENATE

Tax-exempt bonds. S 1627 would amend the Internal Revenue Code of 1986 to generally treat bonds issued for organizations classi-

COUNCIL OF BETTER BUSINESS BUREAUS
Philanthropic Advisory Service

REPORT

NATIONAL HUMANE EDUCATION SOCIETY
P.O. Box 837
15-B Catoctin Circle, SE #207
Leesburg, VA 22075

(703) 777-8319

SEPTEMBER 1990

Expiration Date: September 1991

BACKGROUND AND ACTIVITIES

The National Humane Education Society (NHES) was incorporated in Washington, D.C. in 1948 as a nonprofit organization. Its stated purpose is "to foster kindness to animals, to oppose and prevent cruelty to them, [and] to provide food and shelter for those in need." The Society advocates responsible pet ownership and abolishment of the use of animals in experimental research.

NHES program activities include humane education, animal rescue and relief, and the Peace Plantation program. Peace Plantation, located in Walton, New York, provides shelter and necessary medical treatment for homeless animals. NHES rescues "distressed" animals and transports them to Peace Plantation. NHES promotes humane animal education through its "Quarterly Journal," which is sent to NHES members.

In the first six months of 1989, NHES's program expenses were humane education $842,664; Peace Plantation $232,847; and animal rescue $108,688.

GOVERNANCE AND STAFF

NHES is governed by a ten-member board of directors which met two times in 1989 with 70% average attendance. The three-member executive committee met four times during the same period with all members in attendance.

Two NHES paid staff (Mr. William, J. Kropp, executive director and Mrs. Virginia A. Dungan, vice president) serve as voting members of the NHES board. Mrs. Anna Briggs (mother of Mrs. Dungan) is president of the board. As a result, 30% of the 10-member NHES board is compensated either directly or indirectly. (See PAS COMMENT section.)

Mrs. Anna C. Briggs is the president of the board and the chief executive officer. Mr. William J. Kropp serves as the executive director and heads a paid staff of 30 employees.

FUND RAISING AND TAX STATUS

NHES raises funds through direct mail appeals.

As reported in the 1989 six-month report, sources of income were direct mail appeals 93%; public contributions 5%; rental income 1%; foundations & trusts 1%; bequests less than 1%; and interest and other less than 1%. Fund raising costs were 13% of related contributions, which totaled $1,449,160. (Related contributions are funds received as a result of fund raising activities.)

The notes to the 1989 six-month audit report indicate that NHES incurred joint costs for mailings that included educational material and fund raising appeals. These costs totaled $955,754 for the six-month period ended June 30, 1989. Of this amount, $183,108 was allocated to fund raising expenses and $772,646 was allocated to program services.

The information contained herein has been compiled from sources deemed to be reliable and, while not guaranteed, is believed to be factual and accurate. It is not intended to recommend or deprecate, and is furnished solely to assist you in exercising your own judgment.
THIS REPORT IS NOT TO BE USED FOR SALES OR PROMOTIONAL PURPOSES.

National Humane Education Society is tax exempt under section 501(c)(3) of the Internal Revenue Code and is not a private foundation. It is eligible to receive contributions deductible as charitable donations for federal income tax purposes.

FINANCIAL

NHES has recently changed their fiscal year to end in June. According to the audited financial statements for the six-month period ended June 30, 1989, total income was $1,466,540. As a percentage of this amount, expenses were program services 81%, fund raising 12%, and management and general 4%. Income exceeded expenses by $39,296 or 3% of total income. Beginning of the six-month period fund balance was $236,918 and end of the six-month period fund balance (net worth) was $276,214. On June 30, 1989, assets totaled $521,724, offset by liabilities of $245,510.

According to the audited financial statements for the year ended Decenber 31, 1988, total income was $1,998,196. As a percentage of this amount, expenses were program services 91%, fund raising 10%, and management and general 7%. Expenses exceeded income by ($160,204) or 8% of total income. Beginning of the year fund balance was $397,123 and end of the year fund balance (net worth) was $236,918. On December 31, 1988, assets totaled $456,751, offset by liabilities of $219,833.

PAS COMMENT

This report reflects the results of an evaluation of materials provided voluntarily by the organization within the past year. This evaluation was completed in relation to the 22 voluntary CBBB Standards for Charitable Solicitations addressing public accountability, use of funds, solicitations and informational materials, fund raising practices, and governance.

National Humane Education Society does not meet the CBBB Standard calling for soliciting organizations to have an independent governing body whose directly and/or indirectly compensated board members constitute no more than one-fifth (20%) of the total voting membership of the board.

National Humane Education Society meets the remaining CBBB Standards for Charitable Solicitations. Donors must decide for themselves the significance of any variation from the CBBB Standards, taking into account the relative importance of the practice in question in the context of the organization's total performance. An organization may change its practices at any time without notice. This report is published solely to assist donors in exercising their own judgment.

jf 9/11/90

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COUNCIL OF BETTER BUSINESS BUREAUS
Philanthropic Advisory Service

REPORT

HUMANE SOCIETY OF THE UNITED STATES

2100 L Street, NW
Washington, DC 20037

(202) 452-1100

JULY 1990

Expiration Date: July 1991

BACKGROUND AND ACTIVITIES

The Humane Society of the United States (HSUS) was incorporated as a national nonprofit organization in Delaware in 1954. Its stated purpose is "...making the world safe for animals through legal, educational, legislative, and investigative means." HSUS reports that it has more than 500,000 members.

HSUS launched "The Shame of Fur" campaign to bring media attention to the fur trade. HSUS's laboratory animals department opposes the pound seizure of animals for research and inhumane animal tests, and it promotes alternative testing methods. The educational division of HSUS, National Association for Humane and Environment Education Center, produces the teaching magazine, "Children and Animals," and the children's newspaper, "Kind News." HSUS also publishes the quarterly membership magazine, "HSUS News," and "The Animal Activist Alert" for primary activist outreach. HSUS also coordinates the pet-overpopulation campaign, "Be a P.A.L. - Prevent A Litter."

HSUS conducts cruelty investigations into animal fights and racing, zoos, puppy mills, pet shops, and animal-sacrifice cults. HSUS reports that 37 states are served through programs and investigations based in its eight regional offices. HSUS maintains its headquarters in Washington, D.C., a center in Bethesda, Maryland for much of its financial, data processing, and publication operations, an Animal Control Academy, and the National Humane Education Center, for HSUS' education division.

In fiscal 1989, HSUS's program expenses were humane education, membership and program services $7,261,961; and cruelty investigation and litigation $1,655,058.

GOVERNANCE AND STAFF

HSUS is governed by a 24-member board of directors which met twice in 1989 with 50% average attendance. The nine-member executive committee met two times during the same period with 72% average attendance. Mr. K. William Wiseman is the chairman of the board. Mr. John A. Hoyt serves as the president and heads a paid staff of 130 employees.

FUND RAISING AND TAX STATUS

HSUS raises funds through membership and direct mail appeals. As reported in the 1989 audit report, sources of income were dues and contributions 41%, gifts and grants 24%, bequests 22%, investment income 11%, and sale of literature and other income 2%. Fund raising and membership development costs were 22% of related contributions. These contributions totaled $13,709,465. (Related contributions are funds received as a result of fund raising activities.)

The notes to the 1989 audit report indicate that HSUS incurred joint costs of $4,161,954 for educational materials and activities that included fund raising appeals. Of this amount, $648,835 was allocated to fund raising, $1,304,472 was allocated to humane education, membership and program services, and $2,208,647 was allocated to membership development.

The Humane Society of the United States is tax exempt under section 501(c) (3) of the Internal Revenue Code and is not a private foundation. It is eligible to receive contributions deductible as charitable donations for federal income tax purposes.

The information contained herein has been compiled from sources deemed to be reliable and, while not guaranteed, is believed to be factual and accurate. It is not intended to recommend or deprecate, and is furnished solely to assist you in exercising your own judgment.
THIS REPORT IS NOT TO BE USED FOR SALES OR PROMOTIONAL PURPOSES.

FINANCIAL

According to the audited financial statements for the year ended December 31, 1989, total income was $15,701,969. As a percentage of this amount, expenses were program services 57%, fund raising 19%, and management and general 10%. Income exceeded expenses by $2,141,446 or 14% of total income.

Beginning of the year fund balance was $20,236,688 and end of the year fund balance (net worth) was $22,378,134. HSUS states that $9,534,414 of the ending fund balance was donor restricted and not available for current operating purposes. On December 31, 1989, assets totaled $22,897,352, offset by liabilities of $519,218.

PAS COMMENT

This report reflects the results of an evaluation of materials provided voluntarily by the organization within the past year. This evaluation was completed in relation to the 22 voluntary CBBB Standards for Charitable Solicitations addressing public accountability, use of funds, solicitations and informational materials, fund raising practices and governance.

The Humane Society of the United States meets the CBBB Standards for Charitable Solicitations.

Detailed information, including HSUS's complete audited financial statements, is on file with PAS. An organization may change its practices at any time without notice. This report is published solely to assist donors in exercising their own judgment.

COUNCIL OF BETTER BUSINESS BUREAUS, INC.
THE INTERNATIONAL ASSEMBLY OF BETTER BUSINESS BUREAUS

GIVING AS MUCH AS YOU GET

When you're successful in business you can be certain that others will be quick to recognize it. Sooner or later, you will be invited to serve on one or more voluntary not-for-profit governing boards.

Together with these invitations will come the opportunity to enhance your position in the community whether that community is local, national, or international.

Self-promotion? Sure. Reason in itself to consider each invitation carefully.

By agreeing to "serve," you'll be announcing, publicly, that you are committing your time, energy, knowledge, judgment and good name to achieving the goals of a particular organization in a country where voluntarism has a long and venerable history and where more than one million "not-for-profits" — libraries, museums, religious groups, foundations, schools and colleges, health and welfare organizations and scores of others — are guided by volunteer boards of trustees.

Nothing wrong with that, so long as you, the trustee, give as much in service as you receive in recognition and prestige.

But, good intentions aside, we don't always give as much as we get. In truth, some trustees give so little they become an embarrassment and a burden. To be sure, word gets around quickly in the business circles and the trustee's professional reputation suffers, but that's cold comfort to the organization that has recruited a "lemon."

Unfortunately, it's easy to become that lemon. We're particularly at risk when we agree to serve on a board before we know exactly what we're letting ourselves in for. Which is why it is wise to follow two rules:

Rule #1: Don't let yourself be conned into thinking that being a trustee is going to be a snap.

Sometimes, in extending the invitation, the voluntary organization's chief all but says, "Look, I won't ask you to do anything if you don't try to tell me what to do."

Don't fall for it. Not-for-profit trustees have legal oversight responsibilities equal to those of corporate directors.

Your response to anyone who is less interested in putting you to work than in putting an impressive title on the letterhead and a rubber stamp on the board should be a loud and clear, "Thanks but no thanks." Aside from the legal risk, becoming known as a rubber stamp on any board, profit or nonprofit, is the kind of self-promotion an ambitious business executive should avoid like the plague.

Rule #2: Don't let yourself be pressured into a fast decision. Simply say, "If you want an answer right now, it's *no* , because *yes* always takes a little longer." Then, ask lots of questions.

Take your time in making a decision. Be certain that you can answer all the following questions to your satisfaction:

o What is the mission of this organization? Do I truly believe in it? Enough to give it my time, energy and good name? Enough to give my own money and ask others to give money?

o What will I, as a trustee, be agreeing to become accountable for? Legally, ethically, morally. In particular, is there a well-thought-out conflict of interest policy for board members that is conscientiously enforced? What are the standards of performance for which I and the other trustees must hold the organization — ourselves included — accountable? Are they in writing? Are they enforced? If not, *why not*?

o Can I commit myself to attending all board meetings even when they might be personally or professionally inconvenient?

o Can I commit myself to participating *actively* on at least one committee?

o Can I commit myself to setting aside the time to do all the home work for both?

o Can I commit myself to exercising my oversight responsibilities seriously? Will I be willing to ask tough questions and bite the bullet when it's necessary?

Once you've finished your "review" you may decide against serving. Don't feel guilty about it. If you believe that you can't responsibly take on the assignment, you'll be doing everybody a favor by declining.

If you accept, you'll find you're already ahead of the game. You've identified your responsibilities and you've made a conscious commitment to accept them. Once you go to work, you cannot help but give as much — or more — than you get.

4200 Wilson Boulevard • Arlington, VA 22203-1804 • (703) 276-0100 • FAX (703) 525-8277

— HSUS —

Return to List of Charity Reports

Humane Society of the United States

January 2003

2100 L Street, NW
Washington, DC 20037

202-452-1100

www.hsus.org

Expiration Date: January 2004

Year, State Incorporated: 1954, Delaware

Affiliates: Humane Society International; Humane Society International Australian Office; Humane Society of Latin America; National Association for Humane and Environmental Education; Center for the Respect of Life and Environment; EarthVoice, World Wide Network, Inc.; Association Humanitaria De Costa Rica; National Humane Education Center; Meadow Creek, Inc.; Humane Society of the United States Wildlife Land Trust.

Stated Purpose: "to promote the humane treatment of animals and to foster respect, understanding, and respect for all creatures."

Evaluation Conclusions

Humane Society of the United States (HSUS) meets the CBBB Standards for Charitable Solicitations.

Programs

HSUS activities recently included initiation of an Internet site focusing on animal protection issues; urging the maintenance of free trade without harming animals, at the World Trade Organization meeting in Seattle; establishment of ten new wildlife sanctuaries; conducting horse cruelty investigation workshops in North Carolina and Texas; and coordinating efforts to deal with companion-animal relief efforts after natural disasters in Oklahoma and North Carolina. HSUS assists local humane societies and animal-control agencies through financial grants, sponsorship of meetings, and publications. It conducts campaigns to promote anti-fur sentiment and alternatives to genuine fur for clothing; to educate caregivers about resources and reasonable expectations for pet-owning; and to raise awareness of the connection between animal abuse and human violence. It also undertakes grassroots campaigns and lobbying to promote pro-animal legislation. Its magazines and newsletters are directed to various audiences, including HSUS members, local animal care agencies, those involved in legislative action at state and local levels, and elementary school students. Some ($7,288,044 or 45%) of HSUS' public education, membership information and publications program is conducted in conjunction with its fund raising efforts.

For the year ended December 31, 2000, HSUS's program expenses were:

Public education, membership information and publications	16,022,486
Wildlife, animal habitat and sheltering	7,623,999
Cruelty investigations and regional offices	4,236,509
Youth and higher education	2,883,501
Legal assistance, litigation and government relations	2,063,233
Laboratory bioethics and farm animals	1,705,846
Total Program Expenses	**$34,535,574**

Governance

Chief Executive Officer: Paul G. Irwin, President
Compensation*: $288,848

Chair of the Board: David O. Wiebers, M.D.

Chair's Profession / Business Affiliation: Not provided

Board Size: 23

Paid Staff Size: 261

* 2000 compensation includes annual salary and, if applicable, benefit plans, expense accounts, and other allowances.

Fund Raising

Method(s) Used: Direct mail, planned giving, telemarketing, membership appeals, grant proposals, cause-related marketing, publication sales, and catalog sales.

Fund raising costs were 28% of related contributions. (Related contributions, which totaled $62,897,301, are donations received as a result of fund raising activities.)

HSUS incurred joint costs of $17,436,885 for informational materials and activities that included fund raising appeals. Of those costs, $7,288,844 was allocated to program expenses and $10,148,041 was allocated to fund raising expenses.

Tax Status

This organization is tax-exempt under section 501(c)(3) of the Internal Revenue Code. It is eligible to receive contributions deductible as charitable donations for federal income tax purposes.

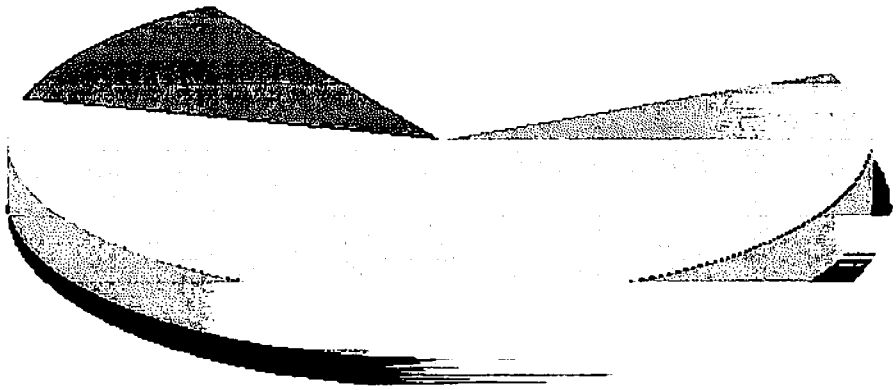
Financial

The following information is based on HSUS's audited financial statements for the year ended December 31, 2000:

Source of Funds	
Dues and contributions	42,389,134
Bequests	15,869,407
Grants and trust contributions	4,092,943
Investment income	3,594,016
Other income	1,788,085
Rental income	631,768
Sales of literature (net of catalog expenses)	447,819
Annuities and unitrusts (including valuation changes)	97,998
Net appreciation in fair value of investments	-4,433,439
Total Income	**$64,477,731**

Uses of Funds as a % of Total Income

This pie chart reflects the CBBB Standards addressing the use of funds which, in part, seek to identify how total income from all sources was applied by the charity. The item titled Increase in Net Assets shows the portion of income remaining after expenses.



Administrative Increase in net assets Programs
Fund Raising

Use your mouse to place the cursor over the the Pie Chart to see each value.

Total income		$64,477,731
Program expenses	$34,535,574	
Fund raising expenses	17,709,782	
Administrative expenses	4,661,450	
Total expenses		($56,906,806)
Income in Excess of Expenses		7,570,925
Beginning net assets		101,085,936

Ending net assets	108,656,861
Total liabilities	10,450,770
Total assets	$119,107,631

Detailed information is on file with the BBB Wise Giving Alliance. An organization may change its practices at any time without notice. Donors must decide for themselves the significance of any variation from the CBBB Standards, taking into account the relative importance of the practice in question in the context of the organization's total performance.

This report reflects the results of an evaluation of informational materials provided voluntarily by the organization. A copy of this report has been shared with the organization prior to publication. It is not intended to recommend or deprecate, and is furnished solely to assist you in exercising your own judgement. The name Better Business Bureau and the logo are registered service mark of the Council of Better Business Bureaus, Inc.

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