

Association 101

TOP 10 QUESTIONS FROM LOCAL PRESIDENTS

QUESTION #1

“Since we are a nonprofit, does that mean we can’t make a ‘profit’ on our programs?”

Two types of businesses:
For-profit and **Nonprofit**

For-Profits

- Exist to make money
- Live by sales
- Precise Objectives: Performance judged by the bottom line
- Business-like means conscious of **profit/loss**

Nonprofits/Not-for-Profits

- Exist to serve people
- Live by the good they do
- Subjective Objectives: Performance judged by the good they do – no exact measures exist
- Business-like means conscious of **cost/benefits**

- Both for-profits and nonprofits need to maximize revenues and minimize expenses
- Both need “surpluses” or they are out of business
- For-profit: surplus is called “profit” and is distributed to owners
- Nonprofit: surplus remains within the organization and cannot be distributed to anything other than advancing the mission and programs (money in the bank)

QUESTION #2

“Are we allowed to lobby the government?”

- Yes, but a better term is “advocacy”
- Restrictions for tax exempt associations, especially 501(c)(3):
 - Can’t use governments funds to advocate
 - Can’t support a specific candidate
 - 5% Rule
- Focus on *educating* your members about an issue and let them make up their own minds

QUESTION #3

“Do we need to be incorporated?”

- Most associations elect to become legal corporations when organized or at some time in the future.
- Incorporation creates an artificial legal entity that has an existence apart from its members.
- **Eliminates personal liability of the members**
- Contact Secretary of State with incorporation questions

QUESTION #4

“Can we do something if it is not in the Bylaws?”

- Some believe that the Board may only do the things that are enumerated in the Bylaws.
- However, the Bylaws cannot address every conceivable situation or decision in the life of the association.
- The membership cannot possibly consider and address every situation or issue that arises in the life of the association.

- The Bylaws enumerate the decisions made by the membership regarding its authority:
 - The things they want to **reserve for themselves** to decide (e.g. the officers and Board members are elected by the membership at the annual business meeting).
 - The things they want to **prohibit** (e.g. the president shall serve ex officio on all committees except the Nominating Committee).

- The membership has only the powers it grants to itself and are specifically enumerated in the Bylaws.
- If it is not in the Bylaws, it becomes the Board's **responsibility, obligation and legal duty** to act on the issue on behalf of the membership.
- In these matters, the Board's decision is final and cannot be overturned by the membership.

QUESTION #5

“Should we put it in the Bylaws?”

- The bylaws should only give general guidance or set minimal requirements...
 - especially in matters that can change during the life of the association...
 - e.g. dues structures, program chair responsibilities, committee mission statements, operational rules and processes, etc.
 - Specific decisions on these matters should be determined by a **resolution** of the membership or board of directors
- Many associations develop and use a ***Manual of Policies and Procedures***

Question #6

“Why do we have to allow nonmembers to enter our festivals/competitions?”

- Federal Trade Commission considers our members to be **competitors**
- Any program that provides members a “**competitive advantage**” or “**economic benefit**” must be available for nonmembers
- For example, professional development events, competitions, and possibly festivals...
- Who determines if there is a competitive advantage? The Board of Directors

- Advertising to nonmembers is not required
- Nonmembers may be charged a fee or larger fee for participation
- *MTNA Antitrust Compliance Guide for State and Local Music Teachers Associations*
- Contact the MTNA Antitrust Compliance Officer (me)

QUESTION #7

“Can we require our members to attend (X) number of meetings/work in order to enter their students?”

- Yes, but really not a good idea.
- Membership Restrictions
- Legally, any restriction on membership that appears “arbitrary” is suspect.
- Any restriction should be “reasonable”: geographic, specialty
- Generally, it should be one that is required to practice the profession.
- FTC will assume that unreasonable restrictions or those not required to practice profession are done to reduce competition.

QUESTION #8

“How do we deal with problem members/officers/board members/committee chairs, including termination of membership or other ‘punishments?’”

- Members are required to be of honorable character and reputation
- Membership is a privilege, not a right
- Board has the right to discipline officers and members, up to and including termination of membership when it is “in the best interest” of the association.
- Ideally, the problem individual will be open to “persuasion”
- Disciplining members is very risky and usually leads to problems much worse than the original problem

Two Helpful Resources:

1. Chapter on “Discipline” in *Roberts’ Rules of Order*

- Describes “punishments” that are available for groups
- Prescribes parliamentary procedures to be followed

2. *MTNA Code of Ethics*

- Contains the goals and ideals toward which every MTNA member should strive with their students, colleagues and society
- **Aspirational** and not a requirement of membership
- *MTNA Mediation of Ethical Disputes*
 - Members are encouraged to work out ethical disputes themselves
 - If issues cannot be resolved by the parties, the MTNA Executive Director may assist in trying to find a resolution through mediation

QUESTION #9

“Can you help me with Roberts’ Rules?”

- Roberts' Rules are the parliamentary law of MTNA and most of our affiliates
- Complex, confusing, and contradictory
- Nothing substitutes for studying them, having “cheat sheets” or “scripting” (or a parliamentarian)
- Rules governing small meetings are different from large meetings as the formality necessary in large groups only hinders small groups

Basic Principles of Roberts' Rules

- Someone has to facilitate or direct the discussion and keep order.
- All members of the group have the right to bring up ideas, discuss them, and come to a conclusion.
- Members should come to an agreement about what to do.
- Members should understand that the majority rules, but the rights of the minority are always protected by assuring them the right to speak and vote.

QUESTION #10

“What do I need to know about legal liability in the age of COVID-19?”

MTNA Resources

- *COVID-19 FAQs for State and Local Music Teachers Associations*
- *Association Waiver and Release of Liability for Exposure to COVID-19*
- *FAQs on COVID-19 Vaccinations and MTNA State and Local Association Events*
- *A How-To Guide for Hosting Successful Online Adjudicated Events*
- *COVID-19 Toolkit*

BONUS QUESTION

“Can we be sued if...”

- Anyone with \$100 can file a lawsuit for anything against any organization.
- The real question is, “Can we successfully defend our actions or inactions in a court of law?”
- Be prudent, use common sense, and be cautious

Two Safeguards for Nonprofit Volunteers

1. Volunteer Protection Act (1997)

- Aim is to promote volunteerism
- Limits or eliminates risk of liability for volunteers of nonprofits for acts or omissions that may harm others while working on behalf of an organization
- Doesn't cover intentional, criminal acts

2. Directors & Officers Liability Insurance

- Helps cover the defense costs, settlements, and judgments from lawsuits against the organization for negligence, discrimination, errors in judgment, mismanagement of funds, conflict of interest...
- Covers directors, officers, trustees, and those acting at the direction of the Board (e.g. committee chairs)

TOP 2 ORGANIZATIONAL QUESTIONS

#1: “How do we fill all of our positions with so few volunteers?”

#2: “How do we get more members, especially younger ones?”

“You can do it. We can help.”