

What is an Executive Committee?

01.28.16 | Linda J. Rosenthal, JD



In “[Lessons for Charity Governance From Sweet Briar and San Diego Opera](#),” we highlighted two instances in which, under the prior leadership just ousted, it was clear that a small group of insiders had dominated and overwhelmed the boards of directors almost off the proverbial cliff. So what exactly is a corporate executive committee? Is it necessary? Is it a valuable element of governing any corporation, including a nonprofit one, or has it outlived its traditional usefulness? The corporate governance model is similar around the United States, but each jurisdiction has its own precise laws and rules.

Executive Committees under California Law

The California Nonprofit Public Benefit Law is the statutory scheme that governs most of this state’s organizations that have 501(c)(3) federal tax exemptions.

The key governing principle is that “[e]ach corporation *shall* have a board of directors.” Generally, “...the activities and affairs of a corporation *shall* be conducted and all corporate powers shall be exercised by or under the direction of the board...” (Section 5210 of the California Corporations Code; *emph. added*) The “shall” language means that it’s mandatory.

But – and this is a big “but” – “[t]he Board *may* delegate the management of the activities of the corporation to any person or persons, management company, or committee however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers *shall* be exercised under the ultimate direction of the board.”

And there’s more: Either under authority of the corporate bylaws, or by a resolution adopted by a majority vote, “[t]he board may, ... create one or more committees, each consisting of two or more directors, to serve at the

pleasure of the board....” Section 5212(a).

These are known as “board committees” and that can be structured to have all of the board’s usual power and authority, except to do certain important things, for example:

- change the bylaws
- fix the compensation of directors
- fill board vacancies

Such a “board committee” would include a so-called executive committee.

Within certain limits, California public benefit corporations have a lot of leeway to structure a governance system that works for them. But what can be created can also be changed – if it turns out to be a bad idea.

Are Executive Committees Obsolete?

Traditionally, executive committees were useful and necessary because they have the authority to act (on most issues) in between regularly scheduled full board meetings or “in an emergency whenever quick and decisive action is called for.”

But in today’s world of email and videoconferencing, there’s a legitimate argument that executive committees have become “obsolete.” There are helpful analyses here, here, and here from respected and knowledgeable experts on the relative pros and cons of the modern-day executive committee.

The biggest danger is that, all too often, a strong executive committee (usually combined with a dominant chief executive officer) will run amok:

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In almost every board with a strong, active Executive Committee, the board as a whole is disengaged. That should come as no surprise – the board’s role has been usurped by the Executive Committee! When the Executive Committee has already discussed the ‘good stuff,’ the only remaining role for the board as a whole is to act as a ratifying body.

Conclusion

That’s what happened at Sweet Briar College and at the San Diego Opera, and countless other well-meaning organizations that have made a wrong turn. The good news, though, is that this imbalance of power can – and should be – corrected.

