

## **Attorney opinions regarding Article XI, Section 2**

I had two phone conversations with our attorney regarding if/when Article XI, Section 2 would be invoked with our proposed Bylaw changes.

In the first conversation, I asked her if any of the motions would invoke the article. This was her response on 27 May 2024:

"The first question we discussed pertains to approval of a specific Bylaw amendment. I understand that the Joint Bylaws/Elections Committee is proposing an amendment to Article V, Section 2 of the Bylaws to establish 16 as the minimum age at which a person is eligible for Fair membership. (The current Bylaws are silent regarding age.) The minimum age is then referenced in Article V, Section 6(a), stating that members who have fulfilled the eligibility requirements of Article V, Section 2 are entitled to vote on any issue brought before the membership. You have asked whether this change establishing a minimum voting age triggers Article XI, Section 2 of the current Bylaws. That section states that an "amendment to Article V, Section 6(a) of these Bylaws pertaining to the voting rights of the membership" requires membership approval. My opinion is that the minimum voting age simply establishes eligibility to vote. It does not actually change members' voting rights – i.e., the issues on which members are entitled to vote. Although the Oregon Nonprofit Corporation Act in ORS chapter 65 (the "Act") does not specifically define the term "voting rights," it does provide some guidance in this area. ORS 65.244 states that "[A]n amendment to [a nonprofit corporation's] articles of incorporation or bylaws to add to, change or delete the vote required for any action of the members must be approved by the members." In this case, after the amendment Fair members will be entitled to vote on exactly the same issues as before the amendment. Establishing a minimum voting age will not add new issues or delete existing issues on which members are entitled to vote, and it will not change the issues on which members are entitled to vote. Likewise, it will not change the percentage of "yes" votes required to approve an issue brought before the membership. For that reason, I do not believe the proposed amendment requires membership approval under Article XI, Section 2.

Your second question is about notice of membership meetings. Article VI, Section 4 of the current Bylaws requires notice of membership meetings to be sent to each member no less than 7 days or more than 60 days before the date of the meeting. I understand the committee is proposing a further amendment to Article V creating a new Section 2(d) that requires persons to submit a registration form to the Fair at least 30 days before a membership meeting to be eligible to vote at the meeting. I further understand that the custom has been to send out notice of a membership meeting as early as possible (pretty close to 60 days before the meeting date) in order to give members ample time to consider the issues to be voted on at the meeting and ample time for members outside the country to turn in their ballots. However, if someone submits a registration form just 30 days before the meeting date, then the earlier notice wouldn't be effective as to the new member. I understand the solution in the past has been to give notice to brand-new members after they submit their registration forms, so the Fair ends up giving notice of

membership meetings on more than one occasion. I see nothing in the Act that prohibits multiple notices. ORS 65.214 simply requires nonprofits to give notice of membership meetings “in a fair and reasonable manner that is consistent with the [nonprofit’s] bylaws.” It further states that notice is fair and reasonable if it “notifies the ... members of the place, date and time of [the] meeting in accordance with [the Act] no fewer than seven days before the meeting....” I work with a fair number of nonprofits, and I’ve never seen any of them give notice of membership meetings on multiple occasions, so this practice of the Fair is unusual. Of course, the Fair also has more fluidity in membership than most of the nonprofits I work with. Based on the Oregon statute, I believe the Fair may give notice of a membership meeting multiple times, so long as the latest notice is given no less than 7 days before the meeting date.”

I then asked her in a second conversation to specifically address whether moving the 30 day registration requirement would invoke the article. This was her response on 16 July 2024:

"After considering the proposed motion and the Bylaws, I don't actually have a definitive opinion regarding the committee's question.

On the one hand, the proposed change simplify clarifies that “all members who have been members for at least 30 days before” a membership vote (the current language in Article V, Section 6(a)) actually means that “individual[s who have submitted] a registration form at least 30 days before” a membership vote (the proposed language in Article V, Section 2(d)) are entitled to participate in the vote. In that sense, this is simply an administrative requirement establishing when, specifically, someone will be considered a member of the Fair. Again, as with my earlier opinion, this amendment doesn't change members' voting rights – i.e., the matters on which members are entitled to vote.

However, what trips me up here is the specific language in Article XI, Section 2 requiring membership approval of an “amendment to Article V, Section 6(a) ... pertaining to the voting rights of the membership.” The proposed amendment is an amendment to Article V, Section 6(a). Therefore, although I don't believe the amendment changes members' voting rights, per se, it is literally an amendment to Article V, Section 6(a) establishing who may participate in membership votes and so could be interpreted as pertaining to voting rights.

Because I believe one can make a good-faith argument either way and understanding this is likely a contentious issue, I recommend that the Board submit the motion to the members for approval. I realize this advice is contrary to the opinion I sent you on May 27th regarding the minimum age for Fair membership. The factor that has caused me to change my opinion in this case is the specific article and section the committee is proposing to amend. Going forward, you could address this issue by defining the term “voting rights” in Article XI, Section 2 to make clear the difference between voting rights and voting eligibility and/or the difference between substantive changes to rights versus administrative rules that implement voting or membership processes.”

--Stephen Diercouff,  
Membership Secretary