

Law Committee Fall Report 2016

LODGE GOVERNANCE REVISITED

TRUSTEES vs DIRECTORS

In 2011 Grand Lodge amended Section 16.020 of the Elks Statutes Annotated to make it mandatory that the duties identified under Section 12.070 of Elks Statutes Annotated and which were previously performed in many lodges by the Board of Trustees, be performed by a Board of Directors consisting of the four Chair Officers and the Board of Trustees. The purpose of that amendment was to make sure our lodges, which in almost every case are corporations formed under the law of their respective states, conform to the corporate law of the state in which they were formed that requires that corporations be governed by a “Board of Directors” (as opposed to by a “Board of Trustees”). However, this amendment had the effect of putting lodges from the State of New Jersey in violation of their state law which requires that corporations be managed by a “Board of Trustees” rather than a “Board of Directors”. To address this concern, at the July 2016 convention in Texas, the Judiciary proposed an amendment to the Elks Statutes Annotated to make it optional whether the duties of lodge governance conferred on the Board of Trustees under Section 12.070 by performed by a Board of Directors consisting of the four Chair Officers and the Board of Trustees or just by the Board of Trustees. This resolution passed. However it is being interpreted by lodges around the country to give them the option of whether their lodge be managed by their Board of Directors or if the Board of Directors can be eliminated and those duties be performed by the Board of Trustees. *This interpretation is not currently supported by Judiciary, who has determined in a 6-2 vote that in all states where state law demands that corporations be managed by a Board of Directors, there must be a Board of Directors in place and it must consist of the five members of the Board of Trustees and the four Chair Officers.* Only the lodges in New Jersey can be managed by their Board of Trustees. Thus, for our lodges in Michigan, the amendment to Section 16.020 of the Elks Statutes Annotated that occurred this July in Texas has absolutely no impact.

For further explanation of the duties of the Board of Directors, please review the Guide For Board of Directors found at this site <http://www.elks.org/grandlodge/judiciary/manuals.cfm>

Respectfully Submitted

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State Law Committee Chair