

District II Report 2014 Annual Members Meeting

Several members requested that I report on reasons why co-op lawyers have interpreted the bylaws in such an inconsistent, conflicting and sometimes self-contradicting manner. (referring to the identical circumstances of the Melissa Amaro and Leo Cordova trustee elections, where the former was judged invalid and the later was valid. The Amaro judgment was then reversed with a “non-legal explanation followed by the self contradiction after pressure by those present).

The quick answer/opinion is that historically, SEC attorneys mistakenly identified the board majority as their client when, in fact the cooperative/corporation, according to their professional code of conduct is the client, all 10,000 members. That is why every member has the right to inspect every invoice presented to the co-op, without redaction.

The topics confused by attorney opinions range from: fair elections, Quorums, being allowed to vote at every meeting of the members, repealing and amending bylaws, duties of trustees, excessive and wasteful spending, etc.

I will provide excerpts for the sake of brevity, to make the points of this report. On the question of Quorum: This is from RRNR-11th
§56. CONTENT AND COMPOSITION OF BYLAWS (RRNR 11th.)

Nature and Importance of Bylaws

The content of a society's bylaws has important bearing on the rights and duties of members within the organization—whether present or absent from the assembly—and on the degree to which the general membership is to retain control of, or be relieved of detailed concern with, the society's business. Except as the rules of a society may provide otherwise, its assembly (that is, the members attending one of its regular or properly called meetings) has full and sole power to act for the entire organization, and does so by majority vote. Any limitation or standing delegation of the assembly's power with respect to the society as a whole can only be by provision in the bylaws—or in the corporate charter or separate constitution, if either of these exists. [(Or by federal and/or state statute in the case of corporations/cooperatives/ and tax exempt, nonprofit corps/co-ops.)]

Unlike societies RECs are controlled first by the U S Constitution and federal Law and State Law. Members democratically control the co-op through elections based on the “one person -one vote rule” which has required substantially equal member populations in voting districts since 1967. SEC bylaw Article V Section 8 makes it a duty of the board to assure equal representation in voting districts and prescribes the method by which to achieve the justification of districts.

State Corporate Law controls how RECs operate.

62-15-7, Bylaws

The original bylaws of a cooperative shall be adopted by its [first] board of trustees. Thereafter bylaws shall be adopted, amended or repealed by the majority of the members present at any regular annual meeting or special meeting called for that purpose, a quorum being present. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative **not inconsistent with this act** [62-15-1 to 62-15-32 NMSA 1978] or with its articles of incorporation.

SEC Bylaws Section III Meetings of Members

Section 1. Annual Meeting. The annual meeting of the members shall be held sometime between April 1 and May 30 inclusive each year at such place in Socorro, in the County of Socorro, State of New Mexico, as shall be specified in the notice of the meeting, for the purpose of passing on reports for the previous fiscal year, and transacting such other business as may come before the meeting. It shall be the responsibility of the Board of Trustees to make adequate plans and preparations for the annual meeting. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Cooperative.

Section 6. Quorum at all Meetings. Three per centum of the total membership registered shall constitute a quorum. If less than a quorum is registered at any meeting, a majority of those registered may adjourn the meeting from time to time without further notice. **The minutes of each meeting shall contain a list of the members registered.** These provisions shall apply equally to district meetings as well as general meetings of the members. Mail-in ballots will count as part of the quorum.

53-11-32 Quorum of Shareholders

Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. **A quorum, once attained at a meeting, shall be deemed to continue until adjournment notwithstanding the voluntary withdrawal of enough shares to leave less than a quorum.** If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the Business Corporation Act [**Chapter 53, Articles 11 to 18** NMSA 1978] or the articles of

incorporation.

Every attorney sence the effective date of this bylaw has ignored it, including the Wiggins attorneys. Members ratafied the secret plan in 2012 to force the reduction from 11 to 5 trustees. The provision of the Non Profit Corporation Law required that trustees be allowed to continue until expiration of the four year term (an example of how other corporate law is used when RECA is silent.

History: Laws 1939, ch. 47

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Bylaw: Article VIII Non Profit Corporation

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and By-Laws shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of this article of the By-Laws shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's office.

The Socorro Electric Cooperative Board of Trustees and Management will account for and notify members of their Patronage Capital (Capital Credits) annually (as required by the existing bylaws but disregarded until 7/2009). (Stated in existing bylaws)

62-15-8. Members.

1. Annual and special meetings of members whether general or by voting districts established pursuant to the Rural Electric Cooperative Act [62-15-1 NMSA 1978], shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all general meetings shall be held in the city or town in which the principal office of the cooperative is located and all meetings by voting districts shall be held at a location set by the board of trustees within the boundaries of each district.
2. Except as otherwise provided in the Rural Electric Cooperative Act, written or printed notice stating the time and place of each meeting of members and, [in the case of a special meeting, the purpose for which the meeting is called] shall be given to each member by the board of trustees or the secretary, or their legal representatives, either personally or by mail not less than ten or more than twenty-five days before the date of the meeting. Failure to receive notice deposited in the mail addressed to a member at the

member's address shown on the cooperative's books and records shall not affect the validity of any business conducted at a meeting.

Article VII, Section 11. Reports. The officers of the Cooperative shall submit at each annual meeting and district meeting of the members reports covering the business of the Cooperative for the previous year. Such reports shall set forth the condition of the Cooperative at the close of such fiscal year, and matters directly affecting or concerning individual districts shall be included in the report submitted at the respective district meeting.

62-15-20. Refunds to members.

Revenues of a cooperative for any fiscal year in excess of the amount thereof necessary:

1. to defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;
2. to pay interest and principal obligation of the cooperative coming due in such fiscal year;
3. to finance, or to provide a reserve for the financing of, the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;
4. to provide a reasonable reserve for working capital;
5. to provide a reserve for the payment of indebtedness of the cooperative maturing more than one (1) year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and
1. to provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative, shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

History: Laws 1939, ch. 47, § 20; 1941 Comp., § 48-420; 1953 Comp., § 45-4-20.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 19, 22,