

No Email Voting by Nonprofit Boards

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I have been challenged several times recently when stating that e-mail voting is not legal in Washington State. Just to make sure I was correct, I've done some more research. First, here's what I've learned about the law regarding this topic. (Please note: I am not a lawyer, so nothing I write on this topic can be construed in any way as legal advice or comment!)

Here in Washington State, chapter 24.03 RCW (Revised Code of Washington) contains much of the law governing nonprofit corporations (for those nonprofit corporations who have incorporated under that law. This constitutes the large majority of nonprofit corporations). Often people will read RCW 24.03.085 and see, "A member may vote...by electronic transmission...." The key to this statement is the word "member". This statement refers ONLY to members of the corporation, not directors (who are members of the board).

The fact that members are allowed to vote electronically does not automatically confer that ability to directors. There is no statement in RCW 24.03 stating that directors may vote electronically. Therefore, they may not.

Well, almost. There is one circumstance in which email voting is allowable: an email vote can be taken if:

1. all directors agree in advance to vote in this manner;
2. all directors vote on the issue; and
3. the vote is unanimous.

If one director votes "no" or doesn't vote, there is no action. This is found in RCW 24.03.465, is often referred to as "unanimous consent" and when obtained, it has the legal effect of a meeting of the Board.

It is true that it is sometimes difficult to gather directors together for meetings. To this end, the legislature has enacted RCW 24.03.120. It says that "...members of the board of directors or any committee designated by the board of directors may participate in a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time...."

The key to this provision is that it allows for interactive dialogue and discussion by directors. That is essential to effective governance, and today's technology (conference calls, Skype, etc.) make this very easy to achieve.

To me this is the fundamental argument against email voting -- or the use of proxies for that matter. For boards to do their jobs well, dialogue and healthy debate simply must happen. It cannot happen when email votes are taken. And if you are not present at a Board meeting (either in person or by phone), you give up your right/responsibility to engage in that debate. I believe this is a violation of your Duty of Care, one of the legal responsibilities of all nonprofit board members.

*I am indebted to my friends [Judy Andrews](#) and [Put Barber](#) for their input to this commentary. Judy, an attorney, specializes in nonprofit law and chairs the Washington State Bar Association's Nonprofit Corporations Committee. Put is a senior advisor for the Nancy Bell Evans Center on Nonprofits & Philanthropy at the UW Evans School and author of *Nonprofits in Washington*, a series of reports on the scope and character of nonprofit organizations in Washington state.*