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September 26, 2019

Mr. Jay Watson, Chairman
Virgin Island Horse Racing Commission

Dear Commissioner Watson,

Thank you for your inquiry. This letter is in follow-up to our call and correspondence received from you regarding your concern of the appropriateness of a motion to reorganize the Commission and depose the Chairperson of the Commission. I have reviewed:

1. Act No. 8010 Bill No. 32-0092, an Act amending title 32 Virgin Island Code, chapter 11, section 201.
2. 32 V.I.C. § 201 (as amended, Nov. 30, 2017)
3. The Revised Organic Act of 1954 Section 16.
4. A memorandum from Chairman Watson to all members of the VIHRC.
5. A legal opinion from Sharline L. Rogers, Esq., Asst. Legal Counsel through Ernest Morris Esq., Chief Legal Counsel.
6. The organization's adopted parliamentary authority the current edition of *Robert's Rules of Order Newly Revised, 11th ed.*

I have completed additional research to thoroughly respond to your question.

Attached is my opinion. Should you have any questions I can be reached by telephone or email.

It was a pleasure to work with you and I welcome the opportunity to work with you in the future.

Sincerely,

Mona Calhoun
Professional Registered Parliamentarian

Enclosure
Parliamentary Opinion



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Parliamentary Opinion for Commissioner Jay Watson

September 26, 2019

Introduction

The Chairman, Mr. Jay Watson of the Virgin Islands Horse Racing Commission (VIHRC) requested the following parliamentary opinion. I was requested to write an opinion concerning the appropriateness of a motion to reorganize the Commission and depose the Chairperson of the Commission. The organization currently does not have bylaws but is governed by the Executive Branch and 32 V.I.C. § 201 (as amended, Nov. 30, 2017). The adopted parliamentary authority of the organization is the current edition (11th) of *Robert's Rules of Order Newly Revised (RONR)*.

Background information

The VIHRC has never adopted bylaws. On February 8, 2019, in a regularly scheduled meeting, the VIHRC adopted the current edition of RONR (11th ed.), as the governing rules for the Commission of all VIHRC official business. At a scheduled meeting on August 30, 2019, a motion was made and seconded to reorganize the Commission and replace Mr. Watson as Chair. The board voted in the affirmative to the motion. The purpose of the meeting was to get the Department of Planning and Natural Resources (D.P.N.R.) input and receive an update and timeline of construction from VIGL.

It is perceived that a violation of the adopted parliamentary authority, RONR (11th ed.) occurred due to the following reasons:

1. Prior notice of the motion to reorganize and name a new chair was not given.
2. There was no motion to suspend the rules of the adopted parliamentary authority, prior to the motion.
3. A proper motion to dispose or remove an officer was not made per the adopted parliamentary authority, RONR (11th ed.).

In addition to the above information, I have had telephone conversations to gather factual information, with Chairman Watson.

The Commission would like clarification on the following questions:

1. Was the motion to reorganize out of order? If not, does it require prior notice?



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2. Was the motion to remove the Chair out of order? If not, is prior notice required for this motion?
3. Is the motion to suspend the rules in order? If it is, what vote is needed to pass?

Sources Consulted

The following sources were used to establish an opinion regarding this inquiry:

1. Act No. 8010 Bill No. 32-0092, an Act amending title 32 Virgin Island Code, chapter 11, section 201.
2. 32 V.I.C. § 201 (as amended, Nov. 30, 2017)
3. The Revised Organic Act of 1954 Section 16.
4. The organization's adopted parliamentary authority the current edition of *Robert's Rules of Order Newly Revised, 11th ed.*

NOTE: The Eleventh Edition supersedes all previous editions and is intended automatically to become the parliamentary authority in organizations whose bylaws (or as adopted by vote) prescribe “Robert’s Rules of Order,” “Robert’s Rules of Order Revised,” “Robert’s Rules of Order Newly Revised,” or “the current edition of” any of these titles or the like without specifying a particular edition. If the bylaws specifically identify one of the ten previous editions of the work as parliamentary authority the bylaws should be amended to prescribe “the current edition of Robert’s Rules of Order Newly Revised”. (as cited on the 4th page from the cover in Robert’s Rules of Order, Newly Revised 11th ed.)

The Commission does not have bylaws but are governed by 32 V.I.C. § 201 and their adopted parliamentary authority RONR (11th ed.). Any reference to “bylaws” or “rules” in RONR (11th ed.) would refer to and apply to the rules in 32 V.I.C. § 201 and guidance from RONR (11th ed.). Further any reference to “president” in RONR (11th ed.) would apply to the role of Chair.

Discussion

Question 1: Is the motion to reorganize out of order? If not, does it require prior notice?

Robert's Rules of Order Newly Revised, 11th ed. was adopted as the Commission's parliamentary authority at a regularly scheduled meeting on February 8, 2019. RONR (11th ed.) p. 111 ll. 4 – 10 states “No main motion is in order that conflicts with the corporate charter constitution or bylaws; and to the extent that procedural rules applicable to the organization or assembly are prescribed by federal, state, or local law, no main motion is in order that conflicts with such rules”. According to the Revised



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Organic Act of 1954, Section 16 Reorganization of Government and 32 V.I.C. § 201 the establishment and reorganization of the Commission lies with the Executive Branch of the government.

Opinion/Conclusion:

Yes, the motion to reorganize is out of order and prior notice to the Commission would not be applicable or proper because the motion conflicts with how a higher authority prescribes the Commission's organization. Should the Executive Branch decide to reorganize the Commission it would follow the procedures as prescribed in its governing documents.

Question 2: Was the motion to remove the Chair out of order? If not, is prior notice required for this motion?

RONR (11th ed.) p. 653 ll. 21 – to p. 654 ll. 1-3 “Except as the bylaws may provide otherwise, any regularly elected officer of a permanent society can be removed from office by the society's assembly as follows:

- If the bylaws provide that officers shall serve “for ___ years *or* until their successors are elected.” The officer in question can be removed from office by adoption of a motion to do so. The vote required for adoption of such a motion is (a) a two-thirds vote, (b) a majority vote when previous notice (as defined on p. 121) has been given, or (c) a vote of a majority of the entire membership—any one of which will suffice. A motion to remove an officer from office is a question of privilege affecting the organization of the assembly, and so also is the filling of any vacancy created by the adoption of such a motion.*
- If, however, the bylaws provide that officers shall serve only a fixed term, such as “for two years” (which is not a recommended wording; see p. 573, l. 33 to p. 574, l. 3 for sample wording), or if they provide that officers shall serve “for ___ year(s) and until their successors are elected,” an officer can be removed from office only for cause—that is neglect of duty in office or misconduct—in accordance with the procedures in RONR (11th ed.); that is an investigating committee must be appointed, charges must be preferred, and a formal trial must be held.

*Footnote in RONR (11th ed.) p. 654 “The assembly normally cannot proceed to fill the vacancy created by removal of an officer immediately, since notice is a requirement (see p. 291, ll. 20 – 23). If the president is removed from office the vice-president thereby succeeds to the presidency, creating a vacancy in the vice-presidency which requires notice to fill. If it is desired to fill a vacancy that may be created by removal, previous notice may be given in advance of the meeting at which removal is



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contemplated that, should removal of the officer occur, the resulting vacancy may be filled at that meeting.”

RONR p. 121 ll. 20 – 30 states, “The term previous notice (*or notice*), as applied to necessary conditions for the adoption of certain motions has a particular meaning in parliamentary law. A requirement of previous notice means that announcement that the motion will be introduced—indicating its exact content as described below—must be included in the call of the meeting (p. 4) at which the motion will be brought up or as a permissible alternative if no more than a quarterly time interval (see pp. 89-90) will have elapsed since the preceding meeting, the announcement must be made at the preceding meeting.”

RONR p. 122 ll. 19 - 27 states, “If previous notice is given at a meeting, it can be given orally unless the rules of the organization require it to be in writing. Unless the rules required the full text of the motion resolution or bylaw amendment to be submitted in the notice, only the purport need be indicated; but such a statement of purport must be accurate and complete—as in “to raise the annual dues to \$20”—since it will determine what amendments are in order when the motion is considered.

Opinion/Conclusion:

Yes, the motion to remove the Chair was out of order and prior notice to the Commission would not be applicable or proper. 32 V.I.C. § 201, letter C part a state “The members of the Commission shall annually elect one of their members to serve as Chair of the Commission...” Annually is considered a fixed term. In such a case, as written above, according to RONR (11th ed.) an officer can be removed from office only for cause—that is neglect of duty in office or misconduct and an investigating committee must be appointed, charges must be preferred, and a formal trial must be held. In accordance with RONR (11th ed) p. 656 ll. 3-6, the officer has the right to due process—that is to be informed of the charge and given time to prepare his defense, to appear and defend himself and to be fairly treated.

Question 3: Is the motion to suspend the rules in order? If it is, what vote is needed to pass?

RONR p. 15 ll.5 – 13 states “The term rules of order refer to written rules of parliamentary procedure formally adopted by an assembly or an organization. Such rules relate to the orderly transaction of business in meetings and to the duties of officers in that connection. The object of rules of order is to facilitate the smooth functioning of the assembly and to provide a firm basis for resolving questions of procedure that may arise”.

RONR p. 16 ll. 21 – 29 states “When a society or an assembly has adopted a particular parliamentary manual—such as RONR (11th ed.)—as its authority, the rules contained in that manual are binding



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upon it in all cases where they are not inconsistent with the bylaws (or constitution) of the body any of its special rules of order, or any provisions of local, state, or national law applying to the particular type of organization.”

RONR p. 17 ll. 19 – 21 states “Rules of order—whether contained in the parliamentary authority or adopted as special rules of order—can be suspended by a two-thirds vote.

Opinion/Conclusion:

Yes, the motion to suspend the rules would be in order and requires a two-thirds in the affirmative to pass. The Commission adopted RONR (11th ed.) as its parliamentary authority. According to RONR (11th ed.) the rules contained in that manual are binding upon the Commission in all cases where they are not inconsistent with any provisions of the laws or governing body that established the Commission. Therefore, to take action that is inconsistent with RONR (11th ed.) would require a motion to suspend the rules prior to taking the action.

Disclaimer

The answers are based on RONR 11th edition newly revised, unless otherwise indicated, and do not take into account such governing authorities as statutes, bylaws, minutes or adopted special rules of order which were not provided.

Overall Opinion

Any motions and votes taken at the Aug. 30, 2019 meeting of the VIHRC related to reorganization and removal of the current Chair, Commissioner Jay Watson were improper and out of order and therefore null and void.

Sincerely,

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