

Draft Questions for GLA Lawyer, December 22, 2018 revision

1. The Board did not formally vote in its meeting on September 10 to adopt the Election Committee recommendations, but the BOD's Action Item, documented in the minutes of that meeting, instructed the Election Committee to revise election instructions to align with GLA Bylaws and our current understanding of the implications of MT state law for nonprofits, MCA 35-2-539. (See September 10 entry in "Memo on election process historical overview-revised '18-12-22_final," which lists the Board's discussion on this and gives the detailed wording of this Action Item.)

Is that sufficient evidence of board agreement with and authorization of the proposed changes to election instructions, which allowed votes by landowners' proxy representatives to override those landowners' absentee ballots?

2. After the Board meeting on September 10, the Election Committee worked to implement the changes in instructions to conform to our understanding of the MT law for nonprofits (which we interpreted as giving precedence to proxy appointees over the landowners' own absentee ballots and in-person landowners precedence over their proxy representatives). Additionally, in late October (~2 weeks before the election meeting), the EC co-chair contacted the board with a further suggestion: to allow an in-person landowner to pull his or her own absentee ballot. This last allowance seemed commonsense and appropriate; it was consistent with the first two changes; and it increased the flexibility of voting options. Also, it was feasible now that the absentee ballots would be held unopened still in identifiable envelopes until noon when the in-person voting period ended. The board was asked to comment. Two board members had questions, only one commented (as described in the historical overview memo).

A group of landowners are now objecting to the fact that no board vote was taken, the GLA did not seek legal advice, and these changes were not sent out to members for 30-day review. They argue that the Board should have done these things before implementing the changes. Please comment on their points:

- a. **Should the Board have sought legal advice?**
 - b. **Should the Board have voted to approve all 3 changes at this late date?**
 - c. **Should the GLA have sent these changes to membership for 30-day review and postponed the election meeting to do so?**
3. The full packet of election materials sent to all landowners included an introductory letter, various instructions, envelopes and candidate bios, as well as both the proxy designation form and absentee ballot form. The introductory letter told voters that if they could not attend the meeting, they should choose one of two options—(a) vote by using the absentee ballot or (b) vote by completing the proxy designation form and sending it to their designated representative to vote in person on their behalf. It cautioned them to pay careful attention to the details at the bottom of the proxy designation form, which included this final sentence in bold red font: "The Association shall continue to recognize a proxy which has not expired until it receives

notice of such revocation, amendment or termination.” (Note: sending in their absentee ballot is not listed as a proxy revocation in MCA 35-2-539(5). Information about the change to allow a proxy representative to cancel the landowner’s earlier absentee ballot had limited distribution. It was known to Board members, to landowners who attended the September 10 BOD meeting, and to those who read the minutes of that meeting, but not announced to the full membership. The final change (which allowed landowners to appear in person and cast a new ballot, cancelling an absentee ballot they had mailed earlier) was made in late October, less than two weeks before the Election Meeting, and was not known beyond the BOD members.

- a. **Was the introductory letter in the election packet and the additional bold red statement on the proxy appointment form sufficient notice that the GLA would honor the ballot of the landowner’s proxy representative unless they explicitly revoked or amended that proxy appointment in one of the listed ways?**
 - b. **Should the GLA have disseminated information about the new options for landowners to change their absentee ballots at the election meeting more widely?**
4. The absentee ballots came to the GLA post office box and were retained until election day in their outer envelopes with stamps. They were initially processed by removing the outer envelope with stamp. The inner envelope with their ballot was still sealed and still identified with the landowner’s name and parcel number. Those membership interests were marked on the sign-in sheets as having submitted an absentee ballot. The sealed still-identifiable absentee ballots were held until noon when the in-person voting period closed. At that time, the absentee ballot envelopes (still with identifying label) were opened and their contents, the still-folded and now anonymous ballots, were placed into a sealed ballot box.

MT civil/public elections do not provide for retrieving or changing an absentee ballot once it is received at the county election office. That is, an official ballot is considered “voted” when it is received at “a place of deposit” (MCA 13-19-301(2)). At the same time, MCA 13-1-101(52) defines a “voted ballot” as one that is “(a) deposited in a ballot box at a voting place, (b) received at the election administrator’s office, or (c) returned to a place of deposit.” To be consistent with our revised election instructions that allowed a still-identifiable absentee ballot to be retrieved and cancelled by either an in-person landowner’s ballot or a proxy representative’s ballot, the absentee ballots were considered to be “voted” at the last step when the anonymous ballots were placed into the sealed ballot box.

- a. **Are non-profit corporations required to follow MCA Chapter 13?**
- b. **If the GLA is required to followed MCA Chapter 13, then was it acceptable for us to define an absentee ballot as “voted” or “cast” only when it was de-identified and placed in the ballot box, according to MCA 13-1-101(52)?**
- c. **If that was not acceptable, then at what stage should the GLA regard an absentee ballot to be “voted”?**

5. If general state law for civil elections (MCA 13-19-301(s)) must apply to the GLA here, then this appears to pose a conflict with our understanding of the MT nonprofit law on proxy treatment (MCA 35-2-539(5)), which provides for revoking a proxy appointment in only two ways—by the member being present at any meeting and voting or by written notification to the secretary or other official. Our interpretation of this statute led to our revised procedure to give precedence to a proxy representative over the landowner’s absentee ballot. We want to ensure the GLA abides by all applicable laws.

Was our recent understanding of MCA 35-2-539(5) correct? If we turn away a walk-in proxy representative because we are holding an absentee ballot does that violate this statute?

6. Landowner concerns about the changes pertain to the impact the new changes had on the election outcome. The changes might have affected the relative standing of two North Glastonbury (NG) write-in candidates in the final totals: Claudette Dirkers lost to Ron Price by 4 votes.
 - Claudette Dirkers was not on the ballot, but ran as a write-in NG candidate. She received 22 write-in candidate votes.
 - Ron Price was originally on the ballot as a nominated NG candidate, but in the end could only run as a write-in candidate. He received 26 write-in candidate votes. Absentee ballots that checked the box to vote for Ron as a regular candidate were not counted for him because he withdrew as a nominated candidate.

The election results were certified and notarized on November 13, 2018. The newly elected board members were seated on the Board at its December 3, 2018, meeting. However, the revised procedures may have altered the NG election outcome: (cf. the attached November 10, 2018 Voting Breakdown):

- Four NG Absentee ballots were superseded by a proxy ballot because ‘Proxy trumps absentee’
- Two NG Absentee ballots were superseded by an in-person ballot because ‘landowner in person trumps absentee’

Because ballots are anonymous, there is no way to determine how any of these proxy appointees/landowners voted.

Since the altered procedures possibly affected the outcome of the election, how should the GLA respond to landowners who question the legitimacy of Ron Price being seated on the Board?

7. As mentioned above in Question 3, the election packet mailed to all GLA members included a Proxy Designation Form. Members were told they could vote by completing the proxy designation form and sending it to their designated representative to vote in person on their behalf. Three of the proxy appointments mentioned above were paper copies of emails sent from a landowner to their proxy representative’s email address. (As with official Proxy Designation Forms, the Board did not receive these “emailed proxies” –they went directly from the landowner to their designated representative.)

Because these were not on the official Proxy Designation Form, the board members gathered during a break at the Election Meeting and they voted in favor of accepting the paper copies of these emails in lieu of the standard Proxy Designation Form. You have already commented on these emailed proxies, saying that signing up for official or unofficial email notification would show intent to communicate via email. You cited the GLA Bylaws (Article V. Para G.), which does not require the members to use the official GLA proxy form, and MCA 35-2-539(1), which allowed the proxy appointment notification to be signed with “authenticated electronic identification.” You also referenced MCA 35-2-542 in its entirety, which basically entitles the GLA to accept a proxy appointment that corresponds to the name of a member.

Although the landowners who sent the 3 emailed proxies were not signed up for official or unofficial email notification, their names were clearly included in their email addresses. BOD members checked that these were GLA landowners and that they were in good standing and eligible to vote. With those considerations, the BOD voted to accept their copies of emailed proxy designations. Some landowners have objected that the board acted improperly in honoring these copies of emailed proxy designations as acceptable.

Should the BOD have rejected these copies of emailed proxy appointment forms since these landowners were not on the email list?

Your answers to these questions will help the GLA address landowner concerns. If possible, could you provide your answers in a document we could share with the membership?