

following:

- Statement of Financial Position
- Statement of Activities
- Cash Flow Statement
- Statement of Functional Expenses

Our CPA did a quick review of our current documents and informed me that we already do two of these every month:

- A Statement of Financial Position is the same as our Balance Sheet. There is no functional difference, just a different name.

- A Statement of Activities is the same as our Profit and Loss Statement. Again, no functional difference.

On the other two:

- Cash Flow Statement – There is no law that requires this from a non-profit except during an audit. He stated that there is no law or practice requiring such a statement from a non-profit in regular practice.

- Statement of Functional Expenses – There is no law that requires this from a non-profit either except during an audit. To do these statements would cost extra money, would be of limited value to our organization in his opinion, and would duplicate some of the function of the 990.

Summary, we already provide two of these and the other two are not required except in specific terms of an audit.

He informed me that he has no problem with any of the records we have ever presented him, that they are very well presented and when there have been questions they have been handled quickly. As mentioned above, his firm deals with over 50 other non-profits and, in his opinion, we keep and provide much better records than many other non-profits they work with.

OVERVIEW of Election Legal Issues and Timeline

– FRRS Counsel David Ludington

Dear Feather River Rail members:

Now that the dust has settled, I would like to set the record straight regarding the lawsuit brought by James Mason, Debra Baer, William Meeker and Robert J. Reininger against the FRRS and Eugene Vicknair in his capacity as Secretary. First, let me emphasize that I represent the Board of Directors and cannot take sides when there is a squabble amongst the Directors. As the board's attorney, I was tasked with defending the Board and Eugene Vicknair in the lawsuit. I do not represent Rod McClure or any other Director in an individual capacity - he was not named in the lawsuit, so I do not represent him in his capacity as President of the Board at this time, any more than I represent the entire Board.

A little background is necessary to understand what precipitated the lawsuit. FRRS'S Nominations and Elections policy reads in pertinent part as follows:

(J) Each candidate may, at their option, provide to the Committee, no later than the second Monday in February, any information statement. These statements shall be separate from the ballot but mailed with the ballot to each eligible voter (with the ballot mailing). These statements shall include membership number, date of becoming a member, previous offices and positions held in the corporation for each candidate.

(K) ... Each candidate or members submitting a statement will be responsible for the cost of the printing of said statement. Likewise, in the event it becomes necessary to use a mailing service, the fees from any mailing service shall be similarly prorated. The Committee may require an advance deposit of the prorated share of the costs prior to the printing and assembly of the ballot mailing. Currently there is a flat rate charge of \$100.00 (subject to change, due to printing costs) for the inclusion of the candidate's statements, the cost of which is to be borne by that candidate him/herself. Any candidate submitting a statement shall be required to submit the payment at the time the

statement is presented, to cover costs of reproduction and mailing preparation.

Candidate James Mason submitted his Candidate Statement by email on February 9, 2015, the second Monday of the month. He did not tender the requisite \$100.00 flat rate charge for publication and mailing of his statement at the time. Instead, he mailed a check postmarked February 11, 2015, which was received February 14th. Candidate Robert Reininger also emailed his Candidate Statement on February 9th, and mailed a check on February 12th, which was received February 14th. Shortly after receipt of the late payments, I was asked for an opinion as to whether these candidates had complied with the letter of FRRS'S Nominations and Elections policy, and determined that they clearly had not, and that the Elections Committee was not obligated to include these candidates' statement in the ballot package to be sent to the members. Ed Wagner, Election Committee Chairperson, then informed these candidates their statements would not be included in the mailing, and returned their checks.

Shortly thereafter, James Mason, requested from Secretary Eugene Vicknair a copy of the "February 28, 2015 Roster" to use for "campaign purposes and not for commercial use." Robert Reininger made a similar request of Mr. Vicknair "for the purpose of soliciting votes from members." As FRRS'S membership list is its most valuable asset, Mr. Vicknair declined to provide the membership list to these candidates. On March 3rd, member Keith Gillette, who represents the petitioners in the lawsuit, sent another demand for the membership list on behalf of James Mason, William Meeker, and Robert Reininger "in order [for these candidates] to provide material relating to their candidacy for the upcoming election." Mr. Vicknair then consulted with me and referred to the California Attorney General's "Guide for Charities", which addresses this specific situation, and states in relevant part:

Q. I am a statutory voting member of a charity and would like to use the charity's mailing list to send out information. Am I entitled to use the mailing list?

A. Yes, with limitations. The mailing list of your charity is considered a valuable corporate asset, and the value diminishes if the list is distributed. California law provides for specific procedures for member mailings through a "blind" use of the list. Your information is mailed out without disclosing the contents of the list to any person.

Mr. Vicknair offered what the Attorney General's Office and case law specifically deem to be a reasonable alternative to turning over the Membership List and its contents – that Petitioners James Mason, Bill Meeker, and Robert Reininger provide their Candidate Statements to FRRS, which would then forward their documents to FRRS'S mailing house for immediate processing and mailing. Mr. Gillette did not respond. Mr. Vicknair then sent an email to Mr. Gillette asking whether he and his clients would accept reject the reasonable alternative, as under the Corporations Code, "[a]ny rejection of the offer shall be in writing and shall indicate the reasons the alternative proposed by the corporation does not meet the proper purpose of the demand made..." Mr. Vicknair also informed Mr. Gillette that the FRRS would be forced to go to court to seek a protective order if he did not get a response, or if the offer were rejected. As time was running out to seek a protective order, I had already started drafting FRRS'S petition for a protective order.

Instead of rejecting the reasonable alternative of a blind mailing, the petitioners opted to petition the court for a writ of mandate compelling the production of the Membership list and ordering that a neutral election inspector conduct the election. In other words, they beat the Board to the punch in regard to seeking a judicial determination of whether the blind mailing was a reasonable alternative to turning over the Membership list. In his moving papers, Mr. Gillette offered to take sole possession of the Membership list "as an officer of the court." He also alleged that prior elections had been tinkered with because "circumstances surrounding the results of previous elections raise questions concerning FRRS'S handling of previous elections and the fairness and

transparency of the impending election." The circumstances referred to by Mr. Gillette are/were speculative at best. At the ex parte hearing the court ordered the election be suspended, and set a briefing schedule prior to a noticed hearing on the petition. A copy of the Order issued after the ex parte hearing is attached. I opposed the petition on the ground the FRRS had offered a reasonable alternative to turning the Membership list over to anyone, and that the Corporations Code did not provide any authority for the court to appoint an election inspector. As is customary, the court issued a tentative ruling prior to the hearing, a copy of which is attached. In its tentative ruling, the court stated that the petition constituted the claimants' written rejection of FRRS'S offer of a blind mailing. A tentative ruling is just that - tentative. In no way, shape or form is it an order, and no findings are made.

At the May 11 hearing, the court called counsel into chambers, and basically brow beat counsel for both sides into a Stipulation that a neutral election inspector be appointed to handle the election, and that FRRS turn over its Membership list to Mr. Gillette to provide to the neutral election inspector, and not for any other purpose - At least that's what I believed was the stipulation I entered into on behalf of FRRS. I feel safe in saying I believe the court also understood the Membership list would not be used for any other purpose. I was unaware at the time there were voting and non-voting membership. In sum, FRRS capitulated to the petitioners' demand to turn over the membership list with mailing and email addresses, and to the appointment of an election inspector, in order to ensure there were no accusations of election fraud after the election. No writ of mandate issued; no evidence of prior election "tinkering" was offered or taken by the court, and absolutely no findings were made by the court that there had been prior election rigging or fraud. It was basically agreed that, in order to assure fairness, the election would be overseen by Mr. Gillette and me.

After the hearing, Eugene Vicknair provided me with all membership lists as they existed on May 13, 2015, the day I was to provide the list to Mr.

Gillette. (Apparently, the Membership lists had changed slightly since February 12, which is the date on which the Membership list for purposes of the election is used.) At that time, I became aware there were voting and non-voting membership classes. I did not turn over the non-voting membership lists - For what purpose would the inspector need these? In any event, no order issued after the May 11 hearing, because I had objections to the proposed form of the order drafted by Mr. Gillette.

My disagreement with Mr. Gillette as to what had been stipulated to came to a head, and on June 23, Mr. Gillette returned to court for the sole purpose of clarifying the terms of the stipulation - he contended I agreed to turn over the non-voting membership lists. That was the sole reason for returning to court. When in court, we also addressed the issue of whether there would be candidate witnesses at the ballot counting, although that issue was technically not before the court. I urged that witnesses be allowed per FRRS'S Election policy, and Gillette wanted no one there other than the attorneys. Again, the Judge called counsel into chambers to attempt to work out a resolution. None could be reached, and brief argument was made in open court. In sum, the court ordered that all membership lists be turned over to Mr. Gillette, which has been done. The Judge was made aware of the fact that Mr. Gillette had used the membership lists for his own purposes, and that others had been mailing information to the members. Mr. Gillette stated that he had intended to use the list for his own purposes all along. In any event, it was too late to do anything about the mailings. I got the impression the Judge erroneously believed the incumbents all had access to the mailing lists, and were doing their own mailings. The Judge also ruled there would no witnesses when the ballots were counted, other than the attorneys. The only other Order that has issued from the court was entered on June 23, and is attached. It does not address the issue of turning over the non-voting membership lists, and this issue is now moot.

In regard to the election itself - I believed, erroneously perhaps, that it could be run and handled by me and Mr. Gillette, working in

coordination with the election inspector. There have definitely been glitches. In an effort to save money, I agreed that Mr. Gillette's office could prepare and/or assemble the materials to be provided to the election inspector. His office did this, using much of what Ed Wagner had already assembled. You are all aware of what was sent with the ballots. In regard to the screw-up with many Family and Family Life members not receiving two ballots, Mr. Gillette contends he tried to put together the list of those members who were to receive two ballots from the materials provided by Ed Wagner. He did not do it right. Despite the fact the Membership lists clearly denote Family and Family Life members, the right question were not asked, and this was not conveyed by other than possibly a phone conversation. Nevertheless, we're where we are today. I understand the Board will be visiting the issue of having the ballots re-sent, whether by

agreement between Mr. Gillette and me, or by court order. I have asked for information regarding improprieties in the ballot/election process so far, and am awaiting receipt thereof. With good cause, and the Boards approval, I will seek to have the election process begin anew; i.e., new ballots sent out, and a new date chosen for the ballot counting.

I urge the Board to publish (this letter) to the membership, so they might understand what took place in court, and what is being done to ensure a fair election.

David T. Ludington
FRRS Legal Counsel
July 23, 2015



David Elems ("Fritz") and Steve Habeck pause their conversation on 20 June, 2015 at the West end of the Diesel Shop. Preparations are well underway for the next day's festivities for Father's Day, including an Amtrak Special which would be watered/re-supplied on the museum grounds.

– Matt Elems Photo