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McCall Men's Golf Association
925 Fairway Drive
PO Box 417
McCall, Idaho 83638

RE: June 21, 2022 Election and \$45,000 donation for Golf Simulator

Dear McCall Men's Golf Association,

I have been advised that the Board of Directors (hereinafter "the Board") of your organization recently approved retaining me as corporate counsel. I do not think, at this point, the Board necessitates keeping an attorney fulltime on retainer, though I am happy to assist the Board with legal issues on a case-by-case basis. I do understand that the Board needs legal advice regarding two current issues by members and I hope to address these issues in this letter.

Issues

- 1) Was the election on held on June 21, 2022 valid?
- 2) Was the donation for the golf simulator to the McCall Donnelly School District proper?

Background

McCall Men's Golf Association is a 501(c)(3) organization with voting members, the purposes of which are delineated in Article II of the bylaws, duly passed on June 24, 2015. The purposes of the group are to stimulate interest in golf, promote and foster bonds embodied in the true spirit of golf, encourage performance with the USGA Rules of Golf, maintain a system of handicapping, govern club competitions, and provide financial assistance for golf related activities and the enhancement of the McCall Municipal Golf Course.

Each year, there is an annual meeting to elect new directors pursuant to Article IV, Section 2 of the Bylaws. Pursuant to Article IV, Section 3 of the Bylaws, nominees shall be those considered by the nominating committee or by a petition submitted two days before the meeting of at least ten members in good standing.

The analysis provided in this memorandum is based on the facts as relayed to my office by multiple attendees and confirmed by the June 21st meeting minutes. For your reference, the meeting minutes are copied below.

The Annual Members Meeting was held at 4:30 PM on 6/21/2022 at the McCall Golf Course Clubhouse, in accordance with the Board of Directors meeting held 5/1/2022 and notified to the membership on 6/7/2022 by email and bulletin board posting. Agenda items were to expand the Executive Board to 9 members and vote for the Directors for the coming year. The Nominating

Committee recommended Bill Code, Wayne Dolik, John Cady, Robert Lyons, J.J. Johnson, Dave Paulsen, Eric Bouchard, Jim Bodle, and Greg Cole for election to the Executive Board.

Immediately prior to the opening of the meeting, Secretary J.J. Johnson was handed a petition signed by 9 current members and 1 former member (Tor Driflot) requesting that Mark Martin, Ian Meuschke, and Todd McKenna be nominated and elected. Johnson stated that this is not acceptable per our bylaws (Article IV, Section 3), and that he would not be able to attest that an election would be held in accordance with these bylaws. He told President Bill Code that he would not participate in the meeting and left the premises.

President Bill Code called the meeting to order, and was immediately interrupted by member Bill Thompson, who addressed the crowd stating that the unaccepted petition was valid and urging the members to vote for a pre-arranged slate of directors. The crowd, many of whom had been at the bar all afternoon, became unruly and obnoxious. A motion to vote to expand the Executive Board to 9 members was shouted down. At that point President Bill Code left the premises.

The meeting disintegrated into a shouting match, with a number of members conducting an election with unattested proxies and with voters who had not been confirmed as current members. Many members stated that this election is not in compliance with our bylaws and also left the premises. Ultimately, the crowd voted for Mark Martin, Ian Meuschke, Todd McKenna, Wayne Dolik, Eric Bouchard, Jim Bodle, and Dave Paulsen. Nominating Committee recommendation Greg Cole withdrew, Nominating Committee recommendations John Cady and J.J. Johnson were left off their ballots.

The meeting ended when everyone left the premises.

Was the election on held on June 21 valid?

As discussed at our consultation on August 30, 2022, the short answer to the question at hand is most likely no. There appears to have been no validly held election on June 21, 2022, because there were too many deficiencies in the meeting to delineate who the new Board would be. The deficiencies in the election were numerous and cumulatively lead me to the conclusion that no valid election took place.

First and foremost, in direct violation of the by-laws, the nominees selected by the nominating committee were not all considered. Article IV, Section 3 of the Bylaws provides that the nominees shall, at a minimum, be those selected by the nominating committee. The nominating committee nominated nine people for seven open positions. However, two of the nominees were not formally considered or voted on. Without a vote on those who were properly nominated, there is no way to know what the composition of the Board would exactly be had all the required nominees been dutifully considered.

Second, the three candidates voted on who were *not* nominated by the nominating committee were not validly nominated, because the petition for their nomination was not signed by ten (10) members and also because the petition was not submitted at least two (2) days prior to the annual meeting, as required by Article IV, Section 3 of the bylaws. Because no other petitions were validly and timely submitted, the election should have been restricted to just those nominees selected by the nominating committee. This was not the case.

Third, there were non-members voting and unattested proxies, neither of which is permitted according to Article IV, Sections 2 and 3 of the Bylaws which explicitly require a vote of the *membership* by a *show of hands*.

Any of the above deficiencies alone could be sufficient to invalidate the election. When combined, this is not a close call. Since not all of the properly nominated nominees were voted upon, some improperly nominated candidates were improperly voted for, and the voting method was not consistent with the Bylaws, then the election cannot be said to have conformed to the provisions required under McCall Men's Golf Association's founding documents.

How can the organization move forward? As noted in the July 1, 2022 meeting minutes, the Bylaws require that directors serve for one year or until the successors have been validly elected. It appears that, according to the Bylaws, without a valid election, the current directors retain their seat, until they resign or a valid election takes place. It is worth to note that, had a valid vote taken place, the entire new seven person board would have been a subset of those eight validly nominated (assuming Greg Cole withdrew), which would have led to a largely similar result as without the election, seven of the eight nominees already previously being Board member and thus remaining on the Board. Indeed, the irregularities of the election had minimal practical effect on the actual outcome of the election, or lack thereof.

Was the donation to the school district authorized at the September 29th meeting proper?

Yes, the donation for the golf simulator was proper. The donation was approved by the Board unanimously. Please note, such gifts are not required but are to be made as an exercise of the Board's discretion. In an exercise of discretion, the Board must determine whether the donation is consistent with the Board's purpose and whether the donation is legal. Indeed, the donation was consistent with the purpose of the McCall Men's Golf Association, as provided in the bylaws. The Sixth Paragraph in Article II specifically provides that one of the purposes of the McCall Men's Golf Association is to provide financial assistance for golf related activities in the McCall area. This donation is for a golf simulator, which undoubtedly is a golf related activity and fosters the development of other golf related activities.

McCall Men's Golf Association is a 501(c)(3) organization and therefore must make sure that all gifts pass muster under IRS Inurement/Private Benefit Guidelines. Generally speaking, a section 501(c)(3) organization must not be operated for the benefit of private interests, but rather for public interests. Gifts from net earnings of a section 501(c)(3) organization may not inure to the benefit of a private individual. A private individual is a person having a personal and private interest in the activities of the organization.,

In this case, this gift appears to be made in compliance with IRS guidelines, because it is specifically made to benefit public school students and would therefore not run afoul of IRS prohibitions on private instruments.

Pursuant to our agreement, I have not been retained by the association to answer questions directly from members, though I understand you will share this analysis with them. Please advise if you need further legal guidance with respect to the above issues.

Sincerely,



Nicholas J. Erektion
Attorney at Law