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Mr. Wayne Praeder  
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OPINION LETTER

RE: UNITED STATES CHESS FEDERATION BOARD OF DIRECTORS

**Introduction**

This opinion addresses the question of which body constitutes the Board of Directors of the United States Chess Federation ("USCF"). USCF is an Illinois nonprofit corporation, recognized as a tax-exempt organization pursuant to 26 U.S.C. § 501 (c) (4). USCF's adopted parliamentary authority is *Robert's Rules of Order Newly Revised* (10th ed. 2000) ("RONR"). USCF Bylaws Art. IX, § 15.

**Questions Presented and Brief Responses**

(a) As a legal matter, which body is the Board of Directors of USCF, the Executive Board or the Board of Delegates? According to Illinois law, the Board of Delegates is the board of directors of USCF.

(b) Is the answer any different if the response is in the context of the information to be provided on the Internal Revenue Service ("IRS") annual Form 990 return for tax-exempt organizations? The Form 990 instructions do not provide any basis for treating the members of the Executive Board alone, as opposed to all members of the Board of Delegates, as directors for purposes of annual reporting.

**Information Provided**

USCF Articles of Incorporation

USCF Bylaws

USCF Form 990 filing for 2006 tax year (available from [www.guidestar.org](http://www.guidestar.org))

**Sources Consulted**

Illinois General Not-for-Profit Incorporation Act of 1986, 805 Ill. Comp. Stat. §§ 105/101.01 *et seq* ("NFPI Act")

*Robert's Rules of Order Newly Revised* (10th ed. 2000) ("RONR")

IRS Form 990 & instructions (for 2007 tax year)

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\* Admitted to practice in Massachusetts, New York, and the District of Columbia.

IRS Form 990 (redesigned for the 2008 tax year, final form released December 20, 2007)

IRS Instructions for Form 990 (redesigned for the 2008 tax year, draft released June 14, 2007)

### **Disclaimers**

The opinion below is based upon the information provided. If additional information is subsequently provided that is at variance with the previously submitted information, this opinion may be revised accordingly.

The author of this opinion is a professional parliamentarian and a member in good standing of the bars of the Commonwealth of Massachusetts, the State of New York, and the District of Columbia. This opinion is based upon the author's consideration of the issues in light of his review of applicable statutes and case law and his experience and training as a professional parliamentarian, to the best of his ability based upon diligent review of available materials.

### **Summary of Facts**

USCF was formally incorporated on December 27, 1939, in Illinois pursuant to the April 18, 1872, Statute Concerning Corporations as the United States of America Chess Federation. The organization has never officially changed its name, but is typically shortened to USCF, and is commonly referred to as US Chess. Bylaws Art. 1. Pursuant to 805 Ill. Comp. Stat. § 105/101.70 (3) all not-for-profit corporations previously incorporated under the April 18, 1872, Statute Concerning Corporations are governed by the Illinois General Not-for-Profit Incorporation Act of 1986, 805 Ill. Comp. Stat. §§ 105/101.01 *et seq* ("NFPI Act").<sup>1</sup>

The Articles of Incorporation state in relevant part, "The management of the aforesaid United States Chess Federation shall be vested in a board of fourteen (14) Directors for the first year of the corporate existence and thereafter in such number of directors as may from time to time be fixed by the By-Laws." There are no other relevant provisions in the Articles of Incorporation.

Relevant provisions of the Bylaws read as follows: "The Board of Delegates is responsible for the management of USCF. It shall formulate general policy, adopt the annual budget, and write the Bylaws." Bylaws Art. V, § 1. "The executive board shall manage the affairs of the Federation, including employment and other contracts, between meetings of the Board of Delegates and shall perform other duties as specified in these Bylaws. The Executive Board shall be subject to the authority of the Board of Delegates, and none of its acts shall conflict with actions taken by the Board of Delegates." Bylaws Art. VI, § 2. Nowhere in the Bylaws are the members of the Executive Board referred to as "directors." When referred to generically in the bylaws, they are called "executive board members." See, e.g., Bylaws Art. V, §§ 6 (B), 8, Art. VI, § 1, 3, 5, 7.

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<sup>1</sup> Illinois calls such corporations "not-for-profit," but the common term used in most other jurisdictions is "nonprofit." For all practical purposes, there is no distinction between the terms. This opinion uses the terms "not-for-profit" and "nonprofit" interchangeably.

RONR states in relevant part:

Except in the simplest and smallest local societies, or those holding very frequent meetings, is generally found advisable to provide in the bylaws for a board to be empowered to act for the society when necessary between its regular meetings, and in some cases to have complete control over certain phases of the society's business. Such a board is usually known as the *executive board*, or—in organizations where there is an executive committee within and subordinate to the board . . . —the *board of directors*, *board of managers*, or *board of trustees*. Any such body is referred to in this book as an executive board, however—regardless of whether there is an executive committee—in cases where the distinction is immaterial.

RONR pp. 464–65 (emphasis in original).

As commonly understood in parliamentary law and as used in this book, the word *convention* refers to an assembly of *delegates* (other than a permanently constituted public lawmaking body), who are usually chosen specially for each session as representatives of the constituent units or subdivisions within a larger group of people, to sit as a single deliberative body acting in the name of the entire group. . . . Other terms by which such a convention may be described in some organizations include *congress*, *conference*, *convocation*, *general assembly*, *house of delegates*, and *house of representatives*. . . . In some societies, also *house of delegates* or *house of representatives* may describe a body of delegates who, instead of being elected only for a convention session, are elected for a fixed term during which they hold sessions from time to time as the bylaws may prescribe.

RONR pp. 581–82 (emphasis added).

Where a particular type of organization is subject to local, state, or national law containing provisions relating to its procedure—as for certain procedures . . . in an incorporated association— . . . such statutes . . . supersede all rules of the organization which may conflict with them, even if no mention is made of it in the bylaws.

RONR p. 562 n.\*.

Relevant provisions of the NFPI Act state: “Board of directors’ means the group of persons vested with the management of the affairs of the corporation *irrespective of the name by which such group is designated*.” 805 Ill. Comp. Stat. § 105/101.80 (d) (emphasis added). “Each corporation shall have a board of directors, and except as provided in articles of incorporation, the affairs of the corporation shall be managed by or under the direction of the board of directors.” 805 Ill. Comp. Stat. § 105/108.05 (a). In this case, there are no contrary provisions in the articles of incorporation, so the body vested with management of the corporation is the board of directors.

The IRS Form 990 redesign draft glossary (June 14, 2007), includes the following definitions:

**directors or trustees** Persons who are members of the organization's *governing body*, regardless of whether they have voting power . . . .

**governing body** Group of persons having ultimate authority over and responsibility for the governance of the organization under the organization's governing documents or applicable state law (e.g. the board of directors of a corporation, the co-trustees of a trust) in a capacity other than as owners, shareholders, or members of the organization.

## Opinion

### *Board of Directors under Illinois Law*

If the only relevant consideration were RONR, the USCF Executive Board would be the equivalent of the board of directors, which RONR considers simply an alternative term for "executive board." RONR pp. 464–65. The Board of Delegates would be considered a "convention" or "house of delegates." RONR pp. 581–82.

Under RONR, however, state laws applicable to incorporated organizations supersede the organization's bylaws and any adopted parliamentary authority. RONR p. 562 n.\*. The NFPI Act makes it clear that the body that exercises ultimate management authority over the organization is deemed to be the board of directors, whatever that body may be called in internal governing documents. 805 Ill. Comp. Stat. § 105/101.80 (d). USCF's bylaws state that the Board of Delegates has ultimate management authority over the organization and can instruct and countermand the Executive Board. Bylaws Art. V, § 1. The Executive Board has only day-to-day management, subject to the authority of the Board of Delegates. Bylaws Art. VI, § 2.

The Articles of Incorporation, a directive of which would supersede an applicable bylaw provision, RONR p. 11, are not to the contrary, as they state that future directors shall be determined in accordance with the bylaws. In light of the bylaws' silence as to the definition of future directors, the bylaws are to be interpreted in conjunction with the NFPI Act, which defines the board of directors as those vested with management authority, as discussed above. Therefore, under the definition of "board of directors" in the NFPI Act, the Board of Delegates is the board of directors of USCF.

A number of additional bylaws provisions support this conclusion. For example, the Bylaws never refer to the members of the Executive Board as "directors." Instead, the Bylaws typically call them "members of the executive board." Bylaws Art. V, §§ 6 (B), 8, Art. VI, § 1, 3, 5, 7.

In addition, Bylaws Art. IX, § 12, entitled "Indemnification of Directors and Officers," indicates that USCF will indemnify members of the Board of Delegates, but does not mention the Executive Board (members of which would be included in the indemnification of officers, Bylaws Art. VI, § 1). Subsequent references in Section 12 to "directors" imply that members of the Board of Delegates are the directors, as that is the only applicable antecedent. The following section, ratification of voidable acts, mentions "adverse interest of any director," but there is no antecedent

in that section. The closest relevant antecedent would be the reference to the Board of Delegates in Section 12. Therefore, nothing in the Bylaws appears to contradict the direct language of Article V, § 1, vesting ultimate management authority in the Board of Delegates, make the Board of Delegates the board of directors pursuant to the NFPI Act.

*Board of Directors for Reporting Purposes for IRS Form 990*

The current IRS Form 990, applicable through the 2007 tax year, does not define the term “director” either in the form itself or the accompanying instruction. Part V-A of the current Form 990 requests certain information about directors, officers, and “key employees.” The instructions do define key employee. The USCF Bylaws do not specifically define the term “director,” but clearly do not apply the term only to members of the Executive Board. As the current IRS Form 990 and accompanying instructions provide no guidance as to the meaning of the term “director,” Illinois law would supply the meaning of the term. As discussed above, the directors would be the members of the board of directors, which means the members of the USCF Board of Delegates.

This conclusion is supported by the draft glossary for the redesigned IRS Form 990, applicable to the 2008 tax year and following years. The IRS released the 2008 Form 990 on December 20, 2007, and it requests information about directors in Parts VI (Governance, Management, and Disclosure) and VII (Compensation of Officers, Directors, Trustees, etc.). The instructions for the redesigned Form 990 have not yet been released. The draft glossary, however, defines “directors” as members of the governing body, which the glossary defines as the body with ultimate governing authority, which in USCF is the Board of Delegates. This provides additional corroboration that the USCF directors, for purposes of reporting on the annual Form 990 tax return, are the members of the Board of Delegates.

**Conclusion**

Because Illinois statute clearly provides that the body with management authority over the corporation is the board of directors, the Board of Delegates constitutes the board of directors of USCF.

Yours truly,

A handwritten signature in black ink that reads "Michael E. Malamut". The signature is written in a cursive style with a large, prominent initial "M".

Michael E. Malamut