



American Legion Baseball
Tar Heel Boys State
High School Oratorical
Veterans' Service

THE AMERICAN LEGION
DEPARTMENT OF NORTH CAROLINA
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Scouting
Jr. ROTC
Student Trooper Program
Nursing Scholarships

The COVID-19 pandemic is raging as I write this Order. Our hearts are hurting, and we have no idea when things might return to normal. But I find comfort in what I see in emails and social media groups with the offers of assistance and collaboration for teaching, helping each other, Buddy Checks, research and teleconferencing. Let there be no doubt. This Legion community is rallying to cooperate in daunting times.

We are currently under Executive Orders including the latest EO 121. See attached. Also, many cities and counties have adopted “Stay Home Orders” and similar orders which limit citizens meeting and require social distancing since we are under a pandemic called “Covid-19.”

The Governor of our state issued a new Executive Order this past Friday. Executive Order 121 is a thirty day “Stay Home order” for all citizens of North Carolina that is not an employee of an Essential Business Rule. It is my opinion our nonprofit organization does not meet the requirements of Section 2 subparagraph (9). The new Executive Order 121 is effective **Monday, March 30 at 5 pm for thirty days**. Executive Order 121 requires a Stay at Home Order. A copy of EO 121 is attached to this Legal Opinion and Order. Said EO 121 requires no mass meeting of more than ten people during the new time frame.

Therefore, this Legal Opinion as the Department Judge Advocate is pursuant to my Authority under The American Legion, department North Carolina Constitution and Bylaws, By-Laws Article 11 entitled Duties of Officers ; Section 5: Department Judge Advocate : “The Department Judge Advocate shall advise the department officers and the department executive committee on all legal matters, including the constitution and interpretation of the department constitution and bylaws, and shall perform SUCH other duties as are usually incident to the office.”

Therefore, below is my Order as to the requirements of our constitution for annual district meetings for the nomination of a District Commander; a District Vice-Commander, and one Delegate and one Alternate Delegate for the National Convention. This Order is based upon a complete review of our Department’s Article of Incorporation, it’s Constitution and Bylaws, and the Statues of North Carolina specifically Chapter 55A North Carolina Nonprofit Corporation Act, the cases and dictum to said Act and along with the other statues so required by our law.

PREFACE:

The American Legion Department of North Carolina is a constituent part of The American Legion, a Federal corporation organized by Act of Congress. The American Legion Department of North Carolina is a Nonprofit Corporation and duly organized as a corporation of North Carolina with its own Articles of Incorporation filed with its Secretary of State of North Carolina pursuant to NCGS 55A. The North Carolina Nonprofit Corporation Act, and its Board of Directors, the Department Executive Committee (DEC) has all Executive, Legislative, and Judicial powers between department conventions. See Constitution of the department, Article IV, General Organization, Section 4. In addition, the department of North Carolina “embraces its jurisdiction extent to the whole of the State of North Carolina.”

The American Legion Department North Carolina is organized into posts. The department is divided into divisions, districts and posts, so organize and officer as provided. The department is divided into divisions, districts and post, organize and officers as provided.

There are no requirements of a division meeting under our constitution and bylaws. However, Article VII of our constitution, has certain requirements for each district in the department.

Article VII; Section 1. The DEPARTMENT shall be divided into districts composed of posts of The American Legion as designated By DEPARTMENT executive committee, (DEC) and the department shall be divided into districts composed of posts of The American Legion as designated by the department executive committee.

Section 2 of said Article states: There shall be a district commander and a district vice commander, and each nominated at the district meeting provided in section 8 of this Article, and they shall be elected and installed at the following department convention.

Section 4 of said Article states: “.... that at least 30 days’ notice of such meeting shall be given in writing to all Posts within their respective Divisions or Districts. That is for the annual district meeting.

Section 6 of said Article states: District meetings shall be composed of delegates and alternates delegates from each charter post in the district, each of which shall be entitled to two delegates and two alternate delegates for the first 50 members or less etc., and Membership of the posts to be taken from the membership report last issued by the department headquarters.

Section 7 of said Article states: Each delegate shall be entitled to one vote. The vote of any delegate absent and not represented by an alternate delegate Shall be cast by the majority of the delegates present from the post

Section 8 of said Articles states: In addition to any other meeting that may be held in the districts of the department, there shall be held in each district a district meeting no

more than (60) nor less than (20) days prior to the date of the Department convention, at a time and place to be designated by the district commander, under the same regulations prescribed for other meetings as set forth in sections four, five, six and seven of this article.

Section 9 of said Articles states: At such district meeting to be held annually, there shall be nomination for a district commander, a district vice commander, and one delegate and one alternate delegate to the national convention. “and it further states ... In the event that a district commander, district vice commander, national convention Delegate or Alternate Delegate, to which a district may be entitled, shall not be nominated by a district meeting as above provided, then the district commander or the district vice commander or national convention Delegate or Alternate Delegate shall be elected at the Department Convention from posts in each district.”

Section 10 of said-Article states: The District commander shall within five days after adjournment of such meeting, certify y and forward to the Department Adjutant a certified copy of the name and addresses of the district commander, district vice commander, and delegate and alternate delegate to the national convention nominated at such district meeting.

And finally, as to the annual District meeting:

Section 11 of said Article states: A quorum shall exist when 30% of the posts within a district are represented at a district meeting providing notice of the meeting was circulated per Article VII, Section 4.

FACTS:

Since the American Legion, Department of North Carolina, Inc is a nonprofit corporation organized under North Carolina nonprofit corporation act; said Act controls our operations and provides us with an understanding how we can continue to operate our organization during this time frame of Executive Orders limiting meetings, except for Essential Operations, and comply with the needs to have our district elections. Since our constitution requires the annual district meetings to be in the range of 60 to 20 days before our annual convention , which has a date of **June 11 through June 14, 2020**, the first date of any district meeting would be on **Saturday April 11, 2020** (a date that is under the current Executive Order 121 which limits mass meeting of 10 or more people and) and the last date we can have a district meeting is **May 21, 2020**. So, the department has 6 weekends and five Friday's to have meetings of the annual district's meetings, plus the days in between those dates of the meeting limitation (**April 11 through May 21**). Of course, with the Governor's new Executive Order 121 which has a “Stay Home Order” for thirty days; then we could not have any meetings until the last week of April, if the new Executive Order 121 is not extended. This new Executive Order 121 has such magnitude! As an organization, it only allows us at the most three weekends and maybe 23 days to have 25 District Meetings for the nomination of said officers and delegates by traditional means.

The statutes are very clear.

District meetings of this department may be by the following means.

Under North Carolina law a nonprofit corporation may allow members or delegates to vote by proxy, written ballot, by written consent, by electronic means, which includes virtual meetings. Our constitution and bylaws do not prohibit any of the actions above.

Therefore, planning district meetings is less complicated compared to a post meeting for elections or our convention.

NCGS 55A -1-41 Notice of meetings.

Subsection (b) of said section states: Notice May be communicated in person; by electronics means; or by mail or private carrier. If these forms of personal notice are impractical as to one or more persons, notice may be communicated to such persons by publishing the notice in a newspaper, or by radio, television, or other form of public broadcast communication, in the county where the corporation has its principal place of business in the state, or if it has no principal place of business in the state, the county where it has its registered office.

It is important to note, that any written notice shall be sent by first class postage mail. Then the notice requirement period is 5 days.

I realized that our constitution requires 30 days' notice for the district meetings, unless the board of directors (the DEC) adopts " Emergency By-Laws " as set forth under 55A-2-07 and the powers outlined to the Board "DEC" under NCGS A-3-03.

Since these elections at the district level is a corporate requirement of this non-profit, The American Legion, Department of North Carolina could, if needed, adopt new time frames for these elections. Those aspect and powers may be needed for our convention; depending on what happens the next several months, and with the Governor's new Executive Order 121 with a Stay Home Order through **April 29th**, we (the DEC) may need to have and exercise the use of an emergency electronic meeting and discuss Emergency by-laws for this concern and aspect.

It should also be noted; under NCGS 55 A -1-41 that in the case of notice given in the form of an electronic record sent by electronic means, the time of the RECEIPT SHALL be determined as provided in NCGS 66-325 which (e) states: An Electronic record is received under subsection (b) per this section even if no individual is aware of its receipt. This is different for a consumer recipient. Since our situation is not a consumer action, the later part of the statute does not apply to a list for member (post) notice. "Plus section (b) of this section states, Unless otherwise agreed between a sender and recipient— an electronic record is received when: (1) It enters an information processing system that the recipient has designated or use for the purpose of receiving electronic records or information of the type sent; and from which the recipient is able to retrieve the electronic record; and (2) it is a form capable of being processed by that system. Therefore, the department meets those requirements for an electronic notice to posts!

Also under the Notice Proceeds of 55 A -41 (I) we can also, if desired, use this section since , Written Notice need not be provided in a separate document and may be included as part of a newsletter, magazine, or other publications regularly sent to members (Post) if conspicuously identified as a notice.

Therefore, we can use our electronic newspaper as notice to the post of the electronic meetings of any annual district meeting or the electronic e-mails of the post and or its officers as the notice for said meetings.

NCGS 55A-7-04 Action by written consent.

Under our law for nonprofit corporation actions required or permitted under the statute can be taken at a meeting of members, including delegates, without a meeting if the action is taken by all members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, sign before or after such action but all members entitled to vote thereon, and delivered to the corporation headquarters for inclusion in the minutes are filed with the corporate records.

For this to occur, we would need to know who the delegates are for each post, provide ballots to each delegate for their signatures, provide the written 30 day notice as required under our constitution; unless each delegate waives such notice and less than ten people could attend if it is an Essential industry, which a meeting of such type is not.

This remedy of NCGS 55A-7-04 has more issue then is practical for us to complete.

NCGS 55A- 7-08 Action by written Ballot

Under our law for nonprofit corporation actions requires or permitted, may be taken without a meeting if the corporation delivers a written ballot to every member/delegate entitled to vote. Ballots may be provided by electronic means, including electronic mail. Again, there are a lot of issues here also, such as to the nomination status, the ballot of candidates how you obtain those names, the notice requirements and many more logistical concerns. Therefore, this is not a valid option either, since we have no idea who the candidates are.

NCGS 55 A- 7 -24. Proxies

North Carolina law allows proxies for non-profits. There are specific rules, such as, the appointment of a proxy or proxies, the form of the member non-profit proxy, requirement of the execution and delivery to the adjutant (the corporate secretary of our organization) and along with more requirements which are not logical or realistic to accomplish for an annual district meeting during this time period.

Therefore, based again upon the facts, we do not have a means of nomination except at the meeting, this would only work if a delegate of a post for a district meeting provides a Carte Blanche authority's on all matters to a proxy. This could work to set up a quorum for a meeting by electronic means.

Under the proxy aspect, and under the NC Emergency By-laws statute, we as the DEC could adopt changes as to the time frame of the notice, the dates requirements for the meetings and other remedies. But again, we would need Carte Blanche Authority from each Post to vote each proxy for each district meeting.

The Best Solution

NCGS 55 A- 1-40 provides certain means to the Non-Profit business:

9(a) “Effective date of notice” is defined in NCGS 55 A-1-41

9(b) “Electronic” has the same meaning as in NCGS 66-31.2

9(c) Electronic signature” is the same meaning as in NCGS 66-312.

Therefore, the simplest solution is to have an electronic meeting of each district. The department has a Go To Meeting application and the capabilities of telephone conferencing. Under North Carolina law in respect to electronic meetings, each participant must be able to hear the other participants during the meeting. Therefore, emails will not work for electronic meetings. However, the Go To Meeting software application (which allows up to 250 participants with more users then we need for an electronic district meeting) or we can just use our conference telephone system; is the best way to have our annual district meetings in a timely manner.

Therefore, the delegates can be elected by a phone conference of each post PEC members, and those post delegates can then attend the electronic meeting of the annual district meeting!

We have time to send out electronic notices; we have ample time to set up the different 25 annual district meetings in the times frame using weekends or even weekdays since on **Monday March 30, 2020** we will be under EO Order 121 to stay home until April 29.

We just need to coordinate with the district commanders (date and times) with instructions and notice to each post as to their individual electronic district meetings. We will need to advise the posts of each district to have their PEC elect their delegates by a phone conference/or a polling by the Commander of his PEC members for their District meeting. Certain department officers shall attend all of these electronic Annual District meetings (the Department Commander, the Department Adjutant, the Executive Secretary, and the Judge Advocate.)

I will prepare a standard electronic notice required for each post of each district. The department needs to contact each District Commander to set dates, time and advised them that their annual district meetings this year will be an electronic meeting either by Go To Meeting and/or option to call in by phone conference.

This is the best way under the law of NC and the best option to handle the 25 annual district meetings which the department is required to have between **April 11 through May 21**.

Time is of the essence.

This is my Order to meet the requirements of our Articles of Incorporation, our Constitution and By -Laws, our state laws and the newest Executive Order 121 issued by our Governor which takes effect Monday March 30, 2020.

A copy of the Governor's Executive Order 121 is attached.

This the 27th Day of March, 2020

Gaither M Keener, Jr

Judge Advocate