

Email to Board of Directors

Date: June 20, 2017

To: The Southern Marin Lacrosse Club Board of Directors: Jon Porter, President; John Bell, Treasurer; Shannon Niles, Secretary; Chris Danne; & Mary Beth Todd

From: The Southern Marin Lacrosse Club Past-President Harris Holzberg

Subject: Re: Recommendations regarding the management of the Southern Marin Lacrosse Club

Beginning over one year ago, at the request of Jon Porter and John Bell, the Past-Presidents Advisory Council twice met to discuss certain matters regarding SMLC.

The following comments are mine alone.

I have reviewed the SMLC Tax Returns for 2014 & 2015, the SMLC Articles of Incorporation and By-Laws and the minutes of the meetings of the SMLC Board of Directors, from 1/1/2015 – 12/31/2016. My repeated requests for the minutes from 1/1/2017 to the present have not been forthcoming.

The following observations, suggestions and recommendations are organized into five categories:

- The first is ministerial in nature, requiring the correction of inconsistencies in the paperwork, the website, document disclosure, the announcement and conduct of open board meetings and communication with the membership.
- The second regards the clarification of in-season requirements regarding membership participation from out-of-season voluntary program participation.
- The third is the separation of the office of the club President from Executive Director due to financial conflicts of interest.
- The fourth regards proper procedures to determine executive compensation.
- The fifth is the need for proactive succession planning and to recruit and train a leadership ladder.

Category One: The SMLC Governing Documents and meetings of the SMLC Board of Directors:

In both the 2014 and 2015 SMLC Federal Tax Returns, Schedule O, states: "The Governing documents, Conflict of Interest Policy, and Whistleblower policies are posted on the website (www.smlax.com).” Upon review of the current SMLC website, the club’s Articles of Incorporation and By-Laws have recently been added. However, the Agent for Service of Process, listed in the Articles of Incorporation is no longer correct and

needs to be quickly corrected. The other above listed documents, the Conflict of Interest Policy, and the Whistleblower Policies, are not available on the website. This is in violation of SMLC's own stated policies and needs to be quickly corrected.

The Bylaws, Article III, Section 7, specify that "a meeting of the Board of Directors shall be held at least once a month, except for the months of July and August." In recent months, upon information and belief, meetings of the Board of Directors have not been held. In addition, there is no listing of upcoming meetings as to date, time or location. Board meeting information is not available on the SMLC website or through any communication generally available to the membership.

In both the 2014 and 2015 SMLC Federal Tax Returns, Schedule O, states: "the monthly Board meetings ... are open to the public." It is imperative that Board meetings be disclosed, in a timely manner, prior to their taking place, that they are open to the "public," and that interested parties are encouraged to attend. Naturally, the board may schedule private executive sessions. Nonetheless, stated club policy is to hold monthly open meetings of the SMLC Board of Directors. SMLC is not a private for profit company but rather a public charitable trust and its business must be conducted in an open and transparent manner.

The SMLC Tax Return should list all of the club officers and directors. In addition, the open conduct of SMLC business at Board meetings are an essential venue for parents and others to ask questions, bring matters to the attention of the Board, to encourage parent participation to take on needed responsibilities, and to recruit future leaders.

As stated above, requested copies of the Board minutes for 2017 have not been provided. Upon receipt of this letter, please provide electronic copies of the duly approved contemporaneous minutes, from 1/1/2017 – present, documenting the meetings of the SMLC Board of Directors. Please email them to me at coachharris1@comcst.net.

Please also send to me a complete electronic copy of the 2016 SMLC 990 Tax Return at the aforementioned address. If it has not yet been filed then please send it to me concurrent with its filing.

Based on review and experience, one of my strongest concerns is that should SMLC be subject to a regulatory audit, the club will not perform in a satisfactory manner. In part, these recommendations are offered to correct this matter of regulatory requirements.

Category Two: Separation of in-season requirements from out-of-season voluntary program participation:

It has long been SMLC policy regarding youth sports, that families need to be given the flexibility to make decisions that are best for themselves and that within young families there is often a variety and interests and conflicts. This is in recognition of the fact that raising young children is difficult enough without SMLC adding to the burden.

With this in mind, during the regular season, especially in the A divisions, families are expected to be respectful of the needs of the team. However, during the off season, participation in SMLC sponsored and related activities have always been strictly voluntary. It needs to be made clear to the membership that out-of-season programs are there for the choosing. Participants should not expect any favor in-season for out-of-season participation nor should they fear any retribution in-season for declining to participate in out-of-season programs.

Several parents have expressed dissatisfaction about the way out-of-season program participation is presented, and sometimes required. This is especially true regarding travel teams and the free choice of tournament participation. For example, requiring players to play for a SMLC travel team, if they attend the summer Tahoe tournament, rather than any other travel team, so that “players do not play against each other,” is not in keeping with the policy of out-of-season free choice. Requiring players to participate in this out-of-season tournament places an undue burden on families who wish to do otherwise or who have other commitments.

During the in-season, SMLC has a monopoly on organized play and this is as it should be. During the out-of-season, SMLC competes with other vendors for players. When SMLC requires its players to choose SMLC out-of-season programs, to the exclusion of for-profit vendors, it is an abuse of its monopoly power and thereby inappropriate.

The following is from a February 16, 2017 email to the 12A team and an example of SMLC’s abuse of its monopoly power:

“Wolfpack is participating in Grapevine/Tahoe/Bend summer tournaments... Please know that if you play for the Wolfpack and will be at these tournaments, we ask that you play only [for] the Wolfpack.”

Quite simply, during the out-of-season, if someone wishes to play for another program then they should be free to do so. To insist on playing “only” for the Wolfpack during the out-of-season is an abuse of monopoly power.

Club wide communications need to make it abundantly clear to the families that they may choose competing out-of-season programs without fear or favor.

Category three: Separation of club President from Executive Director due to financial conflicts of interest.

Insisting that families, who wish to play at Tahoe, purchase a roster spot on a SMLC Tahoe travel team, when the SMLC President will personally benefit financially, is a classic example of a financial conflict of interest.

Another financial conflict of interest was pointed out regarding the Thanksgiving Turkey Shoot. Regarding last year’s Turkey Shoot, a parent complained that one team went with 20 players for the 7v7 format, severely limiting playing time, and that two teams would have been much better. The conflict of interest exists because the president financially benefited from the lower payment of fees for one team rather than two.

Simply said, the person who stands to gain most financially from policy decisions should not be the President. If the President is paid a fixed amount for the year, whether a \$2,500 honorarium or something as substantial as \$30,000, policy decisions will not change those amounts and so no financial conflict of interest exists. However, if compensation is variable, as currently exists, then policy decisions will potentially effect remuneration and a financial conflict of interest exists.

All of this is to say that if SMLC is going to pay the Executive Director six-figures, as took place in 2015, then financial conflicts of interest must be eliminated to the extent possible. This begins with the clear communication of club policy to the membership and by separating the jobs of President and Executive Director.

The separation of in-season duties from out-of-season duties, in and of itself, does not satisfy the concern regarding financial conflicts of interest. Rather the duties of the President and the Executive Director both in-season and out-of-season needs to be performed by separate individuals if the Executive Director is to receive substantial remuneration for services rendered.

Category Four: Compensation of Officers and Directors

Over and above individual financial conflicts of interest, consider the following:

“This corporation is a nonprofit benefit corporation and is not organized for the private gain of any person.” (Articles of Incorporation of SMLC Article II, A)

Following is from the IRS: *Exemption Requirements – Section 501(c)(3) Organizations*:

“Organizations described in section 501(c) (3) are commonly referred to as *charitable organizations*.”

“To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual.”

“The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual.”

“If the organization engages in an excess benefit transaction with a person having substantial influence over the organization, an excise tax may be imposed on the person *and any organization managers agreeing to the transaction*.” (Emphasis added.)

“Except as provided in Section 3 below the Board of Directors shall not approve, or permit the corporation to engage in, any self-dealing transaction. A self-dealing

transaction is a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest.” (Bylaws of SMLC Article VI, Section 2)

Regarding compensation protocol:

“This corporation may engage in a self-dealing transaction if the transaction is approved by a court or the Attorney General. This corporation may engage in a self-dealing transaction if the Board determines, before the transaction, that (a) this corporation is entering into the transaction for its own benefit; (b) the transaction is fair and reasonable to this corporation at the time; and (c) after reasonable investigation, the Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances. Such determinations must be made by the Board in good faith, with knowledge of the material facts concerning the transaction and the director’s interest in the transaction, and by a vote of the majority of the directors then in office, without counting the vote of the interested director or directors.” (Bylaws of SMLC Article VI, Section 3)

Note: The SMLC 2015 tax return states that the process for determining the compensation for the organizations “CEO, Executive Director, or top management official” or “other officers or key employees” did not “include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision.” (2015 Form 990, Part VI, Section B 15 a&b)

This is not to say that people may not be compensated:

“The property of this corporation is irrevocably dedicated to charitable purposes. No part of the net income or assets of this corporation shall ever inure to the benefit of any of its directors or officers, or to any other private person, except that this corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its charitable purposes.” (Articles of Incorporation of SMLC Article V, B)

“The Board of Directors may authorize, by resolution, the payment to a director of reasonable compensation for services as a director.” (Bylaws of SMLC Article III, Section 16)

As stated above, the SMLC By-Laws provide that the “corporation shall be authorized and empowered to pay reasonable compensation for services rendered.”

Nonetheless, above is a clearly defined protocol for the determination of compensation for officers and directors in non-profit charitable trusts. I am not referring to honorariums nor to nominal payments to coaches, but to substantial payments for services rendered.

The minutes of the Board for 2015 and 2016 are clear that the substantial compensations paid to certain individuals were not authorized by the SMLC Board of

Directors. Why was the compensation not authorized? This is more than a matter of the failure to follow proper procedures. It is also the fact that large amounts of compensation were plainly not authorized. Furthermore, in at least one instance the unauthorized amounts paid were, according to my research, clearly excessive.

Category Five: The necessity for proactive succession planning and the need to recruit and train a leadership ladder

SMLC has a long history of attracting, recruiting, and training leaders to fulfill the needs of the club. Some of the parents are compensated while others are not. Sometimes the compensation is modest while other times it is substantial.

Of the five categories, this is arguably the most important. Without competent leadership, and an adequate bench of up and coming leaders, SMLC cannot maintain its quality and its tradition of excellence both on and off the field.

In the past, when SMLC has not lived up to expectations it was due to a break in the development and maintenance of its leadership ladder. Consequently, it is imperative that the SMLC Board identify, recruit, train, and build its future leadership. Potential leaders need to be made aware that SMLC has a number of jobs and an ongoing need for people to step up and to help SMLC provide its programs for the current generation and to build for the future.

The components of building a leadership ladder include: encouragement of interested parents to begin attending the monthly regularly scheduled Board meetings, a listing of the types of jobs and descriptions, and an ongoing and proactive recruiting program. Current SMLC leaders need to inspire people to get involved, to communicate the need for volunteers in order for our voluntary association to perform its duties, and that the benefits of participation are worthy of our best talents. After all, we are talking about the growth and development of our children.

Ever since SMLC began, and as long as the recruiting effort has been actively pursued, the quality of its leaders has been noteworthy. Breaks have occurred when the recruitment process has not been maintained. Sometimes we have been unlucky and the club has suffered setbacks in the quality of its leadership. This is all the more reason to set a goal of recruiting a deep and diverse bench of strong leaders.

In prior communications, I have been made aware of the fact that under prior "leadership," multiple years passed without the filing of tax returns and that this led to SMLC losing its 501(c) (3) tax status. This is very disturbing and all the more reason of the need and importance for current leadership to implement and build a robust leadership ladder.

One of the most important duties of any president and board is to recruit its competent replacement so that, when the time comes, future management preserves, protects, and defends the quality of the organization. Another important feature of a deep ladder, attendance at open meetings, and robust participation is to break up the various tasks into manageable components. In addition to the formal offices of President, Secretary

and Treasurer, there are the duties of a registrar, webmaster, uniforms, fields, scheduling, spirit wear, equipment, perhaps a liaison to the NCJLA, etc.

New club leaders can be recruited to get involved gently by simply attending the Board meetings. From there, a new recruit can begin to climb the ladder. If SMLC is going to maintain its quality and to build for the future it must recruit and train a continuous supply of qualified leaders. This has always been a problem, how to maintain quality leadership when every few years there is a turnover of parents.

Part of the solution might be to form a permanent advisory council, made up of past officers, with the task of overseeing a skilled management team who is charged with the responsibility to maintain the level of program quality and to preserve the traditions of the student-athlete and the goals of the Positive Coaching Alliance.

To summarize:

One: SMLC policy requires that Board meetings are open to all and that everyone is encouraged to attend. The Board meeting dates, times, and locations need to be posted on the www.smlax.com website. In addition, there are numerous ministerial matters that need correction.

Two: It needs to be made abundantly clear that in-season and out-of-season programs are separate and distinct. Families are free to choose to participate or not to participate in out-of-season programs without fear or favor.

Three: The positions of President and Executive Director need to be separated in order to avoid financial conflicts of interest.

Four: Proper compensation procedures need to be implemented and compensation already paid needs to be reconsidered in light of those procedures.

Five: The club needs to recruit and build a leadership ladder. It is imperative that parents' step-up and participate, there needs to be robust outreach to inform parents that there are a number of different ways to participate, and to encourage them to attend Board meetings as an easy way find out more and to get involved.

It is with all sincerity and due deference that I offer the above.

Please let me know the earliest time at which we can meet and discuss these matters.

Yours truly,

/s/
Harris Holzberg