

ABATE of New York, Inc.  
State Board Pre-Meeting  
Binghamton, New York  
August 15, 2009

Meeting was called to order at 12:05pm by Roadkill. All stood and gave the Pledge of Allegiance

Roll call of Officers present was taken: Pres., Vice Pres., Treasurer, Secretary, Legislative Coord., Sgt. @ Arms, Public Relations Coord., Region A Coord., Region C Coord., Region D Coord., and Region E Coord.

Beth at this time called for a point of order:

Beth spoke on the fact that some of the officers (5) of them had contacted the ABATE Corporate Attorney, Michael de Freitas with questions concerning the impeachment of Tim (aka: Roadkill) Werder. At this time Tim wanted to know why we had contacted Mr. de Freitas. Beth stated that we were under the impression that Tim had already contacted the attorney since he had stated so in a previous e-mail dated 8/7/09. Tim also asked at that time that we reserve our ongoing issues for his official inquiry. Since we had still not heard from Mr. de Freitas, we took upon ourselves to contact him for clarification. The first contact with Mr. de Freitas was made on 8/12/09 by e-mail. On 8/14/09 Mr. de Freitas sent an e-mail to the 5 officers involved asking for one of us to contact him with our phone number. Kathy responded to Mr. de Freitas. Mr. de Freitas called and spoke with Kathy for approximately 40 minutes concerning our questions, prior to this call Kathy had provided Mr. de Freitas a copy of the letter dated August 1, 2009 that had been sent to Tim, and a copy of the minutes of the State Board meeting held on June 21, 2009. Beth then read the memo received from Mr. de Freitas that summed up the phone conversation. The following is the memo that was received:

**WILLIAM C. MORAN & ASSOCIATES, P.C.**

*Attorneys at law*

**MEMORANDUM**

*PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION*

To: Beth Michaelson, George Gorman, Susan Long, Kathy Grasby, Mike Grasby

From: Michael A. de Freitas

Re: Officer removal issues

Date: August 14, 2009

I reviewed the documents sent to me, namely, the June 21 State Board minutes and the August 1 letter to Tim Werder, President of ABATE. As you know, my role is counsel to ABATE as an organization. This memo is directed to you as officers acting for ABATE.

The Board's June 21 minutes reflect a motion "for the Impeachment of ABATE of New York, Inc. President Tim "Roadkill" Werder on the grounds of violation of 1) ABATE of New York State By-Laws and 2) Committed acts that are prejudicial to the Aim and Purposes of ABATE of NY, Inc. (Article I: D to promote Positive Community Relations)." Then extensive discussion was held, followed by a vote of 5 yes, 5 no. Roadkill voted no despite the objection that he could not vote. Finally, on August 1 you sent a letter to Roadkill stating, among other things, "as of June 21, 2009 you were then and are no longer now State President of ABATE of New York State, Inc."

Unless there are other facts and documents that I am not aware of yet, the above facts

may not have been sufficient to impeach Mr. Werder under the impeachment procedure in Parts B and C of Article XV of your By-laws (2004 version). That procedure calls for the following steps: (1) the State Board, by a majority vote, requests the officer's resignation, (2) a letter is sent requesting the officer's resignation, (3) the officer has 30 days to respond to the allegations and request a hearing in front of the board for review, (4) if the officer refuses to resign, the State Board may vote to impeach the officer, (5) a notice of impeachment must be sent to the officer stated the grounds for impeachment, the date of the request for resignation, the findings of the board review, and the date of the vote to impeach.

The June 21 minutes appear to show only a vote to impeach Mr. Werder. The August 1 letter appears to inform him that he has been removed. Also, it is dated after the meeting to impeach. Those documents do not show evidence of steps (1) through (4), at a minimum. And as to step 5, the August 1 letter is possibly insufficient anyway because it does not contain all of the elements required for the notice of impeachment.

If the June 21 meeting was intended to fulfill step (1) above, it may not have been sufficient for that, either, because the motion was "to impeach," *not*, as required by Art. XV, Section B.1., "to request the resignation" of Mr. Werder. (In any event, the June 1 vote was not valid because there was not a majority of affirmative votes, regardless of whether Mr. Werder's vote is counted.) And the August 1 letter does not seem to satisfy step (2) because it does not contain a request to resign.

Mr. Werder also telephoned me this morning. The call was brief. I told him only that other officers had sent me documents to review regarding his impeachment. He said that he believes that the June 21<sup>st</sup> vote was not valid because it was not a 2/3 vote of the board as required by Robert's Rules of Order, but he did not further discuss this matter with me except to ask me to check on this.

His assertion can be addressed briefly. I am not familiar with Robert's Rules of Order, so I can only assume that he is correct when he says that they state that a 2/3 vote is needed for removal of an officer. Robert's Rules of Order are not laws, however. Under New York law, Robert's Rules of Order are subordinate to any statutory provisions addressing matters purported to be covered in those Rules. The New York Not-for-Profit Corporation Law ("N-PCL") contains provisions on the removal of directors and officers and on the voting requirements by boards. The N-PCL provides for boards to vote by a majority of those present so long as a quorum is present. Robert's Rules of Order cannot change the vote provided for under the statute. This is so even if the Bylaws provide that Robert's Rules of Order apply to the conduct of meetings. Thus, if Robert's Rules of Order do in fact state that a 2/3 vote is needed to remove an officer, that is inconsistent with the N-PCL and therefore is ineffective.

If there are no other facts or proceedings to throw light on the compliance with the impeachment steps, then perhaps question at this point is to consider what options you have available.

One option is to start the impeachment proceedings over again. I understand that the State Board is to meet this weekend. I notice that Section B.1. of Article XV (Impeachment) of your By-Laws provides that the "State Board may, by a majority vote at a regularly scheduled State Board Meeting, request [a] State Board Officer's resignation." So if tomorrow's meeting is a "regularly scheduled meeting," this option is available.

Another option is to pursue the various removal and suspension options in the N-PCL, which I have previously discussed, without revisiting the impeachment. I would not recommend that. I would recommend that you re-start the impeachment process if it turns out that the process was flawed for the above reasons. The rationale for this recommendation is that the impeachment procedure, as set forth in your bylaws, is a sort of "due process" procedure. Although the N-PCL does not impose any due-process requirements, if you choose (as you have chosen) to adopt a due-process procedure in your bylaws, the conservative course is to follow your own bylaws.

Also, as I previously discussed, “impeachment” is not a procedure discussed at all in the N-PCL. which I have previously discussed, without revisiting the impeachment. I would not recommend that. I would recommend that you re-start the impeachment process if it turns out that the process was flawed for the above reasons. The rationale for this recommendation is that the impeachment procedure, as set forth in your bylaws, is a sort of “due process” procedure. Although the N-PCL does not impose any due-process requirements, if you choose (as you have chosen) to adopt a due-process procedure in your bylaws, the conservative course is to follow your own bylaws. Also, as I previously discussed, “impeachment” is not a procedure discussed at all in the N-PCL. As a result, it is not clear what “impeachment” means as applied in this situation. That term is used with public officials, and my understanding is that the term does not mean “removal from office.” It seems to mean only that the official is found to have violated some requirement. However, your By-Laws do not separately discuss removal, so perhaps the intent in your By-Laws was that “impeachment” *does* mean *both* the finding of a violation *and* the removal from office. In either case, the term is somewhat ambiguous. To remove the ambiguity, I recommend that whenever an impeachment vote is conducted (at step (4) discussed above), a vote also be taken on the remedy or penalty. The remedy or penalty could vary. It could be mere suspension or it could be full removal.

Finally, the N-PCL distinguishes between a board of directors and the officers (though it does not require you to use those specific terms), but your By-Laws are not completely explicit on the distinction. For example, the impeachment Article discusses only officers, not directors. The most logical interpretation of your By-Laws is that the elected “State Board Officers” are collectively the board of directors. Therefore, someone’s status as a director is dependent on his or her status as an officer, and so the removal of an officer would simultaneously result in his or her removal as a director.

To that end, I had earlier said that the N-PCL permits the board to remove officers without cause. But the N-PCL permits the board to remove directors only with cause. Because the status of a director on your State Board seems to depend on his or her status as an officer, the conservative course of action is to make a removal only for cause. Of course, if you have followed the impeachment process to begin with, then “cause” (the impeachable offense that was proven in the impeachment process) has already been established.

M.A.D. (Michael A. De Freitas)

**Motion B#47-09** made by Beth 2<sup>nd</sup> by Michael asking for the resignation of Tim (Roadkill) Werder as President/Director of ABATE of NY, Inc.

At this time Kathy reminded the Board that the State Treasurer, who was in a separate meeting, needed to be present for this motion, discussion and vote. The Sergeant at Arms went to request that the State Treasurer and State Treasury Manager please join us at the meeting.

Discussion on the motion: Tim wanted Kathy to read the motion from the last meeting that was made to contact the corporate attorney. Kathy responded that there was no such motion. The officers contacting Mr. de Freitas did so based on the e-mail sent by Tim on 8/7/09 in which he stated “I am invoking my authority and presenting the issue to the corporate attorney. Please reserve your ongoing issues for his official inquiry.”

Tim then spoke on the letter he had received, signed by 5 members of the Board. He also accused the 5 Board members of having secret meetings. Tim also read his e-mail sent on 8/7/09 to the Board, regarding the registered letter he had received. Tim did contact Mr. de Freitas, but not until 8/14/09. He also sent Mr. de Freitas a follow up e-mail with a lengthy quote of Roberts Rules of Order. He also stated that he is pursuing a law suit for defamation of character among other things against the 5 Board members.

Kathy then continued with the fact that since she had not heard anything from the attorney concerning the impeachment of Tim, that the Board members did go ahead and contact Mr. de Freitas. He responded that he would like more information, so he was given a copy of the letter sent to Tim as

well as a copy of the minutes from the meeting held on 6/21/09. On Friday 8/14/09 Mr. de Freitas sent an e-mail requesting a phone contact for one of the 5 members, Kathy responded.

At this time Tim decided to interrupt with the fact that the letter sent to him was dated 8/1/09 and post marked 8/5/09. But his biggest issue was that the date of the letter was hand written on the letter after covering up another date with a correction tape.

Point of Order called by Michael, that Tim should sit down and listen to what was being said, instead of constantly interrupting. Tim then immediately asked that the 2 non-members be removed from the room. Michael refused to have the 2 individuals removed. Kathy spoke that the 2 people Tim was referring to were her grandchildren and that if they were removed that this would then mean that at least one of the Board members would not be present. The Sergeant at Arms moved to remove the children and he was stopped by Michael. Many members present objected to the removal of the 2 children. Tim conceded to let them stay. But Kathy also made it clear that she sat quietly and let him have his say earlier and that at least he could give her the same respect.

Kathy repeated some of the information given by the attorney, and state that Roberts Rules of Order is used as a guide to running a meeting, it is not law. She also stated that if anyone had any questions to ask that she would gladly answer them.

One question asked concerned the fact that to impeach we had quoted the fact that the vote is majority rule, and that to ask for a resignation is also majority rule. And what were we attempting at this time. Kathy and Beth both stated that there had been a mistake made during the 6/21/09 meeting in the attempt to impeach Tim. They freely admitted that they should have followed the process as stated in the By-Laws by starting with the requested resignation first. And they were correcting that mistake today. The question was also posed that if there was a majority vote today instead of 2/3's what would that accomplish. The member was reminded that according to the attorney's 3 page memo the vote will be carried by majority, not 2/3's. Our By-Laws clearly state majority vote. And that the memo is available for anyone to read.

This all boils down to the fact that the motion and the vote done on 6/21/09 are null and void, because due process was not followed. Michael also, raised the question about the impeachment of 2 chapter officers from Onondaga Chapter. This would also mean that those were null and void. Tim stated that those were done at a regular meeting and voted on by the members present, and there were no requests for resignation. That is when it was pointed out that is where that issue was also done incorrectly, and that the officers who were supposedly impeached, were not in fact impeached because the proper procedures were not followed. Beth stated that she had planned on discussing this issue after this motion is finished.

Another question was asked about the timing of this since we are due for nominations of officers for 2010. The response was that if everyone stops and thinks about this, this impeachment was not brought about by the Board, but by Tim himself. When he in his own words stated that he went after Christina Rathbun because he was mad at her and because the Board had voted Christina in a an Assistant Legislative Coordinator, and he felt that we had slapped him in the face. That is the sign of a vindictive person and that type of behavior can not be allowed in this organization. A prime example is his demand that 2 children be removed from the room, when he knows that they are the children of 2 Board members.

The last question was addressed to Tim. Did he join Onondaga Chapter for the expressed reason of getting rid of Christina Rathbun? Tim answered in the affirmative because of the letter that she had written to another Board member expressing her displeasure with Tim and because it had been posted to the ABATE web site by accident, which he felt was an embarrassment to ABATE. This member was further read a portion of the minutes from the 6/21/09 in which Tim stated that he felt that was the only way he could get rid of Christina.

Beth at this time called for the vote if there were no more questions. One member did ask if Tim could vote at this time since this was not a vote to impeach. The response was yes, and the Board was fully aware of the fact that Tim would and could vote at this time.

Kathy stated that for accuracy and clarification, which the vote would be done on written ballot and that, the count would be handled by two members not of the board and completely impartial. Two

members present were chosen and the Sergeant at Arms passed out the ballot papers. At this time Kathy reread the motion. Motion made by Beth 2<sup>nd</sup> by Michael asking for the resignation of Tim (Roadkill) Werder as President/Director of ABATE of NY, Inc.

The vote was as follows: 6 for Yes and 5 for NO. At this time Tim is refusing to resign.

Tim stated that he understood that at this time he has no voting rights and access to all finances by him are frozen and he will abide by that. However, he will continue to chair the remainder of this meeting.

At this time Tim introduced Jonathan Wharram, son of Donald & Jane Wharram. Jonathan is the winner of the Proner/ABATE Activist Scholarship Award. Jonathan submitted a written essay on the need for younger involvement in motorcycling programs such as ABATE. He will be attending RIT in the fall of 2009.

The award was presented by Mitch Proner, who is also a member of ABATE and a very involved member of our aims and purposes. Jonathan was accompanied to this meeting by his father.

Mitch Proner stated that he has been a member of ABATE for over 20 years. He is proud to be a part of ABATE and what it stands for, the same as everyone else in the room. He is a well respected attorney in the State of New York, as well as in the nation, and a big defender of our rights. He has been the director on many boards and attorney associations and he is the only attorney who rides from these groups. He is also a very generous man who every year donates 1/3<sup>rd</sup> of his fees to NCOM as well as paying expenses for others to attend the NCOM Convention every year.

**Motion #B48-09** made by Beth and 2<sup>nd</sup> by Tom that the Onondaga Chapter impeachment of Ed Crandall and Christina Rathbun, per notification from our corporate attorney, that proper procedures were not followed, therefore the votes are null and void. Unanimous

Beth moved for adjournment of the State Board meeting with a 2<sup>nd</sup>. Meeting adjourned at 1:45 pm.

Kathy A. Grasby  
State Secretary