**MEMORANDUM**

**To: Officers, Directors and Vice Directors**

**From: Tom Gallagher, NY2RF, Jay Bellows, K0QB and Chris Imlay, W3KD**

**Re: ARRL Governance and the Role of Vice Directors for the Second Century;**

 **Board Confidential**

**Date: April 28, 2017**

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In advance of the upcoming webinar concerning Board governance, and to make sure that the entirety of the May 1, 2017 Webinar is dedicated to exchanging views of officers, directors and vice directors rather than restating that which has already been discussed, we wanted to provide a brief summary of the basis for the Executive Committee’s proposal. This was already set forth in a more expansive memo dated April 3, 2017 from Tom Gallagher, Jay Bellows and Chris Imlay, accompanied by the PowerPoint presentation that Chris made at the EC Meeting in Denver, and you have the full text of the Day, Pitney opinion, but in view of the papers circulated by Jim Tiemstra and Mike Raisbeck on the subject, we thought it would be helpful to briefly summarize the facts that led the Executive Committee to make the recommendation that it has to the Board. Please read this in advance of the Webinar.

1. Two things generated the Day, Pitney inquiry: (a) the Day, Pitney lawyers that briefed the Board on good governance last July expressed serious concerns that our practice of allowing Vice Directors to vote and act in the stead of Directors was not consistent with Connecticut law.

They have since repeated that concern and urged us to address it; and (b) Jay Bellows and Chris Imlay were tasked with drafting a rewrite of our Articles and Bylaws due to recent experience that made an update of those organizational documents clearly necessary. They needed clarity about whether or not to include any changes with respect to Vice Directors in that rewrite.

2. The questions asked in Chris Imlay’s memo to Day Pitney dated March 4, 2017 had no preconceived notion other than to explain the historic and current role of Vice Directors in our organization’s structure and to ask if that was consistent with Connecticut law; and if not, how we could revise the structure to fix it. There were four problem areas in which we requested guidance:

 (a) How can Vice Directors be permitted to act in the stead of the Director and to vote during a temporary absence of a Director (even if the Director is unavailable for an entire Board meeting), since the Vice Directors are not members of the Board according to our Articles and Bylaws? Does our present structure violate any Connecticut non-profit corporate laws? Should we change our Articles and Bylaws to preclude any Vice Directors from voting under any circumstances other than the permanent unavailability of the Director due to the death or resignation or removal of a Director from the Board?

 (b) Some Vice Directors say it is unfair to subject them to signing conflicts statements; to hold them to fiduciary obligations and code of conduct obligations to the same extent as the Directors are, since they are not members of the Board, nor, presumably, are they indemnified for actions taken in the stead of the Director, when the Director is unavailable. Is this a valid concern, given that confidential Board information almost co-incident with that given to Board members is given to them? Conversely, could ARRL enforce its ethics, confidentiality, and code of conduct standards on Vice Directors since they are not members of the Board but act as though they are when certain circumstances occur, but not otherwise, and because they are given access to confidential Board information?

 (c) Is it justifiable to permit Vice Directors to have access to confidential information when they are not members of the Board, while refusing access to Board meetings and to confidential Board information to members generally?

 (d) Since the principal role of Vice Directors is as successor to the Director, should they attend in-person or telephonic Board meetings? How about those Vice Directors which serve on ARRL Board committees? How should we address the voting issue and the confidentiality, ethics and code of conduct issues without suffering the potential expense of having a Vice Director ready for succession and to step into the shoes of the Director in case of permanent inability of the Director to serve or continue to serve? If Vice Directors were not at the meetings, could ARRL still recruit Vice Directors to serve on Board standing committees and ad hoc committees?

 (e) Could Vice Directors be made members of the Board without vote under Connecticut law?

3. The list of the main points of the Day, Pitney opinion received in response that was included in the Gallagher/Bellows/Imlay memo of April 3 was as follows; we believe it to be accurate:

 (a) The Connecticut Nonstock Corporation Act does not permit any concept of vice directors or alternate directors to act in place of the Director.

 (b) A Director’s fiduciary duty cannot be delegated.

 (c) There is no authority for anyone but the elected director to act on behalf of the Board.

 (d) No proxies or delegation of duties of directors are permitted.

 (e) Connecticut permits a board of directors by unanimous vote to appoint directors to serve as alternates on committees appointed by the Board, but there is no authorization for alternates to serve on the Board. Negative inference can be drawn with respect to the absence of any reference to alternate directors serving as Board members.

 (f) “There are serious questions as to the authority of a vice director to act in the absence of the elected director.” It draws into question issues of quorum or validity of motions.

 (g) Vice Directors are subject to the same fiduciary obligations as Directors and officers per ARRL Bylaw 45.

 (h) Actions of VDs are required to be indemnified if in good faith and reasonably believed to be in the best interests of the corporation, unless they are not considered to be “directors, officers, employees or agents” of ARRL.

 (i) If VDs are allowed to attend Board meetings and are privy to confidential information, and if held to the fiduciary obligation of Directors, then they must have access to all of the same information as Directors have.

 (j) Confidentiality agreements can be required of VDs.

 (k) VDs cannot be treated as successors to Directors because Director vacancies do not occur at a “specific later date”: no specific date for termination of Board service by directors is known.

4. Of these conclusions in the opinion, the Executive Committee was advised to consider some change in our organizational structure that addressed the two principal points: (a) a Vice Director cannot under any circumstances vote in the place of a Director or act in the place of a Director; and (b) a Vice Director cannot succeed to the position of a Director because in Connecticut, automatic succession is permitted only where it will occur at a time certain; i.e. at the end of a fixed term of a Director - which we don’t have. Since the principal role of Vice Directors described in our Articles and Bylaws is as successor for a Director so as to ensure that members are represented in our governance structure at all times, we attempted to craft some wide-ranging options for the EC to consider. At one end was to make Vice Directors members of the board along with Directors. At the other, an option was to do away with the concept of Vice Directors entirely. There were two middle ground positions outlined.

5. Also at the time of the EC meeting, there was a presentation made by Tom Gallagher that was also made to the Administration and Finance Committee the next day. It detailed the problems that ARRL has with membership retention and with recruitment of new hams. These major problems necessitate some response. Also discussed at the EC meeting was the cost of having Vice Directors attend Board meetings, which Tom reported was on the order of $20,000 per Board meeting.

6. The advice of the preeminent law firm in the State of Connecticut, made by attorneys in that Firm who specialize in non-profit corporation law, is that that we make significant changes in the governance structure of the organization in order to come into compliance with the Connecticut non-profit corporation act (which we are told is structured on the Model Non-Profit Corporation Act). Since the principal role of a Vice Director in ARRL’s current governance structure is to serve as an alternate director and as a successor to the Director, neither of which, we are told, is permissible under Connecticut law, the value of having Vice Directors participate in Board meetings is undercut. There is a significant cost in having Vice Directors attend Board meetings, and it is a question whether under the circumstances that cost is justified going forward. Board meetings can be held more efficiently and at less cost if the attendees are limited generally to Board members and invitees.

7. No one, however, doubts the value of Vice Directors to the organization, most or all of whom have proven expertise in particular areas of Amateur Radio, and all of whom have demonstrated (some over a great many years of service) a commitment to the organization that is extraordinary. It would be foolish indeed to fail to capitalize on the tremendous value of that volunteer resource going forward. So the question for the EC was, what is the proper role for Vice Directors going forward, if not in the governance structure per se? There is no question but that Vice Directors can continue to serve on Board committees and to contribute in that manner. But given the respect that they have in their Divisions as evidenced by their election, and because in most cases they would be given for the same reason a preference in succession appointments where a Director cannot complete a term for whatever reason, they have an important role in membership engagement and recruitment in their Division. Since the largest systemic problem ARRL has is with membership recruitment, retention and engagement, and since the Director cannot be in all places at once in a Division, a very valuable role for Vice Directors is in those areas within the Division. This will keep them ready for appointment in the event of a vacancy in the Director slot, but more importantly, it is a good, economical and valuable deployment of a valuable resource. For these reasons, it is urged that the discussions not be aimed at questioning the accuracy of the Day, Pitney opinion rather but what is best for ARRL and its members going forward.