

M E M O R A N D U M

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TO: Rick Roderick, K5UR
President, ARRL

FROM: Edward B. Spinella

DATE: February 7, 2020

RE: Confidential Information Relating to CEO Search

Purpose

In your capacity as President of The American Radio Relay League, Incorporated (“ARRL”), you have asked me, as special counsel in the area of Connecticut nonstock corporation governance, to provide some high level thoughts and recommendations regarding ARRL’s directors, vice-directors and officers’ collective fiduciary duties surrounding the confidentiality of certain information to be provided to them in connection with the activities of ARRL’s CEO Selection Committee (the “Committee”).

Background

During the course of ARRL’s January 2020 Board of Directors Annual Meeting, the President of ARRL created the Committee. The Committee is tasked with the following responsibilities:

- Collecting and screening a list of suitable CEO candidates;
- Reducing the list of candidates down to 3;
- Presenting these 3 candidates to ARRL’s Board of Directors (the “Board”) for consideration;

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- Organizing a Board meeting to select a candidate;
- Managing the negotiation process with the selected candidate; and
- Providing bi-weekly updates to the Board of its progress, including, but not limited to, the job qualifications and selection criteria chosen and used by the Committee.

In connection with the abovementioned responsibilities (hereafter, the “Responsibilities”), it is contemplated that certain information relating to potential CEO candidates (the “Information”) will be collected by the Committee and shared among ARRL’s directors, vice-directors and officers (hereafter, collectively referred to as the “Recipients”). The Committee believes that the nature of the Information is sensitive in nature and, moreover, that under the relevant facts and circumstances, the improper disclosure of the Information beyond the Recipients would be against the best interests of ARRL. Accordingly, based on these facts and circumstances, and in furtherance of the Responsibilities, the Committee believes the Information should be classified as “confidential information” and treated by the Recipients in manner consistent with their fiduciary responsibilities to ARRL as contemplated by the relevant body of authority discussed below.

Relevant Body of Authority

ARRL is incorporated under the Connecticut Revised Nonstock Corporation Act (the “Act”). Accordingly, the Act governs ARRL’s internal affairs along with ARRL’s Articles of Incorporation, By-Laws, Standing Orders and Director Workbook (collectively, the “Governing Documents”).

The Recipients have certain fiduciary duties under the Act and are required to discharge these duties: (1) in good faith, (2) with the care an ordinarily prudent person in a similar situation would exercise under the circumstances, and (3) in a manner they reasonably believe to be in the best interests of ARRL. These duties are commonly referred to as the duty of care and the duty of loyalty.

Generally speaking, the duty of loyalty requires that the Recipients act in the best interests of ARRL by disclosing and managing conflicts of interests, maintaining confidentiality and not usurping corporate opportunities. Certain of ARRL’s policy and procedures specifically speak to the duty of loyalty surrounding confidentiality: ARRL’s Conflicts of Interest Policy as contained in the By-Laws as well as in Sections 4.4 and 4.5 of ARRL’s Director Workbook.

Advice

Based on the facts and circumstances as I understand them as well as my interpretation of the Act and the relevant Governing Documents referenced above, I believe: (1) it is reasonable and in the best interests of ARRL to treat the Information as “confidential information” as contemplated by the Act and relevant Governing Documents and (2) it is reasonable and in the best interests of ARRL that the Recipients be required, consistent with their fiduciary duties, to keep the Confidential Information confidential subject to the particular direction of the Committee in furtherance of the Responsibilities.