

Open letter to members of the Austin Roping Club, and to any other interested persons  
Tuesday, 4 August 2009

This letter is to explain some of the points we have been making for months regarding the Austin Roping Club. We make those points again and again, but apparently certain people aren't listening. As for *why* we have been making those points, the reader must go farther down in this letter.

Ruben and Sissie have complained to various people about our actions involving the Roping Club. Although some of this has been said in the meetings, a lot of this was said behind our backs, and has gotten back to us. Since they are being cowardly and using gossip to attack us, we have no choice but to respond in this way.

As of this morning at 9:00, the notice and agenda for the Thursday meeting still was not posted, but I see it went up by tonight. Unfortunately, once again, the notice and agenda were posted late. (Sissie, who put the Sunday date on the notice, was mistaken or lied.) The law requires the notices to be posted by 9am, on the third working day before the meeting. (NRS 241.020.3(a)) The notices should have been up by 9am Monday. Accordingly, because the notices were late, any action taken at the meeting will be void. (NRS 241.036)

At least someone is finally reading the rules. For the first time in quite a while, it appears that a cursory reading of the statute has been done. Someone noticed to put a copy on the firehouse (where the meeting will be held) and to attempt to make the point that action will be taken. Unfortunately, the quick course didn't go quite far enough.

There is a second reason most any actions taken at the meeting would be void: most of the the agenda items are not specified in sufficient detail. The agenda must be "clear and complete". (NRS 241.020.2(c)) For example, "Change bank account and take action" is insufficiently detailed to explain what might be done. Is it changing to another bank? Changing the type of account? Changing the number of signers? Similarly, what is "Signing of corral leases and arena leases"? Is someone new signing a lease? Who is leasing the arena? Generic descriptions of contemplated actions or discussions, with no specific guidance or supplemental material are insufficient to comply with the law. In general, the agenda must not only say that action will be taken, but it must be specific about what action that might be. (For more guidance on the specificity of posted agendas, see the *Nevada Open Meeting Law Manual*, by the Attorney General. See also *Sandoval v. The Board of Regents*, 119 Nev. 148, 150, 67 P.3d 902, 903 (2003))

To conduct a meeting in violation of these first two laws is a misdemeanor. (NRS 241.040.1)

Finally, there is a third reason almost the entire agenda is invalid: it was not created in accordance with the statutes and the by-laws of the Roping Club. An officer such as a president or secretary has power given to him or her by the by-laws. (NRS 82.211.3) The by-laws do not give any officer the power to set the agenda. Therefore, the members must set the agenda, normally in the previous meeting. This is not

unusual. For example, in a guideline letter of May 2, 2007, by the Nevada Attorney General regarding a complaint about the Carson City School Board (AG file number 07-005), it was noted that the Board, in a meeting, would set an agenda item for a subsequent meeting, without action in the meeting in which it was first brought up.

There is good reason for having the members set the agenda in this way, and there are few drawbacks. One reason for the current rules, in which the members set the agenda, is to prevent abuse by the secretary who could otherwise manipulate the agenda for her own purposes. This abuse has been occurring in the past, when Ruben and Sissie have avoided placing on the agenda concerns which are inimical to their own interests, while pursuing other items they want to see considered. For example, Ruben and Sissie have avoided discussions of their own infractions such as letting their horses run loose unattended, keeping more than four horses in a corral, not paying a proportional amount for their own corral space (including water usage), using roping arena space as a storage area for items not related to horses, and other things.

Because alternative procedures are available for emergencies, the potential need to introduce agenda items on short notice does not preclude the present rules which require thinking a month in advance. Written ballot to amend the agenda in advance of a meeting, or calling a special meeting, are mechanisms which allow the occasional introduction of emergency agenda items. Rules exist already for written ballots and for special meetings. Looking at the purported agenda for Thursday's meeting, it appears, to the extent which we can divine the meaning of what is on the list, that only one topic might have a short fuse: that of the watchman.

The lease on the watchman's space is problematic by itself, aside from scheduling considerations. Since the only way outside of a meeting for the members to formally approve the lease is by written ballot, and neither a written ballot nor a properly noticed meeting and vote has occurred, the lease on the watchman's space is probably invalid. To my knowledge, it is likely that most members would ratify the lease (if it yet exists; we don't know, since Ruben and Sissie are wont to conduct their operations in secrecy). Nevertheless, a written ballot should be conducted to ratify what is otherwise probably an invalid contract.

As far as the goats and llamas go, I would guess that the members would likely agree to that, also. However, what is required is more than a by-law change. Those of us who have corrals have contracts with the Roping Club, and the Roping Club may not unilaterally alter the terms of these contracts. Therefore, in addition to a by-laws change or exemption, the unanimous approval of all corral renters probably is also required. (According to the corral lease terms, we have rights to expect certain behaviour from all other corral holders. Allowing someone to have llamas and goats might be seen as in derogation of those rights, so each corral holder will need to agree to an amendment allowing this exception.) Again, I doubt that it will be a problem, but a vote by the members without unanimous agreement of the corral holders would be needed to make the goat & llama arrangement proper.

A larger problem overshadows all of the above: the Roping Club has not had a legitimate meeting in over a year. Lack of proper notice is one reason; another is failure to assemble a quorum. Because there

has been no legal meeting, the last election of officers (a President, a Secretary, and a Treasurer) held in January of this year was also invalid. Indeed, in January there were only four members, and one of those did not stand for office; one must be a member to hold office. Under the by-laws, four officers are required for a quorum. Since there are only three officers, elected illegitimately, and since no attempt has been made to invoke the special mechanism to hold a proper election for those three offices, let alone for a fourth, it is impossible to have a legal meeting at this time.

Finally, we come to the greatest problem of all. The Roping Club was chartered to further the sport and skills of roping and of horsemanship in general. It no longer serves that purpose. No attempt has been made to hold any kind of roping, barrel racing, or other rodeo or equestrian event since at least the year before last. No one has even tried to hold a goat tying competition, let alone anything more sophisticated.

A non-profit organization may not operate or exist for the gain of its members. (NRS 82.136) However, the Roping Club has degenerated to the point where the *only* reason it exists is for the gain of its members. Ruben declared at the January meeting that the only reason to keep the Roping Club alive was so that the members could keep the corrals they rent at bargain prices based on a specialized lease arrangement and other aid from the taxpayers of Lander County. If the Roping Club were to uphold its purpose, then Lander County taxpayers would be well compensated by increased tourism and sales tax revenue. It isn't so. Lander County is now a loser on this deal.

The Roping Club needs to be rebuilt. If we act only to preserve the subsidized corral rentals, we are acting in violation of the charter and the statutes, and we are deceiving everyone including the Lander County voters who gives us assistance.

Essential to the task of rebuilding the Club is membership. It will take a lot of work to operate the Club for its intended purpose, and only members can provide that work. Some of us have tried, but we are working against Ruben and Sissie who thwart our efforts in two ways. First, earlier this year, Ruben openly declared that he didn't want new members, that they would only argue with each other. Second, when we have approached potential recruits, we have found some of them repulsed by the lack of consideration shown by the club for the feelings of others. For instance, people complain to us about the horses running loose on the roping grounds, but Ruben declares that he doesn't care. Frankly, why would anyone join a club which is operated as a dictatorship by a few and which has no concern for the purpose for which it was founded?

There is no doubt that Ruben has worked to improve the Arena, but a one-man show won't cut it. This last year, he didn't once ask us to help with re-fencing the arena; instead he wanted to be compensated for paying Marty to help. This is a *volunteer* organization. It will live or die by *volunteer* effort. It is not up to Ruben to decide whether to do it all himself. In the first place, the decision to improve the corral, and how it should be done, belongs to the members.

The by-laws call for monthly meetings. Ruben and Sissie apparently feel that meetings are to be held only when they want something. They did not show up for the April meeting, nor did they show up in

June. When asked, Ruben said, "There was no meeting." Obviously, Ruben didn't want anything that month. That decision does not belong to him.

This is against club interests. For example, in the March meeting, Elizabeth passed out a list of things to consider to improve the Club and to garner new members. Ruben said there was no time to consider it at that meeting, then he failed to show up for the next two months. The list still has not been discussed.

As another example, Elizabeth and Rhonda have wanted to organize events to attract interest among the public and perhaps to raise money. They have been trying to get the Club to discuss this for months, but until Tuesday's (late) notice, Sissie has not put the "Fun Day" on the agenda. Perhaps you are wondering why it could not be raised as "new business". That is because Ruben says he is tired at the end of meetings, and can't stay around for new business. Although it is finally on the agenda, the Fun Day has been seriously damaged because summer is almost over. Ruben and Sissie have possibly succeeded at killing off an idea they didn't like in the first place. (I'm sure they'll have some other excuse.)

And of course, the recording needs an explanation. The statutes and the by-laws both say that the Club is subject to Nevada's Open Meeting Law, otherwise known as NRS 241. (Yes, the OML can apply to private organizations, not just to government bodies. "Where a government body or agency itself establishes such a civic organization, even though it is composed of private citizens, it may well constitute a "public body" under the law. *Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).") When these problems with Ruben and Sissie started getting worse, we decided to record the meetings, beginning in June of this year. Not only is recording allowed, it is *required* unless there is a stenographer making a transcript. (NRS 241.035.4) The main reason was that the minutes kept by the secretary don't reflect what actually happened at the meetings. At times, they reflect things which didn't happen. I told Ruben I don't care how it's done, I want accurate records, and would accept any alternative if he could suggest one, but he had no alternative way of accomplishing the goal. He simply walked out of the July meeting rather than comply with the law and by-laws, once again thwarting the efforts of other members to conduct business. I know that the July meeting would have been, like the August meeting in two days, an illegal meeting, but we could have conducted a fundraiser or fun day of some kind even without legal approval from the Roping Club.

So there it is, a short summary of some of the most obvious problems. I've tried to stay away from picky details (such as that of the horses wandering around unattended) because I'm trying to present the big picture. If we don't stand back and look at the big picture, then we're not going to accomplish anything anyway.

First and foremost, we need to follow the rules and the statutes. Even if we didn't care about the Club itself, the members, when they don't follow the rules, expose themselves to personal liability by ignoring those rules and statutes. For example, if our new, quasi tenant were to have some sort of serious problem and file a lawsuit, and since the Club hasn't actually approved her lease, then she could go after Ruben personally, since he facilitated her moving in as a personal action on his part and not as a club action. As another example, if the ATV Rodeo had been held at the roping arena, and if it had led

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to a lawsuit by someone injured there, everyone who worked on it as an unapproved activity might have been held personally liable. Remember, a waiver doesn't stop someone from suing, only from collecting, and then only if no negligence is found. Pretty words and legalese still won't prevent us from needing to hire a lawyer in such cases. (As a corporation, the Club must be represented by an attorney in Nevada courts, except for a few limited circumstances in Justice Court. We couldn't even deny a claim without an attorney's assistance.)

In this case, the formalities matter. Everyone who has incorporated a business knows, or should know, that the benefits of incorporation, including limited liability, can be lost if the corporation does not follow the requisite formalities such as abiding by the statutes and the by-laws, holding meetings as required, and so on. When those formalities are ignored, the corporation's charter can be revoked, the veil pierced, and so on. The Austin Roping Club is a corporation, and good intentions don't obviate the formal requirements.

Finally, I want to make a moral case for playing by the law and other rules.

As the Attorney General said in the *Nevada Open Meeting Law Manual* at §8.01,

In conducting meetings, one should always remember the message in NRS 241.010: "In enacting this chapter, the legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." In interpreting a similar provision in California's open meeting law, the court of appeals delivered a humbling message when it said:

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over instruments they have created. *Stockton Newspapers, Inc. v. Redevelopment Agency*, 214 Cal. Rptr. 561 (Cal. Ct. App. 1985).

In other words, decisions about this Club, created by and for all of members and the people of Lander County, ought to be made by and for all of the members and the people of Lander County, and not just by a few who want to control the agenda and the activities. Yes, Ruben, it's hard working with other people, especially with certain of them, but that's the job to be done. In a democracy, the world isn't all hierarchical.

If Ruben disagrees with the courts, then perhaps he should consider what Jesus said: "Love your neighbour as yourself." If he doesn't want other people to make decisions for them, then he shouldn't be making decisions for others. Jesus didn't say anywhere that we can limit ourselves to just a few neighbours. In this Club, we're all one another's neighbours.

Despite the opposition, some of us see the Roping Club primarily as an opportunity to help Austin, but only if the members return to the purposes for which it was founded. Despite the economic situation,

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we believe that it still might be possible to host roping and other equestrian events drawing people to the town. They might be smaller and less frequent than in previous years, but we aren't ready to give up on the goal.

I'll give Ruben and Sissie the benefit of the doubt, and take the improvements in the latest agenda as a sign that they might be working toward doing things according to the rules. What I cannot tell is "why". Are the changes merely to avoid running afoul of trouble, or are they based on a sincere attempt to refrain from operating without consulting all of the members when decisions are to be made? We're just going to have to see how this next meeting goes.

Meanwhile, we have some serious problems. We have an organization that hasn't had a legal meeting in over a year, barely pretending to serve its original purpose or any other purpose except to preserve a few benefits for a handful of people, without duly elected officers, without much money, without much help or support. If we're going to make this work, it will take an heroic effort.

If this were an epic film, we might expect the lead character to rise to the occasion and deliver a stirring, inspirational speech to the troops. Something like, "We'll be remembered, chaps, for snatching victory from the jaws of defeat, for creating a great structure from broken ruins, and all that. Most of all, we'll be remembered for sticking to our principles in the face of opportunities for compromise. Our story will be told by our grandchildren."

We'll just have to wait and see the ending of this movie.

If anyone wants to discuss this, my e-mail address is *marking@tatanka.com*.

Michael