

ROGER A. BROWN

Lawyer

38 North Washington Street

Post Office Box 475

Sonora, California 95370

Phone (209) 533-7755

Fax (209) 533-7757

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Charles Varvayanis, President  
Odd Fellows Sierra Recreation Association, Inc.  
Post Office Box 116  
Long Barn, CA 95335

Dear Mr. Varvayanis:

This is to respond to your request for my opinion on a question of law. You asked whether a director of the Odd Fellows Sierra Recreation Association, Inc. must be a shareholder to qualify for membership on the board of directors. I am pleased to accept the assignment.

The analysis starts from the proposition that corporate governance is usually determined by the corporation itself during formation or at one of the first meetings of shareholders. California Corporations Code section 212(b) provides that:

(b) The bylaws may contain any provision, not in conflict with law or the articles for the management of the business and for the conduct of the affairs of the corporation, including but not limited to:.....(4) The qualifications, duties and compensation of directors....

An authoritative work on corporation law, states that it is *optional* to provide for the qualifications of directors, but suggests it is common for corporations to require, "Each director, to be qualified to take and hld such office, shall at all times during the term of such office, be the beneficial owner of at least \_\_\_ of the corporation's common shares." (California Practice Guide, *Corporations*, The Rutter Group (2003) §§4:78-79, 4-21.)

You and I both read the Articles of Incorporation and the Bylaws of the corporation and could find no particular qualifications listed for directors. There was a section in the Bylaws whose heading mentioned qualifications for directors, but the body of that paragraph was silent about qualifications.

I also performed a computer search for whatever other authorities might be helpful to resolve the question. There are no statutes requiring any particular qualifications for directors of an ordinary for-profit corporation. The authors of another reliable law practice (California Legal Forms) state that while it is optional and permissible to include director qualifications in either or both the Articles of Incorporation and Bylaws, it is not required. They further state, "There is no requirement under the General Corporation Law that directors be shareholders of the corporation. However, other statutory provisions that govern special types of corporations may impose this requirement." (California Legal Forms, Lexis-Nexus Pub. Co.(2006); Business and Nonprofit Organizations, Chapter 3 Articles of Incorporation, C. Optional Article Provisions, § 3.285.)

For example, the law requires special qualifications for directors of national banks. (See ie. *Transamerica Corp. v. Parrington* (1953) 115 Cal.App.2d 346, citing 12 U.S.C.A. §72.)

As I understand it, the Odd Fellows Sierra Recreation Association is formed as an ordinary, for-profit corporation under the general corporation law of the State of California, and as such, there is no special statutory prohibition on having non-shareholders elected or appointed to serve as members of the board of directors.

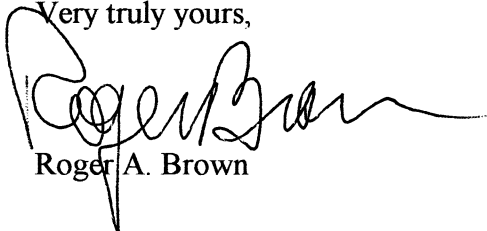
California law once held that directors of a corporation were required to be shareholders in the corporation. (Civ.Code §305; enacted 1872, repealed 1947.) However, since the repeal of this law, there has been no statute and no controlling decisions of the state appellate courts or the California Supreme Court requiring stock ownership to be a director of a for-profit corporation. Our computer search found the only published cases requiring stock ownership for directors were decided under the former statute, now repealed.

It seems clear that California law does not require directors of a corporation to own stock in the corporation, regardless how sensible that proposition appears to be. It is also quite clear that California law permits, but does not require, directors' qualifications to be set out in the Articles of Incorporation and the Bylaws, but in your case, neither document requires any such qualifications.

Accordingly, my opinion is that directors of Odd Fellows Sierra Recreation Association, Inc. are not required to be shareholders in the corporation. However, the shareholders may, following the procedures set out in the law and the Bylaws, change the Bylaws to state any qualifications for directors which do not conflict with state law.

It would be well to remember that all directors, whether they are shareholders or not, have a legal fiduciary duty to the corporation and they are bound to exercise their authority as directors in good faith, for the benefit of the corporation, and not to benefit themselves or anybody other than the corporation itself. Directors who violate this duty may be personally liable to the corporation for any such violation of duty and may be sued in court to restrain such violations, to be removed from the board, or for money damages. One of the reasons why many corporations require their directors to be shareholders is to ensure that they have an economic stake in the governance of the corporation.

I hope my comments and opinion adequately address the questions you posed, but if I can be of any further assistance on this or other questions, please do not hesitate to contact me at your convenience.

Very truly yours,  
  
Roger A. Brown

Roger A. Brown  
PO Box 475  
Sonora, CA 95370

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CA 952  
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