

MINUTES	Hawaii Writers Guild	March 25, 2020
	Rev 1	

Hawaii Writers Guild (HWG) Board of Directors (BOD) Meeting
Held via Zoom

Officers and Directors of the Guild present via Zoom:

Diann Wilson – *President*, Bruce Stern – *Vice President*, Diane Revell – *Secretary*, Bob Lupo – *Treasurer*, Duncan Dempster – *Webmaster*, Joy Fisher – *Public Relations*

Others Present via Zoom:

Invited speaker – Shawn Nakoa, Attorney at Law

[Note: Items in **bold** indicate decisions made or actions required. Items in square brackets are usually information that became available after the meeting had been adjourned.]

Tutu’s house staff assigned the host role to Diane Revell which gave her some Zoom options unavailable to the others in the meeting. Prior to the start of the meeting those of us unfamiliar with use of Zoom remotely exchanged advice. All were able to participate via video and audio, but Diane Revell’s audio had problems and “chat” was used in some cases as an alternative. Joy Fisher suggested we use the “record” option for the Zoom meeting. Diane as host had that option and selected it for “local” versus “cloud” storage, but found out later it did not seem to save it on her PC perhaps as Zoom has some restrictions on the recording option (maybe it was recorded to the Tutu’s House computer where the meeting originated).

Prior to the meeting Vice President Bruce Stern had posted the current membership rosters (order of joining the Guild and alphabetized order) to the Board’s Google Group. Also, prior to the meeting Treasurer Bob Lupo had posted the final Treasurer’s log for February 2020 (Attachment 1) and the preliminary Treasurer’s log for March 2020 (Attachment 2) to the Board’s Google Group.

The meeting was called to order by President Diann Wilson at 1:53pm with “Zoom” running on the Tutu’s House’s computer to allow the Board and our guest to join remotely as Hawaii was entering a “stay at home” directive. **For this meeting we decided to focus on the presentation by our guest, Shawn Nakoa, about the duties of the Board of an 501(c)(3) qualified charity under federal and Hawaii law.** We chose not to extend the invitation to the full membership due to the limited topic.

Bob Lupo did provide a quick summary of our financial status with the details in attachments 1 and 2. Bruce asked Bob if he had been able to create the donation lists and thank you notes for 2018 and 2019 donations to the Guild. Bob said not yet, but he would do so in the next few days.

Shawn joined the meeting shortly after it was called to order, so we proceeded with her presentation on the basics of 501(c)(3) Board Training 101. Attached are Secretary Diane Revell’s notes from the presentation (**Attachment 3**).

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At the end of the presentation, Shawn asked if any questions for her and those are included in the here, but also in the notes.

1. Bruce wanted to know since our approval as a 501(c)(3) qualified charity was effective back to the date of our incorporation under the state in November 2018, so we need to file our IRS Form 990 EZ for 2018 as well as 2019. Shawn said she would check and get back to us on that. Joy Fisher indicated she believed the IRS rules were if you missed the filing deadline for a given year, you could not file later. Shawn said she thought that was the case also but would still check for us.
2. Duncan Dempster wanted to know if there was any more guidance related to confidentiality and not having most all the Board meetings with an open invitation to the full membership. (See notes for guidance Shawn provided in her presentation). Beyond what she already said, Shawn felt likely we would usually not have an issue with giving the open invitation to the members but it would depend on the agenda and that could be arranged to isolate such confidential matters to the beginning or end of the meeting with non-Board members excluded from those topics. She thought our current small size would make this an infrequent issue, but that as we grew it could be more likely a concern requiring such steps. Some specific topics Shawn mentioned that require confidentiality included claims against the Guild or the Board members and any personnel issues.
3. It was cited that our discussion of the membership at Board meetings included who was in arrears for their dues and would that require confidentiality treatment? Shawn said that was legally okay to not be treated as confidential and was more any issue of perhaps embarrassing a member.
4. Shawn asked if we wanted what funds that remained in our retainer with her firm to be refunded or held in case of a future issue needing legal services. Bob wanted to know how much the remainder would be, but Shawn said she did not track that but would need to get the number from their accounting folks in Honolulu. Based on charges for the training and the prior balance it is likely at most a couple hundred dollars. Depending on the amount, the Board will decide on which option to take.

Shawn expressed her appreciation for our organization and felt we had taken the appropriate steps to be a great 501(c)(3) qualified charity. We stuck with pursuing that and did it fairly quickly compared to some. She hopes to do some creative writing versus legal writings in the future and join us when that time comes. After that Shawn signed off of Zoom.

Diann W. asked Bruce for a **quick summary of the membership data**. He noted the **64 active current on their dues members, 2 active but late on their dues members, and 1 pending member**. [**Pending was Donald Kennedy who was accepted just prior to the meeting and still needs to pay** to be an active member.]

At this point Diann Wilson lost connectivity for the meeting. The rest of the Board members were still on Zoom. It was agreed by the remaining board members that work on the HWG 2020

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priorities needed to be worked prior to our next regular board meeting. [This was relayed to Diann after the meeting.]

The **next regular Board meeting date** is set for **Wednesday, April 22nd at 1:00pm -2:45pm via Tutu’s House’s Zoom account as Hawaii’s COVID-19 virus related “stay at home” restrictions are currently in place through the end of April.** [Note this our day of the week to meet (Wednesdays) on the 4th Wednesday of the month in 2020 for the Feb. – Dec. Board meetings and the time slot will be 1:00pm-2:45pm.]

For those who cannot come to Waimea on the Big Island in the future to attend the board meetings, we do have Zoom active to allow remote attendance via a computer and internet. Each meeting agenda includes the specific meeting information for joining via Zoom and tutorials can be found on-line.

The meeting was adjourned at 2:45pm.

Respectfully submitted,
Diane Revell, Secretary

Announcements:

- **The next regular Board meeting time and place: Wednesday, April 22nd at 1:00pm – 2:45pm usually at Tutu’s House at 64-1032 Mamalahoa Hwy # 305, Waimea, HI 96743, but via all Zoom through April.** Attendance via internet or phone via Zoom will be offered and if still under “stay at home” restrictions will be the method used.
- **Requests for items to be added to the agenda for the next regular Board meeting should be sent to the President Diann Wilson and Secretary Diane Revell at their e-mail addresses (island.diann@gmail.com and diane.b.revell@gmail.com) 10-days prior to the next meeting, so by April 12th. The agenda will be e-mailed April 17th five days prior to the meeting.**
- Parking Lot:
 - a. **Determine time for a special Board 2020 priorities planning meeting. Who:** Diann Wilson **Due:** April 8th.
 - b. **Provide donation thank you letters (charitable receipt evidence) to those who donated to the Guild in 2018 and 2019. Who:** Bob Lupo **Due:** March 31st.
 - c. **Consider ways to streamline current membership process. Who:** Diane Revell, Duncan Dempster, Bob Lupo, Diann Wilson, Bruce Stern **Due:** April 15th, 2020
 - d. **Consider Guild participation in Sept. 24-27, 2020 HawaiiCon at the Sheraton Kona Resort & Spa Who:** Board **Due:** February 5, 2020 (put on agenda)]

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Attachment 1: Hawaii Writers Guild Final Treasurers Log for February 2020

Attachment 2: Hawaii Writers Guild Preliminary Treasurers Log for March 2020

Attachment 3: 501(c)(3) Qualified Charity Board Training 101 – Notes by Diane Revell

Attachment 1: Hawaii Writers Guild Final Treasurers Log for February 2020

Hawaii Writers Guild Final Treasurers Log for February 2020

American Savings Bank Balance as of January 31, 2020 **\$1,456.37**

February Inflows

Duncan Dempster, membership renewal, 2/4/2020 (PayPal)	40.00
Heather Rivera, membership renewal, 2/5/2020 (PayPal)	40.00
Linda Ulleseit, new member dues, 2/11/2020 (PayPal)	40.00
Carol Hannum, new member dues, 2/24/2020	40.00
Nancy Baenziger, membership renewal, 2/24/2020	40.00
Steve Foster, membership renewal, 2/24/2020	40.00
Kendra Bruno, new member dues, 2/24/2020	40.00
Lilikoi Café Annual Dinner, Deposit Refund	20.00
Cherry Blossom Festival Refund	50.00
Total February Inflows	350.00

February Outflows

Louise Riofro (Pop-Up Event), check 119, debited 2/27/2020	-60.00
Friends of the Future (Tutu's), check 120, debited 2/27/2020	-25.00
ASB Monthly Fee, debited 2/28/2020	-5.00
Total February Outflows	-90.00

Total ASB Operating Balance as of February 28,2020	1716.37
Less 501-c-3 Reserve Fund as of 2/28/2020	-600.00
ASB Operating Balance as of 2/28/2020	1116.37

Attachment 3: Hawaii Writers Guild Preliminary Treasurers Log for March 2020

Hawaii Writers Guild Preliminary Treasurers Log for March 2020

American Savings Bank as of February 28, 2020 **\$1,716.37**

Preliminary March Inflows

Jada Rufo, membership renewal, 3/5/2020 (PayPal)	40.00
Eila Algood, membership renewal, 3/5/2020 (PayPal)	40.00
Eila Algood, donation, 3/5/2020 (PayPal)	250.00
Tamara Hynd, membership renewal, 3/11/2020	40.00
Sabrina Ito, membership renewal, 3/11/2020	40.00
Laura Burkhart donation, 3/11/2020	50.00
Total March Inflows	460.00

Preliminary March Outflows

PayPal fee (Eila Algood's donation), debited 3/5/20	-7.55
New ASB Checks Ordered, debited 3/10/2020	-28.50
Total Preliminary March Outflows	-36.05

Total ASB Operating Balance as of 3/24/20	2140.32
Less 501-c-3 Reserve Fund	-600.00
ASB Net Operating Balance as of 3/24/20	1540.32

Attachment 3: 501(c)(3) Qualified Charity Board Training 101 – Notes by Diane Revell

Instructor: Shawn Nakoa, Attorney at Law, Rush Moore LLP

Date of Presentation: March 25, 2020

Note Taker: Diane Revell, HWG – Secretary [Diane added the website references]

This is to cover just the basics to have a board of directors comply with the associated federal and Hawaiian laws applicable to 501(c)(3) qualified charities. For Hawaii the law is in Hawaii Revised Statutes (HRS), Chapter 414D – Hawaii Nonprofit Corporation Act, Part VIII – Directors and Officers: https://www.capitol.hawaii.gov/hrscurrent/Vol08_Ch0401-0429/HRS0414D/HRS_0414D-.htm Or this easier to negotiate site: <https://law.justia.com/codes/hawaii/2017/title-23/chapter-414d/>

If more detail than these basics are desired, we can arrange a future class with Shawn.

1. Continue to operate in accordance with your stated 501(c)(3) mission. One way to keep this in mind is to start each board or committee meeting reading your mission statement to keep that your focus.
2. By law, avoid private benefits to businesses or individuals.
3. Keep current on your tax filings like your IRS Form 990 (likely the EZ version for our small size) and applicable state filings as appropriate. If you miss filing your Form 990 for 3-years in a row you lose your 501(c)(3) qualified charity status and likely will be unable to get it reinstated.
4. Keep good finance records to make clear your compliance
 - a. Loans are prohibited to officers or board members
 - b. Private benefits are not legal and if found can cause a loss of qualified nonprofit status
 - i. Example is if a rental was arranged for a place owned by a board member or officer or a relative of either, it should be demonstrated to be at fair market value (not over value)
 - ii. Another example would be if property of the Guild were provided or rented to a board member or officer or a relative of either, it should be done at fair market value (not at a lower cost).
 - c. If the Guild generated “unrelated business income” or UBI, taxes must be paid on such income as it is not covered by the 501(c)(3) exemption. An example would be selling journals that do not serve the Guild’s mission and if substantial enough income tax would be owed.
 - i. A question was raised to see if the payments for the pop-up bookstores where members could sell their books and the members retained any payment (versus some cut to the Guild) would be considered UBI. The answer since the Guild did not take any moneys from this activity was that it would not be UBI. (And it is outflow vs. inflow anyway.) [See notes at end about a related topic on pop-up book sales and our status as a 501(c)(3) with citing a case Joy was able to locate on a similar case and Shawn provided a reply.]
 - d. Officers/directors can be sued in the same way as anyone of any organization by a member or by the State Attorney General
 - e. The Guild and officers/directors can be sued for breach of contracts or tort (civil wrong like negligence)

5. The standard of conduct for directors is located in HRS, Chapter 414D-149:
<https://law.justia.com/codes/hawaii/2017/title-23/chapter-414d/section-414d-149/>
- a. Good faith and loyalty with the care of a ordinarily prudent person in like circumstances and in a manner believed to be in the best interests of the Guild
 - b. Hawaii has additional protections for directors for other than gross negligence in HRS, Chapter 414D-149 (f): but this is for **directors without any payment or remuneration** who perform in good faith versus with gross negligence. If paid then these additional protections do not apply.
 - c. Directors need to act in a reasonable and informed manner. Be prepared, get information to others prior to a decision and if given information read it ahead of time. Demonstrate loyalty to the Guild by making decisions in the best interest of the Guild.
 - d. Keep an independent judgement for making good decisions; don't defer or rely on another for your decisions.
 - e. Read aloud and frequently (at each Board and committee meeting) the Guild's mission to keep focused on the mission.
 - i. Our Mission from our website: <https://www.hawaiiwritersguild.com/guild-business.html>

Hawaii Writers Guild Mission Statement:

Support writers connected to the Hawaiian Islands to hone their craft and engage with the public to heighten community appreciation for literature, creativity, and the written and spoken arts

- f. The business judgment rule - If exhibiting duty of care with loyalty showing good faith with decisions in the best interest of the Guild and independent judgment to reach a good decision, the court is prohibited from second guessing.
 - g. Need to keep minutes for both board and committee meetings.
 - h. Need to have a Conflict of Interest Policy [we have one, can be seen on our website: <https://www.hawaiiwritersguild.com/guild-business.html> under the tab "Articles of Inc. & Bylaws".]
 - i. An example of appropriate board behavior in the case of a conflict of interest: If an intended rental facility for the Guild were to be owned by a board member or a friend or relative of that member, before substantive discussion were to take place on the topic of the rental the board member should recuse his or herself and leave the discussion. This recusal should be noted in the minutes of the meeting. If the conflict is not clear, we may want to check with a lawyer prior to any discussion.
 - i. Need to respect confidentiality. Consider if guests appropriate or not at the board meetings to maintain confidentiality. May want to arrange agenda to discuss items of a confidential nature when the guests will be excused from the meeting.
6. Recommend obtaining Director & Officer (D&O) liability insurance. For \$1,000,000 coverage it would cost maybe \$600 to &800 annually.
7. Financial Duties – No comingling of Guild and personal funds as it would be illegal. No loaning Guild money to a director or officer.
8. Lead with the intent to have the right people on the board.

Attachment 3: 501(c)(3) Qualified Charity Board Training 101 – Notes by Diane Revell

- a. Diversity on the board with people who work together well.
 - i. Helps with grants to have diversity
 - ii. Diversity includes racial, ethnic, age, gender including LGBT for example
 - iii. Usually more diversity of views lead to better decisions
 - iv. Working collaboratively. Also spending some social time together usually strengthens working together
 - b. Planning, commitment, fundraising – Assess these periodically to help the board perform better.
9. General Liability policy to cover things like 3rd party injury [What we have for participation in the festivals and pop-up bookstores]

End of the planned presentation

Shawn asked if any questions for her. Here are the questions and answers.

1. Bruce wanted to know since our approval as a 501(c)(3) qualified charity was effective back to the date of our incorporation under the state in November 2018, so we need to file our IRS Form 990 EZ for 2018 as well as 2019. Shawn said she would check and get back to us on that. Joy Fisher indicated she believed the IRS rules were if you missed the filing deadline for a given year, you could not file later. Shawn said she thought that was the case also but would still check for us.
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Note: Since this presentation Joy Fisher found the pertinent case that may indicate our pop-up bookstores and other activities to promote our members book sales might put us beyond being a 501(c)(3), provided it to Shawn and received her opinion on its applicability to our Guild situation, and the Board members have exchanged some ideas on this topic. Below are some of the relevant e-mails on this.

On Thu, Mar 26, 2020 at 11:42 PM Joy Fisher <joyfisher38@yahoo.com> wrote:
I think I found the case Diane came across when we were exploring our qualification for exemption under section 501(c)(3):

In Rev. Rul. 71-395, 1971-2 C.B. 228, an organization created as a cooperative art gallery formed by artists to exhibit and sell their works, didn't qualify for exemption under section 501(c)(3) because the gallery was a vehicle for advancing the careers of the artists and for promoting the sale of their works. The Revenue Ruling explains that "the gallery serves the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects." The organization failed to qualify for exemption because it was operated for the benefit of private individuals within the prohibition of Regulations section 1.501(c)(3)-1(d)(ii).

Although our activities are much broader, the question is whether paying for tables at events where our members can sell their books at a "pop up" bookstore could disqualify us from nonprofit status because that activity "serves the private purposes of our members." The standard is whether our activities are operated "**exclusively** for educational purposes."

Here's a follow-up ruling which clarifies Rev. Rul. 71-395 and may help us understand that word "exclusively."

Rev. Rul. 76-152, 1976-1 C.B. 152

Art gallery. A nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under section 501(c)(3) of the Code; Rev. Rul. 71-395 clarified.

Advice has been requested whether the nonprofit organization described below, which otherwise qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, is operated exclusively for educational purposes.

A group of art patrons formed an organization to promote community understanding of modern art trends. As its sole activity, the organization selects modern art works of local artists for exhibit at its gallery and for possible sale. The gallery is open to the general public.

A modern art work of any local artist is eligible for consideration for exhibition. If selected, the artist's work is displayed on a consignment basis with the artist setting the selling price. The artists have no control over the organization or its selection process.

The organization retains a ten percent commission on sales. The commissions are substantially less than customary commercial charges and are not sufficient to recover the cost of operating the gallery. The organization attempts to make up operating deficits by soliciting contributions from the general public.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for educational purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for educational purposes unless it serves a public **rather than** a private interest.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term 'educational' relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Museums are included in the examples of educational organizations which, if they otherwise meet the requirements of section 501(c)(3) of the Code, may qualify under this section.

Rev. Rul. 66-178, 1966-1 C.B. 138, holds that an organization that fosters and develops the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are gratuitously displayed may qualify for exemption under section 501(c)(3) of the Code. **The organization does not sell or offer the displayed works for sale.**

Rev. Rul. 71-395, 1971-2 C.B. 228, on the other hand, holds that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify under section 501(c)(3) of the Code.

As is the case in Rev. Rul. 71-395, **the artists in the subject case are being directly benefitted by the exhibition and sale of their works, with the result that a major activity of the organization is serving the private interests of those artists whose works are displayed for sale.** Since ninety percent of all sales proceeds are turned over to the individual artists, such direct benefits are substantial by any measure **and the organization's provision of them cannot be dismissed as being merely incidental to its other purposes and activities.** The fact that the artists have no control over the selection of their works for display does not change this conclusion.

Accordingly, the organization is not operated exclusively for educational purposes and thus does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 71-395 is clarified.

On Friday, March 27, 2020, 9:31:34 a.m. HST, Shawn Nakoa <snakoa@rmkona.com> wrote:

Hmmm. Upon review of the opinion, it's a bit of a close call, isn't it? Clearly, the most conservative approach would be to discontinue sponsoring the pop up bookstores. If HWG wants to take a more aggressive approach, there are some distinctions from the IRS Opinion: First, HWG does not take any commission from the sales of the pop up bookstores. Second, HWG offers much broader activities to the public and therefore, depending on how often HWG does the pop ups, it can be argued that the activity is merely incidental to its other purposes and activities. I think it will depend on how often you do the pop

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ups. The other factor that might make a difference is to also allow non-HWG members the opportunity to sell books at the pop ups.

Hope this is helpful.