

Message to CARES membership from CARES, Inc. General Counsel

RE: Proposed Organic Bylaws

Date: October 13, 2004

Greetings!

Please take a moment to read this brief history of CARES and explanation of the proposed Bylaws, and explanation of their provisions, in the attached document (*Word* file).

These bylaws will be coming upon for membership consideration soon, and it is essential that all members understand their content in order to meaningfully discuss them and vote on them when they are at issue.

73,

Kevin Hunt WA7VTD
CARE General Counsel
AEC, Operations

MEMORANDUM TO MEMBERSHIP OF CARES

**From: Kevin Hunt WA7VTD
CARES General Counsel**

Date: October 13, 2004

Subject: Proposed Organic Bylaws

This memorandum is submitted to the membership as an aid to understanding the proposed Organic Bylaws soon to be put before the membership of CARES. This memo is an 8-page document which begins with a brief history of CARES, and then describes the proposed bylaws and attempts to answer anticipated questions about them.

A Brief History of CARES

Before retiring as our EC, Dave Warner KA7IJK accomplished the difficult and tedious task of obtaining an advance determination letter from the IRS

provisionally certifying CARES as a tax exempt non-profit corporation under Section 501(c)(3) of the Internal Revenue Code.

For about 20 years, CARES has been a nonprofit corporation under Oregon law. Prior to David Warner assuming the position of ARES EC for Clackamas County upon the retirement of Curly Stroy ex-WA7TIC (now a silent key), CARES at various times was or was not formally an ARES group. Although always considered as such by the Oregon ARES heirarchy, and although CARES always participated in all ARES drills, exercises and Section-wide ARES meetings, CARES maintained its independence. It was not until the last few years of Curly's reign as CARES EC that he accepted formal appointment as official ARES EC for Clackamas County.

CARES had been a very active and vibrant group with very close ties to the Sheriff's office. Emergency Manager Casey Marley frequently called CARES out on SAR support missions. In those days, we literally had to establish the only links for CCSO back to Oregon City, and often we were called upon to take over the base-to-search team coms for Portland Mountain Rescue. Two of us (Dale LeBarron W7FBP and myself) were Senior AECs and as such, Dale and I spent many, many nights at the mountain. In those days, we had a forward-stored cache of gear at the Lodge, and we always had a representative in the Incident Command Situation Room. They would look at us and say "make it so." And CARES made it so.

Over time, support from the Sheriff's Office waned. Moreover, Casey's involvement with CARES became more and more attenuated. Curly fell into bad health. The SEC, Tom Rickert N7CAP (now silent key) also fell ill. The loss of the former strong CCSO support was never explained, but accelerated with the progressive entropy in ARES occasioned by Tom's illness and Curly's increasing inability to keep up with the need for strong leadership measures. These factors brought CARES into a state of near irrelevance.

Upon being appointed as EC for Clackamas County, Dave Warner KA7IJK re-invigorated CARES and built its membership back up immensely. He established an Operations Steering Committee which met in between general membership meetings, to advise him and to come up with training and operations protocols and programs. CARES became a main player in ARES in Oregon Section once again.

As urbanization increased geometrically and localities were more and more relying upon non-County emergency services agencies, there was a clear need for ARES groups primarily dedicated to responding for those jurisdictions. Credit for first pioneering this goes to Alan Chinnock KB7POR, who organized an ARES group in Lake Oswego. Dave Warner and Alan agreed to that unit being a semi-autonomous subunit of CARES.

Shortly thereafter, the future Mayor of Oregon City, John Williams WB7S JL and the then Oregon City Fire Chief Jim Davis, asked me to organize such a group to serve Oregon City. Chief Davis in particular very much desired to support such a group, as he had been served immensely by ARES/RACES while serving as a FD Chief in Washington. John Williams and I sent post cards to all hams in Oregon City and 70 showed up for the organizational meeting. The Oregon City unit became the first to formally have its members certified as RACES volunteers for Oregon City, and became the second local subunit of CARES. Subsequent immense successes of the OC unit in SETs and several flood and severe weather incidents led Dave Warner to pursue organization of local semi-autonomous subunits throughout the County.

Unfortunately, while Dave Warner succeeded in rejuvenating CARES, cooperation from the County remained lackadaisical. Additionally, fewer and fewer members were willing to perform any tasks to keep CARES financially sound and to take on the administrative work load from Dave Warner. Whereas in its early years, CARES recycled newspapers and other such projects in order to raise money, the commitment from the membership was not there any longer to put in the time for those necessities. The Operations Steering Committee became defunct by lack of participation. Elections of officers for the corporate identity of CARES became a joke. As fewer members stepped forward to do some of the work, more of it fell upon KA7IJK. Never wishing to be a one-man show or a dictator, Dave Warner nonetheless had no choice but to assume that posture, as otherwise the organization could not have remained viable.

A couple of years ago, CARES once again became heavily involved in supporting CCSO during SAR missions. In the meantime, the Lake Oswego and OC groups had formed partnerships with their local CERT (NERT, in OC) groups. The OC group's relationship with the fire dept (which changed from OCFD to TVF&R) became so strong that we were consulted on such matters as blueprints for renovation of the Main Fire Station and construction of the new South End fire station. We got ham stations installed at the fire stations. We got official Emergency Services Worker status, and photo ID cards. We even were trusted with the entry codes into the fire stations.

After about a year following the resurrection of the CARES/CCSO SAR relationship, an assistant leader in CARES became the subject of much dissatisfaction among the membership and other groups served by CARES during SAR missions. At one point the major search group indicated it would no longer respond if that CARES assistant leader in question was on the mountain or in charge of anything.

This person happened to be a long-time friend of the then-EC. After declining to adequately remedy the problem, there were resignations from CARES or from the SAR list. Ultimately, himself having faced a major health challenge, and following a great deal of unfortunate acrimony between those who viewed the problem assistant leader as a major threat to safety of searchers on the one

hand – and Dave Warner’s loyalty to that person as a friend on the other, as well as increasing complaints concerning the lack of participatory democracy in the group, and concerning the EC’s having taken disciplinary actions against certain complaining members, Dave Warner retired from the EC position.

A group of CARES members (including myself; at that time I was Assistant Section Manager) asked the current Section Emergency Coordinator Wayne Jack KK7TT, to appoint Dave Kidd KA7OZO as the new EC for Clackamas County. That happened. Under Dave Kidd’s stewardship, CARES rapidly thrived, with an explosion of new subunits and an active membership. After being appointed EC, Dave Kidd asked me to serve him as a staff person, with concentration on legal and administrative matters.

One of the most important legal priorities I identified at that time was to return CARES to compliance with the law relating to Oregon nonprofit corporations under the Oregon Nonprofit Corporation Act (ONPCA). That meant real elections and a functioning Board of Directors, as well as compliance with the statutes granting rights to members and requiring that the Board oversee all activities of the corporation.

This is essential because otherwise, the “corporate veil” can be pierced in a lawsuit and individual officers and others can be liable for damages. It also can lead to assessment of taxes which would destroy CARES, and tax penalties against its officers personally.

Moreover, if CARES does not act properly as a corporation, it will lose its provisional IRC 501 (c) (3) status when it is reviewed by IRS in less than four years. That would subject CARES to back taxes at the 35% corporate rate. Additionally, CARES would no longer be able to solicit donations of gear and money with the assurance that donors could take a tax deduction for those donations. Finally, and perhaps most importantly, CARES members would lose the protection they have now under the Federal Volunteer Protection Act, against lawsuits potentially brought by anyone claiming that negligence of a CARES responder caused them harm during as mission.

Accordingly, I took the time necessary to draft a set of bylaws that would establish CARES as a viable legal entity in all respects, with the maximum possible protection of its officers and its members. I will now summarize how the Bylaws are set up, as well as answering anticipated questions about them.

Q1: WHY ARE THE BYLAWS SO DARN LONG?

Great question. The answer is that this was unavoidable. It is appropriate for CARES to file with the Section Emergency Coordinator a 2 or 3 page set of simple bylaws describing its ARES existence, but that will not suffice as far as corporate legality of CARES as a nonprofit entity, for several reasons.

In order for CARES to (1) operate as a normal unit of ARES; (2) have the protection and benefits of 501 (c)(3) status, it was necessary to find a way to deal with some seemingly impossible conflicts in the law.

This is due to two primary legal requirements:

- (1) A 501 (c) (3) corporation cannot be controlled by, nor exert substantial control over, another organization.
- (2) ARES is a registered service mark of the ARRL. ARRL provides that no one can be required to join any other organization in order to participate in ARES. In fact, a person need not even join ARRL in order to so participate.

At the same time, under the ONPCA, the Board of Directors of the corporation MUST have ultimate, overall oversight over the activities of the organization. And yet, of course, it goes without saying that the corporation cannot control any aspect of ARES *per se*; nor would it be desirable for a Board to be in charge of operations, as this is the job of the EC and the EC cannot perform that job without having full and supreme authority in that arena.

I spent a great deal of time carefully studying the nuances of these matters. I have served as General Counsel for other ham-related 501 (c) (3) corporations; and I also consulted with other lawyers who serve in such capacity, and reviewed the most respected texts on these issues written by the experts in this field. The result is what you see in the proposed Organic Bylaws. In order to satisfy all of the above otherwise contradictory requirements, it was essential that the Bylaws specifically recite certain matters. These Bylaws do so. Unnecessary language has been omitted to the extent needed, and in my legal opinion what remains is that which is necessary to meeting the foregoing objectives.

Q2: WHAT KIND OF STRUCTURE IS ESTABLISHED BY THESE BYLAWS?

The practical answer is that as a member, you will not notice much of a change. As far as the current operational aspects of CARES, you will not see any change, except for the establishment of the Operations Steering Committee, an advisory group. And that will not be a noticeable change, because already the current EC has established an "AECs and Staff" group of advisors. It is another name for the same thing.

The Bylaws are divided into two main aspects:

- (1) Corporate Administration;
- (2) Operational Command.

(1) Corporate Administration is (as required by law) by a Board of Directors that is elected by the membership at the annual meeting. It consists of the following Directors, some of whom are also officers:

- (A) President.
- (B) Vice President.
- (C) Secretary.
- (D) Treasurer.
- (E) At-Large Director.

The actual number of Directors can vary in a range which is spelled out in the Bylaws. Under the temporary, provisional Standing Rules under which the provisional Board has been operating, there is an even number of Directors and at times it has not been possible to obtain a majority vote on certain issues. Accordingly, an at-large enfranchised Director position is added for purposes of the November, 2004 Annual meeting and elections.

Those five Directors are “enfranchised Directors,” meaning they can vote in the Board’s meetings. In addition to them, there are two non-enfranchised Directors; they are *ex-officio* Board members who may attend Board meetings and make motions, but who have no vote:

- (F) Commander of Operations (CO);
- (G) General Counsel

Enfranchised Directors A-E above, and the CO, can also call special meetings of the Board.

The Board must meet at least quarterly. In between those meetings, the day-to-day oversight and administration of the corporation will be by an Executive Committee appointed by the Board, chaired by an Executive Director, who also will have authority to perform most of the ongoing, routine corporate administration. This is important, because without this provision, the Board will have to meet complicated legal notice requirements and all kinds of formalities simply in order to perform the most trivial of administrative tasks.

(2) Operational Command is entirely vested in the CO. The Bylaws provide that at time of their adoption, the CARES CO is the person who has been duly appointed ARES EC for Clackamas County. The CO (EC) has full authority to issue Standing Orders, General Orders, appoint assistants, issue field orders, temporarily suspend members from operations, and to organize all aspects of the response capabilities and procedures as he/she sees fit. The Board of Directors does not participate in this function, but is entitled to periodic reports and has authority to request such reports, and to act only in the event a particular aspect of operations fell outside of the law or posed a legal threat to the group.

As already noted, the AECs, including the leaders of the local subunits, form the Operations Steering Committee (OSC). There is a requirement that certain Standing Orders be noticed to the OSC prior to becoming effective; this is solely in order that all subunit members will be made aware of the orders.. Also, the OSC has the power to request initiation of proceedings to remove the CO from office.

There is a legal reason why the term “CO” is used in the bylaws; it is expected that members will (as they should) continue to refer to that person as the “EC.” Likewise, there is a legal reason why there is provision for the CO being theoretically subject to removal (under a rather difficult process). The reason relates back to what was written earlier: CARES cannot exert control over ARES, and *vice versa*. In reality, the ARES EC is going to be the CARES CO. However, in order to satisfy legal requirements as a 501 (c) (3), and to provide members their rights under Oregon law, it is essential that our bylaws clearly recite that all such persons are subject to ultimate Board oversight and to limited powers granted to the members. In practice, this will have no noticeable effect different from the current manner in which CARES functions. Only if CARES were some day in the future stuck with an EC who totally lost the support of the membership, would these provisions come into play. That is not anticipated to happen.

Moreover, if it ever did happen, the removal of a person as the CARES CO would have absolutely no effect on that person’s status as ARES EC for Clackamas County. And since all CARES members will be members of ARES, they would still be under the command of that EC unless they resigned as ARES members. So, it is seen that much of the wordy language in the Bylaws is there for reasons of legal necessity only.

Similarly, if in the future a DEC, SEC or Section Manager were to fire the Clackamas County ARES EC, that would not automatically remove that person as the CARES CO. CARES, its Board and its members would, as provided by law, be the sole determiners of whether they wished to remove a CARES CO who was fired as the ARES EC by higher echelon ARES personnel. In addition to satisfying legal requirements, this provides a unique and important protection to CARES in the event an ARES official were to ever, for arbitrary, political or personal reasons, terminate the ARES EC appointment of a person doing a great job for CARES

The CO (EC) also is responsible for several other functions such as maintaining a RACES plan and program, etc.

Q3: WHAT ELSE DO THE BYLAWS DO?

The remainder of the bylaws deal with formation of internal subunits, affiliation with CARES of outside local subunits, how the “club station” is administered, what occurs in an emergency when the Board cannot meet, how the bylaws are amended, how property is to be distributed in the event CARES dissolves, etc.

Also, a fair procedure (as required by Oregon law) is provided for discipline of members should that ever become necessary. The CO (EC) can remove a member from the operational deployment lists any time he/she deems that necessary (subject to remedial efforts if warranted), but cannot expel a person as a member of the organization. Oregon nonprofit public benefit corporations cannot arbitrarily expel or suspend members. The minimum requirements prior to expulsion of a member are spelled out in the Organic Bylaws, as well as some grounds for expulsion which are deemed appropriate to an organization that works closely with government agencies in a security-conscious context. Precise details of these issues have been put into another separate document entitled "Procedural Bylaws," which are much longer and provide the manner of conducting membership remedial assistance, member discipline, hearings on member appeals of suspensions or expulsions, etc., as well as spelling out in great detail the precise uniform procedures for carrying out certain administrative functions. The Procedural Bylaws will be adopted in some form by the Board, once the membership has approved these Organic Bylaws.

Conclusion

I have expended well over 300 hours in intensive research and drafting of these bylaws. It is my opinion that they will fully serve the needs of this organization for many years to come. It is my further opinion that their adoption is essential to help in protecting the members and officers from liability for any claims of negligence which could easily arise in the type of volunteer work in which we engage.

For all of these reasons, I urge that you carefully review these Bylaws, and that you give them support by voting for them when they come up for consideration, participating in that consideration by asking questions, offering amendments, and otherwise being involved in the adoption process. I am available to answer questions from anyone regarding the import or reasoning behind any provisions of this document.

Respectfully submitted,

Kevin Hunt WA7VTD
ARRL Volunteer Counsel
CARES General Counsel