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Restore ASQ Petition – Town Hall Q &A

It seems like the basic justification for not allowing the petition to be voted on is that the ASQ Board has proceeded too far past the point of no return. This is invalid justification.

This is incorrect. As previously explained, the justification for not proceeding with the petition was that the ASQ Board of Directors, who are ASQ members, was presented data from the Bylaws Committee, who are also ASQ members, which showed conflicts with existing bylaws. This process is required and outlined in ASQ's bylaws.

Outside legal counsel was also consulted and they indicated that allowing the petition to move forward would violate ASQ's bylaws and put the Society at risk for legal issues.

You can reduce the emphasis on certifications and reduce their cost to members and non members and fix this. ASQ is not here to make money, it is here to serve Members and society at large through educating them about quality and the affiliated sciences.

ASQ must be operated in a way that is financially responsible. This is not a fiscally responsible option and the certification assets have been sold to ASQE and are no longer the property of ASQ to control. Also, certification prices for ASQ members have not increased in past five years, and benchmarking shows that current certification prices are lower than the average certification prices of other notable membership societies.

It is important to note that ASQE's Certification Council is comprised of ASQ members and works independently from the ASQ Board of Directors.

This petition did not have anything to do with or to discourage inclusion - that is a red herring. The voices of more than 100 Members is being overridden.

With more than 55,000 global members, ASQ's Board of Directors must look at what is best for the collective membership while governing within their fiduciary and legal obligations. Putting forth a petition which would risk the Society's tax-exempt status and put ASQ at legal risk isn't in the best interest of the collective membership and would violate the fiduciary laws under which the Board must govern.

ASQ was a single society prior to ASQ Transformation and this petition restores this. Simple as that.

It is not possible for a change to bylaws to retroactively undo a binding legal business transaction and it is factually inaccurate to claim that it could be done.

ASQ's original Certificate of Incorporation specifically prohibited members, officers, and directors from inuring pecuniary profits. The petition will restore ASQ to this.

The petition seeks to undo a legally-binding business transaction which cannot be undone. In 2018, the ASQ Board implemented a robust conflict of interest (COI) policy that complies with all IRS and New York state requirements. Key person and board member disclosures are made

on an annual basis as part of orientation and upon discovery; Financial Auditing Committee members must comply with additional COI requirements. The COI process identifies society transactions that confer a financial benefit on board members as well as a procedure for recusal and other remedial action. ASQ's bylaws allow for the reimbursement for services provided which is a reasonable expectation for anyone who does business with the Society.

And by doing this and removing the outsized profiteering the reason to create a 501(c)(6) goes away, thus restoring ASQ.

The existence of ASQE will remain regardless of a change to ASQ's bylaws. Certification assets have been sold to ASQE and ASQ no longer owns them.

ASQ was established to benefit and educate the public. Get industry out of this. And if you want to create separate entities, take a Member vote.

Nothing in the bylaws or articles of incorporation prohibits the ASQ Board of Directors from approving the creation of new legal entities or selling the identified assets, so long as the transaction is arm's length and at fair market value (which outside experts determined was the case). Oversight and preservation of ASQ's tax-exempt status is a fiduciary and legal responsibility of ASQ's Board of Directors.

Return certification prep, training, and exam proctoring to Sections and then the cost and what we need to charge goes down dramatically and gets us under the threshold for 501(c)(3).

This would be contrary to IRS laws governing that certification and related certification activities, including training, are considered part of 501(c)(6) entities.

Did you just say "what the members want?" We want a vote on the petition. It is okay if the vote goes against the petition, but give Members a voice by a vote.

A member vote cannot overturn legal and tax requirements. As a not-for-profit, ASQ is part of a regulated industry and must adhere to the laws which govern the State of New York (where ASQ is incorporated) and the IRS.

How about going to the Members by a vote? This is just talking in circles with legalese. The only risk is to ASQ HQ, ASQE, and those seeking to profit off of ASQ.

The Board of Directors are ASQ members and have a legal fiduciary responsibility to ensure the Society is managed in a way compliant with the IRS and other laws.

Certification is not growing, Membership is declining since ASQ Transformation came into effect.

Certification revenue has grown, including 12% from 2018 to 2019. 2021 is already trending higher than 2019. Membership numbers have fluctuated which was expected when the Associate membership level was phased out over 2020 and anticipated due to the recession caused by the COVID-19 pandemic. We have several initiatives launching this year which are designed to increase membership and more about these will be shared in the coming months.

Certifications are not even mentioned in the Bylaws, so that is a red herring as well.

It's important to note that according to the IRS, certification is considered a function of a 501(c)(6) organization. It would be unreasonable for certification to be mentioned in bylaws to support a 501(c)(3) organization.

Again, we are not here to make money off of ASQ. The Certificate of Incorporation also needs to be restored to the original founder's intent.

The ASQ Board of Directors honored ASQ's Certificate of Incorporation by ensuring the Society's 501(c)(3) status wasn't put at risk by moving this petition forward for a vote. This process is also required according to ASQ's bylaws.

The only voice that you are not allowing in all of this is the voice of Members - shameful that you hide behind lawyers.

ASQ's Board of Directors are all ASQ members. The board is composed of quality experts, not legal experts, however the board has a fiduciary responsibility to ensure the proper management of the Society and legal experts provided valuable insights to help inform decisions.

Yes you can carry out the will of Members - that is your primary duty.

The Board itself is composed entirely of ASQ members – everyone is part of the same membership – and it has a fiduciary responsibility to preserve the tax-exempt status of the Society for the benefit of all members.

Yet you will not even let Members vote.

The Board itself is composed entirely of ASQ members – everyone is part of the same membership – and it has a fiduciary responsibility to preserve the tax-exempt status of the Society for the benefit of all members.

You are in good shape because you transferred \$12.5 million from Sections and Divisions to cover the continued multimillion dollar deficits of ASQ HQ. ASQ HQ had drained down its reserves to the trigger level necessitating taking the money from Sections and Divisions. And you suspended dues allocations on 2020 and halved them in 2021 in violation of the funding policy.

While it is true ASQ as a Society on an overall basis lost money in 2018, it broke even or was profitable in the 2017, 2019 and 2020 years. No money was taken from Sections or Divisions. As part of the transformation process, the TCC transferred all division funds into a common reserve fund in 2018. Funds transferred into the common reserve have either been spent by divisions to operate during the 2018, 2019 and 2020 years or are still being held for investment. TCC funds held for investment totaled \$1.342 million at 12/31/2020.

The Board, which has 12 members representing the TCC and GCC, has the authority at anytime to revise/review the Member Unit Financial Management and Reporting Policy that sets forth the amount of dues allocations to member units. After the start of the COVID-19 pandemic and cessation of all Society and member unit in person events, the Board concluded there was no need to pay allotments during the 2020 year. All member units held sufficient assets to continue operating on a virtual basis. When the 2021 Budget was approved by the Board in November 2020, the Board agreed that dues allocations to member units would restart in the second half of the 2021 year when in person activities resume. The 2021 budget includes 1/2 year's due allocations calculated per the current policy statement. No violation of the Member Unit Financial Management Policy occurred.

The \$12.5 million was transferred to ASQ HQ from Sections and Divisions, check the past financial reports and board minutes 2015 – 2018.

TCC leadership authorized the closure of TC PNC accounts and centralized all reserves leaving TCs approximately 125% of their operating budget for the year. Sections were not impacted.

And promised Reserve Funds and Investment Funds for Sections and Divisions were taken from Sections and Divisions violating the covenants of those agreements.

No funds were taken from any Sections or Divisions.

You just did change tax exempt status

ASQ did not change tax exempt status and remains a 501(c)(3) not-for-profit organization. Changing tax-exempt status would require the complete dissolution of the Society, including member unit communities, and creating a new organization under a different tax-exempt status.

And certifications have existed for decades with no problem with 501(c)(3).

Multiple highly regarded tax and legal experts all agreed that ASQ could not maintain its certification assets under its existing tax-exempt structure; it was a liability to the Society and changes were made to avoid the substantial risk.

In a 2004 ruling, the IRS determined that a Section 501(c)(3) membership association's certification program generates taxable unrelated business income ("UBI") to the association. Since 2004, most 501(c)(3) organizations with certification and/or accreditation programs have created affiliated 501(c)(6) associations and moved their certification and accreditation programs into the 501(c)(6) entities.

So cut the certification fees to be below the limit.

Cutting certification costs - which have been benchmarked and are lower than most every 501(c)(6) organization which offers cert - is not a sustainable business model and can jeopardize the financial health of the Society. Also, that would not address the fact the IRS considers certification a function of a 501(c)(6) tax-exempt organization and ASQ is a 501(c)(3). Any and all certification related revenue is subject to unrelated business income tax (UBIT) for a 501(c)(3) organization.

Yes an IRS audit of 2017 that passed.

One year of an audit - the first one ASQ had from the IRS since case law established in 2004 that certification is a function of a 501(c)(6) and not a 501(c)(3) - isn't justification to not address the risk cert presented to ASQ.

The scope and substance an IRS audit will cover is determined by each auditor. Part of ASQ's successful passing of the 2017 audit included reliance by the auditor that ASQ was implementing several changes that were not fully implemented at the time of the audit.

Certification revenue itself has remained flat. Percentage of revenues has grown due to the decline in ASQ membership. From a high of 140,000 to just over 50,000 now.

Certification revenue did not remain flat, in fact it grew 12% from 2018 to 2019. 2021 is trending to surpass 2019.

However, the second part of this question regarding how the changes to other parts of ASQ's business affect the percentage of revenue generated illustrates the risk that third party experts like the IRS, tax experts and legal counsel have warned ASQ's Board of Directors about for years. That fluctuation can cause UBIT to be higher than the allowed percentage the IRS deems acceptable (usually 15-20%) which could then cause ASQ to lose its 501(c)(3) tax-exempt status and violate its Certificate of Incorporation and bylaws. This is why the Board followed expert counsel to create ASQE and mitigate ASQ from that risk.

And how many Sections have you dissolved because of ASQ Transformation? You have taken the life out of ASQ because the life of ASQ is its Members and their volunteering.

The dissolution of any ASQ section that has occurred has been done at the request of the GCC which first approves any dissolution before it can move forward. The most common reason for the GCC to dissolve a section is the lack of members willing to serve in leadership roles for an extended period of time. ASQ in 2020 made a concerted effort to recover assets from the local accounts of any sections that were dissolved during the 2014 to 2020 time period. All recovered funds were deposited into the appropriate GCC regional bank account that the section was aligned with.

This was described as arms length when it was insider negotiated.

This is incorrect. ASQ began discussing the creation of a 501(c)(6) in 2017, and research and diligence regarding the creation of it to support our business strategy in January of 2019. External tax and legal experts, including our independent auditors, vetted and agreed with the need to create a 501(c)(6). An arm's length sale price was determined by an independent national valuation firm using the expected future cash flows from the group of assets purchased. Where possible, the valuation firm referred to comparable transaction data it had access to determine the arm's length sale price.

Section and Division funds need to be restored to the Sections and Divisions that held them and Billhighway can manage this.

Section and Division funds are available to them through Billhighway (our financial management tool).

Creating ASQE wasn't like some separate group came along and offered to purchase this, it was proposed and negotiated by the ex-Acting CEO and ex-TCC Chair.

ASQ began research and diligence regarding the creation of a 501(c)(6) entity to support our business strategy in January of 2019. External tax and legal experts, including our independent auditors, vetted and agreed with the need to create a 501(c)(6).

Please then publish ASQ HQ salaries and the amounts of money that current and past officers and directors have made off of ASQ as required in ASQ's IRS Form 990 filings.

ASQ's IRS 990 Forms can be found on various public websites, such as guidestar.org.

Please then provide to Members the valuation since you sold this off for less than one year of revenues and loaned ASQE the money to buy it plus half a million dollars to get started. Complete insider benefit.

ASQ's Board of Directors consulted valuation, tax and legal experts on this transaction and none of those experts determined this was an insider benefit.

Hi Austin, has ASQ Section 300 Metro NY/NJ been dissolved? The Section that gave you your start in ASQ.

ASQ Section 300 has not been dissolved. New leadership, at the request of the GCC and approved by the ASQ Board of Directors, was put in place and the section continues to thrive.

Has the loan on the ASQ HQ building been renegotiated, or do we owe a \$11.4 million balloon payment in February 2023?

The loan on ASQ's Milwaukee offices remains outstanding. The principal balance at 12/31/2020 was \$11,987,000. The interest rate on the loan is currently just under 1% pa. ASQ

will make scheduled principal repayments of \$300,000 in 2021 and 2022 and \$150,000 in January 2023. A final balloon payment of \$11,237,000 is due in February 2023. This debt was incurred back in 2001 to purchase ASQ's offices. ASQ will explore all of the following strategies prior to February 2023-refinance all or part of the loan with the existing or a different lender, sale of the entire building and leaseback of part of the space for a specified time, sale of specific floors and/or portions of the building owned by ASQ. The ASQ Building is part of a condo association that allows portions of ASQ's space to be sold to third parties.

To be transparent, please publish ASQ's up to date financial statements and IRS Form 990 filings on an easy to find location on ASQ's website.

ASQ's 2019 and prior year's audited financial statements have all been posted and are available on the "members only" portion of the asq.org website. The 2020 audit report will be posted in early June along with member unit 2020 financial information. ASQ has completed all required 990 filings with the IRS through calendar year 2019. The 2020 Form 990 is not yet due and has not yet been prepared. The IRS will publicly release all ASQ's Form 990 filings through its website. IRS processing of many 2019 and 2020 tax filings has been significantly delayed by the COVID-19 pandemic.

Let Members decide what is best by voting on the petition. All this talk about what the Members want and you throw our petition in the trash?

The Board itself is composed entirely of ASQ members, however by accepting a role on the board, they have a fiduciary responsibility to preserve the tax-exempt status of the Society for the benefit of all members as required by ASQ's governing documents. Members cannot vote on a petition which would have adverse legal consequences for the Society. It would be unethical to allow that to happen.

Thank you for your time, but you made the wrong decision to block a Member vote on the petition.

The ASQ Board of Directors did not block the voice of members. The Board itself is composed entirely of ASQ members and it has a fiduciary responsibility to preserve the tax-exempt status of the Society for the benefit of all members. ASQ's Bylaws Committee spent approximately 47 hours reviewing the petition and gave it considerable attention. While the petition as presented couldn't move forward due to the risks it presented, the Board agrees that there are opportunities to improve and modernize our bylaws and is exploring options to do so in a way that is aligned with our governance documents.

The Board vote not to approve the Restore ASQ petition was in the best interests of the Society and consistent with ASQ's Governance Management Documents policy and its Certificate of Incorporation.

This is less of a town hall and more of a pontification on the behalf of the board to defend their position, assuming that members need "mansplaining" to understand. Curious that the town hall was held so quickly after the vote - this seems more of an effort to make this go away. There are members who are not intimidated by law or finance statements made by panel members while everyone else is on mute. Over half of the meeting was presentation reiterating information already presented within the published output and is unconvincing. There is a baby and bathwater approach towards this petition - what was presented with respect to opportunities for improvement are menial. Most of the defense is around conflict with by-laws or articles of incorporation, which are made to be

changed. This is being perceived as a gaslighting effort. Will the reports from the law firms and the "SME's" be published? What are the other learnings/OFI's?

ASQ is a tax-exempt entity and as such is required to be governed in a way which complies with IRS regulations and business laws. It would be unethical for any member to willingly violate our existing governing documents, federal regulations and state laws and could result in damage the Society. As a board made of quality professionals, input from tax and legal experts has helped ensure this does not happen and trusts the fact-based findings of these professionals and uses that information to make decisions. However, the legal report is confidential and considered privileged content. As discussed, other opportunities for improvement include updating the bylaws in a way which is does not create conflicts with existing bylaws or create legal risk.

My division's budget was slashed - our scholarship was reduced by 33% - if the financial situation is so rosy, why have funds be slashed?

Budgets for Divisions are determined by the TCC. If there were changes made, TCC leadership can best explain the rationale.

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