

COVID-19 Contingency Planning Committee Report April 9, 2020

Background:

In response to the deadly virus COVID-19, forty (40) states have issued shelter in place orders and the CDC has issued guidelines through the White House restricting the movement of residents, ordering older residents to stay home, and prohibiting the gathering of groups consisting of more than ten (10) people. This has impaired the VFW's ability to conduct meetings to include elections and Conventions at all levels of the organization.

Purpose:

Commander-in-Chief Schmitz appointed the Contingency Planning Committee to develop contingency plans for navigating the fraternal business of the organization within COVID-19 restrictions; specifically, the committee was charged to explore options for the National Convention under current CDC guidelines of social distancing pursuant to our Bylaws.

Summary:

This report will be broken down into two (2) recommendations. The first recommendation will address whether or not the organization should conduct a National Convention in Reno, Nevada in its current form given the known health risks of COVID-19 and current CDC restrictions.

The second recommendation will be the committee's recommended contingency plan for the National Convention from the three (3) contingency plan options the committee developed.

Recommendation 1:

The facts of the situation known to date are as follows:

- The deadly COVID-19 virus is extremely contagious and a majority of our members are classified as high risk to succumbing to the virus due to their age.
- Forty (40) states have issued shelter in place orders restricting the movement of their residents, ordering their older residents to stay home, and prohibiting the gathering of groups consisting of more than ten (10) people.
- The President of the United States has extended social distancing guidelines through the end of April that recommend the same.
- The Reno-Sparks Convention Center has been declared a potential alternate care site for local hospital overflow for patients stricken with COVID-19 by state and federal healthcare officials.
- This pandemic is unprecedented and although projections change daily and vary from state to state, some projections have states seeing peak COVID-19 occurrences as late as the end of May and not seeing a recovery rate of occurrences where social distancing would be eased until the end of July. With that said, these projections continue to be adjusted as the virus spreads through the United States and are not to be taken definitively.

Given the aforementioned facts, the current CDC restrictions, their lack of a definitive end date, and in order to mitigate the health risk to our members, the committee recommends the National Council of Administration vote to forego the National Convention in its current form in Reno, Nevada.

Recommendation 2:

Through intensive research of the Bylaws and Robert's Rules of Order and extensive debate, the Committee developed three (3) contingency plans for the National Convention based upon the given that under the current COVID-19 landscape and CDC restrictions the National Convention could not proceed in its current form in Reno, Nevada.

OPTION 1: Conduct the National Convention electronically.

Although the technology exists to accomplish this solution, the committee agreed this option is prohibited by our Bylaws for the reasons detailed below and therefore **the committee voted to reject this option.**

In order to comply with CDC guidelines and the quorum requirements for the National Convention pursuant to Section 603 of the National Bylaws, electronic attendance would need to be employed to accomplish the quorum which is in conflict with our Bylaws.

Quorums are clearly defined in Sections 203, 403, 503, and 603 of our National Bylaws; however, electronic attendance is only provided for within Section 203 and 403 which specifically state a quorum is only established by those members who are "physically present."

Section 403 of the National Bylaws states "[t]he minimum number of delegates required to constitute a quorum for the transaction of business at a regular or special meeting shall not be less than one (1) delegate from fifty (50) percent of Posts in the District, provided that when using electronic attendance, at least twenty-five (25) percent are physically present." Most importantly this Section does not provide for electronic attendance for District Conventions: the Bylaws go to great lengths to distinguish between meetings and Conventions in regards to electronic attendance. Staff comments provided to the 116th National Convention, when this change was passed, provided, "This change separates the "meetings" from a "convention;" electronic attendance would not be permissible for conventions." Thus, the recorded history that provided the rationale for this change was clear in that it would not apply to the National Convention.

Robert's Rules of Order was consulted when the language regarding electronic attendance was developed; specifically, "[i]f an organization authorizes its assembly, boards, or committees to hold electronic meetings, such a provision should indicate whether members who are not present *in person* have the *right* to participate by electronic means..." "Various additional rules (in the bylaws, special rules of order, standing rules, or instructions to a committee, as appropriate) may also be necessary or advisable regarding the conduct of electronic meetings, such as rules relating to... methods for determining the presence of a quorum (emphasis added)." (RONR, pp 98-99).

The phrase "physically present" was added to the definition of quorum within our bylaws in union with the amendment to allow for electronic attendance. This again speaks to the definition of the phrase "physically present" and that it was added to distinguish physical presence from electronic. Beyond the scope of a quorum for meetings, physical presence is also required for the institution of a new Post pursuant to Section 201 of the National Manual of Procedure. In fact, an amendment was adopted at the 120th Convention to reduce the number of members required to be present at a Post's institution from twenty-five (25) to ten (10). Again this supports committee's assertion that physical presence is distinguishable from electronic presence in our bylaws.

In reference to a quorum and the ability for it to be waived by unanimous consent and/or notice, Robert's states, "[t]he prohibition against transacting business in the absence of a quorum cannot be waived even by unanimous consent, and a notice cannot be validly given." (RONR, pp 348).

Based on the aforementioned conflicts with the National Bylaws, Manual of Procedure, and Robert's Rules of Order, the committee agreed the National Convention cannot be conducted electronically and therefore believes this is the least viable option and voted to reject this plan.

OPTION 2: If no business can be transacted at the National Convention, hold officers in place for an additional term.

The committee explored this option. The rationale for this option is found in Sections 217, 417, 517, and 617 of the National Bylaws which state, "[a]n officer elected and assuming the duties of an office shall continue to hold office for the period for which elected *and* until a successor assumes the duties of the office," (emphasis added). Additionally, the Sections 220, 420, 520, and 620 of the National Bylaws limit the manner in which an elected officer is removed. There is no provision that expressly states that such an officer may be removed prior to the election and installation of his or her successor except for missing two consecutive meetings or failing to perform the duties of the office (See, National Manual of Procedure Section 620). This option would keep officers at all levels in place until at such time a Convention (or Post meeting) could be held in which officers would then be elected.

However, the committee agreed there are additional provisions which give the authority of the respective Councils of Administration at the National and Department levels to conduct the business of either electing a successor as referenced in Articles V and VI or by filling such vacancies pursuant to Sections 220, 420, 520, and 620 of the National Bylaws and Manual of Procedure, respectively, at their next scheduled or regular meeting. Specifically, those provisions arguably allow the respective units to determine a position is vacant at the end of the elected term. The distinction is that such an action would not be a "removal." Rather, it would simply be a declaration, at the end of the elected term, that position is vacant. Such a distinction is important in ensuring the status of a "Past Officer" is preserved under Section 719 of the National Bylaws.

The committee voted and was evenly split on this option, but the committee agreed that although this option is not in direct violation of our bylaws, it does not move the organization forward. Based on the lack of a definitive end date for COVID-19 risk and CDC restrictions the committee agreed this option is not the most viable option.

OPTION 3: If no business can be transacted at the National Convention, the National Council of Administration shall make the determination that the terms the 2019-20 terms of all officers have ended thereby vacating those offices, those positions which have a successor are filled pursuant to the bylaws, and all other elected vacancies are filled by the National Council of Administration.

Citing Sections 217, 417, 517, 617 of the National Bylaws and Manual of Procedure and their respective provisions which mandate elected offices at each level serve for a one (1) year term, the committee explored the option the National Council of Administration shall make the determination that the terms of all elected National officer positions have ended thereby vacating those offices. Pursuant to Section 620 of the National Bylaws, the Senior Vice and Junior Vice would succeed to the higher office without undue delay; the newly succeeded Commander-in-Chief would immediately appoint a Quartermaster Pro Tempore as well as all other required appointed offices. The National Council of Administration would nominate and elect all other vacancies through a ballot vote thereby affirming those other offices filled through succession.

Pursuant to Section 622 of the National Bylaws, the National Council of Administration shall be responsible for administering the affairs and transacting the business of the Veterans of Foreign Wars of the United States in the intervals between conventions. Based on this provision, if the business of National Convention cannot be conducted then the National Council of Administration not only has the ability to conduct the election of officers, it has an obligation to do so.

The National Bylaws and Manual of Procedure further provide that with respect to other vacant elected offices, including the Junior Vice, a Post or District may fill those positions at the next regular or special meeting, with a provision for the appointment of a Quartermaster Pro Tempore. A similar provision permits the Council of Administration at Department and National levels to fill vacant elected positions at a meeting or by ballot at the Department and National levels.

Other levels of the organization that are able to hold elections and/or Conventions would be allowed to do so; however, for those that are either unable or unwilling to hold elections and/or Conventions the aforementioned process would be employed to determine the terms of office as ended on the same date as the National offices and thereby vacating those offices as well.

This option most closely correlates to the customs and traditions of this organization while maintaining the continuity at all levels. It allows for the transition of leadership to occur while maintaining the “Past Officer” status under Section 719. Furthermore, the balance of the provisions in the bylaws tend to favor the establishment of procedures that encourage elections; this option allows for that. Finally, this option can be replicated at all levels for those units that are unable to hold an election and does not penalize those that are. **Based on all of these facts, the committee voted by a majority vote in favor of this plan and believes this is the most viable option.**

Conclusion:

The committee weighed the three contingency plan options and voted to recommend Option 3 as the most viable as it provides a path to move the organization forward with the least amount of required bylaws interpretation. The committee recommends the Commander-in-Chief present Option 3 to the National Council of Administration in the form of a resolution.