



Legally Speaking
by Bob Dunlevey

ATTEND TO YEAR-END LEGAL MATTERS
- *Your Checklist* -

2016 is coming to an end and for most of you that means the end of your fiscal year as well. Don't let the holiday season frenzies cause you to neglect important year-end business affairs. Here is a handy checklist of some things you need to consider.

- Schedule your annual corporate meetings for shareholders and directors; give notice in accordance with your bylaws/code of regulations; set the agenda for the meeting
- Review your corporate minute book to make sure it is up-to-date; are last year's minutes in there and are they signed? Did the minutes call for certain actions to be taken during the year and have these items been accomplished? Do the minutes ratify corporate actions, such as contributions to benefit plans, borrowing, auto leasing and monetary distributions?

- Has there been a change in the officers, directors or shareholders? Do the corporate records reflect those changes? Do others need to be elected?
- Are there shares of stock needing to be transferred or canceled? Is your share ledger in the back of the minute book up-to-date?
- Is the statutory agent designated to receive important papers current and on file with the Secretary of State? – check the State’s website
- Is your corporation in good standing with the State? – check the State’s website – Ohio - <http://www.sos.state.oh.us/>
West Virginia - <http://www.sos.wv.gov/>
Kentucky - www.sos.ky.gov
Indiana - www.in.gov/sos
- Is the corporation doing business in any other state? Is it appropriately registered and meeting the requirements to do business in those states?
- Is the annual financial report, including a balance sheet, statement of profit and loss and surplus, and an opinion of the financial position of the corporation being prepared?
- Do the corporate records verify payments of salaries versus bonuses and dividends? – the IRS can contend that payments to corporate officers or employees or shareholders are not deductible dividends and that payments to its officers who are not shareholders are not deductible – better assure the proper classification of such payments by identifying the

payments as deductible compensation and consider identifying the justification

- If no, or nominal, dividends are to be paid, and your corporation has a large amount of accumulated earnings, do the minutes include a statement of the reasons why the earnings are being retained?
- Have you changed financial institutions during the year and not noted it within the corporate records? Are those who are authorized to sign checks still the appropriate names and are the appropriate corporate resolutions contained within the minute book?
- Have there been loans to officers or shareholders needing to be documented by minutes and promissory notes?
- Do you have a buy/sell agreement which regulates and restricts the transfer of shares so you don't end up with an unwanted "business partner?" Have you updated the valuation information which sets the price for which shares are repurchased? Has the buy/sell agreement been amended to include new shareholders?
- Are your benefit plans, such as retirement, profit sharing, medical reimbursement, Section 125 or 401(k) plan, appropriately documented within the corporate records and in full compliance with the law? Are the summary plan descriptions you give to employees up-to-date? Are you strategizing about the impact of healthcare reform?

- Have you consulted with your CPA regarding year-end matters, such as tax incentives for such things as equipment purchases, you still may wish to take advantage of before year-end?
- Have you evaluated the cost of your workers' compensation program? Have you shopped for enrolment in a workers' comp group that provides good savings (discounts) and effective third party administration? Have you gone online and looked at your claims history to identify your major claims? Have you met with your workers' comp attorney to devise a plan to eliminate costly claims from your experience and reduce your premiums?
- For those key employees hired this year, do you have employment agreements in place addressing such things as non-disclosure of confidential information and non-competition? It's not too late.
- Have you reviewed your general liability insurance and other business coverages with your agent to ensure proper, cost effective coverage?
- Are your licenses to do business in various locales current?
- Have you reviewed the exempt and non-exempt wage-hour status of your employees to ensure wages and applicable overtime are being paid properly and records maintained appropriately?
- Your personnel policies and practices may require modification due to recent NLRB decisions applicable to non-union employers – is your employee handbook up-to-date?

- Ensure your health plan complies with all new Affordable Care Act provisions and prepare IRS Forms 1094 and 1095, which have to be distributed by some employers in January.

Dust off those corporate records and make sure that everything is ready for 2017. If you need legal assistance in your business affairs, contact **Bob Dunlevey** at **Dunlevey, Mahan & Furry** (937) 223-6003.