

# AL GAGE, CPP-T, PRP, PAP

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## Parliamentary Opinion

December 15, 2024

### **Introduction**

While this opinion was commissioned by the NYSDA (NYSDA), the author has an ethical obligation to be impartial and protect the rights and privileges of all members of the NYSDA and the Speaker was informed that this would be an impartial review and no outcome was discussed.

### **Questions related to meetings of the NYSDA:**

1. Were both the July 12 Meeting and the July 17 Meeting of the Board of Trustees properly called? Was the July 12 Meeting a regular or special meeting?
2. Was the board required to permit absent members to participate electronically in the July 12 meeting?
3. Was notice of the intent to offer a motion to terminate Mr. Hill's employment required to be included in the call of the July 12 meeting? Was this motion in order at the July 12 meeting?
4. Was the motion to rescind the motion for the termination of Mr. Hill in order at the July 17, 2024, meeting, and if so what effect would it have had on the termination?
5. What is the parliamentary difference between an Executive Session and Attorney-Client Session?
6. At the July 17, 2024, meeting was it proper to preclude discussion of what occurred in Executive or Closed Session at the July 12, 2024, meeting?
7. Is it proper for members of the Board to be excluded from either Executive or Attorney-Client session (*closed meetings*)?
8. If every member of the Board is entitled to know what transpired during a privileged session but was not present, by what means should that information be available to them?
9. Are there any noted deficiencies in the governing documents that should be addressed.

### **Background Information Provided**

- Interview with Dr. John Demas on November 18, 2024.
- Interview with Dr. Prahba Krishnan on November 21, 2024.
- Documents provided by Dr. John Demas [Information for Mr. Gage, two versions of a Minority Report]
- The Constitution and Bylaws of the NYSDA last amended October 15, 2024.
- Organization and Rules of the Board of Trustees last amended November 6, 2024

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- Call for the Regular Meeting for July 12, 2024, dated July 8, 2024
- Call for the Special Meeting for July 17, 2024
- Agenda for the Regular Meeting for July 12, 2024, dated July 8, 2024
- Agenda for the Special Meeting for July 17, 2024
- Minutes from the Regular Meeting for July 12, 2024, dated July 8, 2024
- Minutes from the Special Meeting for July 17, 2024
- Email from the Executive Director outlining the changes to the Rules and Bylaws since July 2024, which were not relevant.

## **Sources Consulted**

In addition to the Background Information Provided, as noted above, the following documents were consulted:

- *The American Institute of Parliamentarians Standard Code of Parliamentary Procedure Second Edition (AIPSC2)* the parliamentary authority of the NYSDA because of its reference in Chapter III, Section 130 (B) of the NYSDA Bylaws and with reference to Rules of Order in the Organization and Rules of the Board of Trustees of the NYSDA.

## **Opinion**

### **Questions related to meetings of the NYSDA:**

After interviewing parties representing both the majority and the minority, it appears that there is no dispute as to whether there is sufficient error to reverse the outcome of these two meetings. This opinion will be used to clarify areas of misunderstanding as well as to promulgate changes and deficiencies in the governing documents.

1. *Were both the July 12<sup>h</sup> Meeting and the July 17 Meeting of the Board of Trustees properly called? Was the July 12 Meeting a regular or special meeting?*

The call of the meeting for the July 12 meeting was issued on May 21, 2024. This call was issued by the person who would be the President at the time of the meeting and therefore meets all the requirements of a properly called meeting as listed in the bylaws. The bylaws dictate in Chapter IV Section 120 that:

*A. Regular Sessions. The Board of Trustees shall hold a minimum of three regular sessions each year. The number of actual regular meetings to be held in excess of three for the ensuing year shall be determined in advance by the Board of Trustees.*

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The Association year begins on the beginning of a term. A Regular Meeting was held on June 1, 2024. The July 12 meeting was the second meeting of the Association year. This second meeting of the year would not require action of the Board of Directors to establish more than three meetings for the year. It was proper to deem the July 12 meeting a regular meeting, despite the unwritten custom to the contrary which was to hold regular meetings in September, February, and April. In addition, it has also been customary to hold a regular Board of Trustees Meeting immediately before and after the House of Delegates without further approval by the Board of Trustees.

Reference was made in the minority report that a statement was made at the post House of Delegates meeting announcing the meeting on July 12, 2024, but it was never put to a vote. A vote was not necessary to call a regular meeting as long as it was not more than the third meeting of the year. Members wishing to alter the July 12 date could have done so by motion at the post House of Delegates meeting, but did not do so.

On July 3, 2024, the preliminary agenda was distributed followed by a subsequent identical agenda on July 8. The document distributed followed the prescribed order of business as outlined in the Organization and Rules of the Board of Trustees. The notice of the meeting, i.e., how far in advance the meeting was called, and the full agenda prescribe that this was in fact a regular meeting per the definition of the bylaws. The minutes of the meeting, which appear to have subsequently been approved, clearly state that it was a regular meeting. There has been no evidence presented to the contrary other than it is a deviation from a customary time for a meeting. Even though many of the board members could not attend, adequate notice of a regular meeting was given.

The call for the special meeting called on July 17, 2024, was issued on July 15, 2024. The bylaws provide for the calling of a Special Session, which essentially means the same as a Special Meeting, in Chapter IV Section 120 as follows:

*B Special Sessions. Special sessions of the Board of Trustees may be called at any time either by the President or at the request of five voting members of the Board, provided adequate notice is given to each member in advance of the session.*

Since all the Board of Trustees appear to have been present at this meeting and no one objected, it is clear that this meeting was properly called and attended, and that the notice was “adequate.”

One of the deficiencies that will be noted in the governing documents is that while they state who specifically can call a Special Session, there is no specific mention of who may call a regular meeting but that does not render the call of this meeting invalid since all members were aware of the meeting.

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## *2. Was the board required to permit absent members to participate electronically in the July 12 meeting?*

The default position in AIPSC2 is that the holding of electronic meetings is allowed. It states:

*19.7. Electronic meetings are allowed unless the governing documents of an organization or applicable law specifically prohibits their use. AIPSC2 19:7*

It goes on to say

*In 19.13. If the meeting is noticed as an in-person meeting, there is no right to attend the meeting electronically; just as if the meeting is noticed as an electronic meeting, a member does not have the right to attend in person. The authority to call a meeting also includes the ability to determine or modify the method of meeting. AIPSC2 19:13 (Emphasis added)*

In this instance it is unclear who had the authority to change the right to attend the meeting electronically, but it is also clear per the parliamentary authority, that members did not have the inherent right to attend a meeting virtually that had been called as an in-person meeting.

## *3. Was notice of the intent to offer a motion to terminate Mr. Hill's employment required to be included in the call of the July 12 meeting? Was this motion in order at the July 12 meeting?*

The determination that the meeting on July 12 meeting was a regular meeting is a significant one. It means that the meeting was allowed to take any action that the Board of Trustees was legally allowed to undertake. The business that may be conducted in a meeting is only limited if the meeting was a special meeting.

The parliamentary authority states:

*18.7. At a regular meeting, any business can be conducted that comes within the scope of the organization's purposes unless otherwise restricted by the governing documents. The organization should be cautious in choosing to restrict items of business to a particular meeting as this may limit flexibility to accomplish necessary business. AIPSC2 18:7 (Emphasis added)*

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It further states:

*18.11. All members must be notified of a special meeting, and the call or notice must state the items of business that will be considered and voted on. A copy of the call for the special meeting must be inserted in, or attached to, the minutes of the meeting. **Only those items of business stated in the call for a special meeting may be considered unless the governing documents specifically authorize other business.** No new items of business may be added to the agenda or may be acted upon after the notice period has expired. AIPSC2 18:11 (Emphasis added)*

Since this was a regular meeting, there is no limitation on the business that could be conducted except as prescribed in the governing documents. The parliamentary authority also says:

*20.9. Regular meetings require notice as designated in the organization's governing documents, and no notice is required if the governing documents of the organization provide for meetings to be held on specific regular dates—for example, the third Wednesday of each month. Regular meetings may also be established by resolution. **Any regular meeting of an organization may transact any business not requiring advance notice. If, however, the officers responsible for giving notice know that a proposal of great importance, which may not require advance notice, will be brought up at a regular meeting, they should, as a matter of good faith, give notice of the proposal.** AIPSC2 20:9 (Emphasis added)*

If the President knew that this matter was to come up, the parliamentary authority dictates that the President should, but is not required to, disclose that information. It is not difficult to imagine, especially in personnel matters, why this would not necessarily have been placed in the call of the meeting.

The governing documents give the Board of Trustees the duty to appoint the Executive Director explicitly. They state in Chapter V Section 110 Duties Letter B:

*B. To appoint the Executive Director of the Association.*

The parliamentary authority is clear on the matter of the power to elect or appoint also carries with it the power to remove a person from that position.

It states:

*33.11. The power to select carries with it the power to remove. AIPSC2 33:11*

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In light of these facts and citations, the Board of Trustees had the right to terminate Mr. Hill without notice by a majority vote. The motion that was adopted

*“28-B-2024:*

*Resolved, that the NYSDA Board of Trustees terminate Mr. Gregory Hill's employment as our Executive Director, and be it further*

*Resolved, that our President Dr. Prabha Krishnan use legal counsel to oversee this termination in accordance with the provisions of Mr. Hill's contract.*

was in order at the meeting on July 12, 2024 , and received sufficient vote to be the act of the Board of Trustees

4. *Was the motion to rescind the motion for the termination of Mr. Hill in order at the July 17, 2024, meeting and if so what effect would it have had on the termination?*

The motion to rescind the termination of Mr. Hill was initially ruled out of order at the July 17 meeting because of the inability to retroactively apply the motion. This is a common misconception about the motion to rescind. The motion was in order, but possibly did not achieve the desired effect much like the example given in the parliamentary authority. The motion to rescind the termination of Mr. Hill would not have been applicable retroactively. The parliamentary authority says:

*13.44. The Motion to Rescind, if adopted, affects the present and future only; it is not retroactive. For example, if a motion to assess special fees from members were rescinded, those fees would no longer be imposed; however, the fees already collected would be retained and fees that were assessed before the motion was rescinded would still be collectible.* AIPSC2 13:44 (Emphasis added)

The fact that it would not undo the termination does not make the motion out of order or ineffective. If the motion to rescind had passed, it would've allowed the board to offer Mr. Hill reinstatement or rehire since at the time he was still employed by the NYSDA under the conditions of his contract. Nothing could have been done to undo the termination of Mr. Hill, but it was possible to retain him as an employee. As an alternative the motion could have been to rehire Mr. Hill, which would have rescinded the original motion under the concept of repeal by implication. If the rescission had been made prior to Mr. Hill being notified of his termination, it would have been the same as if the termination had never happened.



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## 5. *What is the parliamentary difference between an Executive Session and Attorney-Client Session?*

No attempt will be made to discern what an Attorney-Client Privilege meeting means in the parliamentary sense as the author is not an attorney and cannot practice law. From a parliamentary perspective, it appears to be a closed session, where legal advice is given or sought and designed to preserve Attorney-Client Privilege. This is much different than a closed or executive session in the parliamentary sense. A closed meeting as defined in AIPSC2 is a meeting in which the proceedings are secret for the members present, and the members who are entitled to be present. The book offers the following definitions:

### *CLOSED MEETING*

*18.21. A closed meeting, sometimes referred to as an executive session, is a meeting open only to current members of the body that is meeting and is a meeting in which sensitive or confidential matters may be discussed and acted upon. Any discussion held or actions taken are legally considered as confidential, and all information must remain within the confines of the meeting unless the body that is holding a closed meeting directs otherwise by formal motion. A motion to go into a closed meeting is privileged, is not debatable but is amendable as to who may attend in addition to members and is adopted by majority vote.*

*18.22. Boards and committees are normally considered to operate in a closed meeting unless the organization documents state otherwise. Boards and committees may invite members of the organization, staff, or others to attend as observers or to obtain information.*

*18.23. In a closed meeting, only those who are members of the body that is meeting are allowed to attend; for a board or committee, that means only the members of the board or committee rather than all members of the organization. In a membership meeting, only members of the organization have a right to attend the closed meeting. Guests, such as witnesses, advisors, or staff, may attend only by invitation of the body that is in a closed meeting.*

*18.24. Personnel matters, such as discussion of salaries and evaluation of employees, should be handled in a closed meeting, as should discussions of pending legal problems, legal or financial advice, negotiation strategies, and other matters of a highly sensitive nature that may cause harm to the organization if not held in a closed meeting. Disciplinary actions against a member of an organization must be handled in a closed meeting.*

*18.25. Some states have sunshine laws or open meeting laws that restrict the use of closed meetings. These laws may apply to such organizations as corporations, charities, not-for-profit groups, municipalities, and school boards. Closed meetings cannot be used to conceal matters that members or, if applicable, the public have a right to know, such as financial information, or any matters that may be required by law to be conducted in open meetings.*

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*18.26. The minutes of a closed meeting are available only to current members of the body holding the meeting unless the law or the bylaws require otherwise or the body holding the closed meeting votes to make its minutes available to others.*

*18.27. Any action taken in a closed meeting may have the confidential nature of the meeting and its protections removed by a majority vote. This vote to remove confidentiality or to report the motion must also be taken in a closed portion of the meeting.*

*18.28. Members who violate the confidentiality of a closed meeting are subject to disciplinary action. Staff and other nonmembers who violate the confidentiality of a closed meeting may be subject to penalties as well.*

Only the items and actions for which secrecy is expressly lifted may be divulged to persons not entitled to be at that particular board meeting. In this instance, if the meeting was a closed session, the members of the board that were entitled to be present possess the ability to expand the secrecy of the proceedings in that meeting to include the absent members. There appears to be a long-standing custom to excuse the speaker of the house and other ex officio members from such sessions. As ex-officio **members**, they are entitled to attend such sessions. If that is not the desired interpretation, they should be changed from ex-officio members of the board of trustees to consultants to the board of trustees. The parliamentary authority allows the members of the body to determine which staff, consultants, and others may be present during a closed meeting. The secrecy of such meetings applies to all in attendance, subject to discipline by the body or other remedies.

## *6. At the July 17, 2024, meeting was it proper to preclude discussion of what occurred in Executive or Closed Session at the July 12, 2024, meeting?*

At the July 17 meeting, it was improper under parliamentary procedure, to preclude discussion of the happenings at the July 12 meeting. All of the members in attendance were entitled to have attended the July 12 meeting which grants them access to the discussions of the July 12 meeting. If you disagree with this interpretation of the parliamentary authority, then it was certainly permissible to lift the secrecy of the first meeting by action of the second meeting via motion and vote. This is the parliamentary conclusion, but if the open meeting law or legal advice dictates another conclusion, the legal advice or the open meeting law should prevail if it is applicable. Closed sessions are certainly prudent when making personnel decisions.

## *7. Is it proper for members of the Board to be excluded from either Executive or Attorney-Client session (closed meetings)?*

Any member of the Board of Trustees, whether they are an elected member or a non-voting member by virtue of the office they hold, must be allowed to participate in both Attorney-Client Meetings or Closed (Executive Session) Meetings. If the desire is to be able to exclude members such as the Executive



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Director or the Secretary-Treasurer , they should not be listed as ex-officio members of the Board of Trustees but rather consultants.

The Speaker of the House should not be excluded from either Executive Sessions or Attorney-Client Sessions unless the item of business concerns the Speaker, or legal counsel dictates to the contrary. If legal counsel dictates to the contrary, this exception should be listed in the Rules. The Speaker is not technically a member of the Board of Trustees, but the Speaker is required to serve as the parliamentarian for the Board of Trustees. There is no exception for either Executive Sessions or Attorney Client Sessions and business may be conducted during these sessions which require real-time parliamentary advice. The rules state:

***Parliamentarian:*** *During sessions of the Board of Trustees, the Speaker of the House of Delegates shall serve as parliamentarian.*

This includes both Executive and Attorney-Client Session since the Speaker of the House is subject to the same level of discipline should they violate confidentiality. In the opinion of the author, the parliamentarian is not in the definition of staff to be included or excluded from such sessions and this clause is more specific than the clause about staff with regard to executive sessions.

*8. If every member of the Board is entitled to know what transpired during a privileged session but was not present, by what means should that information be available to them?*

There is no guidance in the Parliamentary Authority on how to disseminate information from a closed meeting without capturing it in written form. The board should adopt a policy on such matters and explicitly include or exclude staff and consultants in each closed meeting scenario. Legal counsel should be consulted for parameters to maintain the attorney-client privilege.

*9. Are there any noted deficiencies in the governing documents that should be addressed?*

The deficiencies noted in the brief portions of the bylaws which were examined are:

1. It is not clear who has the authority to call regular meetings.
2. The procedure for calling extra regular meetings is not clear. The bylaws also require that any meetings in excess of three meetings per year must be called by action of the board. It appears customary to hold three regular board meetings a year plus one immediately prior to and one immediately after the house of delegates. This amounts to five board meetings a year which would require board action to create more than three.
3. Ex officio members of the board of trustees who are non-voting members may create problems, such as counting them for the quorum, and whether they can attend closed

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sessions or not. The society likely would benefit from them being listed as consultants rather than ex-officio members of the board.

4. The parliamentary authority is listed in the rules and procedures of the board of trustees, but should be elevated to a bylaw level recitation to give it authority across the entire NYSDA. As it currently stands, the bylaw only applies to the house of delegates. The only reference to the parliamentary authority for the board of trustees is under the rules and guidelines of the board of trustees where it should be in the bylaws.

## **Conclusions**

1. Both the July 12 and July 17 meetings were properly called. The July 12 meeting was a regular board of trustees meeting,
2. Electronic participation at the July 12 not an inherent right of members because the meeting was called as an in-person meeting.
3. Notice of the motion to terminate Mr. Hill, was not required.
4. The motion to rescind the termination of Mr. Hill was in order although had it been adopted further action would have been required to rehire or reinstate Mr. Hill.
5. No position was offered on the definition of an Attorney-Client Meeting, but a closed meeting or executive session was defined along with recommendation for procedures to determine who should be in attendance.
6. It is improper to preclude discussion from a prior Executive Session in the parliamentary sense, but the Open Meeting Law or legal advice may prevail over this interpretation.
7. Board members, whether they are ex-officio non-voting members, should not be excluded from either executive sessions or Attorney-Client Privilege meetings.
8. There is no guidance as to how to disseminate information from Executive Sessions other than the normal minutes process.
9. Several recommendations for changes to the governing documents were included above along with a recommendation for an independent, neutral third-party review of the documents.

No attempt has been made to reconcile the advice given in this opinion with New York State law and more specifically New York Open Meeting Law (if applicable). The author is not an attorney and has not reviewed New York law. Any advice given in this opinion is purely parliamentary advice. If legal advice is necessary, please consult an attorney.

**Disclaimer: The author presents this opinion as a parliamentary opinion only. The opinion is based solely on the information provided and additional or erroneous information may alter the**

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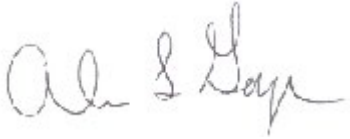
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**opinion. No attempt is made to address the legal, statutory or tax ramifications of these or any other action by the parties as the author is not professionally trained in legal or accounting matters.**

Sincerely,



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