

**Amateur Trapshooting Association  
Draft Report to ATA Executive Committee  
Summary of Recommendations/Observations**

**Robert R. Glatz, CPA  
July 19, 2010**

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## **1.0 FINANCE**

### **1.1 The ATA should strongly consider implementing an increase in dues and/or fees of \$5 to \$10.**

The organization is not breaking even with respect to member services. In 2009, the ATA spent nearly all its \$400,000+ investment income to support current operations. This is a sign of a financially troubled organization. It is clear that dues and fees have not kept pace with inflation and are at least part of the shortfall in Member Service revenue. At \$20 annually, the ATA's regular member dues are the lowest of the clay target sports.

**1.2 The ATA should establish a five year strategic plan.** This plan (including financial budgets) should be reviewed and updated annually. The EC should be intimately involved in this planning process and the results should be approved by the board and shared with the membership.

**1.3 The ATA should establish simplified management financial statements.** The ATA's GAAP financial statements may not be easily understood by volunteers and staff in managing and providing oversight for program services. Simplified management financial statements could be used to facilitate visibility, control and accountability for all programs.

**1.4 The profitability of all programs should be determined without regard to investment income from the ATA's historical endowment.**

**1.5 The ATA has for all but one of the last five years run a deficit in Net Operating Income from Continuing Operations ("NOICO").** The ATA lost nearly \$400,000 in NOICO in 2009. Over the last four years, the ATA has lost nearly \$1.4 million in NOICO. NOICO can be illustrated by making a few adjustments to the GAAP (Generally Accepted Accounting Principles) Consolidated Statement of Activities (the Income Statement). The information below was extracted directly from the audited financial statements of the ATA. The starting point is Net Income (Loss) which is also called "Change in net assets" in the nonprofit world. From that audited number, we have eliminated the impact of unrealized gains (losses) from investments. These are the so-called "mark-to-market" adjustments that reflect what would have happened had the ATA sold assets held for investment at year end. This number goes up and down with the market each year and generally has no impact on the real bottom line (or cash flow) unless the assets are actually sold or compromised in some other way (e.g. bankruptcy). We also removed the sale on the property in Vandalia as a one-time gain, not in the ordinary course of business. Again, our ultimate goal is to get to Net Operating Income from Continuing Operations (NOICO), so we are adjusting the GAAP statement to reflect only the income (or loss) from the ATA's continuing business operations. So far, the adjustments result in what we've called Net Income - Adjusted. Net Income - Adjusted also includes the results of "real" investment income in the form of interest and dividends. Since it is not the ATA's business to be a professional investor and since the funds on which the interest and dividends are earned were accumulated by a prior generation of shooters, we also eliminated Investment Income to move closer to a clear picture of Net Income from Operations. Finally, we have removed the net impact of lead reclamation. The logic is twofold. First, a proper matching of revenue and expense would suggest that lead reclamation income belongs to a prior period. Second (and more importantly), the ATA will not benefit from lead reclamation income from Sparta, so including prior year lead reclamation in an estimate of **Net Operating Income from Continuing Operations** simply wouldn't make sense. We also made an additional minor adjustment with respect to realized gains in 2009, for the sake of consistency.

	2009	2008	2007	2006	2005
Audited Net Income (loss)	\$ 876,652	\$ (498,503)	\$ 345,587	\$ (147,472)	\$1,283,950
Unrealized Gain (loss) on Investments (mark-to-market)	831,657	(1,025,528)	(38,306)	(72,475)	(145,680)
Gain on Property Sale (Vandalia)					845,632
Net Income - Adjusted	44,995	527,025	383,893	(74,997)	583,998
Investment Income	424,195	443,263	386,075	385,199	291,498
Excess (deficiency) of Net Income – Adjusted over Investment Income	(379,200)	83,762	(2,182)	(460,196)	292,500
Realized Gains on Investments and Fixed Assets	13,161				
Significant Non-Recurring Revenue - Net Lead Recovery	(33,494)	216,401	224,816	177,580	36,613
<b>Net Operating Income from Continuing Operations (NOICO)</b>	<b>\$ (399,533)</b>	<b>\$ (132,639)</b>	<b>\$ (226,998)</b>	<b>\$ (637,776)</b>	<b>\$ 255,887</b>

What do we learn from this analysis? The “bottom line” is the ATA lost nearly \$400,000 in Net Operating Income from Continuing Operations (NOICO) in 2009. In the last four years, the ATA has lost almost \$1.4 million in NOICO. My guess is that we will lose another really big number in 2010. The losses are being masked in the audited financial statements by income from lead reclamation, investment income on the ATA’s “endowment,” as well as the “mark-to-market” gains (losses). Said differently, if not for the prudence of a prior generation of shooters and lead reclamation from Vandalia, we would be eating into our endowment at an alarming rate! As it is, we are diminishing the value of the endowment by nearly fully consuming the earnings thereon. If the trend continues, we will liquidate the ATA.

**1.6 The ATA should improve its financial transparency.** Work with GuideStar and other public charity monitoring agencies to improve the ATA’s financial transparency to facilitate grant applications and planned giving.

**1.7 The ATA should establish better financial communications with all stakeholders.** This includes members, the shooting industry and potential supporters. The IRS Form 990 and the organization’s financial statements should be posted to the ATA’s web site. In addition, a comprehensive set of frequently asked questions (FAQ’s) should be posted to the web site to enhance transparency and promote understanding.

**1.8 The ATA should consider a per event registration fee versus a daily fee.** This would better match the cost of member services with revenue and could be tuned to enhance member service revenue.

**1.9 The ATA should explore ways to aggressively collect past due membership fees.** I was surprised by the large number of ATA shooters who have not paid their prior year membership dues but have been allowed to continue registering targets. At a minimum, the list of delinquent dues payers should be published to the ATA web site.

**1.10 The ATA should consider curtailing membership rebates.** Roughly \$150,000 each year is paid back to states and provinces. This practice was established when it was uncommon for states and

provinces to assess daily fees or membership fees. I suspect curtailing these rebates would be unpopular, but the action is roughly equivalent to increasing dues by an average of \$5 annually or totally eliminating travel reimbursements to the EC. And, there aren't a lot of six figure levers to pull to increase profitability.

**1.11 The ATA should develop a detail cost of member services.** That analysis would be used to adjust dues and fees periodically.

**1.12 The ATA should consider its 501(c)(3) status when designing membership programs.** Dues up to \$75 may be fully tax deductible, if properly structured. It may be possible to increase dues revenue while lowering the after-tax cost to members.

**1.13 The ATA should consider a tiered membership.** Basic and enhanced member services could be offered at different price points.

**1.14 The ATA should maximize the use of affinity programs and communicate the benefit of those programs to members.** Many organizations make much more extensive use of such programs for the benefit of the organization.

**1.15 The ATA should establish financial goals for Member Services, the Grand American, the Youth Shooting Program, etc.** Except for periods of planned investment, it should be the goal for all ATA programs to be break-even or profitable.

**1.16 The ATA should explore the use of an outside vendor to manage its online and tournament site merchandise programs.** The current operation is only modestly profitable.

**1.17 The ATA should explore the sale of advertising on its web site.** The ATA's web site is a logical marketplace. However, the impact on supporting organizations would have to be carefully considered.

**1.18 The ATA should reinstitute the new shell requirement for the Grand American tournament for all tournament events.** The use of new shells would enhance the perception of a level playing field, permit the profitable utilization of in-kind gifts from the ammunition companies and allow the ATA to earn a modest profit.

**1.19 The ATA should evaluate the lease in Vandalia in light of the potential Hall of Fame relocation.** The occupancy cost for the building in 2009 was approximately \$50,000. While the office lease was only \$3,800, other costs including taxes, utilities, maintenance and janitorial made up the balance. This does not include the costs incurred for other property taxes, mowing, etc associated with the property subject to clean up (lead reclamation). The total occupancy cost associated with the Vandalia location is in excess of \$110,000 annually. It may be possible to obtain a lease on Class B or C office space in the Vandalia area for significantly less than the current occupancy costs.

**1.20 The ATA should tighten management and oversight of the Vandalia lead reclamation project.** The ATA has been cleaning up the lead in Vandalia for five years. The first vendor's work proved to be unacceptable to the City of Dayton. The new vendor can produce acceptable results, but since the "low hanging" fruit has been picked, their services are more costly to the ATA. In 2009, the ATA lost \$33,494 on the lead reclamation project. It would appear, as a result of the passage of time and unacceptable results from the first vendor, that this project has been undermanaged, jeopardizing the \$500,000-plus escrow arrangement with the City and costing the ATA potentially hundreds of thousands of unnecessary dollars.

**1.21 In light of recent member solicitations, the ATA should review its compliance responsibility with respect to state charitable registration laws.** States exercise regulatory authority over nonprofits (generally) if the nonprofit has either a physical presence (offices or activities) or solicit funds from the state. I suspect many states would argue the ATA has "nexus" under both theories. I've included a link

to the Uniform Registration Statement, an attempt by government and nonprofits to reduce the potential compliance burdens of multi-state registrations. [http://www.multistatefiling.org/a\\_tp\\_urs1.htm](http://www.multistatefiling.org/a_tp_urs1.htm)

### **1.22 The ATA should investigate the application of the California Nonprofit Integrity Act of 2004.**

Based on informal discussions with the California Attorney General's office (related to another nonprofit), I believe California would contend their statute applies to the ATA. The 2004 Act is what many call a Sarbanes-Oxley "clone law" seeking to apply the improved governance mandates from the federal law (applied mostly to public companies) to nonprofits which "operate" within the state. These laws are on the books of at least a dozen states and the "nexus" rules vary significantly, however many commentators believe California's law may be the most comprehensive and compliance with the California statute would likely cause a nonprofit to pass muster in most other states. The California Assistant AG offered that PA's law may be the most aggressive (I have not reviewed it). The California law requires the following (not comprehensive) -

- Registration with the state.
- An independent audit of charities with more than \$2 million of gross receipts. The financial statements of the charity must be GAAP and they must be audited by a CPA in accordance GAAS.
- The audited financial statements must be made available to the California Attorney General within nine months.
- That the governing board of the organization appoint an audit committee (AC). The AC may include persons not on the governing board, but it cannot include the organization's Treasurer, Controller, CFO, Executive Director or Officer.
- At least one member of the AC must be a "financial expert" (an SEC technical standard for audit committee suitability) and all members of the AC should be volunteers i.e. not compensated for their time. They should be familiar with nonprofit financial statements and the principles of strong governance.
- There is also a requirement for what is commonly called a Compensation Committee (CC) to review the salary of the Executive Director and payments to other officers and directors to make certain those payments are "just and reasonable". Again, members of this committee should be independent, volunteers with appropriate experience (for example, background in the reasonable compensation documentation standards and the IRS Excess Benefit rules).

## **2.0 GOVERNANCE**

**2.1 The ATA should give a high priority to establishing an Audit Committee (AC) and a Compensation Committee (CC) (see 1.22 above).** The AC and the CC should consist of "independent, non-compensated" members who are sufficiently well versed in accounting, finance, tax and governance issues specific to nonprofit organizations. To strengthen governance and compliance and obtain the appropriate expertise, the ATA may have to add additional board and/or EC members who are appointed rather than selected from the elected delegates.

**2.2 The board should consider eliminating the EC expense reimbursements, the president's Discretionary Travel Budget and the president's gun allowance.** All of these payments are inconsistent with the ATA's status as a public charity. At a minimum, the payments should be restructured as taxable income (to reduce tax exposure to the ATA) to eliminate the elements of "personal expense" reimbursement. This recommendation was also made in writing by the ATA's outside counsel who specializes in 501(c)(3) law.

**2.3 The ATA should suspend the practice of providing credit cards to EC members.** All volunteers should use their own credit cards when traveling on behalf of the ATA. The volunteers should submit

timely, properly substantiated and approved expense reports to recover their expenses. If certain volunteers have issues with cash flow, an advance system could be selectively authorized.

**2.4 EC reimbursements are excessive, poorly substantiated, and highly personal in nature.**

Reimbursements for EC travel expenses (averaging over \$15,000 per year, each), the president's gun allowance (\$16,500) and the president's Discretionary Travel Budget (\$20,000), in addition to the president's normal EC reimbursement (average of \$15,000) are highly irregular in a public charity setting. If the ATA plans to continue this policy, the payments should be recharacterized as compensation, properly substantiated, appropriately approved and disclosed broadly. Proper IRS reporting should also be adopted immediately and prior years should be corrected.

**2.5 EC expense reports should be reviewed by Judy Harden and the Audit Committee or another independent committee of the board.** The EC expense reports are not reviewed by anyone independent of the EC or management. The EC is currently reimbursed for travel expenses that the IRS would very likely view as personal in nature which is likely to create serious future tax issues. In addition, the EC's expenses are not properly "substantiated" as required by IRS Regulations.

In IRC Sec. 170(j), the law makes it clear that deductions are allowed for transportation or other travel expenses (including meals and lodging) incurred in the performance of services away from home on behalf of a charitable organization "if there is no significant element of personal pleasure, recreation, or vacation." This is a tough standard to overcome and the few public charities that reimburse board related travel do so only if the travel is exclusively to conduct the business of the charity. It would be very tough to argue that attendance at and participation in the Grand American and other tournaments doesn't provide a significant element of personal pleasure, recreation, or vacation to the EC members.

It should be noted that the vast majority of public charities do not reimburse travel of any sort with respect to volunteer board members or directors. In my more than thirty years of practice, I have never run across a public charity (other than the ATA) that reimburses travel for volunteer board members. **Neither the National Skeet Shooters Association (NSSA) nor the National Sporting Clays Association (NSCA) reimburse volunteer directors for any travel expenses even those where only business meetings are conducted.**

**2.6 All proposed changes to the EC expense reimbursement policy (including the Presidential Gun Allowance) should be approved by the Audit Committee or the board of directors.** The EC currently has sole discretion to approve changes to its own expense reimbursement policy. It does so in executive session and does not publish the policy or changes thereto in public minutes, nor does the EC seek the approval of the board. This practice is highly irregular particularly given the ineffective expense approval process in place.

**2.7 Changes to the ATA's By-Laws are required to permit the \$16,500 Presidential Gun Allowance.** The allowance was properly treated as compensation (for the first time) beginning with the Neil Winston presidency. Prior to that time, the EC resisted professional advice to send prior ATA presidents 1099's for the amount of the allowance. This exposure along with improper handling of expense reporting could give rise to significant tax, penalties, and perhaps even criminal liability.

**2.8 To the extent the board and the EC wants to continue reimbursing EC travel expenses, the reimbursement should be characterized as taxable income to mitigate tax exposure.** The ATA's current practice provides the potential for numerous violations of tax law and IRS Regulations and is not sound business practice. Continued violations of long-established law and Regulations could lead to the loss of the ATA's 501(c)(3) status.

The loss of the ATA's 501(c)(3) status would be devastating to the organization. The ATA has saved over \$1 million in tax since the ATA qualified as a public charity including significant amounts annually on Investment Income. The impact on the ATA's ability to raise funds in the future would be significantly impaired, if not destroyed, by the loss of its 501(c)(3) status.

Any decision to fix the EC travel reimbursement issue by characterizing the payments as taxable income should be done after giving consideration to the IRS' view on compensating Directors of charitable organizations. On February 7, 2007, the IRS posted on its web site a preliminary discussion draft of the agency's "Good Governance Practices" for charitable organizations (See Bureau of National Affairs, Daily Tax Report (no.33) Tax Core, Feb 2, 2007). Among other things, the IRS expressed a view that a "successful charity pays no more than reasonable compensation for services rendered." They go on to say that Charitable organizations "**should generally not compensate persons for service on the board of directors except to reimburse direct expenses of such service.**" And further, direct compensation "**should be allowed only when determined [to be] appropriate by a committee composed of persons who are not compensated by the charity and have no financial interest in the determination.**" The above reflects the opinion of IRS policy makers, but is not yet law.

According to BoardSource, "only about 2% of nonprofits compensate board members, and it is unusual outside of large, complex entities such as health care systems or large foundations."

Arguments frequently raised against compensating board members and/or reimbursing expenses include:

- Board members are thought of as volunteers
- Donors and members expect their monies to be spent on services
- Members are generally willing to give their time and themselves to further a cause or a hobby
- Nonprofits are organized and operated to serve a mission
- Boards that pay members discourage the act of volunteering
- Boards that pay members discourage charitable giving
- Boards have a fiduciary responsibility to manage the organization's and donor funds
- Boards that pay members could be considered staff of the organization
- Boards will not want to take a chance of losing the protective status offered in the Volunteer Protection Act ("VPA")
- Boards don't want to saddle organizations with expensive D&O costs (if coverage by the VPA is foregone)

The arguments in favor of paying board members and/or compensating expenses tend to be along the lines of attracting the most qualified board members. In discussions with EC members, I've often been told that they didn't realize all the reimbursements that they would receive (including the president's totally discretionary \$20,000 travel budget and the \$16,500 gun allowance) if elected to the EC, however they have been quick to argue that even though they didn't know the perks existed, they need to be maintained to attract the best and brightest. My personal experience with a number of large public charities would suggest compensation and expense reimbursements simply aren't required to attract smart, diligent, hard-working people who can advance the goals of the organization.

**2.9 Expense reimbursements to EC members should fully conform to IRS Regulations for charitable organizations.** The ATA reimburses EC members for the use of their personal cars in gratuitous service to the organization. The reimbursement for such service is set by statute at 14 cents per mile. The ATA reimburses at a rate of 50 cents per mile which is the mileage allowance used when the taxpayer is engaged in a trade or business. The difference between the charitable mileage allowance and the rate used by the ATA is considered an automatic Excess Benefit and is subject to the IRS' Intermediate Sanctions rules. These rules require that the difference between the rate reimbursed and 14 cents per mile be returned to the ATA (plus interest) for all miles so charged and a fine of 25% be paid by each recipient. The party who approved the reimbursements is also subject to a 10% penalty for all such payments. If the IRS discovers the issue upon audit or if the 25% fine is not paid promptly, the fine can be increased to 200%. **If this situation is not corrected by the EC and the appropriate taxes and penalties paid, the ATA membership should not be required to later indemnify EC members for taxes and penalties for violating the statute.**

In addition to the mileage reimbursement, there are many other travel related expenses reimbursed to the EC which the IRS will likely conclude are personal in nature (e.g. paid in conjunction with travel which is **not without some significant element of personal pleasure, recreation or vacation**). These

expenses are also automatic Excess Benefit Transactions subject to the Intermediate Sanctions rules creating significant additional exposure to penalties.

**2.10 All payments to EC members, whether direct or indirect, should be included with the existing supplemental disclosure to the audited financial statements.** The current disclosure is incomplete and (based on my recent experience) it appears to be intentionally so (see letter to President Sherrod attached.) The supplemental schedule reported in the ATA's 2009 draft financial statements suggested that travel and related expense reimbursements for Officers and Executives totaled \$60,739 (Figure A). A more robust accounting of total reimbursements (including the president's gun allowance) paid to the same group was \$136,778 (Figure B) or **nearly 28% of the ATA's 2009 annual membership dues revenue**. Expressed differently, it takes the annual dues of more than **7,000 members** to cover the annual expense reimbursements paid to the Executive Committee. These totals include no salaries nor do they include the expenses or salary of the Executive Director.

**Figure A: Amateur Trapshooting Association  
Consolidated Supplemental Financial Data  
Schedule of Travel and Related Expenses  
Year Ended September 30, 2009**

	Amateur Trapshooting Association	Grand American Handicap	Total
Officers and Executives			
Bruce Reed - President	\$ 11,344	\$ 3,790	\$ 15,134
Neil Winston	766.00	671.00	1,437
William Anzaldi	6,376.00	4,371.00	10,747
Jeff Wagner	5,508.00	3,904.00	9,412
Gary Sherrod	5,400.00	3,617.00	9,017
John Hiter	4,183.00	3,333.00	7,516
Thomas Burkey	-	3,640.00	3,640
Mike Seitz	-	3,524.00	3,524
Allan Radway	312		312
	<b>\$ 33,889</b>	<b>\$ 26,850</b>	<b>\$ 60,739</b>

**Figure B: Amateur Trapshooting Association  
Consolidated Supplemental Financial Data  
Schedule of Executive Committee (EC) Expenses for the year ending September 30, 2009**

EC Member	Presidential Gun	ATA Expenses	Grand Expenses	Total
Bruce Reed - President	\$ 16,500	\$ 20,092	\$ 4,824	\$ 41,416
Neil Winston		5,770	1,705	7,475
William Anzaldi		11,866	5,405	17,271
Jeff Wagner		12,142	4,938	17,080
Gary Sherrod		12,893	4,651	17,544
John Hiter		10,438	4,367	14,805
Thomas Burkey		5,722	4,674	10,396
Mike Seitz		5,096	4,558	9,654
Allan Radway		1,137		1,137
<b>Total</b>	<b>\$ 16,500</b>	<b>\$ 85,156</b>	<b>\$ 35,122</b>	<b>\$ 136,778</b>

Voting Executive Committee Members: Voting members are reimbursed for their travel expenses to attend the Grand American Tournament, Satellite Grand shoots in their resident Zone, as well as one Satellite Grand outside of their resident Zone. They are also provided reimbursement for their travel to official meetings and other Presidential-directed travel.

Nonvoting Executive Committee Members: Nonvoting members are reimbursed for their travel expenses to the Grand American Tournament, official meetings, as well as other Presidential-directed travel.

ATA President: The president is reimbursed for his travel expense as described above for voting members. In addition, the ATA President has a supplemental budget of \$20,000 for his discretionary travel and entertainment.

\* \* \* \* \*

Recent ATA Presidents have been reimbursed \$40,000-\$45,000 including the gun allowance. Only the gun allowance has been characterized as taxable income (and that only recently despite contrary professional advice), all other reimbursements have been provided "tax free". Using a 40% federal and state combined marginal tax rate, that equates to a *\$64,000 taxable salary equivalent* for the ATA's top volunteer! If expenses of the other EC members are similarly adjusted, it is the equivalent of paying the group roughly \$225,000 per year - which requires the dues of an astonishing 11,250 members! And, we are a volunteer organization whose By-Laws prohibit the payment of compensation to the board and EC! Assume for a moment that the reimbursements are subject to social security (which they likely are) \$64,000 becomes nearly \$80,000 and \$225,000 becomes almost \$305,000. That is an unusually high total board cost for a \$100-400 million public company, let alone a public charity!

***As interesting as the tax issues are (to a former tax geek), the EC expense reimbursement issues are really more about good common sense and what is in the best interests of the ATA and its members.*** What the EC is doing today offends my sensibilities in terms of tax risk and the dollars involved. The tax risk can be managed by restructuring the payments. The dollars are offensive to me, but that decision belongs to the board and our membership.

**2.11 The ATA should consider the formation of a committee to recommend changes to the existing governance structure of the organization.** It is my observation that the existing structure may be broken and/or outdated and no longer serves the needs of the organization.

**2.12 The ATA should consider an expanded committee structure to allow the EC to focus on governance, oversight, strategy and the future of the sport.** The current EC does not appear to be properly focused and as a result, the financial stability of the organization has become a serious concern.

**2.13 The ATA Secretary and Treasurer should be appointed for a certain term by the board.** These important positions should not be appointed annually by the EC. The need to be reappointed each year can stifle candor and potentially prevent needed financial and governance reforms. These positions should be appointed for a term certain (e.g. five years) by the board. These positions should also be full voting members of the EC.

**2.14 The ATA's Conflicts of Interest policy should require that all potential conflicts be reported to the board and Audit Committee.** Transactions that might give rise to a conflict, or the appearance of a conflict should be reviewed by the AC. For example, the AC should review all insurance contracts purchased directly or indirectly from Mike Seitz. Similarly, all trophy orders placed with Bill Anzaldi's former employer, Henderson, should be reviewed by the AC.

**2.15 The ATA should review the necessity of carrying Directors & Officers insurance.** The ATA carries Directors and Officers (D&O) insurance coverage costing \$11,390 annually. In 1997, Congress passed The Volunteer Protection Act ("VPA"). The VPA generally applies to IRS-qualified Sec. 501(c)(3) organizations. Provided the volunteer board member is not compensated (and a five part test is met), the VPA acts to shield the volunteer from both ordinary damages as well as punitive damages rendering D&O coverage all but unnecessary. See my Analysis provided to the ATA on January 1, 2009 (Exhibit A attached).

**2.16 Establish a set format for EC meetings and calls to assure that proper governance and oversight is maintained.**

**2.17 Establish a board orientation program for new ATA delegates and an EC orientation for new EC members.** This is critical in the post Sarbanes - Oxley world. The EC is frequently made up of members with little or no experience in management and governance of public charities. In order to effectively serve, these individuals need to fully understand their legal and fiduciary responsibilities to the organization.<sup>1</sup>

**2.18 The ATA should consider a “profile” against which all EC members are evaluated.** The profile would give delegates guidance to ensure the most qualified candidates are selected.

**2.19 The ATA should consider background checks on all EC candidates.** The heightened profile of the ATA’s status as a 501(c)(3) makes routine background checks advisable.

**2.20 Establish a formal investment policy for the ATA.** There is no policy with respect to the ATA’s significant endowment. This is not a criticism of the way ATA investments have been handled. It is merely a recommendation to strengthen control and governance.

**2.21 Revise ATA gifting policy.** It does not appear that the ATA’s policy meets all the requirements of the Uniform Prudent Management of Institutional Funds Act nor its Ohio equivalent.

### **3.0 TECHNOLOGY**

**3.1 The ATA should reduce the use of mail/postage by using electronic mail and maximizing the content of its web site.** The ATA spends roughly \$70,000 in postage annually which could be significantly reduced via an aggressive use of the web site and e-mail communications to the members.

**3.2 Redesign ATA information and accounting systems to facilitate the current and future needs of the business.**

**3.3 Establish an ATA self service online “portal” for most membership interactions.**

**3.4 The EC should consider a member newsletter.** The newsletter could be posted to the ATA web site several times each year to enhance member communications.

**3.5 The ATA should consider documenting the rationale for controversial and/or important decisions.** A history published on the web site (e.g. the decision to move the Grand American to Sparta) would document the logic and financial implications of the decisions for members who may question the outcome. (While I am not second guessing that decision, I saw little evidence of financial modeling of or planning for the move that could easily have exposed the ATA’s current financial situation.)

**3.6 The various ATA policies (e.g. Whistleblower, Document Retention, Gift Acceptance, Conflicts of Interest, etc.) should be published to the ATA’s web site.** At a minimum, these policies should be made available to all employees and volunteers. The policies are ineffective unless they are broadly distributed, understood and enforced.

**3.7 Implement an ATA blog.** As part of the ATA web site, a blog could facilitate member communication and “sounding”. The blog should allow for transparency with respect to member participation.

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<sup>1</sup> For a primer, see *Sarbanes-Oxley for Nonprofits - A Guide to Building Competitive Advantage* by Peggy M. Jackson, DPA, CPCU and Toni E. Fogarty, PhD, MPH (Exhibit B). Also, see *Nonprofit Governance - Law Practices & Trends* by Bruce R. Hopkins and Virginia C. Gross (Exhibit C).

**3.8 Maximize the use of social media, e.g. Twitter, Facebook, etc.**

**3.9 Designate someone to keep the web site up to date.**

#### **4.0 FUND RAISING**

**4.1 Appoint EC level fund raising committee.** In most public charities, the fund raising responsibilities would be focused on and driven by the EC.

**4.2 Consider hiring a full time fund raising executive.**

**4.3 Develop ATA's fund raising policies with reference to best practices.**

**4.4 Communicate and cultivate a culture of "giving back" to the sport.**

**4.5 Establish a planned giving program.** The ATA has been a 501(c)(3) since 2005 but has done little to proactively take advantage of the favorable tax status.

**4.6 Require some type of annual giving from the EC and the board as a condition of service.** This requirement (both formal and informal) is common with respect to most public charity boards.

**4.7 Examine the Sarbanes - Oxley "clone laws" on a state by state basis for their impact on the ATA's fund raising programs.**

**4.8 The ATA should consider establishing a support program within the Gun Club Fund.** The program would assist gun clubs and state organizations with efforts to enhance their ability to raise funds on a tax deductible basis. In this area and others, the ATA can provide significant centralized support and guidance.

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**Subject: Personal Liabilities of Volunteer Boards**

Jim

A volunteer member of a board on which I also serve recently asked me about our liability as directors. He was concerned that events in the financial markets (and the impact on the charity's endowment) could lead to suits against the organization and potentially board members. My initial reaction was that we, as volunteer directors, have "immunity" under both state and Federal law, but I agreed to review the matter further. As it turns out, my answer was essentially correct, but in reading through the Federal law I noticed at least one issue that could void the Federal protection for the ATA.

A bit of background - The Volunteer Protection Act of 1997 (the "VPA") became effective on September 16, 1997. The VPA's purpose was to supplant the then-existing patchwork of individual state laws in order to provide a nationwide and unitary standard for volunteer immunity. The VPA generally applies to IRS-qualified Section 501(c)(3) organizations and other organizations that would likely qualify to be a 501(c)(3) had they sought the qualification from the IRS (another benefit of the ATA's 501(c)(3) status). The VPA covers officers, trustees and any other persons contributing their services to the organization, with two exceptions -

- \* the volunteer cannot receive any compensation (however, the volunteer can receive reasonable reimbursements for expenses actually incurred), and
- \* the volunteer cannot receive any "thing" of value that is in lieu of compensation and that is in excess of \$500 per year.

I'll get back to these exceptions, but first let me describe the five part "VPA Test" that must be met for a volunteer to be immune from personal liability for "an act or omission of the volunteer when the volunteer was acting on behalf of the the qualifying organization." The five parts of the Test are -

- \* The volunteer was acting within the scope of the volunteer's responsibilities at the time of the act or omission.
- \* If appropriate or required, the volunteer was properly licensed, certified or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred. Again, the activities or practice must have been undertaken within the scope of the volunteers responsibilities to the organization.
- \* The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.
- \* The harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft or other vehicle for which the State requires the operator or the owner of the vehicle, craft or vessel to: 1) possess an operator's license; or 2) maintain insurance.
- \* The volunteer did not engage in conduct that: A) constitutes a crime of violence or an act of international terrorism for which the volunteer has been convicted, B) constitutes a hate crime, C) involves a sexual offense (again, requires a conviction), D) violates Federal or State civil rights laws, or E) the volunteer was under the influence of alcohol or drugs at the time of the misconduct.

When each of the 5 elements of the test is met, not only is the volunteer totally shielded from ordinary damages, but the volunteer is also shielded from any punitive damages. The VPA only acts to shield the

volunteer from third parties, so for example, it is still possible for the organization to seek damages against a volunteer without protection from the VPA.

Since the vast majority of volunteer directors, officers, trustees and other persons who contribute their services to a qualified organization conduct themselves in a non-reckless manner on behalf of their organizations, one would expect that they would satisfy the VPA Test. Therefore, the volunteer should expect to be fully shielded from any personal liability as a result of their volunteer activities - a very good thing!!

Now, let's go back to the two "exceptions" discussed earlier. I am concerned that the ATA would likely fail under one or both of the exceptions with respect to the ATA President and perhaps with respect to the EC members as well. The "gun allowance" provided to the ATA President is almost certainly compensation to the ATA President under US tax law. It is required to be reported to the IRS as such. And, it is pretty clear that this "allowance" will void the application of the VPA to the ATA President. If any EC member is going to be named in a suit against the ATA, it will clearly be the ATA President. The ATA may feel that it has sufficient D&O coverage such that the VPA is not necessary, however, I don't really like the optics (personal opinion) and many would argue that the existence of the VPA make D&O coverage unnecessary except for the largest non profit institutions.. The gun allowance may also violate other aspects of the rules surrounding the operation of Sec. 501(c)(3) with respect to significant benefits making their way to individuals. We may want to discuss this later as well.

While perhaps a bit less troublesome, the payment to EC members for attendance at the Grand or other shoots could also violate the VPA exceptions. At first glance, one would probably argue that those payments constitute reimbursement for out-of-pocket expenses to attend official meetings. However, that argument probably wouldn't fly upon examination by the IRS as in order for those payments to be excluded from the income of the recipients, the primary purpose of the meetings must be business.

Without boring you with the tax law, I doubt the recipients actually meet the "primary business purpose" test. It is a highly litigated and pretty much settled area of the law. If the ATA really wants those expenses to be reimbursed and not cause either a tax issue or an issue with respect to the VPA, it would be better to hold business meetings on days where the IRS wouldn't argue that you would have participated in the shoot whether or not reimbursed for the travel. The fact that teleconferences have become much less expensive has also given the IRS lots of ammunition with respect to this issue.

My concern is that the ATA may be voiding the significant immunity shield provided by Federal law to volunteer directors, officers, etc. by questionable travel reimbursements and the gun allowance. We may be doing other reimbursements that I'm not aware of which could also be problematic. I'm obviously not a lawyer, so Mike may be the better person to confirm the application of the VPA to the ATA. However, I am very comfortable with my observations on the taxability of the gun allowance and the travel issue.

In my years of practice as a PwC tax partner, I've never seen another tax exempt organization provide more than a token gift to departing directors and officers. I have seen boards exceed the tax limit (\$25), but not without including the gift in the recipient's income. I have seen non profit board members paid small stipends for board service ( e.g. less than \$1,000 per year), but it is very unusual for even the largest non profits. I would not recommend travel reimbursements where the recipient is also participating in an ATA tournament at the same time. If you are going to do it, you should probably classify it as taxable income to the recipient. However, I would personally not want such reimbursements to create an argument that the VPA does not apply to the recipients.

I tried to summarize the VPA without being too legalistic, so certain clarifying citations have been omitted. I think my summary is faithful to the statute, but I'll let Mike comment if he feels otherwise.

If you have questions, or would like to discuss, give me a call.

Best wishes for the New Year!!

Bob

Jackson  
Fogarty

**SARBANES-OXLEY FOR NONPROFITS**

A Guide to Building  
Competitive Advantage



# SARBANES- OXLEY FOR *NONPROFITS*

A Guide to Building Competitive Advantage

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# Nonprofit Governance

Law, Practices & Trends



**Bruce R. Hopkins**  
**Virginia C. Gross**

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