Billy R. Smith, P.C. Attorney at Law A Professional Corporation



A Professional Corpora 1331 Gemini Ave., Suite 200 Houston, Texas 77058-2764

Telephone 281/486-9461

Telefax 281/486-1495

Board Certified in Commercial & Residential Real Estate Law Texas Board of Legal Specialization

September 18, 1997

To:

Donnie Johnson, President

Space Center Rotary Club

and

The Board of Directors

Re:

Service Funds

Dear Donnie and Members of the Board:

The Service Budget

Recently, you have been struggling with the annual club budgets and the Service Budget has been especially difficult to establish. This has been a problem since the Shrimporee date was moved to September and then, recently, to October. When it was held in July, we knew early in the Rotary year what funds would be available and the budget could be established with real income numbers. With the Shrimporee occurring later, the Service Budget can only be an estimate. The year that I was president, we did not have a final Service Budget until January.

Because of this problem, the Board, several years ago, determined that we needed to establish a policy of "forward funding." The idea was to reserve some of the service funds each year until there was enough to fund the Service Budget during the first four to six months of the Rotary year. Then, when the Shrimporee funds had been determined, the reserves would be replaced and the budget finalized. To assist in the initial forward funding reserve, some existing savings deposits, including \$10,000 that had been set aside several years earlier to fund a Clear Creek High School science project that would fly on the Space Shuttle, were used. The science project had been abandoned after several attempts to get it ready for flight.

Even though the forward funding plan was a good one and the funds were established, the plan has never been fully implemented. In fact, as administrations have evolved, the plan has become unknown and the Board is only aware of having a reserve without knowing why. The attitude has become one consistent with our individual financial planning that encourages us to save for a "rainy day".

My feeling is that the Club should not save for a rainy day, because we do not experience rainy days. Each Rotary year begins anew on July 1st with zero budgets. The Board then establishes budgets based solely upon anticipated income. Service funds are extracted from the community to be returned to the community (except for our international service) as soon as possible through Rotary supported projects. If we don't have the money, we don't fund the project. It's that simple. Unfortunately, there is an insidious mental problem, i.e. a belief both by Board and committee members and some institutions such as the Boy Scouts, Senior Citizens, etc. that there are legacies that must be supported. Many times, the Board has struggled to remind and convince itself that no one and no entity or project is "entitled" to Rotary funding. Every project and request for funding must prove itself worthy each and every year. Rotary rules do not allow the Board in one year to bind, financially, a subsequent Board. On July 1st of each year, all of the budget numbers are rolled back to zero and there are no continuing financial obligations or entitlements.

Except for carry-over administration account funds, which are derived solely from members dues and not from the community, and funds to carry the plan of forward funding, there should be no funds (other than enough to keep the account active) in the service account.

The Space Center Rotary Club Endowment Foundation

When Billy Weseman was president (1988-1989), Floyd Boze and Bob Wren urged the establishment of an endowment foundation by our club. Although this was a new concept for us, many clubs had already established such foundations with which both Floyd and Bob were familiar. Since Billy was a strong supporter of the Rotary International Foundation and believed that a local foundation would compete for funds, he did not support the idea and nothing came of it.

The next year (1989-1990) John Watson was president and the idea of a foundation was again discussed by the Board. This time the Board unanimously supported the idea and resolved to establish the Space Center Rotary Club Endowment Foundation. John asked me to obtain a charter from the Texas Secretary of State for a non-profit corporation and David Hamblin was asked to obtain approval from the Internal Revenue Service so that the Foundation was classified as a 501(c)(3) charitable organization. After considerable research and discussions with members of other Rotary clubs who had long-established foundations, both were accomplished. The corporate charter was issued on February 15, 1991 and 501(c)(3) status was granted on April 9, 1993. The purposes for which the Foundation is organized are stated in Article I of its bylaws:

"Article I Purposes of Corporation

SECTION 1.1. <u>Purposes</u>. The purposes of the corporation (hereinafter referred to as the "Foundation") shall be as provided in Section IV of the Articles of Incorporation.

SECTION 1.2. <u>Restrictions on Funds</u>. This is an endowment foundation, and as such, the funds and properties coming into its possession shall not be expended, except as prescribed by the terms of a gift or bequest, but shall be restricted. Only the income of the Foundation shall be unrestricted and expended for the purposes of the Foundation.

Section 1.3. Intent of Founders. Not desiring to diminish the importance of or to detract from the work of The Rotary Foundation of Rotary International or to interfere with or compete for support, through its members, of Space Center Rotary Club, and, while acknowledging the worthiness of the Club's attaining the highest possible level of member participation in financially supporting The Rotary Foundation through Paul Harris Fellowships, Paul Harris Sustaining Members, and Benefactors, the founders of The Space Center Rotary Club Endowment Foundation believe that there will be those among its members, both present and future, as well as relatives and friends of members, who, desiring to foster and promote the ideals of Rotary, wish to do so within the local community and through the control, management, and administration of members of Space Center Rotary Club. Therefore, this Foundation has come into existence and shall strive to nurture. encourage, and advance the development of effective programs, activities, undertakings, and projects of a philanthropic, charitable, educational, humanitarian, and eleemosynary nature. To achieve this intent, the founders believe that it will be important and desirable for the Trustees of the Foundation to resist the temptations to distribute all available funds, but, at least in the early years to concentrate on the building of a sizable trust corpus, accumulating as much of the income as possible and adding it to the principal until the Foundation has the means and resources to offer financial assistance to worthy projects of a far greater dimension than it would otherwise be able to consider."

You can see that two things are prominent:

- 1. As an "endowment" foundation, only the income from its funds or properties may be spent. This is to accomplish a growth in value of assets so that the income produced will be an amount which will facilitate the implementation and support of projects the magnitude of which is not possible from the Club's annual fund raising. This is to be perpetual, to live beyond our individual lives.
- 2. There is to be no competition between the Rotary Foundation Committee and the Endowment Foundation for members' money. Both are important, the first for international service and the second for local community service. In fact, all of the Trustees and advisors are Paul Harris Fellows and only some are also Floyd Boze Fellows.

Considerable time passed between the resolve of the Board to establish the Foundation and its birth and much more time has now elapsed, making it important that the commitment made by that 1989-1990 Board of Directors be renewed annually and that the history be carried forward to inform newer members of where we are and how we got here so that we have a vision of where we are going.

It has been a struggle from the beginning to convey and plant the idea among our members that the Foundation *is* us and not *separate* from us. The bylaws state that the members of the Foundation are *all* of the members in good standing of Space Center Rotary Club.

The Club's Board of Directors sometimes views the Foundation and its Board of Trustees as aliens, set apart from the Club, when, in fact, it is only a separation of entities for tax reasons. The bylaws provide that the Trustees must be members of the Club and are elected by its members. The bylaws further provide that no property may be used or funds spent without approval of the members of the Club acting through its Board of Directors. The only exception is when a donor attaches a condition to a gift directing that it be used in a specified manner or for a specified purpose.

For a long time, those involved with the Foundation have struggled to answer the question, "For what purpose does/will the Foundation use the money or property it is given?" Since no project has been identified, although we have a planning committee considering various possibilities, our standard answer has essentially been, "We don't know yet." Then we attempt to convey, in concept, the overall purpose and mission of the Foundation's existence. This has usually not satisfied the inquirer. Recently, though, the light has shown through the clouds and I have awakened to the fact that it is not the duty of the Trustees and its advisors to determine how the Foundation will use its assets and what projects to which it will give, that is primarily the duty and responsibility of the members of the Club acting through you, the Board of Directors. Only you can approve funding. While our passion for making the Foundation a success (measured by what it does for the citizens of the greater Clear Lake Community) is a driving force, those of us who serve as Trustees and Advisory Trustees of the Foundation have, as our primary responsibility, the management and investment of its assets and the promotion of its worthiness.

The Marriage of My Arguments

Reconsider the forward funding idea so that a six-month (July 1 - December 31) Service Budget can be established early with a known amount available and fund those projects that need it early. Determine the budget for the next six months, after the Shrimporee, when the results are in. Abandon the idea of saving for a rainy day. You are the custodians of the community's money—it does not belong to us—the community has entrusted it to us for you to use for the community's benefit. The community does not want or expect us to have a savings account or other depository where we hoard *their* money.

SUPPORT AND FUND THE ENDOWMENT FOUNDATION! Put <u>all</u> reserves in the Foundation and let it grow until YOU decide how it should be used. Remember, you can attach conditions to the transfers or deposits so that you can determine the use of both principal and income. If desired, for example, Lamar Bowles can continue to manage the investments which he is now supervising. But, be encouraged to put some funds each year into the Foundation as seed money, permanent funding, for growth. Only with such support can the long range goals be reached. Join with the committee chaired by Charles Hartman to determine the needs of the community and what Space Center Rotary can do to help. Establish a committee to recommend to the Board members or others upon whom you will bestow the honor of Floyd Boze Fellow. Promote the Foundation as "our" Foundation, not "the" Foundation. When you visit other Rotary clubs, you will observe the attitude and pride in their foundations of which I am speaking.

Consider having the Foundation put on the Shrimporee. The members are the same and then donations will be made to a charitable organization [501(c)(3) instead of 501(c)(4)]. There would be no change in management, control or structure. All other clubs with whom I have discussed endowment foundations do this. In fact, for many, that is the reason they have an endowment foundation — so their benefactors can receive a tax deduction for a charitable donation.

I know that this is lengthy and I have chanced exceeding your patience, but it is hoped that you will receive these thoughts and suggestions in the spirit in which they have been offered. I have no axe to grind and no platform to promote. We, all of us as Rotarians, have one common goal, i.e. "Service". How can we best accomplish that goal? As our leaders, that is for you to decide.

Thank you for your consideration.

Yours in Service,

Billy R. Smith

cc:

all Endowment Foundation Trustees and Advisory Trustees