



GVR Bylaws Requirement Regarding Capital Project Funding

Summary of GVR Legal Opinion dated 4/23/18 re: Bylaws: "Standard of Service"

Approved by GVR Board of Directors for communication to Membership on 8/28/2018

The Bylaws (Art. III, Sec. 3) state that "There shall be no decrease of services presently provided nor addition of any new services, either of which should exceed 5 percent (5%) of the existing Operating Budget except as approved by a majority of the members voting." The question posed by this provision is what constitutes "services," as the term is not defined in the Bylaws.

Under Arizona law, a corporation's bylaws constitute a contract between the members and the corporation. In interpreting contract terms, courts will generally use the ordinary meaning of language where circumstances do not show a different meaning is applicable and as long as such an interpretation is reasonable.

The ordinary definition of "services" in the business context is intangible activities that are provided (as opposed to "goods" which are tangible things that are produced). Since this Bylaw limitation on decreases and increases of "services" is based on the operating budget - which is the financial plan related to the costs of *operating* the corporation - it is reasonable to interpret the term as referring to intangible activities. Had this Bylaw limitation been intended to apply to tangible assets, such as recreational facilities, it would have been based on the *capital* budget.

There may be instances, however, in which opening a new facility or closing an existing facility would trigger this Bylaw provision: if doing so results in an increase or decrease of services that exceed five percent of the operating budget. For example, if GVR were to purchase a new recreational facility, and the cost of the services provided by that facility would exceed five percent of the then current operating budget - i.e., in terms of employee salaries, supplies, utilities, maintenance, and similar expenses - then under this interpretation of the term "services," the Bylaw limitation would apply to require the approval of members.