

## **From a lawyer's Letter of Advice addressing an inquiry of her client**

Firstly, to summarize the facts of the case, a group of shareholders of Longfellow Inc. has filed an action with the district court seeking to set aside the election of the board of directors on the grounds that the shareholders' meeting at which they were elected was held less than a year after the last such meeting.

The bylaws of the corporation state that the annual shareholders' meeting for the election of directors be held at such time each year as the board of directors determines, but not later than the fourth Wednesday in July. In 2006, the meeting was held on July 18<sup>th</sup>. At the discretion of the board, in 2007 the meeting was held on March 20<sup>th</sup>. The legal issue in this case is whether the bylaws provide that no election of directors for the ensuing year can be held unless a full year has passed since the previous annual election meeting.

The law in this jurisdiction requires an "annual" election of the directors for the ensuing "year". However, we have not found any cases or interpretation of this law which determine the issue of whether the law proscribes the holding of an election until a full year has passed. The statutes give wide leeway to the board of directors in conducting the affairs of the company. I believe that is unlikely that a court will create such a restriction where the legislature has not specifically done so.

However, this matter is complicated somewhat by the fact that there is currently a proxy fight underway in the company. The shareholders who filed suit are also alleging that the early meeting was part of a strategy on the part of the directors to obstruct the anticipated proxy contest and to keep these shareholders from gaining representation on the board of directors. It is possible that the court will take this into consideration and hold that the purpose in calling an early meeting was to improperly keep themselves in office. The court might then hold that, despite the fact that no statute or bylaw was violated, the election is invalid on a general legal theory that the directors have an obligation to act in good faith. Nevertheless, courts are usually reluctant to second-guess the actions of boards of directors or to play the role of an appellate body for shareholders unhappy with the business decisions of the board. Only where there is a clear and serious breach of the directors' duty to act in good faith will a court step in and overturn the decision. The facts in this case simply do not justify such court action and I therefore conclude that it is unlikely that the shareholders will prevail.