

Proposal to Amend SNA-VT Bylaws

Proposal #	Title	Article	Section	Proposed By
3	Employment Eligibility for Officers	V	1	Executive Board

<u>Current Language:</u>	<u>Proposed Changes:</u>	<u>If Adopted:</u>
<p><i>Article V. Section 1 – Officers</i></p> <p>They shall be regularly employed by an organization in school food service, but may not be employed as a manager, supervisor, regional manager, corporate officer, or similar position of a for-profit organization in or outside of a school district.</p>	<p><i>Article V. Section 1 – Officers</i></p> <p>They shall be regularly employed by an organization in school food service, but may not be employed as a manager, supervisor, regional manager, corporate officer, or similar position of a for-profit organization in or outside of a school district.</p>	<p><i>Article V. Section 1 – Officers</i></p> <p>They shall be regularly employed by an organization in school food service.</p>

Rationale:

For the purposes of this proposal, any reference to or statements by SNA, SNA Legal Counsel, or SNA Board of Directors is referring to the National Organization known as School Nutrition Association. Additionally, any reference to or statements by SNA-VT or SNA-VT Executive Board is referring to the state Organization of School Nutrition Association known as School Nutrition Association of Vermont.

SNA-VT Executive Board has taken current SNA-VT Bylaws under consideration as a result of changes to the SNA Bylaws as approved by the Delegate Assembly on July 9, 2016 in San Antonio, TX. In the absence of a state level Antitrust Policy Guideline, SNA-VT is bound by the SNA Antitrust Policy Guideline as referenced below. Context of the SNA Rationale is being used for consideration with regard to the SNA-VT Executive Board proposed Bylaw changes.

SNA legal counsel was retained to evaluate this restriction in the national bylaws and has advised SNA Board of Directors that the language should be changed. Information provided by legal counsel includes the following:

Professional and trade associations offer many kinds of services, opportunities and benefits that confer a competitive advantage on members. While restrictions on association membership and benefits may be necessary and beneficial to ensure that the association’s members may

achieve their common purpose, no association may adopt membership rules where either the **purpose** or **effect** of the rules is to suppress competition. *Associated Press v. United States*, 326 U.S. 1, 15 (1945). An association membership policy that denies significant business advantages to some competitors while favoring members may violate either Section 1 or Section 2 of the Sherman Antitrust Act as a boycott to limit a competitor's access to the market, as a conspiracy to monopolize or as an anticompetitive business practice. *Fashion Originators Guild of America, Inc. v. FTC*, 312 U.S. 457 (1941).

SNA Bylaw restriction does not itself directly restrict competition. However, given the power, control and influence of the SNA Board of Directors, the SNA Bylaw restriction closely tracks and enhances the interest of SNA Members who are not employed by for-profit companies while denying or potentially denying significant advantages to for-profit companies operating in the school food service market. Further, there is evidence that the SNA Bylaw restriction was motivated by a fear or concern about competition from for-profit companies. Accordingly, we believe that the Bylaw restriction is vulnerable under the antitrust laws even under a rule of reason analysis.

In reaching this conclusion, SNA Legal counsel has noted the following facts:

1. Individuals who work for school food authorities (SFA's) and person who work for management companies are essentially professional competitors.
2. Service on the SNA Board of Directors is regarded as a hallmark of professional accomplishment and stature, and SNA promotes service on the Board as recognition of professional achievement and value.
3. Persons who have served on the SNA Board of Directors frequently are promoted into more responsible positions within their school districts, or hired as consultants to conduct training or for technical assistance by SFA's, industry member companies, other non-profits or school districts after their service on the Board.
4. The SNA Board of Directors has final authority to approve SNA's legislative and regulatory agenda, after the agenda is developed and recommended by the PPL Committee. SNA's legislative and regulatory agenda, to the extent it is influential with either Congress or the USDA, has a significant impact on the rules and regulations that govern the day to day operations of all SFA's, whether operated by a management company or self-operated.
5. The President and President-Elect of SNA, who are members of the Board of Directors, serve as Advisors to and are influential in the planning and operation of the Annual National Conference (ANC), including the Exhibit Hall which is the largest industry marketing venue for school nutrition and the only national non-online marketing venue. Industry vendors rely on the ANC for customer contacts and exhibits to promote products, develop new customers and increase sales. The same vendors sell to both management companies and SFA's.
6. The President – Elect of SNA, who is a member of the Board of Directors, identifies and recommends all committee chairs and committee members each year to the Board. The Board of Directors must review and approve the committee chair and member selections.
7. At least four past Presidents of SNA have been appointed to significant positions of authority within the FNS at the USDA, which is the agency charged with regulation of the school food industry as well as chief executive of the Institute of Child Nutrition.

These and other facts demonstrate that the members of the Board of Directors of SNA are in a position to influence and affect competition in the school food market.

The exclusion of management company employees from the Board of Directors is inconsistent with SNA's own Antitrust Policy Guidelines. The Antitrust Policy Guidelines applies to all formal and informal SNA-related activities. (2013 Bylaws, p. 30) Regarding Membership Restrictions, the Antitrust Policy Guideline states: "Considerations such as competitive concerns...should not be a basis for denying or revoking membership...because [they] could limit the ability of the applicant or nonmember to compete in the industry or pursue his or her vocation." (2013 Bylaws, p. 32) More specifically, the General Rules of Antitrust Compliance, which are part of the Guidelines, explicitly state that "No person shall be unreasonably excluded from participation in any SNA activity, committee, or local organization where such exclusion may impair such person's ability to compete effectively or pursue their livelihood in the school food industry." And "No SNA activity or communication shall include any discussion which might be construed as an attempt to prevent any person or business entity from gaining access to any market or customer for goods or services." (2013 Bylaws, p. 34)