

28 July 1998

NBA Executive  
PO Box 3079  
NAPIER

Dear Executive

Near the conclusion of the NBA's Annual Meeting, the NBA President indicated that he would not accept a nomination for NBA President or Vice President for a member who had not commenced office. That is, an Executive member who had been elected at the election prior to conference would not be considered for nomination.

I indicated from the floor that the NBA had received a contrary legal opinion several years ago, indicating that such a nomination was in order. By way of this letter I am providing a copy of that opinion to you. I would appreciate being provided with a copy of the contrary legal opinion referred to by the President at the Annual Meeting.

I contend that on four grounds a newly elected member of the Executive can be elected President or Vice President in their initial year of election:

1. The wording of the rules
2. Historical
3. Intent or lack of contrary intent
4. Practice

### **1 Wording of the rules**

The President and Vice President are to be elected "from the six members of the Executive elected in accordance with Rule 16." (Note some rules have been re-numbered since the opinion from Morrison-Morpeth was received). This clearly refers to the members of the Executive for the forthcoming year, those who were either remaining in office or having been elected using the postal ballot.

The rules make a distinction between "commencing office" and "being elected", indicating that these are two separate matters. Accordingly, any new member to the Executive will have been elected prior to the Annual Meeting and will be eligible for election as either President or Vice President.

### **2 Historical**

Until 20 years ago, all members of the NBA Executive were elected from the floor of conference. The President and Vice President were similarly elected, and there was no requirement that they had to come from the previous year's Executive in order to be eligible for nomination and election.

### **3 Intent or lack of contrary intent**

I have not found any reference in any historical material relating to the situation in question. To the best of my knowledge, there is no reference to it being the intent of the Association to change the eligibility related to President and Vice President, nor is there any reference to indicate the matter was ever raised. I conclude from that that there was no intent on the part of the NBA to change the eligibility of President and Vice President. On the other hand, there is written material related to the desirability of a postal poll for the membership of the Executive

itself – that expression resulted in the rules being changed to the form that we now operate under.

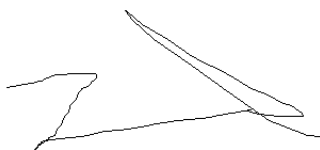
It was never stated in an NBA publication or minutes of the Executive that it would be undesirable to make newly elected Executive members ineligible for nomination for President or Vice President at the Annual Meeting following their initial election to the Executive.

#### **4 Practice**

Allen McCaw was elected to the office of NBA Vice President in 1983, having been elected to the Executive in the election immediately prior to that year's Annual Meeting. Nick Wallingford was elected to the office of NBA President in 1994, having been elected to the Executive in the election prior to that year's Annual Meeting.

In conclusion, I believe it has been the intent and practice of the Association that newly elected Executive members are eligible to stand for the office of President or Vice President prior to 'commencing office', the official beginning of Executive duties. The wording of the rules, as interpreted by the NBA solicitor, a knowledge of the first 60 years of practice, a review of the materials related to the time of the rule changes 20 years ago and the application of the rules during the last 20 years support my belief in this matter.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Nick Wallingford', written in a cursive style.

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