

Amateur Radio Clubs and the Law

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Why Do We Have to Worry About This? This Isn't Fun!

- Amateur Radio Clubs are organizations and should have certain formalities in order to function.
- Liability Issues
- Tax Considerations
- Longevity, Succession and Continuity
- Ownership and Division of Property

Levels of Club Organization

1. Informal groups of individuals
2. Unincorporated Associations
3. Corporations, Limited Liability Companies, and partnerships.
4. Benefits and Drawbacks to each
 - Paperwork
 - Tax burdens
 - Liability Exposure

LIABILITY – THE BIG ENCHILADA

- Does my club have any exposure? In general, YES
- Do we sponsor events?
- Do we serve food?
- Liability to club members vs. Liability to the Public – Hamfests, Field Day, ARES Activities
- Publishing of Newsletters
- Expelling members
- Ownership of Property – e.g. repeaters, vans, contest stations.

Keep Creditor's Hands Out of Your Pockets – Liability Continued

- Order of satisfying judgments:
 1. Insurance Proceeds
 2. Club Funds
 3. Individual Member's Funds (unless Club is incorporated).

What we want to do is to maximize #1, minimize #2 and eliminate #3.

How Do We Avoid Liability?

- Incorporation
- Liability Insurance
- Both!
- Statutory Immunity (Volunteer Protection Act, Good Samaritan Laws)

Incorporation

- File Articles of Association or Articles of Incorporation
- Prepare and Adopt Bylaws
- Have separate bank account and taxpayer ID
- Annual filings with the state corporations office
- Annual Fees
- Tax exemption? Section 501(c)(3) Charitable, Scientific, Educational entities, or Section 501(c)(7) clubs for pleasure, recreation, etc.
- Concern about Piercing the Corporate Veil
 1. No commingling
 2. Funding adequate for types of activities engaged in
 3. Corporation cannot be alter ego of individual(s).

Liability Insurance

- Normally cheap and easy to get.
- ARRL Club Liability Program Customized for Affiliated Clubs
- Concern about deductible – ARRL Program has none.
- Covers food service, personal injury, accidental injury, defamation, and other liability sources.
- Automobile use often excluded for vehicles not owned by a club.
- Fire and flood coverage if club owns buildings or real property.
- Look for coverage of at least \$1M per occurrence, \$2M aggregate per year.
- See, concerning ARRL Club Liability Insurance:

http://www.arrl.org/FandES/field/regulations/insurance/club_liability.html

ARRL Club Liability Insurance

Policy provides coverage for lawsuits resulting from bodily injury and property damage at ARRL Affiliated Club-sponsored activities. This includes concession stands, dances, banquets, parties, auctions, raffles, picnics and meetings, to name just a few. Coverage would also apply for official Club participation, for instance participating in a community-sponsored event. Plus, in addition to the policy limits described below, this plan also pays the court and legal costs of defense for covered claims.

VPA and Good Samaritans

- Volunteers providing services to government agencies or Section 501(c)(3) Tax Exempt private organizations are provided immunity from liability by the Volunteer Protection Act, 42 U.S.C. 14501.
- Requires acting w/in scope of normal duties under a volunteer program such as ARES, RACES.
- Exceptions: harm while operating motor vehicle, criminal acts, gross negligence.
- State Good Samaritan laws generally unhelpful; they require that a volunteer who aids others must use duty of care.
- Worker's Compensation generally unavailable.

§ 8332.4. **Volunteer-in-public-service** negligence standard

Typical Language
For State
Good Samaritan Act

(a) SERVICES COVERED

- Except as provided otherwise in this section, no person who, without compensation and as a volunteer, renders public services for a nonprofit organization under section 501(c)(3),..... of the Internal Revenue Code of 1986 *or* for a Commonwealth or local government agency conducting or sponsoring a public service program or project---
- *shall be liable* to any person for any civil damages as a result of any acts or omissions in rendering such services *unless* the conduct of such person falls substantially below the standards generally practiced and accepted in like circumstances by similar persons rendering such services *and*
- *unless it is shown* that such person did an act or omitted the doing of an act which such person was under a recognized duty to another to do, knowing or having reason to know that such act or omission created a substantial risk of actual harm to the person or property of another. It shall be insufficient to impose liability to establish only that the conduct of such person fell below ordinary standards of care.

Important Exceptions Exist

- Many such State Statutes usually except vehicular injury liability and impose the normal liability standards. (Insurance is normally mandated in many modern vehicle codes).
- Criminal activity exempted.
- Other identified exceptions often exist.

State Tort Claims Acts?

- Many States enact laws exempting state agencies and public employees from claims.
- Example is PA Tort claim Act.
- Applies to public employees & agencies.
- Radio Amateurs considered Public Employees during actual call-up??
- *Must file for exemption then under FCC for drill as employee????*

Federal Volunteer Protection Act of 1997 (FVPA)

- Protects volunteers from liability for their acts while performing services for nonprofit organizations without compensation.
- Must be primarily for charitable, civic, educational, religious, welfare or health purposes.
- Not dependent on whether formal nonprofit status has been confirmed upon an organization.

Who is a Volunteer under FVPA?

- A volunteer is a person who provides services to a nonprofit organization but does not receive compensation or anything of value in excess of \$500.00 per year for his or her services.
- A person may receive reimbursement of his or her expenses and still be protected as a volunteer by this Act.

What does FVPA Provide?

- A volunteer for a nonprofit or charitable organization may not be held personally liable for harm caused in the course of his or her work for the organization if certain criteria are met.

Limitations for FVPA

- The volunteer must have been acting within the scope of his or her responsibilities at the time the harm took place.
- The volunteer must be properly licensed, authorized, certified or warranted to do the thing that he or she was doing at the time the harm took place.

What does the 2nd limitation mean?

- Being a member in good standing of ARES or RACES and having a license and the requisite emergency communications certification by a sanctioned organization such as the ARRL would likely go far to assure an amateur operator would enjoy the benefits of this Act.

Next FVPA condition?

- Third, the volunteer radio amateur must show that the harm claimed by an injured member of the public was not caused by the radio amateur's willful or criminal misconduct, gross negligence, reckless misconduct or conscious, flagrant indifference to the rights of or safety of others.

Final but important requirement

- The harm claimed by the injured public in question must not have been caused by the volunteers operation of a motor vehicle or other vessel for which an operating license is required.
- *An automobile, which is usually a large part of an ARES or RACES call-out would provide an exception to the general immunity to the particular affected radio amateur. (Auto Insurance usually state requirement).*

Other FVPA Benefits?

- No punitive damages are permitted. *Unless certain criteria are clearly proven at trial.*
- The Act also limits a volunteer's liability for damages for non-economic losses such as for pain and suffering, emotional distress and other non-tangible losses.
- This may have the practical effect of reducing cost to insure against claims.

What FVPA Does Not Cover

- Act does not prevent nonprofit organizations from suing their volunteers for misconduct.
- Act does not protect an ARES or RACES organization itself from liability for harm suffered in the course of its activities.

Practical Effect of Limitation?

- An injured member of the public could sue ARES or RACES *as an organization* based on the alleged misconduct or negligence of one or more ARES/RACES members. (Other protections may remain).
- This might limit any actual remaining claim to the value of the available assets.

Other Legal Realities in re FVPA

- Does not prevent individuals acting as volunteers for ARES or RACES from being sued or being named in a law suit.
- Various law set forth above provides an affirmative defense to liability which the lawyers for the volunteer would raise in the course of defending a case.

Other FVPA Issues

- The federal act also does not eliminate all the laws of the individual states relating to the liability of volunteers.
- The FVPA sets the floor for the protection that must be afforded volunteers.
- While a State might create additional protection, that state cannot mandate less protection or pass other inconsistent laws.

ARES Club Issues

- ARES is an ARRL program
- ARRL has registered trademark for ARES and Amateur Radio Emergency Service
- Permission granted to ARES groups and clubs to use, but specific language required in organizational documents:
 - Must Acknowledge use of Registered Mark
 - Acknowledge that ARES is an ARRL program and agree to abide by the rules of the Field Organization
 - ARES rosters, membership records and data are property of ARRL.

Who Owns the Repeater or Contest Station?

- Most frequently encountered problem in repeater clubs.
- Who owns the repeater? Who is entitled to the club license? Suppose the club splits into two groups? Who has the repeater channel?
- Some even fight about the frequency coordination (which is a waste of time; it is not a property right, but merely a recommendation)!
- Document, document, document! Decide in advance whether the trustee of the club is entitled to take the club license if he or she leaves the club. Who is entitled to modify the license at FCC? Whose FRN is used? Club should keep the password and designate a substitute trustee who will be empowered to modify the license if the trustee is no longer associated with the club.

ARRL Affiliated Clubs

- Clubs can affiliate with ARRL in one of four categories. 1. Local Amateur Radio clubs 2. Regionally- or nationally-organized Amateur Radio groups 3. Local school or youth groups, or Amateur Radio clubs in homes for the elderly or disabled 4. Club councils (clubs of clubs).
- Over three quarters of ARRL affiliated clubs are category one clubs and a large majority of them follow the model that we mentioned at the beginning of this article. Clubs should be organized to best suit the membership and meet the mission of the club.
- Club affiliation requires at least 50% ARRL membership, except that schools or youth groups only require a single member to be an ARRL member.
- There are special service clubs which agree to do certain community functions as an ARRL affiliated club.
- See, <http://www.arrl.org/FandES/field/club/cpw/cpw.pdf>

Handling Money

- *This can be the club's biggest nightmare, even where everyone is scrupulously honest..*
- Clubs must have a designated treasurer, and if large amounts of money are involved, the treasurer should be bonded (though that is costly).
- Consider two signatures on all club checks, especially important to avoid identity theft.
- Procedures for handling cash should be in writing, and cash handled by volunteers (such as parking fees for the club's hamfest) requires some supervision.
- Annual accounting should be provided to the club members of all club funds.
- Expenditures over a certain limit should be subject to a prior vote of the officers, or even the entire membership.
- Section 501(c)(3) clubs must be careful about expenditures for non-exempt purposes and unrelated business income.

Discipline of Members and Officers, and Discrimination Issues

- Occasionally, it will be necessary to discipline a club member or even a member of the governing board.
- The right to do so should be provided for in the bylaws.
- There should be some “due process”.
- While a club does not have to accept volunteer services, it must be careful not to discriminate against applicants for membership based on certain characteristics. A Section 501(c)(3) cannot discriminate on the basis of race, age, sex, or religion. Some states prohibit discrimination on the basis of sexual orientation.
- It is acceptable to have different classes of membership, voting and non-voting, based on Amateur licensing or the absence of a license.
- Background checks...best way to alienate a volunteer I can think of.

Political Involvements of Clubs – Can We Lobby?

- Yes. An Amateur Club can do government relations without losing its tax exempt status, but there are limits.
- State and local government lobbying critical on Amateur issues for clubs – Antenna regulations, state PRB-1 laws, mobile cellular legislation are three examples.

Other Resources

- Affiliated Clubs, The Power of Incorporation, by Joseph Morton, KF2MX
- At: <http://www.arrl.org/FandES/field/club/clubinc.pdf>
- Get a good CPA.
- Yes, I have to say, get a good attorney, but find one that is a ham and make him or her do the work “*pro bono*.” Tell them that the Bar Association in their State frowns upon lawyers who don’t do much *pro bono* work!
- Buy a copy of “How to Form a Non-Profit Corporation” by Mancuso and NOLO Press, for \$39.95.
- Contact a corporation corporation such as CT Corporation or the Company Corporation.

QUESTIONS AND ANSWERS

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