

June 22, 2014

Department Judge Advocate
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We have come a long way this past year in the Judge Advocate's office. It is a journey that I do not wish to repeat. This office is almost equally divided between assisting in a business atmosphere and defending in a legal atmosphere. Yet it is the legal atmosphere that consumes the majority of our time and money. This phenomenon is created by the insidious use of the "lounge" to relax in that the American Legion graciously allows in our Posts but does not recognize as part of the organization. It is here where an estimated 50% of our legal problems arise. I can attest to this. The other 50% arises predominately from internal conflicts and from outside sources not controlled by the American Legion.

The first 50% can be rectified almost immediately. The Post bar MUST be under the control and direction of the Post; not the House Committee, not the Bar Committee, nor any other committee designated to oversee this operation. It is the responsibility of the Post Executive Committee to control all bar operations. The appointed permanent or temporary committees for bar operations simply administer the Executive Committees' directives. If a liquor license is involved, strict adherence to liquor laws must be obeyed. Bartenders must be trained on how to handle customers including non-member customers. But above all else, Bar Regulations MUST be formulated by the Executive Committee and POSTED in the bar areas. This is the business part of the Post operation and is simply an exercise of common sense. This should reduce, or perhaps eliminate, the number of incidents which create legal problems which, as I have said, consumes most of our time and money.

The other 50%, generated from internal and external sources, usually has no immediate solution. In this area, the main culprit is the lack of control over the Post's money and losses from embezzlement. The word "trust" here is totally overused and is the best source of all Post losses. It is trust that erroneously offers total reliability rather than "control" because it does not have to be understood like control. As I have stated throughout the year, Post officers allow this to happen. Trust is easier to administer than control. When losses occur in the American Legion, most are not reported for 2 basic reasons: first embarrassment by Post officers and second not knowing what to do when a loss is discovered. I have given you a solution to this problem which is called "internal control". It is because of these 2 basic reasons that we do not know the total dollar losses each year among our 14,000 Posts worldwide in the American Legion. The first item to address is embarrassment. Forget it! You are not the first and will not be the last to suffer monetary losses. Get to work and find the approximate amount and source of any loss. Get professional help immediately, especially if the loss is sizeable. Take control of bank accounts and credit and debit cards. Notify all, including your bank and credit card companies. Above all, file a report with the local police department. All will give you basic advice which you will need. But don't forget that this is only half of what you have to do. The other half is to stop future leaks and this solution I have already given to you. It is called GUIDELINES FOR CASH INTERNAL CONTROL FOR NON-PROFIT ORGANIZATIONS 2014. If you need to see it, refer to the February 2014 edition of The California Legionnaire on Page 9.

The next part of the second 50% is the internal conflict within a Post. It is generated by rumor, poor communication and a total lack of knowledge of American Legion legal processes. It is also generated by a total lack of knowledge of the Post Bylaws. Understanding and utilization of the Bylaws will eliminate most of the questions and problems arising within the Post. The Department Officer's Guide is also an excellent source for seeking answers to Post problems. The Department Trial Manual is the next source if all else fails. Hopefully, this source can be avoided and should be avoided especially by compromise. Lack of compromise is a major factor in allowing problems to spread and is virtually missing from the Post vocabulary and replaced by the word "retaliation".

During this past year we were called upon to assist to resolve major issues in 17 of our Posts. Some of these cases are still open and 3 more are pending. Another case names us individually in the California Superior Court. The 17 cases involved covered appeals to the DEC; expulsion of members; eligibility of members; recall of Post Commanders; revocation of a Post charter; suspension of members; Post embezzlement; criminal and civil cases from lounge operations. We were also busy in advising Posts of IRS filing requirements and IRS audits.

We spent many hours advising members to study their Post Bylaws, the Department Trial Manual and the Officer's Guide. All of this work we accomplished with the aid of only 3 of our members who volunteered their valuable time and expertise. They are Rees Lloyd, Esq., Jeff Seaton, Esq. and John "Doc" Bart. I thank you comrades.

In closing out this year, I was fortunate to attend the IRS National Phone Forum which covered only exempt organizations under our 501 (c) (19), for veterans' organizations. This was such an excellent presentation that I pass it on to our members. The following was noted:

1. DD-214's do NOT have to be kept on file at the Post.
2. The Post Membership Register can be used to verify membership.
3. Form 8822b was not covered.
4. Loss of tax exempt status.
5. Annual Coverage Test.
6. UBTI taxable income issues.
7. Bingo issues that are taxable in some cases.
8. How to correct errors and deficiencies.