

**Memo on Post Activities
A Guide for DEC Officers
4-18-2020**

This memo is written to provide advice to The American Legion Department of NC Board of Directors (DEC) and Officers to answer certain questions which may be asked of them by Post Commanders and Officers.

This memo is not a legal opinion for the several American Legion Posts chartered in North Carolina. Each Post should know the law and ordinances; and if they have concerns or issues, they need to contact their lawyer to provide legal advice in respect to those concerns.

This memo is to assist DEC officers in respect to questions asked in reference to the Board of Directors meeting of April 13, 2020 and in respect to Dec Resolution #2 4/13/2020.

In writing this memo, I have confirmed certain matters with the National Judge Advocate.

A. May an American Legion Post in the Department of North Carolina sponsor activities that is not endorsed by the Department or is not a Department Program?

The answer is yes, so long as the post follows all federal, state, local laws, ordinances, and Executive Orders, and the program is not illegal. However, each program of a Post stands on its own merit.

The cancellation of the Department of NC youth programs does not cancel other legal youth programs of a Legion Post which is not associated as a youth program of The American Legion Department of NC.

Examples:

The National organization and the Department of NC have been aligned and supportive of the Boy Scouts of America (BSA) since the early beginning of our organization. Many Posts either provide just fundings, or the Post may provide funding, uniforms and the use of the Post facilities. The action of the DEC passing Resolution #2 of 4/13/2020 does not cancel or suspend BSA programs at a local Legion Post. However, the PEC may need to understand their legal and social obligations, responsibilities and liabilities allowing the use of their Post facilities. Nothing has changed as to those aspects. However, during this Pandemic spreading of the COVID-19, members of the PEC should use all **Duty of Care** a reasonable person would use during this time frame and after, such as;

1. Does the Legion Post have proper and adequate general liability insurance, accident insurance, D&O insurance, etc. which will protect the young participants, their leaders and guests; and protect the local Legion Post, its PEC and officers and directors, and its members for any liability associated with the use of the facility.
2. Does the Post have rules in respect to the sanitizing and cleaning procedures of its facilities; and is the facility properly cleaned and sanitized after each use and by whom. What is the contractual agreement with that vendor?
3. The Post PEC should determine if there is any insurance coverage for all liabilities, including Covid-19 exposure, in respect to their general liability policy and any other policy the post is an insured. Determine the aggregate amount of their policy, lines of limits, deductibles and the key insurance information from their insurance carrier or broker. Same aspect in respect to the Post Officers and Directors liability insurance policies. Remember each policy of insurance stands on its own language, exclusions and

disclaimers including Acts of God exclusions. The Post PEC needs to review all policy information with their carrier, broker or the Post lawyer, if not all three.

B. What about sponsoring a Sports Youth Team of a Post?

Many Posts sponsor in one form or another, youth league teams. Examples are soccer, wrestling, little league baseball, midget basketball and other youth teams through a nonprofit incorporated, 501 (c)(3) youth league.

The key here is a sponsor “through a nonprofit incorporated 501(c)(3) youth league”. Post will provide funds to the league to sponsor one of several teams in that league. The League has the responsibilities, should carry all proper insurance, and the post liability could be limited to its monetary funding. Notice I said “could be limited”:

If a post sponsors a youth team of a nonprofit incorporated 501(c)(3) league such as Little League , Babe Ruth League, etc., the PEC should advise their insurance broker of such sponsorships to make sure the Post, its officers and members are covered under the Post’s numerous insurance policies just in case a plaintiff brings an allegation of “joint and several liability under a negligence tort action” theory. Always advise your broker and carrier of all of your programs to make sure you have proper insurance coverage.

C. Some Posts allow their facility to be used for rentals, daycare usage, learning resources for school children, and other community needs. Does Resolutions 2, 3, or 4 of the Dec April 13 meeting stop those usages?

The Answer is NO, so long as the Post follows all laws, regulations, ordinances and Executive Orders of the Governor and it is not illegal. Again, the PEC needs to think about

reviewing their insurance policies, the procedures for the sanitizing and cleaning of their facilities with all reasonable care as described previously.

- D. **It has been brought to my attention that some Legion Posts may be sponsoring a Baseball or Softball team this summer in an independent Baseball or Softball league. One league is called NC3. Can a post sponsor a team in such Independent League?**

The answer is yes, with several caveats.

1. The Post PEC must have a meeting of the Board and approve such action as a Post sponsor with written minutes of such action generated as prescribed. That is their first step. That step may place any numerous liabilities of the post, its officers and maybe its membership as this is totally different than sponsoring a team in a youth recognized nonprofit incorporated 501(c)(3) organization such as Little League or Babe Ruth.
2. Where the Post provides a fee to sponsor a team and the Post has **no control** over the team managers, coaches, travel, operations and schedule, (See Dallas E. Daniels, by and through his Guardian ad litem, et al Plaintiffs vs Edwin L. Reel, III, Edwin L. Reel, Jr.; The American Legion and its subdivisions; The American Legion Department of NC, Inc. and Cary American Legion Post 67, Inc., Defendants, NC Court of Appeals No COA98-238 (then maybe negligence May Not apply. **Again, I said maybe**).

3. Where the Post allows its name used for the Baseball/Softball Team, has the responsibility of hiring (even volunteer coaches), scheduling, travel, operations requirements, and provide finances or some funds, or the operation of a team as its sponsor; as in the facts of the Cary case, the Post could be responsible for any direct negligence with respect to a player's injury, health concerns, restrictions, etc., and maybe vicarious and indirect negligence as to allegations of Respondeat Superior.

4. The Post as the sponsor of an independent league team using the name of the Post or just being the sponsor, under the Cary case, could have various liability for the negligence of its members, employees, coaches, or volunteers. A plaintiff would argue as in the Cary case, the Post has a "duty of care" to use reasonable care in the operation of their baseball program based upon the circumstance in hand: and at a basic level, would allege a liability in negligence, premise on the fact that a post and its PEC did not perform in a reasonable fashion.

5. **So what may or should a post do if they decide to sponsor an Independent Baseball or Softball Team?**
 - 1) Make sure the league is incorporated as a nonprofit and has a Federal 501(c)(3) exemption!
 - 2) Make sure the league has proper finances, who are the officers and Board of Directors, and what type of insurance policy does the league have. Require the League to name the Legion Post as an additional insured to the league's liability, accident and all other insurance policies.

- 3) Make sure the post buys adequate youth insurance policy that includes general liability, accident, molestation, etc. Here the post needs to check with their broker and carrier as to all insurance requirements. Remember the BSA lawsuit.
- 4) Since this program (Baseball or Softball Independent League) is not a program of National (The American Legion) or the Department (The American Legion Department of North Carolina, Inc.) then the Trademarks of the American Legion and the name American Legion Post number cannot be associated on uniforms or the name of the team. Also, any information on the team on a post website cannot be used as the American Legion or a Post number of Legion Post is the property of National and the Department. So last year's uniforms and the name of the Post cannot be used under our Constitution and the Post application for charter.
- 5) So can a Legion Post use the name, Post 444? No, a post cannot. The American Legion is divided into posts. The Department of NC owns the Post #s assigned to a Legion Post.
- 6) Anyone could associate Post 444 to an American Legion Post as the VFW Posts begin in the 600's and the majority of the VFW Post numbers are in the thousands in NC except for Post 10. The DAV are Chapters.
- 7) Therefore, if a post decides to sponsor an independent team, it shall not use the American Legion Trademark in any form, it shall not use Legion, American Legion, Legion Post #___, Post #___, etc. on uniforms, any advertisement, programs, solicitation of funds, etc. as it is not a program of National or the Department.

The Post may use the city name, county name, or a nickname as that doesn't indicate the association or approval of the National Organization or the Department of North Carolina. (Cary case)

If a post decides to sponsor a team, it should make sure it has proper insurance in all aspects, review all laws, ordinances and any CDC rules, plus the Executive Orders of the Governor, review all matters with their insurance broker, insurance carrier, and their lawyer, especially since any and all liability could be that of the post as the sponsor. Remember, COVID-19 as of today is most likely a noncovered event in any insurance policy so any litigation for such alleged negligence may not be covered. Also, the Post should determine if their general liability policy provides any coverage for youth sponsorships. Always get a legal opinion from your Post lawyer.

If the Post doesn't have a lawyer, the PEC needs to hire a lawyer for legal advice and counsel.

These are just the basics and by no means are all inclusive of what a team sponsor needs to review. Example, where is the team playing? Is it safe and has it been sanitized? Many parks have not, and remember, safety is a major concern. (Mooresville American Legion Post 66 liability lawsuit.)

Make sure vehicles that are used for the transportation of your programs, including your Color Guard, are safe and have been sanitized.

Make sure you use common sense.

Again, this is **NOT a legal opinion**. Each Post needs to obtain advice and counsel from their own lawyer.