



THE AMERICAN LEGION

Veterans Strengthening America

OFFICE OF THE NATIONAL JUDGE ADVOCATE

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LEGAL OPINION

Subject: The American Legion, the Sons of The American Legion and the four rules of an American Legion Program

For 50 years, the Sons of The American Legion (SAL) has co-existed at all levels of The American Legion. However, this has also created a perception that SAL members have the same rights and privileges as those in The American Legion, and this misinterpretation of the rules, which has gone largely unchecked or uncorrected in some areas, is starting to cause some very real problems for the organization. Recently, this has grown into a larger concern as we hear reports of Posts being audited and, when asked for their membership rolls, submitting the names of SAL members in addition to those of regular members.

This opinion seeks to clarify for everyone that the Sons of The American Legion is a program, not simply a cheaper alternative that comes with the same rights and privileges as a traditional member. Further, leadership at all levels – Post, District, Department and National – must be knowledgeable on what the rules governing veterans and non-profit organizations are and safeguard the integrity of our organization by ensuring that no person or group jeopardizes our future by operating in a manner not consistent with the laws and regulations set by Congress and the IRS.

BACKGROUND

Shortly after the end of hostilities in World War I in Paris, France, LTC Theodore Roosevelt – the oldest son of the former president – had a conversation with George White, a fellow servicemember and editor of The Oregonian, a Portland newspaper; from this discussion, The American Legion would be born. Roosevelt would suggest the immediate establishment of a new servicemen's organization that would include all AEF members, as well as those soldiers who remained stateside as members of the military during the war. Roosevelt and White advocated this proposal ceaselessly until they found sufficient support at headquarters to move forward with the plan. In September 1919, Congress formally recognized the creation of The American Legion when both Houses of Congress passed our congressional charter and signed it into law.

Congress has deemed it in the national interest to afford congressionally chartered organizations some latitude to raise money and lobby Congress that is not available to many other non-profits. As one non-profit trade publication noted:

Above all, 501(c)(19) organizations offer financial, medical, psychological, and social support to veterans, their families, and the community. Through rehabilitation programs, support networks, and advocacy, these groups enhance veterans' mental health, employment opportunities, and overall well-being. These programs strive to secure a better future for those who have served. However, their impact extends far beyond supporting veterans, as they provide vital assistance to entire communities by mobilizing trained veteran volunteers in fields such as logistics, emergency response, and more during disasters.

At the 1932 National Convention in Portland, OR, The American Legion, while in general session, voted to approve Resolution 28, which established a youth program called "the Sons of the Legion." The Committee on Junior Activities called for "The National Organization of The American Legion to approve, encourage, and foster organizations of sons of members of The American Legion." Resolution 456 adopted at the 14th National Convention, states in the two whereas clauses "In the propagation of an organization for such boys' future around a fine idea, and assist in the bringing out the best type of citizenship," and "[a]n organization of this sort will bring the father closer to his son and make a better Legionnaire of him." The first resolve clause states, "One, that The American Legion officially propagate, recognize, and sponsor an organization to be known as the Sons of The American Legion." Upon the adoption of Resolution 456, it was believed, "Because The American Legion is such a unique organization, with eligibility so highly restricted, it can have no successor. But it can have an heir to whom it can bequeath all its treasured heritage."

THE PROBLEM

We are hearing more and more anecdotal evidence (and indeed some is even being sent to us) that various Departments and Posts are incorrectly interpreting the IRS code regarding the SAL, and, crucially, may be taking actions that could jeopardize The American Legion's non-profit status.

Congress sets the membership eligibility criteria for The American Legion, and the laws that govern it are found in Title 36 of the United States Code, Chapter 217, which deals exclusively with our organization. Eligibility is addressed explicitly in 36 USC 21703, a provision most recently amended with the passage of the Legion Act in 2019, and the Internal Revenue Service has promulgated rules based on what the Congressional intent was in the enactment of those laws. For us, the problem arises because Congress and the IRS have created differing rules for veterans of various conflicts, rules that largely do not apply to the SAL.

The IRS, in its Audit Technique Guide for Veterans Organizations, defines a member of a 501(c)19 with the following characteristics:

1. An individual eligible for membership under the constitution and bylaws of the veterans' organization.
2. May attend and vote at membership meetings.
3. Hold office in the organization.
4. Participate in State or National Conventions.
5. Posts remit membership dues for the individual to the central organization.

FOUR RULES OF A SUBSIDIARY PROGRAM

SAL squadrons, detachments, and the national organization are not stand-alone Veteran Service Organizations; rather, they must co-exist through the adoption and sponsorship from a post and cannot have their own EIN or tax-exempt status. This means that the SAL is under the full autonomy of its sponsoring post. If the post chooses to allow the squadron to use the post's EIN and tax-exempt status, that would be predicated on whether the squadron (program) is in full compliance with the Four Rules of a Program. Moreover, the rights and privileges of a program are not the same as those of a Legionnaire, or member of the American Legion Auxiliary. For example, the post bar, restaurant, canteen, or other social activity is intended for Legion members (veterans) of the post, their bona fide guests, and members of the Auxiliary unit, with the revenue remaining in the tax-exempt category. The IRS defines a bona fide guest as an individual a member invites to participate in an activity and pays for his expenses. If the guest pays for his own recreation or food, he isn't a bona fide guest. Social non-members are not eligible for membership in The American Legion. The members of the SAL squadron would be considered social non-members, and therefore, any sales or revenue generated from social non-members may also be subject to Unrelated Business Income (UBI) Tax by the IRS.

The IRS provides an example in the "Tax Guide for Veteran Organizations" (rev. 4-2018.):

Post A has 1,500 individuals who participate in the club's bar and gaming activities. 1,200 are veteran members who are eligible for membership as described in the post's constitution and bylaws. 300 are social non-members. Social non-members are not eligible for membership.

The veterans' organization satisfies the section 501(c)(19) membership requirements because its members are all past or present members of the U.S. Armed Forces. The social non-members are treated as members of the general public for 501(c)(19) purposes. Income from non-member sources may be subject to the unrelated business income tax.

Interpreted by the IRS, SAL members are considered social non-members when they utilize a post's social activities (if the operations are not already open to the general public and paying UBI tax for the income derived), and may generate taxable income if a Legion post member does not sign in that individual and pay for all food and entertainment for the guest. This includes all social or recreational activities of a Post not related to one of the other exempt purposes of a 501(c)19. In all such activities, an SAL member is not considered a member of the organization; therefore, revenue generated by these non-members may be considered taxable income, unless a Legion post member officially signs the non-member into the post and pays for all their purchases and services or another exception to UBI is claimed (such as volunteer labor exception).

In summary, the SAL program should be viewed as a participatory initiative that fosters the development of youth into patriotic Americans as outlined in the SAL Preamble; to uphold and defend the Constitution of the United States, foster and perpetuate a true spirit of Americanism, preserve the memories of veterans from all wars, to inculcate a sense of individual obligation to the community, state

and nation, to safeguard the principles of justice, freedom and democracy, to sanctify our friendship by our devotion to mutual helpfulness, and the last phrase; to adopt in letter and spirit all of the great principles for which The American Legion stands, and to assist in carrying on for God and Country, promotes American values and helps them become productive citizens in our society.

The SAL, as a program, is equivalent to an ALR chapter, Boys' and Girls' State, or Oratorical. All of them are Legion programs, but do not entitle participants or members to equal rights and privileges with veterans eligible for a TAL membership or to privileges commensurate with members of the American Legion Auxiliary. Certainly, no post would assume that a member of the Post's American Legion Baseball team would have unfettered access to the post commensurate with what a Legionnaire enjoys, but some Posts then turn a blind eye to members of the Sons of The American Legion, despite the SAL also being a program.

In order to deal with these issues, we have long had rules governing program operations. Attached to this opinion, you will find our latest incarnation of those rules, along with an acknowledgement section to be signed by the program participant or leader as the Post or Department may determine. Together, these four rules governing Leadership, Rules, Reports and Controls apply to all programs of The American Legion, whether they are our exclusively Youth Programs (Oratorical, Boys State, Shooting Sports, etc.) or programs like the SAL or The American Legion Riders. Regardless of what the program is — whether it be an ambulance service, a rodeo, a yacht club, a cruiser club, or some other program — the four rules apply to each of them.

Best regards,

A handwritten signature in black ink, appearing to read "Mark C. Seavey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark C. Seavey, Esq.
National Judge Advocate, The American Legion