

Legal Issues for Jaycee Leaders



Patrick Knight - Joe Carey



Prologue

Welcome to the business of being a Jaycee leader. Why do we call it a business? Well, whether you are a local President, State Vice-President or National Treasurer, you are a corporate officer of the Junior Chamber. If you read the bylaws of the United States Jaycees, you will see that our National Organization is repeatedly referred to as: "The Corporation." On a State or Local level, you are also considered an officer of your State Organization or Local Organization, both of which, are incorporated pursuant to the laws of your state.

So, if you are the Local President, you are really the CEO of a non-profit entity called the Anytown Jaycees, Inc. As CEO, you better be equipped to handle the legal issues, corporate issues, insurance issues and liability issues that could affect your corporation. If you think being President of the Jaycees is like being the leader of a social club, guess again. You are a corporate officer and are held to the same standards, laws and rules as the corporate officers of the Red Cross, Easter Seals, United Way, Chamber of Commerce and other non-profits.

This collection of articles and legal information will help you to have a basic understanding of the legal issues that affect your chapter. In 2003, two lawyers from the Miami law firm of Kubicki Draper published a monthly article called Legal Issues for Jaycee Leaders. At the time, Patrick Knight was serving as the National Legal Counsel for the United States Junior Chamber and Joe Carey was serving as the Metro Legal Counsel for the U.S. Metro Jaycees (large city chapters). The articles written and disseminated by these attorneys in 2003 have been collected in this manual. The contact information for each attorney is provided below.



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Attorneys as Jaycees

One question that I keep waiting for is: "I have attorneys in my chapter, should I be worried?" For some reason, people tend to fear attorneys and the way attorneys think, but I believe that is just because we are misunderstood. Attorneys are in the business of helping people to have their rights protected and helping to interpret the laws that we all live by as a civilized society. Thus, it only makes sense that Jaycee presidents would want to have some attorneys in their chapters to help them sort through the myriad of laws, legal issues, insurance problems and liability questions that affect Jaycee Chapter on a daily basis. The scary thing is that many chapters have no attorneys and some state organizations do not even have a State Legal Counsel. So, we are devoting this article to showing you the value of having a legal eagle in your chapter and why it should be a top ten priority for you in 2003.

Attorneys tend to have many of the characteristics we look for in Jaycee leaders and usually, they will crave officer positions in your organization. Most people that attend law school tend to have been over-achievers in their academic life and are often self-motivated hard workers. I know this because when I got to law school, I soon realized that everyone there had done well in school, had good credentials and was equally motivated as I was to succeed. See the connection to qualities needed in a good Jaycee leader? In addition, most attorneys that I know have always been "joiners" from the time of their involvement in church youth group, their high school athletic teams and student councils, college fraternities, student government and charity organizations, law school student groups, moot court board and as law journal editors, etc. Again, they are likely to join an organization such as the Jaycees, but only if your chapter has something to offer them in spite of their already busy schedule and scarce free time.

But what can attorneys offer your chapter? Well, they know the laws in your State and can help you avoid sticky situations concerning fundraising and liability claims. They will be the first board members to let you know that a certain project could result in a lawsuit. For instance, in one chapter, an attorney gave advice on how to turn an illegal Casino Night into a legal event using a blind drawing. They can help you draft and review contracts for your events. Attorneys can help you set up Foundations or charitable organizations. They usually have contacts with businesses (often their clients), the court house and in local government. Furthermore, their law firms are often very willing to get involved in the community and may sponsor your chapter with funds or other support.

These same attorneys (or their peers and bosses) are often sources for great speakers at your meetings, too. Topics that attorneys can speak about at your meetings that may be of interest to your members include:

- DUI Stops, What Should I Do?
- Dealing With an Unfair Landlord
- How to Beat a Speeding Ticket
- Legal Issues of Buying a House
- Car Insurance, What Type and How Much Do I Need?
- The Criminal Justice System, What Happens When Someone Gets Arrested

Now, to attract attorneys, we suggest that you point out the obvious benefits to their career in joining the Jaycees: (1) increased public speaking skills; (2) greater involvement in the community will look good on the resume; (3) Chapter Legal Counsel is a nice resume addition as well; (4) their contacts in local government will increase; (5) community service will make the attorney look good in his firm; (6) opportunity to make business contacts or attract clients through chapter networking and advertisements; (7) ability to take a leadership role in an organization that builds young leaders, etc. If you show them what's in it for them, then you have a much better shot of attracting them as members.

So our challenge to you is to three fold: first, go out and recruit an attorney to act as chapter legal counsel. Second, contact your State Organization and find out who your State Legal Counsel is and, if there is not an attorney on the State Board, help your State find a State Legal Counsel. Third, contact one other local chapter in your area and tell them the importance of having a legal counsel in their chapter. The first step in safeguarding your Chapter from liability is to have an attorney on board. If you have to go into a fight, it is always better to have the right weapons on your side, so don't get caught unarmed without an attorney.

Extensions: Beyond the Jaycee Charter

As local chapters, we extend new chapters because we want to start a new group of Jaycees in the image of our chapter. That, in fact, is why they are called extensions. However, while Jaycee presidents may be well versed in how to get 20 people excited and motivated to start a new Jaycee chapter in their community, there seems to be little knowledge on what to do once you have turned in the membership list with the Jaycee charter fee. In addition to the mentoring, cultivating and training aspects to helping this new chapter thrive in their first year, there are specific legal, corporate and tax issues that need to be immediately addressed in order for this new chapter to stand on their own feet.

First, there is incorporation of the chapter. Whereas in the past, a new corporation was required to file articles of incorporation, bylaws, minutes of the meeting electing the new board and, in some states, other documents as well, most states now allow you to incorporate on-line. By visiting the website of your State Department of Corporations, you can find the information you need to incorporate through the website and you will receive confirmation within a week or so. Each State is different, so consult their website or their 1-800 number for more information. It typically costs \$50-\$100 and only requires you to file your list of officers, registered agent, address for the corporation and the purpose for your organization.

Second, the new chapter needs to register with the IRS and obtain a Federal tax identification number, also called an Employer Identification Number (EIN). This is perhaps the most simple task to perform, but it is one thing that is sometimes neglected in the first months of the new chapter. The EIN is necessary because, without it, the new chapter cannot obtain a non-profit status as a chapter, they may have tax or audit issues with the IRS, and they will not be able to open a bank account or many times, lease venues for their projects. The easiest way to obtain an EIN is by phone. By calling 1-800-829-4933, you can get an EIN in five minutes. Otherwise, you can go to: www.irs.gov/formspubs/index.html and select the appropriate form (Form SS-4) from those listed.

Third, the chapter needs to obtain non-profit status under 501(c)(4) of the Tax Code. Sounds a little scary for the average Jaycee, right? Well, fear not, because the U.S. Jaycees have already taken care of that for you and that is one of the biggest advantages to being a national organization. The U.S. Jaycees already have non-profit status and a group exemption number that works as an umbrella for all Jaycee chapters in the United States. All you have to do is pull the "Group Exemption" form off of the U.S. Jaycee website (www.usjaycees.org), fill in the information concerning your EIN and corporate name, and fax it to: the Group Exemptions Officer at (918) 584-4422 at the United States Jaycee Headquarters. You will receive a letter from the national organization showing that you are included under this group exemption umbrella and this will be your proof of non-profit status for any venues, sponsors, promoters or other organizations that ask you for such information in the future.

Fourth, the chapter needs a bank account and a P.O. box for mail. Neither of these things can be obtained in most states until the bank and post office can see your corporate documents, EIN number and your non-profit status letter. So, rather than attempting to take care of these things prior to steps one through three above in hopes that you can open an account or P.O. box anyway, it is best

to have your documentation taken care of prior to your visit. For banks, try to find one that will give you a great deal (i.e. no charge for checks, no minimum balance, etc.). Non-profits typically are given a break at most banks, so keep looking until you have a deal that makes you feel comfortable. For P.O. boxes, it is as easy as going to the Post Office, showing your documentation and paying the fee. It is recommended that you put more than one person on the account and that you get more than one key. The last thing you need is for your new President, Treasurer, Management VP, etc. to be the only person on the account and have the only key, only to quit and never be heard from again.

Once you have these issues taken care of for your new chapter, you can move forward to the other stuff: community projects, networkers, increasing membership, officer training, etc. But if the new chapter tries to operate before taking care of these important legal and tax issues, you will surely run into more brick walls than you can imagine when trying to run projects, attract members or enter into contracts. Jaycee chapters are mini-companies, if you run it like a business, you will have greater success. As always, please consult your State Legal Counsel or an attorney in your area if you have specific questions regarding your State.

Contracts Can Save You Headaches

Have you ever set up an event with a venue only to have them cancel on you at the last minute? Or how about having a sponsor that is willing to supply food for your event at cost, but then they never show up on the night of the project? Does it make you feel aggravated? Frustrated? Devastated?

Well, that's why attorneys use things called "contracts" and your chapter should use them, too. As you probably know, a contract is an agreement made between two or more parties with the intention of creating a legal relationship, enforceable by law. Contracts can be in writing or oral and, basically, any agreement to supply goods or services in return for payment that falls within this definition is a contract.

The benefit of a written agreement over an oral agreement, is that if the writing contains the essential elements of a contract, then neither party may escape from its effect other than by mutual consent. As such, all parties to the contract have legally binding obligations to fulfil its conditions. In laymen's terms, if it is in the written contract, you have to do it, unless both parties agree to change the terms at a later date.

Although a contract should not be entered into lightly - as the result may be costly to your Chapter if you are the party failing to live up to your end of the bargain - a contract, more often than not, can prevent a headache. For instance, suppose you have a project as simple as a happy hour that will be raising money for charity and you are going to charge \$5 at the door for members, \$10 for non-members. Now, suppose you had contacted the bar and they agree to give you dollar drafts and \$2 vodka drinks from 6 - 9 pm, if you agree to give them ad space in your newsletter. It would be very beneficial if you put this all in writing and have the bar manager sign the agreement (even if it is in the form of a simple letter outlining the details). That way, you won't show up on the night of the event and find a new bar manager who tells you that he has no idea what you are talking about, which would effectively ruin your project.

Moreover, if you need to enforce an agreement that you had with someone, it is much easier to do if you have the details in writing. I have seen a chapter that poured beer at a festival all day and received no money from the promoter at the end of the day when he told all the non-profit volunteers that there was a different deal in place than they all thought existed. If they had a written contract to enforce, it would have been much easier to make sure the Chapter received its money.

The basic way that you enforce a contract is to present it to the other party and show them that you have an agreement and ask them to fulfil their end of the bargain. This may sound simple, but often, this is all it takes to enforce a contract. You may need to go a step further and remind them that this is an obligation that they have a legal obligation to fulfill. Finally, when all else fails, you may need to resort to the legal system to enforce the contract. If litigation is unavoidable, it is strongly recommended that you consult an attorney familiar with the laws in your jurisdiction.

Finally, always be careful when signing contracts drafted by a venue or promoter. Often they

add clauses or paragraphs that effectively absolve them of any liability and/or give them rights to void the contract at any time. Here's some issues to watch out for: often, a party such as a venue or promoter will include an indemnity and defense clause, also referred to as an exculpatory clause, which usually shifts responsibility of any accident back to you and creates liability for your Chapter where none would otherwise exist. For example, if you are renting a banquet hall and the indemnity clause in the contract makes you liable for any and all incidents while you are in control of the hall, regardless of cause, then you may be liable for someone falling over a puddle due to a leaky pipe that you had no control over. These types of clauses should be avoided, or you should at least be aware of their existence.

Other clauses, such as a limit of liability clause (similar to an indemnity clause), right to cancel clause (giving one party the right to cancel without notice) or litigation venue clauses (requiring a case be litigated in another jurisdiction where the laws may not be as favorable) are all things to keep in mind when entering into a contract. Remember, the use of contracts can be extremely beneficial and help avoid a headache, but blindly entering into a contract without keeping these issues in mind can cause a bigger headache. As a rule of thumb, when in doubt, consult your local Chapter attorney.

If you would like to see a sample of a basic contract, please feel free to contact Joe (jwc@kubickidraper.com) or Patrick (pwk@kubickidraper.com). However, always consult your State Legal Counsel or an attorney from your home state prior to entering into any contracts.

"Why Can They Sue Our Chapter If They Signed a Waiver?"

We have all been there, right? You are standing in line waiting to use the go-carts, or polishing your paint ball gun, or working up your courage to go bungee jumping, when an employee of the park you are attending asks you to sign a release or a waiver of liability. The circumstances surrounding the reading of the waiver are generally the same. As stated above, moments before starting an activity, a dense document with fine print is presented for signature and the only explanation from the provider about the document is that it is a "formality" or "procedure". So, you sign the document and never think about it again, until you get injured. No matter what it is called, the concept behind a waiver is that a person who knowingly engages in an activity and signs this piece of paper, may be precluded from bringing a claim or lawsuit if he or she gets hurt while performing the activity. But get ready for this: if someone gets hurt and challenges the waiver, a court might strike it as invalid. Will your waiver pass the test?

Many Jaycee chapters hold events, festivals and projects where waivers could and should be used, but if you are not careful, you might be going through the motions of having a meaningless piece of paper signed and your chapter still might be sued because, in a court of law, not all waivers are treated the same. A simple: "I agree to waive all claims" will most likely not work, especially when minors are involved. More and more, people who sign waivers are challenging their validity in court and they are winning. The waiver may be too general, it may not have been explained well enough, it might not have been properly signed by the actual parent or guardian, or a host of other reasons that you may not even think about.

For example, suppose your Chapter is hosting a Youth Sports Olympics at your local park. As participants sign up and pay the \$25 admission fee, you ask the parents to sign a general release and waiver of all claims for any injuries that might occur to their child while participating in the Youth Sports Olympics. The program may involve a relay race, a rock climbing wall, a long jump competition, a bike race or any number of other events. During the day, a ten year old boy slips on the grass during the running race, tumbles to the edge of the course you set up and strikes his head on a steel sign left there by one of your members as that member was setting up the next event. The boy's parents subsequently sue for damages in court. Can they win? Maybe. It depends on the state deciding the case, the language in the release and the circumstances surrounding the case.

Some courts have held that in a situation such as that stated above, the parents cannot sue because they signed a waiver and they knew of the inherent dangers in participating in such a day of sports activities. Other courts, however, might hold that a general waiver is meaningless in this situation because, although the minor and his parents were aware of the risks inherent in a running race, they were unaware that a steel sign would be placed at the bend of the course posing additional risks. Furthermore, in a number of states, you cannot use the same waiver form for both children and adults because several courts have held that a waiver form for children must include detailed disclosures and representations and, sometimes, must be signed by both parents or legal guardians to be considered valid.

In addition, a good waiver should do more than just guard against liability. It should authorize your group to seek medical treatment in case of injury, it should state that the participant acknowledges that the specific activities are dangerous, it should include language that the signor is participating at his/her own risk, it should warn the signor to read the document thoroughly before signing and, you may even want to include language that releases you from liability "even for your own negligence." The latter language is often looked on with disfavor from courts, but may be upheld if the language is specific and follows certain requirements set forth in the case law of your state.

To be extra cautious, you might want to start the release with general language, but then offer subsequent paragraphs that specifically identify the activities and potential risks involved with the activities. If the waiver is long, you may want to offer the participant extra time to read it or have one of your members thoroughly explain it. You may even have a space next to each paragraph where the participant has to initial to show that he/she has read that paragraph. For instance, if you have ever gone skydiving, you know that the Waiver of Liability and Release of Claims is not only specific, but requires you to basically sign your life away with no legal recourse even if the skydiving people packed your parachute wrong. (They can do this because you don't have to jump, but if you want to, you have to sign this specific release, which has been upheld in courts all over the country).

Furthermore, waivers need not be limited to situations where outside participants can sue your chapter for personal injury. For instance, if you are organizing an art contest for fifth graders where the winning design will be used for the T-shirts or posters in your 4th of July Festival, you will probably need a waiver from all participants that allows you to use their artwork for such purposes if they are declared the winner (i.e. that their artwork becomes your property). Also, if you are organizing a snorkel trip between your Chapter and another Chapter, you may want to have all participants (even your members) sign a waiver that protects your Chapter from any liability claims. If you are selling beer at a festival, you may want to have your members sign a waiver that states they will check ID's of questionable underage patrons and that they will hold harmless, indemnify and release the Chapter from any liability or claims that arise out of their inability to do so.

As always, the best thing to do is to consult your Local or State Legal Counsel for all projects where you have any questions of liability because you might not have thought of the legal ramifications of your event. Don't assume that you have a shield from liability just because you are using a waiver because that shield might just turn out to be a meaningless piece of paper. Protect your Chapter!

Legal Analysis When Planning a Project

Banners? Check. Confirmed venue? Check. Make flyer to promote event? Check. Send out press releases? Check. Evaluate all potential liability for project? Potential WHAT? Too often, Jaycee chapters have chair people and Vice-Presidents who carefully plan events down to the smallest details, but they might never even consider potential liability problems. In fact, this is also true in life and business because most companies institute new safety procedures or inspection programs AFTER they get sued for failing to evaluate potential liability correctly in the first place. When you are always reacting to potential liability rather than pro-actively trying to avoid it, a recipe for disaster begins to brew. I am not just talking about personal injury law suits, either. You could violate a local ordinance and get fined or you could get in trouble with a State agency.

For instance, suppose you have a project where you take foster kids back-to-school shopping. You find sponsors, the volunteer manpower is adequate and the project works out just fine. During the scope of the event, Jaycee members innocently take pictures of the shoppers and their kids because what's a Jaycee project with no camera, right? Well, if you take those pictures and post them on your website or in your newsletter, you are not only possibly violating the privacy rights of these children, but you are potentially putting some of them in danger because some are in foster care due to the abusive parents from whom they were removed. Even worse, the foster care agency might take some kind of action against your chapter and it could end up in a PR nightmare, just because no one considered the consequences of that one action.

Likewise, an innocent activity such as promoting your next happy hour or networker can have disastrous results if your members decide to post flyers all over town without regard to local ordinances. In some cities, unauthorized flyers posted on trees, bulletin boards and newspaper boxes can result in fines for EACH FLYER. This means that if you aggressively posted 100 flyers around town with no permission and with no knowledge of local ordinances, it could cost you as much as \$2,500 if the fine is \$25 per flyer. So much for profit from that event.

Or how about this? You hold an essay contest for local elementary school kids to celebrate Veterans Day. You receive 200 submissions, receive great PR for the event and decide to publish the winning essay in your State Newsletter or the local paper. What's that? You did not get written permission from the student to use their essay after the contest? Well, then get ready for potential trouble because you used their property for monetary gain (i.e. there were probably sponsors for the newsletter or ads in the paper) and the parents of that child might just try to reap some of those profits. Whether they have a case or not depends on the laws of each state, but why not nip that issue in the bud and have each participant sign a waiver that says all essays submitted become the property of the Jaycees for whatever use and purpose the Jaycees decide to do with the essay.

Thinking about using your non-profit status to get a liquor license? If you are going to sell or serve beer and alcohol, I hope you have a system set up to avoid selling to minors. Just because you have a sign that says "You Must Be 21 to Drink", does not mean you are insulated from liability. Your members and volunteers need to card anyone that is near the age of 21. As a chapter, you might want your members to sign a waiver that affirms they will check identification of all patrons and that they are serving beer at their own risk should they fail to ID an underage drinker. I have

seen the police send underage drinkers up to beer stands at festivals to see if the volunteers are carding people and if they do not do so, the police have no problem arresting or fining the violator.

How about haunted houses? Is the local fire inspector your buddy who will let violations slide so that you don't have to get more insurance or spend more money to bring your haunted house up to code? Well, just wait until someone gets hurt because of that code violation. Your chapter will get sued right along with the city for failing to properly inspect the haunted house. An ounce of prevention can save a lot of headaches versus a short-sighted approach of "beating the system" because the fire inspector is your buddy.

In sum, legal analysis needs to be a priority in any project checklist or CPG. You need to consider potential legal issues and develop a proactive strategy to avoid legal problems. Once again, this is where an attorney in your chapter is very helpful and I cannot stress enough how important it is for you to have a Local Legal Counsel. But if you do not have a legal counsel and you need a general opinion, please contact your State or National Legal Counsel and make sure you are covering all your bases with respect to liability. Be proactive, not reactive!

Raising Money For Charity Without Being Registered May Lead to Fines

So, your local chapter has renewed its corporate status with your State Department of Corporations, it filed a tax return last year, your Jaycee charter is current and active and you have your 501(c)(4) status through the U.S. Jaycees. Your ducks all seem to be in a row, right? Well, did you know that in some states, your Chapter cannot legally solicit money for any purpose without being registered with another State organization? Are you aware that the penalty for soliciting money - even for another legitimate charity - can subject your chapter to fines of \$1,000 per violation? If not, you better learn fast and this article will help you figure out what you need to do.

Since I live in Florida and I am much more familiar with Florida laws, I will use our State as an example. Pursuant to Chapter 496, Florida Statutes (called the "Solicitations of Contributions Act") the Florida Department of Agriculture and Consumer Services requires that all non-profit organizations that solicit money for any purpose must be registered and paid current with the Division of Consumer Services. Failure to register or renew annually, can result in your organization being fined \$1,000 every time you solicit money if they are monitoring your chapter. Other states have similar laws and you need to find out about these laws if you want to avoid severe penalties.

This means that if your chapter runs a Back-to-School Shopping Spree and sends out donation letters, your organization must be registered. If your chapter hosts a Casino Night to raise money for American Cancer Society and you donate all the money to ACS after taking out the expenses of the event, then you must be registered with the Division of Consumer Services. If your chapter does a car wash and gives half of the money to Humane Society and keeps half for the chapter, you must be registered. Basically, if you are asking people to give money to the Jaycees for any purpose - even if 100% of it is going to ultimately be given to JCFAN or some other charity - you must be registered.

What does it take to be properly registered? In Florida, your Chapter must fill out a Registration Statement for the Division of Consumer Services. This nine page document requires you to fill in information concerning your Chapter's legal name and address, contact information, officers of your chapter, financial statement concerning your solicitations and donations, the purpose of your organization, and the major programs your chapter runs. Your financial statement should have estimated solicitations be as accurate as possible to avoid problems. The document must be notarized as well and returned with a check for \$10 if you solicit \$25,000 or less; or \$75 if you solicit \$25,000 - \$100,000. These figures do not count membership dues, beer pouring money or any money you make as a chapter where you are working for the money or selling a product. Solicitations count only where people can make a donation to the Jaycees or your charity of choice based on your request or actions. (Car washes fall into a grey area, but since many people give more money than requested, it can be a solicitation event).

Furthermore, if you have both your chapter and your chapter's foundation incorporated, then both need to be registered with the Division of Consumer Services if you expect raise money through solicitations made by each entity. Since it only costs \$10, it is better to be safe than sorry. Your chapter must renew each year with an updated registration statement and a check for \$10, so you

should add this to your checklist of things the new Local Chapter President should know in your Chapter. Late fees on renewal are \$25 and as stated above, failure to renew could cost you \$1,000 in fines for each violation. Remember that your Jaycee Chapter is a business and should be run like one, so make sure you are up to speed on your non-profit reporting and registrations. For further information or if you have any inquiries, please contact your State Legal Counsel or an attorney in your home state.

Liability of Jaycee Officers: Can They Be Sued?

As we travel around the country, we always ask the same question to local chapter officers during seminars: "How many of you can tell us for certain that your chapter is incorporated?" The response is always shocking because only about half the room raises their hand each time. You should see their faces when they find out that chapter officers of unincorporated chapters could potentially be sued personally. DID YOU HEAR THAT? Depending on the laws of your State, if you are a chapter officer and your chapter is not incorporated, someone that gets hurt at one of your events could sue you personally.

"How can this be?", you ask, "I was always told that I am not liable for volunteering in the Jaycees." Well, there is a reason for the confusion: if your chapter is not incorporated, it may be recognized as a chapter in the eyes of the State Jaycee Organization, but in the eyes of your State Department of Corporations, the Anytown Jaycees may not be a recognized entity. Just because you pay the charter fee to the Jaycees for the right to have a chapter in your community, that does not mean that your chapter is a recognized corporation with the State and that means that you, as an officer, can be on the hook for debts of the chapter, personal injury claims against the chapter or breach of contract claims against the chapter.

One of the reasons that a company or organization becomes incorporated is typically to shield the owners, stockholders and officers from liability. The new corporation becomes the legal entity that can sue or be sued, that can enter into contracts or that can purchase and sell assets. Moreover, just because your chapter was incorporated at one time, it does not mean that your chapter is still incorporated if your State requires you to renew your incorporation each year. It is very important that you immediately check to see if your chapter is incorporated pursuant to the requirements of your State Department of Corporations.

So, most of the time in the majority of States, if you are incorporated as a Chapter, then your officers are insulated from personal liability for claims brought against the chapter. (However, see later article regarding claims brought against officers for breach of fiduciary duty). Some States even go further to specifically protect officers of non-profit corporations above and beyond the standard protection that is typically given to corporate officers. For example in Florida, if you are an officer or director of a 501(c)(3) or 501(c)(4) corporation (including the Jaycees), then you have immunity from civil liability (i.e. personal injury lawsuits, breach of contract claims, etc.) pursuant to Florida Statute, section 617.0834. That laws states that an officer " is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director" unless you failed to perform your duties as an officer and that failure results in a violation of criminal law, you had willful disregard for human rights or you derived an improper personal benefit through your action.

Furthermore, Florida Statute, section 768.1355, called the Florida Volunteer Protection Act, makes all volunteers who perform service for a non-profit, an agent of the organization and gives them immunity for civil liability for their negligence when they cause personal or property damage while volunteering for you. In other words, officers, chair people and general member volunteers of chapters in Florida are generally immune from personal liability if that chapter is properly

incorporated. Be sure to check with your State Legal Counsel to see what statutes in your state may apply to personal liability of volunteers and officers in a nonprofit organization.

Regarding insurance, we will discuss that more in a future article, but basically, your chapter should have a general liability insurance policy to protect the chapter's assets, bank account and event profits from civil liability claims. As noted above, insurance is not the deciding factor as to whether an officer of your chapter can or cannot be sued, it is whether you are incorporated. The reason you should have insurance is to protect the chapter. Stay tuned to future articles for more information on that topic.

To recap, the officers, chair people and general members of your chapter are probably immune from personal liability for claims brought against the chapter, if your chapter is properly incorporated. If you are unsure whether your chapter has 501(c)(4) status, all you need to do is contact the United States Jaycees to find out if you have submitted the proper documentation to them to be covered under the group exemption umbrella. Don't wait another minute, get incorporated today! As always, please contact your State or Local Legal Counsel for more information about the laws in your state.

Minors and Alcohol - Police Yourself

We have all heard the argument many times: if they can go to war and vote at 18, why do they have to be 21 to drink alcohol? The answer, of course, is obvious. You cannot drink alcohol until you are 21 because your state law says so! This article is not meant to debate the drinking age, rather it is just meant to show you how to avoid facing severe penalties for your organization or even potential criminal charges.

Let's face it, one aspect of the Jaycees is the social part because people like to unwind after work and meet other people in a laid back environment. In fact, the Jaycees are well known for some big festivals, parties, pub crawls and happy hours in many local communities across the nation. So, what can be done to insure that minors do not obtain any alcohol at your local chapter's events?

First, you need to consider the location. If your event is held at a bar or hotel where the bar tenders or servers are employees of the venue, then you are probably protected from any violations of serving minors. This includes bouncers letting under-21 people into a club or bar, unless the Jaycees are the ones working the front door. It is important to do an evaluation of who is serving the alcohol at all points during the night because if the hotel is providing a full service bar, but the Jaycees have a free keg available or if the Jaycees are offering a free punch spiked with alcohol, then your chapter could be on the hook if a minor turns up drunk. If minors are on the premises at an event, a State Conference or a general meeting, never leave unattended alcohol out for the general public. You may think you know your teenagers, but you may not know their friends who have come along to accompany them to the event.

Second, ask for identification of EVERYONE that appears to be under the age of 30. Teenagers look much older these days and if you are not asking for identification before serving beer to a person, it is not a valid defense to say: "but she looked over 21." This holds true whether you are pouring beer for a festival, offering free jello shots at a state conference or allowing free draft beer for your guests at Charter Night. Furthermore, if you see a person of questionable age drinking a beer at a Jaycee event, you need to go ask them for an ID. I know that no one wants to seem like the bad cop, parent or strict teacher in this case, but if that person is a minor and he or she ends up in police custody, sick with alcohol poisoning or busted by hotel security, then you have a huge mess on your hands. It is much better to be resented by a minor or slightly embarrassed for asking a 30 year old for ID, then it is to have your Chapter's charter revoked or fined by the state.

Third, use wrist bands or marker on the back of the hand to identify over-21 patrons if you have an event where you know there will be mixed company of minors and adults. In this way, you will be able to provide a better defense for your chapter if a minor stole a wrist band, marked his/her own hand, or found a "used" wrist band. Even with such a system in place, however, you should still ask to see ID again if someone has a wrist band and appears to be of questionable age.

Fourth, you may be wondering about what happens if a minor is found drinking at a house party or barbeque. This should hit home for most Jaycee chapters because I often see picnics, barbeques and theme house parties where children are invited to come along. Of course, the provider of the alcohol will be on the hook (i.e. whoever purchased the alcohol and set it out) and the owner

of the house will be on the hook for allowing minors to drink on the premises. But, again, your chapter could be sued by the minor's parents or face fines and criminal charges as well. If it is an event sponsored by your local chapter, then the chapter could be on the hook. Now, if you have read prior Legal Issues for Jaycee Leaders articles, you know that an officer is typically not liable personally for such lawsuits. But do you want to be the Local President that has to give an interview to your local paper explaining why a drunk minor got into a car accident on the way home after drinking all day at one of your events?

In sum, there should be a high priority placed on the safe guarding of alcohol from minors at your events. Whether any bylaw change to reduce the membership age to 18 is passed in the future or not, there will still be issues of minors being present at Jaycee events where alcohol is being served. Look at your State Conventions, general membership meetings and family picnics. Surely, you have noticed all the under-21 people running around the event. This issue is present now, so start evaluating your exposure and liability now. As always, consult with a local attorney or your State Legal Counsel for the laws of your state and don't forget that if you police yourself, the police won't have to do it for you.

"We're Being Sued for a 1999 accident?"

Imagine this: you and a small group of your friends take over a Jaycee chapter and begin to make things happen. New members, quality projects and timely communications are making everything run smoothly. Then, out of nowhere, your chapter is served with a Summons and Complaint from a local attorney in your area. As you begin to read the Complaint, you realize that someone is suing your Chapter for an accident that occurred in your Chapter's haunted house back in 1999. To make matters worse, there are only two or three people in the Chapter that were even members back then, so nobody has any clue what this lawsuit is all about. Does this sound unlikely to you? Guess again, because in most states an injured party has four or five years to bring a lawsuit after the date of accident and often times, this means that witnesses and documentation of the event may be non-existent if your Chapter is not proactive after an incident.

In this article, we are going to give you a few tips that can help you preserve evidence and potentially protect your Chapter during future lawsuits in the event of an injury at one of your events or projects. We are not going to discuss preventative measures before the accident because that type of an article could go on for pages. It goes without saying that we always want to make each event as safe as possible without taking the fun away from the participants. However, no matter what we do, accidents happen. The purpose of this article is to suggest some simple steps you should take after someone has been injured at a Jaycee function.

First, make sure the person gets proper treatment necessary. Call the police or fire rescue, get the person some water, stay with them and make them comfortable. Having a first aid kit at your event might be a good idea from the start because it can help you to deal with minor cuts and bruises quickly and may obviate the need for any further medical care.

Second, do not say anything stupid that would imply you did something wrong because it will be used against you later on during a trial. For instance, if someone catches their arm on a loose nail in your haunted house, do not have a conversation with your Management VP in front of the whole world where you utter a phrase similar to this: "I told them not to let Jim put up the side walls because he never does the job properly." Also, we would suggest that you do not enter into any written agreements with the injured party to pay medical expenses or otherwise admit you did anything wrong to cause the injury.

Third, if you have a camera, take some pictures of the scene of the incident (unless it is severely detrimental to you). This is especially true if you are dealing with some kind of an alleged defect in your haunted house, a possibly dangerous condition at your festival or any other kind of situation where the thing that caused harm is not going to be there in the future. Using the example from above, if the person says that they were cut by a loose nail and they show you a nail that is barely poking out half an inch from the board, you may want to photograph it. Just use your common sense.

Fourth, get the names, addresses and phone numbers of anyone that witnessed the incident. This will include Jaycees and non-Jaycees who may have some information. If the person involved in the incident says that they are not injured, you may want to write that down, especially if there

were other people around you that heard him/her say those words. But even if you have photographs, names or statements, it does your Chapter no good unless they are placed in a folder and kept with your Chapter documents for use in the future because if the current President keeps the folder and then disappears from the Chapter, it will be of no use to the 2003 President who took over four years later with no clue about this incident.

Fifth, if there is an accident with injury, you probably need to report it to your insurance company immediately. Depending on the wording of your policy, it may be required that you report all injuries during your event to your insurance company in order to put them on notice of a potential claim. Failure to do so could affect your insurance coverage and leave you high and dry with no insurance. So, if there is a question on that issue, pull out the policy and take a look at it or consult your State or Chapter Legal Counsel. Moreover, within a day of receiving the Summons and Complaint, it is absolutely necessary and required that you contact your insurance company (or an attorney if you have no insurance) because you may have only 20 days to respond to the Complaint in Court.

Accidents are just that, accidents. They occur without any notice and when you least expect. Therefore you must be prepared. Think about these steps and discuss them at your next meeting and at every meeting when you are planning an event. It may also be helpful to develop a checklist that outlines the five suggested steps discussed above: provide as much medical care as possible to the injured person; think about what you say; photograph the area/person (if applicable); document witness names and other pertinent information and contact your insurance company and/or your attorney.

In sum, do not ignore a situation just because it did not seem serious at the time of the incident. We see many cases where a person leaves the scene of an accident and assures the owner of the property that they are just fine only to sue at a later date after a plaintiff's attorney gets a hold of them. Take precaution to avoid accidents, but if one should happen, do not panic, just be smart. For more information or explanation about the laws in your state, please contact your Local or State Legal Counsel.

"FIVE-OH-ONE-SEE-WHAT? Oh, our Non-Profit Status"

Is your chapter a 501(C)(3) organization or a 501(C)(4) organization? We can see the blank stares right through our computer screens. That's okay, we see it all the time when we do training seminars or when we watch local officers deal with vendors for projects. But you need to understand this important component to our organization, considering the Local Jaycee President is really the CEO of a non-profit organization (i.e. the Jaycees) in a given community.

So, let us start here: 501© refers to that section of the United States Tax Code that applies to organizations like the Jaycees. Your chapter is most likely organized pursuant to section 501(C)(4) of the Tax Code, which governs non-profits that are not organized for a charitable purpose. This, of course, does not mean that your chapter does not do great community service projects and leadership training. It just means that you do not meet the strict requirements of 501(C)(3), which prohibit organizations from reaping the benefits of a charity or educational organization unless 90% of its activities fall within the categories listed in the Tax Code for that section (i.e. community service, education, scientific research). With all of the socials, international projects, conferences and other things done by most Jaycee chapters, we do not usually qualify to organize ourselves under 501(C)(3).

In fact, if you obtained your non-profit status recently or some years back by faxing your corporate documents and Tax ID number to U.S. Jaycee headquarters, then you received a letter that allowed you to be under the umbrella of the 501(C)(4) status enjoyed by the U.S. Jaycees. So, if your organization falls under section 501(C)(4), this means that you are categorized as a non-profit organization. However, people cannot deduct from their taxes, any donations made to your chapter. (There are ways to pass along a tax deductible donation to your donor if a portion or all of the money was donated to a charity and you can contact us or your State Legal Counsel if you need more information on that).

Conversely, if you are a charitable organization under Section 501(c)(3) of the Tax Code, anyone making a donation to your organization can deduct it from their taxes, in addition to sharing the other benefits of being a non-profit organization under Section 501(c)(4). The major factor in becoming a 501(c)(3) charity is that ninety percent of your activities must be for a charitable purpose (or other purpose listed under that section) and those activities must be described in detail in your Articles of Incorporation. For this reason, most Jaycee Chapters do not qualify because we run social, business, community, international and management projects, some of which do not fall under "charitable activities." (as stated before, there are other purposes by which an organization can qualify for 501(c)(3) status, but they will not be discussed in detail here).

Now, you can set up a separate corporation (i.e. Coconut Grove Jaycee Foundation, Inc.) and have all money raised by this corporation used solely for community service activities or leadership training or a mix of the two purposes. In your Articles of Incorporation for the new entity, you would have to clearly delineate what projects and events would be funded by this corporation and 90% of those projects must fall within the allowable activities of Section 501(c)(3). This would allow your Chapter to have people donate money to that Foundation and it could be a tax deduction for them. On the flip side, any money you make from car washes, beer pouring or raffles could still be deposited into your normal operating account for the existing corporation in order to run the

Chapter, fund social events and pay for administrative costs. This gets a little complicated and a more detailed explanation is warranted, but you can contact your State Legal Counsel or a local attorney for more information. (i.e. after starting the corporation, you need to file for tax-exempt status with the IRS and fill out Tax Form 1023, but while you are waiting for the status, you have up to 12 months to operate as a 501(c)(3) organization anyway, etc.)

As a side note, some states differentiate between 501(C)(3) and 501(C)(4) organizations by calling one type "non-profit" and calling the other type "not-for-profit". Some states, like Florida, make no distinction and call everything a "non-profit", so you may want to train yourself just to use the numbers because those are universal around the United States. However, if you are in a state that differentiates between the two types of organizations by name (i.e. "not for profit"), then you should be familiar with both the names and the numbers when you are talking to potential corporate sponsors, donors or vendors.

In sum, the Junior Chamber is a business; to wit: we are a non-profit organization specializing in leadership development, community service, business opportunities, personal improvement and international impact. If you are the President or an Executive Officer in this corporation, you need to know your stuff and it begins with your corporate status. As always, please contact your State Legal Counsel or a local attorney in your area for a more detailed explanation of the corporate laws in your State.

States and Chapters With Officers Over the Age of 40 Better Beware!

According to the United States Junior Chamber Bylaws, the Jaycees is an organization for young people between the ages of 21 and 39. Moreover, the U.S. Jaycee Bylaws specify that no person may hold office in a local or state Jaycee organization if that person has reached their 40th birthday prior to the beginning of their term in office. This means that any State organization or local chapter that places a 40+ year old member in office would be in violation of the U.S. Jaycee Bylaws. So what, you say? Well, before you turn a deaf ear to this advice, be aware that your local charter or state charter can be revoked for a violation of the U.S. Jaycee Bylaws. Are you listening now?

The situation described above is apparently quite common among different states based on phone calls we have received this year. Sometimes, the calls are from advisors or presidents who want to figure out a way to place a 40+ year old strong leader into office because this person is just what the State or local organization needs right now. Other times, the calls are from general members or other officers who want to know how someone could have been voted into a Jaycee officer position when they are over forty and more importantly, how they can be removed. Either way, it is clear that this confusion needs to be cleared up and the ramifications of such actions need to be identified before you get yourself or your organization into serious trouble.

As stated above, if someone turns forty prior to the beginning of their term in office, they cannot hold that position pursuant to the U.S. Jaycee Bylaws. Now, there are some exceptions for positions like Chairman of the Board or Immediate Past President because often times a person becomes State President in their final year of Jaycee eligibility and it would be unfair to leave the next President without a COB or IPP. But if you think that appointed positions can be filled with people over the age of forty, guess again.

Imagine this: you have no local treasurer but you have a friend that is 45, who agrees to help you out with the books of your chapter. You, as President, knowingly violate the U.S. Jaycee bylaws (and probably your State and local bylaws) by allowing your friend to organize the books, sign checks for the organization and even vote as a member of your Board of Directors. It doesn't hurt anyone, right? Wrong. It could ultimately hurt you and your chapter because, as stated above, your charter could be pulled for violating the U.S. Jaycee bylaws and even worse, you might face allegations and charges of breach of fiduciary duty as an officer of the corporation for knowingly violating the bylaws of the corporation. My advice: do not put yourself in that situation, period.

Do you remember how society and the legal system reacted to Enron executives and other corporate officers who were found to ignore corporate rules, violate state law and deceive the very employees they were hired to lead? Now, as a Jaycee President a/k/a CEO of your local or State non-profit entity called XYZ Jaycees, Inc., do you think you will be looked at any differently if you knowingly violate corporate bylaws and regulations? I suggest that you read your local bylaws, read your State bylaws and definitely, read the U.S. Jaycee Bylaws, which are available on-line. No State or Local bylaws can be inconsistent with the U.S. Jaycee Bylaws or they are automatically considered null and void. As a local or State CEO in our corporation, you better know our rules and bylaws.

If you have any questions about the U.S. Jaycee bylaws, please contact us and, as always, it

is advisable for you to consult with your State Legal Counsel or an attorney in your State if you have any questions concerning the legality of issues that affect your Chapter.

Non-Profit Legal Questions for Jaycee Leaders

1. What is the legal definition a corporation?

A: A corporation is a fictitious legal entity, which is entirely separate and distinct from the individuals who compose it, including its: shareholders, members, officers and directors, having powers to engage in transactions in its own name.

2. What is the legal definition of a nonprofit corporation?

A: A nonprofit corporation is an incorporated organization chartered for other than profit-making activities. Typically, the articles of incorporation are filed under state law to carry out charitable, educational, and other civic or humanitarian activities although they are not restricted to such activities. .

3. What is the difference between a for-profit corporation and a non-profit corporation?

A: One key difference between the corporations is that a for-profit business corporation has owners (stockholders), for whose benefit the corporation is to be operated. Stockholders expect to receive: (a) a distribution of the net profits as dividends, and (b) appreciation in the value of their stock holdings. Conversely, a non-profit corporation does not typically have stockholders and its net profits may not be distributed as dividends to shareholders, members, officers, or directors.

4. Is a nonprofit corporation entitled to earn profits?

A: Legally, the answer is “yes”. A non-profit corporation may earn profits, but it may not distribute its profits as dividends to its shareholders, members, officers, or directors.

5. Who owns and controls a non-profit corporation?

A: Specifically, no one has an equity interest in a nonprofit corporation, which is managed and controlled by its board of directors. Thus, even in those states which permit a non-profit to issue shares of stock, no one technically owns a nonprofit corporation. The board of directors are authorized and have the power to manage the business and affairs of a non-profit corporation.

6. What are the powers of a non-profit corporation?

A: State law governs the powers of a non-profit corporation. In most states, non-profit corporations have power to:

- (a) Have perpetual duration.
- (b) Adopt, amend, or repeal bylaws, including emergency bylaws, relating to the purposes of the corporation, the conduct of its affairs, its rights and powers, and the rights and powers of its shareholders, members, directors, or officers.
- © Elect or appoint officers, employees, and other agents of the corporation, prescribe their duties, fix their compensation and the compensation of directors, and indemnify

- corporate directors, officers, employees, and agents.
- (d) Sue and be sued in all courts and participate in actions and proceedings judicial, administrative, arbitral, or otherwise, in like cases as natural persons.
 - (e) Purchase, receive, take, otherwise acquire, own, hold, sell, lend, exchange, transfer, otherwise dispose of, pledge, use, and otherwise deal in and with its own shares, bonds, and other securities
 - (f) Purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use, and otherwise deal in and with, real or personal property, or an interest therein, wherever situated, either absolutely or in trust and without limitation as to amount or value.
 - (g) Make contracts, give guarantees, and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or an interest therein, wherever situated.
 - (h) Lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned or invested.
 - (i) Have a corporate seal, and alter the seal, and use it by causing it or a facsimile to be affixed, impressed, or reproduced in any other manner.
 - (j) Make donations for public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof.
 - (k) Cease its corporate activities and dissolve.

7. Who can incorporate a non-profit corporation?

A: Subject to the laws of a particular state, any competent person may act as an incorporator of a corporation. This includes the preparation and filing of Articles of Incorporation with the proper state office. The incorporator is the person who performs the initial preparation of the Articles of Incorporation and brings the corporation into existence. An incorporator is not an officer or director of the corporation, but may subsequently fill such offices.

8. Must a non-profit corporation have directors?

A: Yes, state law requires a non-profit corporation to have a governing board of directors with the authority and power to manage the business and corporate affairs of the corporation.

9. What is meant by the term "fiduciary duties"?

A: Fiduciary duties are those duties, which officers and directors of a non-profit corporation are accountable to fulfill. As fiduciaries, officers and directors occupy positions of trust and confidence, and they are accountable for fully representing the interests of the corporation and must not use their positions to further their own personal interests.

10. What is the purpose of a board of directors?

A: Their purpose is to manage the business and affairs of the corporation. Directors must act upon corporate issues in good faith as corporate fiduciaries. Directors are accountable to the corporation and to the corporation's members to act in accordance with their fiduciary duties.

11. May the board of directors take action without a meeting?

A: Yes, provided that the following provision is included in the non-profit corporation articles of incorporation and/or bylaws and is permitted by state law.

12. What evidences "action" of a board of directors?

A: The board takes "action" when it makes decisions and otherwise carries out its fiduciary responsibilities.

13. What is a volunteer officer or director?

A: A volunteer officer or director means that such person does not receive anything of more than nominal value from the corporation for serving as an officer or director other than reasonable per diem compensation and reimbursement for actual, reasonable, and necessary expenses incurred by an officer or director in their capacity as an officer or director.

14. Who is a non-director volunteer?

A: A non-director volunteer means a person, other than a volunteer director, performing services for a nonprofit corporation who does not receive compensation or any other type of consideration for the services other than reimbursement for expenses actually incurred.

15. Are directors personally liable for the non-profit's debts?

A: No, as a general rule. However, if the board of directors breaches its fiduciary responsibilities, or if a director is responsible to prepare and file payroll tax forms (as the Treasurer would be), and the payroll taxes of employees are not paid, personal liability may attach to that director. However, directors are not responsible for poor decisions, they are only responsible to exercise good faith and appropriate due diligence in support of their decisions.

16. Should directors be paid to attend meetings of the board?

A: No, as a general rule. If directors are paid to attend board meetings, they may cease to be volunteer directors under some state laws and thus expose themselves to possible personal liability.

17. Who are the officers of a non-profit corporation?

A: The officers of a non-profit corporation are agents of the corporation having certain implied authority by virtue of their office and express authority as provided by the corporation's bylaws and resolutions of the board of directors. A President, for example, has implied authority to sign contracts, hire and fire employees and otherwise obligate the corporation. Similarly, the Treasurer has implied authority to draw checks to pay accounts payable, and payroll checks, prepare and file tax returns, and pay any taxes due. And, the Secretary has implied authority to maintain corporate records, including minutes of board of director's meetings.

18. What is the difference between a director and an officer?

A: A director makes corporate policy decisions and officers execute those decisions. Moreover, officers are employees of the corporation whereas directors, by virtue of their position as directors, are not corporate employees. It is recognized, however, that in small nonprofit corporations a very few persons may be directors as well as officers, although the positions are distinct and different in terms of authority and responsibility.

19. What are the duties and responsibilities of officers?

A: Corporate officers are fiduciaries, like directors, and may only use their position to fully represent the interests of the nonprofit corporation and not their own personal interests.

20. Are officers of a non-profit corporation personally liable for the non-profit's debts?

A: No, as a general rule officers are not responsible for the nonprofit corporation's debts to creditors.

21. What is the purpose of bylaws?

A: The purpose of bylaws is to provide for the management and regulation of the affairs of the nonprofit corporation not inconsistent with law or the articles of incorporation.

22. Are bylaws required for non-profit corporations?

A: Bylaws are generally not required as a matter of law. However, it is prudent for a nonprofit corporation to adopt bylaws. This may either be done initially by the incorporators, or subsequently by the board of directors.

23. What should be in the bylaws?

A: The following topics are recommended for inclusion in a nonprofit corporation's bylaws

- (a) Corporate Name and Address
- (b) Corporate Purpose and Mission
- © Membership Categories
- (d) Directors & Officers
- (e) Election Procedures
- (f) Administration of Donations
- (g) Prohibited Activities
- (h) Financial Matters
- (I) Committees and Sub-committees
- (j) Indemnification
- (k) Amendments and Procedures for Amendment

24. Who adopts the bylaws?

A: Bylaws are adopted either by the incorporators of the nonprofit corporation, or subsequently by the board of directors.

25. May bylaws be amended and if so, how?

A: Yes, in the absence of any prohibition in the bylaws themselves, or the articles of incorporation, bylaws may be amended in accordance with the procedures set forth in the bylaws, or in the Articles of Incorporation.

26. Are bylaws public documents?

A: No, bylaws are adopted for the regulation and management of the non-profit corporation and are not public documents, nor must they be filed with any governmental agency. Bylaws may, however, be subject to discovery in a legal action involving the non-profit corporation and/or its board of directors.

27. What is a conflict of interest?

A: A conflict of interest occurs when a person under duty to promote the interests of the non-profit corporation (i.e. an officer), promotes an undisclosed competing interest. Undisclosed conflicts of interest are a breach of duty to act in the best interests of the non-profit corporation.

28. How does an officer discharge a conflict of interest?

A: All conflicts of interest of directors and officers must be disclosed to the board of directors. After disclosure is made, the person with a conflicting interest must refrain from participating in or making a decision regarding that interest.

29. During the Annual Meeting, what actions should occur?

A: The principal action at the annual meeting of the board of directors of a nonprofit corporation includes: (a) election of directors, (b) examination and approval of financial statements, (c) authorization and/or ratification of actions of officers, (d) approvals of contracts, (e) review of compliance with the corporation's nonprofit purpose, (f) review of compensation, if any, of officers, (g) adoption and/or review of an expense reimbursement policy, (h) review of all corporate policies, and (i) elections and authorizations of officers.

30. What should be included in the minutes of an Annual Meeting?

A: The minutes should state the names of the directors present at the meeting, and that a quorum of the board of directors was present. Then, all decisions of the board must be stated in the form of a clear, unambiguous resolution which states the decision. It is recommended that all resolutions be consecutively numbered, dated, signed by the Secretary, and placed in a corporate minute book properly indexed for ease of retrieval.

31. What should not be included in the minutes of an annual meeting?

A: Because the minutes of a board of director's meeting could be subpoenaed in the event of a lawsuit, or be demanded by the Internal Revenue Service pursuant to an audit, minutes should only contain the well-considered decisions of the board of directors in the form of resolution and nothing else.

32. What is the purpose of a registered office?

A: The registered office may be the same as its place of business and is the "official" corporate office in the state where it is incorporated or where it is licensed as a foreign corporation at which location lawsuits and other official documents may be served on the corporation.

33. Who is the registered agent?

A: The resident agent is a person authorized to receive service of process and other official documents in behalf of the nonprofit corporation.

34. May a non-profit corporation receive donations from donors?

A: Yes, a non-profit corporation may receive donations from donors. However, a non-profit corporation is not automatically a tax-exempt corporation and donations to it are not tax deductible by taxpayer donors.

35. Is a non-profit corporation automatically exempt from taxation?

A: No. A non-profit corporation must file payroll tax returns and pay the state and federal withholding taxes that are due. Additionally, to the extent that the nonprofit corporation has net income, it is taxable at standard state and federal corporate tax rates.

36. What does it mean to be tax-exempt?

A: To become tax-exempt, a nonprofit organization must file an Application for Recognition of Exemption (Form 1023 or 1024) with the Internal Revenue Service. When an organization is recognized as a tax-exempt organization, it means, among other things, that the organization is exempt from paying state and federal income taxes on its net income generated from its tax-exempt activities. This falls under Section 501(c)(4) of the Tax Code.

37. Are all non-profits charities?

A: No, only those nonprofit organizations which are recognized by the Internal Revenue Service as a Section 501(c)(3) organization. Except in the case of a church, charitable status is recognized only upon filing an Application for Recognition with the Internal Revenue Service on Form 1023.

38. If it is discovered that the corporation is not tax-exempt, contrary to the belief of the Board, what should the Board of Directors of a non-profit corporation do?

A: The Board should immediately seek advice of an attorney to prepare an Application for Recognition of Exemption (Form 1023 or Form 1024) and represent the corporation before the Internal Revenue Service.

39. Can a tax-exempt organization set up a 501(c)(3) charity as a separate entity.

A: Yes, a tax-exempt organization is allowed to have a related Foundation or charitable entity, but the new entity must be incorporated separately and a new Application for Recognition of Exemption must be filed with the IRS. The purpose of the new entity must be spelled out in the Articles of Incorporation for the 501(c)(3) entity.

40. Is a non-profit required to pay sales tax?

A: Generally, no, but you must check with the laws of each state.

Breach of Fiduciary Duty: Claims Against Directors and Officers

The Junior Chamber is a non-profit legal entity that is governed by bylaws and applicable statutory and governmental regulations. The Directors and Officers of the organization are the core infrastructure for the entities and they are charged with the governance of the organization. These boards are virtually always comprised of volunteers who generally have the greatest intentions when serving the Junior Chamber.

Regardless of their intentions, however, officers of the Junior Chamber are confronted with some basic inherent challenges. First, our boards often lack experience or training in the business of running a corporation. Second, there is often a false sense of security held by most Junior Chamber officers that matters can be handled informally while ignoring the basic rules, bylaws and governing documents. Third, our boards too often shy away from professional guidance for things such as insurance, legal issues, tax preparation and corporate requirements. they explode; and,

To understand the potential liability of an officer or director in a Junior Chamber chapter for breach of fiduciary duty, one must first understand the most common claims brought under that theory. Typically, the most common claims are as follows:

The Board's failure to adhere to bylaws
The Board's failure to properly notice elections
The Board's failure to properly count votes/proxies
Challenges by members regarding power granted the Board by bylaws
Improper removal of Board Members
Breach of fiduciary duty
The Board's failure to properly disburse funds (i.e. insurance proceeds)
Defamation by the Board of a member

What Are The Causes For The Most Common Claims?

One of the most common problems faced by boards of the Junior Chamber is the failure to know and follow the Bylaws or other governing documents of the organization. It is understandable that this problem would arise because Junior Chamber boards often are very small or are comprised of Jaycee members who are very close, like a family. Accordingly, the board will conduct business in an informal way with simple procedures. At times, this approach works because there is no problem, no complaint and things are taken care of in the chapter. As long as there is no problem, no one pays any attention to the matter.

However, the chapter is too often lulled into a false sense of security because if a problem does occur, the Junior Chamber members have a short memory and every one of the formalities set forth in the governing documents will be thrown back in the face of the board. Moreover, the board will probably lose when defending itself in court because a judge will give full faith and credit to the governing documents and challenges to those procedures cannot be easily won, even if the chapter

has been doing things that way for years. Accordingly, the unwritten rules followed for years, which contradicts the chapter's By-laws, may be successfully defeated by someone in the chapter who chooses to challenge the decision of the board.

Failure to Update or Memorialize Amendments to Governing Documents

Not only are there situations where Junior Chamber boards fail to know or follow the governing documents, but there are times where they also they fail to formalize changes and amendments to such documents. If members vote to change the Bylaws, but the board never memorializes the changes in writing, then future versions of the Bylaws may not be accurate or in compliance with current laws. There are two main problems that can arise from this situation. First, many Junior Chamber organizations were created years ago and almost every state has had many changes to laws that govern non-profits, including laws that may contradict the existing bylaws of the Chapter. Second, if a chapter fails to formally amend changes to the governing documents after an amendment, they have both wasted time and defeated the purpose and intent of the change.

Failure to hire the Needed Professionals

The Junior Chamber is run by volunteers, but sometimes, professionals are needed to handle the corporate and tax documents of the organization. It is money well spent to retain experienced general counsel with whom to consult for legal issues if the Chapter does not have one in the organization. Corporate documents and legal issues should be reviewed by a competent attorney to avoid problems down the road. Regarding taxes, accountants can file your tax returns accurately and with greater efficiency than the average member. It is common sense to have an accountant deal with the tax returns because this is a business and our returns must look professional.

Failure to Document and Keep Records

Documentation can be critical to that chapter's operations. Unfortunately, the same informal attitude of governance carries over to the issue of keeping good records and proper records both with respect to financial issues, budget issues, legal issues and anything else that is required of the specific Chapter. Good file keeping goes a long way toward successfully defending the Chapter's position.

What Can Be Done To Avoid The Common Claims?

In the area of directors' and officers' liability, as opposed to other types of casualty insurance, the most common types of claims are avoidable. For reasons again that can be the subject of a sociological study, people do not take seriously the governance of their community association. As employees, the association members go to great lengths to make sure they do their job by the book. On the other hand, when they are on a board that governs a community wherein they have invested their greatest asset, they do not take things as seriously.

Avoiding the Problems

What can be done to ensure that a Junior Chamber Board of Directors avoids these types of problems. For starters, they can begin to follow the guidelines below:

- (1) Follow the rules.
- (2) Know the by-laws and any other governing documents.
- (3) Require all board members to read the by-laws.
- (4) Know the rules governing elections and follow them

- (5) Conduct a periodic review of the governing documents.
- (6) Retain counsel to make sure that the association is advised of new laws and developments.
- (7) Memorialize changes to governing documents
- (8) Make changes pursuant to the Bylaws.
- (9) Elect Board Members who are serious
- (10) Make sure potential board members know what the job entails.
- (11) Provide training for board members as a governing board.
- (12) Use Professionals
- (13) Do Not let Emotions and Personality Get in the Way
- (14) Keep board minutes and provide them to board members to be corrected and approved.
- (15) Keep good financial records.

***Note: Much of the information contained in this article (“Breach of Fiduciary Duty: Claims Against Directors and Officers”) came from an article on the website of the Ian H. Graham Insurance Company concerning claims brought against directors and officers of associations.*

