



Lions Legal Issues

What Club Officers and Directors Need to Know

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Fiduciary Duties

The term **Fiduciary Duties** refers to a trustee's responsibility to handle the financial and management decisions of the organization. Trustee is the legal term, in Lions Clubs we call these individuals officers and directors. Serving as a Board Member is not an honorary title. There are specific legal duties owed to the organization. There also can be severe consequences for breaches of fiduciary duty. Board Members can be held individually responsible to their organization for not living up to fiduciary standards.

The Ohio Attorney Generals Office publishes a "Guide to Board Members" on these standards. It outlines a trustee's specific legal duties owed to the organization:

- ❑ **The Duty of Care**
 - Understand the organization's mission, constitution and by-laws.
 - Attend meetings, read minutes, reports and other material.
- ❑ **The Duty of Loyalty**
 - Ensure that the interest of the organization is always first.
 - Avoid transactions involving potential conflicts of interest.
- ❑ **The Duty to Manage Accounts**
 - Keep accurate records of income, expenditures and transactions.
 - Develop annual budgets that provide clear direction for spending.
 - Establish appropriate internal accounting system.
 - Prudently invest assets.
- ❑ **The Duty of Compliance**
 - Follow provisions of the organization's governing documents.
 - Comply with Federal and State reporting requirements which may include filings with the Ohio Attorney General, the Ohio Secretary of State, Ohio Sales Tax Department and the Internal Revenue Service.

Due Diligence is the conduct that a reasonable person will exercise, in a particular situation, to look out for the well being of the organization. Board members have to live up to a **Standard of Care**, which is the degree of prudence and caution required of them and the board's financial dealings. In addition to the four duties mentioned above, Board members need to ensure that donations and distributions from the Lions Club are appropriate. The board should check out the proposed recipient before distributing funds. You may request a full disclosure of public documents from the proposed recipient or check them out using:

www.IRS.gov/eo

search engine for a list of charities

www.GuideStar.org

reports IRS exemption rulings and displays recent tax returns

Financial Policies in the Constitution and By-Laws

Written into Lions Clubs International's constitution and by-laws are requirements for the proper financial policies of all Lions Clubs. These governing policies must be followed as these documents are the basis for Lions Clubs International's application and agreement with the Internal Revenue Service for tax-exempt status. The following statement is the primary rule for all Lions Clubs financial policies:

Under no circumstances may the net income of club projects or activities raised from the public be used in any manner whatsoever for administrative expenditures.

In order to accomplish this policy, Lions Clubs must establish and maintain at least two separate funds. The first shall be an administrative fund and the second will be an activities or project fund.

- 1) The **Administrative Fund** will be used for the internal running of the club. The income of this fund will be from member's dues, tail-twisting fines, and other money raised directly from the club members. The expenses of this fund will be for per-capita tax, printing, postage and other costs relating to running club meetings.
- 2) The **Activities Fund** will be used to fulfill the exempt purposes and goals of the club. The income of this fund will be from public fund raising projects. The expenses will be the direct costs of the fund raising projects, as well as the donations and charitable activities of the club.

It is not permissible to pay a percentage of activity funds to the administrative fund to cover administrative overhead, even if it is publicly stated. Interest from activity money must stay in the activity fund and can not be used for administrative purposes.

Other important financial policies include:

- All monies from whatever source must be deposited, as received, in the board-approved bank.
- Payment or disbursements for any purpose should not be made from cash received by the club, but by check drawn on one of the club's bank accounts.
- All disbursements are done only on the authority of the board of directors.
- The club may not create any indebtedness beyond the current fiscal year.
- Receipts should be obtained. Reports, bank statements, and copies of governmental filings should be retained.
- The treasurer should be bonded.
- Audits should be performed at least annually.

Carryover of Funds is the amount of money which an organization can accumulate and pass from one fiscal year to another. Although there is no black and white answer, carrying substantial funds threatens the loss of ones exempt status. The purpose of the organization is to expend the funds for social or charitable purposes, not to accumulate funds.

Incorporation

It is strongly recommended that all Lions Clubs incorporate. Doing so protects individual club member in lawsuits against the club. Liability would be limited to the capital or assets of the club. Checking to ensure your club's incorporation status is intact is the single most important item a board can do to protect its members.

Incorporating as a non-profit corporation is covered under section 1702 of the Ohio Revised Code and is handled by the Ohio Secretary of State. There is a \$125.00 fee to file the Initial Articles of Incorporation. Renewal cost \$25.00 every five years. All forms can be obtained, and inquires should be directed to:

Ohio Secretary of State
180 E. Broad St. 16th Floor
Columbus, OH 43215
(877) 767-3453 www.state.oh.us/sos

Once incorporated, the Secretary of State issues a **Statement of Continued Existence** every five years to the Statutory Agent (any Lion so named in the Initial Articles of Incorporation). This update of records is required by the Secretary of State in order to maintain the incorporation status of the organization. There is a \$25.00 fee to file this form once every five years. Failure to file such a statement will result in the cancellation of the articles of incorporation. You may contact the Secretary of State to make sure your club's corporation status is still active.

If your club must file an Initial Articles of Incorporation, you have to contact the Legal Department at Lions Clubs International. They must approve the Initial Articles prior to your filing. After approval, Lions Clubs International will mail a "Letter of Authorization" to be signed by the club president and returned. This is in order to continue to include the incorporated club as a "Subordinate of Exemption" granted under IRS rules. The Legal Department at Lions Clubs International may be contacted at:

Legal Division /Lions Clubs International
300 22nd Street / Oak Brook, IL 60521-8842
(630) 571-5466 Ext 202 or FAX (630) 571-8890
www.legal@lionsclubs.org

The following statements must appear in the Articles of Incorporation. They may be used to answer the question, "Purpose for which corporation is formed".

- The Lions Club of _____ is chartered by and under the supervision of, The International Association of Lions Clubs of Oak Brook, Illinois, and is governed by the Constitution and Bylaws of said Association.
- The Purposes and Objects of this Lions Club are...

There is a special form to file called the **Statutory Agent Update** to change the appointment of the statutory agent or change the mailing address of the current agent. There is a \$25.00 fee to file this form.

Tax-Exempt Status

All clubs chartered under Lions Clubs International are exempt from federal taxes under the Internal Revenue Code section 501 c 4. This section deals with “civic leagues and social welfare organizations.” Lions Clubs International has not been granted status under section 501 c 3, which is for “charitable organizations.” Therefore, for all federal purposes Lions Clubs are not considered charities and **donations to Lions Clubs or projects are not deductible as charitable contributions.**

It is proper to refer to a Lions Club as a “Tax-Exempt” or as a “Not for Profit” organization. However, for all federal purposes, it would be improper to refer to a Lions Club as a “Charity.”

The IRS requires disclosure of the non-deductibility of contributions in fundraising solicitations. (Solicitation here means asking for donations as well as selling products.) The IRS makes no distinction between solicitations made directly by the Lions Club and those done on behalf of the Lions Club by a third party. This disclosure is handled differently between large and small Lions Clubs:

- ❖ Lions Clubs with \$100,000 or more in annual gross receipts (an organization’s gross receipts are the total amount it received from all sources during its annual accounting period, without subtracting any costs or expenses) must include an express statement that contributions or gifts to it are not deductible as charitable contributions. There are different rules and very specific statements to be used for printed, telephone and television solicitations. The Legal Division at Lions Clubs International can provide the exact wording required.
- ❖ Lions Clubs with less than \$100,000 in annual gross receipts are excluded from this requirement. However, when asked, Lions Clubs must always disclose that a contribution to the club is not tax deductible to the donor as a charitable contribution.

Be careful not to mislead the public by printing the word “Donation” on admission or raffle tickets. The IRS views this as a violation of your disclosure regulations, when no deductibility is actually warranted.

Jeopardizing Exempt Status

- **Private Benefit or Inurement** which is engaging in any activity which permits the organization’s income or assets to unduly benefit a person who has some close relationship to the organization. (Perform audits and maintain record keeping)
- **Employment Issues** including compensating “volunteers” with gift cards or waving of membership dues. Reimburse members only with proper receipts.
- **Political Campaign Activity.** Candidates and issues should not be endorsed. Non-partisan “get the vote out” initiatives are acceptable.
- **Non-Compliance with filing requirements.**

Internal Revenue Service

All Lions Clubs are exempt from federal income tax under IRS Code Section 501 c 4. However, **the IRS requires that an informational return be filed annually for all clubs.** This filing can be Form 990-N (e-Postcard), Form 990-EZ, or Form 990 depending on the gross revenue the club had during its fiscal year. The club's **gross revenue** is the total amount it received from all sources, without subtracting any costs or expenses.

Club's Annual Gross Revenue	IRS Form Required
Less than \$50,000	Form 990-N (e-Postcard)
\$25,000 to \$200,000	Form 990-EZ
More than \$250,000	Form 990

The filing deadline for any one of the forms is November 15th. This return would show the financial information for the recently completed fiscal year. The current form to use would be dated for the calendar year at the beginning of the fiscal year. See below. **Caution: the IRS recently revised the 990 and 990-EZ forms.**

<u>Lions Fiscal Year</u>	<u>Filing Deadline</u>	<u>Form to Use</u>
July 1, 2010 to June 30, 2011	November 15, 2011	2010 revised 990, 990EZ
July 1, 2011 to June 30, 2012	November 15, 2012	2011 revised 990, 990EZ

Filing a Form 990-N (e-Postcard) must be done electronically. There are no paper forms. It is an internet based process with no software to purchase. Therefore it can be filed from any computer connected to the internet including public libraries. There is no financial information transmitted on the 990-N other than a statement that the gross revenue is under \$50,000.

The IRS is required to revoke the tax-exempt status of any organization that fails to meet their filing requirement for three consecutive years.

You must file all returns directly with the IRS. Do NOT send the original completed form to Lions Clubs International. All Lions Clubs in Ohio should send their completed form to: Internal Revenue Service, Ogden, UT 84201. It is strongly recommended that you send it "return receipt required." Always keep a copy of the return in your club files.

If you are in need of a tax form or instructional booklet, you can obtain a free copy of either from the IRS by calling 1-800-TAX-FORM (1-800-829-3676) or by downloading from www.irs.gov

Lions Clubs International through their web site (www.lionsclubs.org) provides instructions and examples for filing 990 returns. The same information in printed form is available by calling Lions Clubs International (Legal Department) at (630) 571-5466.

Unrelated Business Income

Lions clubs may be liable for payment of Unrelated Business Income Tax. This is a tax on income realized from an unrelated trade or business by exempt organizations. The term “unrelated” refers to being apart from the exempt purpose of the organization. The ordinary fundraising activity of a Lions club is considered to be a trade or business within IRS definitions. The question then is whether the club’s fundraising activity falls within the official definition of unrelated business income.

By the IRS’s definition, the term “unrelated business income” does **not** mean:

- 1) Income in the form of dividends or interest
- 2) Income in the form of rentals from real estate
- 3) Income in the form of incidental (less than 10%) of personal property leased with real property
- 4) Income from a trade or business in which substantially all the work is done without compensation
- 5) Income from a trade or business which sells merchandise, substantially all of which is donated
- 6) Income from a trade or business which is not “regularly carried on”
 - a. Income producing activities lasting only a short period of time will not ordinarily be treated as regularly carried on if they recur only occasionally or sporadically.
 - b. Such activities will not be regarded as regularly carried on merely because they are conducted on an annual recurrent basis.
- 7) Income from conduct of bingo games which are not ordinarily carried out on a commercial basis

Thus, the income realized in the normal fundraising activity of a Lions club (sale of light bulbs, brooms, candy, raffle tickets, etc.; concert, dance, style show, car race, sporting event, turkey shoot, etc.) is not unrelated business income.

However, if a Lions club carried on an income producing activity which is regularly carried on (runs the length of a season) in a manner similar to a comparable trade or business of a commercial enterprise, where the merchandise and labor are not substantially donated, then the club will have unrelated business income and may be liable for the tax imposed. Clubs with unrelated business income must file Form 990-T along with their annual filing of Form 990 to the IRS.

Charitable Organization Registration

Every Lions Club in Ohio must annually file a “Charitable Organization Registration Statement” or the “Unified Registration Statement of Charitable Organization Form” (URS) with the Attorney General if it meets **any** of the following conditions:

- 1) The club holds any public fund raising project **and** the club has \$25,000 or more in annual gross revenue. Gross revenue is the total amount received from all sources without subtracting any costs or expenses.
- 2) The club uses a professional solicitor (any compensated source outside the club) to solicit sales or donations.
- 3) The club operates bingo.

This filing is mandated in section 1716 of the Ohio Revised Code, also known as Ohio’s charitable organization solicitation statute. The initial registration statement must be filed before engaging in any sale or donation request. The statement must be refilled annually before November 15th. (All federal extensions are granted). If your club has any public fund raising project without previously submitting a registration statement, the club may be subject to possible legal action by the Attorney General. Civil penalties may include up to \$10,000 for each violation. Clubs may now file on-line with the Attorney General’s office.

The following fees, based on the organization’s prior year gross revenue, are to be submitted with the filing of the registration statement:

<u>Gross Revenue</u>	<u>Fee</u>
Less than \$5,000	\$ 0
\$5,000 to \$24,999	\$ 50
\$25,000 to \$49,999	\$ 100
\$50,000 or more	\$ 200

Note: **Clubs that have received a 501 c 3 determination letter from the IRS also have to file a Charitable Trust Registration Form** as described in section 109 of the Ohio Revised Code. Fees apply to this registration if the club has assets greater than \$25,000 at the end of its fiscal year. These fees are not tied to gross revenue, only to total assets.

For the registration form or more information contact:

Ohio Attorney General
Charitable Law Section
150 East Gay Street, 23rd Floor
Columbus, OH 43215-3130
(614) 466-3181
www.OhioAttorneyGeneral.gov

Ohio Sales Tax

The State of Ohio has many laws concerning sales tax and various non-profit organizations. All 501 c 4 organizations, such as Lions Clubs MUST:

1. Pay sales tax on taxable items purchased for their own use.
2. Collect and submit sales tax from the public when selling taxable items as a fund raising project.

To be compliant with the laws of Ohio, all 501 c 4 - Lions Clubs, involved with fund raising projects that sells tangible taxable items such as roses, light bulbs, brooms, soft drinks, etc, MUST do the following:

- **Obtain a vendors license.** A regular vendors license is obtained from the local County Auditor. There is a one time \$25 application fee. Annual renewals are no longer required.
- **Collect sales tax.** Vendors must charge and collect the sales tax rate in effect in the county where the sale is made.
- **Keep proper records.** Vendors are required to keep complete records of sales and tax charges. All records must be maintained for 4 years and are open to inspection by agents of the Tax Commissioner.
- **File returns and submit tax.** Vendors will be notified of their filing schedule, monthly or semiannually, based upon their anticipated tax liability. These returns are submitted to the State Treasurer using forms provided by the State. Returns must be filed even when no tax is due. You file your return on the paper forms, over the Internet or over the phone. Payments can be made using a credit card or an electronic debit from a bank account. When using the phone or Internet, make sure you obtain a confirmation number. Always keep a copy of the return with your club files.

A penalty of \$50 or 10% of the tax required to be paid, whichever is greater, may be charged on every return not filed on time and/or when the tax liability is not paid in full. For not paying collected taxes, or not filing a return, a penalty of 50% of the tax due may be assessed. Penalties are at the discretion of the Tax Commissioner.

Food that is consumed off premises is non-taxable. The definition of “food” includes bottled water, ice, unsweetened coffee, fruit juices (greater than 50% juice content) milk, milk products, ice cream, popsicles, snow-cones, popcorn, nuts, candy, gum, and breath mints. Non-Food (and thus taxable) products include sweetened water, coffee and other beverages (without milk), fruit juices (less than 50% juice content), and all soft drinks or soda pop. Note that carbonation is no longer a factor, just if the vendor adds sweetener.

Any questions about sales tax law may be directed to the local county auditor’s office or to the Ohio Department of Taxation, P.O. Box 530, Columbus, OH 43266-0030 (614) 466-7350 or at www.state.oh.us/tax. For information about taxable items contact Taxpayer Services at 1-888-405-4039 or at www.tax.ohio.gov.

Gaming, Bingo and Raffles

All gaming activities including bingo and raffles are covered by Sections 2915.02 to 2915.13 of the Ohio Revised Code. The Ohio Attorney General's Charitable Law Section regulates the following:

- **Game of chance** is defined as a player giving anything of value in hopes of gain, the outcome of which is determined largely by chance, but does not include bingo. Games of chance include cards games conducted at "Texas Hold'em" tournaments and "Las Vegas Nights." Regulations include:
 - Only 501 c 3 charities may conduct games of chance
 - Games of chance may not include craps or roulette for money
 - Must be held at "festivals" which include 2 or more non-gaming activities
 - Conducted maximum twice a year if 4 days or less, once if 5 days
- **Scheme of chance** is a slot machine, lottery, numbers game or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine or a pool not conducted for profit. No person or organization can legally conduct a scheme of chance.
- **Instant bingo** is gaming that uses tickets or cards with perforated break-open tabs or ones that contain one or more seals that, when removed or opened, reveal pre-designated winning numbers, letters or symbols. Regulations include:
 - Only 501 c 3 charities can conduct instant bingo
 - Instant bingo licenses must be obtained from the Attorney General. Annual fees for instant bingo begin at \$500 and range upwards to \$5000 plus a percentage of the gross profit
 - No person shall receive any form of compensation
- **Bingo** is a game of cards or sheets divided into spaces designated by letters or numbers, with an operator selecting these designations by chance, and a winner who announces covering a predetermined pattern of these spaces. Regulations:
 - 501 c 3 and 501 c 4 organizations can conduct bingo
 - Bingo licenses must be obtained from the Attorney General. Annual fees for bingo begin at \$250 and range upwards to \$5000 plus % of gross profit
 - No person shall receive any form of compensation
 - If the organization is 501 c 4, then 100% of the profit derived from bingo must be donated to a 501 c 3 charity
- **Raffles** are a form of bingo in which the one or more prizes are won by one or more persons who have purchased a ticket. The winners are determined by drawing the ticket or detachable section from a receptacle holding all tickets or detachable sections sold. Regulations include:
 - 501 c 3 and 501 c 4 organizations may conduct raffles to raise money for their organizations and do **not** need a license to conduct bingo
 - A 501 c 4 organization must distribute at least 50% of the net profit to a 501 c 3 charity

Note: IRS requires specific record keeping on gaming. Completion of Form W-2G, submission of Form 1096, and withholding of income is required on certain gaming winnings (including raffles) equal to or greater than \$600. See IRS publication 3079.

Liability Insurance

Lions Club International provides a \$1,000,000 general liability policy for all individual Lions Clubs. This is a liability policy and will not pay for injuries to third parties without showing negligence on the part of the named insured. The policies provisions apply to those insured including:

- Lions Clubs
- Individual Lion Club Members
- Non-Lion Volunteer Workers

If you undertake a joint project with another organization, the cosponsor is not protected by this policy and should have adequate insurance of its own.

Keep in mind a couple of facts when considering this insurance:

- This is a legal liability policy only, and does not provide “accident” insurance, which will pay for injuries regardless of fault.
- There is no coverage for damage to property owned or used by the Lions.

Lions Clubs International annually sends out an informational booklet explaining coverage and exclusions. Limitations on the policy include:

- Medical payments to persons injured in athletic events
- Liability arising out of the sale or distribution of alcoholic beverages
- Liability arising out of operation of an automobile

The club should make certain that at all times the club is adequately protected. If the club’s activities are such that more coverage is desired, then additional umbrella insurance coverage should be arranged for locally.

It is recommended that all Lions Clubs designate a safety officer to review each club activity from a safety standpoint and identify potential hazards. Lions Clubs International provides a self-inspection checklist. All steps should be taken to reduce liability. Lions Clubs International does not recommend activities involving:

- ❖ Firework displays or sales
- ❖ Dunk tanks
- ❖ Tractor or truck pulls
- ❖ Snowmobile, go-kart, skateboard and other races

All claims, or occurrences which might lead to claims, should be reported promptly to both the Lions Clubs International Legal Department at (630) 571-5466 and to ACE Insurance at (888) 832-3747. When a claim situation arises:

- Do not admit liability
- Do not suggest that compensation will be offered
- Do not enter into negotiations with a claimant

Trademark Protection

As a matter of legal protection to Lions Clubs International and its member clubs, the association's name and emblem (and variations thereof) are registered trademarks. To protect these trademarks, the Association has established the following rules of policy:

- No item bearing the association's trademarks may be sold or distributed without express written permission of the association. Interested persons are directed to contact the association's general council or the Club Supplies and Distribution Division for information about securing a license.
- No Lions club may use the association emblem on any item sold for fundraising purposes. A special "Lions Club Fund Raising Activity Seal" has been created for this purpose.

Special Policy Rules for Lions Clubs:

- Lions clubs have permission and license to use the association's name, emblem and other trademarks printed on stationery, post cards, bulletins, and other printed material reasonably necessary to its operation.
- Permission is not granted for the club to print the association's trademarks on items that are available through the Club Supplies and Distribution Division.
- Lions clubs may use the name of their club along with the Lions emblem on their respective web pages. Only emblems downloaded from the official format emblems provided on the association's web site may be reproduced on web sites and other areas on the Internet.

Copyright

Copyright protects the expression of original works of authorship from copying. Copyrights exist when the works are fixed in a tangible medium of expression whether or not notice is given. Copyright protection lasts for the life of the author plus seventy years. Copyright holder has the exclusive right to:

- * Reproduce the work
- * Prepare derivative works
- * Distribute copies of the work
- * Perform or display the work

Privacy Policy

Lions Clubs International recognizes the importance of protecting the private information of its members, donors, recipients of humanitarian assistance and other individuals obtained in the course of conducting activities.

The following practices are performed at the International level and are recommended for club, district and foundations:

- Personal information is protected by using password-protected areas.
- Payment information is encrypted and only a limited part of credit numbers is revealed when confirming an order.
- The official directory is not available on the Internet without a password.
- A club locator with club officer contact is available without a password, but it is designed so that it cannot be used as a commercial mailing list.