

How Do Convictions Impact Assigning?

By Donald C. Collins

Q What should associations do in regard to assigning people with criminal convictions? What does the higher standard mean for officials?

A Associations can consider convictions. Indeed, there are times when associations must consider convictions. However, associations should not impose an absolute bar against officials who have a criminal conviction, even if the official was convicted of a felony.

Associations should only bar officials for convictions when there is a business justification for doing so. This standard allows an association to bar the sex offender and the axe murderer while not barring someone who committed a crime that may not strike us as nefarious.

Associations should also provide for an individualized assessment of officials who are barred. In short, let the barred person have a hearing if they want it. It is possible that time and circumstances may have a bearing upon whether the presumably barred person is employable.

One example of a person who may be employable for a "barred" crime is the streaker convicted of indecent exposure (or the convicted sexter). The context within which the streaking occurred, and the passage of time may some day make that person employable ... or not.

The business justification test is not just a best practice; it's required in employment discrimination cases. It is a sensitive legal area. A number of employers have used tests, arrests and convictions as a pretext for discriminatory hiring practices. Some employers have used neutral sounding prerequisites that inadvertently force a disproportionate number of members of groups protected by civil rights laws out of the hiring pools.

The number of groups protected by civil rights laws is sufficiently broad that no association should gamble that an absolute bar will never be

challenged. All it takes is a person who claims discrimination on the basis of color, gender, race, national origin, religion, disability, age or any other class protected under federal law or the law of your state.

In short, associations can consider criminal convictions. There are some people who shouldn't officiate. However, associations should not simply bar every convicted person. That's too broad. Only bar people where you can explain that they shouldn't be officiating.

Associations can face other problems in barring officials. They're not the only entities with a stake in the matter; their word may not be final.

Associations must consider state law. The legislature may have laws about who can enter a campus. Some states mandate background checks or fingerprinting. Associations need to honor those laws.

Also, a number of state governing

bodies license officials, and have rules about what crimes bar one from having a license. Associations have to find out whether they can be more strict than the governing body; associations may not have discretion to bar officials for crimes that the governing body accepts.

Associations need to make sure their bylaws are clear. Confusion could invite litigation. Associations should consult with local counsel to make sure they properly obtain and handle information regarding applicants' and members' criminal records.

Dealing with convictions is complex. Local associations can handle it if necessary, but that is really an area where groups benefit from guidance from their state governing body.

Donald C. Collins is the executive director of the San Francisco Section of the California Interscholastic Federation. He is a longtime basketball official and lawyer. This article is for informational purposes and is not legal advice. □

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