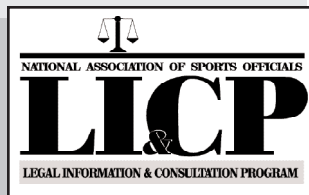


Your Legal Rights and Responsibilities

Does Training Impact Independent Contractor Status?

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By Donald C. Collins

Q: What sort of training or training materials can a state association give to officials in the state without crossing the "employee" line? We're told that the state would like to provide training for the officials, but can't because they say if they provide training, it makes the state look like its employing the officials instead of allowing them to act as

independent contractors. Is that true? Is there anything the state association can "safely" do to help with the training of officials?

A: Clearly, organizations can train sports officials without converting the officials into employees. Officials associations do it all the time. Of course, officials associations also suffer a great deal for their proximity to officials. Associations are often in court battling over whether their officials are employees or independent contractors. Also, associations deal with a host of discrimination charges, claims for unemployment contribution where an official loses his real job and threats from attorneys on issues ranging from injuries to payments. Groups that look like they employ sports officials incur some risks. The good news is that they generally overcome the risks; but it takes a lot of time and effort to do so.

State associations are no different than any other organization that deals with officials. They can provide training information and training to officials without converting the officials into employees as long as they're just providing information on nationally promulgated rules, regulations and mechanics. The danger for state associations and many officials associations is that they may deviate from disseminating nationally promulgated information and come up with their own special way of doing things. The other danger is that the state association could exert so much control over the daily business of officiating and the means by which officials go about their business that the officials could start to believe that they're employees. That could create a number of problems.

The simple fact of the matter is that officials have always been found to be independent contractors by high-level courts. Every published legal opinion states that. Also, numerous states have legislation making officials independent contractors. Obviously, state associations can conduct any type of training they want in those states that

have enacted independent contractor legislation. Relying on published legal decisions is a different story, though.

Employers of sports officials have often found that unemployment, workers' compensation, and tax agencies have never heard of the published legal decisions that make officials independent contractors. Of course, officials and their employers haven't heard of them either unless they happen to be attorneys who specialize in this relatively arcane practice area. To invoke those published opinions, therefore, a state association and an officials association have to spend money on legal fees. Legal expenses ultimately force organizations to do a cost benefit analysis about the value of fighting to the bitter end or cutting a less expensive deal.

The tension between business reality and the difficulties of getting a favorable legal ruling does make it convenient for state associations and national governing bodies to keep officials at arm's length. It costs money to govern officials, doing so could result in lawsuits, taxes, workers' compensation claims and unemployment paperwork. It's safer for state associations to let officials associations, leagues and teams carry out their own daily business.

The problem with keeping officials too much at arms length is that doing so ultimately affects the integrity of the competitions, and that integrity cuts to the core of a state association. Thus, state associations are getting involved in training officials. A state association should get involved by registering officials who can demonstrate that they have enrolled in programs that would give them mastery of the nationally promulgated rules and regulations or by ensuring that the people who operate the daily business of officiating do so. That can take many forms — from the Texas model of relying on an independent state consortium of officials, to the Michigan model of having in-house people monitor and certify officials, to the California model of ensuring that officials associations train, observe and link assignments to training and observation.

In short, state associations take a risk when they train sports officials. But many recognize the benefits and they adjust to that risk.

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 is intended for informational purposes and is not legal advice. □

Is there a topic you or anyone else in your association would like to share? ONBoard would like to interview you. Send your ideas to editor@NASO-ON.org.



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