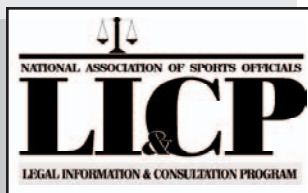


**Your Legal Rights and Responsibilities**

**The Problem With Paying Out Game Fees**

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**By Donald C. Collins**

**Q:** For years our association has had an agreement with the local rec department to assign all their games. The rec department pays us a lump sum of money at the beginning of the season and we cut game fee checks individually to the assigned officials. Recently, a member noted that we're exposing our association to unnecessary legal risk by doing that. What are those risks and how can we avoid them, especially if the rec league won't take over individual game fee payments?

**A:** There are times when the law follows the money. Sports officials associations can be affected by that in two ways.

First, officials associations that make direct payments to their officials bear an increased risk of being assessed employment taxes and back taxes and penalties. Of course, if you live in one of the states that has enacted independent contractor legislation, your association will be safe from that problem.

If the government came after you for employment taxes and you fought tooth and nail and appealed to the highest courts, your association would probably win and the officials would probably be viewed as independent contractors in the eyes of the court. However, your association would spend a ton of money that it doesn't have, and key association officers would spend a lot of time in court. It may be strange that you could have to fight so hard when every published legal opinion holds officials to be independent contractors, but the strangeness won't make you feel any better.

Second, officials associations that make direct payments to their officials also bear an increased risk of being liable for injuries to injured participants. The injured people will go after the association because the association probably has more money than the individual official. If an association is making a direct payment to its officials, then juries and lower courts may be more

inclined to believe that the association employed the official and should pay for an official's negligent act.

Those are pretty severe potential problems. They would lead some to conclude that officials associations should never make a direct payment to anybody. But, hold on. There are reasons for associations to make the payments, too.

If you're sending your officials out to an unreliable league, your officials either might not get paid or they might get paid really late. Your association will also lose some leagues if you make them pay directly. The leagues will go to other associations or they'll directly assign your officials and bypass the association.

Private entities will be more amenable to having associations assign while the private league or school makes the direct payment to officials. Public entities could have a slightly tougher time, but it's not impossible to get them to do that.

A public school or a rec department is often just another school district or city agency. They often must follow a district or citywide model in which work is often farmed out to contractors who bring in and pay their own subcontractors. Schools and rec departments' contracts and policies often reflect that model, and staffers generally uphold that model. If an association wants to assign, and then have the public entity pay they either need to find an amenable district athletic director or rec director, or they need to try to work with the athletic director or rec director to cut a deal with the association's lawyer. There's a risk that the school district or public recreation department could solve the issue by taking all of the assigning in-house. That would solve the association's legal problem, but then assignments are completely out of your control.

*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 material 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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