

Privacy and Selectivity –

Court Decisions Clearly Show Us How We Must Operate If We Want to Continue Enjoying the Rights of a Private Organization!

Recently, the Vermont Supreme Court issued an opinion on a case involving the Elks fraternal organization. The language of the decision describes what private lodge facilities such as theirs – and those of the Moose - must do to ensure a “private” club status. Although this is a Vermont case, the decision is illustrative of the current direction of many, if not all, state and federal appellate courts.

The Vermont Supreme Court has established criteria to determine whether an organization such as the Elks, or the Moose, qualifies as a “private” club. They are as follows:*

- (1) Is the group’s membership genuinely selective?**
- (2) What is the amount of control the existing members have over the club’s operation?**
- (3) What is the history of the organization?**
- (4) What is the use of club facilities by non-members?**
- (5) Does the club advertise or direct its publicity to anyone other than members?**
- (6) What is the organization’s purpose?**
- (7) Does the organization have any profit motive?**

The Vermont Supreme Court stated that the principle factor in determining whether a club is “private” or “public” is the *selectivity of its membership selection process*--and that factor alone may be determinative.

The Court stressed that a club’s “procedures” and a club’s “criteria” for membership may *look* as if they are “selective”, but that will not protect them if, as a *matter of practice*, they do not act with *true limits on admission* to the facility. The Court also noted that one Elks lodge had a 96 percent acceptance rate of applicants over the preceding ten years. Obviously, this made it difficult to argue that the lodge is “genuinely selective”.

A Moose facility must be vigilant if it desires to maintain its status as a “private” entity and enjoy the constitutional protections afforded private membership organizations. Based on court decisions, the easiest way to lose that status is by not being sufficiently selective in choosing new members. Use of the facility by non-members, advertising to non-members, and a focus on making a profit from its operations, especially from the public, will all weigh against the Lodge and Chapter in a determination of whether it is “private” and can thereby be selective in its membership process.

Membership promotion and retention are important, indeed essential, to all private membership organizations. However, the need for membership does not mean you should allow “just anyone” to become a member. It is imperative that all applications for membership be properly completed and investigated by an Application Review Committee, to ensure that the applicant meets the current membership qualifications contained in the General Laws of our fraternity.

Consequently, the Application Review Committee is an extremely important committee to the Moose facility, and the fraternity overall. This committee consists of three members appointed by the Lodge Governor. The committee must exercise due diligence in the investigation of applicants for membership. A majority vote of the committee either approves or rejects an application. The decision of the Application Review Committee regarding an application is reported to the Board of Officers. The Board of Officers **does not vote** on applications for membership, but merely receives the report of the Application Review Committee and notes the receipt of the report in the board’s meeting minutes.

If the committee has reported favorably on an application, it is submitted to the Lodge membership for balloting at a regular general membership meeting.

To emphasize: The laws of the Order *require* a separate Application Review Committee. It is contrary to the laws of the Order for the Board of Officers to fulfill this function. To do so violates established checks and balances. **The Application Review Committee is a separate functioning committee from the leadership of the lodge to ensure selectivity and objectivity in the membership application process.**

If you have any questions concerning any aspect of the Private Policy, or any other provision of the General Laws – please contact the General Governor’s office @ 630-966-2207.

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Office of the General Governor

(*Excerpts taken from a letter, dated Dec. 3, 2003 from Judy G. Barone, Attorney at Law, with Law Firm of Readnour & Barone, Rutland, VT.)