

MAINE STATE LEGISLATURE

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Beano - Eligibility for License

FACTS:

The statutes provide that the Chief of the State Police may issue beano licenses to certain bona fide organizations under certain conditions.

QUESTION:

Does a Fire Department, whether volunteer or regular, fall within one of the categories eligible for a Beano License?

ANSWER: No.

REASON:

Revised Statutes 1954, chapter 139, section 23, states in part:

"The Chief of the State Police may issue licenses to operate such amusement for a period of 6 days to any fair association or bona fide charitable, educational, fraternal, patriotic, religious or veterans organization which was in existence at least two years prior to its application for a license, when sponsored, operated and conducted for the exclusive benefit of such organization by duly authorized members thereof."

The answer to the question depends upon fitting a Fire Department, whether volunteer or regular, into one of the categories listed in the portion of the section quoted above.

1. Fair association. It is obvious that a Fire Department is not a fair association. Citation of definitions is not necessary.

2. Charitable organization. A charitable organization has

been defined as:

"One which has no capital stock and no provision for making dividends and profits, but derives its funds mainly from public and private charity, and holds them in trust for the objects and purposes expressed in its charter. Congregational Sunday School & Publishing Soc. v. Board of Review (Ill.) 125 N.E. 7. One conducted not for profit but for promotion of welfare of others. Stearns v. Association of Bar of City of New York. (N.Y.) 276 NYS 390." To the same effect see The Webber Hospital Ass'n v. McKenzie, 104 Me. 320 at 329.

Hence, if the organization has (1) no dividends or profit sharing arrangements with its members, and (2) derives its funds mainly from public and private charity, and (3) uses its funds for the promotion of the welfare of others, and such purposes are expressed in its charter, it would qualify as a charitable organization.

3. Educational organization. This term may be defined:

" . . . as the act of developing and cultivating the various physical, intellectual, and moral qualities towards the improvement of the body, the mind, and the heart." In re Moses' Estate, (N.Y.) 123 N.Y.S. 443.

4. Fraternal organization.

"A fraternal organization is an organization which is organized to assist its members and to promote moral, intellectual and social benefits. Women's Club of Little Falls v. Township of Little Falls, (N.J.) 26 A 2d 739."

"A fraternal society, association or order is a society organized for pursuit of some common object by working together in brotherly union, it is a benefit society organized with a representative form of government, it is not carried on for profit and often it consists of members of same trade or occupation or allied ones. Davis v. Painting and Decorating Contractors of America. (Miss) 1266 So. 2d 876."

Hence, a fraternal organization should have certain characteristics - (1) Assist its members or have common object; (2) Not carried on for a profit; (3) Generally members will have some common bond, i.e., nationality, religion, lodge system, employment, etc.

5. Patriotic organization.

"Inspired by patriotism; fitting a patriot."
Patriotism is defined as "Love of country; devotion to the welfare of one's country."

The above definitions are taken from Webster's dictionary. The meaning of the word appears to be so well settled that legal definitions are virtually non-existent. Patriotic organizations are organizations founded upon and devoted to the welfare and love of one's country.

6. Religious organization.

"A religious corporation is a corporation whose purposes are directly ancillary to divine worship or religious teaching. Lee v. Poston (N.C.) 64 S.E. 2d 835.

7. Veterans organization. This obviously refers to organizations composed of persons who were members of the armed services during a period of war or some extreme emergency. It would appear that a definition of this word is really not necessary.

In reviewing the preceding definitions it is necessary to observe that most of these words are defined in relation to tax exemptions. The general rule is that tax exemptions are strictly and narrowly construed.

The beano licensing law is a portion of the general laws prohibiting gambling. Gambling laws being penal are strictly construed. Hence, the beano licensing law being a portion of the gambling laws must also be strictly construed.

It should be borne in mind that an applicant does not have to be fitted exclusively in any one category. Some applicants may well partially fit in more than one category but not completely in a single one. Many groups are often "charitable or religious" or they may be "charitable or fraternal" or even "fraternal or religious." If the applicant can fit in any one or any combination of categories, it is eligible for a license.

It should be obvious from the foregoing that a Fire Department of any type does not fit into any of the categories enumerated in the statute. It does not fit partially in one and partially in another.

A Fire Department of any type is organized for the sole purpose of performing a most important function of municipal government. It is a part of the municipal government. A regular Fire Department is wholly supported by municipal taxation. A volunteer department also may receive funds from that source.

Fire Departments are not organized as, or for any of the purposes of, the types of organizations which may be licensed under chapter 139, section 23.

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