EQUAL OPPORTUNITY LAWS: IS YOUR CLUB EXEMPT?

Many clubs today are thinking about giving up their non-profit status and bringing in more non-member business. They must, however, consider all the ramifications of this move—not the least of which are the Equal Opportunity statutes

by JACK JANETATOS

Officials of many clubs are wondering if their facilities can any longer "afford" a tax-exempt status. As reported in the April issue of GOLFDOM ("Presidents and Owners: How Do They Run Their Clubs?" p. 27), a survey revealed that 34 per cent of the presidents of member-owned private clubs felt the 5 per cent guideline on income from outside business has hampered their clubs' revenue earning potential, and 54 per cent said their clubs are forced to refuse such business. In addition, 25 per cent of the presidents indicated that their clubs have considered giving up their non-profit exemption to reap the revenue from non-member busniess.

However, for clubs "toying" with such a serious step, it is advised that they consider all the ramifications—not the least of which is dealing with the Federal Civil Rights Act of 1964.

This act was an important and far-reaching piece of legislation, which caused vast changes in many areas of American life. The Public Accommodations Title of the act effectively desegregated restaurants, hotels and all other forms of public accommodations. As much as was possible in a practical sense, Congress sought to bring Jim Crow to an end. As part of the same act, Congress included Title VII in order to give equal employment opportunity to all citizens without regard to race, color, religion or national origin.

Private clubs were exempted from both the public accommodations and equal employment opportunity sections of the act. There is no need to go into the reasons for the exemption here, but there may be some value in looking at the exemptions with some small precision.

The exemption from the Public Accommodations Title is granted to all clubs if they are "not in fact open to the public." Congress obviously intended by this broad language to give a wide latitude for court interpretation. The concern was that the facilities that Congress wanted desegregated would seek refuge from the law under the private club exemption. The courts had little difficulty with the problem, and in a few short years the sham organizations were separated from the bona fide clubs.

The exemption from the Equal Employment Opportunity Title was somewhat more narrowly drawn to provide an exemption only for clubs that were exempt from the Federal income tax. Thus, a club that is not exempt from tax under section 501(c) (7) of the Internal Revenue Code is not exempt from the equal employment opportunity rules whether it is open to the public or not. Clearly, any club that is tax exempt will qualify for exemption from the Public Accommodations Title; it would not be possible to have a club that is tax exempt and yet have it found to be "in fact open to the public." But the reverse situation is different. It is possible to have a club that is taxable yet is not "in fact open to the public."

The majority of private golf clubs in the United States are tax exempt and, therefore, exempted from the equal employment opportunity provisions. Yet, the minority of clubs that do not have tax exemption and thus are covered by the employment rules still constitute a rather large number. These non-exempt clubs should be concerned with the equal employment opportunity provisions.

Those clubs not qualifying for exemption are prohibited by the act from engaging in several types of activity, which are designated as "unfair employment practices." The most important of these are:

1. Failing or refusing to hire or discharging any individual or otherwise discriminating against an individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion or national origin; and
2. Limiting, segregating or classifying employees in any way which would deprive or tend to deprive any individual of employment opportunities because of such individual's race, color, religion, sex or national origin.

As is customary, the act was drafted broadly to allow further interpretation by the courts on a case-by-case basis, rather than confining the statute to a list of specific practices.

The act established the Equal Employment Opportunity Commission (EEOC) to administer the provisions of the statute. Any person who believes that he or she has been discriminated against in hir-

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ing or employment practices can file a complaint with the EEOC, which is empowered to investigate the complaint and, if it is justified, seek a remedy either through the process of conciliation or through a court-ordered injunction.

During the 1960s, Title VII proved to be fertile ground for enormous amounts of administrative and judicial litigation. Individuals and civil rights associations were successful in obtaining court decisions prohibiting numerous hiring and employment procedures. Based on these decisions, it is possible to set down some specific guidelines for a club to follow in order to minimize the possibility of difficulties under Title VII. The primary ingredient in all of these is "job relatedness," that is whether or not a particular hiring practice or employment pattern is sufficiently related to the performance of the job in question.

First, check to ensure that the club is not using any tangible materials that make references that might be interpreted as a clue to the applicant's racial or ethnic background. This obviously includes elimination of the "Race" blocks on application forms or employee information forms; also in-house employment guidelines that refer in any way to racial employment patterns or quotas. By extension, remove, if possible, any pictures, statues and so on, depicting minority groups in a derogatory or subservient light.

Second, counsel every person who interviews job applicants to make sure that they do not exhibit bias in regard to dress and grooming styles unique to certain racial or ethnic groups. Again, the watchword here is "job relatedness." An employer can require employees to wear a certain mode of dress or a uniform, if it is applied evenly and is related to a specific job, such as personnel working in the club dining room. But an employer cannot arbitrarily establish a rule on hair length, for example, which has no relation to the performance of a particular job.

Third, re-evaluate your educational standards to reflect what the applicant needs to get the job done. Eliminate requirements for a high school diploma where none is really required or for prior experience where the job can be quickly learned.

Fourth, if standardized tests are now being administered, determine if they can be eliminated. This is one area in which the courts have recently set strict requirements. If written tests will be continued, use skill and aptitude tests, and have the tests validated by qualified testing specialists.

Lastly, if a large percentage of prospective minority group applicants are being interviewed and rejected as compared with whites, institute a system of documented reasons for each rejection.

A recent burgeoning area of litigation under Title VII is that of sex discrimination. A club should take care to ensure that any distinction in hiring practices between males and females be based on bona fide occupational qualifications reasonably necessary in the normal operation of that particular enterprise. These would not include: assumptions related to the applicant's sex, for instance, an assump-

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tion that most women are unable or unwilling to do a certain job; preferences of co-workers or customers; traditional restrictions for jobs involving heavy physical labor and the fact that physical facilities are not available for both sexes.

Although the above guidelines should forestall any potential problems under Title VII, the Equal Employment Opportunity Commission makes several other recommendations that they feel are implied in Title VII. Their basic premise is this: Because whites predominate in today's work force, they have an inherent advantage in learning about job openings. To equalize this advantage, the commission believes employers should take positive steps to establish contacts in the black community, which can be used to disseminate information about job openings, advertise job openings in minority news media and send information about job openings to schools with large minority group enrollment. In addition, the EEOC notes that some minority group persons have difficulty in adjusting to their jobs and that special efforts should be made to counsel them on their problems.

For the club today, the first consideration under Title VII requirements is to determine whether the club comes within the exemption. If it does not, then the club should review its hiring and employment practices to ensure that there are no procedures that could be pointed to as discriminatory. □

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to train men for this work. The Green Section wishes to start a movement to correct this condition."

Fifty years later those of us with practical and academic backgrounds continue to give these young men the opportunity to prepare for a sound future as golf course superintendents.

Such an attitude on our part is justified because, we, the practical men in turf management, believe as Dr. Troll and Dr. Duich do. Troll's expression on the seasoning of young men following two years in the classroom is very explicit. Again, from his presentation at the conference, "We do not claim to turn out experienced golf course superintendents, but we do graduate people who will be well qualified as superintendents after a period of seasoning in the field."

This is what it is all about, Mr. Sommers.

With costs increasing for just about everything, including the high cost of maintenance labor, materials and equipment, we can only hope that quality will remain our byword—even though we in the turf field have to adjust to the changes being thrust upon us in the name of economy, efficiency and environmental necessity.

Adequate provisions for an interested and reliable maintenance staff must remain a high priority if the quality of golf course maintenance is to survive the "change" decades. Proper encouragement to both turf management trainees and qualified assistant golf course superintendents are a necessary part of this picture, a mutual responsibility to be shared by progressive superintendents and clubs. To those club officials who are looking to apply Ben Franklin's adage, "A penny saved is a penny earned," there is this rejoinder: Penny-pinching has never proved to be the true road to turf quality. Quality is a highly desirable facet in all things in life. The satisfaction and justifiable pride of the golfer and the professional image of the superintendent is totally dependent on quality. Let us continue this quest together. □

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president of the CMAA. He views the current negative publicity about the club industry as unproductive. "Clubs have always faced problems," Hall says, "but there is no overwhelming problem we can't overcome with positive action. We have to look at the situation as a challenge and opportunity, not as the end.

"I think some clubs and managers are spending too much time reading adverse stories, instead of taking action to solve their problems. The successful clubs are those that keep up with the times. There is more to this business than just food and beverage."

Another leader among club managers is John Simmons, Tacoma (Wash.) G&CC and a secretary treasury of the CMAA.

"Clubs have much to offer in an increasingly complex and mobile society," Simmon says. "The potential demand is greater than ever before. "There will be changes—some of them perhaps traumatic. We must seek to affect this change through conscious design rather than have it occur through the force of circumstances. It calls for exhaustive analysis, perceptive forsight and a determination to answer honestly the question, 'What business is our club in?' "

That is the key question that should be asked and answered within every club regularly. Because, after all, a club exists primarily to serve its members. It must also be a citizen of the community. Old ideas die hard, but those clubs with leadership willing to change will survive and prosper. □