# Do Provisions of Your By-laws Safeguard Club or Member?

By RENZO D. BOWERS

Clem Hardin was getting along in life and sometimes felt the impact of the years. On doctor's advice, he decided to take up golfing. He joined a certain southern Country Club which had previously been incorporated as a golf and social organization, paid his initiation fees and dues, and for a few years availed himself of the privileges of membership whenever he chose.

Hardin was an irascible sort. He failed to hit it off unanimously with his co-members. Sometimes he refused to play whenever certain others were on the course. Seldom attended social functions at the clubhouse. Had long spells of peevishness. Sulked a good deal. Criticized most things that went on. He managed nevertheless to keep from being expelled as an undesirable.

Sniffing some such contingency in the offing, however, he decided to resign.

The Club had a loosely-knit organization and was rather haphazardly run; but it did have a set of by-laws, and they specified how a member could get out. He was required to make a written resignation, and it had to be in the hands of the secretary before the 1st of January or the member would be liable for dues for that year.

Hardin had paid no attention to by-laws or the Club's constitution. Being at outs with some of the Club's officers, he afterward claimed that he did not even know who was secretary. So, he wrote out his resignation, and handed it to a certain professional player who constantly busied himself officiously around the grounds and clubhouse, with the request that the player see that the resignation be delivered to the Club.

After the 1st of the year, the secretary conveniently overlooked such information as he had acquired that Hardin had attempted to resign, sent a bill for his dues.

### Learn the Hard Way

Hardin blew up like an inflated balloon. He refused to pay. Hadn't he resigned? He was no longer a member of their so-and-so Club! He didn't owe them as much as a Buffalo nickel, by heck!

The Board of Directors, secretly hilarious at the opportunity, sued him.

What happened? Hardin was required to pay the dues for the year following his attempted resignation, and to learn the hard way some of the laws about members of Country Clubs, with which many persons in that category now, and those to come along in the future, could profitably charge their memories.

"The constitution and by-laws of a Country Club constitute the law between the Club and its members by which they have agreed to be bound," the judge admonished. "When one becomes a member of a golf Club, he will be deemed to have known and assented to the provisions of its charter and by-laws. Whether he actually knows, is beside the point. It is his business to know or to promptly ascertain. His ignorance will not excuse him from any obligation imposed upon him in the by-laws.

"Thus, to entitle a member to resign so as to relieve himself from further liability for dues or other charges, he must do it in accordance with the by-laws. For instance, if the resignation is not received by the officer designated to receive it, delivery to anyone else will not be effective."

The well-organized and well-conducted Country Club with golfing as its chief aim in life will have adopted a constitution and by-laws expressing the rules by which its affairs are to be governed and carried on as between the association and its members. Organizations of the kind are frequently established under special state statutes as non-profit corporations authorizing adoption by the stockholders or members of suitable by-laws. But, equally effective, they may, and often do, come into being as voluntary associations, any number of persons not bothering to incorporate formally but merely getting together and deciding to have a Golf Club, and proceeding to select officers, adopt an agreement in the form of a constitution and by-laws, and going on from there in conducting the Club's affairs in the manner specified in the by-laws.

### Legal Contract

Members of these clubs, whether formed under one or the other method, cannot be admonished too emphatically about the extent to which they are legally bound by the by-laws as adopted. To reiterate a rule of law previously

mentioned, the by-laws are in effect a contract between the members and their Club, as forceful in forwarding the purposes of the Club as if each member had personally signed a formal writing. Others who become members later, maybe years later, or even some of the original members themselves, may never have an inkling as to what provisions the by-laws contain, unless and until they come up against them with a jolt that hurts. But their plea in court, if they happen to be drawn into that unprofitable domain, that they had no knowledge of the particular by-law involved, will fall upon deaf ears.

The by-laws may contain any provision that the members agree upon, if it is not opposed to good morals or the law of the land, and is not arbitrary and unreasonable. The constitution and by-laws will usually cover these points, with more-or-less detailed particularity: The objects of the Club; the method of admitting, disciplining, suspending, or expelling members; the amount of dues and when payable, method of enforcing payment, effect of non-payment; what body shall constitute the governing board, the manner of its selection, powers, duties, and term of service, and the like; the interest that each member shall have in the Club's property, and whether he may sell and transfer his interest. The by-laws may, and should, also specify the conditions under which a member may resign, and the manner in which he is to do it.

### Importance of By-laws

A few actual instances will illustrate the importance of the by-laws in the inner workings of Country Clubs and their members.

A Golf Club in the far West imposed by its by-laws an initial fee of $1,000 and annual dues of $180 for membership. A member could be expelled by a certain procedure for nonpayment of dues. Another clause declared, "No resignation of a member shall become effective until accepted by the Club, and the Club shall not accept so long as a member is indebted to it."

One who had paid his initiation fee and enjoyed club privileges for several years became delinquent in his dues. The association suspended him, resulting in denial to him of further club privileges. It did not expel him, as it had a right to do. The member himself, being indebted for dues, could not resign under the by-laws.

The relationship rocked along in that condition until finally the club sued him for the dues that were unpaid to the time of suit. He contended in defense that when the Club suspended him he was relieved of all financial obligation to it, since it thereby took away his club privileges.

The court saddled a judgment upon him for all dues, pointing out to him that he had not resigned, in fact could not resign without paying back dues, and so he was still a member. His suspension did not disturb that relationship.

Contrast this occurrence with a case history from the state of New York. There, a prominent golf Club had the right to "suspend" any member for nonpayment of dues, with the alternate power under the by-laws to drop a delinquent from the membership roll.

After waiting a long time for a certain member to pay up, and disgusted at seeing the moocher reaping where he had not sown by enjoying club privileges without financial outlay, the Club sent him a notice by letter that if he failed to come across by a named date he would be "dropped" as a member.

The notice had no effect either in producing the cash or stopping the sponger from using the Club's golf course. Then the governing board sued him for all dues accruing to the time of trial. And there is where the Club officer got a lesson in law. Through neglect to make the by-laws broad and specific with regard to the penalty that could be inflicted on a member in arrears, the Club could only suspend him or drop him from the rolls. By notifying him that if he failed to pay by a certain date he would be dropped, the Club elected to impose that penalty, and the court ruled that by so doing it relieved the member from paying anything whatever.

As well as being remiss in safeguarding its interests by suitable provisions in its by-laws as to the conditions under which a member may resign, a Club may go to the other extreme and include provisions so stringent as to throttle itself.

For instance, in giving the ax recently to a California golf Club the state Supreme Court gave out this admonition: "A golf Club may impose only reasonable restrictions on the right of a member to resign." That drab and dreary declaration in the nature of a warning was evoked by a situation so startling and unusual as to impel a judge of the court to wax mirthful by sheer force of contrast, in giving a quietus to the Club's ambitious designs against one of its prominent members. The jurist started his gentle chiding with the provocative statement that, "Doubtless this is the only case in history where a golf Club has failed to heed the plaintive cry of one of its flock."

But it is necessary to go back a little for elucidation.

This Club, determined at the outset to

*(Continued on page 63)*

## CLUB BY-LAWS

*(Continued from page 37)*

clinch its hold on its members however gaspingly one of them might struggle to be free, put in its by-laws the provision that "No resignation shall be effective until accepted by the Board of Directors, and until transfer of the certificate of membership on the Club's books the recordholder shall remain liable for all dues, fees, and other charges."

One who got in on the ground floor and received his certificate of membership, exercised club privileges and paid all dues and assessments for 15 years. He was a man of influence and a good member to have on the roll. But, no respecter of persons, the depression of the mid-thirties hit him, and in the process of retrenching as the necessities required he wanted to resign.

Thereupon, his dues being paid up, he indorsed his certificate of membership in blank and delivered it, along with his written resignation, to the Board of Directors. This was as the by-laws specified. But the Club's governing board thought it had the last say. It was having its financial troubles too in those hectic times. It fairly shuddered at the thought of losing a prominent and paying member. It dilly-dallied about accepting the resignation, about transferring the certificate on its books. Didn't it have the right to hold him indefinitely by merely refraining from accepting his resignation and making the necessary book transfers?

On the fact of things it looked that way. But it was working a hardship on the member. He wanted out. The greater his insistence, the firmer the Board's stand. The struggle went on for two years or more. The Club kept holding him for dues.

In desperation, the member haled the Club into court for a decree compelling it to accept his resignation and relieving him of the financial burden. The trial court ruled against him; but he had his inning a year or two later in the Supreme Court.

Said the Judge there, in lighter vein than the ponderous tomes of the law ordinarily disclose: "This man wishes to resign as a member of the Club and be allowed to go in peace. Doubtless this is the only case in history where a golf Club has failed to heed the plaintive cry of one of its flock. The court below indorsed its action by refusing to say that

the member was entitled to any balm at all. The judgment of the court was that he was 'stymied' and so must remain, forever and aye, unless perchance the Board of Directors might experience a change of heart and vote him a furlough.

"The member fails to appreciate the implied compliment to him in the Club's desire to retain him. The Club insists that unless and until it changes its mind and consents to his release, and follows it by a suitable entry in its book of life, he must gracefully submit and continue to 'roll in the fiery gulf.'

"However, the law requires the Club to provide a way of escape for members, imposing only such restrictions upon the right of resignation as may be just and reasonable ... So much of the by-law as permits this Club to deny this member the right to resign, on the ground that it merely withholds its consent, or declines to make the necessary book entries, is invalid because unreasonable and arbitrary." So, the court loosened the member's shackles.

By no means are legal squabbles and contentions arising over the affairs or conduct of Country Clubs limited to the effect of either tricky or good-faith by-laws respecting resignations of members or the right of a Club to discipline or expel them. The contentions may take any of a variety of turns; and the by-laws may be significant not only for what they contain but also for omissions.

For instance, a Federal court has recently ruled that unless the by-laws authorize assessments against members, none can be made. This ruling had evidently been anticipated by counsel of a prominent New York Country Club in preparing its by-laws, for all provisions that would have authorized member assessments had been shrewdly omitted.

The omission worked to the Club's behoof in this way: The Federal laws require Country Clubs to pay income taxes on membership "dues, assessments, and initiation fees." The Board of Governors of this Club desired to improve its clubhouse and property to the amount of $50,000 to be paid by the members. If the by-laws had authorized the levy of assessments, income taxes would have been payable on that sum. Since enforceable assessments were not authorized in the by-laws, the Board merely sent out letters to the members asking them to submit to a **voluntary** assessment of $150 each. Nearly all did. A few did not, and the Board made no attempt to collect these, realizing there could be no legal enforcement of a voluntary contribution.

At the insistence of the Collector of Internal Revenue, the Club paid, under protest, income taxes on the approximately $50,000 it had collected, and later sued to recover the amount paid. The court ruled that since the amounts received from the members had been voluntary payments, rather than enforceable assessments as would have been the case had such been authorized by the by-laws, they were not in reality assessments at all as contemplated by the income tax laws, and the Club was awarded a return of its money.

While legal difficulties never can, perhaps, be always and completely obviated in the inner workings of a Country Club, since those belonging to or running it are afflicted with the common weaknesses and imperfections of mankind, much can be done to head off disrupting occurrences by painstaking and thorough preparation of the rules (the by-laws) by which the associates agree to be governed. It is not a matter to be regarded lightly or as unimportant.

The governing board of the carefully organized and conducted Country Club will see to it that every member is informed specifically as to what the by-laws contain. Manifestly, this desideratum cannot be achieved by merely strik-

ing off a typewritten set of by-laws and filing it with the secretary to be hauled out of a dusty pigeonhole and unwrinkled, if it can be found at all, in event some question arises requiring its inspection. The sensible way, and the safe way, is to have the by-laws printed in quantities sufficient to supply every member at the beginning and as often thereafter as may be reasonably necessary in keeping the membership informed.

As a final admonition, it is to be said that it is not only **members** of Country Clubs who must toe the legal mark in performing their obligation to the Club, or asserting their rights against it. The officials, too, have heavy responsibilities, enhanced by the fact that their relationship to the Club and its members is of a fiduciary nature. This relationship requires the ultimate of good faith on their part in handling Club affairs. They are absolutely prohibited by the law from doing anything in which they are personally interested that would be detrimental to the interests of the Club or its members.

Take one actual occurrence in illustration. A Chicago man hatched up a scheme that was a lulu. It called for the co-operation of seven kindred spirits, whom he lured into his net easily with the bait he had to offer.

In furtherance of the plan, this promoter located a tract of land suitable for a golf course, took an option-to-purchase, incorporated a golfing Club with himself and his seven associates as Directors, and sold stock to the public to the extent of $300,000. Thereupon, the Directors sold the option to the Club for $147,000, out of which was paid the actual purchase-price of the land, $78,000, giving to the promoter and his willing associates, without any investment of their own money, the sum of $69,000 personal profit at the expense of the Club and its stockholder-members.

The fraud soon came to light, and a court, at the instance of some of the members of the Club, required the unfaithful Directors to pay into the Club's treasury all profits they had made personally on the deal.

## WHY MEMBERS THINK

*(Continued from page 44)*

doesn't know all of them, he knows where to find them in a hurry when they are needed. He is the local law on golf. That's why the club hired him.

The pro is the club's golf business man. All his unpaid services to the members give him the right to sell them his wares in a proper shop provided by the club. This is a convenience to the players who get