

# Court Upholds Payment of Workman's Comp on Contributed Labor

By WILLIAM JABINE

A sort of do-it-yourself course maintenance program conducted by a golf club in Iowa came under the scrutiny of the courts of that state when a club member who was engaged in work on the course lost his

life. His family sought workman's compensation on the ground that he was an em-

ployee of the club at the time of the fatal accident. The industrial commission made an award in favor of the claimant and the golf club and its insurer appealed to the courts. The district court set aside the award and the claimant appealed its decision to the Iowa supreme court.

When the work plan was initiated in the fall of 1960, the Silver Crest GC adopted this resolution: "Each member will be asked to contribute five hours of labor, either on the course or buildings. An alternative to the above proposal may be a \$5.00 contribution. A current record of these contributions, either in labor or money, will be posted weekly."

The man who was injured and who died as a result of his injuries had been a member of the club since 1945 and had participated in a number of work parties before engaging in the one that resulted in his death.

## Contribution Was Optional

After quoting the above resolution, the supreme court continued: "If work pursuant to the above resolution was all we had before us, no inference of responsibility to pay wages would be permissible. However, this resolution appears in the margin of the minute book. The

secretary-treasurer of the club explained: ' \* \* \* at the meeting the exact wording was in doubt, \* \* \* although we knew that we wanted this idea of \$5.00 or five hours in the minutes. That is why the minutes have this notation on the side, and it was worded differently afterwards.'

The secretary-treasurer went on to testify the substance of the motion that was adopted was the sum as appeared on the margin and the sense of the resolution was essentially a voluntary contribution. The chairman of the grounds committee, in testifying, said; ' \* \* \* the club voted to make an assessment of \$5.00 on each member or one day of work. That was over and above regular yearly green fees. \* \* \* The procedure of requiring five hours of labor from a member or an additional \$5.00 payment was necessary because we wanted to keep the amount of the green fees down.'

## Credit for Work

"Though the secretary-treasurer also testified no record was kept and no member ever paid the \$5, it was permissible for the commissioner to find, as contended by the claimant, that the decedent either had to pay \$5 or perform five hours work and therefore defendant club was required to give him a credit of \$5 for his work on the day of his fatal accident. This is true because of the circumstances surrounding the adoption of the resolution, the conflict in the secretary-treasurer's testimony, and the chairman's testimony concerning the resolution. The above constitutes a responsibility to pay wages, see (Citations).

"Evidence of the relationship the parties intended is found in the adoption of the above resolution by the defendant. It is conceded a purely voluntary plan had not worked. The membership desired to make a change. They decided upon the above resolution. It is substantial evidence of an intention to change from a voluntary plan and to create an employer-employee relationship."

## Responsible for Wages

The court then took up the club's contention that its right to discharge the deceased member was so modified that the relation of employer-employee could not



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be established. The court disagreed with this contention and said: "The evidence before the commissioner was sufficient to sustain a finding of the presence of all of the elements to be considered, particularly that the defendant was responsible for the payment of wages in that it must give claimant's decedent credit on the assessment for the work performed. The fact that the right to discharge was modified should not alone defeat the claimant. \* \* \*

"In case of doubt the workmen's compensation act is liberally construed to extend its beneficent purpose to every employee who can fairly be brought within it. (Citations) Under the evidence the claimant is entitled to the benefit of this rule."

The judgment of the lower court in favor of the club was reversed, and the award to the decedent's family was affirmed. (Usgaard v. Silver Crest Golf Club, 127 N.W. 2d 636.)

### Dues Tax Is Unreasonable, Benedict Tells House

An appeal has been made by the USGA to have the federal excise tax on club dues and initiation fees reduced from 20 to 10 per cent. The appeal was recently made by Clarence W. Benedict, president of the USGA, at a hearing before the Ways and Means Committee of the House of Representatives in Washington, D. C.

The USGA President called the 20 per cent excise tax on dues and initiation fees discriminatory and outlined four salient facts:

- (1) The rate amounts to a penalty on golf club membership;
- (2) Golf club membership is not limited to wealthy persons;
- (3) Private golf clubs contribute to the general welfare;
- (4) Private golf clubs are experiencing financial difficulties, and some of the problem is attributable to the unreasonable dues tax, which applies to only horse and dog racing admission in addition to club dues.

Crabgrass seeds can lie in the ground for 40 years before germinating, according to Michigan State University agronomists.