

## PUBLIC ACCOMMODATIONS GUIDELINES

### I. Background

The right to associate with persons of your own choosing is guaranteed by the 1st Amendment to the U.S. Constitution and several decisions by the Supreme Court have reinforced this right. There are individuals and groups who would do everything they can to bring down any private organization. The "Public Accommodations Laws" enacted by the Federal Government and many states (Title 11, Civil Rights Act of 1964) have been used to attack private organizations in this endeavor. (In 1989, Missouri enacted the "Public Accommodation Law" however it exempts private clubs explicitly.)

In several cases, it has been held that "Elks Clubs" (Lodges) are "places of public accommodation"; and therefore, cannot be selective in membership requirements. However, the most frequently used, and the approach which has been most successful for the opposition, has been: "You have been regularly providing food, drink, and other services to the general public; therefore, you are obviously a "place of public accommodation".

### II. Amendments To Section 14.130 - "Closed Door Policy"

Consequently, in an attempt to ensure that our Lodges cannot be identified as "places of public accommodation", Section 14.140 was amended on several occasions. On July 9, 1992, the membership voted to further amend Section 14.130, as follows:

"Subject to state and local laws, the use of the Home or Club facilities shall be limited to members in good standing in the Order, their spouses and guests of members, and those receiving Identification Cards under Section 14.140, as provided in the House Rules, so as to preserve the privacy of the use of such facilities to the members of the Order. Subordinate Lodges shall take appropriate action to conform to the provisions of this Section."

### III. Guidelines

Section 14.130, as amended in 1990 and again in 1992, is intended to clarify and strengthen the position that an Elks Lodge home or club facilities, which includes, swimming pools, dining facilities, golf courses, leased dining facilities owned and operated by the Lodge or a Lodge or Club Corporation, are limited to members, their spouses and their guests. The Lodge is a private, Fraternal Order, not open to the general public. The Lodge does not offer any of its services or activities to the general public, but only to its members and their guests. The Lodge is not a business subject or commercial enterprise which offers goods or services to the general public. The Lodge is a non-profit organization and as such, does not operate to create monetary profits. The following general guidelines must be observed:

1. Do not advertise your club/home facilities as "Open To The Public", either covertly or overtly.
2. Visiting Elks must be required to show their membership cards and sign your guest register.
3. All guests must sign your guest register and must be accompanied by a member, who must remain with them.

4. A Lodge may issue identification cards for use of its facilities only upon written request of any Member in good standing to: a) a spouse of a Member; b) an unmarried widow or widower of a deceased Member; c) a child or stepchild (under age 21), of a Member or deceased Member. *Opinion 06 - There must be a house rule permitting the holder of an identification card to enter a Lodge without being signed in by a Member. An identification card does not itself permit the holder to purchase goods or services in or from the Lodge. (See GLS 14.140)*
5. All members, unless recognized by the server, must show a paid-up membership card.
6. Weddings, anniversaries and other social events held in the club facilities, must be sponsored by an Elk member on a contractual basis and he must be responsible for all charges. The sponsor should not always be the same member.
7. Bingo for charitable purposes, as allowed by State law, may be open to the public, provided no food or drink is supplied by the Lodge to non-members. For the present, it is permissible for a Ladies Auxiliary to provide this service at bingo.
8. Grand Lodge Statutes provide that certain Elks functions can be open to the public. These include Memorial Day, Flag Day, Installation of Officers, youth banquets, media or law enforcement nights, Eagle Scout observances and similar ceremonies. These occasions are restricted to free admissions and a ban on the sale of food or drink to the public.

#### IV. Opinions

On July 12, 1994, at the request of our State Sponsor, the Honorable Ted Callicott, P.G.E.R., the Grand Lodge Committee on Judiciary issued the following opinions, pursuant to Section 14.130, 14.140, as well as the other provisions of the Constitution and Laws of the Order: *Note: For purposes of these opinions, the Committee on Judiciary has defined "facilities" as "Lodge, Home and Club property and property immediately adjacent which is customarily used in conjunction with the Lodge, Home and Club property."*

1. May the Lodge's Auxiliary hold an arts or crafts show in the Lodge facilities, charge for a table set up and invite and sell to the general public? **NO**
2. May the Lodge's Auxiliary hold a spouse sponsored function on the Lodge's parking lot and invite and sell to the general public? **NO**
3. May the Lodge's Auxiliary advertise in the newspaper, by flyers, or in the Lodge bulletin pertaining to a spouse-sponsored function at the Lodge and invite the general public? **NO**
4. In that the Lodge's Auxiliary have a state bingo license, may they conduct bingo in the Lodge and invite the general public? **YES**, if your state provides an exception to the public accomodation laws for bingo, and provided that the same restrictions concerning the prohibition in the sale of food and beverages to the general public are followed.
5. May the Lodge rent its baseball diamond to the general public or youth groups? **YES**
6. May the Lodge donate its baseball diamond to the general public or youth groups? **YES**

7. May the Lodge donate its facilities for worthwhile or charitable fundraisers in which the donations are from the general public? **YES**, provided that the same restrictions concerning the prohibition and the sale of food and beverages to the general public are followed.
8. May the Lodge donate its facilities for Boy Scout and Girl Scout meetings or other group or organization meetings? **YES**, provided that the organizations are of a charitable and/or exempt nature.
9. May the Lodge sell Christmas trees to the general public on Lodge facilities? **NO**, but the answer would be yes if the trees were sold on non-facilities property.
10. May the Lodge sponsor and hold an annual Strassenfest, (food, games, rides, entertainment) outside the private Lodge facilities as a community project and charge and invite the general public? **YES**, provided that "outside the private Lodge facilities" means in or on facilities not regularly used by the Lodge or Club.
11. May the Lady Elks sponsor and hold a Strassenfest for the general public on the Lodge facilities? **NO**
12. May the Lodge hold a turkey shoot on the Lodge property and charge and invite the general public? **NO**, if the shoot were to be held on Lodge facilities, and yes if they were to be held on non-adjacent property.
13. May the Lodge donate its facilities for a Heart Fund dance or Chamber of Commerce dinner where tickets are sold by these organizations to the general public for these functions outside the Lodge? **YES**, provided that the same restrictions concerning the prohibition and the sale of food and beverages to the general public are followed.

Lodges that do not comply with the requirements of Section 14.130, Laws of the Order, as amended, are inviting litigation and possible action by local agencies including licensing, taxing and civil rights authorities.

Should there be a final judicial determination that a Lodge is a "place of public accommodation" because of its refusal to restrict the use of its facilities as intended by Section 14.130, consideration will be given to the revocation of its Charter.

#### Article V. Internal Revenue Audits

These opinions, as stated previously, do not address the issue of "taxation," as in the situation where a Lodge, Club, or an official auxiliary might be required to pay tax on the proceeds from an event as "unrelated business income" as not being adequately within exempt purposes of the sponsoring entity. Those issues should be addressed by the accountants for the individual Lodges.

The Internal Revenue Service has held Lodges to be tax exempt under group ruling number 1156 with the National Order of Elks as a IRC 501(c)(8) organization. In random audits, however, the IRS has required certain documentation in order that an individual Lodge be recognized under this group ruling. In order to test for compliance that documentation may include:

- Copies of Forms 1099-MISC/1096 for for the period January 1, \_\_\_ to December 31, \_\_\_\_.
- Copies of contracts in place for those paid as contract labor, if any.
- Copy of Quarterly Employment tax forms 941, Annual return 940 and related W-2/W-3 for the calendar years \_\_\_\_\_ and \_\_\_\_\_.
- Copy of Form 990 for Year ending March 31, \_\_\_\_\_ and \_\_\_\_\_, if filed.
- Copy of auditor's report if previously audited (for any audit: financial, tax or otherwise).
- Year end trial balance for the year under examination. If the trial balance does not reconcile to the Form 990, provide an explanation of the variance. If you do not have a trial balance, provide your year end summary of income and expenses, i.e. Income statement, and Balance Sheet, so that the tax return can be compared to your records for reconciliation.

In order to verify that the organization still meets the operational tests, the IRS may request the following:

- Provide a list of your activities, a brief explanation of each, time spent on each, list of duties of members or employed persons providing services for the activities. Provide information for non-member participation, if any.
- Are non-members allowed in your Lodge? Do you have a roster where they sign in?
- What percentage of your income is sourced from non member income?
- Do you sell packaged liquor to be consumed off premises?
- Do you rent any part of your facilities to non members? If so, provide the amount of income from these rentals and what services you provide to the renters.
- Provide bingo and pull tab returns filed with the State of \_\_\_\_\_ for the years \_\_\_\_\_ and \_\_\_\_\_ - all quarters.
- Provide all bank statements, cancelled checks and deposit slips used for gaming purposes.
- Provide a description of your gaming activities; number of sessions held; number of workers and their duties and amount of payment, if any; where the sessions are held and amount of rent paid, if any; number of non members participating at the bingo games or purchasing pull tabs, if any. If non members are participating in the gaming activities, provide a break out of how much income is sourced from the non members for bingo games and pull tab sales.
- Provide any records of income and expense for sales of concessions to the general public during the games.
- Provide any information for related auxiliaries operating within your organization.

A Lodge undergoing an IRS audit should immediately notify it's State Sponsor.