Mendenhall Groups

NATIONAL CLUB ASSOCIATION

Aubrey C. King
Director of Public Affairs

1625 Eye Street N.W.
Washington, D.C. 20006
(202) 466-8424

file

NATIONAL CLUB ASSOCIATION

(Bill No. 336-A)

Explanation:
Italics indicate new matter added.
{Bold Brackets} indicate matter deleted on final passage.
Bold Italics indicate new matter added on final passage.

AN ORDINANCE

Amending Title 17 of the Philadelphia Code by adding Chapter 17-400, prohibiting the City from contracting with certain parties who reimburse or subsidize employees for certain expenses associated with the use of certain private organizations which bar, restrict or limit membership or the use of dining or recreational facilities on the basis of race, color, sex, religion or national origin or ancestry; providing means for the determination thereof; vesting the Commission on Human Relations of the City of Philadelphia with certain powers and duties; and further providing for the administration and enforcement thereof.

WHEREAS, It is the policy of the City of Philadelphia that the City will not contract with employers who maintain employment practices or policies which discriminate on the

(Bill No. 337)

Explanation:
Italics indicate new matter added.

AN ORDINANCE

Amending Chapter 20-300 of The Philadelphia Code by adding Section 20-307 prohibiting the use of public funds from the City Treasury to make payment or reimburse City employees, executive and administrative officers and elected City officials for business expenses and entertainment in connection with the use of private organizations which limit membership or the use of facilities on the basis of race, color, sex, religion, national origin or ancestry; requiring certain certifications from City employees, executive and administrative officers and elected City officials; and vesting the Commission on Human Relations with certain powers and duties regarding the administration thereof.

WHEREAS, It is the policy of the City of Philadelphia that public funds from the City Treasury shall not be used to support practices of discrimination against any person on the basis of race, color, sex, religion, national origin or ancestry; and

H O U S E O F D E L E G A T E S

11r3530 No. 1553 38

By: Montgomery County Delegation (By Request)
Introduced and read first time: February 13, 1981
Assigned to: Ways and Means

A BILL ENTITLED

AN ACT concerning

Montgomery County - Licenses and Tax Benefits - Revocation for Discrimination
MC 257-81

FOR the purpose of providing for the revocation of certain tax benefits for certain clubs or organizations in Montgomery County which discriminate against applicants for membership; providing for notice to applicants for membership of the provisions of this subtitle; providing for the institution of complaints; directing the Montgomery County Human Relations Commission to hold hearings, make determinations regarding discrimination, and negotiate consent orders, issue cease and desist orders, direct certain agencies to take certain action, and perform other duties necessary to the implementation of this subtitle; providing for a right of appeal; providing for an exemption for certain religious corporations, associations, and organizations; providing an exemption for certain reasons for clubs located outside Montgomery County; providing that the Attorney General may make certain findings; providing for the reapplication for revoked tax benefits after a certain time and under certain conditions; and generally relating to the revocation of certain tax benefits upon a finding of discrimination.

BY repealing and reenacting, with amendments,

Article 81 - Revenue and Taxes
Section 19(e)(4)(i)
Annotated Code of Maryland
(1980 Replacement Volume)

BY adding to

Article 81 - Revenue and Taxes
Section 468 to be under the new subtitle "Revocation of Tax Benefits for Discrimination"

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

JAN 22 1981

STATE OF NEW YORK

439

1981-1982 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 7, 1981

Introduced by M. of A. NEWBURGER—Multi-Sponsored by—M. of A. BARBARO, BOYLAND, EVE, FINNERAN, GOLDSTEIN, GOTTFRIED, GRANNIS, HEVESI, HINCHEY, HIRSCH, JACOBS, LAFAYETTE, LASHER, LEWIS, MARCHISELLI, M. H. MILLER, NINE, PROUD, SANDERS, SERRANO, SIEGEL, SILVER, SMOLER, STAVISKY, E. G. SULLIVAN, F. M. SULLIVAN, WEPRIN, YEVOLI—read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law and the executive law, in relation to certain private clubs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The civil rights law is amended by adding a new section forty-h to read as follows:

§ 40-h. Discrimination in certain private clubs. No institution, club or place of accommodation shall be classified as distinctly private if in the preceding calendar year at least thirty percent of its income from initiation fees, dues, meal or bar service, meeting rooms, athletic fees, room rental and like charges was paid to it for the furtherance of members' trade or business. Payment for the furtherance of members' trade or business includes payment on members' behalf by their employers or firms to which they belong or by businesses with which they have business relationships; or by members themselves and reimbursed to them by employers, firms or businesses with which they have business relationships; or by members who have deducted said payments in computing net taxable income for federal, state or city income tax purposes.

§ 2. Subdivision nine of section two hundred ninety-two of the executive law, as amended by chapter three hundred eighty-eight of the laws of nineteen hundred sixty-nine, is amended to read as follows:

9. The term "place of public accommodation, resort or amusement" shall include, except as hereinafter specified, all places included in the meaning of such terms as: inns, taverns, road houses, hotels, motels,

EXPLANATION—Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD1-62-19-65

THE COUNCIL

The City of New York

Int. No. 801 February 5, 1980

Introduced by the President (Ms. Bellamy) and Council Member Samuel; also Council Members Berman, Codd, Crispino, DeMarco, Eisland, Foster, Friedlander, Gerges, Greitzer, Katz, Katzman, Messinger, Michels, Pinkett, Ryan, Sadowsky, Silverman, Spigner, Steingut, Trichter, Williams, Alter, Gerena-Valentin and Stern—read and referred to the Committee on General Welfare.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the powers of the New York city Commission on Human Rights to eliminate discrimination because of race, religion ad sex in private clubs where a significant portion of the membership conducts or engages in business.

Be it enacted by the Council as follows:

Section 1. Chapter one, title B, section B1-2.0(9) is amended to read as follows:

9. The term "place of public accommodation, resort or amusement" shall include, except as hereinafter specified, all places included in the meaning of such terms as: inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants, or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectionaries, soda fountains, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind or retailed for consumption on the premises; retail stores and establishments dealing with goods or services of any kind, dispensaries, clinics, hospitals, bathhouses, swimming pools, laundries and all other cleaning establishments, barber shops, beauty parlors, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors; garages, all public conveyances operated on land

Note—New matter in *italics*.

STATEMENT

OF

NATIONAL CLUB ASSOCIATION, WASHINGTON, D.C.

Submitted by Herbert L. Emanuelson, Jr. its President, before the Committee on General Welfare, Council of the City of New York

July 30, 1980

The National Club Association (NCA) appreciates the opportunity to submit comments to the Committee on General Welfare of the Council of the City of New York regarding consideration of Introductory No. 801.

NCA is the national trade association representing the legal, legislative and business interests of some 630,000 members of 850 private golf, city, yacht, tennis and athletic clubs from coast to coast. Further, as a participating member of the Conference of Private Organizations (CONPOR), NCA also speaks for the concerns of the millions of our citizens who belong to this nation's private civic, fraternal, patriotic and service organizations.

One of the purposes of NCA and CONPOR is to defend the constitutionally protected right of free association of members of bona fide private clubs. We do not suggest or recommend to clubs what their individual membership admissions policies should be, but, rather, counsel them on their rights under the law.

Today, we join with our colleagues from the New York State Club Association in asserting that this proposed law, which purports to define business-supported private clubs as public accommodations, is illegal and violates constitutionally guaranteed rights of privacy and association.

While we recognize that the City of New York has laws authorizing it to investigate and eliminate discrimination existing, inter alia, in places of public accommodation, it has no authority within truly bona fide private clubs. However, Int. No. 801 clearly overreaches that right by establishing a definition for a private club that is in direct contradiction with federal law and a host of federal court decisions. We urge this Committee to reject it for the following reasons:

COMMENTS OF THE NATIONAL CLUB ASSOCIATION

TO THE

COUNCIL OF THE CITY OF PHILADELPHIA

CONCERNING

BILL NO. 336 AND BILL NO. 337

The National Club Association (NCA) appreciates the opportunity to submit comments to the Council of the City of Philadelphia regarding Bills No. 336 and 337.

NCA is the national trade association representing the legal, legislative and business interests of some 650,000 members of over 900 private golf, city, yacht, tennis and athletic clubs from coast to coast. Several Philadelphia area clubs are members of our association. Further, as a participating member of the Conference of Private Organizations (CONPOR), NCA also speaks for the concerns of the millions of our citizens who belong to this nation's private civic, fraternal, patriotic and service organizations.

One of the primary purposes of NCA and CONPOR is to defend the constitutionally protected right of free association of members of bona fide private organizations. We do not suggest or recommend to organizations what their individual membership admissions policies should be, but, rather, counsel them on their rights under law.

NCA is concerned that these two bills would have a severely detrimental effect on private clubs and other membership organizations and on constitutionally protected individual rights. Bill No. 336 would prohibit contractors doing business with the City of Philadelphia from "reimbursing or subsidizing employees for certain expenses associated with the use of certain private organizations which bar, restrict or limit membership on the basis of race, color, sex, religion or national origin or ancestry..." Bill No. 337 would prohibit the City from paying or reimbursing any of its employees or officials for business expenses and entertainment in connection with the use of such

NATIONAL CLUB ASSOCIATION

1625 Eye Street, NW
Washington, D.C. 20006
[202] 466-8424

Gerard F. Hurley, CAE
Executive Director

These documents illustrate ongoing assaults on our fundamental rights of privacy and association, as those rights are manifested by individuals choosing with whom they may or may not wish to associate in private membership organizations. We believe that, although perhaps sincerely motivated, the leaders of these assaults typically ignore the rights of others, fail to document the social problems they perceive, and propose governmental actions that would unjustly stigmatize honored and respected private organizations and threaten them with massive revenue losses.

Among the variety of assaults documented here are:

(1) A protracted effort by the U.S. Department of Labor to prohibit any employer doing business with the federal government from paying or reimbursing the expenses of any employees in private organizations with selective membership policies, a regulation that our association estimates would cost private clubs alone over $800 million. Although current Labor Secretary Raymond J. Donovan is proposing to withdraw this regulation, it remains a chilling example of potential governmental coercion.

(2) An effort by the U.S. Comptroller of the Currency to "discourage" federally regulated banks from paying such employee expenses;

(3) A recent Philadelphia, Pennsylvania, ordinance that imposes this same prohibition on employers doing business with the city. In this and the two preceding cases the assaults are predicated on the fallacious premise that private organization membership is indispensable to career success. Yet no evidence has ever been produced to support this assumption.

(4) Efforts to impugn the reputation of public officals who belong to private organizations;

(5) Efforts in New York City and New York State to redefine private organizations as public accommodations in a totally unprecedented fashion. Legislation there would classify a private organization as public accommodation unless the organization could prove that 70 or 80% of its income came from its member's personal funds, without employer reimbursements or members' claim of tax deductions;

(6) A Maryland effort to strip private selective membership organizations of all differential tax treatment and liquor licenses.

And this litany does not even include the litigation currently underway in many courts attacking private organization membership policies.

The National Club Association (NCA) has been in the forefront of those organizations which have been striving to defend and protect our rights of privacy and association. NCA is the national trade association representing the legal, legislative, financial, and other business interests of the private club industry. We have been particularly assisted in our efforts by fellow members of the Conference of Private Organizations (CONPOR), an alliance of national private organizations for information exchange and mutual support in defense of these rights.

We have two basic requests of anyone who examines this material:

(1) We hope this makes you more sensitive to the threats we all confront, for it is indeed the rights of privacy and association of every citizen which are imperiled; our right to fashion our private lives as we wish is in jeopardy.

(2) We seek your support for further inquiry into these rights of privacy and association as they are manifested in private organizations. Scholarly research is welcome, of course. We believe also that this is a topic that could benefit greatly from intense Congressional scrutiny. All sides on this issue could present their views and their arguments, respond to questions, and clarify current areas of confusion and uncertainty. Among the questions that could be covered are:

   (a) What restrictions, if any, should society place on an individual's rights of privacy and association?

   (b) Should these rights be diminished because some perceive that they should have a "right" to belong to whatever private organization they desire?

   (c) What is a truly private organization?

   (d) How far can government regulations go to achieve social objectives, especially if the nature of the social need is tenuous and unproven?

   (e) What social role is performed by a complete spectrum of diverse private groups?

   (f) What should be the role of government with regard to this spectrum of private groups, which typically ask nothing of government but to be left alone?

Please note that in several cases only the first page of a document is included in this packet for illustrative purposes. For complete copies and additional materials or information please contact:

National Club Association
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 466-8424

NCA ISSUES URGENT APPEAL FOR CLUB ACTION
TO WIN FINAL VICTORY AGAINST CLUB DUES PAYMENT BAN

THURSDAY, MARCH 26, 1981--The National Club Association is calling for urgent and immediate club action to win a final victory in the fierce five-year battle with the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) over its regulation prohibiting federal contractors from reimbursing employees' dues and expenses in organizations with selective membership policies.

Victory is almost within our grasp now. On Wednesday, March 25, newly-appointed Labor Secretary Raymond J. Donovan announced the withdrawal of the regulation, denouncing it as "a clear case of overburdensome federal regulation."

But the fight isn't quite over--on Friday, March 27, three days before the regulation was scheduled to become effective, the Federal Register will publish a "proposed withdrawal." There will be a 30-day comment period before final action. This means that the activist groups supporting the regulation will be flooding the OFCCP with letters crying for reinstatement.

IT IS UP TO NCA AND THE PRIVATE CLUB COMMUNITY TO MAKE OUR POSITION--AND OUR POLITICAL POWER--PLAIN. WE MUST COUNTER THE ACTIVISTS.

Secretary Donovan is on our side. Administration backing for the NCA position became apparent when President Reagan, at NCA's urging, included the regulation on a limited list of regulations frozen until March 30. But we must provide Secretary Donovan with the ammunition he needs to resist the highly vocal and well-organized activists.

Comments are due by April 27 and should be sent to:

James W. Cisco
Acting Director, Division of Program Policy
Office of Federal Contracts Compliance Programs
U.S. Department of Labor
Washington, D.C. 20210

When you write, point out that throughout the lengthy (since 1976) struggle, NCA has consistently argued that OFCCP has never proved the need for this regulation or any connection between private club membership policies and federal contractor employment discrimination. NCA has also argued that there are already sufficient remedies under existing law for cases of employment discrimination, and that the proposed regulation would violate the basic Constitutional rights of individual club members.

Secretary Donovan himself has shown apparent concurrence with NCA's position. In his statement announcing the proposed withdrawal, he declared, "...the payment of dues for individual employees to an outside membership organization by an employer is not itself a violation of [the law]. Indeed, the regulation of such payments may raise serious legal problems. The prohibition against discrimination and the affirmative action requirement under [current law] are, however, adequate to prevent an employer from using such memberships to structure the conduct of its business in a manner which creates employment discrimination."

Look for further details in the forthcoming NCA April Newsletter.

3/26/81

NATIONAL CLUB ASSOCIATION

NATIONAL CLUB ASSOCIATION SUMMARY COMMENTS ON
LABOR DEPARTMENT RULE ON
FEDERAL CONTRACTOR PAYMENTS TO PRIVATE ORGANIZATIONS

OBJECTIVE: To rescind the final rule of the Office of Federal Contract Compliance Programs (OFCCP) on "Payment of Membership Fees and Other Expenses to Private Organizations," as published in 46 Federal Register 3982 (January 16, 1981). This rule would prohibit "payment or reimbursement by contractors for membership fees and other expenses for participation by their employees in a private club or organization which bars, restricts or limits its membership on the basis of race, color, sex, religion, or national origin." The OFCCP alleges, "that employees provided with a contractor sponsored membership in a discriminatory private organization receive an employment advantage not available to employees excluded from membership in the discriminatory organization." Orginally scheduled to become effective February 17, 1981, President Reagan's regulations freeze has extended the effective date until March 30, 1981.

BACKGROUND, 1976-81: An April, 1976, internal OFCCP "opinion memorandum" first attempted to prohibit such contractor payments. When NCA objected to the lack of notice, two weeks were granted for comments. NCA's critique forced OFCCP to consult the Justice Department which, in December, 1976, challenged OFCCP's approach and rationale. Under the Carter Administration, OFCCP secured from Justice in September, 1977, a more liberal opinion of how constitutional and procedural shortcomings might be overcome.

OFCCP proposed its rule in 45 Federal Register 4954 (January 22, 1980). Comments received were 5 to 1 opposed. Despite the rejection of the Carter Administration's regulatory approach in the 1980 election, OFCCP rushed to complete its rule draft. Necessary EEOC review was first scheduled for closed meeting on January 13, 1981. When NCA sought Temporary Restraining Order, EEOC conceded its clear procedural violations and opened the meeting. Within one hour of EEOC clearance, former Labor Secretary Marshall signed the rule and it was published on the last possible date before the inauguration of President Reagan.

NCA ARGUMENTS: NCA totally opposes this rule because its premise is unproven, it would result in severe financial losses to private membership organizations, its legal basis is questionable, and it severely threatens constitutional rights and liberties:

1. OFCCP has failed to document and prove its premise for this rule. No empirical data have established the requisite link between contractor payment policies, the membership policies of private organizations, and unfair employment advantages. Even former Secretary Marshall has virtually conceded that there are no such data.

2. OFCCP has also failed, as required by Executive Orders 12044 and 12291, to give any consideration to the economic loss that this rule would inflict upon private organizations. A 1980 NCA survey estimated that private clubs alone would lose over $800 million because of the rule. As a new administration properly stresses that federal regulations must carefully weigh both costs and benefits, the past failure of OFCCP to consider either in this matter becomes all the more glaring.

3. The rule violates constitutionally protected individual rights of association and privacy. It is clear that individuals can decide those with whom they may or may not wish to associate in private settings. This rule, however, would stigmatize and penalize private organizations whose members are exercising that sanctioned right.

4. The rule violates due process by presuming that contractor payment policies create employment discrimination unless the contractor can prove otherwise.

5. The rule exceeds the statutory authority of OFCCP as delineated in Liberty Mutual v. Friedman (4th Circuit Court of Appeals, 1981).

6. NCA questions why OFCCP will not try such alternative approaches as either (a) requiring employers to make the same amount of funds available to all similarly situated employees, or (b) investigating individual employee complaints.

CONCLUSION: The protracted history of this rule is a graphic illustration of bureaucratic zealots pursuing a single, favored social goal in total disregard of standards of proof, costs to the private sector, constitutional guarantees, and even their own agency's procedural requirements. Few bureaucratic rules have ever called so clearly for rescission.

(3/10/81)

(5) On page 82838, in the first column, in § 29–70.216b–1, paragraph (c)(2), in the last line "sec. 122(k)" should have read "sec. 121(k)".

BILLING CODE 1505-01-M

Office of Federal Contract Compliance Programs

41 CFR Part 60–1

Payment of Membership Fees and Other Expenses to Private Organizations

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: This rule amends 41 CFR Part 60–1 by adding a new § 60–1.11 to prohibit Federal contractors under Executive Order 11246, as amended, from paying membership fees and other expenses for employee participation in discriminatory private clubs or organizations except where the contractor can provide evidence that such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin. The rule requires OFCCP to provide contractors with the opportunity to present evidence in defense of their actions, and requires that contractors' fee payment policies be administered without regard to employees' race, color, religion, sex, or national origin. The rule is designed to address the problems facing employees excluded from contractor sponsored membership in discriminatory private clubs or organizations because of their race, color, religion, sex, or national origin, and to ensure that the contractor conducts business related activities and provides employee benefits in an environment free of discrimination.

EFFECTIVE DATE: February 17, 1981.

FOR FURTHER INFORMATION CONTACT: James W. Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210, telephone (202) 523–9426.

SUPPLEMENTARY INFORMATION: The Office of Federal Contract Compliance Programs (OFCCP) administers three programs which prohibit employment discrimination by Federal contractors and subcontractors. Executive Order 11246, as amended, prohibits employment discrimination based on race, color, religion, sex, and national origin; Section 503 of the Rehabilitation Act of 1973 prohibits handicap-based discrimination; and Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 prohibits discrimination based on veteran status.

The rule published today covers practices under Executive Order 11246, but not under either Sections 402 or 503. The matter of payment of membership fees first arose under the Executive Order, and most concerns have revolved around the employment impact of exclusion from discriminatory clubs upon minorities and women. Only one commentator expressed the opinion that coverage of the rule should be extended to qualified handicapped persons under Section 503. However, if OFCCP becomes aware of problems in this area, consideration will be given to further rulemaking.

OFCCP has no jurisdiction over the membership practices of private organizations, and does not seek any through this rule. The regulation does not prohibit contractors from making direct contributions unrelated to employment to charitable, service, or other private organizations. Neither does the regulation prohibit employees from maintaining membership in any organization for which they elect to pay membership or other fees not reimbursed by the contractor.

I. Background—Summary of the Proposed Rule.

The proposal published January 22, 1980 (45 FR 4953) would have made it a violation of Executive Order 11246 for contractors to pay membership fees or other expenses to organizations which bar, restrict, or limit membership on the basis of race, color, religion, sex, or national origin where such restrictions or limitations impacted upon employees' promotional opportunities, status, compensation, or other terms and conditions of employment. The proposal would have established a procedure through which the contractor would conduct an analysis of its membership fee payment policy to determine whether any employees were maintaining contractor sponsored membership in a discriminatory organization which conferred a business or professional advantage affecting excluded employees. Nothing in the proposal would have prohibited contractors from paying membership fees to organizations which confer no business or professional advantage.

The proposed regulation contained an analysis composed of five steps designed to enable the contractor to determine whether its fee payment policy was nondiscriminatory, which organizations to which it paid fees had discriminatory membership practices, which employees maintained employer paid memberships in such discriminatory organizations, whether these employees received any business or professional advantage by virtue of their membership in such discriminatory organizations, and whether such advantage impacted upon the employment opportunities or status of those similarly situated. The sixth step of the process would have required the cessation of payments to any discriminatory organization which the contractor's analysis determined to be conferring a business or professional advantage having an employment impact.

II. Analysis of Comments Received

During the comment period ending March 24, 1980, OFCCP received an unduplicated count of 203 comments broken down into the following categories of commentators: members of Congress or the Senate, 4; women's groups, 6; minority groups, 2; public interest groups, 4; religious groups, 3; service clubs, 21; other clubs, 31; club "industry" associations, 7; banks and savings and loan associations, 20; other contractors and companies, 15; contractor associations, 7; state agencies, 1; individuals, 82. Comments OFCCP considered as substantive numbered 35 of the unduplicated total. Of the 202 commentators expressing an opinion on the proposal, 41 supported the proposal, while 161 opposed it. OFCCP reviewed and considered comments received after the close of the comment period, but these are not reflected in the figures given above. The major concerns raised in the comments are considered below.

A. *Justification for the rule.* One of the most frequently expressed comments by opponents to the proposal was the belief that the proposal is unwarranted. While some of these commentators agreed that OFCCP had a role in prohibiting employment discrimination, they argued that the purpose of a contractor's payment of membership fees was not to discriminate in employment, but to further the contractor's business interests.

But membership fees are generally paid, to quote one corporate commentator, "as a perquisite and adjunct to the company's compensation program or for business purposes to contact officers [of other businesses] with the understanding that the membership will be used for business cultivation and direct business purposes." It is then reasonable to conclude that in furthering the business through membership, company

sponsored members further their own careers as well. It is also reasonable to conclude that those excluded from membership in clubs or organizations used to further the business are correspondingly impeded in advancing their careers in the same manner as their company sponsored member colleagues. Evidence gathered in various compliance reviews by the Department of the Treasury as a contract compliance agency, testimony provided before the Senate Committee on Banking, Housing and Urban Affairs, and information received by the Department of Labor both before and after the proposal's publication provide sufficient cause for OFCCP to conclude that exclusion from contractor sponsored membership in a discriminatory private organization may affect employment.

B. *Determining effects on employment.* The basis of the proposal was that employees provided with contractor sponsored membership in a discriminatory private organization receive an employment advantage not available to employees excluded from membership in the discriminatory organization. The analysis in proposed paragraph (b), through a progression of steps, was intended to identify those situations in which membership conferred an employment advantage leading to disparities in employment opportunities, status, compensation, or other terms and conditions of employment.

Paragraph (b)(4) would have required contractors to "determine any direct or indirect benefits received by employees from their membership in . . . exclusionary clubs or organizations which serve to enhance their employment opportunities or which give to them an employment or professional advantage over employees who are excluded from such membership."

To determine whether the employment advantage was accompanied by actual disparities in employment opportunities, the proposal contained a paragraph (b)(5), which required the contractor to "compare the promotion rate, compensation, and other job benefits of employees who maintain contractor sponsored membership in . . . exclusionary clubs or organizations with those of employees who are excluded from such clubs or organizations. . . ." In paragraph (b)(6) the contractor, "upon determining that there exists any employment or professional advantage," was to "immediately cease the reimbursement or payment of membership fees for participation in the exclusionary club or organization."

In speaking of proposed paragraph (b)(4), some commentators went to great lengths to produce hypothetical situations for which contractors would have difficulty determining whether the club conferred an employment advantage. Few other commentators on this paragraph spoke as much on the specifics of paragraph (b)(4) as on the reasons employers pay membership fees. Some opponents of the rule who answered questions relating to why contractors pay membership fees stated that they do not pay fees to confer any employment advantage or to discriminate, but instead to further business, make contacts, and establish relationships with potential customers—all activities which would be likely to have some effect upon the contractor sponsored employee's opportunities for career advancement.

Supporters of the rule found fault with proposed paragraph (b)(5). They believed that the comparison of promotion rates, compensation, etc. required by this paragraph would be meaningless because it could not consider the fact that two employees of unequal ability and perseverance could achieve the same level of success—one through contacts made at a discriminatory private club, the other through harder work and greater talent.

The fact that one employee would have had to work harder than the other to achieve the same level of success would indicate discrimination, but such discrimination would be hidden from the analysis in paragraph (b)(5). Other commentators simply believed that the procedure of (b)(5) was too complex to be feasible.

The analytical process of paragraph (b), particularly the payment cessation requirement of (b)(6), received criticism from many commentators because of their belief that it presumed the employer "guilty" of employment discrimination without any evidence of "guilt." Opponents believed that the existence of the opportunity to continue paying fees to discriminatory organizations upon establishing that no employment impact would result was insufficient assurance that the analysis raised no issue of "guilt" or "innocence."

As stated above, the purpose of the analysis was to provide a means of identifying those instances of fee payment which conferred a business or professional advantage having an effect on the employment opportunities or status of similarly situated employees. OFCCP, following the guidance provided by the Department of Justice, had concluded that such identification was necessary to restrict the impact of the regulation to those situations where employment was affected by the contractor's fee payment policy.

Partly because of the realization that it is the furtherance of business which is at the heart of fee payments, and partly because of the complexities associated with the analysis of the proposal, OFCCP has removed the analysis process of proposed paragraph (b), and has simply stated the conditions under which a violation of the Executive Order exists. The rule published today also ensures that "OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions" in implementing its membership fee policy.

C. *Determining discriminatory membership.* Paragraph (b) of the proposal contained a provision that required the contractor to determine which, if any, of the organizations to which payments are made maintain membership policies which bar, restrict, or limit membership on the basis of race, color, religion, sex, or national origin. Most of the 27 commentators expressing opinions on this portion of the proposed regulation were opposed to the requirement. They believed either that OFCCP intended contractors to "investigate" private organizations or that the provision provided insufficient guidance for contractors to know what was intended.

It was never the intention of OFCCP that either contractors or the Government would conduct "investigations" of private organizations. Although the determination procedure would have been left to contractors, OFCCP envisioned a simple process in which the contractor would generally determine an organization's membership practices by requesting a policy statement from an officer of the organization or by checking the organization's by-laws.

D. *Per se violation.* At the end of the preamble to the proposal appeared a note stipulating that EEOC disagreed with OFCCP's position regarding the regulation, and inviting "comment on the alternative position which, under § 703(a)(1) of Title VII of the Civil Rights Act of 1964, as amended, would absolutely prohibit payment by employers of fees to such discriminating clubs."

Seventeen commentators expressed opinions on the question EEOC raised. Although opposition to any rule in this area was generally widespread, 15 of the 17 commentators who specifically discussed the *per se* violation question

supported EEOC's position that contractors' payments of membership fees to a discriminatory organization should be prohibited absolutely. These commentators viewed any contractor payment to any discriminatory organization as abetting discrimination. They believed that any employee excluded from contractor sponsored membership in a discriminatory organization would suffer diminished employment opportunities and status.

In its two opinions, however, the Department of Justice advised the Department of Labor that employment discrimination under Executive Order 11246 does not exist simply because a contractor pays membership fees for employee participation in a discriminatory organization. The 1976 opinion stated that the Department of Labor could not assume that all membership fee payments were made to clubs to transact business and make business contacts, and that therefore Labor could also not assume that membership in all clubs automatically affects promotion and advancement potential of employees. The 1977 opinion clarified Justice's earlier position by stating that the Department of Labor could assert that a contractor's payment of dues to a discriminatory organization violates Executive Order 11246 so long as the contractor is provided the opportunity to show that its policy and the effects of its policy on employment are nondiscriminatory. In electing to follow the advice of the Department of Justice on this issue of authority under the Executive Order, OFCCP in no way asserts that EEOC is similarly limited in interpreting Title VII.

E. *Exemption of types or organizations.* The proposal provided for no exemptions from the rule for either specific organizations or organizations of particular "types." Among the questions OFCCP asked in the preamble was whether any "types" of organizations should be exempted and how one would characterize an organization as being of a particular "type" (for example, a religious society, service club or social club).

Most of the comments advocating exemptions came from organizations or their industry associations. Although most of these commentators opposed promulgation of any rule, they sometimes qualified their opposition by stating that should OFCCP finalize a rule on membership fees, their type of organization should be exempt from the rule. Service clubs and their members were generally of the opinion that no connection between employment opportunity and membership in a service club could be shown, and that the rule would discourage employers from sponsoring their employees for membership. They expressed the opinion that the effect of the rule would be to diminish their memberships substantially, with resulting reduction in the services the community would receive. None of the two minority groups and only one of the six women's groups filing comments advocated an exemption for organizations established to increase the employment opportunities of women or minorities.

Some determination as to "type" would be necessary to categorize what kinds of organization should be exempt from the rule. Few commentators provided any guidance on how one determines whether an organization is of a particular "type" other than to say that the "type" of organization is dependent upon its purpose. Considering organizations as being of a particular "type" according to their purpose rather than their function, however, leaves unanswered the question of what consideration should be given to the effect that contractor sponsored membership in that organization might have upon employment.

In adopting a rule without exemptions, OFCCP recognizes that participation in various organizations will have varying impacts upon employment. Some organizations are established primarily to provide an environment in which to further business, and function to do so. Others are established for nonbusiness purposes, but have memberships and activities which function to further the business interests of their members. Others have neither business purposes nor functions. Therefore, the rule adopted today will not affect payments made to organizations when the contractor can demonstrate that no effect upon employment results.

III. The Rule Explained.

The rule adopted today is divided into two paragraphs. Paragraph (a) requires that the contractor's fee payment policy be applied without discrimination, and establishes the general principle that payment of membership fees and other expenses for participation in a discriminatory private club or organization is a "a violation of Executive Order 11246 except where the contractor can provide evidence that such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin." The paragraph also ensures that "OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions." Paragraph (b) requires the contractor to determine whether an organization to which it pays fees maintains a discriminatory membership policy or practice.

A. *Principle of the Rule.* Paragraph (a)(1) requires that the contractor administer its policy or practice of paying membership fees or other expenses for employee participation in private clubs or organizations without regard to the race, color, religion, sex, or national origin of employees. This paragraph merely applies the existing nondiscrimination requirements of Section 202(1) of the Executive Order to the specific policy or practice of paying membership fees.

Paragraph (a)(2) establishes that "payment or reimbursement by contractors of membership fees and other expenses for participation by their employees in a private club or organization which bars, restricts or limits its membership on the basis of race, color, religion, sex, or national origin constitutes a violation of Executive Order 11246 except where the contractor can provide evidence that such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin." The paragraph also ensures that "OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions."

As has been discussed above, OFCCP's assertion of violation arises from the conclusion that contractors pay membership fees and other expenses either to further the interests of the business or to provide benefits to employees, and that both types of actions have employment effects. The interests of the business may be furthered by the use of a club or organization in activities such as the following: Use of a club to confer with, transact business with, or entertain clients; use of a club to hold business meetings and company functions; use of the social activities of an organization to establish and maintain contacts on behalf of the contractor; or participation in activities of the organization to enhance the goodwill of the employer within the community.

Although not all employment benefits automatically affect one's employment opportunities, compensation, status, or other terms and conditions of employment, some benefits are career

enhancing. A career enhancing benefit is one which may advance the career or business interests of the employee, including meeting with members of the employee's profession or business, participating in activities which provide information on business related or professional fields (such as lectures on the employee's profession or on local business or the economy), or participating in activities designed to improve the employment or career opportunities of the employee (such as use of job banks, directories, libraries, etc. and participation in job seminars).

OFCCP does not expect, however, that membership in every club or organization will automatically abridge the terms and conditions of employment of employees or applicants excluded from membership. Therefore, the contractor is afforded the opportunity to provide evidence that no effect has resulted. In determining the adequacy of the contractor's demonstration of no effect, OFCCP will review any evidence the contractor may present, and compare this evidence against its own analyses for adverse impact, disparate treatment, or other evidence of employment effect.

B. *Consideration of terms.* Much of the controversy arising over the proposed regulation surrounded the interpretation of terms, particularly those relating to membership and requirements placed upon contractors. Therefore, several of the key terms are described here to provide guidance.

1. *Membership fees and other expenses.* Although the rule is often discussed as affecting *membership fees*, expenses other than the fees themselves are covered. *Membership fees* are those expenses levied by a club or organization for the privilege of association through membership. *Other expenses* are expenses incurred incidental to membership and which are paid or reimbursed by the employer. Generally such expenses include entertainment expenses, facility usage fees, tuition for organization sponsored courses or training, admission and event participation fees, and convention registration and associated convention or meeting expenses. Expenses the employee pays on his or her own behalf are not *other expenses* covered by this regulation.

2. *Discriminatory private club or organization.* A discriminatory private club or organization is one which "bars, restricts or limits its membership on the basis of race, color, religion, sex, or national origin." Such restrictions may arise either from the organization's *policy* or *practice*.

Policy means a written statement (in the by-laws, for example) or verbal agreement among the membership by which members and officers of the organization determine who is eligible for membership. *Practice* means a method of operating the club, including verbal agreements among the members or tradition recognized by the members, which has the effect of determining who is eligible for membership.

Universal eligibility for membership is not a criterion for considering a club or organization as nondiscriminatory. Clubs or organizations which select members according to any criterion other than race, color, religion, sex, or national origin are not considered discriminatory for the purposes of this regulation. For example, an organization which requires candidates for membership to receive a certain minimum level of income or to have attained a certain standard of professional achievement is not considered discriminatory solely on the basis of these membership criteria.

A nondiscriminatory club or organization need not necessarily make all of its facilities available to all of its members. For example, athletic clubs would not be discriminatory if they maintained separate locker rooms, lodgings, and exercise facilities for men and women.

B. *Determining nondiscrimination of membership policies.* As paragraph (b) of the rule states, "the contractor has the responsibility of determining whether the club or organization restricts membership on the basis of race, color, religion, sex, or national origin. The contractor may make separate determinations for different chapters of an organization, and where it does so, may limit any necessary corrective action to the particular chapters which observe discriminatory membership policies and practices."

Although OFCCP prescribes no procedure for complying with the rule, the contractor may find it most efficient to place the responsibility for determining the membership policies of an organization to which the payment of fees and expenses is contemplated with the management official who authorizes the expenditure. The determination may be based upon certification from an officer of the club, from an examination of the organization's by-laws, or from any other evidence that enables the contractor to determine the organization's membership policies and practices in accordance with the rule.

Unless the contractor receives indications of a change in the membership policies or practices of a given club or organization, the determination of an organization's or club's membership policies need be made only once to cover payments of fees for all eligible employees to participate in that club or organization. (Of course, the contractor may elect to make determinations more than once, such as annually or in advance of paying each employee's fees for participation in that club or organization.) OFCCP may verify that the determination for each club or organization is both correct and current by contacting the club on its own.

IV. Expected Impact of the Rule

In the preamble to the pro[posed] regulation, OFCCP asked se[veral] questions relating to how wi[dely] the practice of paying membe[rship fees] is and what the likely impact of a rule on membership fees would be. No commentator answered these questions with sufficient useful information to allow OFCCP to make more than rough estimates of the extent of the practice of paying membership fees or the costs to contractors of complying with the rule. Only one commentator expressed an opinion which attempted to judge the actual costs of the rule as proposed. Some commentators argued that a regulatory analysis should be conducted.

With deletion of the analysis procedure contained in the proposal, the rule published today imposes only incidental new requirements upon contractors. The actions required to comply with the rule can be conducted coincidental to the contractor's established procedure for authorizing expenditures for membership fees and other expenses. The Department has therefore determined that no regulatory analysis is necessary.

This document was prepared by OFCCP's Division of Program Policy under the direction and control of Weldon J. Rougeau, Director, Office of

Federal Contract Compliance Programs. Staff from the Office of the Solicitor provided assistance.

Accordingly, a new § 60–1.11 is added to Part 60–1, Title 41, Code of Federal Regulations, as set forth below to take effect February 17, 1981.

Dated: January 13, 1981 at Washington, D.C.

Ray Marshall,
Secretary of Labor.

Donald Elisburg,
Assistant Secretary, Employment Standards Administration.

Weldon J. Rougeau,
Director, OFCCP.

§ 60–1.11 Payment or reimbursement of membership fees and other expenses to private clubs.

(a)(1) A contractor which maintains a policy or practice of paying membership fees or other expenses for employee participation in private clubs or organizations shall ensure that the policy or practice is administered without regard to the race, color, religion, sex, or national origin of employees.

(2) Payment or reimbursement by contractors of membership fees and other expenses for participation by their employees in a private club or organization which bars, restricts or limits its membership on the basis of race, color, sex, religion, or national origin constitutes a violation of Executive Order 11246 except where the contractor can provide evidence that such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin. OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions.

(b) The contractor has the responsibility of determining whether the club or organization restricts membership on the basis of race, color, religion, sex, or national origin. The contractor may make separate determinations for different chapters of an organization, and where it does so, may limit any necessary corrective action to the particular chapters which observe discriminatory membership policies and practices.

[FR Doc. 81–1597 Filed 1–15–81; 8:45 am]
BILLING CODE 4510–27–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 90

[PR Docket No. 79–338; RM–3470; FCC 80–753]

Temporary Licensing for Multiple Licensed Mobile Relay Systems Operating in the Business Radio Service in the 450–470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule (order).

SUMMARY: The Commission adopts an order denying the Petition for limited reconsideration filed by the General Electric Company to delay the implementation date of a temporary licensing procedure available to some users in the Business Radio Service. The Commission further provides for an interim form to be used for this procedure due to the temporary unavailability of Form 572, the temporary licensing form.

EFFECTIVE DATE: December 29, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gay Ludington, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Parts 1, 2, and 90 of the Commission's rules and regulations to implement a system of temporary licensing for multiple licensed mobile relay systems operating in the Business Radio Service in the 450–470 MHz band, PR Docket No. 79–338, RM–3470.

Order

Adopted: December 18, 1980.

Released: December 29, 1980.

By the Commission: Commissioners Quello and Jones absent.

1. We have before us a petition filed by the General Electric Co. (GE) to reconsider the decision we took in our Report and Order in this proceeding to create a temporary licensing system for some users in the Business Radio Service.[1]

2. The gist of the GE petition is that the effective date of the rules adopted in the Report and Order should be delayed from January 1, 1981, to March 4, 1981.

3. In support GE has expressed concern that the proposed change will have adverse repercussions on the highly competitive equipment marketplace, because it will necessitate major changes in the way GE and some other radio equipment manufacturers market their products. GE contends that most dealers presently do not maintain an inventory to enable them to sell radio equipment off the shelf. Instead, the dealer orders the necessary radio equipment from the manufacturer who then assembles and delivers it to the dealer. The lag time has historically coincided with the time between application submission and license grant and arrangements have usually been made to have the equipment delivered to the dealer about the same time that a license is issued to the user. The new licensing procedure, however, will eliminate this delay. Dealers will be faced with a demand from customers to purchase and install equipment immediately. GE contends that such a change in customer demand characteristics will require dealers to stock inventory in order to remain competitive and thus may require local dealers to procure financing to purchase equipment, insurance, rent storage space, etc. GE therefore requests we delay implementation of our new rules to provide a longer period of time for manufacturers and dealers to alter or adjust their marketing procedures to assimilate this change.

4. We have considered GE's arguments. The issues it raises are merely reiterations of its earlier arguments in this proceeding and were considered and disposed of in our Report and Order.[2] GE has presented no new evidence or arguments in its Petition for Reconsideration to support its request, and has essentially restated the position it took in its comments in the earlier phase of this proceeding. GE does not contend there has been any change of conditions or circumstances which requires our reconsideration of these matters. Accordingly, there is no apparent basis for reconsideration action.[3]

5. In view of the foregoing, it is ordered that General Electric Co.'s petition for reconsideration is denied.

6. The form originally designated for use in this temporary licensing program will not be available on January 1, 1981, the effective date of the rules. We have, however, developed an interim procedure utilizing an existing form, a copy of the submitted FCC Form 400, that does not require the submission of any additional information. This interim procedure was described in a Public Notice issued on December 8, 1980, attached as an Appendix to this order.

[1] *See Report and Order*, Docket No. 79–338, FCC 80–487, adopted August 1, 1980, released September 4, 1980.

[2] *Id.*, at paragraphs 12–13.

[3] *See* 47 CFR 1.429.

Fact and Comment

By Malcolm S. Forbes, Editor-in-Chief

DO REAGAN'S BUDGET AND TAX CUTS HAVE A PRAYER?

Since the wholehearted prayers for the package's passage as proposed may emanate principally from the President and Mr. Stockman—along with some of thee and me—it hardly seems likely that the Great Proposals will come to pass.

Who's *not* bellyaching about the threat to reduce his special preserve? Breathes there a Washington lobbyist with his constituency so dead that he's not whispering sugar or spite into those elected ears tuned to his special segment of the electorate?

Hope glimmers only from the fact that *all* are crying Ouch, Foul, Special Exception, Too Much or Not Enough.

With everybody screaming for everybody-else-but-me to take the lumps, there is hope, there *is* a prayer that this same Everybody will realize it's all of us who stand to benefit if the dollar's to be prevented from sinking to a dime's worth.

The price and pain of passing the embracive Reagan budget cuts will be infinitely less than the cost of not.

The prospect of keeping a bit more of one's earnings in a freer economic climate that could be uninflatedly flourishing a year hence may be powerful enough to open the eyes and deafen for a bit the ears of our elected.

AS TO WHETHER TAX OR SPENDING CUTS SHOULD COME FIRST

that's a chicken/egg syndrome.

Either one without the other is folly.

So make 'em a package deal thereby hooking the heated hollerers who want one or the other or both.

If there is no package, what might pass will be what shouldn't.

STRAIGHT AND SIMPLE FROM SINGLETON

Asked by the *Wall Street Journal* about corporations that set goals for specific annual gains, Teledyne's genius Chairman Henry Singleton remarked: "I think it's childish. I don't care if we have a down year . . . provided it will give us a better year later on."

Asked about federal monetary policy he replied: "There's no way to have any coherent thoughts on that . . . who knows what money is?"

And on the subject of consumer legislation, Singleton said, "I like the idea of thinking about producers instead of talking about consumers." Individuals, he said, must be producers to be consumers.

Maybe President Reagan should draft him to take charge of Policy Implementation for the Administration.

BREAKING BREAD WITH OL' BLUE EYES

may be a reasonable matter to discuss with the new Administration's Attorney General William Smith, but getting on his case for not resigning from that unique, thoroughly worthwhile, good-clean-fun California institution, the Bohemian Club, is something else. It is another instance of reducing the essential equal rights effort to *reductio ad absurdum*.

It's just such nonsensical extremism on the subject of women's rights that has contributed so much to keeping the required number of states from enacting the Equal Rights Amendment and is even threatening continued endorsement by some states that have already passed it.

To assume that Mr. Smith can't tell the difference between enforcing laws against racial and sexual bias because he's a member of the Bohemian Club, or even occasionally plays golf or poker "with the boys," is to assume that he has an I.Q. of zilch.

In this case, the low I.Q. belongs to those in high dudgeon over such a minor matter.

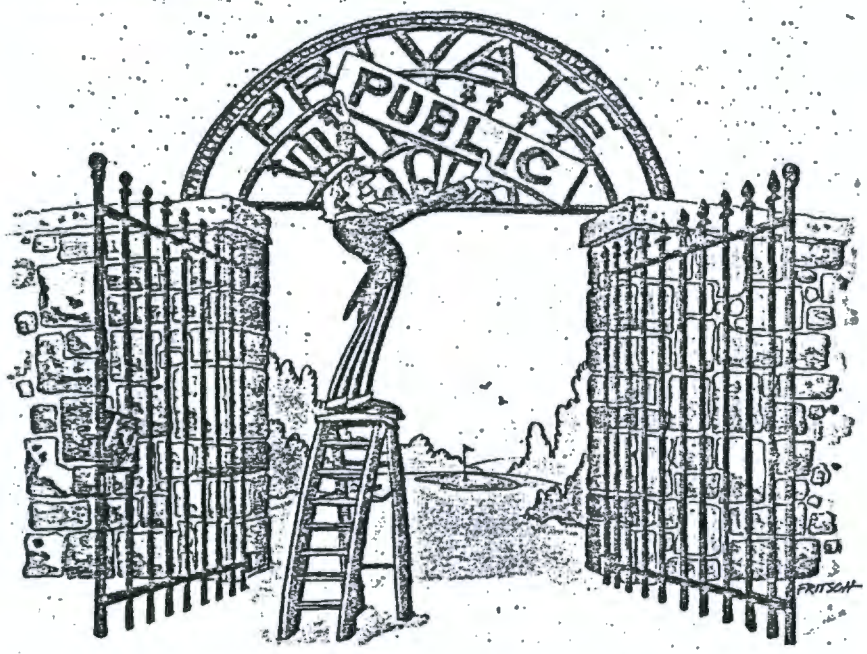
Clubs on the ropes

Opinion/Gerard F. Hurley

Saturday has arrived. You play golf in the morning and then spend an hour in the grill over a sandwich and a beer. You play gin rummy and watch a ball game. You enjoy your day at your club with your friends playing your favorite game.

But watch out! Federal, state and local governments and their agencies are doing their best to eliminate private clubs as you know them, and they will succeed unless those Americans who want to preserve their freedom of association resist.

Here are just a few of the ways government and its over zealous agencies are trying to abolish the First Amendment right to privacy:



• The Labor Department's Office of Federal Contract Compliance Programs (OFCCP) has been trying for years to stop Federal contractors from paying their employees' dues at private clubs. At press time, OFCCP was about to take such a step, despite the opposition of more than 200 Federal contractors, legislators and industry groups who called the proposed measure "unnecessary, illegal and unworkable."

The proposed OFCCP rule would prohibit all companies that do Government work from paying employees' dues at private clubs, unless companies prove that membership does not help advance employees' careers. The OFCCP says membership does provide an unfair advantage in business, *i.e.*, helps promote careers of members. Yet, Labor has not proven a link between club membership and career advancement in a single case, and places the burden of proof on clubs and companies. Labor presumes the link exists and may pass a rule, which is tantamount to legislation, without going through the lawful legislative process, *i.e.*, Congress.

The National Club Association has exposed Government's circumvention of the law. Yet, Labor persists. If OFCCP prevails, then NCA estimates that the average golf club could lose more than $307,000 annually, if employees at firms that fill Government orders lose their club memberships.

• New York City's Council chairwoman, Carol Bellamy, and the head of the NAACP Legal Defense Fund, jointly wrote a bill that would require local private clubs to prove that 80 per cent of their revenue comes from members' own pockets, and is not deducted from income tax or reimbursed. Clubs that fail to meet this requirement would, in effect, become public. And it is doubtful that any private club, faced with an argumentative city auditor could meet the bill's specifications. Besides, such a policy may not be legally enforced, because it would require that income tax returns be made public.

The point that Bellamy misses is that if a club meets the definition of "private," then it doesn't matter where members' dues come from. Congress, the courts and the IRS agree on that. All that matters is that money spent at the club is for members' personal, social or business pleasure. Where member dues come from is member business.

• The Justice Department has interfered in two private membership cases. In *Wright* v. *Salisbury CC*, Justice submitted an unsolicited brief on behalf of a black dentist suing for membership in Salisbury CC, in Richmond, Va. As with many discrimination suits involving private clubs, this case turns on whether Salisbury CC is, indeed, private.

Many factors contribute to a club's being legally private. Does it cost a lot of money to be a member? Does the club demonstrate a plan and purpose of exclusivity? Is there a no-cash policy? Is there a sign in front saying, "Private" or "Members Only"? Do the members own or operate the club? Do the members meet? Do the members have a committee structure? Is there social activity? Does the club prevent or limit use of its facilities by outside groups?

If the answers to most of these questions, and to others like them, is yes, then there is no question that the club is private. Selectivity is not only legal in private clubs, it is required. Selectivity is one reason people join clubs. It's why blacks join the Congressional Black Caucus, why Jews join B'nai B'rith, why Catholics join the Knights of Columbus. These private organizations, along with private golf clubs, deserve to be treated as such as long as they behave as private organizations.

When a private organization starts behaving like a public group, then it must be made to change its policies or suffer the consequences such as losing tax-exempt status. But when Jus-

continued on page 102

OPINION *from page 91*

tice interfered in the case of a Midwestern fraternal lodge, it didn't even offer the lodge an option.

Granted, the lodge had fallen into sloppy practices dealing with the public and got caught. But Justice didn't give lodge officials a chance to pull back and reform. Instead, Justice offered an ultimatum: Change your membership admission policy or we will make you public. Given that unsavory choice, the lodge acquiesced in Justice's requirement that the membership selection power be transferred from the lodge's board of directors to a majority vote of the members at a meeting of the membership.

In both the Salisbury and the lodge cases, Justice set a precedent that might be used to establish standards for a variety of private organizations, and in the lodge case Justice demonstrated that it is hellbent on severely curtailing the right to privacy.

These are but three of the many ways Government and agencies are assaulting the constitutional rights of privacy. Zealots and crusaders in positions of power and influence seem determined to institute their own idea of social utopia, even if their actions are unconstitutional. They are willing to circumvent the lawful legislative process to expedite their vision. They are loud, intimidating and have spread the notion that privacy and private clubs are evil.

The crusaders, however, are not wholly to blame. Congressmen, state legislators, judges, corporate leaders and private citizens also are at fault, because they have not resisted.

Sectors of government that should not cower before the crusaders have acquiesced to them. For example, the U.S. Judicial Conference told its Federal jurist members that they shouldn't belong to private clubs that practice discrimination because it undermines their impartiality. But doesn't a judge's record count for anything? Judges must consider separately each discrimination case that involves a private club. Their decisions must hinge on whether the clubs in question are private. And the judges' records must determine whether they are impartial, not their club memberships.

This trend will continue unless a concerted effort is made to stem it. Action is necessary. Congressmen and senators can reverse this tide. But they must hear from you. □

Gerard Hurley is executive director of the National Club Association.

BANKING ISSUANCE

Comptroller of the Currency
Administrator of National Banks

Type: Banking Circular

Subject: Payment of membership and other fees to associations which discriminate on a prohibited basis.

TO: THE PRESIDENTS OF ALL NATIONAL BANKS

On October 10, 1979, the Federal Financial Institutions Examination Council issued a Policy Statement, effective October 11, 1979, on identifying and eliminating illegal discrimination and encouraging nondiscriminatory practices in the operations of depository institutions. A copy of that Policy Statement is attached.

An important provision of the Policy Statement relates to policies of regulated institutions regarding payment of dues on behalf of employees, officers and directors, to private clubs which discriminate. The policy statement specifically discourages payment of dues to such clubs, as well as payment of costs of business or social functions held at such clubs or organizations.

This policy is based on the fact that historically, social and business functions have been forums for conducting business in an informal setting. Lack of access to such activities may prove to be a significant obstacle to bank directors and personnel in discharging their business responsibilities. However, because business is commonly conducted, membership prohibition may have an adverse and discriminatory effect upon the career advancement of employees who are denied access. Financial support of such organizations could reasonably be construed as reflective of employment policy. Consequently, the "dues provision" of the Policy Statement is an important consideration in a financial institution's review of their employment practices.

Because of the historical significance club membership has played in banking matters, our examiners have been instructed to include in their reports any apparent lack of adherence to this policy which is noted during the course of examinations.

John G. Heimann
Comptroller of the Currency

Joint Notice of Policy Statement on Discrimination

AGENCIES: The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration.

ACTION: Policy Statement on Discrimination.

SUMMARY: The five constituent Federal financial regulatory agencies of the Federal Financial Institutions Examination Council have approved a joint statement of policy on discrimination.

EFFECTIVE DATE: October 11, 1979.

FOR FURTHER INFORMATION CONTACT: Samuel H. Talley, Federal Reserve Board (202) 452-3354; Linda Cohen, National Credit Union Administration (202) 254-8760; Louis V. Roy, Federal Home Loan Bank Board (202) 377-6512; Henry Newport, Federal Deposit Insurance Corporation (202) 389-4668; and Dennis Arczynbski, Comptroller of the Currency (202) 447-0111.

SUPPLEMENTARY INFORMATION:

The Policy Statement

The Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Federal Home Loan Bank Board and the National Credit Union Administration, as Federal agencies responsible for the regulation and supervision of depository institutions, in cooperation with other responsible authorities, are committed to identifying and eliminating illegal discrimination and to encouraging non-discriminatory practices in the operations of these institutions. Over the years, the attention of the Federal financial regulatory agencies has focused especially on such matters as discrimination on the basis of race, religion, national origin, sex, and marital status in the provision of lending and other financial services and the discriminatory aspects of mortgage and other lending practices which may have a disparate impact on various neighborhoods and communities. The various efforts of the agencies have been directed towards the enforcement of prohibitions against such discrimination, the development by the institutions they supervise of appropriate remedial or affirmative actions to help eradicate the effects of past discrimination, and the sponsorship or support of numerous special-emphasis programs that have the objective of assisting the financial institutions to meet the credit needs of all segments of the communities which they serve.

Within the boundaries of their jurisdiction, the five Federal financial regulatory agencies are committed to effective enforcement of the various civil rights laws of the nation. The agencies believe that illegal discrimination is contrary to the best interests of not only the people discriminated against but also the financial institutions themselves.

The provision of employment opportunity without discrimination on any prohibited basis is first and foremost the legal responsibility of the employer, and it is the policy of the agencies that the financial institutions which they regulate should review periodically their employment practices to ascertain that they are, in fact, nondiscriminatory and, to the extent that any discrimination is found, adopt appropriate remedial policies and practices to eliminate it.

Such an examination of employment practices should include consideration of the institutions' policies regarding the payment of dues on behalf of employees to private clubs which discriminate on the basis of race, sex, religion, color, or national origin. Because business is commonly conducted at such clubs, membership prohibition may have an adverse and discriminatory effect upon the career advancement of employees who are denied equal opportunity to access either as members or guests.

For this reason, the agencies discourage the payment by financial institutions, on behalf of their employees, officers or directors, of fees or dues for membership in private clubs where business is commonly conducted, which so discriminate. Payment by financial institutions of the costs of any business or social function held at any such club or organization which practices discrimination is also discouraged.

Dated: October 15, 1979.

Theodore E. Allison,
Secretary, Board of Governors of the Federal Reserve System.

Dated: October 15, 1979.

J. J. Finn,
Secretary, Federal Home Loan Bank Board

Dated: October 15, 1979.

Lewis G. Odom, Jr.,
Senior Deputy Comptroller, Comptroller of the Currency.

Dated October 15, 1979.

Hoyle L. Robinson,
Executive Secretary, Federal Deposit Insurance Corporation.

Dated: October 15, 1979.

Rosemary Brady,
Secretary to NCUA Board, National Credit Union Administration.

[FR Doc. 79-32371 Filed 10-18-79; 8:45 am]
BILLING CODE 6720-01-M

The Chief Justice announced the following action:

The Judicial Conference approved the following commentary to Canon 2 of the Code of Judicial Conduct (i.e., that a judge should avoid impropriety and the appearance of impropriety in all activities):

The Judicial Conference of the United States has endorsed the principle that it is inappropriate for a judge to hold membership in any organization that practices invidious discrimination. A judge should carefully consider whether the judge's membership in a particular organization might reasonably raise a question of the judge's impartiality in a case involving issues as to discriminatory treatment of persons on the basis of race, sex, religion, or national origin. The question whether a particular organization practices invidious discrimination is often complex and not capable of being determined from a mere examination of its membership roll. Judges as well as others have rights of privacy and association. Although each judge must always be alert to the question, it must ultimately be determined by the conscience of the individual judge whether membership in a particular organization is incompatible with the duties of the judicial office.

National Club Association
1625 Eye Street, N. W.
Suite 609
Washington, D. C. 20006

(202) 466-8424

COMMENTS OF THE

NATIONAL CLUB ASSOCIATION

TO THE

ADVISORY COMMITTEE ON CODES OF CONDUCT

OF THE

JUDICIAL CONFERENCE OF THE UNITED STATES

CONCERNING

THE MEMBERSHIP OF JUDGES IN PRIVATE ORGANIZATIONS

WITH SELECTIVE MEMBERSHIP POLICIES

June 1980

CONTENTS

Introduction

The National Club Association (NCA) respectfully submits these comments to the Advisory Committee on Codes of Conduct of the Judicial Conference of the United States. These comments pertain to the drafting by the Advisory Committee of definitions and standards for implementing the March 1980 decision of the Judicial Conference that it is inappropriate for a judge to hold membership in an organization that practices invidious discrimination.

NCA is the national trade association that speaks for the private club industry in the United States. NCA directly represents the legal, legislative, financial, tax, and other business interests of over 850 private golf, city, yacht, tennis and athletic clubs.

On behalf of its member clubs, NCA submitted comments on December 11, 1979, to the Ethics Committee of the Judicial Conference on the propriety of such judicial memberships in private clubs. The Ethics Committee had then been assigned the responsibility for studying this matter and making recommendations to the Judicial Conference. NCA now wishes to reaffirm and expand its earlier comments, a copy of which is attached.

Private membership organizations such as clubs -- but also including fraternals, as well as service, civic, and ethnic groups -- are fundamentally distinguished from public facilities by their selective membership policies. This means that some applicants may be unacceptable to the organization and therefore refused membership-- at times for what may be alleged to be specious, even unfair or unreasonable, grounds. The complete authority of the organization to determine its membership also includes the right to expel incumbent members. Although these comments

are directly submitted on behalf of private clubs, similar, if not identical, points could be made on behalf of nearly all private membership organizations.

Argument

As these comments later explain, the members of a private club have the right under the Constitution to make their membership decisions by whatever criteria they choose, and individuals - including judges - are free to apply for membership in any private club they wish. NCA firmly opposes any action by the Judicial Conference -- or any other outside agency or group -- that would influence the decision of an individual to join or belong to a private club, or that would prevent or discourage private clubs from adopting and enforcing whatever selective membership policies they choose.

Specifically, NCA urges that this present effort to dissociate judges from private organizations practicing "invidious discrimination" should be abandoned for the following reasons:

1) Members of private clubs have a constitutionally protected right to define their organizational membership policies free from outside interference.

2) Judges have the same constitutionally protected right as anyone else to belong to whatever legal private organizations they prefer.

3) Any action taken by the Judicial Conference would pose unsolvable problems of definition and implementation.

4) Any actions by the Conference, however well intentioned, would stigmatize the membership policies of private clubs and thereby irreparably damage them.

1) Members have the right to determine their club's membership policies.

Courts and the Congress have recognized that the rights of privacy and association, as derived from the First and Fourteenth Amendments to the Constitution, extend to the membership practices of private organizations. This extension is necessary to safeguard the basic, the natural, human

desire of individuals to choose their social intimates so as to express their own likes and dislikes and to fashion their private lives by forming or joining a club. It is a right of paramount importance to all Americans.

As Justice Goldberg stated in his concurring opinion in Bell v. Maryland, 378 U.S. 226, at 313 (1964):

> Prejudice and bigotry in any form are regrettable, but it is the constitutional right of every person to close his home or club to any person or to choose his social intimates and business partners solely on the basis of personal prejudices including race. These and other rights pertaining to privacy and private association are themselves constitutionally protected liberties.

Justice Douglas further delineated the point while dissenting in Moose Lodge No. 107 v. Irvis, 407 U.S. 163, at 179-180 (1972):

> The associational rights which our system honors permit all white, all black, all brown, and all yellow clubs to be formed. They also permit all Catholic, all Jewish, or all agnostic clubs to be established. Government may not tell a man or woman who his or her associates may be. The individual can be as selective as he desires.
>
> Whether analyzed in terms of a "right to associate" or a "right to privacy," authority supports the clubs' view that they cannot be required not to discriminate with respect to their membership.

The issue also arose in Congress during debate over the Civil Rights Act of 1964. That historic legislation prohibits racial discrimination in public accommodations. But Congress made clear that the Act did not include private clubs or other organizations. Senator Humphrey explicitly disavowed any such intent:

> Take, for example, the Cosmos Club, the Army and Navy Club, the University Club, the Union League Club, the Minneapolis Club, or the Minneapolis Athletic Club, to one of which I am privileged to belong. Those are private membership clubs. In fact, the Minneapolis Club is so private that my wife cannot even go in the front door. They make her use the back door...It really is

> discrimination. I protested, but to no avail. But this bill would not eliminate that kind of discrimination. It is a private club. I wish to make it clear that I do not believe there should be a Federal law which provides that a private club should be managed this way, or managed that way.

As a result, the House report on the 1964 legislation provides:

> Where freedom of association might logically come into play as in cases of private organization, Title II quite properly exempts bona fide private clubs and other establishments. H. Rep. No. 914, 88th Cong., 1st Sess., Pt 2, at 9 (1963).

Thus it must be emphasized that the membership policies and practices being challenged here have been clearly upheld as essential elements of constitutionally protected individual rights and liberties. These fundamental rights and liberties should never be transgressed.

2) Judges have the right to belong to private clubs.

The preceding argument obviously applies with equal force to the rights of privacy and association of the individual judge. The membership of a judge in a private organization involves purely personal and completely legal activities. As NCA pointed out in its earlier comments:

> Anything that would significantly reduce or alter these activities would be an unwarranted intrusion of one's public responsibilities into one's private life...However substantial one's public trust and responsibilities, individual rights and liberties are retained and should be abridged only for the most compelling reasons.
> (NCA Position Paper, December 11, 1979, pp. 4 and 9)

NCA reiterates that those "compelling reasons" are here absent:

> No correlation or connection has been demonstrated between a judge's private organizational memberships and his conduct on the bench. No incident has been cited where a judicial decision was affected because of where the judge chose to dine.
> (NCA Position Paper, December 11, 1979, p. 4)

Neither has any empirical evidence been presented that would indicate that the public image of any judge has ever been tarnished by membership in

a private organization. NCA is not aware of any judge's decisions that were ever reversed because of such membership. It is fallacious to suppose that the overall membership composition of a private club justifies inferences about the attitudes and beliefs of any individual member. There is, in brief, no compelling reason for proscribing the private organizational affiliations of judges.

3) Any action would pose unsolvable problems of definition and implementation.

a. The concept of invidious discrimination

"Invidious discrimination" is a term more often used than defined. There is no civil rights lexicon in which a standard definition can be found. Even if the term can be clarified conceptually, it remains nearly impossible to define operationally so that it can be confirmed empirically.

Although common usage ascribes pejorative connotations to the notion of "discrimination," it is best considered to have several quite different meanings. In simplistic terms related to recent public policy debates, three different types of discrimination can be identified:

1) "Reverse" discrimination may refer to governmentally mandated advantages given certain minority individuals or groups in competition for education, jobs, government benefits, etc. These advantages are supposedly to compensate for social, physical or other handicaps. This has also been called "affirmative discrimination" or "affirmative action."

2) "Neutral" discrimination simply refers to cases in which one individual or group is treated differently from others as a result of nonobjectionable characteristics such as income, age, physical condition, skills, education, experience, etc. Such discrimination is "noninvidious" and may be best thought of as involving "discriminating" rather than "discriminatory" judgments.

3) "Invidious" discrimination, in contrast, is customarily thought to be that which unfairly disparages those against whom the discrimination is practiced. Such discrimination is said to

> impute a level of social inferiority to those receiving less than equal treatment. Discrimination based solely on race, creed, sex, religion, national origin, or, most recently, physical or mental handicaps, is alleged by some to be ipso facto invidious.

Although invidious discrimination can thus be clarified conceptually, it poses formidable empirical difficulties if used as a basis for regulation or enforcement. One problem is the need to verify the exact causes of any discrimination. It may have resulted from entirely noninvidious or nonobjectionable factors, even though "invidious" elements may be alleged. There have been, for example, few professional basketball players of Japanese ancestry, no men in college sororities, and no whites in the Congressional Black Caucus. In each case no inference of social inferiority occurs. Similarly, because of historical developments, certain racial, ethnic or religious groups may have had limited education or income opportunities which then retard access to certain professional or social settings. But it is their limited opportunities, not their group identifications, which retard their access. No social inferiority attaches to the group.

Another empirical problem posed by invidious discrimination is whether it should not be necessary to prove that the discrimination was invidiously motivated and that it actually resulted in a manifestation of social inferiority towards the discriminated group. In an alleged case of invidious discrimination, no stigma of social inferiority may have ever been intended by, or even occurred to the party alleged to have discriminated. The party alleged to have been wronged may not have regarded the discrimination as invidious. Perhaps most important, the outside community may not have thought the decisions or actions imputed any social inferiority. Even if a portion of the community drew such an inference

of inferiority, how large would that portion have to be to justify remedial action: A minority? A majority? 40%? 75%? Even unanimity, of course, would not nullify the constitutionally protected liberties at stake.

b. Analyzing club membership policies and practices

Even if invidious discrimination could be defined and guidelines drafted for identifying it in general terms, clubs and other private membership organizations pose unique problems. Their principal function is to provide a congenial atmosphere for their members. In this they obviously differ, for example, from educational institutions or businesses. In the latter, the entry requirements are certain skill or ability levels and it can be reasonably maintained that basing entry on group characteristics unrelated to the organization's work constitutes invidious discrimination. But the same is definitely not true of private clubs. There are no objective qualifications that guarantee membership success in any particular club. The many possible criteria are personal and intangible. The appeal--if any--of the applicant is in the eye of the beholder; in this case, the club's current members. Observers may not agree with that appeal, but how can they condemn it?

A few clubs may have written constitutions or by-laws which explicitly exclude from membership anyone from a particular race, creed, religion, sex or nationality. This is, after all, their constitutional right. This may "prove" why no one from the excluded group has ever become a member of the club. It falls far short, however, of proving that the inability to obtain membership has, in fact, stigmatized that excluded group as social inferiors.

The much more common situation is one where club membership decisions

are made without written guidelines. These decisions are typically made confidentially, if not secretly, by the members of the club or their representatives. Almost never are any reasons publicly given for rejecting membership applicants. It is perhaps ironical that this confidentiality is expressly to avoid any disparaging connotations for those rejected.

In the absence of written evidence concerning membership decisions, some might propose that the actual membership record of the club would be indicative. Either specific cases where individual applicants have been rejected would have to be analyzed for causes, or the overall club membership history would have to be surveyed. If a pattern emerges whereby no one from a particular group has ever been a member, some critics would quickly raise the accusation of invidious discrimination. But here too, this approach is critically flawed.

As noted previously, many factors account for club membership decisions. Among them are social compatibility (quite different from judgments of inferiority or superiority), personality, income level, common athletic or business interests, family background, even ethnic or religious interests. Membership decisions may even be dictated by simple economic considerations, as when extensive facility renovations would be necessary before women could be admitted to an all-male athletic club. Even if economically affordable, the renovations might be either extremely disruptive or maybe physically impossible. Would the rejection of women applicants in such cases prompt accusations of invidious discrimination?

A further note should be made with regard to club membership decisions. It has been speculated that club memberships are coveted because they provide a valuable means for advancing one's career. To be denied

membership, therefore, is seen as a career handicap. This, however, ignores a basic truth about private clubs and their members. Club members do not achieve success because of their memberships, but rather, they become club members usually because their accomplishments have made them attractive to their fellow members. The prestige and pleasures afforded by the private club usually go to the individual with proven talents and capabilities, whose personality and interests promise to be compatible with those of the current membership.

It is hardly more helpful to survey the membership history of private clubs. Assuming that all members of a particular group who have actually applied have been rejected, further questions arise: Exactly how many applicants have come from that group? What percentage were they of the total applicants accepted or rejected? Is there a "threshold" number or percentage of rejected applicants that confirms invidious discrimination? What other attributes characterize the rejected applicants? Could those attributes reasonably explain their rejections? What have been the characteristics of those admitted to membership? And again, has any feeling of social inferiority actually occurred as a direct consequence of the membership rejections?

A further complication will result from the variety of memberships available at most clubs. There may, for example, be no women as full members of a given club. Yet many women may enjoy all member benefits through family memberships, or perhaps widow memberships. There may also be partial, limited memberships available, such as dining room privileges or restricted use of the golf course or swimming pool. How comprehensive must membership privileges be to refute allegations of invidious discrimination?

The list of complications could be extended ad infinitum. One additional illustration, however, may suffice for present purposes: will private clubs be required at some point to implement a "quota" system and adopt affirmative action membership plans in order to refute allegations of invidious discrimination? After all, if only one member of a particular group is admitted while fifty are rejected, could that not be alleged to be mere "tokenism"? Will a private club now be required to have the same proportions of its membership from various groups as may be found in the surrounding community? Will the private club, intended to be a haven and a refuge from society, now have to become a microcosm of society?

c. Unanticipated consequences

In its earlier comments, NCA cautioned about two consequences, perhaps unanticipated, of any action to discourage private organizational memberships of the judiciary. Both now bear reemphasis. The first concerns an extension of the logic at work here to encompass nearly all of a judge's private relationships. The second involves an extension of this logic to include other officers of the court.

The premise of this issue appears to be that a judge's private life prejudicially affects his performance on the bench. If that is the case, where does his private life end and his public life begin? Would not a judge's association with affluent friends bias him against the poor, and vice versa? Would not a judge's religious beliefs and activities bias him against atheists? It may be noted that just this year, a judge has been challenged by a defendant supporting the Equal Rights Amendment because the judge's church formally opposes that proposed amendment. For

those who believe that the freedom of religion guaranteed by the First Amendment would protect a judge in such circumstances, we would recall that the First as well as the Fourteenth Amendments are supposed to protect membership in private clubs. As NCA commented earlier, "To guarantee against such perceptions (of bias), a judge would have to become a virtual social neuter, isolated from normal contacts and affiliations." (NCA Position Paper, December 11, 1979, p.8)

The other unanticipated consequence is that all officers of the court may eventually be subjected to the same proscription. If the broader concern is with the public image and reputation for integrity of the judicial system, how could any responsible court officials (even private attorneys) be allowed to belong to suspect private membership organizations? The outcome would thus be a further dramatic diminution of the constitutional rights of still another group of Americans.

4) Private clubs would be irreparably damaged.

A paradoxical outcome seems possible. The members of a private club exercise their constitutional rights in defining the organization's selective membership policies. The judge exercises his constitutional right to select his own private associates and is accepted as a club member. Yet these private, legal actions may now result in the judge being pilloried for his choice of associates and the club being stigmatized because of its "discriminatory" policies.

For clubs so maligned, the damage will be much worse than simply the loss of dues from those members who are judges, or who may aspire to be judges. The likely outcome would be that many judges would resign immediately from accused organizations rather than undergo challenges and

publicized investigations. But the private clubs would then not have a forum in which to explain or defend themselves. The resulting stigma that would adhere to clubs, regardless of their actual membership policies, would undoubtedly prompt other members to withdraw from their clubs to avoid the threat of guilt by association. Such a chain reaction would be devastating to the viability of many private clubs. Clubs will be confronted with an acute dilemma: either change the very essence of their private nature by relinquishing control over their membership policies, or face severe financial losses. It should be further considered whether clubs that thus become less "private" will not be subjected to a host of activist demands on all aspects of their activities.

Summary and Conclusions

The National Club Association opposes any action to discourage the membership of judges in private organizations under any pretext.

1) Any such action would infringe upon the constitutionally protected right of private organization members to choose their associates and the manner of their association.
2) Any such action would similarly violate the rights of privacy and association of the individual judge. This intrusion of the public responsibilities of the judge into his private life is completely unwarranted. There is no evidence that any judge's official performance has been affected by membership in a private organization.
3) Any such action would pose unsolvable problems of definition and implementation:

a) "Invidious discrimination" cannot be satisfactorily clarified for regulatory purposes. It will be impossible to measure the requisite social inferiority and prove that it is the sole, direct result of the membership policies of any private organization.

b) Private clubs present especially difficult problems in analyzing their membership policies and practices. Clubs admit or reject applicants for many reasons, including personality, interests, and accomplishments. It is impossible to tell why an individual or a group has been accepted into membership or rejected, either by investigating particular cases or by surveying membership patterns over time. Furthermore, private clubs often offer several different types of membership which afford a range of privileges. Among the many problems that will arise is whether, in order to refute allegations of invidious discrimination, clubs will have to meet certain group "quotas" in their membership.

c) Unanticipated consequences of any action contemplated by the Judicial Conference might include its ultimate extension to many other aspects of a judge's private life, and its expansion to encompass all officers of the court as well as judges.

4) Any such action would irreparably damage private clubs. Many judges would artibrarily resign from their clubs rather than

endure embarrassing challenges. Other club members would likely follow. Regardless of their actual membership policies, many clubs would thus be stigmatized, if not destroyed.

For the sake of individual liberties and for the sake of private membership organizations, NCA urges that the Judicial Conference reconsider its decision to discourage judges from belonging to private organizations alleged to practice invidious discrimination. We respectfully suggest that the costs of that decision will be intolerably excessive and any benefits nebulous at best. Any decisions concerning the membership policies of a private organization should be left entirely to the members of that organization. Judges should continue to be able to exercise their right to become members of any legal private membership organization they find agreeable. There should be no coercion or pressure exerted by outside agencies that would distort the free decisions of either the private organization or the judge.

NATIONAL CLUB ASSOCIATION NEWSLETTER

Volume 16
Number 2
March 1981

NCA Presses Labor Secretary To Rescind OFCCP Club Dues Ban

The National Club Association has urgently requested a meeting with Labor Secretary Raymond J. Donovan to convince him to reverse the ban on federal contractor payments of employees' club expenses before the regulation becomes effective on March 30.

The regulation, hastily promulgated by the Office of Federal Contract Compliance Programs (OFCCP) during the final days of the Carter Administration, was originally scheduled to go into effect on February 17 but was one of over one hundred regulations that President Reagan suspended pending further study.

The inclusion of the OFCCP club dues regulation in the Presidential freeze was largely the result of NCA's intensive efforts in opposition to the regulation.

Having won the postponement until March 30, NCA is now working just as intensively to permanently overturn the regulation.

NCA is especially hopeful about its chances for rescinding the OFCCP regulation by both recent Reagan Administration actions and a court ruling that raises serious legal doubt about OFCCP's regulatory authority.

In a February 24 letter to Secretary Donovan (a follow-up to a February 2 letter similarly requesting a meeting), NCA Executive Director Gerard F. Hurley, CAE, cited four major points, including a February 17 Presidential executive order and a recent decision by the U.S. Court of Appeals for the Fourth Circuit in the case of *Liberty Mutual Insurance Company v. Friedman, et. al.*, as being vital to the Labor Department's review of the OFCCP regulation.

Executive Order 12291 requires impact studies of the costs and benefits of all major pending and proposed regulations that would result in "(1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based

continued on page 8

Supreme Court To Resolve Dispute On FICA-FUTA Taxes

The U.S. Supreme Court may soon resolve a conflict in the federal courts by determining whether FICA and FUTA taxes e owed on employer-provided meals and lodging.

The Supreme Court has granted certiorari in the case of *Rowan Companies, Inc. v. United States* to clarify the definition of "wages" for social security (FICA) and unemployment (FUTA) tax purposes.

The nation's highest court agreed to take the *Rowan* case after the U.S. Court of Appeals for the Fifth Circuit ruled in favor of the Internal Revenue Service claim that FICA and FUTA taxes are owed on the value of employee meals and lodging.

continued on page 6

INSIDE:

NATIONAL CLUB ASSOCIATION

1625 Eye Street, NW
Washington, D.C. 20006
(202) 466-8424

Labor Department Indefinitely Suspends Controversial Hike in Minimum Wage

The Department of Labor has indefinitely suspended the effective date for a Carter Administration regulation which would have sharply raised the minimum wage for assistants, trainees, and other workers.

In addition, DOL has reopened the period for comments until April 6.

NCA, which has previously submitted comments to DOL on the minimum wage rule, will furnish further comments.

NCA, prior to its submission of further comments to DOL on the minimum wage rule, is asking its member clubs for feedback on the effect this proposed rule will have on their clubs.

NCA is especially interested in finding out (1) how many club employees would be affected by the proposed increase; and (2) what would be the total club cost.

Member clubs are asked to send their comments to Aubrey C. King, NCA Director of Public Affairs, by March 23.

The highly unusual DOL action came just two weeks after NCA, working with other national business, trade, and hospitality industry associations, contacted the new Labor Secretary Raymond J. Donovan to protest the 11th hour moves by Carter Administration bureaucrats to push through this highly-damaging regulation. NCA and the other trade associations requested a meeting with Secretary Donovan to explain why the increase should be overturned.

The new rule, which would have raised the minimum wage for executive, administrative and professional employees by 45 percent, has generated considerable opposition from the business community. Its current status illustrates the general reaction of the new Reagan Administration to the last-minute efforts by Carter Administration bureaucrats to push through their legislation before leaving office.

Under the regulation, which was originally scheduled to go into effect February 13, 1981, executive and administrative employees would have had to be paid $225 ($11,700 annually) and meet five function tests to be exempted from overtime provisions of federal law. Currently, these employees must be paid at least $155 ($8,060 annually). The regulation also called for these employees to be paid at least $250 ($13,000 annually) by 1983.

The minimum wage for employees who qualify under the "upset" salary or short test (and who need only demonstrate that [1] they manage a department and [2] direct the work of at least two employees) would have been raised from $250 a week ($13,000 annually) to $320 ($16,640 annually) with a further increase to $345 ($17,940 annually) in 1983.

NCA emphasizes that employees, including assistant golf pros and assistant managers, are not exempt from overtime provisions just because their compensation is quoted in terms of a salary. Rather it is the wages earned and the job responsibilities which determine whether an employee is entitled to overtime pay. (For more information on exempted employees, see NCA's Reference Series entitled "Understanding the Federal Wage & Hour Laws.) ❀

IMPORTANT!

Membership Profiles Final Deadline March 15

LEGISLATIVE CONFERENCE

May 19 Conference in Washington, DC To Feature Lawmakers Discussing Key Private Club Issues

Now is the time to register for NCA's Legislative Conference and Annual Meeting to be held Tuesday, May 19, 1981, in Washington, D.C. at the prestigious Capitol Hill Club, from 8 a.m. until 4:30 p.m.

The Conference, which will feature leading Congressmen from both sides of the aisle, both Houses, will cover a wide range of legal and legislative matters important to clubs and club operations. Representatives from various government agencies currently dealing with club concerns have also been invited to participate.

The Conference will also include a brief Annual Meeting at which the membership will elect members of the Board of Directors.

Not a moment will be wasted as the Conference begins with an 8 a.m. breakfast with a guest speaker yet to be announced.

The first of the Conference's two sessions will immediately follow the breakfast and official welcome. This morning session will be a two-hour presentation of all the critical issues before the club industry today in a legal and legislative update. There will be reports from a variety of NCA counsels in law, taxes, and finance, and a full discussion of the status of various challenges to our Constitutionally protected right of free association.

The morning session will be followed by a reception in the famous Eisenhower Lounge of the club, which is known as the official Republican Club in the Nation's Capital and is located next door to the Republican National Committee headquarters on Capitol Hill.

Members of Congress and their staffs have been invited to join the reception. Conference participants are encouraged to invite their own Representatives or Senators to join them for the reception and the lunch that follows.

Lunch will include a short business session for the election of Directors.

After lunch, there will be a two-part session. Part "A" of the afternoon session will be devoted to the OFCCP question—the reimbursement or non-reimbursement of employee dues by federal contractors. This segment will be addressed by Rep. John M. Ashbrook (R-OH), ranking minority member of the House Committee on Education and Labor. Representatives from the Labor Department will also be present.

The Conference will end with part "B" of the afternoon session devoted to IRS issues such as unrelated business income and audits. Representatives from IRS have been invited to participate.

The Capitol Hill Club is located at:
300 First Street, S.E.
Washington, D.C. 20003

NCA cannot urge you too strongly to register for the Conference *now.* Please fill out the accompanying registration form and put it—with your check—in the mail today. ❀

NCA Reserves Rooms For Conference Registrants

NCA has reserved a block of rooms for Conference registrants at the luxurious Hyatt Regency Washington on Capitol Hill.

It is, however, up to individual registrants to make specific reservations with the hotel itself. In order to qualify for the special NCA block, you must reserve your room by April 25. After that time, unreserved rooms will go on a first come, first served basis.

Special convention rates are:

Single Occupancy – $70

Double Occupancy – $85

Suites – $200-$424

(depending on size)

The Hyatt Regency Washington is located at:

400 New Jersey Avenue, N.W.

Washington, D.C. 20001

(202) 737-1234 TELEX: 897432

Registration Form

Package Registration

(Includes breakfast, lunch, and both sessions.)
If multiple registration, indicate number of registrants in appropriate box.

[ ] First NCA Member Registration $100
[ ] Subsequent NCA Member Registration $80
[ ] First Non-member Registration* $150
[ ] Subsequent Non-member Registration $130

**$50 of this fee may be credited toward NCA membership.*

Partial Registration

If multiple registration, indicate number of registrants in appropriate box.

MEMBERS

[ ] Morning Session $60
[ ] Afternoon Session $60
[ ] Both Sessions $85
[ ] Breakfast $6
[ ] Reception $8
[ ] Lunch $15

NON-MEMBERS

[ ] Morning Session $90
[ ] Afternoon Session $90
[ ] Both Sessions $130
[ ] Breakfast $6
[ ] Reception $8
[ ] Lunch $15

(Non-members can get a $25 per session rebate applicable to NCA membership.

_____ $_____
Name Title

_____ $_____
Name Title

_____ $_____
Name Title

Total $_____

Club or Company Affiliation _____

Address _____

City _____ State _____ Zip _____

Telephone Number _____

Enclosed is a check for $_____ to cover registration fees. Please send this form with your check by May 15 to:

NCA Legislative Conference & Annual Meeting
National Club Association
Suite 609 ● 1625 Eye Street, N.W. ● Washington, DC 20006

Bill Filed to Reform Disability Insurance Program

Representative John N. Erlenborn (R-IL) has introduced a bill in the 97th Congress which would overhaul the ailing Longshoremen's and Harbor Workers' Compensation Act.

The bill, identical to a reform bill which was not acted on in the 96th Congress, exempts persons "providing services on or for any vessel less than 65 feet long" from coverage under the Act if they are covered by state workmen's compensation.

NCA has been working to exempt yacht club employees from the Act, and is currently investigating whether the 65-foot exemption is sufficient to cover yacht clubs or whether further clarification or amendments are needed on the bill.

A companion Senate bill to the House bill, introduced by Rep. Erlenborn, the second ranking Republican on the House Labor and Education Committee, is expected to be introduced in March.

NCA will again submit comments and lobby for the current reform bills as it did in the 96th Congress.

Meanwhile, NCA is continuing to work with the Longshore Action Committee, a coalition of 57 business and insurance groups, on a major campaign to reform the Act. The Committee supports legislative action which will curb the excesses of the Longshoremen's insurance program and realign it with the purpose of workers' compensation: to replace income at levels encouraging rehabilitation and return to work.

The Committee has begun distributing a brochure, explaining the weaknesses in the act, to the mass media, and is setting up an intensive team lobbying effort. ❀

FICA/FUTA *continued from page 1*

That decision was contrary to the Court of Claims finding in the *Hotel Conquistador* case where the IRS position was rejected (see June 1979 Newsletter).

While the Supreme Court weighs how to resolve the conflict, NCA reminds member clubs that they should submit protective filings for 1977 FICA refunds by April 15, 1981.

Last year, NCA succeeded in convincing the IRS to allow these filings.

To protect a possible claim for a 1977 FICA refund should the Supreme Court rule in favor of the Rowan Companies, NCA urges member clubs to fill out Form 843 and mail it to their IRS district office.

(Note: Form 843 is identical to the blank forms included in the March 1980 Newsletter. If you cannot obtain Form 843 from your local IRS office, call or write NCA and we'll be happy to send you a blank form and sample copy.)

The protective filing ensures that future attempts to collect refunds will not be foreclosed for the years covered by the protective filings by the three year statute of limitations.

Clubs who submitted protective filings for 1976 FICA taxes should submit protective filings this year for 1977 FICA taxes. Each protective filing applies only to the single year specified.

Last year, IRS accepted NCA's request that only minimum information be completed on Form 843. Therefore, in completing the form, fill in "more than $1" for item # 6 (the amount to be refunded). IRS officials agreed that item # 10 (the explanation) can be satisfied by inserting the statement, "Protective filing based on Court of Claims decision in *Hotel Conquistador, Inc. v. U.S.*"

In completing Form 843 for a FICA refund, check "941" on item # 9. Please indicate clearly at the top of the page that the filing is "FOR FICA REFUND."

While the issue of FICA and FUTA taxes for employer-provided meals and lodging is pending in the Supreme Court, the IRS is continuing to adhere to its policy.

In the event that the Supreme Court rules in favor of the Rowan Companies, it is not yet known if businesses will be able to collect retroactive funds. However, the protective filings will ensure that private clubs can collect if the refunds are allowed.

The Supreme Court case involves the Rowan Companies, Inc., which owns and operates offshore oil and gas drilling rigs. Because of the prohibitive cost of transporting workers to and from the shore at the start and end of each shift, Rowan provided its crews with lodging and meals aboard the offshore rigs.

In its petition for certiorari, the Rowan Companies argued that the Fifth Circuit Court's ruling conflicts with previous rulings by other federal courts, including the Court of Claims *Hotel Conquistador* decision.

In that case, the Claims Court reasoned that if the IRS did not consider the value of meals as wage income taxable to the employee, meal values should not be considered wages when determining a FICA/FUTA tax base.

The *Hotel Conquistador* decision was contrary to the IRS' longstanding policy that meals, while not subject to income tax withholding, are subject to FICA and FUTA taxes.

Now we shall await the outcome of the deliberations of the nation's highest court. ❀

NCA Officials Heartened by Generous Response As Legal Defense Fund Campaign Reaches West Coast

Contributions are still arriving daily for NCA's Legal Defense Fund as the campaign reaches our member clubs on the West Coast.

NCA officials have been decidedly heartened by the response. According to NCA President Herbert L. Emanuelson, Jr., "To say that we are very pleased would be an understatement . . . this display of support and approval for NCA's activities in defense of the private club industry is most gratifying and reassuring."

Checks have ranged from $50 to $1,975, with any amount, no matter how large or small, gratefully welcomed. NCA had originally suggested a $1 or more donation per member as a rough guideline.

The Legal Defense Fund drive was conceived by the NCA Board of Directors to fill NCA's desperate need for a special fund to defray the expenses of defending our industry in the nation's courts and legislatures.

In addition to receiving generous checks from nearly 150 clubs, NCA has also received a number of very kind letters regarding our activities.

A generous check from the Atlanta Athletic Club of Duluth, Georgia, came with a note from the club's Secretary and General Manager James E. Petzing . . . "I am enclosing . . . the Atlanta Athletic Club's contribution to the plea of NCA for additional funds to help fight legislative enactments which could severely affect the private club industry. This was a unanimous decision on the part of the Board . . . "

Joel Hampton, who is General Manager of the Mayfield Country Club of South Euclid, Ohio and also Vice-President of the Cleveland Chapter of the Club Managers Association of America, brought up an issue that is very important to NCA when he wrote, "I will encourage local managers to encourage their Boards of Directors to become members of the National Club Association. An increase in National Club Association membership would provide the additional funds needed at this time and share the burden of expense over the wide base of clubs who reap the benefits of the work of the National Club Association."

Some of our contributors are:

Akron Woman's City Club
Akron, OH

Allegheny Country Club
Sewickley, PA

Atlanta Athletic Club
Duluth, GA

Baltusrol Golf Club
Springfield, NJ

Canoe Brook Country Club
Summit, NJ

Chevy Chase Club
Chevy Chase, MD

The City Club
Dallas, TX

Country Club of Petersburg
Petersburg, VA

Fairlawn Country Club
Akron, OH

Fort Wayne Country Club
Fort Wayne, IN

Glen View Club
Golf, IL

Greensburg Country Club
Greensburg, PA

Indian Creek Country Club
Miami Beach, FL

The Kahkwa Club
Erie, PA

Lochmoor Club
Grosse Pointe Woods, MI

The Mayfield Country Club
South Euclid, OH

And special thanks to:
Golf Course Superintendents Association of America
Lawrence, KS ✿

NCA Joins Allied Golf Associations In Exploring Common Issues

Both NCA President Herbert L. Emanuelson, Jr., and NCA Executive Director Gerard F. Hurley, CAE, attended the Allied Associations of Golf Meeting February 9, 1981, at the Bay Hill Country Club in Orlando, Florida.

The meeting was aimed at the development of a common industry "agenda" on behalf of golf and golfers.

Some of the most pertinent items of joint interest discussed at the meeting included:

(1) expanding the base of golfers;

(2) increasing representation of golfing interests before governmental bodies;

(3) enhancing the image of golf;

(4) increasing the understanding of the actual golf market in terms of market statistics.

As a direct result of this meeting, members of the allied groups volunteered for in-depth studies of these areas through subcommittees, which are due to report at another joint meeting May 20, 1981, in Washington, D.C. (Remember that NCA's own Legislative Conference is to be held in Washington, D.C. May 19, 1981.)

NCA Executive Director Hurley will chair the Government Relations Subcommittee which will include representatives from CMAA, ASGCA, NGF, GCSAA, PGA, and USGA. ✿

OFCCP *continued from page 1*

enterprises in domestic or export markets."

NCA's letter explained that, "The private club industry estimates that revenue losses of over $800 million would result from this rule. This potential loss would clearly seem to make this a 'major rule' under Executive Order 12991."

Citing the *Liberty Mutual* decision, NCA noted that it "has raised the most serious questions about the legal authority underlying OFCCP rules. We respectfully suggest that no additional OFCCP rules should become effective until these uncertainties are resolved."

(NCA Legal Counsel Thomas P. Ondeck, Esq. has noted that the *Liberty Mutual* decision might be used to attack the authority of OFCCP to promulgate regulations, such as the club dues ban.)

NCA also pointed out to Secretary Donovan that, "Any regulatory review [of the OFCCP regulation] should intensively question why OFCCP has proceeded to this point without ever producing direct evidence establishing that there is a substantial employment discrimination problem that would be remedied by this rule. As we noted in our earlier letter, even your predecessor, former Secretary Marshall, acknowledged that there was no evidence documenting the problem this rule purports to resolve."

Mr. Hurley finally noted that, "We have long argued that there are compelling constitutional reasons to reject this rule."

While NCA continues its massive campaign to get the regulation overturned, it reminds member clubs that the regulation *has not* yet become effective and they should pursue business as usual.

(For more details on the meaning and impact of the OFCCP regulation, see the February Newsletter.)

While NCA intends to vigorously pursue every avenue to defeat this totally unwarranted regulation, it needs the public support of every NCA member club to increase its clout not only on Capitol Hill and in the White House, but in the news media.

An excellent example of that kind of support is a recent letter by NCA Vice President Harold B. Berman to the editor of the *Dallas* (TX) *Morning News*.

Mr. Berman wrote to the newspaper to commend them for a recent editorial commending President Reagan's 60-day freeze on all pending federal regulations and criticizing the Carter Administration's last-minute maneuvers in rushing regulations onto the books.

In his letter, Mr. Berman noted that, "Another good example of the vendetta of these 'lame duck' civil servants was the enactment by the Office of Federal Contract Compliance of the Department of Labor of complex regulations dealing with payments by federal contractors to private organizations. This department ignored the law and its own procedures to pass them. No weight whatsoever was given to the stockpile of information and facts furnished to that department that clearly indicated the lack of need for these regulations and the adverse effect upon the industries involved.

"Hopefully, during this 60-day freeze of the Reagan administration, some sane and sensible heads will examine those irresponsible actions of their predecessors and undo a great wrong."

In its fight to overturn the OFCCP regulation, NCA has received the help of a powerful ally, Representative John N. Erlenborn (R-IL), the second ranking Republican on the House Labor and Education Committee. Congressman Erlenborn recently asked Secretary Donovan to give serious consideration to NCA's arguments in determining the future of the OFCCP regulation.

The regulation, which prohibits federal contractors from paying their employees' dues or other expenses in private clubs or other organizations that restrict membership because of race, color, sex, religion, or national origin, was published in the January 16, 1981 *Federal Register,* just two working days before the Carter Administration left office. ❀

NCA Saddened By Death Of Long-Time Supporter

The National Club Association is sad to have to report the sudden death January 25 of Adolph J. Donadeo, CCM, in Hawaii the day following the close of the Club Managers Association of America Conference.

Mr. Donadeo, who was 58, was General Manager of the Pittsburgh Press Club, Pittsburgh, PA, at the time of his death.

A longtime supporter of NCA, Mr. Donadeo will be greatly missed. ❀

Welcome New Members

Bob Barrett, Manager
SHOAL CREEK
Shoal Creek, AL

David W. Howard, General Manager
MARRAKESH GOLF CLUB
Palm Desert, CA

Ronald C. Rhoads, General Manager
WYKAGYL COUNTRY CLUB
New Rochelle, NY

V. Russ Hoppe, CCM, General Manager
CANYON COUNTRY CLUB
Palm Springs, CA

NATIONAL CLUB ASSOCIATION NEWSLETTER

Volume 16
Number 1
February 1981

Club Payment Ban Suspended

NCA's Intensive Efforts Frustrate OFCCP's Midnight Raid

President Reagan has frozen the effective date of the regulation banning federal contractor payments of employees' club expenses for 60 days—largely as a result of the National Club Association's intensive efforts in opposition to the regulations.

The club dues regulation, rushed onto the books by opponents of private clubs in the Labor Department in the final hours of the Carter Administration, was originally scheduled to become effective on February 17 but has been put off until March 30 [from Jan. 30] to give the new administration more time to study it. There is a good chance that Labor may even agree to extend the regulation an additional 30 days beyond the Presidential freeze.

The club dues regulation is one of over one hundred regulations that the Reagan Administration has marked for early attention, at least ten of which are from the Labor Department alone (see related story on page 3).

Utilizing every contact in the highest levels of government, NCA has launched a massive campaign to have the Office of Federal Contract Compliance Programs regulation withdrawn entirely. NCA is disturbed by the news media's persistent reporting of the regulation as if it was an accomplished fact and is rallying club leaders throughout the country to alert other club members and officers that there is good reason to hope that the regulation will never be allowed to go into effect—*if* the club community acts now to give strong vocal support to NCA's efforts in opposition to the measure.

"We are outraged that a small group of Labor Department bureaucrats have disregarded the overwhelming public opposition to this regulation—and obvious lack of evidence to support such a sweeping action—to turn their personal vendetta against private

continued on page 4

Q&A

Following are questions most likely to arise concerning the new OFCCP regulation. The answers are primarily based directly on the regulation and explanatory comments as published in 46 *Federal Register* 3892 (January 16, 1981). Where appropriate and reasonable, some answers include interpretations and projections by NCA, which are identified accordingly.

Q What does the regulation say?

A The most significant part of the regulation would prohibit "pay-

continued on page 5

INSIDE:

NATIONAL CLUB ASSOCIATION

1625 Eye Street, NW
Washington, D.C. 20006
(202) 466-8424

NCA Briefs CMAA Conference Attendees On Latest Threats To Club Industry

Reaffirming the close ties between the National Club Association and the Club Managers Association of America, NCA kicked off CMAA's 54th Annual Conference, Honolulu, Hawaii, January 19-20, with a special "Legal/Legislative Seminar" designed expressly for club managers.

NCA Legal Counsel Thomas P. Ondeck conducted the seminar, after an introduction by Executive Director Gerard F. Hurley, CAE, and with closing remarks by NCA Past President Milton E. Meyer, Jr. Meyer exhorted club managers to "cooperate and coordinate" at the state and local levels destined to be the new legal and legislative battleground now that we have a clubman in the White House.

Mr. Ondeck began by calling the newly-signed OFCCP regulation "The single most important challenge to private clubs this year . . . bureaucracy run rampant . . . a final joke on the American public by lame duck officials."

Besides detailing the OFCCP fight, Ondeck touched on the disputed membership of federal judges in private clubs, state and local attacks on clubs through threats to liquor licenses and tax differentials, some specific court rulings, such as in the Salisbury Club Case, and a number of issues relating to taxation.

Mr. Ondeck particularly stressed that "Some of the most dangerous challenges to private clubs are being mounted at the municipal level." He cited the infamous Philadelphia OFCCP clone as evidence of this phenomenon, and explained that challenges at this level are "easier to push through" because of the comparatively small size of the legislative bodies and constituencies involved. He also pointed out that governmental actions can move so swiftly at the city level that a measure can be proposed, passed, and finalized before local clubs can organize formal opposition.

"A city council ordinance affecting clubs will normally be administered by a small, extremely biased administration such as a municipal human rights commission," Ondeck warned.

The NCA representatives reported that they were warmly received and that the famous Hawaiian spirit of hospitality was a hallmark of the CMAA gathering, which also included seminars on topics ranging from "Effective Time Management" to "Creative Thinking for Better Business," and the election of the 1981 CMAA officers.

CMAA's new president is Richard P. Maynes, CCM, Oahu Country Club, Honolulu, HI. James A. Goslin, Jr., CCM, Warwick Country Club, Warwick Neck, RI, is the new Vice President, and Raymond D. Watts, CCM, Houston Club, Houston, TX, is Secretary-Treasurer. Bob Hedges, CCM, Arlington Club, Portland , OR, was re-elected to the Board and newly elected Board members were James H. Brewer, CCM, Los Angeles Country Club, Los Angeles, CA, and Burnett N. "Buzz" Johnston, CCM, Orchard Lake Country Club, Orchard Lake, MI.

The varying topics of Mr. Ondeck's remarks will be treated individually and in detail in this and future NCA Newsletters, but those wishing the complete presentation on tape ($7.00 each) can contact:
Club Managers Association of America
National Headquarters
7615 Winterberry Place
P.O. Box 34482
Washington, D.C. 20034

NCA Vice President Harold B. Berman (right) welcomes fellow Texan James E. Maser (left), President of the Dallas-based Club Corporation of America, and his family of outstanding private clubs onto the NCA team.

Easy Passage Of Philadelphia Bills Illustrates Need For United Action

Philadelphia Mayor William Green on Jan. 14 signed into law two bills, banning city contractors from reimbursing employees' club dues and expenses and prohibiting the city from conducting its business in private clubs with selective membership policies.

Mayor Green signed the bills despite the direct, personal efforts of NCA Executive Director Gerard F. Hurley, CAE, and Counsel Thomas H. Quinn to convince him to veto them.

Hurley and Quinn traveled to Philadelphia to brief the Mayor on the dangerous ramifications of the passage of these bills not only for Philadelphia clubs but for clubs across the country.

"One of our major concerns is that the Philadelphia bills may be copied by other city councils across the country," said Hurley.

Bill No. 336, patterned after the recently-signed OFCCP regulation, prohibits anyone doing business with the City of Philadelphia from "reimbursing or subsidizing employees . . . for expenses associated with the use of certain private organizations which bar, restrict, or limit membership on the basis of race, color, sex, religion, or national origin or ancestry." Bill No. 337 prohibits the City from paying or reimbursing any of its employees or officials for business expenses or entertainment in connection with the use of such private organizations.

The bills were first introduced in August but a hearing was not held until December 1 (Previously scheduled hearings in October and November had been canceled.) The bills were unanimously passed by the City Council just two weeks later in a special session.

"The quick and easy passage of these bills by the Philadelphia City Council should serve as a chilling reminder that private clubs across the country must be alert to the ever-increasing threats in their own backyards," said NCA Executive Director Hurley.

"The swiftness with which the Philadelphia City Council and the Mayor acted on these bills gave our Philadelphia clubs little time to

continued on page 12

Management Pay Hike Frozen By New Administration

A regulation, sharply raising the minimum wage for assistants, trainees, and other workers, has been frozen for 60 days by President Reagan.

The minimum wage rule, which NCA has officially protested to the Department of Labor, was one of over one hundred regulations, issued during the final days of the Carter Administration, which were postponed to allow the new administration more time to study them (see related story on OFCCP regulation on page 1).

Mark de Bernardo, a labor law specialist for the U.S. Chamber of Commerce, called the Carter Administration's action "a midnight raid."

NCA has joined a coalition of other national business, trade, and hospitality industry associations in protesting the Labor Department regulation, which raises the minimum wage for executive, administrative, and professional employees by 45 percent.

Under the new regulation, which was theoretically scheduled to go into effect February 13, 1981 but has now been extended until March 30, executive and administrative employees must be paid $225 and meet five function tests to be exempted from overtime provisions of federal law. Previously, the minimum wage was $155. Under the regulation, the minimum wage for executive and administrative employees is to be raised to $250 by 1983.

The minimum wage for employees who qualify under the "upset" salary or short test (and who need only demonstrate that [1] they manage a department and [2] direct the work of at least two employees) has been raised from $250 a week to $320 with a further increase to $345 in 1983.

continued on page 8

OFCCP Club Payments Ban Frozen Until March 30

continued from page 1

clubs into public policy," said NCA President Herbert L. Emanuelson, Jr. "Their actions are unconscionable and serve as a classic, and very frightening, case study of bureaucracy run rampant."

Emanuelson continued that, "While we condemn this gross abuse of power by lame duck officials in the Labor Department, NCA is encouraged by both the new administration's more thoughtful approach and Attorney General William French Smith's eloquent and cool-headed defense of private clubs during his confirmation hearings (see story on page 6). We are now hoping for a less hysterical and more substantive consideration of private club issues in Washington."

Noting the recent signing of anti-private club bills in Philadelphia (see story on page 3), Emanuelson warned that, "Private clubs can't afford to be complacent with a friendlier administration in Washington while the activists are turning to the local level to attack private clubs. The Philadelphia bills particularly alarm us because of the cookie-cutter effect they may have on private clubs throughout the country."

The OFCCP regulation, which prohibits federal contractors from paying their employees' dues or other expenses in private clubs or other organizations that restrict membership because of race, color, sex, religion, or national origin, was published in the January 16, 1981 *Federal Register,* just two working days before the Carter Administration left office.

Having won its postponement, NCA now is asking the new administration to rescind the regulations as unnecessary and improper. NCA recognizes that if these administrative procedures fail, a court challenge may be the only alternative.

NCA has been hampered throughout its five-year fight to stop the OFCCP regulation by the secrecy surrounding it.

"From the very beginning, OFCCP officials knew there would be widespread criticism of this regulation, so they tried to hide their actions," said Emanuelson. The regulation was originally proposed as an OFCCP internal opinion memorandum (thus avoiding the necessity of public hearings) in 1976 but was withdrawn after the Justice Department (under President Ford) pointed out the proposed policy was overly broad; the Justice Department again in 1977 (this time under President Carter) said that most reimbursement policies probably *did* violate federal contractor regulations but because some may not the presumption of violation must be rebuttable. That was the "go" signal Labor bureaucrats needed.

"NCA will pursue every avenue to defeat this totally unwarranted intrusion into our private lives"

Herbert L. Emanuelson, Jr.
NCA President

The proposed regulation laid dormant until January 1980 when OFCCP unveiled its proposal. Despite public comments running four to one against the regulation, OFCCP pressed on, proposing to issue the regulation in July 1980.

At that point, NCA, working with its Congressional contacts, convinced Democratic Party officials that the proposed regulation was inappropriate and should not be issued; likely they also recognized that it would be politically unwise to issue such a controversial regulation before the election. Accordingly Administration sources told OFCCP to hold action on the regulation at least until after the election; NCA had hoped the election would chill further agency action.

Despite President Carter's stunning defeat—and its clear message that voters were disgusted with excessive government interference in their private lives—the undaunted OFCCP bureaucrats ignored public sentiment and moved swiftly to issue their final OFCCP regulations before President Reagan arrived in town.

Through its contacts both in the Labor Department and the Reagan transition team, NCA became aware of the frantic efforts to issue the regulation before the change of administrations.

In a stern letter to Labor Secretary Ray Marshall, NCA noted OFCCP's failure to issue a required economic impact analysis and other procedural failures; called Marshall's attention to OFCCP's secrecy; and asked him to defer action on the regulation until after the change of administrations.

On the political front, NCA, working closely with high level members of the Reagan transition team for the Labor Department, convinced them to formally request the Carter Administration to defer this regulation until after the change of administrations. The Carter White House deferred these decisions to the individual cabinet secretaries.

At the hearing, the government's attorney said that EEOC had reconsidered and now agreed to open the meeting. He asked the judge to dismiss the case.

continued on page 9

Q&A

continued from page 1

ment or reimbursement by contractors of membership fees and other expenses for participation by their employees in a private club or organization which bars, restricts, or limits its membership on the basis of race, color, sex, religion, or national origin."

Q When will the regulation be effective?

A As a result primarily of NCA's efforts, the effective date has now been extended 60 (sixty) days [from the Jan. 30 Presidential regulation freeze] to March 30. The originally scheduled date was February 17, 1981. NCA is determined to work with its member clubs to secure the total withdrawal of the regulation by Reagan Administration officials before it becomes effective.

Q Should clubs go ahead and make changes in their membership policies and practices as a result of this regulation?

A No. NCA advises that clubs make no changes in their membership policies and practices solely as a result of this regulation. NCA believes no club membership policy changes are now warranted because:

(a) the regulation is not yet effective and will not become effective in the immediate future, if ever;

(b) the regulation is so vague and general it is unclear yet precisely how it would be interpreted;

(c) the regulation does not directly require any action by clubs; the only direct requirements of the regulation would be imposed on contractors.

Q What requirements would be imposed on contractors?

A There are two:

(a) The contractor can continue to pay or reimburse any employee for participation in a private organization with a selective membership policy if the contractor can prove to OFCCP that the membership policy of that organization does not "abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin."

(b) "The contractor has the responsibility of determining whether the club or organization restricts membership . . . " on the basis of the forbidden reasons.

Q How would the contractor comply with these two requirements?

A (a) The regulation and comments are silent as to how the contractor can determine whether a private organization's membership policies may affect the "terms and conditions of employment of those of its employees barred from membership." No real guidance is provided on this point. As originally proposed twelve months ago, the regulation provided an elaborate, complex process for the employer to make such a determination. Many objections were made about the burdens that process would have placed on contractors. Now it seems OFCCP would go from one extreme to the other, from a convoluted procedure to none at all.

(b) In determining the nature of a private organization's membership policy, the contractor may rely "upon certification from an officer of the club, from an examination of the organization's by-laws, or from any other evidence." OFCCP, in other words, would allow the contractor to accept some official, written statement of a club's membership policy.

Q How would OFCCP verify determinations by a contractor as to a club's membership policy?

A There are no guidelines or standards in the comments or in the regulation concerning how OFCCP would investigate and verify such determinations. NCA believes this to be one of the most ominous aspects of the regulation. There is nothing in the regulation that would place any limits on future OFCCP investigations of any private organization's membership policies and practices.

Q Are clubs the only private organizations that may be affected by this regulation?

A No. In its comments, OFCCP explicitly indicates that no private organizations are exempted. Thus, all civic, ethnic, fraternal, service, and religious groups would be included.

Q How great an impact would this regulation really have on private clubs?

A OFCCP has persistently refused to estimate the economic impact of this regulation. According to a 1980 NCA survey, the private club industry faces the potential loss of over $800 million, with the average city club losing over 35% of gross revenue, and the average country club losing over 21% of its revenue.

This loss will be worsened if the regulation not only becomes effective as published, but is pursued and then expanded by OFCCP. NCA knows that OFCCP has either actually attempted or would like to expand its authority by broadening the definition of contractors to include their subcontractors as well, by interpreting "payments or reimbursements" to employees to include expenditures employees

continued on page 11

William French Smith/

Attorney General William French Smith is proud to belong to private clubs—and he demonstrated it during his recent confirmation hearing before the Senate Committee on the Judiciary by eloquently refusing to be intimidated into resigning his memberships.

With his direct and calm defense of private clubs, Smith promises to be one of the most refreshing figures to hit Washington in recent years.

Rather than making the politically expedient symbolic gesture of resigning his club memberships to quiet civil rights activists, Smith held firm, challenging the notion that membership in single-sex organizations is evidence of discriminatory attitudes.

The issue of Smith's membership in two private, all-male California clubs was the only controversial issue raised during his confirmation hearing and he was unanimously approved by the Committee.

"I do not think we have reached the point where belonging to the Boy Scouts or Girl Scouts, going to a women's college or a men's college or even playing on a female or male Davis Cup team should be viewed as evidence of discriminatory attitudes," Smith told the Committee. "I am completely satisfied that neither of these two clubs [to which he belongs] has discriminatory practices."

Fully committing himself to enforcement of civil rights laws, Smith added that "belonging to a private, all-male club does not constitute a violation of that concept."

Two Judiciary Committee members, Senators Edward M. Kennedy (D-MA) and Joseph R. Biden, Jr. (D-DE) asked Smith to resign his memberships. Sen. Alan Cranston (D-CA), one of the two California senators who introduced Smith to the panel, the National Organization of Women, the National Women's Political Caucus and the League of Women Voters also made similar requests.

Sen. Cranston, while saying he doesn't believe membership in all-male clubs should disqualify Mr. Smith from becoming Attorney General, added that Mr. Smith should resign his memberships because "they suggest an insensitivity to the consequences of discrimination to women and minorities."

Sen. Cranston's fellow California senator, S. I. Hayakawa, however, defended Mr. Smith's club memberships citing his own membership in one of Smith's clubs as evidence that it does not discriminate against minorities. He added that in both primitive and advanced societies men and women at times feel more comfortable with their own sex.

Under questioning from Senator Kennedy, who suggested that Smith's memberships in all-male clubs gives an "appearance" of discriminatory attitudes, Smith replied that he is well aware of "appearance" but it should not be taken to extremes.

"Should I resign from my church so as to avoid the 'appearance' of a church-state conflict?" Smith commented. "The rule of reason has to be applied in these cases."

Senator Biden continued to press Mr. Smith on his club memberships, suggesting that Mr. Smith had a "generational blind spot" in not recognizing the women's movement as being of equal consequence with other civil rights movements.

"Even if you don't resign, which I've asked you to do, at least you should become aware of the point I am trying to make," Senator Biden told Mr. Smith. "You may send signals of intense insensitivity to one of the most important issues in civil rights."

Smith responded, "I subscribe to everything you have just said. The difference is in degree, not kind."

Among other Judiciary Committee members commenting on the private club issue were Senators Robert Dole (R-KS), Arlen Spector (R-PA), Charles Grassley (R-IA) and Chairman Strom Thurmond (R-SC).

Senator Dole said he hoped that the club issue wouldn't be the overriding concern in questioning Mr. Smith since there are more important civil rights issues, such as equal pay.

"I do not think we have reached the point where belonging to the Boy Scouts or Girl Scouts, going to a women's college or a men's college . . . should be viewed as evidence of discriminatory attitudes."

William French Smith
Attorney General

New Attorney General Calmly Rejects Criticism Of Private Club Memberships

Senator Spector questioned whether asking Mr. Smith to resign from his clubs as a symbolic gesture was really meaningful and cautioned against ignoring the importance of freedom of association. (It is interesting to note that it is the Senator's spouse, Joan Spector, who authored the recently enacted Philadelphia law banning certain dues payments by city contractors.)

Senator Thurmond remarked, "Why can't groups of men gather in private and groups of women gather in private?"

A panel of witnesses, representing women's groups, asked Mr. Smith to resign his club memberships but were unwilling to ask the Committee to reject his confirmation. This prompted Senator Grassley to question whether the club membership issue was really important when even the witnesses didn't consider it grounds for rejecting Mr. Smith's nomination.

In a letter to Attorney General Smith, the Conference of Private Organizations, of which NCA is a participating member, commended him for pointing out that membership in a private organization has "absolutely no relevance to one's fitness for public office. To suggest otherwise would be to raise a trivial, symbolic issue, were there not significant principles at stake. We must, however, never lose sight of the fundamental distinction between what is public and what is private. The right of individuals to join together in private organizations and operate outside the control of government is protected by our Constitution. Surely, the framers of our Constitution never intended to deny its protections to public officials."

NCA President Herbert L. Emanuelson, Jr. has written to Senator Thurmond and other members of the Committee on the Judiciary, congratulating them for resisting the suggestion that Mr. Smith resign his club memberships as a price for accepting his new position. "It is reassuring to see attention directed to Mr. Smith's experience and abilities, rather than to 'symbolic' gestures intended only to placate vocal activist groups," he wrote. ❀


VIP

The Clubs of William French Smith

JUDY MANN

His Private Clubs Tell Something About a Man

A sampling of recent press comments on William French Smith's private club memberships

workshop corner

Q. Can our club's pro advertise publicly a special sale of his inventory?

A. He may be able to do so but we don't recommend it. As a general rule, private tax-exempt clubs should not become involved in any way with public advertising. It is very possible that involvement in public advertising may jeopardize the private status of a club. In the recent case of *Wright v. Salisbury,* the U.S. Fourth Circuit Court of Appeals cited that club's very limited involvement with advertising several years past as one of the reasons to support its rejection of the club's claim that it was truly private.

Although technically it would be your pro, and not your club, that would be advertising, this distinction may not be sufficient if you are forced to defend your club's private status.

Rather than public advertising, your club may want to consider alternatives that would promote the pro's sale, such as advertising in the club newsletter.

Q. Can we consider our club manager an independent contractor? The manager, who is responsible for the food and bar operations and maintenance of the clubhouse, receives a salary from the club which is paid through payroll, lives on the club premises and does not have other similar businesses. Concerning the food operation, our manager prepares the billing to members, collects receipts, pays the expenses and payroll, owns the equipment and retains the profit. He, not the club, reports the income and expense on his personal return. As for the bar operation, our manager prepares the billing to members; deposits receipts in the club's bank accounts; is reimbursed by the club for expenses; and receives a commission on the net profit. The club reports the income and expense.

A. No, judging from the facts you described, your club manager cannot be considered an independent contractor. Some indications of this are that he receives a salary from the club, lives on the club's premises, does not operate other similar businesses, and deposits the receipts of the bar operations in the club's bank account. Since the manager would not be considered an independent contractor and the restaurant is an integral part of the operations, the restaurant sales and expenses should be reported on the club's Form 990. Any unrelated business income should be reported on the club's Form 990-T. The unrelated business income would be included in the calculation for determining tax exempt status. Also, since the manager is not an independent contractor, he and his workers would be considered employees of the club and, therefore, the club is ultimately responsible for any violations of the Wage and Hour Laws. ❀

Carl Jehlen, CCM Retires After 28 Years

Carl J. Jehlen, CCM, long active in NCA affairs, has retired after 28 years as General Manager of the Baltusrol Golf Club in Springfield, New Jersey.

The club's Board of Governors has appointed Assistant Manager Mark De Noble to replace Mr. Jehlen who will continue to serve as a consultant through April.

Mr. De Noble previously served as Manager of the Suburban Golf Club and the Essex Fells Country Club. ❀

Management Minimum Wage

continued from page 3

(For more information on exempted employees, see NCA's Reference Series entitled "Understanding the Federal Wage & Hour Laws".)

In a letter to Labor Secretary Designate Raymond J. Donovan requesting an extension of the minimum wage increase's effective date so that the issue could be rescinded, NCA Executive Director Gerard F. Hurley, CAE, pointed out that:

- The increase would have a severe inflationary effect.
- There is insufficient rationale for utilizing salary levels as a test for exempt employees.
- This increase was deliberately promulgated before the Reagan Administration could consider it.
- This increase will have a chaotic effect on large and small businesses. ❀

NCA Working With Business Coalition To Reform Longshoremen's Act

The National Club Association is working with a coalition of 57 business and insurance groups which has launched a major campaign to reform the Longshoremen's and Harbor Workers' Compensation Act.

The coalition, known as the Longshore Action Committee, supports legislative action which will curb the excesses of the Longshoremen's insurance program and realign it with the purpose of workers' compensation: to replace income at levels encouraging rehabilitation and return to work.

In addition to working with the Longshore Action Committee to seek overall reform of the Longshoremen's and Harbor Workers' Compensation Act, NCA is also working to exempt yacht club employees from the Act.

The Committee, which counts among its members the Alliance of American Insurers, the American Boat Builders and Repairers Association, American Trucking Association, Chamber of Commerce of the United States and National Association of Manufacturers, has drafted a brochure explaining the weaknesses in the Act. The brochure will be distributed on a mass basis to the news media.

The Committee is also setting up an intensive team lobbying effort in which members will collectively talk to individual congressmen.

Committee members are being encouraged to simultaneously generate activities on the part of their individual groups. ❀

OFCCP *continued from page 4*

Through coordination with transition officials our materials were conveyed to Secretary-Designate Donovan who asked Secretary Marshall to defer the club regulation, along with a number of other items.

Marshall, however, indicated that he was committed to follow the recommendations of the head of OFCCP and the Solicitor of Labor (two of the individuals who have spearheaded this effort). In fact, when asked why she was pursuing these controversial club regulations so vigorously, the Solicitor replied that she and her colleagues wanted to make a "political statement."

NCA also proceeded on the judicial front. Although the regulation could not be attacked in court until after its enactment, NCA was able to take advantage of procedural malfeasance by the Equal Employment Opportunity Commission (which must approve all equal opportunity regulations).

EEOC is required to comply with the Government in the Sunshine Act which requires, among other things, that it give public notice of its meetings and open them to the public except under very specific circumstances. In this case, however, EEOC, acting on a request by OFCCP, intended to hold a closed meeting and tried to point to an exemption in the Act to justify its action.

NCA brought suit on January 12—one day before the scheduled EEOC meeting in the Federal District Court for the District of Columbia, arguing that the secret meeting would violate the Government in the Sunshine Act and asking for a temporary restraining order injunction against the EEOC. In addition to forcing EEOC to open its meeting, NCA hoped that the judge would require the EEOC to abide by a new seven-day notice period before it could hold its open meeting (which would mean Inauguration Day), but that was denied.

However, Judge Louis Oberdorfer persisted, conducting a two-hour hearing during which he permitted NCA to put on the record a full statement of the government's outrageous attempt to rush this regulation into law. As well as ordering the government to take all steps to inform the public of the EEOC meeting, Judge Oberdorfer criticized the government's conduct and stated that its abuses would serve as a good basis for challenging the regulation once it was enacted.

As expected, the OFCCP regulation was quickly approved by EEOC the next morning and, within 30 minutes, was also signed by Secretary Marshall.

As the February 17 effective date for the OFCCP regulation approaches, NCA has been concentrating on making the Reagan Administration, and especially Labor Secretary-Designate Donovan, aware of the need to prevent this regulation from taking effect.

"NCA will pursue every avenue to defeat this totally unwarranted intrusion into our private lives. The social engineers at the Labor Department may think they have succeeded in their vendetta against private clubs but we intend to prove them wrong," Emanuelson warned. ❀

NCA Legal Defense Fund/

NCA is proud to report that as of press time, well over 100 member clubs from 30 states and the District of Columbia have responded with donations to our Legal Defense Fund, with contributions still arriving daily as the campaign reaches the West Coast.

Checks have ranged from $50 to $1,975, with any amount, no matter how large or small, gratefully welcomed. NCA had originally suggested a $1 or more donation per member as a rough guideline for contributions to the drive.

In addition to filling NCA's desperate need for a special fund to defray the expenses of defending our industry in the nation's courts and legislatures, the Legal Defense Fund drive was designed to acquaint individual club members with NCA and their clubs' participation in NCA programs.

Although most clubs simply sent a lump sum check representing the contributions of, or on behalf of, their memberships, at least one individual member insisted on sending his own personal check to NCA. That was David Nimick of the Allegheny Country Club of Sewickley, Pennsylvania. His gesture, and the comments of individual members sent along to NCA by contributing clubs, has made the Legal Defense Fund effort doubly worthwhile.

The need is greater than ever. We have high hopes that the Reagan Administration will bring a much needed sensitivity to club industry concerns to the highest levels of government. However, it appears that this sympathy for club rights by the nation's elected leaders has spurred the anti-club federal bureaucracy and state and local level activists onto even more intense anti-club efforts.

If any proof of this trend is needed, consider the frantic last-minute push by OFCCP to have outgoing Labor Secretary Marshall sign as final the regulation NCA has fought against for nearly five years (see article on page 1 of this issue), and the signing, only one day later, by Philadelphia's mayor of an almost identical bill aimed at city contractors.

In order to make sure that the "final" on these measures is an empty word, NCA has lined up the best possible counsel . . . which, of course, we *always* do in order to give clubs a fair hearing in local, state and federal courts and legislatures.

But the best of anything is inevitably expensive, which is why NCA is grateful for the support of so many member clubs for our Legal Defense Fund drive. A partial list of clubs contributing since our last listing in this space includes:

Bookcliff Country Club
Grand Junction, CO

Butterfield Country Club
Hinsdale, IL

The California Club
Los Angeles, CA

Capital City Club
Atlanta, GA

Charlotte City Club
Charlotte, NC

Cleveland Athletic Club
Cleveland, OH

Cleveland Yachting Club
Rocky River, OH

Congressional Country Club
Bethesda, MD

Corpus Christi Country Club
Corpus Christi, TX

The Country Club
Brookline, MA

Country Club of Little Rock
Little Rock, AK

Country Club of Orlando
Orlando, FL

Country Club of Terre Haute
Terre Haute, IN

Dallas Country Club
Dallas, TX

Decathlon Athletic Club, Inc.
Bloomington, MN

Del Paso Country Club
Sacramento, CA

East Ridge Country Club
Shreveport, LA

Highland Country Club
Fayetteville, NC

Hyperion Field Club
Grimes, IA

Kenwood Country Club
Cincinnati, OH

Lehigh Country Club
Allentown, PA

MARK YOUR CALENDARS!

NCA Annual Meeting & Legislative Conference

May 19, 1981

Capitol Hill Club
Washington, DC

(See next Newsletter for details)

Over 100 Clubs Respond To NCA Drive But More Needed To Fight Anti-Club Efforts

The Los Angeles Country Club
Los Angeles, CA

Merion Golf Club
Ardmore, PA

The Metropolitan Club
New York, NY

Minneapolis Athletic Club
Minneapolis, MN

Minnehaha Country Club
Sioux Falls, SD

The Mohawk Club
Schenectady, NY

Old Warson Country Club
St. Louis, MO

Old Westbury Golf and Country Club
Old Westbury, NY

Pelican Yacht Club
Fort Pierce, FL

Race Brook Country Club
Orange, CT

Racquet and Tennis Club
New York, NY

Richmond County Country Club
Staten Island, NY

River Hills Country Club
Clover, SC

Schuyler Meadows Club
Loudonville, NY

The Stock Exchange Luncheon Club
New York, NY

The Summit
Houston, TX

Westchester Country Club
Rye, NY

Wilmington Club
Wilmington, DE ❀

Q&A

continued from page 5

make from their own salaries, or by adding such categories as "handicapped persons" to those to whom a club could not deny membership. Any of these changes would increase the scope and impact of the regulation enormously.

Q What does NCA advise a club to do if asked about its membership policy by a federal contractor?

A NCA has long advised clubs to answer all inquiries about their membership policies and practices by citing the club by-laws (assuming the club wishes to respond at all). We do not advise club officers personally to categorize or describe such policies. Such statements could conceivably place club officials in personal legal jeopardy in the event of an OFCCP investigation. We believe this advice remains valid with regard to inquiries from federal contractors.

Q Would federal contractors soon be investigated by OFCCP if this regulation becomes effective?

A Even assuming that this regulation ever becomes effective, the chances are very slight that any contractor would soon be contacted by OFCCP because of it. In all of 1980, OFCCP investigated only 1 1/2 percent of the nearly 300,000 federal contractors in this country.

Q How does OFCCP determine which contractors it will investigate?

A The criteria are not precise and inflexible but in general, NCA has learned that OFCCP investigates a contractor when a serious complaint is received, or when a large (over $1 million) federal contract is to be awarded to a contractor that has a substantial number of employees (over 250) and/or a past history of employment discrimination problems, especially if it has been at least two years since the last OFCCP investigation.

Q What can clubs do now to get this regulation rescinded?

A We have succeeded in our first objective: to get the effective date of the regulation extended. Now a much more difficult task is at hand. To get the regulation rescinded will require an intensive political effort by the private club industry. Although we expect the Reagan Administration to be more sympathetic than its predecessors, it will still have to be convinced of why it must go to the trouble that rescision will require.

We know the constitutional and equitable arguments are on our side. But we must demonstrate political strength also. So it is imperative that all clubs and their members contact their Senators and Representatives in Congress as well as the White House on this issue, and if necessary, keep contacting them. We must demand that our political leaders have this outrageous regulation withdrawn forever. ❀

NCA Clubs in New York City Urged To Keep Pressure On To Defeat Anti-Club Bill

The New York City Council's Committee on General Welfare is still considering an anti-club bill that NCA has opposed and monitored since last summer.

Int. No. 801 would reclassify private membership organizations as public accommodations (thus subject to the regulations of the city's Commission on Human Rights) *unless* these organizations can *prove* that over 80% of their income comes strictly from members' personal funds, not as expenses reimbursed by an employer or deducted by members on personal tax returns (a requirement that virtually no club could satisfy).

NCA has opposed this bill on the grounds that it:

- violates individual rights of privacy and association, as well as free speech;
- violates all judicial and legislative definitions of "private" clubs;
- assumes fallaciously an unproven connection between membership in a private club and an individual's career advancement.

Although the New York State Club Association, the Conference of Private Organizations (in New York), NCA city clubs and other private groups have registered considerable opposition to Int. No. 801, much more is needed.

NCA again urges all New York City member clubs to express their strongest possible opposition to:

Mrs. Aileen B. Ryan
Chairwoman, Committee on
General Welfare
City Council
City Hall
New York, NY 10007 ❀

Philadelphia

continued from page 3

mobilize any effective vocal opposition. Even Mayor Green told me that, lacking any opposition to these bills on the record, he had little choice but to sign them."

Private club officials can learn a valuable political lesson from the Philadelphia experience by recognizing that challenges to private clubs are not going to disappear, and they must develop political savvy to battle them.

Private clubs can't afford to sit back and assume that the bills being considered by city councils in their communities—or by city councils elsewhere in the country—won't affect them. That attitude can prove to be very costly. Sooner or later, the activists will be knocking on your door—as the Philadelphia clubs found out—if you don't join with other private clubs in combatting these threats now.

"Politicians are body counters," said Mr. Hurley. "They need to see and directly hear from their constituents who will be affected. Plus they need to know *why* the measure should be defeated. Finally, they must be assured that if they stick their neck out for you they can expect political ammunition support from you. Club officers have been particularly remiss on these political requirements." ❀

NCA Executive Director Appointed to Board

Mr. Gerard F. Hurley, CAE, Executive Director of the National Club Association, has just been elected to the Board of Governors of the prestigious Capitol Hill Club, Washington, D.C.

Mr. Hurley, who has been a member of the Capitol Hill Club's House Committee for two years, will serve a three-year term.

The Capitol Hill Club, which is located next door to the Republican National Committee Headquarters on Capitol Hill, is known as the Republican club in the nation's capital. The club includes among its membership Congressmen, Congressional staff members, and leading lobbyists. ❀

Welcome New Members

Raymond M. Adams, General Manager
CHICAGO YACHT CLUB
Chicago, IL

Robert E. Waid, General Manager
EL CONQUISTADOR COUNTRY CLUB, INC.
Bradenton, FL

Arra J. Swisher, Manager
EL NIGUEL COUNTRY CLUB
Laguna Niguel, CA

John S. Davidson, Jr., General Manager
GASTON COUNTRY CLUB
Gastonia, NC

John W. Thomas, Esq., President
Jay Marion, General Manager
THE SUMMIT CLUB
Columbia, NC

Charles A. DeLone, President
David H. Voorhees, Club Manager
WHITFORD COUNTRY CLUB
Exton, PA ❀

NATIONAL CLUB ASSOCIATION NEWSLETTER

Volume 15
Number 11
December/January 1981

Labor Rushing To Issue Rules Banning Club Dues Payments

The National Club Association has learned that lame duck officials in the U.S. Department of Labor may well issue in early January regulations banning federal contractor payments of employees' dues and expenses in selective membership organizations.

Through its contacts at the highest levels in the Labor Department, NCA has been daily investigating conflicting reports about the status of the long-dormant regulations' status amid press reports that the Labor Department is rushing to release a host of regulations before the Reagan Administration takes over.

Meanwhile, an amendment, proposed by Sen. Jesse Helms and designed to block the 11th hour release of Labor Department regulations, was defeated by a vote of 54-30 in the final days of the 96th Congress.

Despite the ominous rumblings from the Labor Department and the defeat of the Helms Amendment, NCA is vigorously continuing its fight to block the regulations, that reportedly have been drafted in final form by the Labor Department's Office of Federal Contract Compliance Programs (OFCCP).

NCA has been utilizing the network of contacts in Congress, the Labor Department and private associations developed during its four-year battle to block the issuance of the OFCCP regulations. These contacts have ensured that NCA's concerns are being heard on the highest levels of both the Carter Administration and the Reagan transition team. Whether these NCA efforts will be enough to block the regulations, however, is not known at this point.

OFCCP has argued that club dues payments create such a singular, unfair career advancement opportunity that they must be available to all employees or none.

NCA has been arguing since regulations were first proposed in April 1976 that they violate constitutionally protected rights of association and privacy and are erroneously based on an assumed link between career advancement and private club membership—a link that has never been substantiated by any court ruling, administrative finding or statistical

continued on page 6

Anti-club Bills Passage Possible In Philadelphia

The Philadelphia City Council is now expected to approve two bills that pose a serious threat to the city's private clubs.

The bills would ban city contractors from reimbursing employees' club dues and expenses and prohibit the city from reimbursing employees' expenses and conducting city business in private clubs with selective membership policies. They were hurriedly considered by the Council's Committee on Labor and Civil Service during a brief hearing on December 1. With only two of six members present for the vote, the Committee recommended that the full Council approve the two bills.

The bills are expected to come up for a vote before the full Council within the next few weeks.

In a letter sent to the Committee

continued on page 8

INSIDE:

NATIONAL CLUB ASSOCIATION

1625 Eye Street, NW
Washington, D.C. 20006
(202) 466-8424

Music Copyright Exemption Bill To Be Reintroduced In Congress

The Senate Subcommittee on Improvements in Judicial Machinery recently held its final hearing on S. 2082, a bill to exempt veterans and fraternal groups from having to pay performance royalties for the use of copyrighted music.

A staff member for Senator Edward Zorinsky (D-NE), the bill's sponsor, said the bill has gained the support of Subcommittee Chairman, Sen. Dennis DeConcini (D-AZ) and will be reintroduced in the next session of Congress. Whether its prospects are better in the next session is not known.

NCA, which previously submitted testimony to the Subcommittee requesting that the bill be amended to include private clubs, will continue to monitor the development of this legislation.

The bill has received strong support from veterans and fraternal groups that want to be free of liability when they play copyrighted music at fundraising and social functions. However, the measure has been bitterly opposed by copyright owners who argue that they should not be required to sacrifice their livelihoods involuntarily.

Richard B. Carroll, counsel for the Knights of Columbus, testified that an exemption from the license fees now imposed by the Copyright Act would assist his organization in carrying out its "many worthwhile activities which are of great benefit" to society. Without an exemption, he added that the Knights of Columbus' license fees could total as much as $1 million.

The Copyright Office, represented by its General Counsel Dorothy Schrader, opposed the bill.

NCA has maintained that private clubs should be included in the exemption because their use of copyrighted music is basically identical to that of the fraternal and veterans organizations, restricted to purely private gatherings for members and their guests and not open to the public.

NCA materials discussing the Copyright Act and its present coverage of private clubs are available to members upon request. ✿

Extension Voted On Tax Status For Independent Contractors

The House has passed HR 6975, legislation which includes an amendment extending the moratorium on any Internal Revenue Service changes in the current tax status of independent contractors until July 1, 1982.

The legislation, which had previously been approved by the Senate on October 1, is now awaiting President Carter's signature.

The moratorium will block the IRS's attempt to require 10 percent income tax withholding on payments to independent contractors, whom the Carter Administration has charged with "extremely poor" tax compliance.

The Administration's proposal had called for such withholding to begin January 1, 1981, which would have caused some changes in club arrangements with golf professionals and other club staff who are not treated as employees.

The 18-month extension is designed to enable Congress to decide on the tax status of independent contractors before the IRS can take definitive action on the matter. An assortment of legislation touching on the issue is currently under consideration by committees in both houses. ✿

General Manager Dean Matthews of the Southern Hills Country Club, Tulsa, OK, recently hosted a luncheon at which managers of Tulsa clubs and NCA Executive Director Gerard F. Hurley, CAE, discussed current private club issues. Shown with Matthews (far right) and Hurley (second from left) are (from left) Manager William W. Dorman of the Cedar Ridge Country Club, General Manager Harold R. Shubrook of the Tulsa Country Club, and Manager C. M. Crawshaw of The Tulsa Club.

Comptroller Reiterates Policy Discouraging Club Dues Payments

In a move that has disturbed both banks and private clubs, the Comptroller of the Currency John G. Heimann has reminded financial institutions that the federal government discourages the payment of employees' dues and expenses in selective admissions organizations.

Furthermore, Heimann, in a banking circular which reiterated a policy statement issued last year by the Federal Financial Institutions Examination Council, pointed out that "Our examiners have been instructed to include in their reports any apparent lack of adherence to this policy which is noted during the course of our examinations."

Responding to inquiries from several clubs whose banker members have received the OCC memorandum, NCA cautions clubs that the policy statement is not a law and is vague in its meaning. The consequence to banks of continuing present dues payment policies is not spelled out and is in need of further clarification, which NCA, with the help of the American Bankers Association, is seeking.

The OCC banking circular focused on the dues provision of the joint policy statement issued in October 1979.

The original policy statement, issued by OCC, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Federal Home Loan Bank Board and the National Credit Union Administration, urged financial institutions to examine and correct any employment practices that could encourage or cause discrimination against their employees based on race, sex, color or national origin.

The statement specifically "discouraged" payment of membership dues on behalf of employees, officers or directors in private clubs which "practice discrimination," or payment for the costs of business functions held at such clubs.

The original policy statement and OCC's latest memorandum noted that "lack of access to such activities [membership in a private club] *may* (emphasis added) prove to be a significant obstacle to bank directors and personnel in discharging their business responsibilities"; that "membership prohibition *may* have an adverse and discriminatory effect upon the career advancement of employees who are denied access"; and that "financial support of such organizations *could* reasonably be construed as reflective of employment policy."

NCA has maintained that there have been no court decisions, administrative findings or statistical information establishing a link between career advancement and membership in a private club. ❀

Proposed Club Regulations Unveiled in NYC

Proposed regulations to enforce a controversial bill that would redefine the private status of New York City's private clubs were unveiled at a recent public hearing by the New York City Council's General Welfare Committee.

The Committee, after a first hearing on July 30 at which time NCA and the New York State Club Association presented testimony (see July/August Newsletter), had requested that the city's Commission on Human Rights present the proposed regulations at a second hearing so the Committee could see how the bill would be enforced.

The bill, Council Bill Int. No. 801, would reclassify as public any private membership organization receiving 20 percent or more of its income from payments made "in furtherance of members' trade or business". NCA has been working with the New York State Club Association and NCA member clubs in New York City in an ongoing campaign to defeat the bill.

The Commission on Human Rights staff members present at the hearing said the Commission has no desire to go after private clubs and has drafted regulations designed to minimize the burden on these clubs.

[EDITOR'S NOTE: NCA fundamentally challenges that the Council can use its formula to determine which organizations are "private".]

NCA has maintained that the legislation itself violates Constitutionally guaranteed and Congressionally sanctioned rights of privacy and association.

Even if the regulations were modest, there is no guarantee that those regulations won't be stiffened or narrowly construed in the future, representatives of NYSCA pointed out at the hearing.

The proposed regulations call for

continued on page 6

perspective

Gerard F. Hurley, CAE

Anti-club Bias In The Press: Combatting The Emotional Tirades

By Gerard F. Hurley, CAE
NCA Executive Director

I wonder what ever happened to journalistic objectivity?

Instead of rationally presenting the facts for the public to form its own opinions, journalists have adopted the role of opinion-makers.

These well-meaning but misguided journalists have decided that they know what is best for society and, accordingly, selectively choose facts to lure the public into passively accepting their view of the world.

In the world of advocacy journalism, emotion triumphs over logic. It is far easier for a journalist to write the heart-tugging anecdote or to parrot the views of a friendly source than to analyze the subtle nuances of constitutionally protected rights.

In this lazyman's journalism, the formula is almost always the same—the good guys versus the bad guys with the latter getting little opportunity to state his case. And we in the private club industry have been pegged with the "bad guy" label as evidenced by a recent United Press International dispatch and other equally one-sided attacks in the news media.

The UPI article, I feel, graphically illustrates the battle that the private club industry faces in presenting its case to the press.

After sitting down with a UPI reporter for two hours and answering questions (all stemming from the New York City Council hearing) about memberships, property taxation, deduction of expenses, the nature of privacy and so forth, I cautiously hoped that the private club industry might get equal treatment in the article.

As well as answering the reporter's questions about the private club industry and covering basic concepts about privacy and taxation, I provided her with NCA materials detailing our position as well as NCA President Herbert L. Emanuelson, Jr.'s testimony before the New York City Council (which clearly addressed her major questions).

Despite NCA efforts, however, UPI gave the private club industry viewpoint only six inches out of a 64-inch story—roughly 6 percent. The other 58 inches were primarily a rehash of every challenge and silly anecdote we've been hearing for the past six to eight years.

The article did not seek to examine the balance between the constitutional right against discrimination versus the right of free association and privacy. It blindly recorded the argument that women and minorities are disadvantaged in their career advancement because of their exclusion from private clubs without reporting that there are no court decisions, administrative findings or statistical information establishing a link between career advancement and membership in a private club.

And not only was the private club industry's position almost totally ignored in the article, but my remarks were taken out of context.

Despite the press' hostility to the private club industry, NCA will continue to speak out, rationally presenting the arguments for the constitutionally protected right of free association. And I urge you, as NCA members, not to be stampeded or intimidated by the emotional tirades against private clubs that you read in your daily newspaper. Look closely at each thrust—separate fact from fiction. If your chances are good to present your views (we'll help you with whatever information we have available), please try. If you don't believe you'll be treated fairly, then don't play their game. ❀

NCA Annual Meeting On May 19

NCA's Annual Meeting and Legislative Conference will be held in Washington, D.C. on May 19, 1981. All NCA members are invited to participate in the meeting, which will deal largely with the role government plays—and would like to play—in the affairs of the nation's private organizations. All functions will be held at the prestigious Capitol Hill Club.

Subjects to be discussed at the all-day, four-session meeting will include wage and hour concerns, tax laws, agency regulations and other challenges designed to interfere in the membership policies of private clubs.

Mark May 19 on your calendar right now, and watch future Newsletters for more details. ❀

LOOKING AHEAD

Political Climate's Improving But Clubs Can't Be Complacent

For private clubs and their members the outcome of the 1980 national election is certainly encouraging. The mandate delivered by the voters is clear: Get government off our backs and out of our pockets! That is a sentiment with which the private club industry *will* readily agree. No group asks less of government. We seek no subsidies, no handouts, no loan guarantees, no special favors. Members of private clubs ask only that government leave them alone so that they can privately associate in their clubs with whomever they choose.

As we know all too well, however, the past several years have seen the federal government repeatedly attempt to curtail our constitutionally protected rights of privacy and association. The Departments of Justice and Labor and the Senate Justice, Finance and Banking Committees have attacked the membership policies of private clubs through court actions, proposed regulations, and insulting criticism of the memberships of judges and other public officials. We believe that the attacks on private clubs have been just one manifestation of a broader effort by social activists to level society to a lowest common denominator by abolishing anything that smacks of achievement or accomplishment. The media reinforce this by typically referring to clubs as "bastions" of privilege or elitism.

There is reason to expect, however, that the new administration here in Washington will be much more positive on such matters. As NCA has sought help and support in past battles, our experience has been that many of those now about to assume power, especially in the Senate, appear much more sensitive to the importance of our constitutional protections and the need to preserve the distinction between what is public and what is private.

We further expect that the new administration will cut into the thicket of other federal regulations that have grown so much recently. Thus clubs may benefit along with business by not suffering the imposition of more costly wage and hour standards, IRS guidelines and rulings, burdensome energy, environmental, and safety regulations than we have now. We can even hope that some existing controls and requirements will be modified or even eliminated.

But we cannot be complacent. Right now, NCA is engaged in as intensive a series of lobbying efforts as we have ever undertaken. As our front page story describes, as a farewell gesture, lame duck officials at Labor's OFCCP are determined to issue the anti-club regulations that NCA, with the help of many other groups, has been able to block for nearly five years. If these Labor regulations, which prohibit contractor reimbursement of club dues and expenses by employees, do become official, we'll have to mount a massive national effort to overturn them. It will not be easy.

It is important to remember that most of the bureaucrats will remain in their offices after the inauguration and it is they who, as at OFCCP, have so often instigated our problems. They will continue to be responsive to the activists and the media critics; actually, many of our antagonists were activists in the 60's, so many are merely acting out what they believe personally. They will undoubtedly continue to be insensitive to the facts of life in the private sector and to the nature of private clubs. Even the incoming conservative office holders cannot be taken for granted. There may well be a desire to prove that the appellation of "Country Club Republicans" is unfounded by not rising against such anti-club proposals. How many remember that the OFCCP regulations were originally proposed during the Ford Administration?

If, indeed, the adversaries of private clubs find the going

continued on page 7

Maryland Country Clubs Win Battle Over Tax Abatement

The Country Clubs of Montgomery County (Maryland) have apparently won a major battle in their fight to retain the tax abatement on country club land thanks to some ardent efforts by club members in the county. NCA provided monitoring assistance and counsel during the recent battle.

As the NCA Newsletter went to press, NCA learned that the Montgomery County Delegation to the Maryland General Assembly has decided to support a bill retaining the tax abatement for country club land over another bill which would have phased out the abatement over a six-year period.

NCA congratulates the Montgomery County clubs for their energy and persistence in lobbying for the tax abatement. We will provide further details in an upcoming issue of the Newsletter. ❀

NCA Describes Challenges To Chicago Group

NCA Board Members Milton E. Meyer, Jr. and John T. McEnerney met recently with the Executive Committee of the Chicago District Golf Association to inform the Association's leadership about NCA and its activities and the legal challenges threatening the existence of private clubs.

The NCA directors told the Executive Committee that NCA's only purpose is to serve private clubs. However, NCA needs the support of private clubs so it can effectively serve them.

Executive Committee members present at the meeting, held at the Hinsdale Country Club in Chicago, were: William J. Lunn, President; Robert A. Van Nest, Vice President; Raymond B. Anderson, Secretary; Dennis F. Davenport, Executive Director; and Carol McCue, Associate Executive Director. ❀

Nominations Open For NCA Directors

Nominations are now being solicited for the National Club Association's Board of Directors, according to Milton E. Meyer, Jr., chairman of the Nominating Committee.

Board nominees will be voted on at NCA's Annual Meeting and Legislative Conference on May 19.

Nominations may be sent to Mr. Meyer in care of NCA, Suite 609, 1625 Eye Street, N.W., Washington, D.C. 20006. ❀

Clubs Must Cope With Trying Financial Challenges In '81

Clubs will face particularly trying financial challenges during 1981 as they struggle to cope with major price increases in their two biggest budget items—personnel and food/beverage costs.

These cost increases will be beyond the power of any club to control significantly.

Here is a brief rundown on price increases in these areas:

FOOD: Current Department of Agriculture projections are that food prices will increase at least 12 percent in the next 12 months.

PERSONNEL: The minimum hourly wage will jump from $3.10 to $3.35/hour on January 1, 1981 (the jump for tipped employees for whom maximum 40 percent tip credit is taken will be from $1.86 to $2.01). Also, the Social Security withholding tax rate will go up from the current 6.13 percent to 6.65 percent on January 1. The limit on annual income requiring Social Security withholding will increase from $25,900 to $29,700. ❀

OFCCP *continued from page 1*

data. The proposed regulations, NCA has also pointed out, will cost federal contractors over $150 million and private clubs over $800 million in lost revenue.

With no action by OFCCP on the regulations since the March 24, 1980 deadline for public comments (which ran 10-1 opposed), NCA was outraged to learn that the Labor Department was attempting to rush the regulations through during the waning days of the Carter Administration.

In addition to attempting to block the issuance of the proposed OFCCP regulations at the agency level, NCA was one of the first groups to urge Congressional passage of the Helms Amendment and the first group to issue a formal statement. The Helms Amendment would have denied funding for the enforcement of the Labor Department regulations until February 1, 1981. ❀

New York City Council *continued from page 3*

private clubs to maintain records indicating what percentage of their income comes from members whose club dues and expenses are paid for or reimbursed by their employers or are deducted from the members' federal or city income tax. Club members failing to supply this information or making false statements would be subject to criminal penalties. The regulations further state that it is up to the club to prove that it is distinctly private in any complaints alleging discrimination in its membership policies or practices.

With the burden of proof thus resting on private clubs, NCA has warned that the bill could conceivably cover every club in the city.

A third hearing is planned at an unspecified date. Both NCA and NYSCA are continuing to monitor the bill's progress. ❀

Private Clubs Respond Enthusiastically to Legal Defense Fund Drive

The new NCA Legal Defense Fund has taken off at a gallop with private club membership responding enthusiastically to NCA's appeal for financial help to defray the costs of its numerous battles in behalf of the private club industry.

Despite the impressive initial contributions, they only begin to whittle away at the whopping expenses NCA assumes by retaining the best possible counsel to make sure private clubs get a fair hearing in local, state and federal courts and legislatures.

The Legal Defense Fund was devised by the NCA Board of Directors to maintain NCA's excellent achievement level as the spokesman and guardian of the nation's private club industry. The drive began in October with a letter to each NCA club president in the Northeast and Midwest, asking if the club would participate in the Legal Defense Fund and suggesting that individual club members be asked to contribute a modest $1 apiece. In November, clubs in the Sunbelt were contacted, and clubs in the Far West can expect an invitation to join the campaign in early January. Participation is entirely voluntary.

The need is grave. Although the results of the national election have given private clubs a glimmer of hope for a greater sensitivity to club industry concerns at the highest level of government, challenges to our freedom of association are proliferating at the state and local level at a record rate—almost as if in reaction to the changing climate in the upper levels of government. And it is these local challenges that are often the most expensive to fight.

NCA does fight them, literally, often stepping into a local court case on behalf of a member club as a "friend of the court" or sending representation to battle an anti-club bill in a state or city legislature. For example, NCA counseled with the Salisbury Club throughout its two-year legal battle in Virginia's U.S. District Courts. The Association has been physically present to battle anti-club legislation in the city councils of New York, Philadelphia, and Pittsburgh, in the Maryland State Assembly's Montgomery County Delegation, and in the New York State legislature, working closely with state and local club associations, fraternal, and service groups.

These efforts have not gone unappreciated by member clubs, as witnessed by the warm and immediate response to the Legal Defense Fund appeal. In fact, Harold B. Hamilton, President of the Metropolitan Club of New York City, wrote that his club was contributing to the drive because of NCA's assistance in the battle against two potentially disastrous bills pending in the New York City Council which would deny private status to clubs receiving more than 20 percent income from business sources and would deny liquor licenses to clubs with selective membership policies.

Similarly, A. P. Callahan, Jr., Rear Commodore of the Pelican Yacht Club of Fort Pierce, Florida, wrote, "Our Board of Directors voted to support this vital campaign . . . We are most concerned regarding any legislation affecting private clubs and certainly appreciate the representation NCA affords private clubs. Your continuing efforts will be appreciated."

Donald B. Tansill, President of the Stock Exchange Luncheon Club of New York City, wrote, "We are well aware of past efforts by your organization on behalf of the private club industry and continuing threats against clubs today to deny their members freedom of association."

NCA is both heartened and grateful for this member response which may be summed up by this comment from Andrew Wargo, General Manager of the Butterfield Country Club of Hinsdale, Illinois, "All of [our] officers and directors join me in wishing you success in your campaign . . . Good Luck—and your past record of achievements in our behalf is appreciated." ❀

Political Outlook *continued from page 5*

tougher here in Washington, we expect they will focus that much more effort at the state and local levels. The trend is already evident. Within the past six months NCA has become directly involved in local challenges in Pittsburgh, Philadelphia, and New York City. We are closely monitoring impending threats to clubs at the state level in New York, Maryland, and California. It will not surprise us to see an increase in individual legal suits challenging club membership policies.

The shift to the state and local arenas will be far more taxing on our limited association resources, of course. That's the major reason for establishing our Legal Defense Fund at this time. We anticipate the increased state and local problems will overshadow any conceivable decrease at the national level. This trend will accelerate if any state or local attacks succeed and thereby create precedents for other jurisdictions—another good reason why NCA is exploring stronger ties to its local clubs so that essential communication and lobbying efforts can be more quickly mobilized. As always, we must stand together. The election did not change that. ❀

Philadelphia City Council *continued from page 1*

on Labor and Civil Service (which was quoted in a recent *New York Times* article), NCA President Herbert L. Emanuelson, Jr. said, "The Supreme Court and the U.S. Congress have clearly affirmed the unrestricted right of individuals to select those with whom they wish to associate privately, and, therefore, those with whom they wish not to associate. The two bills under consideration would penalize private clubs and their members for exercising explicitly protected and sanctioned constitutional rights."

Bill No. 336, patterned after proposed regulations by the U.S. Department of Labor's Office of Federal Contract Compliance Programs [OFCCP], would prohibit anyone doing business with the City of Philadelphia from "reimbursing or subsidizing employees . . . for expenses associated with the use of certain private organizations which bar, restrict, or limit membership on the basis of race, color, sex, religion or national origin or ancestry." Bill No. 337 would prohibit the City from paying or reimbursing any of its employees or officials for business expenses or entertainment in connection with the use of such private organizations.

In formal comments submitted earlier to the Committee, NCA urged that the bills be rejected because:

1) Both bills violate the constitutionally protected freedoms of privacy and association of individual club members.

2) Bill No. 336 violates standards of due process by its use of a prima facie presumption of discrimination.

3) No connection has been proven between the membership policies of private clubs and unfair employment advantages.

4) This legislation would mandate judgments as to (a) the nature of private organization membership policies and practices, and (b) their relationship to employment advantages, that would be impossible to make reasonably, fairly and validly.

5) The enforcement role of the Commission on Human Relations (which would determine which clubs discriminate in Philadelphia and five surrounding counties) under these bills is legally doubtful under Pennsylvania law.

Of the nine witnesses at the hearing, eight spoke in favor of the two bills and only one, a representative of the Pennsylvania Order of the Sons of America, opposed the legislation. NCA had weeks earlier submitted to the Committee a cover letter and full statement in opposition.

The bills' proponents, repeating often-used arguments, said that since discrimination in hiring was now prohibited, it is now necessary to attack discrimination in job or career advancement. Private club selective membership policies, they argued, are a clear example of such career discrimination.

NCA's earlier comments were implicitly acknowledged with the deletion of Bill No. 336's Section 17-403, which had said that reimbursement to selective admissions organizations automatically "confers an employment advantage or discriminates with regard to hiring, tenure of employment, promotions . . . " NCA had claimed that this prima facie provision was a violation of due process. ❀

Welcome New Members

John A. Kruse, President
Gerald E. Miller, Manager
DETROIT GOLF CLUB
Detroit, MI

Thomas C. Naquin, President
Luis F. M. Leal, Club Manager & Asst. Sec.
ELCONA COUNTRY CLUB
Elkhart, IN

William D. Hobbs, President
Hugh A. Fields, V.P. & General Manager
GRANDFATHER GOLF & COUNTRY CLUB
Linville, NC

Duke Butler, Executive Director
HOUSTON GOLF ASSOCIATION
Houston, TX

Curtis Hankamer, President
Wayne E. Glenn, Vice President
LOCHINVAR GOLF CLUB
Houston, TX

Mrs. Jerome Adams, President
Ernest G. Friez, Jr., Manager
Metropolitan Club
San Francisco, CA

Nick H. Mourikis, General Manager
OLD OAKS COUNTRY CLUB
Purchase, NY

Robert Pettit, President
Louis L. Szep, General Manager
PETROLEUM CLUB OF LAFAYETTE, INC.
Lafayette, LA

Robert F. MacNally, President
PGA GOLF
Morton Grove, IL

Lewis Krantz, President
Alan Van Dix, General Manager
WESTWOOD COUNTRY CLUB
Houston, TX