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# The State of South Carolina



## Office of the Attorney General

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July 9, 1992

The Honorable Marion P. Carnell  
Member, House of Representatives  
Box 119  
Ware Shoals, South Carolina 29692

Dear Representative Carnell:

You ask for an opinion of this Office whether the American Legion Post 100, in an instance where the Post's treasury contains more money than is needed for its activities, may divide the cash assets among the Post members. You have provided for my review copies of the Constitutions and By-Laws of the South Carolina and the National American Legion as well as a letter from the Internal Revenue Service to the National American Legion regarding tax status. I have reviewed the material and have determined that disbursement of assets of the Post to the benefit of individual members of the Post would be inappropriate.

The Constitution of the South Carolina American Legion provides that its purposes, principles, aims and objects are to be in conformity with those of the National American Legion with the additional proviso that the South Carolina American Legion is further dedicated "to the promotion of the welfare, prosperity and happiness of all people of South Carolina, to the preservation of the ideals and traditions of ... (the) State, ...". Article II, Sections 1 and 2, Constitution of the South Carolina American Legion. The preamble to the National Constitution of the American Legion (hereafter, National Constitution) establishes the following as the purposes of the American Legion, its Departments and Posts:

To uphold and defend the constitution of the United States of America; to maintain law and order; to foster and perpetuate ... Americanism; to preserve the

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memories and incidents of ... (association of its members) in the Great Wars; to inculcate a sense of individual obligation to the community, state, and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify ... (the comradeship of its members) by ... (their) devotion to mutual helpfulness.

The National Constitution states that The American Legion is a nonpolitical, civilian organization composed of one Department in each state which, in turn, is comprised of numerous Posts, one of which is Post 100 about which you inquire. See Articles I, II, III of the National Constitution. The National Constitution requires that all Posts "... uphold the declared principles of the American Legion ...". See Article IX, Section 4(2). With regard to property and assets, the National Constitution and National By-Laws require that upon suspension, cancellation, or revocation of any Post charter, the National Committee shall take possession, care, custody and control thereof. See Article XI, Sections 4 and 5 of the National Constitution and Article III, Section 3 of the National By-Laws.

You do not state that Post 100 wishes to dissolve or that its charter has been suspended, cancelled, or revoked in which case all property and assets would revert to the National American Legion Committee. Therefore, I assume Post 100 will continue its current operation but feels it has more funds on hand that it presently needs to fulfill its goals. You do not state the source of the funds. Without the necessity for further legal consideration or analysis, it is apparent that distribution of assets in the manner about which you inquire would be inconsistent with the purpose and spirit of the American Legion. Disbursement of any Legion money or property for the private benefit of individual Post 100 members is not provided for in and would be contrary to the principles, objects and aims set forth in the State and National Constitutions and By-Laws as outlined above. It is my opinion that distribution of Legion assets to individual members for personal gain would be inappropriate as such would be unrelated to Legion purposes.

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Additionally, Post 100 should be mindful of tax consequences. The 1946 Internal Revenue Service (I.R.S.) letter which you provided indicates that the I.R.S. has accorded the National American Legion and certain of its Departments and Posts an exemption from federal income tax probably based upon one of the exclusions listed in what is now 26 U.S.C. Section 501, which includes exemptions for charitable or other organizations traditionally regarded as non-profit. If Post 100 is regarded as a charitable organization, then any gift of property or money will generally

result in its firm and unalterable dedication to the purposes of that organization, or to such of the organization's purposes as are specified. All such donations are commonly known as "charitable trusts" because of their dedicated nature ...

15 Am.Jur.2d Charities, p. 13. Post 100 would hold any gift subject to a fiduciary obligation to expend the resources for its charitable purposes only. Id., at 99. If Post 100 is a non-profit charitable organization, funds or property could be expended only upon the stated and I.R.S. approved charitable purposes of the Post. Otherwise tax ramifications could result.

If Post 100 has attained tax exempt status as a civic league, then expenditures are restricted to charitable or other limited purposes. 26 U.S.C. § 501 (c) (4). If Post 100 enjoys tax exempt status as a "post or organization of past or present members of the Armed Forces" then "no part of the net earnings may" inure to the benefit of any private shareholder or individual." 26 U.S.C. 501 (c) (19). Post 100 may wish to confer with the I.R.S. to receive guidelines for maintaining a tax exempt status as well as ramifications for any future action contemplated, if, in fact, it operates as a tax exempt organization. Also, while I mention tax consequences, there may be numerous other considerations which could apply.

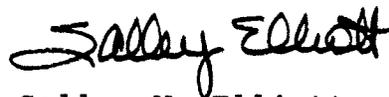
You have also asked that we respond to an additional question from the Post to provide a ruling on laws controlling expenditures as well as to identify which procedures are legal and which are illegal. I regret to advise that we are unable to address such a broad and hypothetical matter. However, the South Carolina and National American Legion

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Constitutions provide for a Judge Advocate who appears authorized to provide advice on legal matters of the South Carolina Department and Posts. The Judge Advocate would be in a better position to provide appropriate advice as specific questions arise in the day to day activities of Post 100.

I hope that my comments prove helpful.

Sincerely,



Salley W. Elliott  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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