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STATUTES - UNINCORPORATED ASSOCIATION AS A "PERSON" UNDER THE LIQUOR AND SALES ACTS

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STATUTES — UNINCORPORATED ASSOCIATION AS A "PERSON" UNDER THE LIQUOR AND SALES ACTS — In 1939 the International Workers Order, an unincorporated association, had a picnic and dispensed beer through its secretary to its members without charge. The association had not obtained a license to sell beer. The secretary, defendant herein, was arrested and tried for violation of the Liquor Control Act,¹ which made it a misdemeanor for a person to sell liquor without a license. *Held*, that an unincorporated association is not a person within the meaning of the statute, and therefore there was no sale. *People v. Budzan*, 295 Mich. 547, 295 N. W. 259 (1940).

An unincorporated association, organized for social or business purposes, is not generally held to be a legal entity, and therefore is not a "person" within the meaning of regulatory statutes, unless such statutes specifically provide otherwise.² Where a club, organized for social purposes, incorporated or unincorporated, sells intoxicating liquor to its members, the courts disagree whether the sales come within the sales and liquor licensing acts. If the association is unincorporated, the majority view is that there is no sale³ because the liquor is owned, not by the club as an entity, but by the members jointly or in common, and therefore there is no passage of title from one person to another.⁴ However, there is some authority for the view that title passes from the members as joint or common tenants to the particular member.⁵ On the other hand, if the club is incorporated, most courts hold that since the club is a legal entity, there

¹ Mich. Stat. Ann. (1937), §§ 18.971 et seq.

² *Meinhart v. Contresta*, (S. Ct. Special Term, 1922) 194 N. Y. S. 593; *Medlin v. Ebenezer Methodist Church*, 132 S. C. 498, 129 S. E. 830 (1925); *Brotherhood of Railroad Trainmen v. Cook*, (Tex. Civ. App. 1920) 221 S. W. 1049; *Ruggles v. International Assn. of Bridge, Structural and Ornamental Iron Workers*, 331 Mo. 20, 52 S. W. (2d) 860 (1932).

³ *Popovich v. Yugoslav National Home Society*, 106 Ind. App. 195, 18 N. E. (2d) 948 (1939); *Graff v. Evans*, 8 Q. B. D. 373 (1882); *Commonwealth v. Pomphret*, 137 Mass. 564 (1884); *In re Rathbone's Estate*, 170 Misc. 1030, 11 N. Y. S. (2d) 506 (1939).

⁴ *Commonwealth v. Pomphret*, 137 Mass. 564 (1884); *Graff v. Evans*, 8 Q. B. D. 373 (1882).

⁵ *Marmont v. State*, 48 Ind. 21 (1874).

is such a transfer of title from the corporation to a member as to constitute a sale.⁶ This kind of approach, based on the fact of unincorporation and the technical definition of sale, is taken in the principal case. The court's decision thus hinges on the fact of unincorporation.⁷ This mechanical approach reaches a desirable result in the instant case since it excludes the unincorporated clubs from the operation of regulatory statutes intended to deal with commercial organizations carrying on a business for profit.⁸ However, it reaches an undesirable result when it is applied to incorporated social clubs.⁹ The better approach, as followed by some courts,¹⁰ would appear to be to take into account the policy behind the statute. If that policy was to include social and benevolent clubs as well as commercial enterprises, then the court should hold the unit subject to the regulation of the statute, regardless of the fact of incorporation or unincorporation. Such an approach would avoid the undesirable result of regulating enterprises not intended to be regulated by the policy of the statute.

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⁶ *People v. Soule*, 74 Mich. 250, 41 N. W. 908 (1889); *State ex rel. Young v. Minnesota Club*, 106 Minn. 515, 119 N. W. 494 (1909); *State v. Lockyear*, 95 N. C. 633 (1886). *Contra*, *People v. Adelphi Club of City of Albany*, 149 N. Y. 5, 43 N. E. 410 (1896); *Piedmont Club v. Commonwealth*, 87 Va. 540, 12 S. E. 963 (1891).

⁷ The Michigan Supreme Court said that the fact of incorporation is important in this case. Principal case, 295 Mich. 547 at 550.

⁸ *Piedmont Club v. Commonwealth*, 87 Va. 540, 12 S. E. 963 (1891); *Union League Club v. Johnson*, (Cal. 1940) 108 P. (2d) 487.

⁹ Social clubs are organized for an entirely different purpose than commercial corporations. *Sein v. State*, 55 Md. 566 at 571 (1880).

The courts make a distinction between unincorporated social associations and business associations, so there is no reason why courts should not distinguish between social corporations and business corporations. *Medlin v. Ebenezer Methodist Church*, 132 S. C. 498 at 503-504, 129 S. E. 830 (1925).

¹⁰ *Sein v. State*, 55 Md. 566 (1880); *Piedmont Club v. Commonwealth*, 87 Va. 540, 12 S. E. 963 (1891); *People v. Adelphi Club of City of Albany*, 149 N. Y. 5, 43 N. E. 410 (1896). Such a rule will not allow for evasion of these regulatory or tax statutes, since the courts can always inquire as to whether or not the club is organized for a bona fide purpose. 1 VA. L. REV. 547 at 553 (1914).