

**Amateur Radio Legal Defense and Assistance Committee
(ARLDAC)
Report to the ARRL Directors, July 2020**

In January, 2020, President Roderick asked me if I would chair the Amateur Radio Legal Defense and Assistance Committee (ARLDAC) and it is my pleasure to submit the committee's report to the Board of Directors.

As stated on the ARRL web site, "Since 2000, the ARRL expended over \$31,000 assisting a variety of different amateurs with their antenna and other amateur-related legal issues. The lion's share of these expenditures have been in support of over 30 different situations, most relating to antenna ordinance issues in a variety of communities across the country from Maryland to Southern California. The support has been in the nature of research and legal briefs/opinions written by the ARRL's General Counsel up to and including direct financial support to fund legal costs in select situations."

One of the first items to be addressed by the committee was the issue of the composition or membership of the ARLDAC. We almost immediately discovered that that the motion from the January 2010 Board meeting outlined the membership on the ARLDAC. The motion states "The Committee consists of two ARRL Directors, one or more ARRL Vice Directors, an experienced attorney not a member of the ARRL Board, and the League Counsel." Well, that seemed a bit awkward since there was no mention of an ARRL Vice President, let alone a VP chairing the committee. The committee decided that since there were no new pending actions before the committee and no new pending requests for assistance that the best course of action would be to "stay the course" and prepare a motion for the July Board Meeting adjusting the composition of the committee. It was discussed whether to ask the Executive Committee to revise the membership criteria but it was ultimately decided to bring the matter before the full Board since it was a Board motion that created the committee and revised it in 2010. The proposed motion to restate the composition of the ARLDAC is attached to this report.

There is one ongoing antenna ordinance matter in San Jose, California. As reported to the Board in January, 2020, the amateur has good counsel in the matter and if any further assistance is needed from the ARLDAC or the League then the matter can be addressed at that point. As of the writing of this report, no new information is available about the matter.

The committee's first meeting was by teleconference on 24 March 2020. The issue of hiring outside counsel who is knowledgeable in the areas of municipal and county tower and antenna ordinances, zoning ordinances, permit negotiations and resolutions and related litigation was discussed by the committee. There is a need for this type of expertise to be available to our members and to ARRL staff, particularly to assist Regulatory Information Manager, Dan Henderson N1ND. Dan deals with all of the inquiries from amateurs about issues that arise in the areas noted above. It should be clearly understood that such outside counsel as envisioned by

the ARLDAC would not be the attorney for the member dealing with the local authorities but would be a resource person available to the member and the member's attorney. As such the outside counsel could provide legal materials and case law, possible tactics and support for the member's attorney. After a lengthy discussion, the consensus of the committee was that such outside counsel was urgently needed. Of course, the Legal Structures Committee is charged with establishing the framework and scope of any counsel working with the ARRL. Therefore, the ARLDAC strongly urges the Legal Structure Committee to take up this issue and make arrangements for the retention of outside counsel to assist members and staff in the areas set out above. This could be a paid position, part time or retainer, or could be handled by one or more of the Volunteer Counsel. We understand that nothing will likely be done on this issue until the new CEO is in office but it should be one of the first issues taken up by the Legal Structure Committee.

The committee also discussed the issue of "distracted driving" legislation and "use of cell-phone while driving" legislation that has been enacted in the last several years by a number of states and local governments. The amateur radio operators in a number of these jurisdictions have been able to get an exemption for amateur radio or at least some accommodation for amateur radio. The committee concluded that it would be helpful to have a listing of states that exempted ham radio in such legislation in support of the argument that amateur radio ought to be exempted in any new legislation proposed. The committee is working on a method to gather this information but that likely won't be implemented until the ARRL HQ staff has fully returned to HQ in Newington.

The committee discussed the need for a study done to show real estate values are not impacted by amateur radio towers and antennas. This issue is a work in progress with no final plans at this point.

Shortly after the teleconference, Jay Bellows indicated he wished to resign from the committee. An email was sent by Jay to President Roderick documenting that resignation. I was sad to hear that because Jay has contributed so much to the efforts of the ARRL in antenna/tower litigation and policy involvement in the last 20 years or more. We will miss him.

The committee held a second Zoom conference on May 26, 2020.

The committee discussed the possibility of having a half-day seminar on antenna/tower ordinances and litigation in conjunction with the ARRL National Convention in February, 2021 in Orlando. Details are still being worked out as to whether it is feasible to have such a seminar. The committee also noted it was advisable to have such seminars in conjunction with divisional conventions in other areas during the year.

The committee revisited the issue of commissioning a study showing amateur radio towers having no effect on nearby real estate values. The consensus of the committee was to arrange for such a study if and when it might become an issue in some actual pending litigation.

Respectfully submitted,

Members of ARLDAC:

IAVP Stafford, Chair

1st VP Raisbeck

Director Tiemstra

Vice Director Tharp

Dan Henderson, Mgr Regulatory Information

ARRL Legal Counsel Siddall

ARLDAC Motion #1

Moved by:

The Amateur Radio Legal Defense and Assistance Committee Guidelines (ARLDAC) are modified to read as follows:

- (A) The committee shall be composed of at least 3 members of the ARRL Board, at least one experienced attorney not a member of the ARRL Board, and the ARRL Legal Counsel for FCC affairs. Members will be selected by the President.
- (B) The following criteria, rules, and procedures are adopted for determining whether to fund legal, legislative, or regulatory activities relating to Amateur Radio.
 - (1) To be funded, an activity must pertain to Amateur Radio. This includes, but is not limited to, situations involving Amateur Radio antenna height and placement, interference allegedly caused by Amateur Radio operations to non-Amateur Radio uses and services, interference received by Amateur Radio operations from non-Amateur Radio sources, matters pertaining to RF safety, aesthetics, structural safety, environmental issues, matters affecting the use and enjoyment of Amateur Radio such as hands-free driving regulations, and any other matters found by the Committee to involve and potentially impact Amateur Radio operation.
 - (2) Funding shall be limited to activities that may be expected to provide precedent or example that will be significantly useful to other Amateurs in the situations described in paragraph (1). In general, preference shall be given, in descending order, as follows:
 - a. to matters of national scope;
 - b. to matters of statewide scope;
 - c. to matters of intrastate or local scope;

Included within the scope are judicial and regulatory proceedings, initiatives involving laws, bylaws, or regulations, which do or may impact the ability of Amateur Radio operators to deploy effective antennas or otherwise to operate stations and to enjoy Amateur Radio, and investigative activities in support of these goals such as collection of data and preparation of materials to assist Amateurs and their attorneys.

Administrative and local land use authority activities are not normally eligible for funding unless and until they reach the judicial level, due to the absence of precedent value of such cases. In rare and exceptional circumstances, the Committee will fund such an activity of this sort, upon a

clear and convincing showing that the activity addresses a unique issue of law or may have wide ranging impact.

(3) In cases involving individual Radio Amateurs' operations, funding shall be limited to not more than \$10,000 per activity, so as to maximize the number that can be funded with the limited money available. Funding is also limited to the amount of the Legal Research and Resource Fund. In special situations in which the Committee feels that additional funding is warranted, the \$10,000 limitation may be waived by the ARRL Executive Committee.

(4) For a case involving a particular Amateur Radio installation, the case must have substantial merit on the facts, and must present a significant issue of law, or be likely to provide a persuasive example which other courts or administrative boards are likely to follow.

(5) For initiatives not focused on a particular Amateur Radio installation, the matter must have the potential to impact a large number of amateurs either directly or as a persuasive example to other regulatory or legislative entities.

(6) Activities must present a question or situation which maximizes leverage of ARRL funds. This includes situations which present, or are predicted to present, some or all of the following characteristics:

1. activities with a high likelihood of success;
2. activities in which a favorable result would have particularly high value to Amateur Radio;
3. activities in which an unfavorable result would have particularly severe negative impact upon Amateur Radio.

(7) For initiatives not focused on a particular Amateur Radio installations there must be some financial participation by the Amateurs involved, and/or by the local Amateur community. For initiatives involving laws, bylaws, or regulations, there must be a well developed effort on the part of affected Amateurs.

(C) In addition to funding of legal or rulemaking activities, the Committee may also fund the following activities:

(1) Provision of research and background materials, such as books, law review articles, amicus briefs, and the like, to attorneys representing Amateur Radio clients in cases involving Amateur Radio issues.

(2) Support of training for attorneys and other professionals involved in Amateur Radio related issues, to specifically include things such as Continuing Legal Education, classes and seminars.

(D) All decisions on funding made by the "Amateur Radio Legal Defense and Assistance Committee" must be by 2/3 majority. Requests and inquiries should be forwarded to the Chairman, ARRL Amateur Radio Legal Defense and Assistance Committee c/o ARRL HQ.