

ARLDAC Report to the Board  
January 12, 2019

There has been some activity since last July that could potentially involve the ARLDAC. The following is an updated status report.

**A. Handling potential new laws and regulations affecting ham radio activity**

We have been monitoring the status and progress of the ARPA bill and awaiting action, if any, by the FCC on the ARRL's recent petition for rule making. According to CEO Howard Michel, U. S. Rep. Adam Kinzinger (D., Ill) has recently re-filed his legislation regarding the Amateur Radio Parity Act.

In the meantime, I received a recent inquiry from David Winarsky, K6ZD, about an antenna application he has had pending before the City of San Jose's planning department for the past year which may implicate San Jose building ordinances. The Committee will be reviewing this situation with an eye toward lending legal and financial support.

Finally, a California distracted driving statute popped up unexpectedly more than a year ago and since then additional distracted driving bills have taken the ARRL by surprise. Indeed, the Texas Legislature reconvened on January 8, 2019 with two wireless communication/distracted driving bills have been pre-filed, that if passed, could pose problems for Texas Amateurs. The Committee will be discussing what we can do regarding these types of bills when next we meet.

**B. Upgrading of materials available to hams dealing re antenna construction**

We have requests out to several people who may be able to supply us with some updated support materials. This action item requires follow-up.

**C. Current cases**

Recently, a case in Rochester, Minnesota, involving the City’s attack on an unpermitted antenna installation, was brought to the attention of General Counsel who referred the matter to Director Holden. Daniel Knutson, N0ISY, was to be referred to a local VC. The Committee has received no further information on this case.

While the Committee has not recently been involved with any other pending cases, a further ruling just came down in the *Landstein v. LaGrange* case in which the League had provided some early financial support. A synopsis of that ruling is attached below as an Appendix.

**D. Committee Composition**

With the recent resignation of General Counsel, the Committee has been left without legal counsel with respect to its potential involvement with cases and legislation. Hopefully, replacement general counsel capable of assisting this Committee with independent legal analysis and advice will be retained shortly after the Board meeting this month.

Furthermore, our new Board member, Director Fred Hopengarten, K1VR, would be a welcome addition to the Committee based on his well-known expertise in matters within this Committee’s purview.

**E. Financials**

|                  |  |              |
|------------------|--|--------------|
| Balance 12/31/17 |  | \$ 191,900   |
| Contributions    |  | 13,065       |
| Expenditures     |  | <u>(230)</u> |
| 12/31/18 Balance |  | \$ 204,735   |

We have a substantial sum of money dedicated to the cause of legal defense, and

also have, I believe, an obligation to use it to further the cause. It currently appears that we will have opportunities to do so in the next 6 months.

Respectfully submitted,

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ARLDAC Chair

Jay Bellows, K0QB  
John Robert Stratton, N5AUS  
Ned Stearns, AA7A

## APPENDIX

### Landstein vs. Town of LaGrange, NY

This case, which goes back to 2013, was about applying PRB-1 to a situation in which a municipality attempts to thwart the installation and maintenance of ham radio antennas by imposing excessive costs of the application process on the ham applicant for a permit. Landstein lost at trial and the appeal was filed in about 2015.

The cost prohibition was the primary issue on appeal. The town attempted to assess its legal fees amounting to some \$17,400 to Landstein, but later reduced that amount to \$5,874. Also, the town assessed a continuing escrow balance of \$1,000 to cover the Town's future consulting costs. The antenna at issue and the support structure was to cost no more than \$1,000.

The Appellate Court ruled that the town exceeded its state-granted authority by assessing the fees, and that the town also violated PRB-1 in doing so:

"Here, as discussed above, the Town did not limit the legal consulting fees charged to the petitioner to those necessary to the decision-making function of the Planning Board and the ZBA with respect to health, safety, or aesthetic considerations (see *Freeman v Burlington Broadcasters, Inc.*, 204 F3d 311, 319-326 [2d Cir] [field of radio frequency interference preempted by federal law, thus prohibiting the voiding of a municipal permit based on failure to comply with interference abatement requirements of permit]). As such, the Town's action went beyond the "minimum practicable regulation to accomplish the state or local authority's legitimate purpose" (47 CFR 97.15[b]). Thus, in requiring the petitioner to pay the subject fees, the Town's actions not only exceeded the authority granted to it by the State, but also were preempted by federal law (see *Pentel v City of Mendota Hgts.*, 13 F3d 1261, 1263-1264 [8th Cir]; *Palmer v City of Saratoga Springs*, 180 F Supp 2d 379, 384-386 [ND NY]). Just as the Town may not use its land use regulatory authority to construct "hoop after hoop" for the petitioner to jump through in order to erect his radio antenna tower (*Palmer v City of Saratoga Springs*, 180 F Supp 2d at 385), the Town cannot impose unreasonable expenses so as to create an insurmountable financial barrier to the pursuit of the project. In this context, not only must the consultant fees be reasonable in amount, but the underlying services must be necessarily related to those municipal regulatory functions which are not preempted by federal law."