

# Affiliated Clubs

## *The Power of Incorporation*

By Joseph Morton, KF2MX

During a recent club meeting, one member observed that our 20-year-old club wasn't incorporated and that individual club members would be collectively responsible for any lawsuits brought against the club for damages in excess of the insurance policy limits. Instant pandemonium! Another member stated, "Just pick up a newspaper to find out how serious and expensive lawsuits have become!" One member asked, "it's not uncommon to find settlements far in excess of several million dollars; what happens after the club assets and insurance policy have been exhausted?" "Paid club members would lose homes," exclaimed someone sitting in the back row. Most were surprised that incorporation provided any level of protection from legal action. Before the meeting attendees had a chance to calm down, a formal vote was taken to proceed with the incorporation process. No one knew how to incorporate or had any idea where to start; nevertheless, we all knew that it was our only option. In this age of litigation, our club couldn't afford to take any chances, however remote they may be.

The committee that was formed to handle the incorporation process determined the basis for it during a free consultation with a local New York State Corporation attorney. The club becomes a separate "entity" under incorporation, exclusive of individual club members. Figuratively, a corporation is a living entity that can sue, pay taxes, be sued, and pay bills. This is the basis for "limited liability," which protects members and directors of a corporation. However, it doesn't protect the individual member who willingly breaks the law. In addition, the committee became aware of several other "perks" that incorporation had to offer.

Section 402 of the New York State Non-profit Corporation Law contains the incorporation certificate guidelines and all related requirements. Laws vary from state to state, but there should be similar laws governing the incorporation proc-

ess in your state. In New York, an Amateur Radio club can be classified as a type-b, educational/scientific, membership club. This requires a special approval and signature from the Department of Education before the papers can be filed with the Secretary of State. The entire process takes about two months.

To complicate things, the corporation attorney's fee was \$2,000.00 plus \$180.00 per additional hour to process our club's incorporation – far too much for our small group. We considered other options. Was there a way to do the incorporation ourselves, we wondered? On behalf of the incorporation committee, I contacted ARRL Hq for help and guidance. The League gave us a listing of area clubs that may have already gone through the incorporation process that we could contact. We were also given a partial listing of the ARRL volunteer counsels.

After contacting a dozen or more lawyers in the ARRL Volunteer Counsel program, the best price our committee received was still too high, so we decided to go with another low cost alternative. Our committee decided to let Corporate Agents do the job. The entire transaction was done over the phone and FAX machine. In the beginning of December, the Orange County Amateur Radio Club received its articles of incorporation!

One of the nicest perks of being incorporated is the tax exempt status. Currently, the Orange County Amateur Radio Club Inc. is working on the 501(c)(3) tax exempt forms from the

Internal Revenue Service. The Federal Government decides how corporations are taxed, and individual states usually adopt the IRS tax classification after filing a simplified state tax form with the IRS determination attached. Informational tax returns each year is all that is required. If you discover that your amateur radio club is unincorporated, let your club know of the issues involved and volunteer your time to help change things for the best!

### TIPS

#### **Attorney Specializing in Corporation Law**

Best choice because they have an excellent overall picture of benefits and perks, and will know the best non-profit classification for your club. Expect to pay a retainer in excess of \$2,000.00 for impeccable expertise. Use your best judgment for selection and be skeptical of referral services started by attorneys that end up referring you to the ones that started the service.

#### **The Company Corporation**

This is a business in the business of incorporating small companies. They either have a branch office or an affiliate in the capitol district area of your own state. The main office is located in Wilmington, Delaware. All of the information that they need to incorporate your club can be taken over the phone or faxed. Call them at (800) 877-4224 to find out the cost for your state. The cost for a New York non-profit incorporation is \$356.00.

#### **ARRL Volunteer Counsel**

Check the ARRL Web at: <http://www.arrl.org/field/regulations/local/vc.html> for a list of participating lawyers in your area. These attorneys have agreed to help hams for a reduced rate, but this service is done in addition to their normal work schedule. Fees could conceivably range from \$2,000.00 to free!

#### **Do-it-yourself Incorporation Kits**

For example, "How to Form a Non-Profit Corporation" by Mancuso and NOLO Press is an excellent book on the subject. For \$39.95, it's packed with easy to understand information and serves as a guide to your particular state's requirements. Legal forms are included on an IBM formatted 3.5" disk. These forms are legal and binding. This approach brings down the cost of incorporation to a minimum, e.g., \$75.00 filing fee in NY State.