

# **THE USE OF NATIONAL SKI PATROL MONIES BY PATROLS**

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Each year, member patrols of the National Ski Patrol run fund raising events, such as ski swaps, and collect monies contributed to the National Ski Patrol for its non-profit mission. The question now presented is how can those patrols spend those monies. This question has faced the National Ski Patrol and its member patrols since it first became a tax-exempt entity on February 8, 1948 and it is not a question which has a simple answer. Instead, the question represents an issue which has evolved as the National Ski Patrol continues to evolve, and as the individual needs of the National Ski Patrol's members and member patrols change. So, with an understanding of this evolution, and with an understanding that the following conclusion can and will change over time as the National Ski Patrol continues to evolve its mission, set forth below is National Ski Patrol's volunteer legal advisor's recommendation on use of patrol monies.

## **The Use of Patrol Monies**

The use of patrol monies can be and has been divided into three areas:

- (1) Those items which patrol monies can be spent on;
- (2) Those items which fall into a category that the decision on the use of the patrol monies is determined on a case by case basis directly related to the specific facts involving the member patrol and its need to spend monies; and
- (3) Those items which patrol monies can not be spent on;

In general, NSP member patrols may use the monies they earn and are contributed to them on behalf of the National Ski Patrol in its tax-exempt status for those items that have been historically purchased by patrols; however, at all times, the monies spent must promote the purpose and mission of the National Ski Patrol.

## **Reasons for the Three Categories**

The reasons for the three categories governing the use of patrol funds are directly related to how the National Ski Patrol, and its member patrols, address competing interests and objectives on the use of non-profit monies. There are basically three such competing interests and, in every case where monies are expended, some reference to those three factors should be made by the patrol. The decision to either spend or not to spend patrol monies evolves from balancing these factors in a way that maximizes the benefit to the patrol, the patrol's individual patrollers and the National Ski Patrol. In order to understand how to balance the factors, one must first understand what the factors are.

1. **Doing The Best For An Injured Skier.** Since the first day Minnie Dole formed the National Ski Patrol, its focus has been and remains to support its patrollers in their effort to render the best possible first aid to an injured skier. This commitment to excellence remains at the core of our organization's continuing efforts to make sure that our patrollers are educated and equipped so they can look down into the eyes of an injured skier and say "I am a member of the National Ski Patrol, can I help you."

2. **Protecting NSP's Non-Profit Status.** The second factor concerns the basic non-profit 501(c)(1) and (c)(1) status of the National Ski Patrol. The National Ski Patrol is a federally chartered non-profit corporation and, by its charter, can solicit and collect monies which will promote its non-profit purpose and mission. Monies which are expended outside of the National Ski Patrol's purpose and mission could be argued as being monies expended in violation of the National Ski Patrol's Federal Charter, thus putting that Federal Charter at risk of being taken away by the United States Congress.

3. **Liability Protection.** The third factor which needs to be considered, and which may conflict with the above two objectives, is the need to protect our individual patrollers from liability exposure. In the decision making process of deciding what items can be purchased by patrols, protecting our individual patrollers from liability exposure is becoming more and more important. It is because of the increase in liability exposure that certain items can not be purchased by monies contributed or earned by National Ski Patrol member patrols.

### **Reconciling Conflicting Objectives**

In reconciling the above three conflicting objectives, it is best to start with the objective of protecting the National Ski Patrol's tax free status. As stated above, monies given to the National Ski Patrol, or to its member patrols, can only be used to promote the National Ski Patrol's tax exempt mission.<sup>1</sup> This clear line governing expenditures becomes grayer because many of our member patrols patrol at "for profit" ski areas. As a general rule, NSP member patrols should not use the monies given or earned for NSP's tax exempt purpose for "for profit" ski area purposes. Since almost everything a patrol does at a "for profit" ski area benefits the ski area, it can be argued, from a tax point of view, that use of any monies earned by the patrollers and members of the National Ski Patrol, in its non-profit status, cannot be used at the ski area. To help members resolve this dilemma, on June 17, 2006, the National Legal Committee, comprised of the legal advisors to each Division, met in Denver and discussed this issue with the National Ski Patrol's paid tax

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<sup>1</sup>The National Ski Patrol's Federal Charter states that the purpose of the National Ski Patrol is to (1) to promote, in every way, patriotic, scientific, educational, and civic improvement activities and public safety in skiing, by such means as the dissemination of information and the formation of volunteer local patrols consisting of competent skiers trained in first aid for the purpose of preventing accidents and rendering speedy assistance to individuals sustaining accidents; and (2) to solicit contributions of money, services, and other property for, and generally to encourage and assist in carrying out these purposes in every way. 11 U.S.C. 152702

attorney. From that meeting, a general rule was derived which allowed some expenditures, which had been historically accepted by the Internal Revenue Service, to be made by the member patrol even if such an expenditure could be argued to benefit the “for profit” ski area. What was emphasized by NSP’s tax attorney, at that meeting, is the need for Patrol Leaders to use their good judgment in balancing the need to make sure that their patrollers are properly equipped to the need to protect the National Ski Patrol’s tax exempt status.

Balancing these two objectives is nothing new to the National Ski Patrol in that it has historically been making these decisions since 1948. The success our organization has had in implementing these decisions rests on the good people it seems to attract to be patrol leaders and leaders in our organization. Our organization simply relies upon the good judgment of such leaders to protect it and to carry it forward into the future.

### **Items Which Historically Have Been Permitted Expenditures Of Monies**

With respect to items which have historically been purchased by patrols, first aid supplies and those “basic” supplies necessary to make sure that a patroller is equipped when attending to an injured skier on the slopes, which have been utilized since the inception of the National Ski Patrol, should qualify as legitimate expenditures of NSP non-profit monies. In addition to certain first aid supplies, expenditures on patroller training, the general administration of the patrol, and patrol meetings, including attending NSP approved Region and Division meetings, are appropriate expenditures of patrol monies. However, every situation is different and a Patrol Leader must be conscious of this problem. Patrol Leaders should try not to spend such monies on supplies if the “for profit” ski area can easily afford them.

In addition, monies spent to promote the mission and general non-profit purpose of the National Ski Patrol have historically been considered appropriate. For example, money spent by patrols to improve their volunteer patrollers training, to purchase training toboggans, to fund patrol meetings and to fund courses to improve the education of patrollers, are appropriate expenditures of patrol monies.

It should be noted that sometimes monies are given to patrols for the National Ski Patrol and are restricted by the giver in the use of the monies. First, those monies should not be received by the patrol unless the monies fit within the proper purpose of the National Ski Patrol. Second, the patrol should honor the restriction placed upon the use of the monies.

### **Items Which Expenditures Of Monies Must Be Reviewed On A Case By Case Basis**

The next category is the category of expenditures which have to be reviewed on a case by case basis. For example, some patrols might need radios and toboggans in order to improve their care of injured skiers on the mountains. However, in many cases, the “for profit” mountain can easily afford such radios and toboggans and, therefore, the “not for profit” monies contributed to the National Ski Patrol should not be expended to supplement the “for profit” budget of a profitable ski area.<sup>2</sup> However, realistically, some areas simply do not make sufficient monies to purchase such items and, in such cases, it might be appropriate for the patrol to spend its non-profit monies to make sure that its patrollers have the proper equipment in order to care for the injured skier, one of the primary objectives of the National Ski Patrol. Once again, the decision is really made on a case by case basis and a patrol’s Regional legal advisor and Division legal advisor can assist a member patrol in making such decisions.

### **Items Which Patrol Monies Should Not Be Used For**

In consideration of liability concerns for our individual patrollers, snow mobiles and lift evacuation equipment may not be purchased or owned by NSP member patrols. This does not mean that NSP member patrols cannot utilize snow mobiles and lift evacuation equipment in their everyday patrol activities as long as the equipment is owned and properly insured by the ski area. The National Ski Patrol simply does not own snow mobiles and lift evacuation equipment and does not authorize the purchase of such equipment. In addition, member patrols may not purchase or own real property because of the liability exposure.

Real property and high risk equipment should be owned by the ski area to ensure that there is no question that the ski area’s insurance covers any accidents associated with such property or equipment. The ski area’s insurance is the primary insurance which protects our individual patrollers; thus, making it clear that the ownership of such property and equipment must be held in the name of the ski area is important for Patrol Leaders to understand in order to protect the liability exposure of their individual patrollers.

Snow making equipment and snow groomers are also not permitted purchases.<sup>3</sup> As more particularly set out below, the reason for this is to reduce the liability exposure of the individual patroller, the patrol and the National Ski Patrol itself. Since the National Ski Patrol does not “patrol” at any ski area, it does not control the day-to-day patrolling activities in that it is an educational institution. Making sure that our organization and patrols do not own such equipment, buildings or real estate is very important in protecting our individual patrollers from legal liability.

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<sup>2</sup>Patrols which are members of NSP’s Professional Division and are made up of professional ski patrollers have more difficulties in expending monies since they are not “volunteers”. Since the Professional Division does not have a legal advisor, questions concerning the expenditure of monies should be directed to the National Legal Counsel.

<sup>3</sup>Believe or not, such purchases have been made.

If a patrol finds that it owns real property, snow mobiles or lift evacuation equipment or some other type of equipment which could create liability exposure for its individual patrollers, in almost every circumstance, the legal advisors who volunteer their time to the National Ski Patrol have been able to construct a satisfactory means to transfer the ownership of such equipment and property in a manner which maintains its benefit to the patrol. If a patrol owns such equipment or property, it should immediately contact its Region's legal advisor for assistance.

### **Conclusion**

Balancing the above three objectives is a task which faces our member patrols Patrol Leaders each season. In making a decision among the three objectives, I have found that the "liability" objective is becoming more and more important to consider. Since the founding of the National Ski Patrol, it has evolved to become an educational organization, with member patrollers patrolling as "agents of the ski area". The National Ski Patrol does not control patrol activities at a ski area, so its need to purchase equipment and supplies is minimal and primarily involves improving the education and patrol skills of its members.

Balancing objectives governing the purchase and maintenance of property and equipment is a day-to-day chore for any Patrol Leader. It is part of what our leadership is trained to do and it is needed to protect not just our organization but our individual patrollers going to an accident to perform the Good Samaritan deeds that we, as patrollers, have become so well known for. Promoting skiing safety and helping our fellow individuals is a legacy which our founder, Minnie Dole, has given to us. I am not sure that Minnie Dole, when he was asked to form the National Ski Patrol, contemplated dealing with issues such as legal liability exposure and tax exempt status, but I do know that Minnie Dole created a patrol organization made up of motivated individuals who want to help people. Relying upon the good judgment of such people has always been part of the foundation of the success of the National Ski Patrol. So, if you, as a leader of the National Ski Patrol, have a question with regard to the ownership or purchase of any property or equipment, please remember the conflicting objectives set forth above in your decision making process and please remember that the National Legal Committee and all of the regional legal advisors are there to help you, in that we are part of a large team created by our founder, Minnie Dole. Please feel free to rely upon that team.

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