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TEAMSTERS JOINT COUNCIL 40
REPORT OF LEGAL COUNSEL
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Section 504 of the LMRDA - Disqualification to Hold Union Office

The Labor-Management Reporting and Disclosure Act (LMRDA) is the federal law that governs the internal operations of most unions. One seldom-mentioned provision of the LMRDA is Section 504, which disqualifies persons convicted of various crimes from serving as a Union officer or official. Your Local Union may need to look at ways to insure compliance with the criminal provisions of Section 504, which affect the election of Union officers, business agents and stewards as well as hiring office staff or consultants. It is important to be familiar with who this section applies to, what crimes are included, what the disqualification means, and who is responsible to insure compliance. Failure to pay attention to the requirements of Section 504 can result in criminal liability for Local Union officials.

First, the basic rule is easy to state: Under Section 504 anyone convicted of certain disqualifying offenses CANNOT serve as a Union officer, agent or employee. The list of disqualifying offenses is broad - it includes all felonies and many misdemeanors. Even if it may appear that a particular crime does not appear in the actual language of the statute, the Justice Department and the federal courts have always read the list of disqualifying offenses very broadly. Due to the variations between federal criminal law and the criminal laws of the various states, the courts have interpreted the coverage of Section 504 to be inclusive rather than exclusive. Virtually any felony and most serious misdemeanors in Pennsylvania will come within the coverage of Section 504 as disqualifying offenses.

Second, this disqualification applies to almost any elected or appointed position within a Union other than member. The U.S. DOL's position is that Local Union officers, business agents, stewards, committeepersons and organizers are subject to the prohibition in Section 504. Often overlooked is the provision that employees and outside consultants hired by the Union (including secretaries, consultants, and even attorneys) may also come within the coverage of Section 504. The Local Union needs to be aware when persons are elected, appointed or hired that Local 504 comes into play.

Third, the period of disqualification is quite long. If a person has a disqualifying offense, that person is disqualified from serving in any capacity for a period of thirteen years from the date of the conviction OR the end of the imprisonment, whichever is later. That period may only be (but almost never is) reduced by the sentencing court.

Fourth and most important for the Union, it is also a crime if someone knowingly assists an individual in violating Section 504. A willful violation of Section 504 could result in fines up to \$10,000 or imprisonment for up to five years, or both. It is potentially a crime for a Local Union Executive Board to swear in a newly-elected officer who has a disqualifying offense, or for a Local Union to hire a secretary or staff employee who has a disqualifying offense. If the Local Union does not have steps to check on a person's background at the time they are sworn in or hired, the Local Union Officers may open themselves up to criminal charges. This means that a Local Union Executive Board should take steps to insure that officers and agents are not in violation of Section 504.

One point of this Report is to suggest that Local Unions consider taking a few simple steps to insure compliance in terms of their elected officers at the time of nominations.

Compliance Options

The Local Union can take certain steps in the election process to increase the prospect of compliance with Section 504. One opportunity exists at the time of nominations for Local Union elections. Currently many Unions make no inquiry at the time of nominations about whether candidates for Local Union office have a disqualifying offense. The Local Union can consider several different approaches to address the issue of Section 504 at the time of nominations, including:

- The Local Union could provide each nominee with a statement of the prohibitions in Section 504;
- The Local Union could provide notice to each nominee and request an authorization to conduct a criminal background check; or
- The Local Union could provide notice to each nominee and require the nominee to authorize the background check as a condition of acceptance of the nomination.

It is important to stress that each option has its pros and cons. Your Local Union will want to consider the implications in light of how your elections are handled.

In addition, the Local Union should look to compliance in terms of hiring office personnel. There is also the issue of ongoing compliance and whether officials who have been re-elected should undergo a criminal background check as well. Your Local Union may want to institute mandatory procedures that will insure that future problems will be disclosed in a timely and lawful manner.

**RESPECTFULLY SUBMITTED,
ROBERT A. EBERLE, ESQUIRE**