

LEGAL RESPONSIBILITY IN MANAGEMENT OF SPORTS FACILITIES IN THE UNITED STATES OF AMERICA

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***Abstract:** Improving multifunctional sports facilities caused the development of sports facilities management, and Sports Law, particularly in the United States. As an important segment of the industry sports facilities are, market-making business, oriented to operate rationally. That means on the one hand to offer their customers the best possible conditions, and on the other hand, that it is essential that the capital invested in them recovers quickly, and then increase. It is therefore necessary to minimize possible financial risks. Since much of the undesirable financial costs of sports facilities can result from non-compliance with legal provisions, inadequate contract or dissatisfaction of users or business partners, their prevention requires from management of sports facilities an excellent understanding of the legislation and its application in business.*

***Keywords:** law, responsibility, sports facility, USA*

1. INTRODUCTION

Operation and managing modern sports facilities place high demands to their managers. This is so because enormous funds must be invested in the construction of magnificent sport facilities, and their business is to satisfy the desire of many users oriented on achieving maximum profit. In this sense, the sports facilities built very well and multifunctional and management of such facilities requires tremendous knowledge and skills. As far as on the one hand it is imperative to realize more revenue, is so important to reduce unnecessary expenditures and losses, especially those that result from legal liability. Adverse financial expenses may result from inadequate management of sports facilities, but also because of lack of knowledge or failure to comply with legislation. Poor organization of clubs, associations and sports centers is evident from the lack of qualified staff and managers. (Kastratović, E., 2011).

This paper presents the legal responsibility of managers in the sports facilities of the United States, which are extremely attractive sports facilities, which represent a significant segment of the sports industry, but also extremely well regulated legal issues in this area, particularly in terms of construction, finance and security all the actors sport. As evidence of this is the fact that in many multi-functional sports facilities implemented more than 300 events per year and in the most organized over 400.

One goal of this paper is to highlight the need for timely and good regulation of the legal aspects of the functioning of each of the sports facility, whether it is capital shares to participate in the construction and/or renovation of a sports facility, organizing a sports event, security actors, conditions for tracking people with special needs or health care of any sports facility visitors.

2. LEGAL REPONSIBILITY IN THE MANAGEMENT OF SPORTS FACILITIES

The laws of the United States are generally divided into three levels: federal, state and local and consist of more codified and non-codified form of law, the most important being the United States Constitution.

In considering the potential liability of management of sports facilities, a number of laws from which it derives could be indicated. These are:

- General Laws,
- Criminal Code,
- Property Law
- Constitutional Law

In addition, significant legal liability and possible financial expenses resulting from inadequate contracts of non-respecting provisions of or agreements, as well as failures that leads to violations of safety and health.

A specific type of legal responsibility in the management of sports facilities arising from the document of the ADA (Americans with Disabilities Act - ADA).

General laws

Numerous legal issues relate sports facilities through general laws.

For example, tax laws, regulations, and health care (Occupational Safety and Health Act - OSHA), may affect the operation of the concession and legislation regarding the restitution of the tax on donations to sports programs and tax-free status of the construction bonds. These are just some of the legal issues at the local, state and federal level.

Although the laws are designed and made to guide and direct individuals and businesses for the benefit of society they can sometimes prevent or hinder operations. For example, some municipalities penalize the resale of tickets, while in others allowed. What is legal in one area may be illegal elsewhere.

Criminal Code

Criminal Code, in relation to the management of sports facilities, primarily relate on a variety of claims based on violations of the person or property damage. There are deliberate or intentional criminal acts.

In the context of action, sports facility managers need to point to several elements that define or eliminate its liability in this case.

Obligation

The essential duties of managers of the building are: to provide a safe facility, regularly browse facility, repair any dangerous condition and provide proper supervision. The primary duty is to act reasonably, prudently, in a similar way as other managers with the same education and experience in certain circumstances. There is also a duty to take every precaution to protect users of the facility when there is a risk or threat.

Breach of the obligation

Property managers must prevent hazard situations. For example, there is a requirement that pools have a 1.2m high fence in order to safeguard children. When a legal duty is violated, such as the need for the fence, is considered as ruthlessness.

The immediate case

Even if the duty is not fulfilled, failure to perform duties may not be the direct cause of someone's injury. The causal link means that the injury was a direct result of someone's misconduct. For example, if an object is not cleaned and the items that can cause slippage were not removed, the facility failed to meet the duty. If a person is hurt by being slipped on a slippery surface, but as it is pushed by another person, the person who pushed the "injured" shall be considered a direct cause of the injury. The case drowning in the pool, when while trying to rescue people pulled from the water, but hit her head on the edge of the pool. The Court concluded that the cause-effect relationship of death was not drowning, but improper attempt to save as a swimmer died after being hit by head.

Injury or damage

In the event of injury or harm, depending on the country, a comparative (relative) or contributory negligence can be used as a defense. This defense essentially argues that the injured party is partially or wholly responsible for their injuries. In a comparative negligence, state court examines all the actors and specific events and can decide damages accordingly. If the plaintiff contributed to his injury with 40%, of one million dollars of damages adjudicated, he will receive \$600,000 for the recovery. If the rest is due to the negligence of state, it is possible that the plaintiff's own negligence or actions determine as crucial. In this case, the plaintiff that was guilty 40% will not receive any recovery.

One of the concerns of the stadium and the arenas are "missiles", like balls or hockey puck that after the offense may leave the playing area. After the death of a young hockey fan in Columbus - Ohio, 2003, started a new trend in the study regarding security at sports facilities. For example, stadiums normally have shelter behind the terrain to protect spectators. The issue is what the dimensions of the shelter would provide full public safety, as well as what additional protection is needed? One way of increasing security in the stadiums can be a Japanese model, where lower part under the seat for the audience is completely converted.

Risk-taking

Risks taking mean that the plaintiff knew of the risk of participating in certain activities, voluntarily assuming the risk, and then was injured. Under these circumstances, the injured should not receive any compensation.

One of the classic examples of risk-taking involves "stray" balls in baseball. The courts have been consistent that the viewer can see the entry of a "violating" ball to the stands and it should assume that the ball couldn't hit him if sitting behind the protection. The obligation of the owner of the sports facility is to provide sufficient protected places for those who require them, and that the most dangerous part of the panel is protected. The viewer may be

required to sit in a protected place, if he is concerned that the “violating” ball will hit him. If people do not sit behind a screen, and hit the “violating” ball hits him, then it takes risks and cannot seek damage compensation.

Immunity

Immunity is one of the main methods of defense that can be used by government bodies and some non-profit agencies. For example, Alabama has determined in its constitution that the state cannot be sued for negligence. Therefore, someone who was injured in a public hall for practicing public high school cannot sue the school. In other states, immunity of protection is lower and governmental entities are essentially protected from acts of simple negligence, but not if something are done intentionally, recklessly, or without regard to consequences. Therefore, a public facility could be liable if the staff knew about the dangerous condition, but done nothing to eliminate the danger. Furthermore, some states allow the immune defense relating to public employees whose employees acted willfully. This refers to activities such as planning an event in one building or deployment of security personnel. States do not want their employees are judging for every decision they make, so they were given them immunity.

However, even in these states, the courts are clear that the immunity is not given when the worker is engaged in ministerial leadership. Ministerial behavior is related to the mechanical execution of the directive. For example, it is a discretionary activity if a supervisor inspects the facility and compliance of schedules. The ministerial act is when the implementer of activities takes into account the schedule. Supervisor may be immune in the planning process, but the supervisor will not have immunity for its ministerial act, if not on schedule or object is not reviewed in time. If someone is injured and the building does not meet security requirements, the supervisor will probably be acquitted while the object (as employer) may be responsible.

Risk management and insurance

Various risk management strategies can prevent the risk of injury and reduce the number of cases because of them. To reduce the possibility of a harmful and undesirable events and consequences, and thus increase the likelihood of achieving the planned objectives and results must be conducted using risk management methods and management techniques. (Knezevic, R. et al., 2011).

Risk management focuses on two main aspects: hazard identification, and then removing or reducing these risks. Identifying risks involves a considerable effort in order to examine the current operation, and then gradually create new strategies and techniques to reduce potential lawsuits. One of the strategies is **ect** risk management approach. The name is derived because each element of the strategy end with the letters "ect"

Reflect - Manager of the facility should define why it is interested in managing program-related risks. Is the reason saving money, reducing liability insurance, increased safety of the facility or combination of these. The second part is the assessments of potential risks. For example, an earthquake is not a significant risk factor on the East Coast, but it could be an important factor in the West Coast.

Deflect - Management of the facility can improve risk management by shifting responsibility to others. This can be achieved by putting clauses in insurance contracts regarding purchasing tickets or rental space. In addition, in order to assume responsibilities, the facility may have participants (e.g. parents) who participate in activities, and since they are familiar with the risks will not sue the facility if the injury occurs while participating.

Detect - object manager needs to learn how to recognize potential problems and avoid risks. An example of this is a requirement of the National Fire Protection Association to larger facilities to carry out frequently safety inspections annually.

Inspect - The surveillance is necessary, but sometimes not enough to identify risks in dangerous conditions. In addition, one can physically examine the object, and doing so does not establish the existence of any threat or not the area that needs to be repaired.

Correct - After a certain area, object or situation is identified as a threat, it must be eliminated. For example, it is necessary to complete the works or make repairs.

Re-inspect - The fact that certain repairs carried out does not mean that they were done correctly and hazards are eliminated. Therefore, it is necessary to re-inspection it after repairs, in order to determine the level of security.

Reflect - After a while, for example one year, or after the event, the entire risk management process should reevaluate.

In addition to the risk management strategy, the manager of the facility should apply other types of insurance in addition to traditional comprehensive responsibilities that cover basic operating losses, such as fire or liability for infringement.

For the rare occurrences of events, it is possible to buy a single premium. Thus, for example, insurance in case of snowfall, applications can determine which job losses will be covered in the course of which date to the insurance only covers lost profits and which days will be particularly highlighted as a key business days. For example, the football stadium management wants their insurance covers only in a week when they play games at home. In the insurance policy may be entered any conditions on which an agreement is reached. This depends largely on the knowledge, skill, and ability to negotiate sports facility managers.

Property Law

The property law treats sport facilities in a variety of ways, but it is indisputable that a sports facility is a property, as it is fixed at a section of land, while personal property, such as a car or lawn mower, can move. Many laws and regulations relate to real estate. For example, zoning is considered mandatory for any object. Local officials protect the neighborhood, the integrity and may allow only residential property in a particular area. However, in the case of joint use of the facility, the law of zoning may be more tolerant.

One of the biggest legal concerns with the property law is a "concept of inconvenience." For example, if an object has a lighting or sound systems that go beyond the boundaries of the property, adjacent owners may request the reduction of lighting and sound.

Constitutional Law

In terms of constitutional law, it may be indicated that it exists at level of both the U.S. and all 50 states. It applies only to state and federal actors, and does not include private institutions. The first question that arises at the Constitutional Court was whether the state or federal offender is involved. However, even in private property, government intervention may occur, for example, if state worker, coach, forcing players to play with a private university rival.

The First Amendment – Freedoms

First Amendment encompasses rights, such as freedom of religion, freedom of religious expression and freedom of speech. Problems concerning matters relating to freedom of religion and its free expression can arise when such religious material are transmitted through the speakers. The religious "invocation" is allowed in the facility prior to the event, while prayers are allowed in locker rooms.

The issue of freedom of speech is increasingly appearing in the sports facilities, but can be interwoven with religious matters. In one case, a fan brought a sign of religious-oriented at the stadium, which was removed from the facility. This incident is a mixture of free speech and freedom of religious expression. Other cases involving freedom of speech only, for example, if it is not allowed individuals to stand in front of the building. Several cases have been initiated against persons outside the stadium and arena exhibit programs. Courts avoid the general prohibition of such activities and often proclaim what is called a reasonable time, place, and manner restrictions. Such restrictions allow management facility or municipalities to regulate speech, not on content but on the other standard criteria.

In terms of leasing public property, it is legal to be rented by a religious organization, but if the facility is available to one group, it must be available to other groups regardless of their order or ideology.

Fourteenth Amendment – Protections

Equal protection is another important element of the Act. Publicly owned sports facility (representative acting as the agent of the state) in accordance with the Fourteenth Amendment must provide equal protection under the law to all individuals working in the facility. This applies to players and employees at the facility, and the press. There was a case brought by a female journalist against Yankee. Reporter was not allowed to enter the dressing room and launched a lawsuit alleging that the Yankee played in a public facility, which is guaranteed equal protection regardless of the gender of journalists. Based on such cases, in the "male" sports equal access to locker rooms is provided to male and female journalists. To avoid this problem, in the "feminine" sports no journalist can enter the locker room. Often, journalists are allowed to enter the locker room only after all players take a shower or athletes are interviewed in a separate room.

OSHA regulations and taxes

OSHA regulations affecting the work environment are made so that the facility is as safe as possible for the workers, because injuries often occur in sports facilities.

In the first three years, in Arena at Harbor Yard (now Webster Bank Arena) in Bridgeport – Connecticut were more injuries of workers who have lost fingers while working with glass panels used in hockey.

All serious injuries should be reported to federal or state OSHA office.

Issues related to fees may include taxes on the income of employees, taxes collected on the various items sold, a collection of maps related to the payment of taxes and the ability of property-related taxes. Thus, for example, "Ravens" (The New Haven Ravens) were the only one of 130 teams in baseball league who paid property taxes in the amount of \$25,000 for field use. In addition, they were obliged to hire three or four police officers who worked outside stadium during each match, regardless of the number viewers, what cost them nearly \$80,000.

The influence of government on sports facilities has many aspects. From the zoning regulations to the federal legislation affecting the environment, sports facilities must constantly watch for new regulations that may affect the functions of management.

Contracts

It is known that the contract does not have to be in writing, but this form gives evidence of the agreed terms. Contracts for major investments, such as those on the real estate, or contracts whose implementation requires more than a year, should be in writing.

Seen from a legal perspective, the existence of four basic elements of the contract is necessary. These are:

- contract value,
- subject of the contract,
- party(ies) in the contract,
- the time necessary for the execution of the contract¹

The value of the contract must be clearly stated. It is usually expressed in money, but for example, when the subject of sports facility construction contract value, it is often expressed in square meters of newly constructed space. The minimum contract value is not defined by legal acts, and on the value of the contract, the parties are negotiating and enter in a contract values on which they previously agreed.

The subject of the contract is the theme around which the parties have agreed to deliver it. For example, the owner of a sports club, local (city) government and other (smaller) investors have agreed to build a new stadium for American football.

Party(ies) in contract are stakeholders in the implementation of the object of the contract. It is important that for all the parties in the contract there is the ability of reasonable negotiation. Some people cannot legally be contractors due to age, mental status, mental condition, which means those whose judgment is altered due to the influence of drugs or alcohol have no option of contracting.

The time necessary for the execution of a contract primarily involves a beginning date and end date of contract execution. In addition, in certain jobs, it is necessary to specify the dates (periods) of the completion of certain business segments.

A special type of contract is lease contracts, which also must be made carefully, especially because some items may eventually lose/gain in importance.

Compliance with ADA

In terms of impact on the development and use (management) of sports facilities by persons with disabilities, the most significant document is the Americans with Disabilities Act (ADA). It has a greater impact on the sports facilities than any other law ever passed by the federal government.

This is understandable, because according to some estimates, more than 50 million Americans with disabilities were given the right to equality in the premises, and employment opportunities. The Americans with Disabilities was signed on January 26, 1992.

Given the popularity of sports facilities and the number of people who attend events or participate in activities on them, sports and recreation centers are particularly prominent in relation to the ADA.

Sport facilities and free enjoyment of persons with special needs in them have become subject to surveillance by numerous organizations. One of them is the Veterans Organization of America, which has over 17,000 members. Among other, group filed a complaint against several arenas because despite they had places for wheelchairs, those places have not had a good view of the surrounding terrain when spectators stand.

¹ Jeffrey A. Helewitz (2006). Basic Contract Law for Paralegals, Sixth Edition, Aspen Publishers, New York

Regulations on the floor of the ADA require that all seats for wheelchairs must be such that the wheelchair user is not isolated, and to have a choice of seats and ticket prices. In addition, in places where it is expected that fans will stand, the place for the disabled must provide an unobstructed view from the seats/chairs that are offered to other viewers.

Chapter III of the ADA affects on the places of social and commercial facilities, such as those in which it is possible to consume food and beverages, entertainment facilities (theaters, concert halls, etc.), assembly (amphitheaters, clubs, stadiums, arenas, etc.), centers for public transport, places of recreation (parks, zoos, bowling alleys, etc.), places of education (private schools) and room for exercise or recreation (gymnasium, golf, etc.). Private clubs and religious organizations are only exempted.

ADA compliance requires that in public areas all architectural barriers to access must be removed, if removal is "readily achievable". If architectural barriers cannot be removed, the facility must provide alternative services. In addition, all construction or changes to them must comply with all ADA accessibility standards, unless it is structurally impracticable.

It should be noted that not only disabled persons are protected by the ADA because it prohibits discrimination against any individual or entity who is a relative or associate with disabled person. For example, the accompanist of disabled person cannot be excluded; but does not assume that the person can get free entry to stadium. However, if they have tickets, they should be able to sit together. These places are often referred to places for accompanists.

Suitable place refers to the correction of architectural and programmatic barriers. Architectural barriers are physical elements of the building to prevent access for disabled person. Examples of architectural barriers include following:

- stairs (instead of the ramp),
- unmarked parking,
- manual doors (instead of automatic doors)
- layout of office spaces that do not allow movement of the wheelchair space,
- deep carpet, on which it is difficult to move a wheelchair,
- mirror, paper towels, sink - placed too high on the bathroom wall

In order to avoid discrimination, all reasonable facilities must change its policies, practices and procedures, unless it would be necessary to fundamentally change the nature of goods, services, facilities, privileges, advantages, or accommodations.

Suitable accommodation to ensure equal communication can involve many communication aids such as a qualified interpreter, transcription services, sound recordings, voice synchronization, and telecommunications devices for deaf, video-screened articles, written material (including large print), hearing aids, decoders for approaching and materials for the blind.

Objects of these supplies must be kept in accessible place, and it must function properly.

In order to detect which potential ADA problem exist, the facility manager should conduct a complete inspection of the facility and program. It involves six steps.

1. To assign one employee for ADA. From this "expert" is required to review the literature in the area, meeting ADA regulations and specifications, and listening to the needs of employees and customers.
2. To conduct a comprehensive audit of the facility. All components of the facility should be analyzed and evaluated in relation to accessibility. The written evaluation should be prepared to follow: the necessary repairs, the date of valuation of the building, repair, repair costs, priorities and so on. Such documentation is very important when running the ADA investigations.

3. To determine the policy, procedures and practice of the facility. All policies, procedures or practices that may affect individuals with disabilities must be adjusted. The key to success is the involvement of all employees in this process.
4. To obtain and use in the work necessary aids such as interpreters, recorded text, the text for the blind and hearing aids.
5. To monitor the situation and to make sure that everything goes according to plan.
6. To always check with the accountant whether something can be used to obtain tax benefits².

National regulations relating to the use of alcohol and the smoking ban significantly affect sports facilities and their visitors.

The best known universal laws on alcohol set the age limit for buying alcohol. Manufacturers of alcoholic beverages, like tobacco producers, regularly advertise in numerous countries. One such law in California governing types of advertising (signs, billboard, etc.) that can be purchased from the retail concessionaire. Special decree limits the purchase of advertising space and advertising during the event at the stadium or arena. Manufacturers of alcoholic beverages that participate in the initiation of violation of the provisions can face penalties of imprisonment, a fine of the whole value of advertising space or time involved in the contract, plus \$10,000, or both. It is defined that the advertising features, which size and type of location can be used in stadiums or arenas.

Given the general ban on smoking in restaurants, office buildings, on beaches, and at numerous other locations nor arenas and stadiums are not exempt from these rules. For example, in San Francisco, the city's health code (Article 19) prohibit smoking in workplaces and certain public ownerships sports arenas, where it is stated, "the owner, manager or operator of the sports arena or stadium should accept, and the staff should be aware that smoking and tobacco smoke are prohibited in any indoor or outdoor space in the arena or stadium, except:

1. Ramps outside the arena seats,
2. Private boxes and corridors in the private boxes,
3. Parking areas³

In order to prevent smoking in the facility, "No smoking" labels should be placed and clearly visible at each entrance to the area, and the staff must kindly asks that visitors refrain from smoking.

If the owner or manager fails to take reasonable steps, it can get a reprimand from the Director of Public Health Department. Failure to apply these provisions may result in fines of up to \$500 per day for each day of violation or for continuation.

To avoid problems related to the use, sale and advertising of tobacco and alcohol, the manager of the building should regulate these issues by contract.

Although there is legislation necessary, it is necessary to point out the following. For safety and preventing adverse events in sports stadiums and arenas, but prevention of unwanted situations in stadiums, or coping with certain provisions of criminal law, managers of facilities publicly point out the rules of the behavior of visitors. They precise what is allowed in the sports facilities and what is forbidden.

For example, in one of the most famous sports venues - closed arena in Chicago, United Center, that is the home to one NBA basketball team - Chicago Bulls and NHL Chicago Blackhawks hockey team, which is named after the sponsor United Airlines:

² Gil Fried (2005). *Managing sport facilities*, Human Kinetics

³ <http://www.amlegal.com/>

- Smoking is not permitted;
- Visitors may not bring food, drinks, bottles or cans, that can be purchased at many places inside the arena;
- alcoholic beverages are sold only to persons older than 21 years, with photo identification and proof of age;
- it is not permitted to bring backpacks, game bags or sacks, and if someone comes with such a bag, will be advised to either return it to the car or leave at the appropriate space while in the Arena;
- flags should not be worn during games so the view would not be blocked, parole should not be placed on a wall or fence, and parole that are offensive, vulgar, or commercial are not allowed;
- In the Arena is not allowed to bring animals, unless they are not accompany to individuals with disabilities;
- the use of non-professional camera on the matches of the Bulls and the Blackhawks is allowed, and other developments depend on the policies of the organizers;
- for children below 110cm the entrance is free, but they must share the seat with the companion

It should be noted that Arena is considered the greatest, not according to its capacity, but the space taken up, and this facility annually host approximately 7.5 million visitors in over 200 events.

3. RESUME

Sporting events, realized in the sports facilities are an important part of the sports industry. Modern sport requires adequate sports facilities, which fully meet the requirements for the implementation of activities, and provide comfort, safety and various offers to visitors. One of the indispensable features of modern sports facilities is a fitness for people with special needs, and providing adequate conditions for the media.

Such, multifunctional sports facilities are very large investments that, on the other hand, relatively quickly return the invested capital. However, in managing sports facilities is necessary, especially in the United States, to comply with legislation in order to avoid unnecessary costs of legal penalties and lawsuits from damaged users, employees or partners.

Even if the facility is very safe, the injury is possible, and because of that injured person can sue the facility. In this regard, it is important to understand that good legal planning, contract analysis, recognition of property rights and Constitutional law, as well as other government regulations, Americans with Disabilities Act (ADA) and regulations on smoking and alcohol, reduces unnecessary expenditure.

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