

American Radio Relay League
Amateur Radio Legal Defense & Assistance Committee
Report to the Board of Directors Annual Meeting
January 2016

Committee: Jim Pace, K7CEX, Northwestern Division Director, Chairman, Marty Woll, N6VI, Southwestern Division Vice Director, Jim Tiemstra, K6JAT, Pacific Division Vice Director Mike Raisbeck, K1TWF, New England Division Vice Director, James O'Connell, W9WU, Member Chris Imlay, W3KD, General Counsel

2015 Cash Flow:

**American Radio Relay League
Legal Research Fund
As of November 30, 2015**

12/31/14 Beginning Balance	\$ 165,707
Contribution	12,949
Napa, CA-operating time restrictions	(900)
WN3A tower case	(200)
Draft zoning ordinance-case note cited	(170)
Howard County, MD zoning	(150)
West Palm Beach zoning	(1,410)
Detroit Suburban Town	(30)
DePolo antenna case	(7,091)
ARLDAC funding request	(210)
Landstein case	(690)
Great Neck, NY zoning restriction	(200)
Brookings, Oregon antenna ordinance	(300)
11/30/15 Ending Balance	\$ 167,305

Narrative: : Jeffrey DePolo v. Board of Supervisors of Treddyfrin Township et al. (3rd Circuit United States Court of Appeals consideration of United States District Court dismissal of Amateur PRB-1 complaint for failure to state a claim upon which relief may be granted; Amicus Brief filed for ARRL August 17, 2015). This case is now waiting for oral argument, which is scheduled for Tuesday, January 12, 2016 in Philadelphia. ARRL's Amicus Curiae Brief, ordered by the ARLDAC, was accepted by the Court

over the objection of DePolo's opponents. General Counsel Imlay electronic copies to distribute to you prior to the meeting.

In this case, the Amateur plaintiff/appellant, Mr. Jeff DePolo, WN3A is represented by ARRL Vice Director Bob Famiglio, K3RF. The case is now on appeal in the Third Circuit United States Court of Appeals in Philadelphia. The United States District Court for the Eastern District of Pennsylvania dismissed the case filed by DePolo on the basis of a Section 12(b)(6) preliminary motion to dismiss the case filed by the Township.

DePolo moved to the Township in eastern PA and applied for a 180-foot tower and antennas mounted atop that in the face of an ordinance that permitted "buildings" (which in this case expressly included antennas) to be erected to a height limit of 35 feet as a matter of right. The Township, in view of the Pennsylvania State PRB-1 statute, offered DePolo a 65-foot tower permit (which it didn't seem to have the authority to do under the ordinance as it reads) but DePolo asserted that the 180 foot antenna was the minimum necessary to do the communications he needed to do. There was at the administrative hearing uncontroverted evidence of this from a registered P.E. by the name of Larry Will of the need for the height requested. This case is aberrational because it was dismissed under Section 12(b)(6) of the Federal Rules of Civil Procedure: the failure to state a claim on which relief might be granted. This is the first time that a PRB-1 complaint was dismissed on a preliminary motion rather than on the merits. The trial judge's finding, in essence, was that the complaint, taken in the light most favorable to the plaintiff DePolo, failed to state a claim on which relief may be granted even though PRB-1 was argued on the face of the complaint and the facts were in dispute. That procedural move by the trial judge makes this case unique, and unfortunately the decision is certified for publication. The truly strange thing about the trial judge's opinion is that he dismissed the case on a preliminary motion but then decided to elaborate in his opinion on the merits of the case.

The ARLDAC denied DePolo's request for funding for the 3rd Circuit Court of Appeals component of this case but ordered the filing of a brief Amicus Curiae in the Court of Appeals on behalf of DePolo. The brief principally addresses the argument that the trial judge should not have dismissed the case for the failure of the plaintiff to state a claim on which relief could be granted. That is normally based on an analysis of the complaint itself and whether or not on its face, taking the allegations in the light most favorable to the plaintiff, the case states a justiciable claim. Secondly, the brief challenges the fixed, 35-foot ordinance on its face. The case law supports those arguments.

Myles Landstein, N2EHG v. Town of LaGrangeville, NY. (Cost prohibitions as violations of PRB-1, and Amateur antennas as customary accessory use of residential real property). The status of this case is unclear and N2EHG is non-responsive to our inquiries for a status report. The issues in the case are whether or not there is a cost prohibition imposed by the Town of LaGrangeville against Landstein's antenna, and whether the Town improperly failed to consider an Amateur Radio antenna to be a normal accessory use to residential real property. ARRL has asked Myles Landstein repeatedly for an update and hope to have one for you by the time of the meeting.

Respectfully Submitted

Jim Pace, K7CEX, chair