

Below are Mitch Crane's responses to the most frequently asked questions from the June AFA Risk Management Cafe.

Please note that any opinions or recommendations in these responses are not necessarily those of the Association of Fraternity Advisors or CAMPUSPEAK Inc. The Risk Management Café is designed to serve as an additional educational resource for Association members.

1. What liability is incurred by an organization hosting a social activity at a bar or tavern?

One early lesson law students learn in Civil Litigation is: "Sue everyone remotely responsible for the injury!" It is not unusual to find multiple defendants in personal injury cases. The standard questions are: What was the proximate cause of the injury? Who had the duty to protect the injured person. Was the injury caused by a breach of that duty?

The reason most inter/national Greek letter organizations ban sponsored events at bars or taverns is because of the liability issue. If the bar is responsible for carding and an underage person is served and there is an injury as a result (MV accident, assaulting another person, sexual assault, etc) the liability will be with the establishment--if that establishment is licensed and bonded (insurance) that cost will be theirs. That liability would shift if the chapter collected money, shared in the profits, did carding, knew the bar would not card, or, if members of the chapter knew that their members or guests present had altered ids.

There would still be liability if they knew or should have known that one of their members had a propensity for getting drunk and assaulting others.

With the exception of carding and serving (if the bar does it) a chapter-sponsored event at a bar (or anywhere else) carries the same liability for actions of their members as a party in their house would)

2. What liability risk is posed by using peer monitors to enforce IFC policies at off-campus social activities?

Liability could arise in situations where there is a reliance on the work of the peer monitors (are they agents of the institution). If there is reliance, and the monitors see and overlook violations of law, or should have seen, there could be liability. It is important that these peer monitors be covered under someone's insurance policy (preferably the institution's).

3. Is it better to ignore or acknowledge activities sponsored at unregistered (not University recognized) fraternities and sororities?

If an underground or unrecognized fraternity or sorority has a tragedy (fire in house resulting in death; rape after party) the headlines will still say "-----Univ Frat..." The publicity and damage to the institution's reputation are the same. It is expected that the institution take reasonable actions. That action is very different in public and private institutions.

In public institutions the courts have held that students may associate themselves as they see fit. Those organizations have the right to recognition and the use of public facilities. (See *Gay Student Services vs. Texas A&M* 737 F2d). The only restriction is if the organization engages in "activity (that) disrupt(s) the educational mission." (*Iota Xi Chapter of Sigma Chi Fraternity vs George Mason University* 773 F.Supp 792, affirmed 003F2d 386). You cannot ban or refuse to recognize an organization merely because they are vulgar or profane, or politically radical, or promotes ideas inconsistent with the administration. You can, I believe, take action against organizations that consistently violate the law --serve minors, assault new members). Can you prohibit membership in such organizations as a condition of matriculation in a public institution? Unclear, but...in private institutions (not publicly owned or financially supported) the relationship is that of contract. The institution may create written rules-handbooks, etc. and require students entering the term after the creation of those rules, to adhere. Private institutions have been allowed to amend these contracts and prohibit fraternities or other unpopular organizations. (*Corso vs Creighton University* 731 F2d 529.)

Bottom line is that it is best to use reasonable means to control the activity than to ignore it altogether in a public institution. In a private, it is reasonable to take action in anyway considered to be in the best interest of the institution--even prohibiting membership.

These are not necessarily my personal beliefs, but are my considered opinion of current law.
--Mitch Crane