



*The Value of*

# Relationships

*Between State Charity Regulators  
& Philanthropy*

BY

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**Copies of this publication are available free for download at [www.givingforum.org/policy/regulators.html](http://www.givingforum.org/policy/regulators.html) or at [www.cof.org](http://www.cof.org).**

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# Contents

<b>A MESSAGE FROM STATE CHARITY REGULATORS .....</b>	<b>iv</b>
<b>INTRODUCTION .....</b>	<b>1</b>
<b>PART ONE: SUMMARY &amp; KEY FINDINGS</b>	
State Regulation of Charities: A Brief Overview .....	3
Models of Regulator-Philanthropy Relationships .....	5
The Value of Regulator-Philanthropy Relationships .....	5
Table 1: Key Characteristics of State Regulator-Charitable Sector Relationship Models .....	6
Lessons on Developing Regulator-Philanthropy Relationships .....	7
<b>PART TWO: GOVERNMENT REGULATION OF CHARITIES—AN OVERVIEW</b>	
Federal Regulation of Charities .....	10
Managing Charities Under Federal Law .....	10
Regulating Charities by the IRS .....	11
State Regulation of Charities .....	12
Managing Charities Under State Law .....	12
Regulating Charities by the Attorney General .....	13
Attorney General Oversight of Charities: A 16-State Review .....	15
Registration & Reporting to Enhance Attorney General Oversight .....	15
Table 2: 16-State Review Sample of Attorney General Oversight .....	16
Staffing & Organization of Attorney General Oversight .....	17
Funding of Attorney General Oversight .....	17
Educating the Charitable Sector & Public .....	18
<b>PART THREE: CASE STUDIES OF RELATIONSHIPS BETWEEN REGULATORS &amp; PHILANTHROPY IN ACTION</b>	
Illinois Case Study: Creating a Permanent Charitable Advisory Group .....	23
Michigan Case Study: Enhancing a Strong Regulator-Charitable Sector Relationship .....	28
New Hampshire Case Study: Collaborating to Strengthen Nonprofit Governance .....	33
Ohio Case Study: Educating Philanthropy & Building a Relationship .....	38



## A Message from State Charity Regulators

We are pleased to acknowledge the collaboration of the Council on Foundations and the Forum of Regional Associations of Grantmakers in publishing this report to explore how state charity regulators and the philanthropic sector can work together to improve the regulation and accountability of grantmakers.

Attorneys general are the chief legal officers of the states, commonwealths and territories of the United States. One of the many enforcement functions of attorneys general is the general power and authority to enforce state laws regulating charitable organizations. In some states, regulation is a bifurcated system and may also include secretaries of state, state regulatory boards or other state officials in the supervision of charities and enforcement of the laws governing them.

Although we cannot endorse any facts or opinions presented in this report, we appreciate the efforts of the Council and the Forum to reach out to state regulators. We hope that both state regulators and the foundation community will benefit from the information in the report.

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# Introduction

The Council on Foundations and the Forum of Regional Associations of Grantmakers share the goals of strengthening and improving the governance and accountability of foundations. Government oversight occurs at both the national and the state levels, and in many cases, state attorneys general and charity officials are the front line for enforcement of nonprofits and foundations. We believe there is merit in an appropriate level of state regulation and enforcement—in ways that recognize the diversity and complexity of the philanthropic sector.

This publication seeks to help enhance the accountability and effectiveness of foundations and their oversight by state regulators by highlighting the value of ongoing, productive relationships between regulators and the philanthropic sector, and demonstrating how such relationships can be successfully achieved. In all sectors across all industries, a frank dialogue between the regulators and the regulated is a prerequisite to effective government oversight. The publication is intended for people working in both charity regulators' offices and the charitable sector.

Part One summarizes the key lessons learned from the publication's case studies and provides tips and tools to the charitable sector and state regulators for creating and building relationships. Part Two provides an overview of the government regulation of charities and offers an in-depth discussion of state oversight, with data and examples gathered from a review of 16 key states. Part Three presents case studies of four states where state charity regulators and the charitable sector have developed effective relationships to help improve the education, regulation and accountability of foundations and public charities. The publication is written from the perspective of the philanthropic community because they are our constituents. However, we hope that all charities will find this report useful, because we believe that the key lessons learned apply to the entire sector.

We would like to extend our sincere thanks to the representatives of the charitable sector, state regulators' offices and others for their willingness to share their perspectives, talents and time. This publication would not have been possible without their input and support (please see a complete list of acknowledgements on the inside front cover).

We hope you will find this publication helpful as we all work together to continue ensuring an effective and accountable philanthropic and nonprofit sector.



ELLEN BARCLAY  
*President*  
*Forum of Regional Associations of Grantmakers*

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STEVE GUNDERSON  
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## About the Council on Foundations [www.cof.org](http://www.cof.org)

The Council on Foundations, located in Washington, D.C., is a national membership organization of more than 2,000 grantmaking foundations and giving programs. The Council provides the opportunity, leadership and tools needed by philanthropic organizations to expand, enhance and sustain their ability to advance the common good. Throughout its 54-year history, the Council has worked to improve the governance of foundations by providing leadership expertise, legal services, guidance on best practices and ethical standards, and networking opportunities—among other services—to its members and to the general public.

## About the Forum of Regional Associations of Grantmakers [www.givingforum.org](http://www.givingforum.org)

The Forum of Regional Associations of Grantmakers is the national network of regional associations serving and advancing philanthropy in their communities. The Forum focuses on philanthropy at the city, state, and multi-state levels and encompasses 31 regional associations of grantmakers which collectively represent more than 4,000 foundations, corporations, organizations, and individual donors. The Forum works to enhance, expand, and explain philanthropy and provides services and resources to increase the capacity and effectiveness of its network of member associations and colleague organizations.



## PART ONE:

# *Summary & Key Findings*

# State Regulation of Charities: A Brief Overview

Charitable organizations are subject to a dual state-federal system of government regulation in the United States. At the federal level, charities can qualify for favorable tax-exempt status afforded to them under the federal tax code that entitles them to exemption from corporate income taxes and, more importantly, to receive tax-deductible contributions from individuals and corporations. The federal government's grant of tax exemption gives it a stake in making sure that charities comply with the requirements for maintaining tax-exempt charitable status.

At the same time, charities are created under state law and subject to state rules that have long defined the basic fiduciary duties of the directors and officers managing them. In contrast to the uniform federal regulation of charities, state charity regulation varies widely from one jurisdiction to another. There is a degree of uniformity in the states' substantive requirements, but little if any in the degree and effectiveness of their enforcement.

## THE ROLE OF THE ATTORNEY GENERAL

State attorneys general are the chief legal officers of the states. They serve as legal counselors to state agencies and legislatures and as representatives of the public interest. Their powers, duties and responsibilities are defined and interpreted by state constitutions, legislatures and the courts.

The duty of the attorney general with respect to charities is to enforce the laws regulating charitable organizations and charitable solicitations, and to ensure the proper administration of funds dedicated to charitable purposes. In the absence of legislation, the legal remedies available to the attorney general to correct wrongdoing are as broad as the courts' equity powers to grant them. The most typical remedies sought by regulators are restitution, imposition of fines, removal of directors and officers engaged in wrongdoing (and appointment of successors) and sometimes dissolution of the charity.

Most attorneys general and other state regulators view their role in charity regulation as consumer protectors. They spend their time and efforts addressing fraudulent and deceptive charitable solicitations and on making sure that charitable funds are used in accordance with donor intent. However, the string of governance failures in the nonprofit sector in recent years has prompted some state regulators to increase their focus on the governance of nonprofit organizations—Is the board exercising active oversight? Is the charity paying excessive compensation to officers and directors or for professional services? Is the charity engaging in related-party transactions that result in private benefit?

## ATTORNEY GENERAL OVERSIGHT OF CHARITIES: A 16-STATE REVIEW

It is widely acknowledged that state regulators lack adequate resources to enforce effectively the laws that regulate charities. But some states do actively regulate charities in a way that positively impacts their compliance with the law.

Here are highlights of how attorneys general in 16 key states<sup>1</sup> supervise charities, like private foundations, that do not fundraise from the general public, and therefore do not have to register with the attorney general, or another state agency, in accordance with state charitable solicitation statutes that are in effect in the majority of states. Sixty-four percent of all private foundations and 57% of all public charities are located in these 16 states.

### Registration & reporting.

Between the 1940s and the 1960s, several states passed legislation increasing the supervisory powers of attorneys general that included mandatory registration and reporting of charities

*Over the past several decades there has not been a significant increase in the number of attorneys assigned to charity oversight.*

regardless of whether or not they solicit funds from the general public. New Hampshire was the first state to enact such legislation in 1943, followed by Rhode Island (1950), South Carolina and Ohio (1953), and Massachusetts (1954). Several other states have enacted versions of the 1954 Uniform Act for Supervision of Trustees for Charitable Purposes, which has several provisions intended to enhance the attorney general's knowledge of the existence and administration of charities. These states include California (1955), Illinois (1961), Michigan (1961), Oregon (1963), New York (1967) and Minnesota (1989). Few other states have tried to enact similar legislation.

**Staffing & organization.** The oversight of charities within the attorney general's office often falls under the pur-

view of the consumer protection division or an equivalent division within the office. In most states, the attorneys and staff are assigned to charities work as necessary and not to a separate charities section or unit. However, in almost all of the 16 states reviewed, the attorneys general have created separate chari-

ties sections or units—usually within the larger consumer protection division—to handle and coordinate the charity oversight work.

*In most states, there are no funds earmarked to support the attorney general's enforcement of charitable organizations.*

Based on surveys conducted in the 1970s and 1990s and the current review of 16 states, it is fair to say that over the past several decades there has not been a significant increase in the number of attorneys assigned to charity oversight or in the states with the highest staffing levels. Among the 16 states reviewed, those with the most full-time attorneys in their charities sections are New York (20), Pennsylvania (12), California (11) and Ohio (10). On the other end, for states with fewer charities, Oregon has three attorneys and New Hampshire has one. At least six of the 16 states also employ auditors or financial investigators to assist with reviewing reports filed by charities and with active audits or investigations of charities. Additional staff handles the actual registration function, which consumes significant time and resources.

**Funding.** In most states, there are no funds earmarked to support the attorney general's enforcement of charitable organizations. In the 11 states with general registration and reporting statutes, the filing fees imposed in four states are deposited in the general treasury, while five states follow the Uniform Act by earmarking fees for the attorney general's oversight and enforcement function of charities. In some states, attorneys' fees, fines and penalties collected from charity enforcement actions are also earmarked for charity oversight. Registration and reporting fees are generally modest, but there is little uniformity in the fee structure imposed among the states reviewed.

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***See "Part Two: Government Regulation of Charities: An Overview" on page 10 for a complete overview of federal and state regulation of charities and foundations, including a review of attorney general oversight in 16 key states.***



# Models of Regulator-Philanthropy Relationships

In some states, charity regulators and the charitable sector have developed ongoing, productive and mutually beneficial relationships. These types of relationships tend to follow one of three basic relationship models:

- **Legally mandated charitable advisory or working group.** A group created by statute to offer guidance and input to charity regulators on issues affecting the charitable sector. An example of this model is at work in Illinois, where the Illinois General Assembly passed groundbreaking legislation in 2001 to create the Charitable Advisory Council as a permanent body to advise the Illinois Attorney General on issues related to charities and charitable giving in the state (see the Illinois case study on page 23).
- **Voluntary/ad hoc charitable advisory or working group.** A group formed and convened at the direction and discretion of charity regulators to offer guidance and input on issues affecting the charitable sector. An example of this model is at work in Michigan, where the Nonprofit Council for Charitable Trusts was established

in 2004 as an advisory/working group to the Attorney General on issues related to charities and charitable giving throughout the state (see the Michigan case study on page 28).

- **Project-based collaboration to provide education and information.** Representatives of the charitable sector and charity regulators work together on specific projects to develop educational materials or information resources for the sector. Examples of this model are at work in New Hampshire, where the charitable sector and Attorney General's Office jointly developed new resources to strengthen nonprofit governance; and in Ohio, where the Attorney General's Office and philanthropy sector have jointly created two educational guides for grantmaking foundations (see the New Hampshire case study on page 33 and the Ohio case study on page 38).

Table 1 (on page 6) summarizes and compares each relationship model.

# The Value of Regulator-Philanthropy Relationships

## CORE VALUE: A STRONG CHARITABLE SECTOR

In states where charity regulators and the charitable sector have developed ongoing, productive relationships, people involved view the primary value of these relationships as their contribution to helping maintain a strong charitable sector. At their core, these relationships improve the effectiveness and efficiency of ensuring that foundations and public charities are accountable to the public in using their charitable assets. Whether educating the charitable sector on its roles and responsibilities, informing the public about the sector, or enforcing laws and regulations in the sector, the consensus is that these functions work better if states' charitable sectors and charity regulators work together.

## ADDITIONAL BENEFITS

Along with the core value of a strong charitable sector, states cite many key secondary benefits of positive working relationships between charity regulators and the charitable sector:

### *Benefits to Charity Regulators*

- **Improved legislation and regulation.** When a regulator seeks input from the charitable sector on proposed legislation or regulations affecting the sector, it can help yield more effective laws and rules that better reflect their practical impact on foundations and charities.
- **Leverage resources.** Relationships with the charitable sector can help regulators achieve their goals with mini-

*(continued on page 7)*

**TABLE 1: KEY CHARACTERISTICS OF STATE REGULATOR-CHARITABLE SECTOR RELATIONSHIP MODELS**

	<b>Legally mandated charitable advisory or working group</b>	<b>Voluntary/ad hoc charitable advisory or working group</b>	<b>Project-based collaboration to provide education and information</b>
<b>Summary</b>	A group created by legal statute to offer guidance and input to charity regulators on issues affecting the charitable sector. Group members can include nonprofit and foundation representatives, legal and governance experts, and fundraising professionals.	A group formed and convened at the direction and discretion of charity regulators to offer guidance and input on issues affecting the charitable sector. Group members can include nonprofit and foundation representatives, legal and governance experts, and fundraising professionals.	Representatives of charitable sector and charity regulators work together on specific projects to develop educational materials or information resources.
<b>Structure</b>	Typically meets on a regular basis.	May meet regularly or on an ad hoc basis when a new need arises.	Remains in operation only as long as the project lasts.
<b>Level of formality</b>	High	Medium	Low
<b>Typical functions</b>	Provide input on existing or new legislation or regulations; help regulators educate and inform public charities, foundations, donors and/or the public; and/or help regulators collect and provide data and information on the charitable sector.	Provide input on existing or new legislation or regulations; help regulators educate and inform public charities, foundations, donors and/or the public; and/or help regulators collect and provide data and information on the charitable sector.	Plan, create, disseminate and promote resources to the charitable sector and/or the public. Might also provide input on existing or new legislation or regulations.
<b>Example</b>	Charitable Advisory Council (IL)	Nonprofit Council for Charitable Trusts (MI)	"Guide to Grantmaking Foundations" publication (OH); "Excellence in Nonprofit Governance" project (NH)
<b>Pros</b>	<ul style="list-style-type: none"> <li>● Guaranteed to remain in operation even as people change.</li> <li>● Statute gives the group added credibility and visibility.</li> </ul>	<ul style="list-style-type: none"> <li>● Easier and quicker to set up than a legally mandated group.</li> <li>● More likely to create a lasting, productive relationship than project-based collaborations.</li> </ul>	<ul style="list-style-type: none"> <li>● Easiest and quickest to set up of three models.</li> <li>● Requires less overhead and staffing than either type of advisory group.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>● Can be more difficult and time-consuming to pass legislation to create the group.</li> </ul>	<ul style="list-style-type: none"> <li>● Not guaranteed to remain in operation as a regulator's staff or priorities change.</li> </ul>	<ul style="list-style-type: none"> <li>● Without continued engagement, might be less likely to create a lasting relationship.</li> </ul>

mal added expense, since the bulk of the staffing support for collaborative projects or groups typically comes from the charitable sector—particularly from regional associations of grantmakers or nonprofits.

- **Focus resources more strategically.** Working with the charitable sector to inform and educate foundations and charities can enhance the effective use of a regulator's resources for education, and possibly free up limited resources for monitoring and enforcement activities.
- **Tap into charity expertise.** Working with representatives of foundations and charities allows a regulator to tap into their extensive expertise in the sector, which can be particularly helpful when creating education or information resources for the sector.

### *Benefits to Charitable Sector*

- **Less likelihood of harmful legislation.** A charity regulator's top priority will always be to regulate the charitable sector. However, by developing a good relationship with regulators, the sector can increase regulators' understanding of its needs and concerns and thus decrease the likelihood of any unduly burdensome legislation or restrictions being proposed.
- **Support self-regulation.** Regulators that develop good relationships with the charitable sector can sometimes become stronger supporters of the sector's efforts at self-regulation, particularly through the development and promotion of guiding principles and best practices for the field.
- **Strengthen public trust.** A good working relationship between the charitable sector and charity regulators can help strengthen and deepen public trust in the sector.

## Lessons on Developing Regulator-Philanthropy Relationships

People involved in ongoing, productive relationships between a state's charity regulators and charitable sector share these common lessons for developing and maintaining a relationship:

### LESSONS FOR ALL

- **Get support from the top.** It is difficult if not impossible to develop a good relationship without the full support of the attorney general and the heads of any other agencies involved in regulating the charitable sector.
- **Ensure a clear understanding of expectations.** Given the inherent barrier that exists when a regulator builds a relationship with the organizations it regulates, take care to ensure that all people involved in the relationship have a clear and common understanding of their roles and responsibilities, purpose, authority and limitations. When working with an ad hoc or permanent advisory group, it is also important to develop clear guidelines on group membership (nomination process, term limits, etc.) and avoid honorary appointments.
- **Have trust.** As with any type of relationship, there must be trust if a relationship between regulators and the charitable sector is going to work. Everyone involved needs to be open and honest with each other.
- **Find win-win situations.** The relationship will function best when both sides work together in mutually beneficial ways, finding the right balance between the needs of regulators to oversee the sector and the needs of the sector to advocate for foundations and charities.

- **Be patient.** Recognize that it can take time to develop a relationship and accomplish goals, since it will involve people who are working in a voluntary capacity and are coming to the table with different time constraints and perspectives.

## LESSONS FOR CHARITY REGULATORS

- **Work with charity associations or groups.** One of the best ways for state regulators to develop relationships with the charitable sector is to work with regional associations of grantmakers and/or nonprofits covering the state, if they exist, or with other less formal groups of nonprofits or foundations. These associations and groups can offer expertise on the field and readymade connections and outreach to the sector. (You'll find a list of regional associations of grantmakers at [www.givingforum.org/ralocator.html](http://www.givingforum.org/ralocator.html); and a list of state and regional associations of nonprofits at [www.ncna.org](http://www.ncna.org).)
- **Make it personal.** Take advantage of as many opportunities as possible for a regulator's staff members to meet face-to-face with nonprofits and foundations. This can help increase the effectiveness of their regulatory work by opening lines of communication and understanding about the regulator's goals and objectives and the charities' responsibilities and compliance requirements.
- **Support self-regulation efforts.** A regulator's support for the charitable sector's efforts at self-regulation can help free up its limited resources to focus on the highest-priority enforcement issues.
- **Take the first step.** Be willing to take the first step in developing relationships with the charitable sector, since the balance of power is on the regulator's side.

## LESSONS FOR CHARITABLE SECTOR

- **Involve the right people.** Whether you are dealing with a charitable advisory/working group or a specific project, take care to ensure that the people involved from the charitable sector are committed professionals who represent the diversity of the sector and who have political savvy, an in-depth understanding of the sector, and a willingness to roll up their sleeves and get things done.
- **Be proactive.** Since the charitable sector is not typically at the top of any regulator's agenda, the sector must be willing to take an ongoing, proactive stance in reaching out to regulators and developing a relationship with them.
- **Provide staffing support.** These relationships tend to be most successful if the charitable sector is willing and able to provide the bulk of the staffing support for any collaborative projects or advisory/working groups.
- **Recognize and support the attorney general's regulatory role.** If the charitable sector wants charity regulators to support its self-regulation efforts, then it must also stand up and support the regulators when they prosecute violators.
- **Develop relationships with legislators.** In addition to developing good relationships with state charity regulators, the charitable sector must work to develop good relationships with state legislators. Since a substantial portion of charity regulation originates, and is controlled by, state legislatures, the charitable sector's strategies to work with regulators will only go halfway if it does not also consider ways to work with key legislators who can influence a state's charity regulation.

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### Endnote

<sup>1</sup> California, Florida, Illinois, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina and Texas.



## PART TWO:

# *Government Regulation of Charities— An Overview\**

**An overview of the federal and state  
regulation of charities as it  
affects the governance  
of foundations, including a  
review of attorney general oversight  
in 16 key states.**

\* The authors wish to acknowledge with gratitude the substantial and material assistance of Marion Fremont-Smith with this section of the report.

## Introduction

Charitable organizations are subject to a dual state-federal system of government regulation in the United States. At the federal level, charities can qualify for favorable tax-exempt status afforded to them under the federal tax code that entitles them to exemption from corporate income taxes and, more importantly, to receive tax-deductible contributions from individuals and corporations. The federal government's grant of tax exemption gives it a stake in making sure that charities comply with the requirements for maintaining tax-exempt charitable status.

At the same time, charities are created under state law and are subject to state rules that have long defined the basic fiduciary duties of the directors and officers managing them. Most state regulators (attorneys general) view their role in charity regulation as consumer protectors. They spend their time and efforts addressing fraudulent and deceptive charitable solicitations and on making sure that charitable

*Charities are created under state law and subject to state rules that have long defined the basic fiduciary duties of the directors and officers managing them.*

funds are used in accordance with donor intent. However, the string of governance failures in the nonprofit sector in recent years has prompted some state regulators to increase their focus on the governance of nonprofit organizations—Is the board exercising active oversight? Is the charity paying excessive compensation to officers and directors or for professional services? Is the charity engaging in related-party transactions that result in private benefit?

This section provides an overview of the federal and state regulation of charities as it affects the governance of foundations, and thus the regulation of charitable solicitation is not discussed. Although the focus is on state regulation, since this study is about the role of states in regulating charities, an overview of federal regulation provides a useful background for helping to understand how states regulate charities.

## Federal Regulation of Charities

### MANAGING CHARITIES UNDER FEDERAL LAW

Charities have long been afforded preferential tax treatment by the federal government. Charities are exempt from corporate income taxes, and individuals and corporations can make tax-deductible contributions to them. To qualify for tax-exempt status under Section 501(c)(3) of the federal tax code, all charities must meet an organizational test and an operational test. To meet the organizational test, a charity must provide in its governing documents that its assets will be used exclusively for purposes considered to be “charitable” as defined in the federal tax code, regulations and by the courts. The governing documents must also prohibit the organization from undertaking any activities not permissible for an exempt organization, and must require that on dissolution or termination, the

organization's assets will pass to another charity. To meet the operational test, a charity must ensure that its actual operations are consistent with the standards for exemption required under the organizational test.

***Public Charities vs. Private Foundations.*** The federal tax code divides charities into two basic types: public charities and private foundations. Public charities include churches, educational institutions and hospitals, as well as publicly supported organizations such as museums and community foundations. Private foundations, on the other hand, are usually funded by a single individual, family or company. The private foundation classification is important because private foundations are more strictly regulated than other charities.

Private foundations, among other requirements, must distribute a percentage of their assets every year; pay an excise tax on their net investment income; observe certain requirements when making grants to non-public or foreign charities; avoid making risky investments that might jeopardize their ability to carry out their charitable missions; and avoid entering into self-dealing transactions with certain individuals and entities, including their trustees/directors and officers. Public charities are not subject to any of these constraints, although they are subject to some requirements regarding their dealings with interested parties. They may enter into related-party transactions if they are negotiated at arms-length and provide no “excess” benefit (more than fair market value) to the related party.

## REGULATING CHARITIES BY THE IRS

Federal regulation of the administration and governance of charitable organizations has been assigned by Congress to the Internal Revenue Service by virtue of the Service’s role in the administration of the tax laws. A special division within the IRS is responsible for enforcing the provisions of the Internal Revenue Code governing charities. Currently called the Tax Exempt and Government Entities Division, the division was created in 1974 and underwent major reorganization, along with the entire Service, in 1998 pursuant to a legislative mandate. The division must compete with others within the IRS for funds because revenues collected from the excise tax on private foundations—which exceed the division’s budget—are not earmarked to support its enforcement and educational initiatives.

Almost all charities must file detailed annual federal information returns, which are available for public inspection, that contain information on finances and programs. In recent years, following a congressional mandate that charities make these returns more easily accessible to the public, the returns have become widely available on the Internet, either through posting on a charity’s own website or through GuideStar, which posts information returns of all charities. These Internet postings greatly increase charities’ transparency, which is considered by some to be as important as direct enforcement.

The sanctions available to the IRS are only those that are prescribed in the federal tax code and only for those actions that violate the provisions of the tax code. Until 1969, the only sanction available to the IRS was revocation of exemption, a sanction that in some instances was too drastic. The Tax Reform Act of 1969 imposed limits on private foundations and created new remedies for violations of those limitations in the form of penalty excise taxes. For self-dealing transactions, excise taxes are imposed on the self-dealer and on the fiduciaries who approved the transaction. Excise taxes are also imposed on the foundation and in some cases its managers for violations of the other limitations. In 1996, Congress enacted provisions applicable to public charities that prohibit the payment of excess benefits to insiders, with sanctions similar to those in effect for private foundations. Second-level, confiscatory taxes can be avoided if the wrongdoing is “corrected,” which generally requires making restitution to the charity. With these requirements, federal sanctions more closely resemble those available in state courts, directed as they are toward the fiduciaries who have misappropriated charitable funds and toward remedying the harm done to the charity.



# State Regulation of Charities

In contrast to the uniform federal regulation of charities, state charity regulation varies widely from one jurisdiction to another. There is a degree of uniformity in the states' substantive requirements, but little if any in the degree and effectiveness of their enforcement.

## MANAGING CHARITIES UNDER STATE LAW

Charities are created under state law (generally statutory) that prescribes certain procedural steps to take depending on whether a charity's legal form is to be a corporation, a trust or a voluntary association. The definition of charitable purposes under state laws is in almost all cases aligned with that in the Internal Revenue Code, both using definitions established under the common law, which has its roots in Elizabethan England. State law regulating the actions of fiduciaries and the governance of nonprofits is generally not based on the type of charity involved (e.g., public charity vs. private foundation), as is the case under the federal tax code, but rather on the organizational form of the charity (trust vs. corporation). Thus, a charity organized as a nonprofit corporation may be required to have a certain minimum number of directors and officers—usually three, although a few states only require one—while no similar limits exist for a charity organized as a trust.

The basic duties of charitable fiduciaries are those of loyalty and care. These duties are derived from the law of trusts, and in general have been carried over to the law of corporations, although some differences do exist (and litigation sometimes arises over which laws apply to which types of organizations). Under the *duty of loyalty*, a trustee/director is prohibited from benefiting at the expense of the charity whether in the course of buying from or selling to the charity, or in regard to compensation. This duty functions, in large part, as a state limit on self-dealing. The *duty of care* requires that a fiduciary act as a "prudent person" in overseeing the affairs of the organization and investing charitable funds and, as formulated in almost every jurisdiction, demands that he not be reckless

or grossly negligent. Both the duty of loyalty and the duty of care share the requirement to act in good faith.

Some states impose specific limitations or requirements with respect to the internal governance of charities. Many state nonprofit corporation statutes prohibit a charity from providing loans to officers and directors. Three states require charities to have a certain number or percentage of independent members on their boards. In California and Maine, no more than 49% of directors can be persons who receive compensation from the charity, while in New Hampshire there must be at least five directors of every charitable corporation who are not of the same immediate family or related by blood or marriage. The requirements in California and Maine apply only to charitable corporations, while private foundations are exempt from the New Hampshire law. Finally, and most recently, the California Nonprofit Integrity Act of 2004 requires charities with revenues of \$2 million or more to establish and maintain an audit committee that does not include that charity's staff members, the president or chief executive officer, and treasurer or chief financial officer.

## Role of Legislatures & Courts in Prescribing Charity Rules

In the absence of legislation, the courts define basic questions related to charitable organizations, including what activities will qualify as charitable and what standards of behavior officers and directors must observe to satisfy their fiduciary duties. Throughout the 20th century, and continuing today, the trend has been for state legislatures to codify the common law rules enforced by the courts and to enact laws that address the governance of charities and the legal duties of the officers and directors managing them. Examples are state-adopted versions of model and uniform statutes such as the Revised Model Nonprofit Corporation Act, the Uniform Trust Code, and the Uniform Management of Institutional Funds Act.

*State charity regulation varies widely from one jurisdiction to another.*



## REGULATING CHARITIES BY THE ATTORNEY GENERAL

### *Duties & Powers of the Attorney General*

State attorneys general are the chief legal officers of the states.<sup>1</sup> They serve as legal counselors to state agencies and legislatures and as representatives of the public interest. Their powers, duties and responsibilities are defined and interpreted by state constitutions, legislatures and the courts.

The duty of the attorney general with respect to charities is to enforce the laws regulating charitable organizations and charitable solicitations, and to ensure the proper administration of funds dedicated to charitable purposes. The attorney general's power is deeply rooted in common law and stems from the state's authority as *parens patriae* to enforce laws regulating charitable trusts and oversee assets dedicated to charitable purposes. The state acts on behalf of the charitable beneficiaries, since charitable assets cannot be dedicated to identifiable beneficiaries who would be in a position to enforce the administration of the funds.

As the California Attorney General's "Guide to Charities" indicates, some of the most frequent governance-related issues the attorney general investigates include: self-dealing transactions by directors or officers; loans by a charity to directors or officers; losses of charitable assets through speculative investments; excessive amounts paid by a charity for salaries, benefits, travel, entertainment, legal and other professional fees; sales of charitable assets or conversion of a public charity to a for-profit entity (as authorized by law) for a price that is unfair to the charity; illegal use of charitable funds; and diversion of charitable trust funds from their intended purposes. The attorney general generally also enforces laws intended to prevent false or misleading solicitations of charitable donations (see discussion below about the role of the legislature and the courts in defining the attorney general's enforcement and oversight authority).<sup>2</sup>

In the absence of legislation, the legal remedies available to the attorney general to correct wrongdoing are as broad as the courts' equity powers to grant them. The most typical

remedies sought by regulators are restitution, imposition of fines, removal of directors and officers engaged in wrongdoing (and appointment of successors) and sometimes dissolution of the charity. The attorney general cannot impose remedies unilaterally if the charity or fiduciaries involved want to challenge the sanctions being imposed. On the other hand, the courts can act on their own to enjoin wrongful conduct or enforce charitable trusts, but they rarely act without the attorney general or another interested party bringing the matter to the courts' attention.

Most enforcement actions brought by the attorney general are settled without court intervention, and usually without public disclosure of the terms of the settlement—a common practice that is not confined to charity enforcement. In recent years regulators have sometimes conditioned settlement on public disclosure. An increasingly frequent remedy sought as part of settlement agreements has been to bar individuals accused of wrongdoing from serving in a fiduciary capacity at another charity, either for life or a period of years. This sanction is similar to the authority of the Securities and Exchange Commission to seek court orders barring individuals found to have engaged in fraudulent or deceitful practices from service on the board of any publicly traded company.

### *Role of Legislatures & Courts in Defining Attorney General's Oversight Authority*

Funds dedicated to charitable purposes are subject to the supervisory jurisdiction of the courts. The courts can interpret and clarify the attorney general's powers, and interpret the attorney general's authority based on common law when the legislature and state constitution remain silent concerning his or her duties. A recent example was the ruling by the Virginia Supreme Court that the attorney general's common law enforcement powers did not extend to charitable corporations.<sup>3</sup>

*In the absence of legislation, the legal remedies available to the attorney general to correct wrongdoing are as broad as the courts' equity powers to grant them.*

The legislature can also define the attorney general's authority to enforce the administration of charitable organizations, whether clarifying, curtailing or enhancing it (subject to any limitations that may appear in a state's constitution). In the case cited above, the Virginia Legislature promptly enacted legislation that overturned the court's decision and clarified that the attorney general has the same enforcement powers over the assets held by charitable corporations as he or she has over charitable trusts.<sup>4</sup>

The legislature can remove the attorney general's authority and place it in another agency or require the attorney general to share it with another state official. Some statutes regulating charitable solicitations place oversight responsibility with the secretary of state rather than the attorney general. Another recent example is the regulation of hospital conversions. The mid-1990s saw an unprecedented growth in the number of nonprofit hospitals selling all or most of their assets to for-profit corporations or converting from nonprofit to for-profit status. Although there were some existing requirements to provide notice to the attorney general if a charity intended to sell most or all of its assets or to restrict mergers, the sheer number and size of the conversions put a strain on the attorney general's ability to review the transactions. As a result, many states enacted legislation providing specific procedures that must be followed and requirements that must be met in the case of conversions. In some states, the legislation gave exclusive authority to the attorney general to oversee the transactions, while in others the regulatory authority was shared with the secretary of state, the insurance commissioner or another state agency.<sup>5</sup>

### *The Role of Secretaries of State & Other State Officials*

The attorney general is not the only state official authorized to oversee the administration of charitable organizations. Secretaries of state, state tax authorities, boards of education, insurance commissioners and other similar state officials have power to enforce certain rules that may apply to nonprofits engaged in certain activities.

The secretary of state (or other comparable state official) exercises administrative control over charitable corporations by administering statutes that grant corporate charters.<sup>6</sup> To obtain a charter, the typical nonprofit corporation statute requires filing articles of incorporation and a filing fee. The mandatory annual reporting to the secretary of state requires only minimal information from the charity—in most cases the list of current officers and directors, the expiration of their terms, and their addresses—which makes it impossible for the secretary to enforce the substantive provisions of the statute. For example, the secretary will never know if the provision restricting loans to officers and directors, which appears in many state nonprofit corporation statutes, is being violated.

In many states, there is little coordination of oversight of charities between the attorney general and the secretary of state. This can be especially counterproductive to proper enforcement in states where charities may be oblivious to additional registration and reporting requirements with the attorney general. On the other hand, some states are trying to establish meaningful collaboration between the secretary of state and the attorney general. In California, the Charitable Trusts Section has prepared a summary about the attorney general's role in charity oversight and registration and reporting requirements that is attached to the certificate of incorporation sent back to a charity that has filed for incorporation with the secretary of state. In Michigan, the staff of the Charitable Trust Section participates in nonprofit corporation seminars sponsored by the Corporation Division of the Michigan Bureau of Commercial Services in the Department of Labor and Economic Growth (the agency that oversees incorporation in Michigan).

# Attorney General Oversight of Charities: A 16-State Review

How do state regulators know which charities are complying with the law and which are engaging in wrongdoing? What tools and resources do regulators have to monitor the governance of charities? How do regulators educate charities about legal requirements? It is widely acknowledged that state regulators lack adequate resources to enforce effectively the laws that regulate charities. But some states do actively regulate charities in a way that positively impacts their compliance with the law.

This section provides an overview of the office of the attorney general and the resources and tools the attorney general uses to supervise charities, like private foundations, that do not fundraise from the general public, and therefore do not have to register with the attorney general, or another state agency, in accordance with state charitable solicitation statutes that are in effect in the majority of states. Data and examples from 16 states are used for illustrative purposes and to provide some context for discussion.<sup>7</sup> The states were selected based on two criteria. First, the review includes all the states with general registration and reporting statutes (not restricted to charitable solicitation) that apply to private foundations: California, Illinois, Massachusetts, Michigan, Minnesota, New Hampshire, New Mexico, New York, Ohio, Oregon, Rhode Island and South Carolina.<sup>8</sup> Second, the review includes the 10 states with the largest number of private foundations. Accounting for the overlap with the first set, the additional states include: Florida, New Jersey, Pennsylvania and Texas.<sup>9</sup>

The data and examples compiled from these 16 states are not intended to and cannot provide a comprehensive overview of the status of charity regulation in all states. However, the 16 states include almost all of the states that are considered active in charity regulation (excluding regulation of charitable solicitation), and represent a diverse mix of how states regulate charities and what tools are available to them.<sup>10</sup> Moreover, as Table 2 indicates, these 16 states represent 64% of all private foundations (which hold 68% of all foundation assets) and 57% of all public charities (which hold 62% of all public charity assets). Thus, regulation in these 16 states affects the majority of charities and charitable assets in the nation.

## REGISTRATION & REPORTING TO ENHANCE ATTORNEY GENERAL OVERSIGHT

Without adequate information, attorneys general cannot fulfill their duty to monitor the activities of charities and their fiduciaries and to remedy breaches when necessary. Between the 1940s and the 1960s, several states attempted to pass legislation increasing the supervisory powers of attorneys general. These proposals included mandatory registration and reporting of charities regardless of whether or not they solicit funds from the general public. New Hampshire was the first state to enact such legislation in 1943. Several other states adopted similar legislation: Rhode Island in 1950, South Carolina and Ohio in 1953, and Massachusetts in 1954.<sup>11</sup>

In an effort to provide uniform laws in this area, the Commissioners on Uniform State Laws adopted the Uniform Act for Supervision of Trustees for Charitable Purposes in 1954. The Commissioners drafted the Act at the request of the National Association of Attorneys General. The preface to the 1954 Uniform Act explained that the impetus behind the Act was the lack of a “practical method” of carrying out the attorney general’s powers to enforce the administration of funds held for charitable purposes. The note explained that, “This is true because, in most states, there is no agency to which the existence and administration of charitable trusts and grants must be reported.” The Uniform Act also made clear that it is not meant to eliminate the attorney general’s common law duties.

The Uniform Act has several provisions that are intended to enhance the attorney general’s knowledge of the existence and administration of charities. The Act requires trustees and others holding funds for charitable purposes to register with and report to the attorney general (and requires the attorney general to establish a registry database that is open to public inspection); allows the attorney general to make rules on the nature and frequency of the administrative reports required to be submitted; and gives the attorney general enhanced powers to conduct investigations, inspect books and records, and enforce the proper administration of charities. However, the Act exempts many common types

**TABLE 2: 16-STATE REVIEW SAMPLE OF ATTORNEY GENERAL OVERSIGHT**

Registered with the IRS under §501(c)(3)					
State (sorted by number of private foundations)	General registration and reporting statute (date of enactment)	Number of private foundations	Assets of private foundations (in millions)	Number of public charities	Assets of public charities (in millions)
New York	Yes (1967)	12,924	\$71,994	52,680	\$147,984
California	Yes (1955)	11,351	\$56,985	89,564	\$142,465
Texas	No	6,261	\$19,040	51,885	\$72,847
Illinois	Yes (1961)	5,275	\$16,684	29,442	\$79,662
Florida	No	5,257	\$12,748	38,071	\$55,761
Pennsylvania	No	4,597	\$21,092	31,569	\$94,887
Massachusetts	Yes (1954)	4,164	\$9,151	19,824	\$127,702
Ohio	Yes (1953)	4,100	\$8,549	31,634	\$71,576
New Jersey	No	3,692	\$16,505	21,384	\$42,345
Michigan	Yes (1961)	2,924	\$12,306	24,240	\$43,066
Minnesota	Yes (1989)	1,891	\$8,648	16,899	\$35,310
Oregon	Yes (1963)	1,112	\$2,710	12,322	\$21,353
Rhode Island	Yes (1950)	998	\$1,885	3,414	\$9,599
South Carolina	Yes (1953)	721	\$967	11,688	\$13,415
New Hampshire	Yes (1943)	489	\$793	4,111	\$11,411
New Mexico	Yes (1983/1999)	469	\$924	5,769	\$4,789
Subtotal (16 states)		66,225	\$260,989	444,476	\$974,178
Total (all states)		103,388	\$384,996	781,810	\$1,576,106

Source: National Center for Charitable Statistics, Urban Institute (2003 data). The number of registered public charities does not include religious congregations.

Note: The statutes in Rhode Island and South Carolina require registration of only charitable trusts, not corporations.

of charities from the registry and reporting requirements: churches, educational institutions and hospitals.

Several states enacted versions of the Uniform Act after its adoption by the Uniform Law Commissioners, including California (1955), Illinois (1961), Michigan (1961), Oregon (1963), New York (1967) and Minnesota (1989). Iowa also enacted a statute in 1959, but it was repealed in 1965. Washington passed legislation in 1967 that was repealed in 1997. Few other states have tried to enact similar legislation. Bills were submitted in Pennsylvania in 1955 and 1961 that were rejected, and the Texas Attorney General prepared a bill in 1964 that failed to pass.

A general registration and reporting statute is not the only tool available to the attorney general to maintain an active presence in the regulation of charities. Other state statutes may also include provisions that require charities to provide notice to the attorney general of court proceedings, dissolutions, mergers or the sales of a substantial part of a charity's assets. In addition, at least with regard to private foundations, the attorney general can rely on the provision in the Internal Revenue Code that requires foundations to submit copies of their annual federal information returns (Form 990-PF) to the attorney general or other appropriate state officer.<sup>12</sup>

## STAFFING & ORGANIZATION OF ATTORNEY GENERAL OVERSIGHT

The staffing and organization of the attorney general's office varies from state to state. Some of the larger offices may command more than a thousand lawyers and staff, while others may have no more than a hundred employees. The organizational structure of the offices also differs among the jurisdictions, but most are divided into divisions, such as consumer protection and criminal justice, and sections within divisions.

The oversight of charities within the attorney general's office often falls under the purview of the consumer protection division or an equivalent division within the office. In most states, the attorneys and staff are assigned to charities work as necessary and not to a separate charities section or unit. However, in almost all of the 16 states reviewed, the attorneys general have created separate charities sections or units—usually within the larger consumer protection division—to handle and coordinate the charity oversight work.<sup>13</sup> This is usually done for administrative efficiency, but in a few states the charities units were created by the statute that requires charities to register and report their activities to the attorney general (Illinois, Massachusetts, New Hampshire and Rhode Island).

Due to the different organizational structures of the attorney general's office among the states, it is difficult to determine accurately the exact number of staff assigned to charity oversight and to compare the staffing levels among the states. Another obstacle that prevents appropriate comparisons is that the charity-related work handled by the attorney general is not the same among states. The core functions may be the same (although even those are carried out with different levels of staff engagement), but certain functions that might be assigned to the attorney general in some states are assigned to other agencies in other states. This can be the case with the administration of charitable solicitation laws and gaming and bingo licensing.

Based on surveys conducted in the 1970s and 1990s and the current review of 16 states, it is fair to say that over the past

several decades there has not been a significant increase in the number of attorneys assigned to charity oversight or in the states with the highest staffing levels.<sup>14</sup>

Among the 16 states reviewed, those with the most full-time attorneys in their charities sections are New York (20), Pennsylvania (12), California (11) and Ohio (10). Illinois has seven attorneys and Massachusetts and Texas each have six. On the other end, for states with fewer charities, Oregon has three attorneys and New Hampshire has one. At least six of the 16 states also employ auditors or financial investigators to assist with reviewing reports filed by charities and with active audits or investigations of charities, including Massachusetts, Michigan, New York, Ohio, Oregon and Pennsylvania. Additional staff handles the actual registration function, which consumes significant time and resources.

## FUNDING OF ATTORNEY GENERAL OVERSIGHT

Among most states, there are no funds earmarked to support the attorney general's enforcement of charitable organizations. In the 11 states with general registration and reporting statutes, the filing fees imposed in four states are deposited in the general treasury (Massachusetts, Minnesota, New York and Rhode Island).<sup>15</sup> Five states follow the Uniform Act by earmarking fees for the attorney general's oversight and enforcement of charities (California, Illinois, New Hampshire, Ohio and Oregon). In some states, attorneys' fees, fines and penalties collected from charity enforcement actions are also earmarked for charity oversight.

Due to the lack of public information about budgets, it is not known whether the charities sections in those states with earmarked funds are better financed than those where the sections must compete with others for general funds. Even if information were available, the differences in the of-

*Over the past several decades there has not been a significant increase in the number of attorneys assigned to charity oversight.*



fices' organizational structures and work levels would make it difficult to make appropriate comparisons among states. Although the availability of earmarked funds can be an advantage, it can also be a disadvantage if the charities section is not able to seek additional funds from general revenues.

Registration and reporting fees are generally modest, but there is little uniformity in the fee structure imposed among the states reviewed. Registration fees are nominal, ranging from \$15 in Illinois to \$50 in Rhode Island. Five states do not charge a fee (Massachusetts, Michigan, New Mexico, Ohio and Oregon). Exemption from registration varies from state to state, reflecting in some cases the lobbying efforts of constituency groups, although most states tend to exempt religious organizations, educational institutions and hospitals. Massachusetts has the narrowest exemption provision, which requires registration by educational institutions and hospitals.

States' fees for annual reporting are usually tied to a sliding scale. The typical reporting fee is a few hundred dollars for large charities (New York charges the most at \$1,500 for charities with assets of \$50 million or more). Michigan and New Mexico do not charge a fee, while California and Ohio do not charge a fee for charities with revenues less than \$25,000 and Illinois does not charge a fee for charities with less than \$25,000 in assets and revenues.

## EDUCATING THE CHARITABLE SECTOR & PUBLIC

An incidental function of charity regulation is informing and educating the charitable sector and the general public about charities and the laws regulating them. Since most attorneys general have tight staffing levels and budgets, some have increasingly relied on the Internet as an effective tool to disseminate information and resources to a wide audience. A performance audit conducted in 2002 by the Michigan Office of Auditor General of the state's regulation

of nonprofit organizations recommended that the attorney general, and specifically the Charitable Trust Section, "could enhance the public's accessibility to charitable organization-related information by placing it on the [Attorney General's] website."<sup>16</sup> The audit found that the Charitable Trust Section had been unable to upgrade the information on its website due to a lack of resources.

In eight of the 16 states reviewed, there was a direct hyperlink on the attorney general's website homepage to the charities section, and in five states the link was provided on the consumer protection division's (or equivalent division's) website. There is no link to the charities sections in New

Jersey and South Carolina, and there is no charities unit in Florida. Almost all of the 16 states reviewed publish guides on the attorney general's roles and laws for regulating charities. Some of these guides are comprehensive and detailed, like the newly revised 57-page "California Attorney General's Guide for Charities." Some are targeted at particular segments of the nonprofit sector, like the Ohio Attorney General's "Guide for Grantmaking Foundations" (jointly produced with the Ohio Grantmakers Forum). Others focus on particular issues related to nonprofit management, like the guide on "Internal Control and Financial Accountability" published by the New York Attorney General's Charities Bureau.<sup>17</sup>

Some states also provide links to third-party organizations that charities and the general public can consult for further resources. There is almost always a link to the IRS, frequently to GuideStar, and in some cases, to state and national associations representing charities and the nonprofit sector. The charities sections in most of the 16 states reviewed have discretion to post links to educational information and resources that staff thinks are beneficial to the general public and the nonprofit sector, but the website is not intended to be cluttered with too much information. Staff will evaluate any postings or links carefully and in all instances issue a disclaimer about endorsement of information provided by third parties.

*In most states,  
there are no funds  
earmarked to  
support the attorney  
general's enforcement  
of charitable  
organizations.*

Participation at conferences and seminars by the attorney general's staff is another common and effective tool in educating charities and their fiduciaries about their duties and obligations in managing charities. Staff members in the majority of the 16 states reviewed participate in conferences and seminars. Sometimes these events are sponsored by the attorney general's office. In Massachusetts, the Public Charities Division has found great success with an annual "Education Conference for Nonprofit Board Members and Managers," sponsored by the attorney general's office. In other states, charity regulators are often invited to participate as speakers at conferences and seminars organized by professional associations for lawyers and accountants and regional associations of grantmakers and nonprofits.

The Michigan audit report called the efforts by the Charitable Trust Section to increase its "outreach to and education of the nonprofit community by participating in and presenting information at seminars and conferences" a "noteworthy accomplishment." The audit found that the Section participates in and presents at the annual meetings of the National Association of State Charity Officials, shares information regarding charitable activities with other states, the Federal Trade Commission, and the IRS, and "works with other organizations to ensure that nonprofit organizations receive complete, timely and accurate information."

## Endnotes

- <sup>1</sup> The attorney general is elected in the majority of states. According to the National Association of Attorneys General, the attorney general is popularly elected in 43 states and is appointed by the governor in five states (Alaska, Hawaii, New Hampshire, New Jersey and Wyoming). In Maine, the attorney general is selected by secret ballot of the Legislature and in Tennessee, by the state Supreme Court. In the District of Columbia, the mayor appoints the attorney general, whose powers and duties are similar to those of state attorneys general. See [www.naag.org/naag/about\\_naag.php](http://www.naag.org/naag/about_naag.php).
- <sup>2</sup> The California guide also mentions the types of disputes that are generally beyond the attorney general's oversight authority. "Generally, the Attorney General's Charitable Trusts Section does not take action on matters involving internal labor disputes, contested elections of directors, and disagreements between directors and members over policy and procedures. Nor does the Attorney General become involved in most legal actions between charities and third parties over contracts or torts. However, notice to the Attorney General of some of these actions is required by statute." See [www.ag.ca.gov/charities/publications/guide\\_for\\_charities.pdf](http://www.ag.ca.gov/charities/publications/guide_for_charities.pdf).
- <sup>3</sup> *Virginia v. The JOCO Foundation*, 558 S.E.2d 280 (Va. 2002).
- <sup>4</sup> Va. Code Ann. §2.2-507.1, added by 2002 Va. Acts ch. 792 (April 8, 2002).
- <sup>5</sup> Marion R. Fremont-Smith and Jonathan A. Lever, "Analysis and Perspective: State Regulation of Health Care Conversions and Conversion Foundations," 9 *Health Law Reporter* (BNA) no. 19, at 714 (2000).
- <sup>6</sup> In some states, the secretary of state has some responsibility for overseeing charitable solicitation laws.
- <sup>7</sup> The 16-state review was completed between September 2005 and February 2006. The primary sources of data are statutes and publications found on the attorneys generals' websites. With the exception of Florida, which has no staff assigned to charity regulation in the attorney general's office, staff responsible for charity regulation in each state was contacted to participate in a phone interview or to respond to requests for information in writing. Regulators from five states were unavailable or declined to participate.
- <sup>8</sup> The statutes in these states are similar to or modeled after the Uniform Act for Supervision of Trustees for Charitable Purposes. The New Mexico statute is not based on the Uniform Act, but it was included in this study because it requires private foundations to register and file annual reports. In Rhode Island and South Carolina, registration and reporting is required only for trusts, not corporations. For an extensive discussion of the adoption of the Uniform Act by the states, see Marion R. Fremont-Smith, *Foundations and Government: State and Federal Law and Supervision* (New York: Russell Sage Foundation, 1965) and Marion R. Fremont-Smith, *Governing Nonprofit Organizations: Federal and State Law and Regulation* (Cambridge, MA: Belknap Press of Harvard University Press, 2004).
- <sup>9</sup> It is interesting to note that the New Jersey Charitable Registration and Investigation Act, which was enacted primarily to combat deceptive charitable fundraising, requires private foundations to register.
- <sup>10</sup> Connecticut is considered active but did not fit the selection criteria.

<sup>11</sup> In the early 1960s, Massachusetts became a pioneer and a model for building relationships between state regulators and the charitable sector when the attorney general appointed an advisory committee, composed of nonprofit leaders and experts on charities, to give advice and make recommendations about implementation of the registration and reporting requirements and on other policy matters affecting charities in which the attorney general was interested.

<sup>12</sup> IRC §6033(c); Treas. Reg. §1.6033-3(c).

<sup>13</sup> Florida appears to be the sole exception, but that is primarily due to the fact that there is no general registration and reporting requirement in Florida and enforcement of charitable solicitation is assigned to the Department of Agriculture and Consumer Services, rather than to the Attorney General's Office.

<sup>14</sup> Office of the Ohio Attorney General, *The Status of State Regulation of Charitable Trusts, Foundations, and Solicitations*, in Department of Treasury, Commission on Private Philanthropy and Public Needs, *Research Papers*, vol. 5, pt. 1, at 2705 (1977); Harriet Bogard, *The Role of State Attorneys General in Relation to Troubled Nonprofits* (August 1994); Peter Swords and Harriet Bogard, *Nonprofit Accountability: Report and Recommendations* (Nonprofit Coordinating Committee of New York, March 1997).

<sup>15</sup> No effort was made to review whether the filing fees imposed by charitable solicitation statutes are earmarked to the administration of these statutes. In some states, they may be.

<sup>16</sup> Office of the Auditor General, State of Michigan, *Performance Audit of State Activities Related to Nonprofit Organizations: Department of Attorney General and Department of Consumer and Industry Services*, No. 11-200-01 (May 2002), available at [audgen.michigan.gov/comprpt/docs/r1120001.pdf](http://audgen.michigan.gov/comprpt/docs/r1120001.pdf).

<sup>17</sup> Links to these and selected publications from other states are available on the Council on Foundations' website at [www.cof.org/Content/General/Display.cfm?contentID=2807](http://www.cof.org/Content/General/Display.cfm?contentID=2807).

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**PART THREE:**

*Case Studies of  
Relationships Between  
Regulators &  
Philanthropy  
in Action*

*Four case studies highlight four different ways that a state's charity regulators and charitable sector have developed an ongoing, productive and mutually beneficial relationship.*

## Illinois Case Study: Creating a Permanent Charitable Advisory Group

### *Relationship Model:*

Legally mandated charitable advisory or working group.

### *Key Players in Case Study:*

- Catherine Carabetta, Senior Director for Policy and Strategic Initiatives, Donors Forum of Chicago.
- Therese Harris, Chief of the Charitable Trust Bureau, Illinois Attorney General's Office.
- Valerie Lies, President and CEO, Donors Forum of Chicago.
- Lisa Madigan, Illinois Attorney General.
- Janice Rodgers, Attorney, Quarles & Brady, LLP.

### *Summary:*

Illinois has found early success from a legally mandated charitable advisory group to the Attorney General.

### **BACKGROUND: CREATING A PERMANENT ADVISORY GROUP**

The Illinois General Assembly passed groundbreaking legislation in 2001 to create the Charitable Advisory Council (CAC) as a permanent body to advise the Illinois Attorney General on issues related to charities and charitable giving in the state. In its first few years of operation, the CAC has had some clear success in helping the Attorney General's Office understand, negotiate and raise awareness of the many issues involved in regulating and strengthening charitable organizations in Illinois.

The path that led to the passage of the CAC legislation was long and somewhat circuitous. Going back to at least the mid-1980s, several of the state's attorneys general had created ad hoc charitable advisory councils that were fairly inactive. "They didn't have the organization required to be totally effective," notes Therese Harris, Chief of the Charitable Trust Bureau for the Illinois Attorney General's Office.

For the CAC to be effective, the Donors Forum of Chicago believed that the advisory group had to be a permanent entity. A membership association of grantmakers, public charities, individual donors and advisors, the Donors Forum began pushing for a permanent advisory council in the mid-1990s. Donors Forum staff members presented the Attorney General with a detailed plan to create the Council, but found themselves spinning their wheels for several years.

Things got derailed in 1997, when the Attorney General introduced legislation that drew the ire of the state's nonprofit sector. Although the legislation called for the creation of a permanent advisory group that the sector wanted, it also included provisions on nonprofit registration fees and on creating a rating system and standards for nonprofits—provisions that caught the state's charitable sector by surprise.

"We were shocked, because here we had been building what we thought was a good relationship with the Attorney General's Office and the next thing we know there's this piece of legislation that the Attorney General did not even talk to anybody in the sector about," recalls Valerie Lies, President and CEO of the Donors Forum.

The state's charitable sector lobbied hard against the bill, which didn't pass. But the experience was something of a wake-up call for both the Attorney General and the state's foundations and charities. The Attorney General's Office was caught off-guard by nonprofits' aggressive opposition to its legislative proposal, and the charitable sector realized it needed to improve its relationship with the Attorney General's Office to prevent harmful legislation from being introduced again.

The Donors Forum proposed new legislation to create a permanent Charitable Advisory Council, and promoted the legislation to the Attorney General by positioning the CAC as an advisory body of professionals and practitioners in the

*“We’ve been fortunate to be able to leverage our resources through the Council.”*

THERESE HARRIS  
Charitable Trust Bureau  
Illinois Attorney General’s Office

ing the creation of the CAC for a three-year period, and in 2001 the statute was amended to make it a permanent body. In a fortuitous move, the 2001 legislation was introduced by Lisa Madigan, who was named the new Illinois Attorney General two years later.

The Donors Forum did the bulk of the legwork to get the Council up and running. Its staff put together an initial list of CAC member recommendations, wrote the CAC’s charge, and developed the committee structure. Then-Attorney General Jim Ryan announced the formation of the Council at the Donors Forum’s annual luncheon.

## RELATIONSHIP IN ACTION: THE CHARITABLE ADVISORY COUNCIL

Illinois’ Charitable Advisory Council is comprised of nonprofit, civic and community leaders from communities throughout the state. Deliberate efforts were made to ensure representation from many different types of charities from all parts of the state, so that Council membership was not tilted in favor of the Chicago metro area. New Council members are recommended by either the Attorney General’s Office or by current Council members, and there are no term limits.

The CAC has established three working committees around three priority issues: public education, data and legislation. The CAC’s Executive Committee is available to meet with and advise the Attorney General as requested, and oversees and coordinates the work of the three committees:

- **Public Education Committee**, which helps inform the Attorney General on how to maximize the information, tools and leadership of her office to educate the charitable sector, donors and the broader public about

nonprofit sector that the Attorney General could use as a sounding board before introducing legislation affecting the sector—helping avoid a repeat of the 1997 experience. In 1999, the General Assembly passed a bill authoriz-

charities and charitable giving. The committee’s priorities include: identifying and helping publicize information sources and tools for the charitable sector; providing feedback and recommendations on current public education efforts; and identifying opportunities and strategies to educate donors and other citizens about the state’s nonprofits, the importance and impact of giving, and how donors can give wisely.

- **Data Committee**, which advises the Attorney General on how to utilize effectively the wealth of data and information that her office collects and maintains about Illinois’ charitable sector. Some priorities for this committee include: identifying what data can be gathered and shared, who are potential audiences for the data, and how the Attorney General’s website and other technology can facilitate access to the data.
- **Legislative Committee**, which reviews existing state legislation and regulations governing the charitable community and surfaces ideas and recommendations for improvement to the Attorney General’s Office. The priorities for this committee include: reviewing existing statutes and identifying needed revisions and additions; providing input and feedback to proposed changes in charitable legislation; and exploring opportunities to educate and work with the Legislature on charitable issues and policy.

The three working committees typically meet two or three times a year, while the Executive Committee meets once or twice a year. The Donors Forum provides the bulk of the staffing support for the committees, and typically initiates and coordinates the committee meetings.

## OUTCOMES: AN ONGOING, CONSTRUCTIVE RELATIONSHIP

All parties involved with the CAC say it has clearly helped strengthen the relationship between the Attorney General’s Office and the charitable sector in Illinois. “It’s really established an ongoing and constructive relationship,” says Catherine Carabetta, Senior Director for Policy and Strategic Initiatives for the Donors Forum. “We would be at the top of the Attorney General’s list of people to call if she

was thinking about introducing any legislation or changing any of the existing statutes related to nonprofits in the state.”

“In the past three years it’s really taken off,” adds Harris from the Attorney General’s Office. “We’ve been fortunate to be able to leverage our resources through the Council.”

One of the CAC’s biggest initial successes was in advising the Attorney General’s Office on a huge project to make all of the Attorney General’s charity filings available to the public through a new online database on the Attorney General’s website. The Data Committee provided extensive input to the Attorney General on how to make these data accessible and understandable through a database search. “We worked very closely with the Council on this project and they were a tremendous resource for us,” says Harris.

From the Attorney General’s perspective, Harris points out a number of other beneficial outcomes of the CAC:

- **Provides an independent resource for charities and donors.** The CAC has served as an independent vehicle to promote a much more inclusive list of useful resources for charities and donors than the Attorney General’s Office itself would be comfortable recommending for fear of risking its neutrality.
- **Helps Attorney General be a strong supporter of the sector.** The CAC has served as an effective vehicle to help the Attorney General achieve her goal of supporting a strong charitable sector. “The Attorney General is very interested in building better charities and in stopping problems before they start, and the Council has helped us in that regard,” says Harris.
- **Provides access to the sector.** The CAC provides the Attorney General’s Office with a large, direct and ready-made network and constituency that can speak about the Attorney General’s work on behalf of the sector and reach out to the community.

From the charitable sector’s perspective, the CAC has produced other useful outcomes:

- **Supports self-regulation.** The CAC has led the Attorney General’s Office to become much more active in supporting the sector’s efforts at self-regulation. In particular, the Attorney General has become a big promoter of the Donors Forum’s Illinois Nonprofit Principles and Best Practices. The CAC section on the Attorney General’s website links to the Donors Forum’s principles and practices booklet, and Attorney General Madigan promotes the booklet in speeches she gives around the state.
- **Decreases likelihood of harmful legislation.** CAC member Janice Rodgers, an attorney with the Quarles & Brady law firm, points out that the Principles and Best Practices, together with the CAC, have helped increase the Attorney General’s sensitivity to the needs and concerns of charities in any new legislative proposals, which might decrease the likelihood of any harmful new legislation. “By promoting the principles and practices, the Attorney General is willing to encourage self-regulation in addition to performing her ongoing oversight and enforcement functions regarding charities, and that might lessen the possibility of new laws or regulations being proposed that would place unduly burdensome restrictions on the charitable sector,” says Rodgers.

## ILLINOIS’ CHARITABLE SECTOR AT-A-GLANCE

- 11,926 reporting nonprofits<sup>1</sup>.
- \$43.8 billion in annual nonprofit expenditures, representing 9% of Illinois’ Gross State Product.
- 2,888 foundations and corporate giving programs.
- \$21.5 billion in foundation assets.
- \$1.5 billion in annual foundation/corporate grants.

<sup>1</sup>Number of nonprofits with over \$25,000 in annual receipts that reported to the IRS.

Source: Donors Forum of Chicago; all figures are for 2003.

- **Enhances Donors Forum's value to members.** For the Donors Forum, the CAC has also enhanced the value of membership in the association. Donors Forum members are fully supportive of the association's work to create and staff the CAC, and members who sit on the CAC committees view it as an additional membership benefit.

## LESSONS: OPERATING A PERMANENT ADVISORY GROUP

Illinois' experience in creating and operating a legally mandated charitable advisory group offers several lessons for other states that might be interested in following the same path:

**Manage expectations.** Make sure that everyone involved with the advisory group has the same expectations about what the group will do and how it will function. In Illinois, members of the CAC committees and the Attorney General's Office came to the table with some differing expectations, which led to some early miscommunication.

This situation was most prevalent with the CAC's Legislative Committee, which spent nearly a year developing detailed legislative proposals for reducing some nonprofit regulations. But when the committee presented its proposals to the Attorney General's Office, the Attorney General staff made it clear that they could not support any legislation that would rollback their authority and that they might even have to oppose some of the committee's proposals.

This miscommunication can be chalked up primarily to a new Attorney General and a new Charitable Advisory Council both trying to get up and running at the same time, which led to some crossed signals about everyone's specific roles and responsibilities. "Originally we had thought that we could ask the Attorney General to support legislation that would reduce regulation of charities in instances where we thought it was overly burdensome," Rodgers explains. "But

we now have a better understanding that our role is more to comment on proposals that are introduced from time to time and possibly to recommend changes that will make the rules clearer but won't necessarily reduce the burdens on charities."

"What we learned from that experience is that going forward we need to be very clear with the committee members and the Attorney General staff at all levels on what the expectations are and where we actually can go," notes Carabetta.

**Be politically savvy.** When working with state regulators, the charitable sector needs to be as astute as possible about how politics might affect its work. "We need to be really savvy about the larger political environment nationally," says Lies. "Attorneys general watch very closely what's happening in other states and on the federal level."

*"We need to make sure that the relationship we ask attorneys general to enter into with us in no way compromises, or could be perceived to compromise, what they are by law expected to do."*

VALERIE LIES  
Donors Forum of Chicago

For example, one of the Legislative Committee's proposals that was rejected by the Attorney General's Office would have raised the floor for nonprofit audit requirements, but this was coming at a time of increasing calls across the country for more oversight of nonprofits—not less. "I think it was naïve on our part to, at that particular time, introduce something that we knew would be beneficial to the nonprofit sector but that might lead the public to perceive the Attorney General as becoming softer on nonprofit organizations," says Lies.

**Find win-win situations.** State regulators want to keep some distance from the charitable sector they are regulating, so the sector must be particularly careful about

finding the right balance between respecting the Attorney General's regulatory needs and advocating for the sector. "We need to make sure that the relationship we ask attorneys general to enter into with us in no way compromises, or could be perceived to compromise, what they are by law expected to do," advises Lies. "On the other hand, it's our

responsibility to advocate and promote the sector, but we need to find ways to do it that will be a win-win for everyone.”

**Find the right people.** Make sure that the committees are comprised of committed professionals, so that they have enough political savvy and understanding of the field to find those win-win situations and navigate through the sometimes murky political terrain. And make sure committee members are willing and able to roll up their sleeves and get things done. “It’s not just an honorary appointment,” says Harris. “You want people on the committees who are actually going to work.”

**Devote sufficient time and resources.** Charitable organizations working with the Attorney General’s Office need to recognize that it can be a time-consuming process to create and operate an advisory group, and they need to devote adequate time and resources to the process on an ongoing basis.

**Be patient.** The complex nature of the CAC’s structure and goals means it can take time to accomplish the group’s work, so patience is required. “You have to work with a large bureaucratic body and with a group of people who are volunteering their time who are all coming at this with different time constraints and different expectations, so you just have to realize that there’s only so much you can do to drive it in a certain direction,” Carabetta notes.

**Have regular meetings.** From the perspective of the Attorney General’s Office, Harris believes that having regularly scheduled meetings has been an important part of the CAC’s success, since it offers a readymade vehicle that her office can tap into easily. “We don’t have to gather people together every time a new issue comes up, because we already have a structure in place.”

Everyone involved with the CAC agrees that the group’s permanent legal status has been a key factor in its success. It helps guarantee that the group will stay active as attorneys general change, and helps justify long-term investment in the group by all parties. “Attorneys general are politicians;

## RESOURCES

- Illinois Attorney General Charitable Trust Bureau  
[www.ag.state.il.us/charities](http://www.ag.state.il.us/charities)
- Donors Forum of Chicago  
[www.donorsforum.org](http://www.donorsforum.org)
- Illinois Nonprofit Principles and Best Practices  
[www.donorsforum.org/publictrust/principles.html](http://www.donorsforum.org/publictrust/principles.html)

they don’t stay in these jobs forever,” Lies observes. “So if you don’t have the Council mandated I would worry about who would follow Lisa Madigan and whether that person would choose to continue this, because they don’t have to.”

“The Council’s permanency has led to a more formal structure and that’s allowed us to undertake projects that take time to complete,” adds Harris. “It’s a much more functional body now.”



# Michigan Case Study: Enhancing a Strong Regulator-Charitable Sector Relationship

## *Relationship Model:*

Voluntary/ad hoc charitable advisory or working group.

## *Key Players in Case Study:*

- Rob Collier, President and CEO, Council of Michigan Foundations.
- Mike Cox, Michigan Attorney General.
- Gary Gordon, Chief Deputy Attorney General, Michigan Attorney General's Office.
- Marion Gorton, former Charitable Trust Section Administrator, Michigan Attorney General's Office.
- Sam Singh, President and CEO, Michigan Nonprofit Association.
- Erin Skene, Michigan Public Policy Initiative Director, Michigan Nonprofit Association.

## *Summary:*

Michigan's traditionally strong relationship between the charitable sector and charity regulators has advanced further with a new Council to advise the Attorney General's Office on issues affecting the sector.

## **BACKGROUND: BUILDING ON A STRONG TRADITION**

Michigan's nonprofit and philanthropy sector is among the largest and strongest in the country, and has enjoyed a long and positive relationship with the Michigan Attorney General's Office. In 2004, that relationship reached a new milestone with the launch of the Nonprofit Council for Charitable Trusts, an advisory/working group to the Attorney General on issues related to charities and charitable giving throughout the state.

The strong working relationship between Michigan's charitable sector and Attorney General's Office goes back many decades, and owes much to the longevity of two key people: Frank Kelley, who served as Attorney General for nearly four decades, from 1961 through 1998; and Dottie Johnson, who headed the Council of Michigan Foundations (CMF), a statewide association of grantmakers, for 25 years until her retirement in 2000.

"Dottie Johnson started working with Frank Kelley early on, so we've had an ongoing relationship with the Michigan Attorney General's Office for all of our 33 years," explains Rob Collier, CMF's President and CEO.

Both CMF and its partner organization, the Michigan Nonprofit Association (MNA), a statewide association of nonprofit organizations, have engaged in ongoing strategies to continue developing and nurturing that relationship. Both associations invite Attorney General staff to attend or speak at their annual conferences and participate in educational programs for their members, promote the Attorney General's resources in their membership communications, and consult with the Attorney General's Office whenever they develop resources related to state laws and regulations.

Michigan's Attorney General's Office also has a long history of providing information and educational resources to foundations and public charities. And the Michigan Department of Labor & Economic Growth, which registers new nonprofit corporations in the state, offers a monthly seminar for new nonprofit officers, directors and members. The seminar's topics include director and officers duties and responsibilities, indemnification, charitable solicitations, financing, tax issues, filing requirements and recordkeeping.

Even with this strong relationship between Michigan's charitable sector and charity regulators, both MNA and CMF believed that an even stronger relationship could be developed to help make the sector even more accountable and effective. Shortly after Mike Cox's election as Michigan's new Attorney General in 2002, the two associations viewed the change of leadership as an opportunity to "think of ways to strengthen the relationship right from the beginning," says Sam Singh, MNA's President and CEO. "And we were also trying to think of how we could become a stronger resource for that office."

CMF and MNA arranged a series of meetings between Attorney General staff and prominent philanthropy and nonprofit leaders in the state to introduce the idea of forming a charitable advisory group, which they had begun to see happening in other states. The Attorney General's Office was immediately receptive to the idea.



“We saw that there could be benefits to building relationships through such a Council,” says Marion Gorton, former Charitable Trust Section Administrator for the Attorney General’s Office, “and that the Council should be viewed as an opportunity for dialogue but not as a vehicle for changing how the Attorney General regulates nonprofits.”

By fall 2003, Cox gave final approval to create the Nonprofit Council for Charitable Trusts. He appointed the Chief Deputy Attorney General—the No. 2 person in the Attorney General’s Office—as his representative on the Council, giving the group high visibility from the start. MNA and CMF suggested names for Council membership, with the Attorney General having final appointing authority. The Council was officially launched in January 2004.

### RELATIONSHIP IN ACTION: THE NONPROFIT COUNCIL FOR CHARITABLE TRUSTS

The Nonprofit Council for Charitable Trusts is comprised of about 15 members, who include representatives of Michigan nonprofit and philanthropic organizations (including Collier and Singh), lawyers and other professional advisors who focus on the charitable sector, and professional fundraisers. New Council members are appointed by the Attorney General’s Office, with recommendations coming from MNA and CMF, and there are no term limits.

The Council has four primary objectives:

- Provide feedback, as needed, on existing and emerging regulations affecting the nonprofit sector.
- Supplement the Attorney General’s efforts to educate donors and citizens about charities and charitable giving.
- Enhance the effectiveness and efficiency of the Attorney General’s Office in collecting data about charities and fundraisers.
- Promote a more accountable, efficient and responsive charitable sector through compliance with relevant regulations and promotion of best practices.

The Council typically meets three or four times a year (minutes of all Council meetings are available on MNA’s website at [www.mnaonline.org/trust.asp](http://www.mnaonline.org/trust.asp)). The Council is chaired by Chief Deputy Attorney General Gary Gordon and staffed by Erin Skene, MNA’s Public Policy Initiative Director.

### OUTCOMES: STRENGTHENING & DEEPENING A RELATIONSHIP

Those involved with the Council still consider the group to be in its formative stage. However, they point to some early activities as good signs of the organization’s future potential.

In the legislative/regulatory area, the Council has been involved in seeking revisions to the state’s Charitable Solicitation Act, a key piece of regulation for nonprofit fundraising. For many years before the Council was formed, people from the Attorney General’s Office and the charitable sector have been working to revise the legislation. Although those revisions have still not passed in the Legislature, the Council has played a role in bringing more people from the charitable sector to the table to offer feedback on how to improve the Act.

In the area of communications, Council members have provided input on how the Attorney General’s Office communicates with charities, such as through its letters to nonprofits and on its website. In the area of education, the Council is working with the Attorney General to explore new ways to educate the nonprofit community on charity laws and regulations. The group is also playing a role in developing a two-page educational FAQ sheet to send to all new nonprofits after they register with the Department of Labor & Economic Growth.

*“A forum for members of the charity community to express their concerns and to learn about the regulatory process is a benefit to both the regulators and the community.”*

MARION GORTON  
Charitable Trust Section  
Michigan Attorney General’s Office

Singh adds that a bonus of the Council for the two membership associations, MNA and CMF, is that they learn firsthand about new issues that the Attorney General's Office is dealing with in the charitable sector. The Council and the Attorney General's Office agreed upfront that Attorney General staff would not use the Council to discuss individual cases they are working on. But the Council can serve as a venue for representatives of the charitable sector and the Attorney General's Office to discuss general trends in the field. "It becomes an educational process for us, and gives us an opportunity to think about how we can begin to educate our members differently so they're more aware of these trends that are coming from the regulators themselves," Singh says.

"The Council has helped to expand and deepen the dialogue on various topics—both within and outside the Council's framework—between staff of the Attorney General's Office and representatives of different sectors in the nonprofit community," adds Gorton. "It has helped us identify and discuss general areas of concern as well as more subject-specific concerns facing subsectors in the nonprofit community. We feel that a forum for members of the charity community to express their concerns and to learn about the regulatory process is a benefit to both the regulators and the community."

## LESSONS: CLEAR EXPECTATIONS, STRONG SUPPORT ARE KEY

Looking at the early progress made by Michigan's Nonprofit Council for Charitable Trusts during its first two years of operation, people involved with the group offer a number of key lessons they've learned from the experience to date:

**Get support from the top.** Everyone agrees that a major factor in the Council's initial progress has been the support it receives from the top of the Attorney General's Office. "Our success has really been dependent upon the fact that the Attorney General

and his staff have been so willing to work with the sector on this," says Skene. "Without that dedication, the Council really wouldn't be as successful as it is."

**Provide good staffing support.** The Attorney General's Office stresses that a key factor in getting the Council off the ground was the willingness of MNA and CMF to agree from the start to provide the necessary staffing support to launch and maintain the Council. "Our goal was to avoid significantly increasing burdens on the Charitable Trust Section or the Department of Attorney General," says Gorton. "If other states are contemplating forming a similar council, they should remain conscious of the severe, existing strain on regulatory budgets and strive to make the council a resource-neutral or positive arrangement with the regulators."

MNA's Skene drafts the Council's meeting agendas, writes the minutes and does all the critical legwork. She also coordinates efforts by MNA and CMF to take action on items discussed at Council meetings. Collier estimates that the Council's expenses add up to about \$25,000 per year (for staff time, mailing costs, etc.), and funds were raised to cover the costs.

Even with Skene's significant contributions, Gorton notes that the Council still requires a time commitment from the

Attorney General's staff to prepare for and attend the meetings. "It is still time-consuming, so we have to feel that it is worthwhile to continue doing it."

**Remain action-oriented.** MNA and CMF work hard to ensure that the agendas for all Council meetings include some action items, so that the Council is not getting together without a clear rationale. Council meetings are scheduled quarterly, but sometimes scheduled meetings are cancelled if there are no actionable items to address.

**Use care in selecting members.** Gorton notes that the Council's positive chemistry has benefited from the careful selection of individual members for the group to ensure that they will all add value to the effort.

*"You have to recognize upfront that this in no way, shape or form means that you're going to influence the Attorney General, but it does mean that you're going to help inform the Attorney General."*

ROB COLLIER  
Council of Michigan Foundations

“Since the group is relatively small, constructive dialogue could be undermined by members with combative personalities or a goal of using the forum to air grievances instead of seeking common ground and working to improve understanding of our common concerns.”

**Ensure a clear understanding of expectations.** Given the inherent barrier that exists when a state regulator builds a relationship with the organizations that it regulates, those involved in the Council have worked to ensure that everyone involved has a clear understanding of their expectations for the group. “Problems could arise if the Council does not share an explicit understanding of its role and authority,” notes Gorton. “You need to pay careful attention to formulating a common understanding of purpose that respects the participants’ roles and limits.”

In order to respect those roles and limits, from the start the Council established a clear understanding that the state must maintain its role as regulator and that statements made by Council members should not be interpreted as reflecting the views of the Attorney General’s Office. And Council members are mindful of everyone’s boundaries when they discuss legislation in meetings. “You have to recognize upfront that this in no way, shape or form means that you’re going to influence the Attorney General,” says Collier, “but it does mean that you’re going to help inform the Attorney General.”

“We need to both be careful that we know what our roles are as institutions,” adds Singh. “We are in fact advocating for changes within their department, and we need to be true to that voice of our constituency. At the same time, they are a regulator and they want to regulate us without bias as they do everyone else. So that was something we just both had to discuss early in the process and acknowledge that those are very different roles for each organization. It hasn’t been an issue for us, but it’s something that needs constant reminding so it doesn’t seem like there’s an adversarial nature to the relationship down the road.”

**Allow give and take.** As with any successful relationship, Skene emphasizes that this type of relationship requires

## MICHIGAN’S CHARITABLE SECTOR AT-A-GLANCE

- 13,478 reporting nonprofits<sup>1</sup>.
- \$27.5 billion in annual nonprofit expenditures.
- 2,263 foundations.
- \$20.4 billion in foundation assets.
- \$1.2 billion in annual foundation grants.

<sup>1</sup>Number of nonprofits with over \$25,000 in annual receipts that reported to the IRS.

Source: Council of Michigan Foundations, Michigan Nonprofit Association; all figures are for 2003.

give and take from both sides. “What keeps any relationship going is having that ongoing contact with them, and making sure that we’re not always asking things of them but that we can be a resource for them as well. I think that just proves to be an effective type of partnership.”

Over the next few years, those involved with Michigan’s Nonprofit Council for Charitable Trusts envision several areas where the Council is likely to focus some of its energies. Providing education and information resources to donors and nonprofits will continue to be important. In particular, the use of technology and e-filing is likely to be a big issue for the Council and the Attorney General’s Office to work on together.

Michigan does not expect to pass a statute to make the Council a permanent legal entity, as has been done elsewhere. People involved with the Council believe that its current voluntary status serves the state well. “In a state like Michigan, where the Attorney General’s Office enjoys a good relationship with the nonprofit sector, there does not appear to be any need for a formal structure required by statute, as long as the subsectors of the charity community feel their representation is adequate,” says Gorton. She adds that the voluntary nature of the group has also allowed some flexibility in the group’s composition, meetings and topics.



“One of the reasons why we’ve had such a strong relationship is because it has been owned by the Attorney General and his staff,” adds Singh. “Sometimes when you do create things by statute it becomes something that is a legislative mandate versus something they want to do to better understand the people they regulate.”

Skene notes that one of the Council’s strengths has been the willingness of all parties to voluntarily participate in the Council because it is mutually beneficial. But she emphasizes that despite its voluntary nature, the fact that the Council is structured and ongoing has definitely helped advance the relationship between the charitable sector and the Attorney General’s Office. “The more conversations you have with people the more you build relationships with them, and I think that’s helped open the doors to make it much more of a partnership.”

## RESOURCES

- Michigan Attorney General’s Office  
[www.michigan.gov/ag](http://www.michigan.gov/ag)
- Council of Michigan Foundations  
[www.cmif.org](http://www.cmif.org)
- Michigan Nonprofit Association  
[www.mnaonline.org](http://www.mnaonline.org)
- Guiding Principles: Council of Michigan Foundations  
[www.cmif.org/About\\_Principles.htm](http://www.cmif.org/About_Principles.htm)
- Principles and Practices for Nonprofit Excellence in Michigan, [www.mnaonline.org/principles.asp](http://www.mnaonline.org/principles.asp)

# New Hampshire Case Study: Collaborating to Strengthen Nonprofit Governance

## Relationship Model:

Project-based collaboration to provide education and information.

## Key Players in Case Study:

- Kelly Ayotte, New Hampshire Attorney General.
- Michael DeLucia, Senior Assistant Attorney General and Director of the Charitable Trusts Unit, New Hampshire Attorney General's Office.
- Lewis Feldstein, President, New Hampshire Charitable Foundation.
- Terry Knowles, Registrar, Charitable Trusts Unit, New Hampshire Attorney General's Office and President of the National Association of State Charity Officials.

## Summary:

Continuing a long history of partnership, New Hampshire's charitable sector and Attorney General's Office jointly developed useful new resources to strengthen nonprofit governance in the state.

## BACKGROUND: A HISTORY OF OVERSIGHT

The New Hampshire Attorney General's Office has a long record of actively overseeing the state's charitable sector. In 1943, New Hampshire became the first state to codify the Attorney General's common law responsibilities regarding charities and to create a separate division to oversee them.

Given this history, the relationship between New Hampshire's charitable sector and Attorney General's Office has been a fairly positive one. This includes a strong and ongoing relationship between the Attorney General's Office and various staff members and leaders of the New Hampshire Charitable Foundation, which as the state's largest foundation has played a leading role in representing and convening New Hampshire's charitable sector. But in 2003, as national

media and legislative scrutiny of the sector increased, some alarm bells went off for foundation President Lewis Feldstein. "I was especially concerned about avoiding unnecessary state legislation, and trying to see if we could distinguish New Hampshire from the national concerns around these issues," he explains.

Feldstein's concerns were being shared over at the Attorney General's Office. Michael DeLucia, Senior Assistant Attorney General and Director of the Charitable Trusts Unit, had recently written an article for the *New Hampshire Bar Journal* about the implications for the charitable sector of the Sarbanes-Oxley Act, which imposed new standards on for-profit corporate boards. He noted that the legislation did not have much of a direct impact on charities, "but it has become shorthand for 'How we can have better board governance.' In the nonprofit sector, the issue is much broader: How can we make our charities more transparent and regain the public's confidence in them?"

Terry Knowles, Registrar of the Charitable Trusts Unit and President of the National Association of State Charity Officials, was also beginning to fear a renewal of past patterns of foundations behaving like private entities that don't see the need to be accountable to the public. "Many foundations are slipping back into that era of privacy, thinking that, 'It's nobody's business what we're doing,' and that can only hurt foundations."

*"The Committee's charge was to think more profoundly about good governance and what it means: How do we achieve excellence without enacting more legislation?"*

MIKE DELUCIA  
Charitable Trusts Unit  
New Hampshire Attorney General's  
Office

Knowles was also hearing more complaints from foundations about the number of charities that were not appearing to be properly governed and managed. "Organizations weren't filing the appropriate reports, weren't using the grant monies in the manner that they should have, and our foundations finally said, 'There's got to be a better way to make our grantmaking more effective and strengthen the nonprofit sector in New Hampshire at the same time.'"

## RELATIONSHIP IN ACTION: EXCELLENCE IN NONPROFIT GOVERNANCE COMMITTEE

To proactively address the growing concerns about the charitable sector's accountability, in 2004 Feldstein and DeLucia co-convened an Excellence in Nonprofit Governance Committee, a 21-member working group of nonprofit and philanthropy leaders from across the state. The group was charged with developing recommendations on how to strengthen nonprofit governance—the Attorney General's top concern for the sector. "The Committee's charge was to think more profoundly about good governance and what it means," DeLucia explains. "How do we achieve excellence without enacting more legislation?"

"Our office has always believed that charities will do the right thing if they know what the right thing is," adds Knowles. "Part of the problem is you have boards that may or may not understand what the nonprofit sector is; they may not understand their fiduciary responsibilities; they may not even know how to carry out mission and there's really no place for people to go to find out that information. It's sort of hit or miss. Again and again and again, when there has been embezzlement, when there has been mismanagement, you can lay it at the feet of a board that wasn't paying attention to what was going on. And until boards understand that they are the governing body of the organization and take that responsibility seriously, we're still going to have these problems."

The volunteer-driven Excellence in Nonprofit Governance Committee included representatives of nonprofit organizations; private, community and corporate foundations; and a few attorneys and accountants who work primarily in the nonprofit sector. Significantly, it also included state Representative John Hunt, former Chair of the House Commerce Committee that has jurisdiction over charitable regulation, who was named to serve after consultation between Feldstein and the Speaker of the House of Representatives.

Over the course of a year, the Committee crafted a set of recommendations that were tested in six listening sessions held across the state with nonprofit leaders, donors and funders. "We learned a great deal in the listening sessions

about what the charities want," DeLucia says. The main thing they heard: Charities—many of them small and strapped for resources—said they needed someone to explain charities law to them in the clearest possible terms. DeLucia says they also heard that charities needed a "clear narrative" that spells out the duties of officers, board members and executive directors.

The result was a plan, launched in February 2005, with four key deliverables:

- **Nonprofit checklist.** Building on the successful experience of the McNinch Foundation, a private foundation in New Hampshire, with its grantees, the Committee developed a one-page checklist containing all the state and federal legal requirements for a New Hampshire charity, marking the first time all of these requirements could be found in one place. The checklist was designed as a user-friendly document to be used by nonprofits of all sizes whenever they apply for grant funding in New Hampshire. Currently, about 90 percent of the state's grantmakers, including the major health care conversion foundations, have voluntarily agreed to require the checklist as a component of their grant application.
- **"Staying Legal" workshops.** The Committee created the template for a series of legal workshops to provide in-depth information to nonprofits on meeting their legal requirements. The four-hour sessions were held in eight locations around the state in spring 2005, with more sessions planned, and were conducted by Knowles in partnership with the New Hampshire Center for Nonprofits, a statewide association of charities.
- **Nonprofit guidebook.** The Attorney General's Office published a "Guidebook for New Hampshire Charitable Nonprofit Organizations" as a reader-friendly reference tool for directors, trustees, officers and executive directors of New Hampshire charities, describing their rights, duties and conflicts-of-interest issues. The Guidebook was presented to the Governor and Committee, distributed to nonprofits across the state, and can be downloaded from the Attorney General's website ([www.doj.nh.gov/publications/guidebook.html](http://www.doj.nh.gov/publications/guidebook.html)).



- **Best practices program.** The longer-term component of the Committee's plan involves the development and dissemination of nonprofit best practice resources through a re-energized New Hampshire Center for Nonprofits, which recently hired a new executive director and reconfigured its board. "We want to help the Center fulfill its potential and to be a primary resource for nonprofits, especially for small nonprofits, so that it can help the Attorney General's Office continue the work of the Guidebook," says DeLucia, who has joined the Center's board—one of the few nonprofit board invitations he has accepted.

The first project in the best practices program was the development of a checklist verification service to provide a verification certificate to any New Hampshire nonprofit that has filed all necessary legal documents with the Attorney General's Office. A nonprofit can provide a copy of the certificate, in lieu of the checklist, to any grantmaker when applying for funds. In the future, the Excellence in Nonprofit Governance Committee plans to develop a more formalized mechanism for recognizing excellence in nonprofit governance, such as a possible accreditation program.

DeLucia says he welcomes the growing role of the Center for New Hampshire Nonprofits and its educational initiatives because it allows the Attorney General's Charitable Trusts Unit to focus its resources on those transactions that

he believes merit greatest attention, especially the continuing mergers, affiliations and consolidations among the nonprofit health care entities in New Hampshire; monitoring compliance with the state's conflict of interest statutes; reviewing major pieces of legislation that impact charitable trusts; and devoting attention to the condition of financially challenged charities.

*"If charities want to move toward self-regulation, part of that move is the condemnation of those who use the sector to their own personal advantage."*

TERRY KNOWLES  
Charitable Trusts Unit  
New Hampshire Attorney General's Office

## OUTCOMES: MOVING BEYOND "TRIAGE"

From the perspective of the Attorney General's Office, a key initial benefit of the Excellence in Nonprofit Governance project is that it formalized and energized an informal education and information process that has existed at the Attorney General's Office for years. Attorney General staff also appreciate that the project has given additional visibility to the key issues of nonprofit governance and accountability.

The Attorney General's Office has received good feedback so far on the materials and sessions that have come out of the project, but Knowles stresses that the real proof of the project's success will be whether charities fully participate in the effort over the next few years. If that participation occurs, the Charitable Trusts Unit's staff will be able to devote more of their limited resources to regulating the few bad actors in the sector. Right now, Knowles says the staff can do little more than "triage" every charity issue that comes through the door. "We really want to dedicate our resources to the big things—embezzlement, theft, mismanagement—not the little stuff that can be corrected through education."

From the perspective of the state's charitable sector, one benefit of the Excellence in Nonprofit Governance project is that it might have helped forestall any state legislation that could be harmful to the sector. But Feldstein sees a bigger benefit in how the project has helped strengthen

### NEW HAMPSHIRE'S CHARITABLE SECTOR AT-A-GLANCE

- 1,682 reporting nonprofits<sup>1</sup>.
- 259 foundations.
- \$4.3 billion in annual nonprofit expenditures, representing 9% of New Hampshire's Gross State Product.
- \$941 million in foundation assets.
- \$53 million in annual foundation/corporate grants.

<sup>1</sup>Number of nonprofits with over \$25,000 in annual receipts that reported to the IRS.

Source: New Hampshire Center for Nonprofits; all figures are for 2001.

*“To be successful, this type of relationship needs to be ongoing and should involve multiple representatives from both the charitable sector and the Attorney General’s Office, so that it is not limited to a single set of personal relationships.”*

LEWIS FELDSTEIN  
New Hampshire Charitable  
Foundation

latest in a long history of successful public-private partnerships, and I’m glad to see that this cooperation is really leading to real results.”

“It obviously helps to have the Governor, Attorney General and House and Senate leaders all in line in support of your work,” Feldstein says. “So that when times get tough you’ve got a working relationship and people feel generally good about it.”

Views are mixed as to whether the state might someday want to move from the current project-driven relationship between the charitable sector and regulator to a more formal, ongoing charitable advisory group for the Attorney General’s Office, as some other states have done. Knowles believes that New Hampshire’s small size negates the need for a more formal group, since the people involved in the current governance project would be the same people who would be around the table for a more permanent advisory group. But Feldstein sees some merit in the idea. “The benefit is that it creates a regular mechanism that’s not as personality-dependent. And as the incumbents turn over in their roles, it creates a sustaining system. I think on balance it’s a better way to do it, although the informal group that’s come together has served us well.”

and deepen public trust in New Hampshire’s charitable sector, while also deepening the relationship between the sector and the Attorney General’s Office. In February 2005, the initial results of the initiative were announced at a large press conference hosted by the New Hampshire Charitable Foundation and attended by Attorney General Kelly Ayotte, Governor John Lynch and other legislative leaders. As reported in *The Union Leader* newspaper, Lynch praised the initiative: “This is really just the

## LESSONS: BUILDING RELATIONSHIPS—THE ATTORNEY GENERAL’S VIEW

For other state regulators interested in improving relationships with the charitable sector, Knowles’ first piece of advice is to seek out a partnership with associations of grantmakers or nonprofits in the region or, if no such associations exist, find any collaboratives or informal groups in the sector. “That’s the easiest way to get into the sector. Talk to them; see what they’re doing.”

She identifies several other key factors to developing successful relationships between state regulators and the charitable sector:

- **Trust.** The most important factor to developing a good relationship is trust. Everyone needs to be open and honest with each other.
- **Good communication.** Both the Attorney General’s Office and the charitable sector need to communicate clearly their expectations and limitations concerning the relationship.
- **Acknowledge that regulators must regulate.** The charitable sector needs to recognize that even if it develops a good relationship with the Attorney General’s Office, the Attorney General’s chief role is still to regulate the sector. “If boards are not doing their jobs then we’re not coming in as a friend, we’re coming in as a regulator. When meeting with nonprofits, I make that very clear right from the beginning.”
- **Support from the top.** Knowles believes that the Excellence in Nonprofit Governance project would never have succeeded without the full support of Attorney General Ayotte. “If you don’t have the support of the Attorney General, it’s going to be very difficult to implement something as bold as this project.”

DeLucia is supportive of the charitable sector’s current push toward improving self-regulation of the sector rather than creating new laws and regulations, but he stresses that with self-regulation must come self-policing. “The Guidebook and other materials we’ve created have gotten us to first base. But to get to second base, charities have to step up to the plate and do more self-examination,” DeLucia says. He



stresses that the sector needs to get much more specific about best practices and to think about setting up new mechanisms for encouraging compliance.

Knowles adds that she has been “profoundly disappointed” when the charitable sector has remained silent while her office has gone after the few bad actors, and emphasizes that if the sector wants to develop a good relationship with regulators it must stand up and support them when they prosecute violators. “When someone messes up really badly, there needs to be public condemnation on the part of the sector,” she says. “If charities want to move toward self-regulation, part of that move is the condemnation of those who use the sector to their own personal advantage. What I find upsetting as a regulator is the silence of the legitimate charities when a criminal is brought to justice for misusing charitable assets. And that can’t be.”

DeLucia is also concerned about the rapid proliferation of charities in New Hampshire during the past few years. He points out that in 2005 alone, more than 500 new charities registered with the Charitable Trusts Unit. “This proliferation is also evident nationally, as reported by the IRS. Who will train the new board members or the new executive directors in their fiduciary duties, in proper governance, and in the meaning of internal controls? If that proliferation continues in 2006, there will be an even greater need for collaboration between the Attorney General and the charitable sector—and for additional public/private initiatives.”

To improve the charitable sector’s relationship with regulators and policymakers, Feldstein believes that charities and foundations must be willing to take an ongoing, proactive stance in reaching out to them. “They are reachable, but you have to spend the time. Someone has to take it on and make it a priority on behalf of the sector, because the regulator and legislative leaders can have a huge impact on improving the sector.”

Feldstein notes that the success of the Excellence in Non-profit Governance project was far easier to achieve because of all the previous work and interactions between various staff members and leaders from his foundation and the Attorney General’s Office over the years. As one example, he notes that the previous Attorney General is now on the

foundation’s board, and those ties were built while he was in the Attorney General’s Office. “To be successful, this type of relationship needs to be ongoing and should involve multiple representatives from both the charitable sector and the Attorney General’s Office, so that it is not limited to a single set of personal relationships.”

For her part, Knowles encourages state regulators to take the first step in developing relationships with the charitable sector, since the balance of power is really in their court. “The charities ordinarily are not going to come to the Attorney General’s Office for help or assistance because they’re afraid. Regulators and the regulated community must begin to build trust and regulators need to go out there and say, ‘Look, we’re here and we can help you with some of your issues. Don’t be afraid to ask us.’ Because in the long run, well-informed boards make my job a lot easier.”

When dealing with charities on issues of charity regulation and accountability, DeLucia also encourages charity regulators to move beyond general comments about fiduciary duties and to get specific and practical, because that’s what charities say they need. “They don’t just want us to say, ‘You have to have integrity and be honest.’ Charities now want you to drill down and want you to be specific. That’s what is needed.”

## RESOURCES

- New Hampshire Attorney General Charitable Trusts Unit, [www.doj.nh.gov/charitable](http://www.doj.nh.gov/charitable)
- New Hampshire Center for Nonprofits [www.nhnonprofits.org](http://www.nhnonprofits.org)
- New Hampshire Charitable Foundation [www.nhcf.org](http://www.nhcf.org)
- Guidebook for New Hampshire Charitable Nonprofit Organizations [www.doj.nh.gov/publications/guidebook.html](http://www.doj.nh.gov/publications/guidebook.html)
- New Hampshire Nonprofit Checklist (PDF) [www.nhcf.org/images/nonprofit\\_checklist\\_-\\_20051.pdf](http://www.nhcf.org/images/nonprofit_checklist_-_20051.pdf)

# Ohio Case Study: Educating Philanthropy & Building a Relationship

## Relationship Model:

Project-based collaboration to provide education and information.

## Key Players in Case Study:

- George Espy, President, Ohio Grantmakers Forum.
- Claudia Herrold, Vice President of Communications and Public Policy, Ohio Grantmakers Forum.
- Monica Moloney, Senior Deputy Attorney General, Charitable Law Section, Ohio Attorney General's Office.
- Jim Petro, Ohio Attorney General.

## Summary:

As they worked together to create educational resources for grantmakers, Ohio's Attorney General's Office and philanthropy sector developed a more collaborative relationship.

## BACKGROUND: AN INTERMITTENT RELATIONSHIP

The relationship between Ohio's philanthropy sector and Attorney General's Office is "stronger than we've ever had before," says George Espy, president of Ohio Grantmakers Forum (OGF), a statewide association of foundations and corporate grantmakers. "They contact us when they have questions, respond to calls we put in to them, speak at our conferences, present at our programs."

That's a significant change from just a few years ago. Up through the 1990s, Ohio's philanthropy sector had what Espy describes as an intermittent and reactive relationship with the Attorney General's Office. "The Attorney General's Office would contact us when an issue came up where they wanted our advice, and then we'd help them out and that would be the end of it. And we wouldn't hear from them again until the next issue came up."

In the mid-1990s, for example, OGF provided input to the Attorney General on how to regulate health conversion foundations' assets from the sales of nonprofit hospitals to for-profit companies, following the passage of a 1996 law delineating the Attorney General's role in overseeing the sales of nonprofit entities. And the Attorney General's Office approached OGF for guidance in setting up the Ohio Tobacco Use Prevention and Control Foundation, which was formed following a 1998 settlement with tobacco manufacturers.

But by 2000, Espy and his staff realized that Ohio's philanthropy sector needed to raise the bar in its relationship with the Attorney General. That same year, OGF approved a new mission calling for the association to be the "leading voice" for philanthropy in Ohio, which Espy knew couldn't happen unless OGF strengthened its voice with the regulators of philanthropy. "So rather than waiting for them to come to us, we went to them," he says.

The timing was right to make such a move. The recent appointment of a new head of the Attorney General's

Charitable Law Section, Brian Cook, gave OGF an opening to arrange an introductory meeting with him. And the Charitable Law Section had recently outsourced many of its resource-intensive operations for licensing and managing the state's extensive bingo operations, which in Ohio can only be run by nonprofits. The outsourcing freed up valuable time and resources that the office planned to redirect to providing more proactive oversight of, and more education and information to, the charitable sector.

"In the past, much of our investigations have been totally complaint-driven," explains Senior Deputy Attorney General Monica Moloney, who became chief of the Charitable Law Section in 2004, after Cook was promoted to head the Public Protection Division of the Attorney General's Office. "We really want to reclaim that role of maintaining oversight and keeping charities accountable to the public, and we're getting

*"If state regulators don't already have a relationship with an organization such as the Ohio Grantmakers Forum or the Ohio Association of Nonprofit Organizations, I would greatly encourage that they find out where those organizations are and make the contacts."*

MONICA MOLONEY  
Charitable Law Section  
Ohio Attorney General's Office

very active in educating foundations.” Moloney believes that most of the problems her office sees in the charitable sector are unintentional and due to a lack of understanding of the laws and regulations, which underscores the need for more education.

## RELATIONSHIP IN ACTION: COLLABORATING TO EDUCATE FOUNDATIONS

OGF saw the Attorney General’s renewed emphasis on education as an opportunity to improve its relationship with the Attorney General’s Office. At its introductory meeting with Cook, Espy and his staff positioned OGF as a professional, unbiased, neutral party that could help the Attorney General’s Office fulfill its educational role. OGF emphasized its core expertise on grantmaking issues and on educating the state’s grantmakers, explained how OGF could serve as a useful educational resource for the Attorney General, and suggested ways in which the two offices could work together.

For example, the discussions led to Ohio Attorney General Jim Petro speaking at OGF’s annual conference. And OGF suggested to the Attorney General’s Office that they collaborate on creating a publication on foundation reporting requirements. Claudia Herrold, OGF’s Vice President of Communications and Public Policy, had reviewed the Attorney General’s website and identified this publication as one of the key gaps in the Attorney General’s list of resource offerings.

Herrold and Moloney co-wrote the publication, called the “Guide to Grantmaking Foundations,” over a period of several months. The Attorney General’s Office paid for the design and printing of the Guide, which was released in 2004. The Guide helps leaders of the state’s grantmaking foundations understand their registration and reporting requirements under Ohio law. It explains the relevant state laws and clearly spells out the processes and steps that foundations must follow to comply with these laws.

OGF mailed the publication along with its annual “State of Philanthropy” research report to all foundations in the state. Both organizations offer the publication for download

## OHIO’S CHARITABLE SECTOR AT-A-GLANCE

- 12,000 reporting nonprofits<sup>1</sup>.
- \$43.2 billion in annual nonprofit expenditures, representing 10% of Ohio’s Gross State Product.
- 3,019 foundations and corporate giving programs.
- \$13.22 billion in foundation assets.
- \$1 billion in annual foundation/corporate grants.

<sup>1</sup>Number of nonprofits with over \$25,000 in annual receipts that reported to the IRS.

Source: Ohio Grantmakers Forum; Nonprofit figures are for 2004; foundation figures for 2003.

from their websites, and OGF uses the Guide in various programs and information packets.

The Guide was so well-received that OGF and the Attorney General’s Office jointly developed a second publication, the “Guide for Foundation Board Members,” that describes the legal duties and best practices of board members of grantmaking foundations. Released in late 2005, the publication is the first such guide written specifically for directors and trustees of foundations in Ohio.

## OUTCOMES: A MORE COLLABORATIVE RELATIONSHIP

Moloney notes that the relationship between the Attorney General’s Office and OGF has grown particularly strong in the past few years, as they have worked together to create new educational resources for foundations. “We had contacts in the past here and there, but now we’ve moved to more of a collaborative level.”

The relationship has improved to the point where OGF’s Espy was invited to serve on a new Government Contracting Advisory Council, operated by another section of the Attorney General’s Office, that helps guide the Attorney General with rulemaking on contracts between the state and outside organizations. Such an appointment would have been much less likely just a few years ago, Espy believes.

*“You need to constantly be looking at new opportunities and thinking about different ways to build that relationship.”*

GEORGE ESPY  
Ohio Grantmakers Forum

Moloney points out the many benefits to her office of the Attorney General’s more collaborative relationship with the state’s philanthropy sector. For starters, the relationship gives her staff direct access to reliable perspectives, content and expertise on

the sector they are regulating, which can be helpful in all areas of their work. In developing the “Guide to Grantmaking Foundations,” for example, Moloney praises Herrold’s knowledge of the sector in helping make the publication more useful. “Sometimes the lawyer in me gets too technical in the terms, and Claudia helped make it more reader-friendly.”

The Attorney General’s Office also values its relationship with OGF and its sister organization, the Ohio Association of Nonprofit Organizations (OANO), for helping fulfill its educational role in a cost-effective manner by tapping into a large network of foundations and charities in the state. “The beauty of working with organizations like OGF and OANO is that they have such a large membership and have these regular opportunities to speak,” Moloney explains. “You can go to three or four of their sessions and reach a tremendous amount of people, and they’re the people we need to reach.”

## LESSONS: THE “4 Ps” TO PHILANTHROPY-REGULATOR RELATIONSHIPS

In describing the key factors that have helped Ohio’s philanthropy sector develop, maintain and improve its relationship with the Attorney General’s Office, Espy cites the “Four Ps”: Proactive, Persistence, Performance and Patience:

- **Proactive.** OGF’s decision to take the first steps in developing a better relationship with the Attorney General’s Office is what got the ball rolling. Espy notes that philanthropy is not typically at the top of any state attorney general’s agenda, so the sector needs to be proactive in developing a relationship with regulators.

“If you wait for them to come to you, they’ll only come to you in a crisis.”

- **Persistence.** OGF has been persistent in developing its relationship with the Attorney General’s Office. They try to have a formal meeting with Attorney General staff once a year, where they always offer new suggestions on how the two organizations can work together. “You need to constantly be looking at new opportunities and thinking about different ways to build that relationship.”
- **Performance.** Whatever projects you do with or for a regulator, you need to do them well or the relationship will quickly falter. “You have to deliver on what you promise and develop credibility with regulators or they won’t come back.”
- **Patience.** OGF has been very strategic and careful about what it has asked of the Attorney General’s Office, and has been patient in building up the relationship over time. It’s important to have some “early winners,” such as the “Guide to Grantmaking Foundations,” and build the relationship from there.

Being headquartered in the state capital of Columbus has been another advantage for OGF in developing its relationship with the Attorney General. On a practical level, when you’re working together on projects it helps to be located just a few blocks away from the Attorney General’s Office. On a strategic level, it adds to your credibility. “That’s not to say that we couldn’t have accomplished what we’ve accomplished if we weren’t located here,” says Espy. “But it does say symbolically that we are a statewide association and represent everyone.”

As they have strengthened their relationship with the Attorney General’s Office, Espy and his staff at OGF say one of the key challenges has been to find the right balance between being an advocate for the philanthropy sector and being a professional, credible and neutral resource for the Attorney General. Another big challenge is the proverbial politics. “You have to understand that partisan politics can get in the way of what you want to accomplish,” Espy notes.

Espy stresses that the philanthropy sector can only develop

a relationship with state regulators if the regulators are open to having such a relationship. If they aren't interested, there isn't a lot you can do about it. "It will only work if they want it to work. If they don't think they need your help, we don't have a real power base to overcome that."

Looking ahead, OGF envisions a continued strengthening of the relationship between Ohio's philanthropy sector and Attorney General's Office. One possible new area for collaboration is in making effective use of the electronic 990-PF data that the Charitable Law Section will soon begin receiving from the IRS.

OGF and the Attorney General's Office have also begun some exploratory discussions to advance their relationship by creating a more formal charitable advisory council. Espy envisions a voluntary/ad hoc advisory group that would be created and appointed by the Attorney General's Office, rather than one created by law.

Espy believes that by developing a relationship with the Attorney General's Office incrementally over the past few years, the state's philanthropy sector is in a much better position to succeed in creating a charitable advisory council than if it had tried to create such a council as its first order of business. He recommends the same process for other states: develop the relationship through individual projects and then move to create a more formal advisory group.

From the view of the Attorney General's Office, Moloney offers several pieces of advice for state charity regulators who are interested in developing a good working relationship with the charitable sector in their region:

- **Work with charity associations or groups.** Seeking out associations and groups of nonprofits and foundations is an important first step in developing a relationship with a state's charitable sector. "If state regulators don't already have a relationship with an organization such as the Ohio Grantmakers Forum or the Ohio Association of Nonprofit Organizations, I would greatly encourage that they find out where those organizations are and make the contacts. Be open to them and see how they work out for you."

## RESOURCES

- Ohio Attorney General Charitable Law Section  
[www.ag.state.oh.us/sections/charitable\\_law](http://www.ag.state.oh.us/sections/charitable_law)
- Ohio Association of Nonprofit Organizations  
[www.ohiononprofits.org](http://www.ohiononprofits.org)
- Ohio Grantmakers Forum  
[www.ohiograntmakers.org](http://www.ohiograntmakers.org)
- "Guide for Foundation Board Members" (PDF)  
Ohio Attorney General's Office, Ohio Grantmakers Forum  
[www.ohiograntmakers.org/images/ag\\_guide\\_board\\_members300.pdf](http://www.ohiograntmakers.org/images/ag_guide_board_members300.pdf)
- "Guide for Grantmaking Foundations" (PDF)  
Ohio Attorney General's Office, Ohio Grantmakers Forum  
[www.ohiograntmakers.org/images/Grant\\_Makers\\_Brochure\\_300.pdf](http://www.ohiograntmakers.org/images/Grant_Makers_Brochure_300.pdf)

- **Get support from the top.** Moloney stresses that she could never have developed a more collaborative relationship with OGF without the full support of Attorney General Petro. "I think his basic goal is to make sure that charitable dollars are used for charitable purposes, so he is very supportive of anything we can do to promote that."
- **Make it personal.** The staff members of the Ohio Attorney General's Office try to bring a personal face to their work with foundations and nonprofits because they believe it increases the effectiveness of their regulatory work. Moloney and her Attorney General colleagues take advantage of many opportunities to meet with nonprofits and foundations face-to-face, primarily through conferences and programs sponsored by OGF and OANO. "It opens lines of communication, and shows that you're not the evil government. After I've spoken to a group of nonprofits, I've had people call me afterwards when they have a question or issue that they would not have asked me otherwise. I think that's very beneficial."



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