



H I G H L I G H T S R E P O R T

The Value of

Relationships

*Between State Charity Regulators
& Philanthropy*

BY

DAVID BIEMESDERFER

ANDRAS KOSARAS





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.

STEVE CARTER
Indiana Attorney General
President
National Association of Attorneys General (NAAG)
www.naag.org

TERRY KNOWLES
Registrar of Charitable Trusts, New Hampshire Attorney
General's Office
President
National Association of State Charity Officials (NASCO)
www.nasconet.org

Download the full report, "The Value of Relationships Between State Charity Regulators & Philanthropy," at www.givingforum.org/policy/regulators.html or at www.cof.org

INSIDE

State Regulation of Charities: A Brief Overview	2
Models of Regulator-Philanthropy Relationships	4
The Value of Regulator-Philanthropy Relationships	6
Lessons on Developing Regulator- Philanthropy Relationships	7
Acknowledgements	9



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 report presents highlights from the publication “The Value of Relationships Between State Charity Regulators & Philanthropy.” The 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. You can read the full report at www.givingforum.org/policy/regulators.html or at www.cof.org.

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 page 9).

We hope you will find the 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

STEVE GUNDERSON
President and CEO
Council on Foundations

MARCH 2006

About the Council on Foundations 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

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.

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?

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

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 states¹ 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 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 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.

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.

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

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

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.

Download an overview of federal & state regulation of charities & foundations, including a review of attorney general oversight in 16 key states, at www.givingforum.org/policy/regulators.html.

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.

Illinois Case Study: 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.

Read the Illinois case study at www.givingforum.org/policy/regulators.html.

- **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.

Michigan Case Study: 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.

Read the Michigan case study at www.givingforum.org/policy/regulators.html.

- **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 and Ohio.

New Hampshire Case Study: Continuing a long history of partnership, New Hampshire's charitable sector and Attorney General's Office established the Excellence in Nonprofit Governance project to develop jointly useful new resources to strengthen nonprofit governance in the state. The new resources include a guidebook for the state's nonprofit directors, trustees, officers and executive directors; a checklist containing all state and federal legal requirements for a New Hampshire charity; and nonprofit best practice resources.

Ohio Case Study: As they worked together to create educational resources for grantmakers, Ohio's Attorney General's Office and philanthropy sector developed a more collaborative relationship. The two organizations have jointly created two guides for grantmaking foundations—one to help foundation leaders understand their registration and reporting requirements under Ohio law, and one that describes the legal duties and best practices of foundation board members.

Read the New Hampshire and Ohio case studies at www.givingforum.org/policy/regulators.html.

■ **Download four case studies of how state charity regulators &**
● **the charitable sector have developed productive & mutually**
■ **beneficial relationships at www.givingforum.org/policy/regulators.html.**

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 minimal 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.

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

GEORGE ESPY
Ohio Grantmakers Forum

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; and a list of state and regional associations of nonprofits at 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.

“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



**Download the full report,
“The Value of Relationships Between State
Charity Regulators & Philanthropy,” at
www.givingforum.org/policy/regulators.html**

Acknowledgements

The Council on Foundations and the Forum of Regional Associations of Grantmakers would like to thank the following people and organizations for their help and guidance in producing this publication:

Report Authors

David Biemesderfer, DJB Consulting Services

Andras Kosaras, Council on Foundations

Staff, Forum of Regional Associations of Grantmakers

Mary O'Neill

Philanthropy & Nonprofit Organizations

Associated Grant Makers

Council of Michigan Foundations

Donors Forum of Chicago

Michigan Nonprofit Association

New Hampshire Charitable Foundation

Ohio Grantmakers Forum

Charity Regulators

California Attorney General's Office

Illinois Attorney General's Office

Massachusetts Attorney General's Office

Michigan Attorney General's Office

Minnesota Attorney General's Office

New Hampshire Attorney General's Office

New Mexico Attorney General's Office

New York Attorney General's Office

Ohio Attorney General's Office

Oregon Attorney General's Office

Pennsylvania Attorney General's Office

Texas Attorney General's Office

Advisory Group

Rob Collier, Council of Michigan Foundations

Claudia Herrold, Ohio Grantmakers Forum

Dan Moore, GuideStar

Kevin Murphy, Berks County Community Foundation

Special Thanks

Evelyn Brody, Chicago-Kent College of Law

Marion Fremont-Smith, Hauser Center for Nonprofit Organizations, Harvard University



Download the full report,

**“The Value of Relationships Between State
Charity Regulators & Philanthropy,” which includes case
studies from four states and an overview of federal and
state regulation of charities and foundations, at:**

www.givingforum.org/policy/regulators.html

or at www.cof.org.