

Attorney General's GUIDE FOR CHARITIES



CALIFORNIA
ATTORNEY GENERAL'S OFFICE

Acknowledgments

The **ATTORNEY GENERAL'S GUIDE FOR CHARITIES** was written in 1988 by members of the Attorney General's Charitable Trusts Section, a part of the Public Rights Division. Many other attorneys, accountants and administrators also served as consultants for this **Guide** by reviewing and commenting on various chapters.

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A Message To California Charities

The Attorney General's **GUIDE FOR CHARITIES** was prepared by the Office of the California Attorney General as a public service to all of the individuals who give their time and skills to serve charitable organizations. This **GUIDE FOR CHARITIES** provides comprehensive information about California laws that govern charities, and also about important federal laws. The **GUIDE** also lists valuable resources that are available to charities, including government agencies, information services, technical assistance providers, and a bibliography of publications from government and private sources. The goal of this **GUIDE** is to provide useful information and to encourage compliance with California laws regulating charities.

Attorney General of California
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INTRODUCTION

The California Attorney General acts as the legal overseer of California charities. The Attorney General has the duty of protecting the interests of all public beneficiaries of charities within his jurisdiction. The Attorney General may conduct investigations and bring legal actions to protect the assets of California charities and insure the assets are used for their intended charitable purposes. Most California charities must register and file annual financial reports with the Attorney General's Registry of Charitable Trusts.

In carrying out these charity oversight duties, the Attorney General's office also provides information and assistance to many individuals who serve as directors, officers, volunteers, fundraisers, accountants and attorneys for charitable organizations. During the past thirty years, the Attorney General's office has responded to thousands of charity information requests. Because of the dramatic growth in the number of charities operating in California, and the large increase in public requests for information, the Attorney General's office recognized the need to publish a practical written Guide for charitable organizations.

What is the "Guide for Charities"?

The Attorney General's Guide for Charities is intended to help volunteers and others who serve as directors, officers or fundraisers for nonprofit charitable organizations. It provides practical information and answers to questions frequently asked about charities. In addition, the Guide summarizes some of the more important California laws affecting the creation and operation of nonprofit charitable corporations. At the end of the Guide, there are two important listings. The "Directory of Services" lists government agencies, legal and general resources that assist charities. The "Bibliography" lists many useful publications for charities.

The Guide for Charities is not intended as a substitute for legal advice or tax consultation from private attorneys or tax experts. Depending on the circumstances, it may be important for your organization to hire a private attorney to assist with specific legal problems. Your local Bar Association Chapter can provide for you the names of attorneys who specialize in nonprofit tax exempt corporations and related matters. For low cost legal services, consult the "Directory of Services" in this Guide.

Chapter 1

WHAT IS A "CHARITY"?

California is home to more than 72,000 charitable organizations, representing about one-eighth of all the charities in the United States. As of 1988, there were 50,000 charitable corporations and trusts registered and reporting to the Attorney General's Registry of Charitable Trusts. Thousands of additional operating charities, such as hospitals, schools and churches, are not legally required to register. The registered charities reported income of \$20 billion and total assets of \$40 billion. Charities represent an important economic sector in California and have the ability to make a significant impact on the communities they serve.

Charitable Purposes:

Historically, charities developed to meet certain needs of society. They were formed to do "public good" and to provide aid to segments of the community that fell outside of the general scope of public assistance. In common usage, the term "charity" refers to an organization that performs charitable programs or sets aside any fund to be used for charitable purposes. California common law defines "charitable purpose" very broadly to include relief of poverty, advancement of education or religion, promotion of health, governmental or municipal purposes, or other purposes which are beneficial to the community. Federal and California tax laws define charitable purposes more specifically for income tax exempt status.

Federal and state laws have been enacted to encourage the making of charitable gifts and facilitate the operation of charitable organizations. These laws reflect the public policy favoring charitable giving and recognize that many charities relieve the public tax rolls from the burden of financing human and community services. As a result, certain benefits and privileges are conferred on charities that are not available to for-profit business corporations.

Income Tax Exempt Status

One of the most important benefits available to a charity is its ability to qualify under federal and state income tax laws for "tax exempt status." Income tax exempt status may confer on the charitable organization exemption from payment of income tax and also allow charitable donors to deduct from their taxable income contributions made to the organization. Income tax-exempt status is discussed in more detail in Chapter 3 of this Guide.

Legal Forms

A charity may operate in California under any of several legal forms, including a nonprofit corporation, a trust or an unincorporated association. Most California charities are organized as nonprofit corporations. The three most common types of nonprofit corporations under California law are: public benefit corporations, mutual benefit corporations and religious corporations. The majority of the registered nonprofit corporations in California are organized as public benefit corporations.

Under California law, a public benefit corporation must be formed for public or charitable purposes and may not be organized for the private gain of any person. A public benefit corporation cannot distribute "profits", gains or dividends to any person. Public benefit corporations often qualify for income tax exempt status. Public benefit corporations (except for educational institutions and hospitals) must register and report to the Attorney General's Registry of Charitable Trusts.

Religious corporations are organized for religious purposes. They are usually income tax exempt and are not required to register or report to the California Attorney General. A religious organization may be formed as a corporation sole, also.

Mutual benefit corporations are organized most often to benefit their own members. Usually, mutual benefit corporations are not charities. Mutual benefit corporations may qualify for different income tax benefits than public benefit corporations. Familiar examples of mutual benefit corporations include private homeowners associations, private clubs, trade and professional associations. If a mutual benefit corporation holds some of its assets for charitable purposes, however, it must register and report on the charitable assets to the Attorney General.

A trust may be created by language in a will or in a written instrument. The trust creates legal obligations for the person(s) ("trustee") who manages the assets of the trust. A trust for charitable purposes can be enforced by the Attorney General, and the trustee must register and report to the Attorney General.

It is not essential to form a nonprofit corporation, a trust or other legal entity to create a charity. In California, any individual or organization who solicits funds and represents that such funds will be used for charitable purposes may be held to be a "trustee for charitable purpose" and accountable for such funds. In addition, the failure of a public benefit corporation or trust to qualify for income tax exempt status does not necessarily free the organization and its directors from accountability as a charity.

Any individual or group of persons who operate as a charitable organization but do not create a nonprofit corporation or a trust may be treated under California law as an "unincorporated association." Under this classification, the individuals may be exposed to substantial risk of personal liability if the organization is sued.

Chapter 2

HOW TO FORM A NONPROFIT CORPORATION

A corporation is a distinct legal entity under California law. A new corporation is "born" when its Articles of Incorporation are filed with the Secretary of State. The basic steps and minimum requirements for forming a public benefit corporation are summarized in this chapter.

Preliminary Considerations: **Do You Really Want to Create a Charity?**

Although public benefit corporations may qualify for many important benefits, including income tax exempt status, they are also subject to important legal restrictions. One very critical restriction is that the assets of a public benefit are irrevocably dedicated to charitable purposes, and cannot be distributed for private gain. If the organizers of a public benefit corporation later decide that they do not wish to operate the corporation as a charity, they may terminate the public benefit corporation but they cannot take back its assets. Legally, those assets belong to charity, and must be transferred to another charity that has similar purposes.

It is important to consider carefully the goals of the new organization before taking any steps to form a public benefit corporation. There are many factors to consider before choosing the legal form for the organization and evaluating whether the advantages of income tax exempt status outweigh the legal restrictions on public benefit corporations. Some important factors to review are: (1) What are the purposes of the new organization? (2) What are the projected income needs and sources of income? (3) What are the tax considerations? (4) How do you plan to distribute "surplus" income? (5) How do the standards of liability for directors vary between nonprofit and for-profit corporations, as compared to trusts and unincorporated associations? (6) What are the goals and interests of members of the organization? (7) How much flexibility of operation is desired? (8) What are the government regulations on nonprofit corporations as compared to for-profit business corporations? (9) Will any payments be made by the organization to its

founders, directors and officers, and what are the consequences?
(10) What alternate legal forms exist for creating a charity?

This Guide may help individuals to answer some of these preliminary questions. Additional guidance from an attorney or tax expert may be needed.

Basic Steps for Incorporation Of A Public Benefit Corporation

A nonprofit public benefit corporation may be formed by following the basic steps for creating a California nonprofit corporation, which are summarized below.

1. Choose a corporate name: You may clear and reserve the corporate name by calling the Secretary of State. After clearing the corporate name, you must send a check to the Secretary of State's office to reserve the name. For additional information contact the Secretary of State's office. See the "Directory of Services" for listings.
2. Draft ARTICLES OF INCORPORATION and file the articles (two copies for public benefit corporations) with the Secretary of State. The Articles of Incorporation must state the name of the public benefit corporation, its purpose, and that it is not organized for the private gain of any person. (For forms of Articles of Incorporation, see the "Bibliography" listings.)
3. Draft the BYLAWS of the corporation. Bylaws set out the basic rules for operating the corporation. These rules may be limited by California laws and are very important to the governance of the corporation. (See "Bibliography" for assistance on drafting bylaws.)
4. File APPLICATION FOR INCOME TAX EXEMPT STATUS with IRS (Form 1023) and California Franchise Tax Board (Form 3500). (See Chapter 3 of this Guide.)
5. File federal APPLICATION FOR EMPLOYER IDENTIFICATION NUMBER (Form SS-4) with the IRS.
6. File an annual STATEMENT BY DOMESTIC NONPROFIT CORPORATION which will be sent to you by the Secretary of State after you have filed your Articles of Incorporation. This filing designates an agent for service of process.
7. Hold first meeting of directors. Agenda items for the first meeting usually include adopting bylaws, electing officers, establishing a bank account, setting the accounting year and basic accounting procedures, planning a budget for the first year, and procedures for

safekeeping of minutes, bylaws and other corporate records. It is important for the corporate secretary to record and keep minutes of all meetings of the board of directors.

8. Review the corporation's need for state and local permits and licenses, and for registration with the Attorney General's Registry of Charitable Trusts, plan to meet deadlines for required annual filings with IRS, Franchise Tax Board, Attorney General. (See Chapters 3, 10 of this Guide.)

There are several books and government publications that discuss in more detail the steps for forming a nonprofit corporation. See the "Bibliography" for listings.

This Guide and the publications cited in the "Bibliography" are not a substitute for professional legal assistance. You may wish to seek the professional legal services of an attorney and/or tax expert in forming a new nonprofit corporation.

FREQUENT QUESTIONS

Q. Is it necessary to hire an attorney to form a public benefit corporation?

A. No. California law does not require that you retain an attorney to form a corporation. However, as noted earlier, there are many questions to review prior to deciding to form a public benefit corporation. An attorney who specializes in the area of nonprofit corporations could assist in such review and guide the organizers through steps of incorporation and application for income tax exempt status.

Many charitable organizations cannot afford to pay the fees charged by private attorneys. There are low cost or free legal services available to certain types of charities in some areas. Consult the "Directory of Services" for listings.

Q. What is the simplest legal form to use in creating a charity?

A. The public benefit corporation is the recommended legal form for most California charities (except religious organizations). Although there is significant paper work involved in forming a public benefit corporation, the procedures for operation and the rights and duties of directors, officers and members of public benefit corporations are more clearly set forth under California law than for other forms of organization.

This may be very helpful during the operating life of the corporation.

Q. How does our charitable organization obtain "tax exempt status?"

A. To obtain federal income tax exempt status for a charitable organization, it is necessary to apply to the IRS for classification as a "501(c)(3)" organization under the Internal Revenue Code.. Most California charities also apply to the California Franchise Tax Board for California income tax exempt status. The basic steps and the necessary application forms are described in Chapter 3 of this Guide. There are free publications available from the IRS and Franchise Tax Board that include instructions on applying for tax exempt status. See the "Directory of Services" and "Bibliography" in this Guide for listings.

Q. How do we register our charitable organization with the Attorney General?

A. Registration of public benefit corporations is now done automatically when the Attorney General's Registry of Charitable Trusts receives from the Secretary of State the duplicate filed copy of articles of incorporation. The Registry will mail to each new public benefit corporation instructions for filing the annual CT-2 report (which includes the IRS Form 990) with the Attorney General. The new public benefit corporation has up to one and one-half years after it receives assets before its first CT-2 report is due.

Charities that are not public benefit corporations will not be registered automatically by the Registry. These charities must write to the Registry to obtain registration forms and other instructions. (See "Directory of Services" for Attorney General's Registry listing.)

APPLICATION FOR TAX EXEMPT STATUS

Most charitable organizations in California seek income tax exempt status under federal Internal Revenue Code (IRC) section 501(c)(3) and California Revenue and Taxation Code section 23701(d). These provisions generally exempt a charity from federal or state income tax on all forms of income derived from the charity's exempt purposes. Individuals who itemize and corporate donors may deduct contributions to "section 501(c)(3) organizations," subject to various limitations set forth in IRC section 170.

What is 501(c)(3) Status?

A section 501(c)(3) organization must be "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes." To qualify, an organization must satisfy an organizational test and an operational test. The organizational test is met if the articles of incorporation include language limiting the purposes of the organization to one or more of the exempt purposes set forth in section 501(c)(3) and do not empower the organization to engage in any substantial activities which do not further one or more exempt purposes. In addition, the organizational documents (or applicable state law) must require the organization to expressly dedicate its assets to exempt purposes in the event of a dissolution.

The operational test requires the organization to be engaged primarily in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3). The test will not be met if "more than an insubstantial part" of the organization's activities is not in furtherance of exempt purposes. Examples of impermissible conduct include inurement of net earnings to private individuals and engaging in certain prohibited political activities, such as substantial lobbying or participation in political campaigns on behalf of or in opposition to candidates for public office. Nonprofit California public benefit corporations also may be required to show that no more than 49 percent of the organization's directors are "interested persons" or their close relatives, as defined in

California Corporations Code section 5227. (See Chapter 6 for discussion of "interested" directors.)

"Public Charity" or "Private Foundation"?

Organizations that qualify for exemption under IRC section 501(c)(3) will be classified by the IRS as either a public charity or a private foundation. Most organizations (with a few exceptions, such as churches) are presumed to be private foundations unless they receive a determination from the IRS that they are a "public charity". In general, an organization will be classified as a public charity if it receives a certain percentage of its total support from government sources, other public charities or a broad base of individual donors. An organization also may avoid being classified as a private foundation if it maintains a support relationship with one or more public charities or governmental entities; this relationship may be either financial or programmatic.

Classification as a private foundation carries with it several disadvantages, including a 2 percent excise tax on the organization's net investment income, certain limitations on the deductibility of charitable contributions by individual donors, a wide range of operational requirements and restrictions and more burdensome reporting requirements.

Unrelated Business Income Is Taxed

Regardless of their private foundation classification, section 501(c)(3) organizations are subject to tax on income derived from actively conducted business activities that are substantially unrelated to the organization's exempt purposes.

How To File For Income Tax Exempt Status

An organization that wishes to obtain income tax exempt status must file applications with the appropriate federal and state authorities. Obtaining a federal tax exemption under IRC section 501(c)(3) requires the submission to the IRS of Form 1023 (Application for Recognition of Exemption under Section 501(c)(3).) The application generally must be filed within 15 months from the end of the month of incorporation. Income tax exempt status, if granted by the IRC, will be retroactive to the date of incorporation. Under recently enacted legislation, an organization filing an initial application for income tax exempt status also must pay a fee ranging from \$150 to \$300. A similar procedure requires the submission to the California Franchise Tax Board of Form 3500 to obtain tax-exempt status in California. More information on the criteria and procedures for applying for

federal tax exemption can be found in IRS Publication 557 (How to Apply for and Retain Exempt Status for Your Organization).

In general, IRS Form 1023 requires the organization to submit the following documents: (1) a conformed copy of the organization's articles of incorporation (or trust instrument); (2) the bylaws (if a nonprofit corporation); (3) the Employer Identification Number of the organization or an application therefor on Form SS-4); (4) a statement of receipts and disbursements; (5) a current balance sheet; (6) other financial information, including a proposed budget for two years in the case of newly formed organizations; and (7) an executed copy of a consent to extend the period in which to assess tax (Form 872-C).

Federal laws enacted in 1988 require all tax exempt organizations to make available for public inspection at their offices during regular business hours a copy of the three most recent annual information returns (Form 990 or 990-PF for IRC 501(c)(3) organizations), exemption applications and determination letters.

Property Tax Exemption

The California State Board of Equalization, together with county assessors, are the administrators of the welfare exemption from property taxation (Cal. Rev. & Tax Code, § 214 et seq.). There are many requirements for obtaining a welfare exemption from property taxes, and income tax exempt status is only one of them. For further information, see the listing for State Board of Equalization in the "Directory of Services."

Sales Tax Exemption

A charity that sells items may be required to collect and remit to the state sales tax on goods sold. The rules for sales tax exemption are different from the rules for income tax exempt status. The exemption for sales tax related to the charitable purpose is subject to many regulations. For further information, see the listing for State Board of Equalization in the "Directory of Services."

Other Types Of Tax Exemption

Section 501(c)(3) organizations also may be exempt from property taxes and certain federal excise taxes. They generally are not exempt from sales and use taxes or employment taxes.

The law of tax exempt organizations is highly complex, and this discussion is intended only as a broad overview of the requirements for exemption. Organizations with special problems

or that need more assistance should consult the listings in this Guide under "Directory of Services" and "Bibliography", or a private attorney or tax expert,

FREQUENT QUESTIONS

Q. How long does it take to find out if our organization will receive federal income tax exempt status from IRS?

A. Generally, it takes at least three months after filing the application for income tax exempt status (Form 1023) with IRS to learn if the application has been granted. When IRS notifies you of the decision to grant federal income tax exempt status, IRS will include instructions for annual filing of IRS Form 990 or 990-PF which is required to maintain federal income tax exempt status. (See "Directory of Services" for IRS listings.)

Q. If IRS denies the application by our organization for income tax exempt status, what can we do with the funds already donated to the organization?

A. In most cases, all funds collected by a charitable organization are irrevocably dedicated to charitable purposes. Even if the organization fails to receive income tax exempt status from IRS, the funds must be used for charitable purposes, and cannot be refunded to the donors.

In special circumstances where an organization was formed as a public benefit corporation by mistake, where its organizers intended it to be a mutual benefit corporation, and where all the funds received were dues from members, the organization may be allowed to terminate as a charity and refund the dues and other assets to members, rather than to charity. However, the Attorney General's written consent must be obtained if the organization was formed as a public benefit corporation.

Q. What are the procedures for obtaining state income tax exempt status for our organization?

A. The procedures for obtaining California income tax exempt status from the California Franchise Tax Board are similar to those for IRS. California FTB Form 3500 must be completed and submitted to FTB. The FTB will notify the applicant of its decision on exempt status, and also send instructions for annual filing of FTB Form 199. (See "Directory of Services" for FTB listing.)

Q. Our charitable organization has special tax problems. Where can we find an expert on charitable tax exempt organizations?

A. The law on charitable tax exempt organizations is very complex and quite specialized. Be certain if you hire a tax attorney or other tax expert that the person is knowledgeable about this area of tax law. You may contact any of the following for tax expert referrals. Be sure to specify the area of expertise that your organization seeks.

- The County Bar Association referral service in your area.
- Accredited law schools in your area will usually have a tax specialist on their faculty. The tax professor may be able to refer you to an attorney who specializes in tax exempt organizations.
- Large charitable organizations in your area may be able to give you names of tax experts who have assisted their organization.

Q. If our charity is granted federal and state income tax exempt status, does the charity have to pay property tax on property it owns? Does the charity have to pay sales tax on items it sells?

A. A charity with income tax status may still have to pay property tax and sales tax. The rules that apply to exemption from property and sales taxes are different from the rules for income tax exempt status. Contact the State Board of Equalization and the local county assessor's office for additional information. (See the "Directory of Services" listings.)

CHARITY AS AN EMPLOYER

Many charities hire employees to staff their offices, provide program services, conduct fund raising, maintain books of account, file tax forms and provide other necessary services for the operation of the charity. The fact that a charity has "tax exempt status" and is a nonprofit corporation does not excuse it from the same legal obligations to its employees which apply to any business corporation. This chapter describes several important legal obligations of employers.

1. Applications for Employer Identification Number (IRS Form SS-4).

Even if a charity does not intend to hire employees, it must still apply for an Employer Identification Number ("EIN") by filing an SS-4 with its federal tax exemption application. The EIN is the corporate equivalent of a Social Security Number and is used by the Internal Revenue Service to identify the corporation's information returns in IRS records.

2. Federal and State Corporate Employment Taxes

A corporation's own tax exempt status allows exemption from tax on the corporation's income. As an employer, the corporation remains obligated to report any employee's income and to make proper withholding payments to the federal and state governments. Withholding requirements are strictly enforced. Failure to comply could result in tax problems for the organization, its directors and employees. The following is a list of information forms and withholding returns that employers must file with the state and the federal government:

- Employee's Withholding Certificate (W-4)
- Corporation Federal Quarterly Withholding Returns (Form 941-E) and bank deposits of withheld income taxes and social security taxes.
- Annual Federal Wage and Tax Statement (W-2)
- California Employer Registration Form
- California Income Tax Withholding form (SE-44)

- California Unemployment and Disability Insurance (quarterly)
- Annual Federal Unemployment Tax Return

Federal withholding obligations are explained in Internal Revenue Service Publication 15 (Circular E--Employer's Tax Guide) which may be obtained from your local IRS office.

3. Employee relations

Legally, a charitable organization is treated like any other employer; it has an implied "contract" with each of its employees, whether or not the employee has signed a written contract governing the terms of employment. To avoid misunderstandings between the charity and its employees, directors or officers should provide each employee with a written statement of the charity's employment policies, including any employee benefit plans such as vacation policies, health plans, retirement or life insurance plans.

4. State and federal laws regarding working conditions, minimum wages, overtime pay, and discriminatory hiring/firing practices.

Generally, public benefit corporations and other charitable organizations are subject to laws governing terms and conditions of employment and prohibitions on discrimination to the same extent that private, business corporation employers are. Religious corporations may be exempt from some of these laws and restrictions.

5. Independent Contractors

Ultimately, the IRS will decide whether the people who work for a charitable organization are employees for whom tax withholding and reporting by the employer applies, or whether they are "independent contractors" for whom these employer obligations do not apply. An employer who incorrectly classifies employees as "independent contractors" may be held personally liable for penalties and damages if the IRS disagrees with the classification. If your organization plans to work with "independent contractors," you may wish to consult an attorney or other expert about IRS guidelines for such classification.

FREQUENT QUESTIONS

- Q. During the early years of operation, our charity had insufficient funds to pay key employees the true value of their services. Now that we have adequate revenues, can we pay our employees retroactively?**

A. This problem is not unusual. The answer is complicated by the law that says that charitable assets may not be distributed as "profits" or dividends to any person. Under this rule, a charity that hired an employee under a contract for \$20,000 yearly salary (assuming that to be a fair rate for the services performed) but was unable to meet those payments the first year, would be allowed later to make up the amounts due as revenues became available, because of the contractual obligation. However, if the charity had not contracted to pay the employee the "fair" price, but some lesser amount, or if, without a contract, the charity simply paid the employee what it could afford from available monthly revenues, the charity could be barred from later paying an additional "bonus" to the employee. Payment of charity funds as a gift or "bonus" to any person may be an illegal distribution of charitable assets, for which directors of the charity can be held personally liable. A person who works as a volunteer for charity has no legal right to payment of compensation from the charity. Actual expenses may be reimbursed.

Q. Our charity has been sued by an employee for breach of employment contract and for discrimination. Will the Attorney General act as attorney to defend our charity and save us the expense of hiring a private attorney?

A. No. The Attorney General acts as the attorney for the general public to protect all beneficiaries of charitable assets against fraud and mismanagement of those assets. When the Attorney General sues charity directors for fraud, the action usually seeks repayment from the directors to the charity. In other types of cases, where directors and the nonprofit corporation are sued by employees or other persons for violations of contract, for injuries, or for other civil wrongs, it is the obligation of the directors to hire an attorney to defend the corporation at the corporation's expense. When corporations are able to purchase insurance for general liability coverage, the insurer will usually provide an attorney to defend the corporation.

Q. We just learned that an employee embezzled \$50,000 from our charity. What can we do about it?

A. Upon learning that an employee has embezzled funds from the charity, the directors have a legal duty to take reasonable steps to try to recover the funds and to refer the matter to the local District Attorney for possible criminal prosecution. The directors may have to hire a private attorney to file a civil suit against the employee for restitution. Directors must evaluate whether the prospect of recovery outweighs the probable costs of suit. The loss to charity should be reported on the CT-2 Report filed with the Attorney General, which should include an explanation of action taken by the directors to recover the loss.

Chapter 5

FISCAL MANAGEMENT: BOOKKEEPING, ACCOUNTING, REPORTING REQUIREMENTS

Efficient and accurate fiscal management is very important to all charitable organizations. This requires the directors to organize and document the financial affairs of the charity. It may be useful for the charity to hire an accountant, controller or other fiscal manager.

In choosing a method of fiscal management, the needs of various users of the accounting information must be considered. There are two general categories of users: (1) internal users - management staff, board of directors and members; and (2) external users - governmental agencies, grant making organizations, banks and other financial institutions.

Internal Controls Over the Fiscal Management System

The goal in establishing internal controls over the fiscal management of a charity is to prevent error, fraud, theft or mismanagement. Good internal controls safeguard charitable assets and insure reliability of financial records. Items which make up an effective control system include budgets, segregation of duties, policy and procedures manuals, clear definition and adherence to set procedures for management authority, and periodic review of the control system. A system requiring two signatures on all the corporation's checks is an important control measure. Continuing cost-benefit analysis by charity managers is vital to effective operation and survival.

The charity's directors play a key role in establishing internal controls for the charity. Their approval of policy and procedures determine the fiscal management system. The minutes of the board meetings should reflect these important policies.

Many charity directors seek expert advice from a professional accountant to assist in designing and implementing the fiscal management system. Choose an accountant carefully and be specific about the charity's needs. Ask the accountant about his or her experience with other charitable organizations. Check references.

Preventing Internal Fraud and Theft of Charitable Assets

Fraudulent diversion of charitable assets by employees, officers and directors with control over those assets can occur at either the receipts or the disbursement phase. Charities receive many donations in the form of cash and checks. The person who receives and records the cash and checks could, without proper controls, deposit those funds into unauthorized bank accounts and divert the funds to personal use, without the knowledge of other employees or directors. For this reason it is very important to separate the function of recording cash receipts from responsibility for access and control over the receipts. Assigning different people to the separate tasks of recording receipts and making bank deposits minimizes the risk of fraud.

At the disbursements level, it is important to require two signatures on all checks drawn on the charity's account. This reduces the risk of such fraudulent practices as writing checks to cover unverified expenses or to pay fictitious creditors or phantom grantees.

Directors should continually monitor the budget and anticipated revenue sources and amounts during the year, and compare those figures to the actual revenue reported during the year. Any sizable differences between expected and actual revenue should be carefully investigated by directors or designated officers to obtain a full explanation. The directors should review quarterly the charity's bank account statements, check reconciliations, and the books of account for any obvious irregularities.

Annual independent audits are the best protection against internal fraud and fiscal mismanagement. Independent audits can be expensive, however, and may be beyond the budget capabilities of small charities. A good alternative is to retain an independent accountant to conduct a review of the charity's financial statements, and issue a review report to the directors. A review is usually much less expensive than an audit, and can alert directors to serious deficiencies in the internal control system as well as possible fraud.

Components of an Accounting System

A charity's accounting system should reflect accurate, understandable data that is useful in making management decisions and preparing reports. Books should adhere generally to the standards of Accounting and Financial Reporting for Nonprofit Health and Welfare Voluntary Organizations, and to generally accepted accounting principles. The actual books of accounts to be maintained depend on the type of organization.

For example, a grant making organization would have different accounting needs than a health clinic or museum. Generally, an organization's books of accounts will include:

1. **General Ledger**

A general ledger consists of a number of accounts representing stored information about a particular kind of asset, liability, fund balance, revenue or expense. Information is taken from the general ledger to prepare financial statements such as the Balance Sheet or the Income and Expense Statement. The amounts reported in the General Ledger accounts are often totals for a given time period for a class of accounts detailed in subsidiary ledgers.

2. **Subsidiary Ledgers**

Subsidiary ledgers provide greater detail for a particular account. For example, an accounts receivable subsidiary ledger lists information on each customer's purchases, payments and balance. The general ledger contains one figure representing the total for a period from all subsidiary ledgers for that account.

3. **Journals**

Information from business papers is recorded in chronological order in journals. Various types of journals include:

- **Sales Journal** - sales are recorded as they are made; usually all information is taken from the invoice.
- **Disbursement Journal** - cash/checks going out to pay for expenses, acquiring assets, making grants, are recorded.
- **Receipts Journal** - cash/checks coming into the organization are recorded.
- **General Journal** - non repetitive types of transactions and corrections or adjustments are recorded.

In addition to an accurate system for recording fiscal data, a charity needs a filing system that allows easy access to various business documents and helps the accountant when preparing periodic financial statements, tax returns and management reports. A good fiscal management system allows you to trace any transaction from the financial reports to the general ledger, subsidiary ledgers, journals and business records.

Reporting Requirements to Government Agencies

In addition to keeping financial records, the accountant may be responsible for preparing and filing reports for the charity with various government agencies. Even if your accountant does not prepare these reports for you, you should ask that a report-filing calendar be established for the charity to assist directors in complying with all the required filings. Listed below are some of the annual reporting and filing requirements that apply to most charities.

- 1) Periodic Report to the Attorney General's Registry of Charitable Trusts (Form CT-2).
- 2) Federal information returns of tax-exempt organizations to the IRS (Forms 990, 990-PF).
- 3) California return of tax-exempt organizations to Franchise Tax Board (Form 199, Form 109).
- 4) Quarterly federal employment tax deposits (FICA) to the IRS.
- 5) Quarterly employment deposits to the California Employment Development Department.
- 6) Forms W-2 (provided to employees each year and copies filed by the employer with the federal and state governments).
- 7) Forms 1099 (provided to non-employee service providers and copies filed with the federal and state governments).
- 8) Local and state property and sales tax statements and returns.

In addition, an IRC 501(c)(3) organization must keep copies of its three most recent federal tax returns its exempt status application and determination letter available for inspection by the public at its main office and any other office with three or more employees.

FREQUENT QUESTIONS

Q: What specific fiscal management procedure will help to protect our charity against fiscal mismanagement and embezzlement?

A: Generally, fiscal management policy should provide for careful periodic review by directors and by independent accountants. Procedures such as a dual signature requirement on

all charity bank accounts, periodic review of monthly statements by the board and an annual independent audit are highly recommended.

Q: What if our charity cannot afford an annual independent audit or review?

A: At minimum, the board of directors should review the charity's financial conditions regularly. A Financial Audit Committee could be created to review the charity's finances and watch for irregularities. Low cost accounting services may be available. See the "Directory of Services" listings.

Q: I was recently appointed to the board of directors of a charity, and I have discovered that the charity's records are disorganized and incomplete. I also suspect that a former director misused the charity's funds. What should I do?

A: Some people who find themselves in the situation described above simply resign from the board of directors. If a director decides to continue to serve in the circumstances described, he or she should protect him/herself against possible liability for negligence by insisting that an independent audit of the charity be conducted immediately, and that a competent employee be hired to establish a proper accounting system and to maintain the corporate records.

Any person who suspects fiscal abuse of charity assets is encouraged to report the matter to the Attorney General's Charitable Trust Section, which has investigative audit powers and may bring civil action to recover diverted charitable assets. Any evidence of criminal activity, such as embezzlement of charitable assets, should be reported to the local district attorney for possible criminal prosecution.

Chapter 6

DIRECTORS AND OFFICERS OF PUBLIC BENEFIT CORPORATIONS

Every corporation must have directors and officers. Legally, a public benefit corporation may operate with one director. However, most charities operate with three or more directors, which is strongly recommended. In addition to directors, every public benefit corporation is required to have a president, a chief financial officer and a secretary. Additional officers may be appointed. The powers, duties and liabilities of directors and officers of public benefit corporations are governed by California statutes. Directors are required to discharge their duties consistent with a fiduciary obligation to the charity.

DIRECTORS:

Powers and Duties of Directors

The directors of a nonprofit public benefit corporation are responsible for conducting the corporation's affairs and for exercising the powers of the corporation. Directors may delegate many of their powers to others, such as officers and employees, but the directors are ultimately responsible for all corporate decisions.

Directors may be elected (usually by members) or designated (by the board of directors or other persons). The provisions for election, resignation, removal, terms of office, quorum necessary for action by directors, action by executive committee, delegation of powers, and other important issues affecting directors are generally covered by California statutes. These powers and procedures should be set forth clearly in the corporation's bylaws.

Compensation of Directors:

Most directors of public benefit corporations serve on a volunteer basis, and do not receive compensation, other than

occasional reimbursement for actual expenses of attending meetings (mileage, parking fees, meal costs). However, California law permits directors to receive reasonable "compensation as a director or officer," and distinguishes such compensation from other payments to directors that raise conflict of interest questions. Reasonable compensation paid to a director or officer is not "self dealing" and it does not impair the ability of the director to serve as a "disinterested" director in reviewing other corporate transactions. California law does not suggest what amount of compensation to a director is a reasonable one. The Attorney General audits payments to directors that are more than nominal.

Standards recently adopted by the National Charities Information Bureau state that trustees and directors should be volunteers and not compensated other than for expenses.

Liability of Directors:

In general, directors of nonprofit corporations, like directors of business corporations, are usually not personally liable for the debts, liabilities or obligations of the corporation. A director may be held personally liable to repay damages to the public benefit corporation where he has breached a duty of care or loyalty to the corporation. A director's personal liability to third parties is very limited. California law on director's liability is complicated and has been changed frequently by the Legislature.

1. Nonpaid, Disinterested Director Who Acts in Good Faith With Reasonable Care is Not Liable to Corporation.

A nonpaid director of a public benefit corporation who performs his or her duties in good faith,, in a manner the director believes to be in the best interest of the corporation, and with reasonable care and inquiry under the circumstances has no personal monetary liability to the corporation in an action based on alleged failure to discharge the director's duties. This protection against liability does not apply to a director who engages-in self dealing or who makes or receives a prohibited loan or distribution of the corporation's assets.

2. Volunteer Director Not Liable to Third Parties:

A volunteer director or an officer has no personal liability to a third party for a negligent act or omission in performance of the director's duty if the director: 1) acted within the scope of his or her duties,; 2) was not grossly negligent, reckless, wanton or intentional; 3) and the damages caused are covered by a liability insurance policy issued to the corporation, or the directors made reasonable efforts to obtain liability insurance.

3. Duty of Loyalty and Conflict of Interest

a. Self-Dealing Transactions: Directors May Be Liable For Damage to Corporation

A "self-dealing" transaction is one between a director and the public benefit corporation in which the director has a "material financial interest." Such transactions include payment of a salary, contract fee, commission or other benefit of material economic value from the public benefit corporation to one or more of its directors, or to a corporation or partnership in which a director has a material financial interest. In reviewing self dealing transactions, the Attorney General considers a financial interest "material" to a director if it is large enough to create an appearance of conflict of interest. This is a question of fact in each case.

Self dealing transactions between a director and the charity on which the director serves are inherently suspect. The director's first duty of loyalty is to the charity, and it may be difficult for a director to carry out that duty if he or she is also looking to make a profit from transacting business with the charity. This is one reason that California law requires that all boards of directors of public benefit corporations be composed of at least 51% of directors who are "disinterested" from the corporation. "Disinterested" means that the director is not involved personally in any self dealing transactions with the charity, and also that none of his or her relatives is receiving salary or other contract payments from the charity. A majority disinterested board of directors is absolutely critical to insure that the charity is protected against unfair self dealing transactions and other conflicts of interest.

When a self dealing transaction is not fair to the charity, and when the self dealing director charges an unreasonable price or makes an excessive profit from a self dealing transaction, the charity suffers damage to its assets. The Attorney General and others may sue the responsible directors to recover from them the actual damages to charity, plus interest, and in some cases punitive damages. Any damages recovered are returned to the charity. Often the self dealing directors and other directors responsible for the damage are removed from the charity's board.

Of course, there are cases of self dealing where the charity actually benefits and is treated fairly. If a director contracts with the charity he serves to provide needed services at a fair price, if the terms are reasonable to the charity, if the contract is for the charity's benefit (not the director's benefit), and if the charity "could not have obtained a more advantageous arrangement with reasonable effort under the

circumstances," there is not likely to be any damage to the charity from the self dealing transaction. California law sets out these same criteria for review by disinterested directors of any self dealing transaction. If the directors have all of the facts before them and in good faith, find that these criteria are met, they may "validate" a self dealing transaction and protect the disinterested director(s) against liability for self dealing.

Obviously, if the "disinterested" directors do not conduct their review of self dealing in good faith but merely as a sham to protect other directors, there would be no effective validation. In cases of fraud and collusion by the directors, all directors could be held liable for damages to the charity.

b. **Director May Be Liable For Making Prohibited Loans From the Charitable Corporation.**

A director may be held personally liable for making a loan of the charitable assets to a director or officer of a public benefit corporation. Prior approval from a court or the Attorney General is required for most loans from a public benefit corporation to an officer or director. Exceptions are allowed for certain types of primary residence loans under specified conditions.

c. **Director May Be Liable For Prohibited Distribution of the Charitable Assets.**

A director may be personally liable for making or receiving a prohibited "distribution" of the public benefit corporation's assets. Examples of prohibited distribution include: 1) transfers of corporate funds or assets to directors, officers or members without fair consideration; 2) payment of excessive or unauthorized salaries, non contractual benefits or "bonuses"; 3) improper gifts of charitable assets to individuals; 4) and other uses of the corporate assets unrelated to carrying out the charitable purposes.

Derivative Actions Against Directors

Legal actions filed against directors to recover damages resulting from breach of a director's duty to the corporation are called "derivative actions." They are usually filed by the Attorney General or a disinterested director, on behalf of the corporation and its charitable beneficiaries. Derivative actions against directors usually seek recovery of monetary damages from the responsible director(s) and other equitable relief. Any repayment is made to the corporation or another similar charity.

Statutory Transactions

California law requires that certain transactions by public benefit corporations require either consent by or notice to the Attorney General. These transactions are treated with special attention because they significantly change the corporation. These transactions include dissolutions, mergers, sales of substantial assets, conversions and amendment of articles. See Chapter 10 for more detail on statutory transactions.

Indemnification and Insurance

California law allows for public benefit corporations to indemnify directors for costs and expenses of litigation in both third party actions against the corporation and some derivative actions on behalf of the corporation. No indemnification, however, is permitted for director's fraud, bad faith acts and unsuccessful defense of self dealing.

Public benefit corporations may purchase indemnification insurance to protect directors' liability for most actions, but not for fraud and self dealing.

OFFICERS:

Every nonprofit corporation must have at least three officers: a president (or chairman of the board), secretary, and a chief financial officer. The officers are usually appointed by the directors. Officers' responsibilities are spelled out in the corporation's bylaws. Their duties usually include maintaining books of account, responsibility for deposits and disbursements, keeping minute books, giving required notices, and other such duties as the directors prescribe.

The duties of officers and methods for their appointment and removal should be clearly stated in the corporation's bylaws. Generally, officers are not liable to the corporation or to third parties who sue the corporation. If an officer has acted in a fraudulent or grossly negligent manner, he or she may be liable.

FREQUENT QUESTIONS

- Q. What criteria does the Attorney General apply in reviewing self dealing and loan transactions that are submitted for approval to the Attorney General's office?

A. The Attorney General applies the statutory criteria for determining fairness of self dealing transactions, as set forth in California Corporations Code section 5233. Facts are reviewed to determine whether the self dealing is for the benefit of the charity, whether the terms are fair and reasonable to the charity, and whether there is no better alternative available to the charity.

In reviewing proposed loans from a public benefit corporation to a director or officer, the Attorney General applies a standard of strictest scrutiny. Unlike self dealing transactions, which may be validated under statutory standards, most loans from a public benefit corporation to a director or officer are absolutely prohibited by law. In reviewing a loan transaction, the Attorney General asks whether the loan is strictly necessary to carry out the charitable program and to protect charitable assets. Additional criteria applied by the Attorney General in reviewing a loan transaction include review of better alternatives, review of terms and adherence to market interest rates, full security and fixed term requirements.

Q. The directors of our public benefit corporation which operates a school, voted to convert it to a business corporation. Will the Attomev General approve this conversion? How long will it take to get an answer?

A. The Attorney General's answer will depend upon a thorough review of all the facts. Conversion is permitted by statute if the terms are approved by the Attorney General and all of the charitable assets of the converting public benefit corporation (which are irrevocably dedicated to charitable purposes) are distributed to another charity with similar charitable purposes to the converting corporation. The Attorney General's office looks at all material facts of a conversion to determine the fairness of the transaction to the charity. Is the value assigned to the converting public benefit corporation the true fair market value of the corporation? Is an independent appraisal needed? Will the directors of the public benefit corporation become the directors and shareholders of the new business corporation? Are there self dealing issues? Are the terms of payment or purchase of the converting corporation fair and reasonable to charity? Is the charity designated to receive the payment or purchase price a qualified IRC 501(c)(3) organization with similar purposes to the converting corporation?

The review of facts and legal analysis required for the Attorney General's decision to approve or disapprove a corporate conversion may take from two weeks to several months, depending on the facts and complexity of the transaction.

MEMBERS IN A PUBLIC BENEFIT CORPORATION

California law does not require a public benefit corporation to have members. Any public benefit corporation may create classes of members and offer membership to individuals or corporate entities. Depending on the bylaws, members may be vested with significant voting and other statutory rights, or they may simply be donors who enjoy honorary membership without voting or statutory rights.

Members with legal rights under California statutes are created when a public benefit corporation's articles of incorporation or bylaws give its members the right to vote for directors and/or to vote the manner in which the charity's assets will be disposed upon dissolution or merger. California law gives certain other rights to those "voting members" including: 1) the right to inspect certain corporate records; 2) the right to elect and remove directors; 3) rights to notice of meetings; 4) the right to sue the directors in derivative actions, or third parties on behalf of the corporation, under certain circumstances and subject to specified limitations; 5) and other rights spelled out in the statutes and corporation's bylaws. Classes of voting members cannot be abolished by the directors without consent from the voting members.

Many public benefit corporations have "honorary members" who receive a form of "membership" recognition in return for their donations or services. Honorary members do not have voting rights or statutory rights and should not be confused with voting members.

Members, as such, are not personally liable for the debts, liabilities or obligations of the public benefit corporation. A member is not liable for the actions of directors, unless a member personally benefitted from an unfair self-dealing transaction, prohibited distribution of corporate assets, or other improper action.

FREQUENT QUESTIONS

Q. What is the difference between honorary and statutory members?

A. Unlike the honorary members, statutory members are given legal rights to protect their membership interests. They are allowed to inspect corporate records, attend meetings, and have other privileges outlined earlier in the chapter. Honorary members are usually contributing donors who do not have legal rights as members. Consult the bylaws of your organization to determine your status.

Q. I am a member of a public benefit corporation. My request to attend meetings of the board of directors and inspect the corporation's financial records has been denied by the directors. What are my rights? Can I sue?

A. Statutory members have legal rights to receive annual reports, to inspect and copy corporation records and to exercise their voting rights set forth in the corporation's articles or bylaws. These rights can be enforced in civil court actions. Members are entitled to notice and have rights to attend membership meetings. Generally, members do not have statutory rights to notice or attendance at board of directors meetings.

Q. Are public benefit corporations subject to the open meeting requirements under California law?

A. **No.** Legislative bodies, school districts and governmental entities and their subsidiaries are subject to the open meeting requirements. Most charities do not fall into these categories. Some charitable organizations may be considered as "government entities" because of substantial government funding or government agency affiliation. If you believe a charity is closely affiliated with a government agency, contact that government agency to ask about your rights to attend the charity's meetings under the open meetings requirements.

Q. I am a donor to a charity. Can I obtain the charity's financial statement?

A. **Yes.** You have a right to review the periodic financial report (CT-2) filed by the charity with the Registry of Charitable Trusts. These reports are public records available for inspection by any person. However, corporate books and internal accounting records of the charity are not required to be disclosed to donors or to the general public.

The Attorney General does have the power to review internal corporate records. Other parties authorized to inspect the internal financial records and books of a charity include the

IRS, Franchise Tax Board, grantor agencies (by contract), and directors. Statutory voting members also have limited rights to inspect internal corporate records.

Q. I am a statutory voting member of a charity and would like to use the charity's mailing list to send out information. Am I entitled to use the mailing list?

A. Yes, with limitations. The mailing list of your charity is considered a valuable corporate asset, and the value diminishes if the list is distributed. California law provides specific procedures for member mailings through a "blind" use of the list. Your information is mailed out without disclosing the contents of the list to any person. The charity cannot refuse your mailing request based on the content of your message, so long as your mailing is reasonably related to your rights as a voting member of the charity.

Q. The directors of a public benefit corporation wish to abolish the class of voting members because the members are threatening to sue the directors. Is this possible?

A. It will be very difficult. Classes of voting members cannot be abolished without their consent. Nor can their rights as voting members be changed without proper notice, due process, and their consent.

Chapter 8

CHARITY FUNDRAISING

All charities must raise funds to survive. Most charities rely on various income sources, including public support, government funding and private foundation grants to sustain their operating budgets. Some charities collect fees for services they provide as part of their charitable programs.

Every year in California, individuals contribute billions of dollars in response to charity fundraising appeals. Some of the most popular fundraising techniques used by charities include: 1) direct in-person requests for donations by volunteers at homes and offices; 2) direct mail or telephone solicitation; 3) newspaper and magazine advertisement; and, 4) sales of tickets to special events or sales of products. Some charity solicitors are paid for their efforts by the charity or by the private fundraiser hired by the charity, while others work as volunteers. Whichever method is used, the charity and the fundraisers must comply with various federal, state and local requirements.

The federal tax laws on deductibility of charitable contributions by donors have an impact on charitable solicitation. Recent IRS guidelines require that taxpayers must show that the amount claimed as a deductible gift to charity exceeds the fair market value of any benefits received. The IRS guidelines require that charities should spell out in their solicitations the market value of dinners, etc., and list deductible and non-deductible sums separately.

California's Charity Solicitation Disclosure Law

California law requires disclosure of certain information at the time a charity solicitation is made. To prevent fraud and unfairness in charity solicitation, a solicitor should provide correct information identifying the charity and the charitable program that will benefit from the contribution. Other pertinent information may be required. California law

governing charitable solicitation will be significantly revised during 1989-90.^{1/}

For current information on California charity solicitation laws, contact the Attorney General's Registry of Charitable Trusts. See the "Directory of Services for listing.

City and County Ordinances

In addition to federal and California laws regulating charity solicitation, many cities and counties in California require licensing, registration and financial reporting as a condition to charitable solicitation within their jurisdiction. A partial listing of city and county ordinances and their licensing offices is included in the "Directory of Services." For a complete list of more than 200 cities and counties that have solicitation ordinances, consult the "Bibliography," under CEB, Advising California Nonprofit Corporations.

1. In 1988 California law also required paid fundraisers who solicited for charitable purposes (through direct appeal or sale) to disclose to the prospective donor the percentage of the contribution that was tax-deductible to the donor, and the portion that would be used for fundraising costs and fees. This disclosure was designed to protect the public and legitimate charities against promoters who represent they are collecting money "for charity" but in fact turn over very little, if any, of the proceeds to charity.

In 1988, the U.S. Supreme Court ruled on a North Carolina statute that also required charity solicitors to disclose information about fundraising costs. The U.S. Supreme Court held the North Carolina statute unconstitutional. The court said that a state may not require a charity fundraiser to tell each person solicited about the costs of the solicitation campaign, because this information might discourage people from giving money to charity and interfere with the free speech rights of charity solicitors.

The court allowed that the state could require charity fundraisers to make financial disclosure to the state, however. The state, through its Attorney General, also may publicize information it has about charity solicitation fraud.

As a result of the 1988 U.S. Supreme Court decision, the California Attorney General is preparing a new statute to regulate charity solicitation, which the Attorney General will recommend to the Legislature for passage as new law.

Charities and charity fundraisers should check California statutes for new laws governing charity solicitation.

Choosing A Fundraiser For Charity

There are many competent and honest fundraisers who contract their services to charities. There are several ways to locate a reputable charity fundraiser. Contact prominent charities in your area (especially colleges, hospitals and cultural organizations) for their recommendations; contact your local community fund for referrals; contact the professional fundraisers association in your area for assistance. See the "Directory of Services" for listings.

When selecting a professional fundraiser or fundraising consultant, always ask for references and check them out carefully. Make sure your charity's rights and obligations are clearly spelled out in a written contract. Clarify the fundraiser's rights to fees and payment of expenses, and try to get a fundraiser's bond as security. Cash controls and banking procedures for funds collected should be carefully planned to insure that charity directors maintain control.

Unfortunately, some charities have lost thousands of dollars in contributions because of fraud or incompetence by their fundraisers. Directors who are grossly negligent in their dealings with a charity fundraiser could be held personally liable for the resulting loss to the charity.

Large charitable organizations that have sufficient operating budgets often hire their own "development officers" as salaried employees, to serve as fundraising experts and to plan and carry out all of the charity's fundraising programs. Many cultural and educational institutions rely on their directors and members to contribute volunteer fundraising assistance.

Charity Bingo, Raffles and Illegal Gambling

Generally, private lotteries and raffles are illegal when the winning involves chance. However, certain tax-exempt organizations are authorized by State law and local ordinance to raise money from bingo, provided that: 1) the proceeds are used only for charitable purposes; 2) the games are conducted by volunteer members of the organizations; 3) no salaries are paid with bingo proceeds; 4) there is no commingling of bingo money with any other funds; and, 5) the organization conducting bingo holds a valid license issued by the city or county in which bingo is played.

Charity bingo start-up costs range from a few hundred dollars to many thousands of dollars. Proper planning by directors is essential to insure profitable, cost-effective and legal games. Every charity must comply with the local charity bingo licensing requirements before operating charity bingo

games. Charities must account to local licensing authorities for all bingo proceeds.

In addition to charity bingo, the only legal lotteries in California are the California State Lottery instant tickets and Lotto. A "raffle" is illegal if it contains the elements of prize, consideration, and chance. It is a crime in California to conduct an illegal raffle. Charity auctions of donated goods and other occasional sales and bazaars to raise funds for a charity are permitted.

A Word To Donors: How To Protect Yourself
Against Charity Solicitation Fraud

The Council of Better Business Bureaus' Philanthropic Advisory Service (BBB-PAS) and the National Charities Information Bureau (NCIB) publish guidelines for public donors and suggest basic steps that may protect against fraud. Some of the suggestions are:

1. Do not give cash to a stranger. Do not make a cash donation to any person who solicits you in the name of charity, unless you know the person and know with certainty that he or she is authorized to collect for the organization named.
2. Take the time to learn about the charitable organizations you support. You can read summaries about many charities published by BBB-PAS or NCIB, or review public files on most charities at the Attorney General's Registry of Charitable Trusts. Many charitable organizations will send you a written financial statement and description of their programs. See the Directory of Services for listings for Better Business Bureau PAS, NCIB and the Attorney General's Registry of Charitable Trusts.
3. Be assertive on the telephone. If you receive an unsolicited telephone call that asks for a charitable donation, tell that person you would like to first read about the organization and its programs. Ask the caller to mail you any available literature about the organization and say that should you decide to contribute, you will mail a check to the organization. Be firm.
4. To protect against theft, make all your charitable contributions by check payable to the charity, or use employee withholding programs.
5. Ask every charity solicitor who solicits you for money how your gift will be used for the charity's programs. Ask also about fundraising costs. Is the solicitor's response to your questions clear and direct, or evasive? It might

surprise you to learn that many "telemarketing" campaigns are very costly. A very small portion of a donation made in response to telephone solicitation may ultimately reach the charity. If the solicitor refuses to answer your questions or tries to intimidate you into making a gift, protect yourself and hang up.

6. If you suspect dishonesty or fraud in any charitable solicitation, report the incident to your local law enforcement agency, and to the Better Business Bureau. You may also report the problem to the Attorney General's Registry of Charitable Trusts.

FREQUENT QUESTIONS

Q. I have been solicited for a charity that sounds like it does good work. How can I find out if this charity is legitimate?

A. It may be difficult. If you are not already familiar with the organization, ask for information and financial reports from the charity. You may find useful reports about the charity have been prepared by the Better Business Bureau; contact your local BBB office for further information. The charity may also be one of over 47,000 registered with the Attorney General and may have a public file, which you could review. Check also with any government agencies that the solicitor tells you are supporting the charity.

There is really no way for a donor to insure that a charity is "legitimate" without doing a great deal of research. If you've never heard of the charity, and if the solicitor uses high pressure tactics, be very cautious!

Q. We are professional charity fundraisers. Do we have to register with the Attorney General before we start a fundraising campaign in California?

A. No; as of 1988, there is no state registration requirement for fundraisers. However, the law may be changed after 1989 to require registration of charity fundraisers with the Attorney General. Check with the Registry of Charitable Trusts for current requirements. See the "**Directory of Services**" listing for Registry.

Registration or licensing may be required in various California cities and counties. There are more than 200 cities and counties that require charity fundraisers to comply with local licensing and disclosure requirements. Check with the local police department or charity solicitation agency for applicable local ordinances.

Chapter 9

MISCELLANEOUS CHARITABLE TRUST OVERSIGHT-- TRUSTS: PRORATE; RELIGIOUS CORPORATIONS

The Attorney General's oversight jurisdiction extends to all forms of charities. In operating some types of charities, the fiduciary duties of a trustee may be different than they are for directors of a public benefit corporation.

Trusts

A trust is a legal obligation with respect to property that is created by a written instrument--either a will ("testamentary trust") or a trust agreement executed by a living person ("inter vivos trust"). When a trust is created for charitable purposes, the trustee must register and report to the Registry of Charitable Trusts, and the Attorney General has oversight jurisdiction over the trust. The Attorney General may audit the trust and may file civil actions against trustees for damages caused by their breach of duty to the charitable trust and its beneficiaries.

Generally, trustees are held to a high duty of loyalty and reasonable care in managing trust assets and discharging the trust purposes. Court permission is needed to terminate or modify a charitable trust.

Probate

When a will provides a gift for charitable purposes but fails to name a specific charitable organization, the Attorney General's office will defend the charitable gift on behalf of all public beneficiaries. Usually this occurs in a will contest where the heirs or friends of the deceased challenge the charitable gift. In addition to defending the charitable gift, the Attorney General assists the court in identifying the appropriate charitable organization(s) to receive the gift. Notice must be given to the Attorney General of any probate in which there is a charitable bequest or charitable trust created.

Religious Corporations

In 1981, California law was changed to restrict the Attorney General's charitable oversight role with respect to religious corporations. The Attorney General's office does not have the same investigative or enforcement powers over religious corporations that it has over public benefit corporations and charitable trusts.

The Attorney General's enforcement powers may be used only if the directors of a religious corporation engage in criminal activity or conduct a public, fraudulent solicitation for "secular" purposes. As to other harmful actions by directors of religious corporations, including self-dealing, improper distribution of a religious corporation's assets, and gross mismanagement, the Attorney General does not have the legal authority to file a derivative civil action on behalf of the religious corporation. Only the directors of the religious corporation or, in some cases, the corporation's statutory voting members, may file a civil action to correct these types of abuses.

FREQUENT QUESTIONS

Q. How can I set up a trust?

A. Consult an attorney. The procedure for setting up a trust and the applicable laws are complicated. For a simple bank trust account, consult a bank officer.

Q. I am a member of a church and I am concerned about fiscal mismanagement of church funds. Will the Attorney General investigate this?

A. No. The Attorney General has no civil jurisdiction over directors of religious corporations in matters of breach of duty. If you are a statutory voting member of your church, you may wish to contact a private attorney about possible civil action to correct fiscal mismanagement. If you have evidence of serious fraud and fiscal abuse by a director, you may wish to contact the IRS.

Q. I am a member of a homeowners' association and am concerned about gross mismanagement of our funds. Will the Attorney General investigate this?

A. No. A homeowners' association is usually a mutual benefit corporation; it is not a charity. The Attorney General's office has no jurisdiction over mutual benefit corporations, unless they control a charitable trust fund. You may wish to retain a private attorney to review your legal rights and remedies.

Q. I am a trustee of a charitable trust that was created to provide financial assistance to needy students. I would like to change the trust purpose to fund environmental projects. Can I do this legally?

A. Probably not. The law of charitable trusts requires that trusts created for specific charitable purposes be carried out for those stated purposes, unless it becomes illegal, impossible or impracticable to do so. To change a specific charitable trust purpose, the trustee must file a civil court action asking the court to apply the cy pres doctrine to change the trust purposes. The burden of proving impossibility, etc. is on the trustee and is very difficult to meet. If the trustee files a cy pres action without a reasonable factual basis to claim impossibility, etc., the trustee may be held liable for the resulting costs to the trust. Notice of all cy pres actions by charitable trustees must be given to the Attorney General.

**THE ROLE OF THE ATTORNEY GENERAL
IN OVERSEEING CHARITIES**

Various government agencies take actions that affect the status and operations of charitable organizations. The IRS and the California Franchise Tax Board initially determine whether an organization qualifies for federal and state income tax exempt status. At any time during the operating life of a charity, IRS or Franchise Tax Board may audit the organization to determine its liability for taxes, penalties, or revocation of tax exempt status.

The role of the Attorney General in overseeing California charities is different from the IRS and Franchise Tax Board. The Attorney General represents all the public beneficiaries of charity, who cannot sue in their own right. The Attorney General investigates and audits charities to detect cases in which directors and trustees have mismanaged, diverted, or defrauded the charity. If these improper actions by directors have resulted in a loss of charitable assets, the Attorney General may sue the directors to recover from them the missing funds. The funds recovered by the Attorney General are returned to charity.

The California Attorney General has a specialized unit, the Charitable Trusts Section, that carries out the Attorney General's charity enforcement program. The Charitable Trusts Section is made up of the Legal and Audits Section and the Registry of Charitable Trusts. The functions of each of these components of the Charitable Trusts Section are described in more detail below.

The Registry of Charitable Trusts

The Attorney General's Registry of Charitable Trusts maintains the public files containing financial reports (CT-2) for all of California's registered charities. In addition, the Registry maintains a current index and a computer printout of all registered California charities. The Registry receives and processes the periodic financial reports which must be filed by all public benefit corporations and charitable trusts, unless

they are exempted by statute. Currently, hospitals, schools and churches are exempt from the annual CT-2 filing requirements.

Any person wishing to review a public file for any registered California charity should contact the Registry for further information. See the "Directory of Services" for listings.

The Registry of Charitable Trusts staff also provides general information about registration and reporting to persons seeking assistance. The Registry takes complaints from individuals about charity mismanagement and forwards the information to the Legal and Audits Section for action. A "Public Complaint About A Charity" form is used to document public complaints and may be obtained by calling or writing to the Registry of Charitable Trusts.

Charitable Trusts Legal and Audits Section

The Legal and Audits Section is staffed by attorneys and investigative auditors. This section receives information from many sources about fiscal abuse, fraud and mismanagement by charity directors and trustees. This section conducts civil investigations and audits of alleged charity abuse, and files civil court actions against directors to recover diverted charitable assets. This section also reviews and acts upon mergers, sales of assets, self dealing, loans, corporation conversions, dissolutions and amendments of articles by public benefit corporations.

The Charitable Trusts Legal and Audits Section offices are located at the Attorney General's Offices in San Francisco, Los Angeles and Sacramento. See the "Directory of Services" for listings.

Scope of the Attomev General's Charitable Trusts Legal Enforcement Program

It is the job of the Attorney General's Charitable Trust Section to detect and to correct charity fiscal abuse. The Attorney General may audit a charity at any time to determine if the directors or trustees are carrying out the charitable trust purposes in a lawful manner.

Some of the problems frequently investigated by the Attorney General's Charitable Trusts Section include: 1) self-dealing transactions either between a director and the public benefit corporation, or by trustees; 2) loans by a corporation to a director or officer; 3) loss of substantial corporate funds or assets during one year; 4) losses of charitable assets through speculative investments; 5) excessive amounts paid by a public

benefit corporation or charitable trust for salaries, benefits, travel, entertainment, legal and other professional fees; 6) sale of a charity or conversion of a public benefit corporation to "for profit,, status (authorized by statute under restricted conditions) at a price that is unfair to the charity; 7) illegal use of charitable funds; 8) diversion of charitable trust funds from their intended purpose.

Generally, the Attorney General's Charitable Trusts Section does not take action on matters involving internal labor disputes, contested elections, 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.

Attorney General's Charitable Trusts **Section Investigative Procedures**

The Attorney General receives complaints about charity fiscal abuse from many sources--other government agencies, directors and employees of charities, reporters, donors, users of services, and from charity financial reports and information returns. After screening, substantive complaints are referred for preliminary audit. The first step is to schedule a correspondence or a field audit to review documents and conduct interviews. Usually, notice of an audit is sent in writing by the Attorney General's staff to the executive director of the charity at least one week prior to the intended date of audit.

After the audit is completed, an audit report is sent to the legal staff. A deputy attorney general evaluates each audit report to determine if further investigation or corrective action is required. The deputy attorney general contacts the corporation's directors and their counsel to discuss the problems identified.

Corrective action often includes a demand for restitution to charity. The directors may be required to repay monetary damages caused to the public benefit corporation by their breach of duty. The directors may have to pay restitution out of their personal funds if they are not covered by insurance. If the diverted funds can be traced to a particular individual other than the directors, that individual may be held liable as a "constructive trustee" of the funds. Directors may be asked to resign, or to take steps to remove other directors from positions of conflict of interest in cases of self dealing, fraud and gross mismanagement. Improved accounting procedures and independent audit may be required.

Initially, the Attorney General's legal staff attempts to resolve most cases of charity fiscal abuse through private negotiations with the directors and their counsel. If agreement cannot be reached, the Attorney General may file a civil court action seeking damages and other equitable relief against the directors. Civil court actions tend to be long and costly for all parties. If the Attorney General is successful in the case, the damages recovered are returned to the charity that was injured. If the charity is defunct, a successor charity will be designated by the court to receive the funds. The Attorney General is permitted to recover his audit expenses and expert costs in successful charitable trust enforcement actions.

Often, reporters call the Attorney General's Charitable Trusts Section to learn whether a particular charity is being investigated. The Attorney General's office usually will confirm that an audit inquiry is in progress. As a matter of law and policy, the Attorney General's office does not discuss any details of an investigation. Once a court action is filed, the legal papers filed in court become public records.

**Notice to Attorney General or
Consent by Attorney General Required
for Specific Corporate Transactions**

California law requires that directors of public benefit corporations either give written notice to, or obtain consent from the Attorney General before taking certain actions that will have a significant impact on the corporation and its assets.

The directors must give written notice to the Attorney General prior to voluntary dissolution, merger of two public benefit corporations, or sale or transfer of substantial assets of a public benefit corporation. The Attorney General's consent is needed for a voluntary dissolution to occur without court approval.

Directors may give written notice to the Attorney General of self dealing transactions. The effect is to shorten the statute of limitations for bringing a civil action to challenge self dealing.

Directors must obtain prior written consent from the Attorney General before making a loan to a director or officer, with certain exceptions for residential loans. Court approval may be sought as an alternative. Directors must obtain prior written consent from the Attorney General before amending the articles of incorporation of a public benefit corporation, and before merger of a public benefit with a business corporation. Directors who wish to convert a public benefit corporation into a business corporation must obtain the Attorney General's prior consent, and must certify the transfer of all of the charity's

assets to another charity as a condition to conversion of the corporation.

The following chart cites the applicable statutes and the procedures to be followed for notice or consent by the Attorney General.

1. VOLUNTARY DISSOLUTION (30 days prior notice or waiver of notice by A.G.)
 - Public Benefit Corporation (Corp. Code, § 6716.)
 - Mutual Benefit Corporation (holding assets subject to charitable trust) (Corp. Code, §§ 8716, 7238.)
 - Religious Corporation (Corp. Code, § 9680.)

2. MERGER (20 days prior notice to A.G.)
 - Public Benefit Corporation (Corp. Code, § 6010.)
 - Mutual Benefit Corporation (holding assets subject to charitable trust) (Corp. Code, §§ 8010, 7238.)
 - Religious Corporation (Corp. Code, § 9640.)

3. SALE OR DISPOSAL OF ALL OR SUBSTANTIALLY ALL CORPORATE ASSETS (20 days prior notice to A.G.)
 - Public Benefit Corporation (Corp. Code, § 5913.)
 - Mutual Benefit Corporation (holding assets subject to charitable trust) (Corp. Code, §§ 7913, 7238.)
 - Religious Corporation (Corp. Code, § 9633.)

Any California nonprofit corporation applying to the Attorney General for waiver of notice or approval of voluntary dissolution, merger, or sale of assets, pursuant to the sections of the California Corporations Code listed above, should submit to the Office of the Attorney General the following information:

- a) A letter signed by an attorney for the corporation or director of the corporation setting forth a description of the proposed action.

- b) A copy of the election to dissolve, agreement of merger, or other resolution of the board of directors authorizing the proposed action.

- c) A copy of the corporation's current financial statement.

- d) Copies of the corporation's articles of incorporation, if not already on file with the Registry of Charitable Trusts, and copies of the articles of incorporation of any other corporation that is a party to the proposed action.

4. CONVERSION OF PUBLIC BENEFIT CORPORATION (TO MUTUAL BENEFIT, RELIGIOUS OR BUSINESS CORPORATION)
(Corp. Code, § 5813.5.)

Directors are not permitted to convert a public benefit corporation that has any assets to any form of proprietary corporation (i.e. a business, mutual benefit, or a cooperative corporation) until they have received the prior written consent of the Attorney General. The Attorney General requires certification that all charitable assets will be transferred to another charity as a condition to consent.

Any public benefit corporation applying to the Attorney General for approval of corporate conversion should submit the following information to the Attorney General:

a) A letter signed by an attorney for the corporation or signed by a director of the corporation setting forth a description of the proposed action and the material facts concerning the proposed action.

b) A copy of the resolution of the board of directors authorizing the proposed action, and board meeting minutes reflecting discussion of the proposed action.

c) A copy of the corporation's current financial statement.

d) Copies of the corporation's articles of incorporation, if not already on file with the Registry of Charitable Trusts, and copies of the articles of incorporation of any other corporation that is a party to the proposed action.

e) Any independent appraisals of the value of the public benefit corporation that are available. (In complex transactions involving conversion of a large public benefit corporation, the Attorney General usually requires independent valuation appraisals.)

f) A statement of the plan for distribution of the assets of the public benefit corporation to a qualified charitable organization, or for payment by the directors or purchasers of the public benefit corporation of the fair market value of the corporation to a qualified charitable organization.

5. AMENDMENT OF ARTICLES OF INCORPORATION
(Corp. Code, § 5813.5.)

If the directors plan to change the status of a public benefit corporation by amending its articles, they must follow the same procedures for obtaining the Attorney General's written consent set forth for conversion of corporate status.

6. SELF DEALING TRANSACTIONS
(Corp. Code, § 5233.)

If directors of a public benefit corporation opt to submit a self dealing transaction to the Attorney General, either to give notice or to seek approval, they should submit the following information to the Attorney General's Office:

a) A letter signed by an attorney for the corporation or signed by a director of the corporation setting forth a detailed description of the self dealing transaction, the extent to which any director has a material financial interest in the self dealing transaction, and all material facts concerning the self dealing transaction.

b) A copy of the corporation's current financial statement.

c) A copy of the Articles of Incorporation and amendments thereto of the corporation, if not already on file with the Registry of Charitable Trusts.

d) A copy of the By Laws and amendments thereto of the corporation, if not on file with the Registry of Charitable Trusts.

e) Copies of all minutes of meetings of the Board of Directors or committees of the Board of Directors which reflect any discussions or evaluations of the self dealing transaction.

f) If not covered under (a), a letter signed by the interested director setting forth a description of the director's material financial interest in the self dealing transaction, listing all material facts concerning the transaction and all facts disclosed by the interested director to the Board of Directors concerning the transaction.

g) The Attorney General may require submission of additional information by the corporation and its

directors in order to complete analysis of the self dealing transaction.

These written materials should be mailed to the Office of the Attorney General listed in the 'Directory of Services,' that is located nearest to the corporation's principal office.

7. LOANS TO DIRECTORS, OFFICERS
(Corp. Code, § 5236.)

Directors who seek the Attorney General's prior consent to a loan from a public benefit corporation to a director or officer of the corporation should follow the same procedures set forth for self dealing transaction approval requests to the Attorney General, described earlier in this chapter.

FREQUENT QUESTIONS

Q. Our board of directors will submit several public benefit corporation transactions to the Attorney General's office for approval, including a transfer of assets transaction, a self dealing matter and a loan to a director. What documentation is needed to support our requests for approval, and how long will it take to receive an answer from the Attomev General?

A. The preliminary documentation required by the Attorney General's office for reviewing public benefit corporation transactions is set forth in regulations, which are summarized in Chapter 10 of this Guide. Additional documentation may be requested by the Attorney General, depending on the type and complexity of the transaction. All transactions are reviewed to determine if they are for the benefit of the charity and are fair and reasonable to the charity. Self dealing, loan and conversion to business corporation transactions are carefully scrutinized by the Attorney General for any potential damage to charity. See Chapter 6 for further discussion of Attorney General's review of self dealing, loans and corporate conversion.

The time required for the Attorney General's office to complete a review of a public benefit corporation transaction varies from two weeks to several months, depending on the facts and complexity. Generally, it takes more time to review self dealing, loans and corporate conversions than for other transactions.

Q. I have information about fiscal mismanagement of a charity by its directors. Can I lodge a complaint about this with the Attomev General without revealinu my identity?

A. Yes. Many complaints about fiscal abuse of charitable assets are received by the Attorney General's office from directors, officers and employees of charities who fear loss of their position or job if the directors learn that they complained to the Attorney General. Anonymous complaints will be accepted and reviewed by the Attorney General's Charitable Trusts Section.

Q. When the Attorney General's Charitable Trust Section conducts an audit and investigation of a charitable organization, does it make public the results of the investigation?

A. No. However, the Attorney General notifies the directors of the charity under review of any corrective action that is indicated by the audit, and seeks voluntary compliance by the directors prior to considering court action. If a civil court action is filed by the Attorney General to enforce charitable laws, all legal papers filed with the court become public documents, absent a court order to the contrary.

Q. Our charity has a \$200,000 surplus for the current year. How should the directors invest this surplus?

A. Directors are required to make prudent investments of charitable assets under their control, and are permitted to rely on the advice of investment experts if it is reasonable to do so under the circumstances. Speculative investments are not prudent, and losses caused to the charity through speculation may result in directors' liability to repay the losses to charity. Directors may also be liable for lost earnings on surplus funds left in a non interest bearing account.

Q. Our public benefit corporation has insufficient funds to pay creditors and the directors have therefore decided to dissolve the corporation. What are the legal obligations of the directors in winding up the corporation?

A. It is the legal duty of directors of a public benefit corporation after commencing dissolution proceedings to continue the affairs of the corporation to the extent necessary to winding up and disposal, and to carry out contracts and to collect, pay, compromise and settle debts and claims for or against the corporation. Failure to carry out these duties may subject the directors to personal liability.

In extraordinary cases where there are substantial charitable assets at risk and the directors refuse or are unable to take action to protect the corporation, the Attorney General may in his discretion ask the court to appoint a receiver to take responsibility for operating and/or winding up the corporation. The receiver is usually paid from the remaining charitable assets.

**A Summary of Important California Statutes and Cases
That Apply to Nonprofit Corporations
and Charitable Trusts**

The California Legislature has enacted hundreds of statutes that apply to nonprofit corporations and directors, and to charitable trusts and trustees. California courts have issued many opinions that also affect these nonprofit corporations and trusts. This Summary includes some of the most important of these laws that relate directly to the Attorney General's charitable trust enforcement role.

I. **NONPROFIT CORPORATIONS** (Public Benefit, Mutual Benefit, Religious Corporations) (Cal. Corp. Code, **§** 5000 et seq.)

A. Formation

- 1) Article of Incorporation; filed with Secretary of State (two copies for public benefit corporations). (Corp. Code, **§** 5120.)
- 2) Annual Information Statement; filed with Secretary of State. (Corp. Code, **§§** 6210, 6212, 8210, 8212, 9660.)
- 3) Franchise Tax Exemption Application. (Cal. Rev. & Tax. Code, **§** 23701d.)

(Also: Internal Revenue Service Tax Exemption Application, IRC **§** 501(c)(3).)
- 4) Registration with Attorney General's Registry of Charitable Trusts. (Cal. Gov. Code, **§** 12580 et seq.)
- 5) Welfare Exemption; application filed with State Board of Equalization and county assessor. (Cal. Rev. & Tax. Code, **§** 214.)
- 6) License to Issue Securities; filed with California Department of Corporations. (Cal. Corp. Code, **§§** 25000-25804.) (This is rarely used by charities.)
- 7) Sales Tax Permit; issued by State Board of Equalization.
- 8) Health Care Service Plans (Knox-Keene licensed), subject to licensing and regulation by California Department of Corporations, Health Care Services Plans Division. (Cal. Health &

Safety Code, § 1340 et seq.; Corp. Code, § 10820.)

- 9) Registration of political lobbying with California Secretary of State, pursuant to the Political Reform Act. (Cal. Gov. Code, §§ 82039, 86101.) (This is rarely used by charities.)

B. Periodic Filing

- 1) Returns of Organizations Exempt from Tax.
Franchise Tax Board Forms 199, 109 (unrelated business income)
Internal Revenue Service Forms 990, Schedule A; 990 PF (private foundation); 990-T (unrelated business income)
- 2) Registration and Periodic Report (CT-2) with California Attorney General's Registry of Charitable Trusts. (Cal. Gov. Code, §§ 12580-596; Corp. Code, § 6324.)

C. Operating the Corporation
(Areas subject to State regulation)

- 1) Public Benefit Corporations
 - a. Composition of Board of Directors:
Disinterested directors, the 51 percent rule. (Corp. Code, § 5227.)
 - b. Standard of Conduct Owed by Director to Corporation
Corporation Code:
§ 5230 - duties and liabilities of directors
§ 5231 - good faith; standard of care; liability to the corporation
§5231.5- nonpaid directors; limited liability to the corporation
§ 5232 - election; selection; duties of directors
§ 5233 - self dealing transactions by directors; liability; procedures for validating
§ 5234 - mutual directors; voidability of contracts
§ 5235 - compensation of directors; liability for unreasonable amount

notice to Attorney General for petition for court decree or waiver of objections by Attorney General.)

- 2) Sale or transfer of substantial assets. (Cal. Corp. Code, **§§** 5913, 7913, 9633.) (20 days advance notice to Attorney General)
- 3) Merger. (Cal. Corp. Code, **§§** 6010, 8010, 9640.) (20 days notice to Attorney General required before public benefit corporation merges with public benefit or religious corporation. Other mergers require prior Attorney General consent)
- 4) Amendment to Articles of Incorporation. (Cal. Corp. Code, **§§** 5813.5, 5820.)
- 5) Corporation conversion. (Change of status (conversion) - if assets, written consent of Attorney required; if no assets - 20 days notice) (Cal. Corp. Code, **§** 5820 - trust not abrogated by amendment of articles.)
- 6) Procedures for obtaining Attorney General's approval, waiver or notice, and for giving formal notice are set forth in Regulations adopted pursuant to the California Nonprofit Corporation Law, Title 11 California Code of Regulations, subchapter 15, sections 999.1-999.4. Also available from the Attorney General's Office are printed instructions. The instructions are summarized in Chapter 10 of this Guide.
- 7) Involuntary Dissolution. (Corp. Code, **§** 6510.)

II. TRUSTS FOR CHARITABLE PURPOSES:

(Testamentary and Intervivos Trusts)

- A. Definition of "charitable" trusts is broader than tax exempt status. Lynch v. Spilman, 67 Cal.2d 251 (1967)
- B. Creation of trusts. (Cal. Probate Code, **§§** 15200-210; Cal. Civ. Code, **§§** 2223-2224.) Smith v. The James Irvine Fdn., 277 F.Supp. 774 (1967); In re Los Angeles County Pioneer Society, 40 Cal.2d 852 (1953)
- c. Notice to Attorney General in probates involving charitable interests. (Cal. Probate Code, **§§** 328, 1080.) Estate of Zahn, 16 Cal.App.3d 106 (1971)

- D. Trustee's standard of care and duty of loyalty; self dealing strictly prohibited; investment standard; liability of trustees (Cal. Probate Code, §§ 16002, 16004, 16463-465, 16440, 16100-16105.); People v. Larkin, 413 F. Supp. 978 (N.D. Cal. 1976)
- E. Termination and modification of trusts, cy pres doctrine (Probate Code, §§ 15408-410, 17206.); Corp. Code, § 5241 (investment deviation); Estate of Loring, 29 Cal.2d 423 (1949)
- F. Trustee fees and accounting. (Probate Code, §§ 15680-85, 16062-16064.) Estate of McLaughlin, 43 Cal.2d 462 (1954)
- G. Registration and reporting by Trustees for charitable purposes to California Attorney General. (Cal. Gov. Code, §§ 12580-598.)

III. **REGISTRATION AND FINANCIAL REPORTING TO CALIFORNIA ATTORNEY GENERAL**

- A. Registration (CT-1) and periodic financial reporting (CT-2); extended reporting periods for small charities; exemptions from registration and reporting. (Gov. Code, §§ 12580-598.)

IV. **CHARITABLE SOLICITATION REGULATION**

- A. Statewide disclosure requirements for solicitations and sales for charitable purposes; exemptions, enforcement (Cal. Bus. & Prof. Code, §§ 17510-17510.7.) prohibition against false representations, fraudulent advertising (Cal. Bus. & Prof. Code, §§ 17500-535; 17200-208; Cal. Pen. Code, § 532(d).)
- B. Local governmental regulation of charitable solicitation (200 cities and counties in California have separate ordinances).
- C. Charity bingo. (Cal. Pen. Code, §§ 319, 326.5.)

V. **MISCELLANEOUS CASES**

- A. Attorney General's charitable enforcement jurisdiction. People v. Coaswell, 113 Cal. 129 (1896); Holt v. College of Osteo, Phvs. & Surueons, 61 Cal.2d 750 (1964); Lynch v. Spilman, 67 Cal.2d 251 (1967); Hart v. County of Los Angeles, 260 Cal.App.2d 512 (1968); Mosk v. Summerland Spiritualist Assn., 225 Cal.App.2d 376 (1964)

- B. Payment of "bonuses" to charity volunteers prohibited.
Queen of Anaels Hospital v. Younger, 66 Cal.App.3d 359 (1977)
- C. Rights of voting members of public benefit corporations.
KOED, Inc. v. Hall, 135 Cal.App.3d 951 (1982);
Ferry v. San Diego Museum of Art, 180 Cal.App.3d 35 (1986)
- D. Standing to sue public benefit corporations.
Hardman v. Feinstein, 195 Cal.App.3d 157 (1987);
In re Veterans' Industries, 8 Cal.App.3d 902 (1970);
Holt v. College, etc. 61 Cal.2d 750 (1964); San Diego, etc. Boy Scouts of America v. City of Escondido, 14 Cal.App.3d 189 (1971)
- E. Constitutional limits on charitable solicitation regulations.
Villase of Schaumburg v. Citizens, Etc. 444 U.S. 620 (1980); Sec. of State v. Jos. Munson 467 U.S. 947 (1984); Nat. Fed. of Blind No. Carolina v. Riley 108 S.Ct. 2667 (1988)
- F. Discrimination by nonprofit organizations in violation of state laws and federal tax provisions.
Bob Jones University v. U.S., 461 U.S. 574 (1983);
Roberts v. United States Jaycees, 468 U.S. 609 (1984); Board of Directors etc. v. Rotary Club of Duarte, 107 S.Ct. 1940 (1987); Isbister v. Boys Club, 40 Cal.3d 72 (1985); New York State Club Association v. City of New York 108 S.Ct. 2225 (1988)
- G. Liability of Directors for Negligence.
Francis T. v. Village Green Homeowners Assn., 42 Cal.3d 490 (1986)
- H. Liability of Trustees and Constructive Trustees for Self Dealing, Diversion of Charitable Assets; Duty to Account.
People v. Larkin, 413 F.Supp. 978 (1976); Purdy v. Johnson, 174 Cal. 521 (1917)
- I. Cy Pres Doctrine and Modification of Charitable Trust Purposes.
Estate of Gilliland, 44 Cal.App.3d 32 (1974);
Estate of Loring, 29 Cal.2d 423 (1946); Estate of Maybury, 54 Cal.App.3d 969 (1976)
- J. Religious Organizations Defined; Extent of First Amendment Protections to Activities of Religious Organizations; Qualification for "Religious Purpose."
United States v. Seeger, 380 U.S. 163 (1965);

Malnak v. Yogi, 592 F.2d 192 (2nd Cir., 1979);
Lemon v. Kurtzman, 403 U.S. 602 (1971); De La Salle
Institute v. United States, 195 F.Supp. 891 (N.D.Cal.
1961); Queen of Angels Hospital v. Younger, 66
Cal.App.3d 359 (1977); Holy Spirit Ass'n., Etc. v.
Tax Commission, Etc., 435 N.E.2d 662 (1982);
Africa v. Pennsylvania, 662 F.2d 1025, cert.den., 465
U.S. 908 (1982); Universal Life Church, Inc. v.
United States, 372 F.Supp. 770 (E.D. Cal. 1974);
Church of Scientology of California v. Commissioner
83 T.C. 381 (1984), affd. 823 F.2d 1319 (9th Cir.
1987), cert denied 108 S.Ct. 1752 (1988)

- K. Political Activities and Lobbying.
Resan v. Taxation with Representation of Wash.,
461 U.S. 540 (1983)

ATTORNEY GENERAL'S GUIDE FOR CHARITIES

DIRECTORY OF SERVICES

This Directory of Services has been compiled to assist charitable organizations in locating government agencies, low cost legal services and technical assistance resources that provide useful information. Some of the agencies listed may be able to refer interested person to other, more specialized services for particular problems.

I. Government Agencies

A. **Internal Revenue Service**

(Information on federal income tax exempt status, corporate identification numbers, employment taxes)

1. To order IRS Publications, call: (800) 424-FORM.

2. For general questions or information, call:
(800) 424-1040.

3. Regional Offices

a. AP/EO Division, IRS
450 Golden Gate Ave.
Box 36001, San Francisco 4446
San Francisco, CA 94102
(415) 556-0338

b. Street Address: AP/EO Division, IRS
300 N. Los Angeles, Room 5127
Los Angeles, CA 90012
(213) 894-2289

Mailing Address: AP/EO Division, IRS
P.O. Box 2350
Los Angeles, CA 90053

B. **California Franchise Tax Board**

(Information on state income tax exempt status)

1. Exempt Organizations Unit, FTB
P.O. Box 651
Sacramento, CA 95812-0651
(916) 369-4171

2. Forms and information may be obtained by calling toll-free numbers:
-- In area codes 213, 619, 714, 805, and 818,
call (800) 852-5711.

- In area codes 209, 408, 415, 707, 916 (except Sacramento) call (800) 852-7050.
 - Sacramento and out-of-state callers, use (916) 369-0500.
- Forms are available at local district offices (ask the toll-free operator for location).

C. **California Secretary of State**

(Information on corporate name, filing articles of incorporation, annual statement of domestic corporation)

1. For general information on California Corporations Code, corporate number or name of charities, call (916) 445-2900.
2. Corporate name availability information: (916)322-2387.
3. Regional corporate filing divisions:
 - a. 1230 J Street
Sacramento, CA 95814
(916) 445-0620
 - b. 455 Golden Gate Avenue, Suite 2230
San Francisco, CA 94102
(415) 557-8051
 - c. 107 S. Broadway, Suite 4001
Los Angeles, CA 90012
(213) 620-3104
 - d. 1350 Front Street, Suite 2060
San Diego, CA 92101
(619) 237-6009

D. **California's Attorney General's Office:
Charitable Trusts Section**

(Information on registration with A.G., filing CT-2, review of charity public files, audits & investigation of California charities)

1. **Registry of Charitable Trusts**

Location: 1718 Third Street
Sacramento, CA 95814
(916) 445-2021

Mailing Address: Registry of Charitable Trusts
P.O. Box 903447
Sacramento, CA 94203-4470

2. Charitable Trusts Legal and Audit Section:

- Attorney General's Office - Charitable Trusts
1515 K Street
Sacramento, CA 95814
(916) 445-9555
- Attorney General's Office - Charitable Trusts
350 McAllister Street, Room 6000
San Francisco, CA 94102
(415) 557-2544
- Attorney General's Office - Charitable Trusts
3580 Wilshire Blvd.
Los Angeles, CA 90010
(213) 736-2304
(L.A. office will relocate in 1990)

E. California State Board of Equalization

(Information on property tax exemption and state sales tax requirements)

State Board of Equalization

P.O. Box 942879
Sacramento, CA 94279-0001
(916) 445-6464

See your telephone directory for local listings.

II. Legal Services

- A. Legal Aid Societies** - Local chapters in many counties may provide low cost legal services to qualifying organizations. Usually at least three main factors are considered to determine if the organization qualifies for low cost Legal Aid: 1) the income level of members or targeted service beneficiaries -- is it below the federal poverty level; 2) the assets of the members -- are they relatively low; 3) and the type of services provided by the organization. Charities that serve the needs of low-income individuals are usually given priority.

If an organization meets the above criteria, it may receive either direct legal services or referral to another agency. See your local telephone directory for listings of Legal Aid Societies.

- B. National Economic Development Law Center**
1950 Addison Street, Suite 200
Berkeley, CA 94704
(415) 548-2600

If a charitable organization is organized primarily to serve economic development projects, this Center may be able to assist it with legal services. The Center is funded by various government and private sources to help nonprofit organizations that serve low income persons.

C. Regional Legal Clinics and Referral Services

The services listed below may provide free legal services to qualifying nonprofit organizations or refer them to other agencies. Some of the listed services have income or service restrictions.

San Francisco

San Francisco Lawyer's Committee for Urban Affairs

301 Mission Street, Suite 400
San Francisco, CA 94105
(415) 543-9444
(serves organizations that provide assistance to low-income persons)

Volunteer Legal Services Program

(415) 764-1616
(provides referral services by phone only)

California Lawyers for the Arts

Fort Mason Center
Bldg. C. Rm. 255
San Francisco, CA 94123
(referral service for various arts organizations only)

Los Angeles

Public Counsel: CORP (Community & Charitable Organizations Representation Project)

3535 W. 6th Street, Suite 100
Los Angeles, CA 90020
(213) 385-2977

*

Women's Legal Clinic

443 S. Shatto Place, Suite 301
Los Angeles, CA 90020
(213) 382-7550

Bet Tzedek
145 S. Fairfax, Suite 200
Los Angeles, CA 90036
(213) 939-0506

* **Women Lawyer's Referral & Reference Service**
543 N. Fairfax
Los Angeles, CA 90036
(213) 653-3322

* They do not deal exclusively with women's issues. Other problems will be handled and referred to proper agencies.

San Diego

Volunteer Lawyer Program
1168 Union Street, Suite 203
San Diego, CA 92101
(619) 238-8100
(Same eligibility requirements as Legal Aid Societies. Services are limited only to organizational and operational problems of charitable groups. Needs will be assessed and referred to other services.)

III. Management and Operations Assistance

A. Nonprofit Management Training

Southern California Center for Nonprofit Management
315 W. 9th Street, Suite 1100
Los Angeles, CA 90015
(213) 623-7080
(Training in various management skills is offered free of charge to charities. Publications are available to charity organizers and operators throughout California.)

Support Centers of America

--- **Support Center / CTD**
75 Lily
San Francisco, CA 94102
(415) 552-7584

--- **Support Center**
3052 Claremont Drive, Suite H
San Diego, CA 92117
(619) 275-0880

(Volunteers in management profession offer management training, consulting and information to charities.)

The Management Center

215 Leidesdorff Street, 4th Floor
San Francisco, CA 94111
(415) 781-1953

(Provides management assistance as part of annual membership subscription.)

California Association of Nonprofits, Inc.

716 Ocean Street
Santa Cruz, CA 95060
(800) 345-4226
(408) 458-1955

(Information and group insurance programs, including health, dental and director liability insurance.)

Grantsmanship Resource Center

960 West Hedding, Suite 220
San Jose, CA 95126
(408) 244-5280

(Management and fundraising assistance provided; library use is open to the public at no charge.)

United Way

Many local United Ways offer management and technical assistance programs for interested charitable organizations. Charities do not have to be funded by United Way to participate in these training programs. For additional information, contact the United Way in your area.

B. Fundraising Research and Training

The Foundation Center

312 Sutter Street
San Francisco, CA 94108
(415) 397-0903

(Self-help library on grants, fundraising techniques, and corporate philanthropy. The library is open to public free of charge.)

California Community Foundation Funding Information Center

3580 Wilshire Blvd., Suite 1660
Los Angeles, CA 90010
(213) 413-4042

(Resource Center is open to public free of charge.)

The Grantsmanship Center

650 S. Spring Street, Suite 507
Los Angeles, CA 90014
(213) 689-9222

(Library on fundraising sources is open to public free of charge. For a fee, the group provides training programs and seminars to nonprofit organizations and government representatives. Subscriptions available to various publications.)

C. Accounting Training

Clearinghouse for Volunteer Accounting Services

315 W. 9th Street, Suite 1109
Los Angeles, CA 90015
(800) 821-2535
(213) 623-3147

(Volunteer accountants provide assistance to any IRC 501 (c)(3) organization whose annual budget is below \$100,000. Services range from technical assistance on tax filing reports, financial reports, budget/cash-flow projections, internal control systems, data base management and installation to evaluation and revision of accounting systems. The clearing house will review audits or assist in placing a volunteer accountant on the charity's board of directors.)

D. Assistance for Foundations and Other Philanthropic Programs

Northern California Grantmakers

116 New Montgomery Street, Suite 742
San Francisco, CA 94105
(415) 777-5761

(Northern California Grantmakers is a membership association of foundations, corporations, and other grantmakers. It works to improve cooperation and communication among grantmakers, to improve the field of philanthropy, and also directly operates several charitable programs including the Arts Loan Fund, the Emergency Loan Fund for Bay Area human service agencies, the Emergency Family Needs Program, the Homeless Task Force and the AIDS Task Force. Northern California Grantmakers co-sponsors public workshops for grantseeking organizations.)

Southern California Association for Philanthropy (SCAP)

315 West Ninth Street, Suite 1000
Los Angeles, CA 90015
(213) 489-7307

(SCAB is a membership association of foundations and corporate giving programs. Its purpose is to increase the effectiveness of private foundations and corporations in Southern California. SCAP offers educational and training programs for grantmakers, carries out research on selected philanthropic issues and provides direct assistance to individual grantmakers.)

IV. **Charitable Solicitation and Fundraising**

A. **Donors - Information About Charities**

**Council of Better Business Bureaus, Inc.,
Philanthropic Advisory Service**
1515 Wilson Blvd.
Arlington, VA 22209
(703) 276-0133
(Information summaries on various charities are available.)

National Charities Information Bureau, Inc.
19 Union Square West, 6th Floor
New York, NY 10003-3395
(212) 929-6300

B. **Registration with Local Government Agencies**

Many California cities and counties have passed charitable solicitation ordinances that try to protect the public against fraudulent solicitation. These ordinances may require charities and charitable fundraisers to register, certify their tax exempt status, obtain a license to solicit, and file accountings of fundraising proceeds. Most California counties and large cities maintain a charitable solicitation licensing office. It may be a separate department or part of the police or sheriff's department. All current solicitation licensing offices are listed in the book published by CEB, Advisina California Nonprofit Corporations, which is listed in the Bibliography and is available free at county public law libraries or from CEB (for a charge). Some of the large county and city charity solicitation licensing offices are listed below.

Los Angeles (City)

Department of Social Service
200 North Spring Street, Em. 1501
Los Angeles, CA 90012
(213) 485-5003

Oakland

City Clerk's Office
505 14th Street, Suite 609
Oakland, CA 94612
(415) 273-3614

*

Sacramento

Charitable Solicitation Committee
700 H Street, Rm. 1710
Sacramento, CA 95814
(916) 440-6644

San Diego

San Diego Police Licensing
1401 Broadway
San Diego, CA 92101
(619) 531-2250

*

San Francisco

Chief of Police Permit Bureau
850 Bryant Street, Rm. 458
San Francisco, CA 94103
(415) 553-1115

*

Both city and county requirements are handled at the listed office.

Contra Costa County

Sheriff's Division
651 Pine Street
Martinez, CA 94553
(415) 646-2821

Kern County

General Services Department
1600 North Road
Bakersfield, CA 93301
(805) 861-2491

Los Angeles County

Business License Commission
320 West Temple Street, Rm. 1165
Los Angeles, CA 90012
(213) 974-7691

(Solicitors without a prior fundraising activity within L.A. County need to obtain a permit and attend a hearing.)

Orange County

Public Information Office
10 Civic Center Plaza
Santa Ana, CA 92701
(714) 834-2000

Riverside County

Treasury & Tax Department
4080 Lemon Street
Riverside, CA 92501
(714) 787-2821

San Bernardino County

Clerk of the Board
385 N. Arrowhead
San Bernardino, CA 92415
(714) 387-4578

San Diego County

Office of County Sheriff
Licensing Division
222 West "C" Street, Rm. MO56
San Diego, CA 92101
(619) 531-3975

San Mateo County

(Non-profit organizations are exempt from permit requirement.)

Santa Barbara County

(Recent changes in the ordinance exempt permit requirement for non-profit organizations.)

B. Registration With California Attorney General

New legislation is expected in 1989-90 which may require charity fundraisers to register and file financial reports with the Attorney General. Contact the Registry of Charitable Trusts for further information, at (916) 445-2021.

ATTORNEY GENERAL'S
GUIDE FOR CHARITIES

BIBLIOGRAPHY

FREE PAMPHLETS; INSTRUCTIONS FOR APPLICATION FOR TAX EXEMPT STATUS; EMPLOYMENT TAXES AND REGULATIONS; SALES TAX; PERMITS

These pamphlets may be obtained from the federal or state governmental agencies listed before each title. See the "Directory of Services" section in this Guide, or consult your local telephone directory for the nearest location of the governmental agency office.

FEDERAL GOVERNMENT SERVICES:

Internal Revenue Service, Application for Recognition of Exemption (Package 1023, 1986)

Internal Revenue Service, Tax Exempt Status for Your Organization (Publication 557, 1985)

Internal Revenue Service, Tax Information for Private Foundations and Foundation Managers (Publication 578, 1981); Tax on Unrelated Business Income of Exempt Organizations (Publication 598, 1985)

Internal Revenue Service, Employer's Tax Guide (Circular E)

Internal Revenue Service, Instructions for Form SS-4; Application for Employer Identification Number

STATE GOVERNMENT SERVICES:

California Franchise Tax Board, Instructions for Form 3500 and Form 3500 Exemption Application

Employment Development Department, Employer's Guide (Publication DE 4525)

Employment Development Department, California Personal Income Tax Withholding Guide (Publication DE 44)

State Board of Equalization, Sales and Use Tax Guide for Volunteer and Nonprofit Fund Raisings Organizations (Tax Tip Pamphlet No. 18)

State Board of Equalization, Permit Requirements (Form BT-410)

BOOKS AND PAMPHLETS ON GENERAL ORGANIZATION OF NONPROFIT CORPORATIONS, MANAGEMENT OF BOARD AND STAFF, FISCAL MANAGEMENT, FUNDRAISING ISSUES, DUTIES AND LIABILITIES OF DIRECTORS

These publications are available at special reference libraries for nonprofit organizations, listed under "**Directory of Services**" in the Guide.

-----, **ADVISING CALIFORNIA NONPROFIT CORPORATIONS**
(California Continuing Education of the Bar, 1984)

-----, **A GUIDE TO CHARITABLE GIVING -- GIVE** (A monthly publication from the Council of Better Business Bureaus, Inc., Arlington, VA)

-----, **NONPROFIT BOARD LIABILITY** (United Way of California, 1986)

-----, **THE RESPONSIBILITIES OF A CHARITY'S VOLUNTEER BOARD**
(Council of Better Business Bureaus, 1986)

-----, **THE VOLUNTEER BOARD MEMBER IN PHILANTHROPY**, Rev. Ed.
(National Charities Information Bureau, 1983)

Anthes, Cronin & Jackson, **THE NONPROFIT BOARD BOOK**
(Independent Community Consultants, Hampton, Arkansas, 1985)

Anthony & Hazlinger, **MANAGEMENT CONTROL IN NONPROFIT ORGANIZATION** (Richard D. Irwin, Inc., 1975)

Conrad & Glean, **THE EFFECTIVE VOLUNTARY BOARD OF DIRECTORS: WHAT IT IS AND HOW IT WORKS** (Swallow Press, Inc., 1982)

O'Connell, **THE BOARD MEMBER'S BOOK** (The Foundation Center, 1985)

Powell, **THE NONPROFIT SECTOR - A RESEARCH HANDBOOK**
(Yale University Press, 1987)

Topinka, Schilling & Mar, **A GUIDE TO THE CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION LAW** (The Management Center, San Francisco, CA 1981; Supp. 1988)

Weber, **MANAGING THE BOARD OF DIRECTORS** (The Greater New York Fund, Inc., 1987)

PRACTICAL GUIDEBOOKS FOR USE IN INITIAL INCORPORATION AND APPLICATION FOR TAX EXEMPT STATUS (contain forms and step by step checklist)

All these books are available at special reference libraries for nonprofit organizations listed under "**Directory of Services**" in the Guide .

-----, **MODEL INCORPORATION AND TAX-EXEMPTION APPLICATION DOCUMENTS: CALIFORNIA PACKET** (National Economic Development and Law Center, 1988)

Connors, **THE NONPROFIT ORGANIZATION HANDBOOK** (McGraw-Hill Book Co., 1980)

Mancuso, **THE NON-PROFIT HANDBOOK**, 4th Ed. (Nolo Press, 1983)

Murray, **CHILD CARE CENTER LEGAL HANDBOOK** (Child Care Law Center, San Francisco, CA, 1987)

Wolf, **THE NONPROFIT ORGANIZATION -- AN OPERATING MANUAL** (Prentice Hall Inc. 1984)

BOOKS AND PRACTICAL GUIDES ON FUNDRAISING, BUDGET, AND ACCOUNTING CONCERNS

These publications are available at special reference libraries for nonprofit organizations, listed under the "**Directory of Services**" in the Guide.

-----, **A FISCAL MANAGEMENT HANDBOOK FOR SMALL NONPROFIT ORGANIZATIONS** (Donors Forum Emergency Loan Fund, Chicago, Ill., 1986)

-----, **AUDITS OF CERTAIN NONPROFIT ORGANIZATIONS** (American Institute of Certified Public Accountants, Inc., 1981)

-----, **SECURING YOUR ORGANIZATION'S FUTURE: A COMPLETE GUIDE TO FUNDRAISING STRATEGIES** (The Foundation Center, San Francisco, CA 1987)

-----, **SUMMARY OF CALIFORNIA LAWS REGULATING CHARITABLE SOLICITATION** (Handout available from State Attorney General Charitable Trust Section)

Eddie, **FIRST STEPS IN STARTING A FOUNDATION** (Council on Foundations, Washington, D.C. 1987)

Gaby, **NONPROFIT ORGANIZATION HANDBOOK: A GUIDE TO FUND RAISING, GRANTS, LOBBYING, MEMBERSHIP BUILDING, PUBLICITY AND PUBLIC RELATIONS** (Prentice Hall, Inc., 1979)

Gross, **FINANCIAL AND ACCOUNTING GUIDE FOR NONPROFIT ORGANIZATIONS** (John Wiley & Sons, Inc., 1974)

Pendleton, **FUNDRAISING: A GUIDE FOR NON-PROFIT ORGANIZATIONS** (Prentice-Hall, Inc., 1981)

Schneider, **THE ART OF ASKING: HOW TO SOLICIT PHILANTHROPIC GIFTS**, 2nd Ed. (Fund-Raising Institute, 1985)

Upshur, **HOW TO SET UP AND OPERATE A NON-PROFIT ORGANIZATION** (Prentice Hall, Inc., 1982)

Walco & Farnsworth, **ACCOUNTING FOR NONPROFIT ORGANIZATIONS** (Community Technical Assistance Center, Pittsburgh, PA, 1981)

LEGAL TREATISES

These books contain a detailed overview of charitable corporations and foundations, with emphasis on history, tax laws and regulations, and corporation and trust law. These books are recommended for attorneys and persons with some legal education. These publications are available in most public law libraries.

m-w-- **ADVISING CALIFORNIA NONPROFIT CORPORATIONS**
(California Continuing Education of the Bar, 1984)

Ballentine & Sterling, **CALIFORNIA CORPORATION LAW** Vol. IB (Parker & Son Pub., Inc., 1988)

Fisch, Freed & Schacter, **CHARITIES AND CHARITABLE FOUNDATIONS** (Lond Pub., 1974; Supp. 1987-88)

Hopkins, **THE LAW OF TAX EXEMPT ORGANIZATIONS** (John Wiley & Sons, 1987)

Oleck, **NON-PROFIT CORPORATIONS, ORGANIZATIONS AND ASSOCIATIONS**, 4th Ed. (Prentice-Hall, 1980)

Scott, **THE LAW OF TRUSTS**, 3rd Ed. (Little, Brown & co., 1967)

Treusch & Sugarman, **TAX EXEMPT CHARITABLE ORGANIZATIONS** (American Law Institute, 1983)

BOOKS ON PRIVATE FOUNDATIONS, INCLUDING LISTINGS OF GRANTMAKING FOUNDATIONS IN CALIFORNIA

These books are available at most public law libraries and at special reference libraries for nonprofit organizations, listed under "**Directory of Services**" in this Guide.

-----, **THE FOUNDATION DIRECTORY** (Foundation Center, 1987)

-----, **GUIDE TO CALIFORNIA FOUNDATIONS**, 7th Ed. (Northern California Grantmakers, 1988). This guide lists the major private charitable foundations based in California which hold assets over \$500,000 and award grants totaling \$25,000 or more annually. It also contains a complete listing of nonprofit organization research centers located in California.

Nielsen, **THE GOLDEN DONORS: ANATOMY OF THE GREAT FOUNDATIONS** (E.P. Dutton, 1985)

LAW REVIEW ARTICLES ON REGULATION OF CALIFORNIA NONPROFIT CORPORATIONS

Each article cited contains an analysis of a specific area of concern to nonprofit corporations and charitable trustees, as indicated in the title. Articles include several footnotes with citations to court decisions, articles and statutes. These articles may be found in most public libraries.

Abbott & Kornblum, **Jurisdiction of the Attomev General Over Corporate Fiduciaries Under the New California Nonprofit Corn. Law**, 13 U.S.F. Law Review 753 (1979)

Bell, **Supervision of Charitable Trusts in California**, 32 Hastings Law Journal 433 (1980)

Schwarz & Hutton, **Recent Developments in Tax Exempt Organizations**, 18 U.S.F. Law Review 649 (1984) and 19 U.S.F. Law Review 299 (1985)