

Charities Advisory Council

June 11, 2018 Meeting Minutes

The Coast Gateway Hotel

Present: Howard Donkin, Steve Wilmes, Adam Borgman, Mike Plymale, Stuart Grover, Moonwater, Mike Forness, David Wunderlin, Jennifer O'Bannan, Patrick Reed, (SOS), Dave Horn, (AGO) Scott Douglas (SOS) and Rebecca Sherrell, (SOS).

Absent: Judy Andrews, Mary Kay Gugerty and Liz Davis

Agenda Item #1: Call to Order

- Welcome, Howard Donkin, Council Chairman

The chair called the meeting to order and welcomed the members of the Charities Advisory Council.

Howard reminded the members the purpose of the council and looks forward to receiving input regarding potential meeting topics. The council meets twice a year to discuss issues from respective areas and ways to assist the Secretary of State's Office to meet those needs.

Washington Nonprofit Conference in Bellevue: Howard thought it would be beneficial for Nancy Bacon to attend the next Advisory Council Meeting and talk about her education programs. Rebecca agreed.

Agenda Item #2. Individual Councilmember Introductions

- Introductions

No new members to announce, however, Rebecca introduced the new Corporations and Charities Director, Scott Douglas.

Agenda Item #3. Old Business

- Review of Jan 12, 2018, meeting minutes

The following corrections were brought to the council's attention:

Page 4, before item 8, last sentence: (where it begins with "I want to")
Should read: "The AGO wants to be helpful to the nonprofit sector"

Item #8, First Paragraph, last line: Insert "been" between not and prepared.
Should read: "Therefore, an executive summary has not been prepared."

Page 5: Item #9, first sentence: Insert "shared" between councilmember and what.
Should read: Each councilmember shared what has happening in the nonprofit, charity sector in their part of the state.

With no further discussion, a motion was made to approve the minutes as corrected. The motion was seconded. Votes were cast and the motion carried.

- Review of action items

The online FAQ's were updated to include "Fundraising Auctions and Events (Noncash Gifts)" and were posted under the "Donor" and "Organization" tab of the Charities Web site. A print out of the posted FAQ's were distributed to councilmembers for review.

A councilmember mentioned he has heard several nonprofits in Spokane reference how helpful the Auction FAQ information has been.

Howard asked if anyone has received questions regarding the new federal tax law and how it affects nonprofit organizations.

- Does the new federal tax law affect the FAQ information just posted?
 - No. The new tax code has more to do with unrelated business income and employment benefit taxation.
- Should the wording used in acknowledgments of the donation be changed, as far as the tax benefit to the donor?
 - No. The new tax code does not affect the language used in letters of acknowledgments.

After much discussion, the councilmembers concluded that it is too soon to determine if the new tax law will harm charitable giving. The consensus was we should know more in a year.

From the CPA's perspective, the questions fielded were, "can I stop keeping track of these donations?" For the client, it depends on if they reach \$24,000. If not, the client does not need to keep track of donations.

Moonwater shared that Whatcom Community Foundation serves as a "hub" providing information and resources to local nonprofits. She suggested that the resources provided by the foundation may be considered as a model in some communities.

Rebecca mentioned the annual Commercial Fundraiser Report should shed light on donations for 2018. The report shows the commercial fundraiser's total revenue vs. the total amount directed to their charity client(s). In addition, there is a historical comparison from year to year based on total revenue. See <https://ccfs.sos.wa.gov/#/Home> (Beneath the Charity/Fundraiser/Trust Search module.)

Nonprofit Handbook

Howard inquired about the status of the Nonprofit Handbook that Wayfind is updating. Dave reported that the nonprofit committee of the bar is still in discussion with the Attorney General's Office regarding a section of the Nonprofit Act the committee is trying to revise.

Scott also mentioned that at the May 15 meeting, the committee worked on fine tuning the Executive Summary. Scott is confident the revised Nonprofit Act will be introduced to the 2019 Legislative Session.

Agenda Item #4: Presentation Janet Lavery, WA State Department of Revenue

Janet has been with the Department of Revenue (DOR) for six years. She distributed Nonprofit Guides which were described as very user-friendly.

Washington State Department of Revenue differs from Federal taxes. The state taxes are based off what you do rather than basing off the business structure. If you have a nonprofit that generates revenue and it's taxable revenue, DOR will tax the nonprofit.

If it's truly nonprofit and the donations, including grants, is 100% gratuitous, then it is exempt, if the nonprofit is not getting something in return for the donation or grant.

Janet provided several examples involving nonprofits and the different scenarios where funds were taxable.

If the nonprofit files their business and occupation tax under "service and other" and is less than \$28,000 per year and is not involved in any retail, the nonprofit does not need a license from the Department of Revenue (DOR). However, the banks require a license. Janet explained that DOR would make those "Active, Non-reporting" accounts, if they truly don't need to be a taxable account. For wholesale, the exemption is \$46,000.

A nonprofit can obtain a resellers permit without a business license. To renew the resellers permit online, a business license is required. Paper renewals must be completed for resellers permit with license.

Howard shared that if you're fundraising, the resellers permit can save you money. For example, if you have an auction event at the Hyatt, having the resellers permit, the sales tax will be waived on food, lodging, and catering. Potentially saving you \$2500-\$3000. There is no fee for the permit and it's valid for 1, 2, or 4 years, depending on your activity.

Howard pointed out that organizations can go back four years and request a refund on the Department of Revenue tax. Janet explained there is a form to complete and receipts showing the sales tax paid will be requested. The minimum amount before a refund will be issued is \$25.

Federal Grants are exempt from sales tax. For example, an adult family home that is registered with Department of Social and Health Services, the adult family home would be exempt from paying any B&O taxes on the federal and state government grant.

If there is ever a question that staff on the 800 number can't answer, Janet highly encouraged people to write in and request a written ruling.

The Department of Revenue receives a great deal of calls regarding churches. Churches are taxable.

A question was raised regarding enforcement – how does DOR track non-compliance?

If the business is registered with Department of Revenue, they will perform a desk audit. Janet doesn't see them performed on nonprofits as much as corporations or LLC's, because there isn't as much money compared to corporations or LLC's.

Patrick offered to post the Department of Revenue link on the nonprofit section of the Secretary of State's website. [DOR, doing business industry-guides, nonprofit-organizations](#)

If there's a nonprofit and someone is running for a position, a portion is taxable. A written ruling is needed to determine the actual percentage split. Janet encourages people to seek out a written ruling for the correct percentage. Down the road, if an Auditor comes along with a correction, the written ruling will take precedence.

If the nonprofit plans to hold a fundraiser involving liquor, the organization needs to work with the Liquor and Cannabis Board to acquire a certificate to hold the event. DOR won't charge the organization sales tax if it's a fundraiser, but there will be a liquor, cannabis tax.

A question regarding a nonprofit youth organization selling t-shirts and other items from its website, on a continual basis, no business hours or location. Janet mentioned this would be a taxable activity because there is no end date. If the fundraising event had a beginning and ending date, it would be exempt from sales tax.

Howard suggested linking to DOR site. (See URL shown above)

Janet's contact information: 360-705-6689, or JanetL@dor.wa.gov

Agenda Item #5: Update on the Division's Online Filing System

The Corporations and Charities Division online filing system was soft launched in November 2017 and we continued to build and enhance from there, including getting the Charities functions up to speed. The public feedback overall has been very positive. We haven't announced the official launch because we haven't finished development. We have just entered into the warranty stage.

Scott added that even without the formal launch, the adoption rate has been spectacular. At this point, approximately 63% of filings are 100% entirely online. Another significant portion is filing online, but those are receiving assistance from staff.

Washington State's naming convention and the laws around "distinguishable upon the record" is one of the challenges in the development of the system. For example, when a new nonprofit files, there is no system to check all the possible variations of that name. A long-term solution has been discussed with the legislature to update the naming conventions to a more simplified manner. If that were case, the online percentage would be greater.

The division received a great deal of feedback regarding the \$20 online service fee. Washington Administrative Code, WAC 434-120-042 (Charities) and WAC 434-112-075 (Corporations) requires the division to charge the fee. To amend the regulations is a 3-step process. The division has completed the initial filing of the proposed changes to the WAC with the Code Reviser. The office must hold a public hearing so, it may be September or October before the entire process is complete.

Until then, our office doesn't have the ability to deny the \$20 online service fee. To avoid the online service fee, the customer has the option available to file paper documents.

- The \$20 online service fee was proposed to be removed from all Charities electronic filings and copy fees.
- In Corporations, the \$20 online service fee was proposed to be removed from profit, nonprofit organizations, as well as electronic copy fees.

A reminder was offered that the system will continue to evolve and improve as we move forward. The excellent customer feedback and identification of development glitches, the system will only improve.

Customers have been very positive about the availability of the “filing history.” Anyone can log in and look and/or print at the previously filed documents of any organization and it’s all free.

A councilmember volunteered feedback from a PTA member’s perspective: As a very small organization with limited board members, but always checking to make sure all the appropriate boxes, etc. have been checked. It’s the ease that you have to just go in and search to see if a filing has already been done. It takes about 3 minutes. It’s really great.

- Are the original articles of incorporation available and other similar documents?
 - Yes! Any online user can pull up any document filed in our office.
- There should be no documents uploaded using the new online filing system, right? Years back, the IRS Form 990 was attached to Charities filing. Now, instead, online filers just transfer financial information directly from the Form 990, right?
 - Depending on the filing type, certain uploads are required. For example, a charitable organization registering its initial application is required to provide a copy of the IRS Letter of Determination. Everything provided is placed in the entity’s filing history, which then becomes a public document available online.
- If someone attached their IRS Form 990, or any document, it would show up in the filing history?
 - Possibly.

Once that filing type is completed and paid, a PDF record is created and a copy is placed in the entity’s filing history.

Patrick mentioned that for quality control, anytime there is an upload, there is an annual review to help protect the integrity of the documents.

Agenda Item #6: Tiered Financial Reporting Requirements

Howard remembered serving on the Charities Task Force when the Tiered Financial Reporting Requirements were developed. At the time, there was a good deal of debate regarding audits and when/if they should be conducted. Some states require an audit with a \$250,000 threshold. Howard receives calls just about every week from, usually small organizations (\$40k), saying the board has decided to have an audit.

Other organizations over \$3 million dollars have an audit, but they know of other organizations over \$3 million dollars that don't. Howard noticed there is no question on the online form that asks if the entity was audited. Is anyone was looking at this?

- Is this issue brought to the attention of the Office of the Attorney General?

Rebecca explained that the \$3 million threshold is not based on the end of year assets, but rather is calculated on the average of the three most recently completed accounting years. In addition, there are a few exemptions allowed, making this a complicated question for the online form.

Howard has discovered that some don't want to comply with this section and wonder what the risk is. Dave stated there is always a risk in not complying. He explained that he reviews the nonprofit dissolutions in order to approve the plan of distributions of assets and in doing so, all types of things can pop up that they haven't complied with in the past. As enforcement, if they find out about it, there will be some consequences. Dave suggested promoting compliance.

For the council's benefit, Rebecca provided the history regarding the existing audit requirements and why they exist.

In 2006, the Secretary of State's Charities Program proposed legislation, some of which included an audit requirement for organizations with \$500,000 in total gross revenue. The nonprofit sector was not happy and there was continuous testimony against the proposed legislation. We adjusted the audit requirement to 1 million dollars in total gross revenue. The nonprofit sector still protested.

So throughout the following year, we worked with nonprofits and Secretary Reed held "Roundtables" in six cities throughout the state and invited nonprofit leaders from the respective cities to attend.

Not only did we discuss audits, we learned the nonprofit sector really wanted education. They were willing to pay a higher fee to help fund the education.

The education component and audit requirement passed as part of the 2007 legislation package. Subsequently, a charities task force was formed consisting of nonprofit leaders from around the state to help develop the regulations as a result of the new legislation.

Through much discussion it was revealed that, depending on certain variables, counties may also require an audit due to a state or federal government contract. If \$750,000 of Federal funds are received, an audit is required. Private foundations require an audit. In addition, the IRS Form 990 asks if the organization has been audited, reviewed, or compilation.

Who handles the enforcement? As with any violation, the Attorney General enforces the Charitable Solicitations Act as "per se violations" of the Consumer Protection Act. Which means a violator could be subject to, law suits, superior court, injunctions, civil court, civil penalties, \$2,000 fine per violation, and attorney's fees.

Rebecca asked if the council is familiar with the legal actions posted to the Charities web site, located under the "Donors" tab. This is where the Charities Program post the enforcement actions by the Office of the Attorney General pertaining to the Charitable Solicitations Act. See [legal actions](#)

Agenda Item #7: Update from the Attorney General's Office

For Charities, Dave indicated the Attorney General's Office is litigating with Value Village and Roy Haueter, who operated under the names Haueter Enterprises, LLC, dba Turnkey Leasing; Children's Safety Bureau, aka Needy Children's Shopping Spree; Search and Rescue Charities, aka Holiday Relief Fund; Emergency Relief Services, aka Back to School Helping Hands; Children's Hunger Relief Aid, fka Cancer Exam Network and Children's Hospital Emergency Fund.

There are two cases that the Attorney General's Office will be filing next month involving charitable solicitations. On the charitable trust side, the AGO will be posting more robust information on the website, such as, what to do if you want to dissolve a nonprofit corporation.

The Marysville Festival is pending, but should be wrapped up soon. Some other examples of matters pending include a matter in Clark County where a bank acting as trustee asked the court to terminate a trust and give all the assets to the trustor's granddaughter, even though the trustor wanted them given to charity after the granddaughter died. The AG's job is to preserve the charitable assets, so the AG asked the court to make sure the assets would still go to charity.

Follow up question posed to Dave: So much time and money has been spent on electronic filing systems, why can't organizations file dissolution documents online, hit "file," and you're done! Dave explained that nonprofits with charitable assets are required by law to send a proposed plan for distributing those assets to the AG and get it approved before they can dissolve. Since charitable assets are supposed to benefit the community, it's a matter of public concern what the organization does with those assets, Dave said.

The AGO reviews the information to ensure the proposed plan is consistent with the governing documents. The organization should contact the AGO regarding their intention to dissolve and provide a proposed plan for the distribution of assets. It is the AGO's approval of the proposal that is needed prior to dissolution;

The organization should then contact the Department of Revenue to obtain a Certificate of Clearance.

It is at this point the organization would submit "Articles of Dissolution" with the SOS, attaching the AGO's approval letter and DOR's Certificate of Clearance. There is no filing fee to file Articles of Dissolution.

Agenda Item #8: For the Good of the Order

- Rebecca shared information about a debate that is taking place at the Federal level regarding the IRS Form 990, Schedule B. Some from the sector are pushing to eliminate schedule B and some would simply like to modify it.

- Between four to six councilmembers terms are due to expire December 31, 2018. The records show the members are:

Judy Andrews	Stuart Grover
Moonwater	Adam Borgman
Mike Plymale	Howard Donkin

Potential Agenda Topics

- Speaker from the Gambling Commission
- Speaker from the Liquor and Cannabis Board
- Update on the New Online Filing System

Agenda Item #10: Next Meeting

- First couple weeks in January 2019. January 7 or 11.

With no further business the June 11, 2018, meeting was adjourned.

Respectfully submitted,
Rebecca Sherrell