

Major Revisions to California AG's Guide to Charities

12.05.24 | Linda J. Rosenthal, JD



Over the last two decades, the attorneys general of the individual states have aggressively reasserted their longstanding – but mostly dormant – power to regulate charities and charitable trusts within their borders.

Leading the pack is the Office of the California Attorney General with jurisdiction over the largest charitable sector in the nation. As of July 2024, there were more than 108,000 charitable organizations registered with the Attorney General's Registry of Charities and Fundraisers, formerly known as the Registry of Charitable Trusts.

"Charities represent an important economic sector in California and significantly impact the communities they serve," explains Attorney General Rob Bonta in his opening message for the September 2024 revision of the Attorney General's Guide to Charities which was first published in 2008. "As of June 2022, registered charities reported total revenues over \$473 billion and total assets over \$1.29 trillion."

Even if these staggering amounts – (all irrevocably dedicated for charitable purposes!) – aren't reason enough for the California AG to take a keen interest in the doings of the state's charitable sector, there are over 500 years of Anglo-American legal history and precedent to validate such robust oversight.

A Brief Historical Detour

"The time is the 1590s' in 'England of the first Elizabeth'" It's "a period of social stress: plague, poverty, inflation, malnutrition, property crimes, riots and – of course – religious upheaval [A] perfect setting for the birth of the law of modern philanthropy."

In 1597, Parliament enacted the Poor Laws followed by the landmark Statute of Charitable Uses of 1601. It was “an impressive legislative package” set up as a “public/private partnership ... designed to spur broader and more generous private-sector charitable giving (along with new government aid) while keeping an eye on the problems caused by “opportunistic fiduciaries.” See *Regulating the Poor and Encouraging Charity in Times of Crisis: The Poor Laws and the Statute of Charitable Uses* (2007) Professor Emeritus James J. Fishman, Pace University, *digitalcommons.pace.edu*.

Those lawmakers included the “indispensable element” of “meaningful oversight and investigative authority and procedures....” They were all too aware that “...[c]haritable funds have been and are still likely to be most unlawfully and uncharitably converted to the lucre and gain of some few greedy and covetous persons, contrary to the true intent and meaning of the givers and disposers thereof.” [Preamble to 1601 statute].

Who was tapped by Parliament for these regulatory duties? Among them “... was the powerful (but as-yet-unofficial) legal adviser to the Crown known as the ‘attorney general.’” The significance of this choice lay in the nature of the role of this royal adviser which included some of the “‘parens patriae’ duties of the Crown.”

Some time later, when “... the charitable-trust form crossed the Atlantic, the Attorneys General of the colonies and then the several States inherited this trust-protection responsibility from their Crown counterpart.” Now, some five centuries after enactment of the seminal Statute of Charitable Uses, “that legislation continues to be relevant to the jurisprudence of the United States.”

The State AG Model

This model of an attorney general with responsibility to protect the interests of the general public in connection with charitable trusts, assets, and solicitations is now “firmly rooted” in each and every state, territory and the District of Columbia, according to the National Association of Attorneys General. “While the IRS and the FTC play valuable roles, State Attorneys General remain the chief custodians of the public’s trust in the nonprofit sector.”

Particularly during the middle and late twentieth century, the Internal Revenue Service emerged as the most prominent watchdog of charitable activities and funds because of its high-profile role in recognizing federal exemptions from income tax under the Internal Revenue Code of 1954. (Until the ratification of the Sixteenth Amendment in 1913, there was no constitutionally permitted federal income tax at all.)

But a combination of circumstances have contributed to the weakening – since the turn of the 21st century – of the IRS capability of effectively monitoring the nation’s charities. And events like the Enron scandal of 2001, exposing dramatic examples of corporate mismanagement and corruption, albeit in for-profit settings, prompted state attorneys general to take a good look at the governance practices of their nonprofit corporations and charitable trusts. Aided by newly beefed-up laws, they needed no additional jurisdiction or authority to move center stage; the power was already there.

The California AG’s Guide

In 2008, Jerry Brown – (the flamboyant AG who had been California’s governor from 1975 to 1983 and again from 2011 to 2019) – oversaw the development and publication of the original Attorney General’s Guide to Charities.

It has been amended, revised, and supplemented since then, including in 2019 and 2021. See [Online Charitable Giving: Cal AG’s New Guide](#) (September 17, 2019), *FPLG Blog* [“In the past decade or so, charitable giving and fundraising have been turned upside by the swift and dramatic rise of the internet. As quickly as new means of asking for and giving money to charity have developed, legislators and government officials have tried to keep up with developments in this brave new electronic world.”]

This [comprehensive resource](#) has consistently used a format of twelve chapters to explain the most current state laws, ranging from forming a public benefit corporation and obtaining tax exempt status to corporate-governance best practices to fiscal management to charitable solicitations and fundraising to reporting and filing requirements.

In late September 2024, the current California Attorney General, Rob Bonta, released the latest 111-page revision titled: [Attorney General’s Guide to Charities: Best practices for nonprofits that operate or fundraise in California \(September 2024\)](#).

Latest Revisions

In [Attorney General Bonta Releases Updated Guide for Charities](#) (September 26, 2024), *Press Release*, [oag.ca.gov](#), the AG’s Office explains that this publication is “intended to help directors and officers of charities understand what is required of them under state law.”

Among the most important additions is a section about the landmark California Crowdfunding Law, enacted in 2021. The regulations took a while – (and three attempts) – to get to final approval in April 2024. The revised AG’s Guide includes “an overview of, and regulatory requirements for, charitable fundraising platforms (found in Chapter 9). Effective June 12, 2024, charitable fundraising platforms — or crowdfunding websites like GoFundMe, Meta, and PayPal and other online platforms that perform, permit, or enable solicitations for charitable donations through their platforms — are required to register” with the Registry of Charities and Fundraisers.

There is also now information on “behested payments”: that is, “when monetary or in-kind donations are made at the request, suggestion, or solicitation of a public official for a principally legislative, governmental, or charitable purpose. The Political Reform Act requires a public official to report behested payments to the California Fair Political Practices Commission on Form 803.” Several years ago, we twice discussed this controversial practice. See [Behested Payments: Critics Take Aim](#) (February 2, 2018) and [Behested Payments: Now It’s L.A.’s Turn](#) (May 28, 2019).

Conclusion

The [Attorney General’s Guide to Charities: Best practices for nonprofits that operate or fundraise in California \(September 2024\)](#) is a must-read reference for in-state organizations and charitable trusts, as well as for anyone soliciting contributions from Californians.

Other major states, including New York, Massachusetts, and Minnesota, also have helpful resources from their AG offices.

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