

Form PC Revisions and Other Areas of Focus on Charities

January 31, 2013

A Summary of Remarks by Mary Beckman, Non-Profit Organizations/Public Charities Division Chief in the Office of the Attorney General

Forthcoming revisions to Form PC, examining new forms of solicitation using social media, and newly proposed legislation regarding director compensation were topics covered by Mary Beckman, Chief of the Massachusetts Attorney General's Office Public Charities Division, speaking to a packed conference room of over 50 attendees at the Boston Bar Association's Tax Exempt Organizations Section monthly luncheon on January 29.

Revised Form PC

Ms. Beckman initiated the discussion by describing the Division's efforts to revise Form PC, the annual information filing required to be completed by public charities operating within the Commonwealth. A prototype revised form is under development and will be based on IRS Form 990, the annual federal information return for tax-exempt organizations. Form 990 was substantially revised by the IRS in 2008.

At present, charities must complete a Form PC as well as submit a Form 990 to the Division each year. Ms. Beckman noted that the two forms ask for similar information but use slightly different definitions for certain terms, such as "Related Organizations". The Division's goal is to capture the same information as is currently required but "in a way that is less confusing." Ms. Beckman envisioned the Division relying on the Form 990 for "substantive" information and the streamlined Form PC would be "an additional 10 questions."

At the same time, Ms. Beckman noted that the Division was developing schedules for Form PC on director compensation and executive compensation. She stated that the intent is to require charities to disclose such compensation on a more timely basis and in a more transparent manner than is currently required on Form 990.

A revised prototype Form PC would likely be publicly available by late spring, although the Division is still determining how best to implement the new form.

Proposed Legislation Regarding Director Compensation

Ms. Beckman mentioned that Senator Mark Montigny (D-New Bedford) re-introduced proposed legislation regarding executive and director compensation at public charities, possibly akin to legislation he proposed last spring ([click here for Foley Hoag's May 25, 2012 client alert describing prior proposed legislation](#)). The text of the proposed legislation is not yet available online. She noted that public comments on last year's proposed legislation had highlighted the need to distinguish professional trustees and fiduciaries, whose job is to manage charitable trusts, from other fiduciaries. She said that the Division would welcome public comment regarding whether the newly proposed legislation would capture that distinction.

Solicitation Practices

With the advent of social media, charities are using these new social networks to fundraise. The Division is in the process of learning more about how charities use Twitter, Facebook, their websites, and other nontraditional means of solicitation to communicate with donors and raise funds. Ms. Beckman noted that the intent is to protect the public from unethical fundraising without overregulating. She noted that updating the solicitation rules may require a legislative fix.

Ms. Beckman mentioned the Division's efforts to also understand charities' use of professional fundraisers. She said that according to the Division's Report of Professional Solicitations for Charity in 2011, the fees charged to such professional fundraisers on average exceeded 50% of donations. However, in conversations with a number of charities that retained professional fundraisers, the Division found that

many charities derive significant value from the efforts of such fundraisers, including the fact that loyal donors often come from campaigns that such fundraisers conduct. Also, payment arrangements with professional fundraisers can vary widely. Ms. Beckman mentioned that ideally greater transparency should be provided to donors regarding fees paid to professional fundraisers so that “people can give in line with their donative intent”.

Q&A Session

Ms. Beckman answered a variety of questions from the audience toward the end of the discussion. She noted that the Division would like to make Form PC filings available electronically but that at present the Division does not have the necessary resources allocated to this project. Further, any such electronic filing would be best coordinated with other states so that charities with operations in multiple jurisdictions could make multiple filings in a streamlined manner.

She also addressed comments regarding broadening the scope of the administrative dissolution process, which is currently available to charities with no assets. Several members of the audience voiced support for establishing a *de minimis* asset threshold, below which a charity may take advantage of the administrative dissolution process. At present, if a charity wishing to dissolve has any assets, it must submit a dissolution petition to the Supreme Judicial Court. Charities with no assets may submit their dissolution paperwork merely to the Division for approval. Ms. Beckman noted that any such change would need to be authorized and approved by the SJC.

In the spirit of hoping to best address the views and needs of those in the charitable sector, Ms. Beckman mentioned several times during the discussion that the Division appreciated comments on the issues described above and she encouraged those who are interested to contact the Division with their observations and suggestions.

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