



Nonprofit *Alert*®

Alerting nonprofit leaders to key legal developments and responsive risk management steps.

Inside This Issue:

Liability..... 2

- Negligence Cleared
- Who's in Charge?
- Foundation Fraud

Employees & Volunteers.... 2

- Duty to Train
- Need No Receipts

Tax-Exempt...3

- Political Loophole
- Reminders Won't
- Prove Deduction

State Regs.... 4

- Kansas Bingo Rules
- Michigan Reverse Age Discrimination

Plus...

NPA Highlight of the Month:

Software Pirates Pay \$2.4m in Fines

— page 3 —

FICA Tax Ruling:

Disabled Workers Classify as “Employees”

Developmentally disabled individuals who work in a sheltered employment program, are considered employees for federal employment tax purposes, the IRS has ruled.

A tax-exempt §501(c)(3) organization operated the work program. Included in the program was a supported living environment for disabled individuals where training, job placement, and on-site employment were provided.

The program was aimed at developing social skills and employment opportunities for disabled workers. Individuals who worked in the program were paid on a piece-rate basis after completing a 30-day evaluation period.

The evaluation period allowed the nonprofit to determine each individual's potential for current and future employment. Individuals were then placed in a work program best suited to their skills.

Workers did not receive fringe benefits, nor could they be fired or laid off from work. individuals remained in the work program for an indefinite period.

The mission of the organization was to provide a therapeutic program for developmentally disabled clients to become self-sufficient. But because the disabled individuals performed work under the direction of the tax-exempt organization, the IRS ruled the disabled workers were actually

classified as employees for whom the organization must pay federal employment taxes. LTR 200020004.

 **Nonprofit Alert® Memo, Nonprofit Employers & the Fair Labor Standards Act, addresses these employment tax issues. See back page to order.**

Solicitation Law Comes Under Fire

In the latest round of legal battles over fundraising limitations, a group of national nonprofit organizations has challenged the local solicitation ordinance in Jefferson County, Ky.. The groups say the ordinance is unconstitutional and unnecessarily burdensome because it requires nonprofits and their professional fundraisers to register every year before conducting any kind of solicitation inside the county, which includes the city of Louisville.

The law also requires personal information about nonprofit officers and executives, including social security numbers, home addresses, and birth dates. Challengers say this portion of the law invades personal privacy. County officials say it's necessary to conduct background checks on charities and their organizers.

A similar lawsuit in Pinellas County, Fla., is currently pending on appeal. Nonprofits should watch these cases closely since the outcome could mean significant registration burdens nationwide.

~ ~ ~ The Family That Volunteers Together, Stays Together ~ ~ ~

Volunteering is on the rise, thanks to many programs that now cater to youth and family volunteers. An estimated 56% of all adult Americans volunteered in 1998, the latest year for which figures are available, reports Independent Sector. That's the largest percentage of volunteers ever recorded, says the organization, which tracks such trends. The increase is credited to high profile coverage of volunteerism and the willingness of organizations to welcome family volunteers. Families are turning to volunteering as a way to give something back to their communities, while enjoying a rewarding, quality experience together.

 A new manual offers insight into what attracts young people to volunteerism. Sponsored by the Advertising Council and MTV, *Engaging the Next Generation: How Nonprofits Can Reach Young Adults*, is available free at www.adcouncil.org.

Liability & Risk Management

Jury Clears Nonprofit of Negligence in Shooting

A YMCA in Fargo, N.D. has been relieved of liability in a shooting incident that happened on the organization's premises in 1996. A local attorney was working out in the YMCA weight room, when another member of the YMCA walked in and shot him five times. The gunman had allegedly threatened the attorney and several other YMCA members on numerous occasions before the shooting occurred. The attorney survived the shooting but was permanently injured. The gunman was sentenced to life in prison for attempted murder. The attorney then brought a civil case against the YMCA, claiming that its lack of security led to his injuries. The complaint filed in the case indicated that the gunman had a felony record of violent crimes, of which the YMCA director was aware. The attorney claimed the YMCA should have taken greater precautions

Managing premises liability is a key element in prudent risk management by nonprofit organizations. Premises security is vital, but what constitutes "adequate security" depends on many factors, including location, clients, facility usage, and time of day. If your premises are open to the public, a facility audit by your insurance carrier or legal counsel would be prudent.

Who's in Charge Here? Lawsuit Forces an Answer

A District of Columbia appeals court says the pastor of a church can make contractual obligations on behalf of the church, based on the historical delegation of pastoral authority in the organization. The case arose when an attorney hired by the co-pastor of the Temple Church of God in Christ, Inc., sued to claim \$8,000 in legal fees owed for his services in negotiating an internal dispute between the church's board of trustees and the co-pastor. The trustees claimed they had ultimate control and had not given approval to hire the attorney. The co-pastor had unilaterally contracted for the attorney's services, but the board never objected when the attorney held himself out to the board and others as an attorney for the church. A jury ruled in the attorney's favor and held the church liable for the \$8,000 but the judge in the case set aside the verdict, saying "no reasonable juror could conclude that the pastor had either implied or apparent authority." On appeal, however, the court reversed the judge's motion and upheld the jury award, finding that ample evidence had been introduced proving the pastor

had authority to enter the contract. The presiding bishop had publicly endorsed the pastor's authority; the previous pastor maintained contractual authority; and the denomination considered pastors to be "chief executive officers of the church." *Ruffin v. Temple Church of God in Christ, Inc.*, 2000 D.C. App. LEXIS 79 (D.C. 2000).

Implied or apparent authority may be inferred from circumstances, such as a principal's conduct toward an agent, suggesting the principal approves of the agent acting on the principal's behalf. Thus, an historic pattern of authority by a senior official can give rise to implied or apparent authority. To avoid disputes like this, however, it is always preferable to define an executive's actual authority in an organization's bylaws, board policies, and employment contracts.

Sosa Foundation Hits Home Run to Beat Fraud

The foundation established by Chicago Cubs slugger, Sammy Sosa scored big last month after an intense investigation by the Florida attorney general's office turned up no indications of fraud as previously alleged by a former employee. The investigation revealed that the foundation was late in filing its 1999 tax returns and had some irregularities in management arrangements, but found no discrepancies of a fraudulent nature. The former employee alleged that Sosa used foundation funds to purchase an automobile, that Sosa's sisters operated businesses on foundation property rent-free, and that Sosa never repaid a \$1500 loan he took from the foundation to make a deposit on a rental apartment. But Sosa's lawyers provided ample evidence refuting every claim made by the former employee, the investigation concluded. However, investigators noted that the foundation president also handled Sosa's private company and managed his own personal business interests—an arrangement that could lead to conflicts. Sosa has hired an outside firm to implement better internal and financial controls.

How good are the internal controls in your organization? Take a first step toward a self audit by applying the guidelines found in the Nonprofit Alert® Memo, *Accounting & Fiduciary Guidelines for Nonprofits*. See back page to order.

Employees & Volunteers

Duty to Train Leaders Could Prevent Abuse

The Boy Scouts of America (BSA) had a duty to train their scout leaders and members about child sexual molestation, a California appeals court says. Because of that duty, the court has allowed a former boy scout's lawsuit against the organization to go before a jury trial. The former scout claims he was sexually molested by his troop leader at officially sanctioned scouting activities during a three year period. The leader admitted the incidents and was sentenced to prison. The former scout asserts that if BSA had properly trained its troop leaders and educated them about what to do in such situations,

Nonprofit Alert®

8280 Greensboro Drive, 7th Floor, McLean, VA 22102-3807
(703) 761-5000 Facsimile: (703) 761-5023
E-mail: npa@gandglaw.com

Editor-in-Chief George R. Grange, II

Editor Sarah J. Schmidt

Nonprofit Alert is published monthly by the law firm of Gammon & Grange, P.C., which represents nonprofits nationwide. References in Nonprofit Alert in no way constitute an endorsement by Nonprofit Alert or by Gammon & Grange, P.C. Nonprofit Alert is distributed with the understanding that no legal, accounting or other professional services are rendered, and no attorney/client relationship is established. If legal advice or other expert assistance is required, the services of a professional should be obtained. ©1999 Gammon & Grange, P.C..

the molestation would not have occurred. Since 1987, BSA has educated its leaders about child abuse through a video and handbook. However, the video was never shown to those in charge of this particular troop or its leader. The former scout was given a copy of the handbook, written only in English, but he belonged to a Spanish-speaking troop, and the handbook was available in Spanish. The former scout also claimed there were times when his troop leader violated the Scout's own guidelines, such as sleeping in the tent with scout members. The court refused to hold BSA directly liable for the troop leader's improper acts because those were clearly outside the scope of his role. However, the court said the molestation was foreseeable and stemmed from BSA's failure to perform its duty to reasonably train its leaders and educate its members. A jury will now decide whether BSA's conduct violated that duty. *Juarez v. Boy Scouts of America*, Ct.App., 1st App.Div., Div. Two, #A-085271 (5/12/00).

 **Effective abuse prevention policies are a must, but they must be widely communicated and consistently followed to be truly operative. Two Nonprofit Alert® Memos can help your organization develop, implement, and monitor child abuse prevention policies: *Reducing the Risk of Child Abuse and Responding to Indications of Child Abuse*. Order copies for all your leaders.**

Got a Receipt? May Not Need It for Reimbursement

The IRS has released final regulations that make permanent the increased threshold on business expenses that must be substantiated with receipts under an accountable employee reimbursement plan. Under old rules, business expenses less than \$25 didn't have to be substantiated with receipts. Temporary IRS regulations increased that amount to \$75 several years ago. Now the IRS has adopted that

amount as final, with one exception: hotel bills must still be submitted, regardless of their amount. The move represents an effort to lessen paperwork burdens for employers and employees. TD 8864, IRB 2000-7.

 **Employers aren't obligated to raise the thresholds in their own reimbursement plans; it's merely an option to lessen paperwork. Employers may set a threshold lower than \$75 or they may still require employees to submit receipts for all reimbursable expenses. Find out more with Nonprofit Alert® Memo, *Expense Reimbursement for Volunteers & Employees*. See back page to order.**

Tax-Exempt Issues

Effective Immediately: Political Loophole Closes

Under a new law which became effective last month, §527 political organizations must now file several new reports with the IRS and disclose information to the public, just like §501(c)(3) organizations. The change follows Congressional scrutiny of a loophole in the tax code that permitted §527 political groups to escape the public disclosure requirements that became effective earlier this year for all other nonprofit organizations. The new law requires political groups to file with the IRS:

- a notice of their existence within 24 hours of organizing;
- periodic reports on contributions and expenditures; and
- a modified annual tax return.

Organizations had just 30 days from the effective date of the law

NPA Highlight of the Month

Software Pirates Pay \$2.4 Million in Fines

It's the blue collar crime du jour: software piracy—and your organization may be guilty. If so, the Business Software Alliance, a nonprofit watchdog group, is cracking down. Just recently, the Alliance announced settlements totaling \$2.4 million in fines against 20 companies found in violation of software licensing agreements. Most of the violations were caused by the companies' failure to obtain enough licenses for the software applications they used. For instance, several companies were found to have unlicensed copies of Adobe, Microsoft, Symantec, and Corel products running on more computers than the companies' site licenses permitted. The settlement involved small to medium corporations in 11 states. No nonprofits were included in the crackdown, but they are not immune to piracy violations, Alliance officials insist. Lack of funds and/or a greater reliance on volunteer help make nonprofits particularly susceptible to these violations. The settlement payments will be used to fund the Alliance's anti-piracy programs. The Alliance represents leading software vendors, including Microsoft and Lotus. It investigates cases of software and network applications piracy for potential legal challenges by the vendors.

 **Sometimes, it happens innocently: a company buys new computers and loads them with all its old software without checking to see if additional licenses are required to cover the new computers. Sometimes, it happens on purpose: a company doesn't want to pay the extra cost of securing additional site licenses, so it simply copies software programs onto its unlicensed computers. In both instances, the company violates copyright laws and faces serious penalties. To minimize this risk, train staff to review all software and network licenses annually to ensure compliance.**

(July 1, 2000) to comply. Beginning this month, the IRS plans to post on the Internet a list of all organizations that have filed their initial notices of existence, including the names, addresses, emails, contact persons, and recorded custodians of each organization.

 **For info, contact the IRS at (877) 829-5500. For details about the disclosure law that covers all nonprofits, read Nonprofit Alert® Memo, Nonprofit Disclosure Rules.**

Reminders Work Great, But Won't Substantiate

The Tax Court has denied a charitable tax deduction to a woman who attempted to substantiate her weekly cash tithes with a calendar bearing the notation "church" and a dollar amount marked on every week. She also submitted two handwritten notes from fellow church members who stated that she attended church regularly. The woman claimed \$1,100 in total charitable contributions to her church during the year, but the court rejected her claim because she produced no "reliable written records" indicating the name of the church, the date the contributions were made, or the amounts. The court was not convinced that the calendar notations were made at the time of her contributions and, therefore, denied the full amount. *Aldea v. Commissioner*, T.C. Memo 2000-136 (2000).

 **Help your donors substantiate their contributions by following the tips in Nonprofit Alert® Memo, Demystifying the Receiving of Charitable Gifts.**

Ordering Information: Memos referenced in the *Nonprofit Alert* are \$20 per memo *prepaid* (\$10 for firm clients). Five or more copies of the same memo are bulk priced at \$5 each.

Subscription Information: Subscriptions to the *Nonprofit Alert* are \$75/year, \$130/two years. Additional subscriptions to the same organization are \$25 each/year. Subscriptions for 100 or more may qualify for additional bulk discounts. Send inquiries to: Editor, *Nonprofit Alert*, 8280 Greensboro Dr., 7th Floor, McLean, VA 22102-3807; (703) 761-5000; npa@gandglaw.com.

State Rules & Regs

Bingo! Nonprofits Win Big on Kansas Tax Changes

Kansas Gov. Bill Graves (R) recently signed an omnibus tax bill that significantly alters the way bingo games are taxed in the state. It eliminates the city and county sales taxes on bingo cards and tickets, and it reduces the state sales tax on bingo sales from 4.9% to 2.5%. Nonprofits were also relieved of collecting an additional "bingo tax," which previously went to local law enforcement units. The law also authorizes several new versions of instant bingo games offered by nonprofits in the state. KS Substitute HB 2013.

To Be Young Again: Reverse Age Discrimination

A Michigan court has taken the state's civil rights act a step beyond the traditional age discrimination protections and added *reverse* age protections. A 31-year old account executive was fired after her boss said her voice sounded too young on the phone. That same day, she was replaced by an older, less qualified woman. At trial, the employer argued that the Michigan statute protected only older employees, but the court disagreed. There was no reason why the statute should be limited to older employees, the court said, ruling in favor of the young account executive. *Zanni v. Medaphis Physician Serv. Corp.*, No. 206245, (4/11/00).

 **Although this worked in state court, a federal age discrimination claim would've fallen flat because the federal law only applies to individuals who are at least 40 years old. Read more in Nonprofit Alert® Memo, Avoiding Employment Discrimination in the Nonprofit Organization. See ordering instructions at left.**

Richard M. Campanelli
Stephen M. Clarke
A. ay Fitch III
James A. Gammon*
George R. Grange II
Stephen H. King
Nancy Oliver LeSourd
Timothy R. Obitts
Peter F. Rathbun
Sarah J. Schmidt
H. Robert Showers
J. Matthew Szymanski
Scott J. Ward
Michael J. Woodruff
Rebecca D. Zachritz
* of Counsel

Nonprofit Alert®

GAMMON & GRANGE, P.C.
7th Floor, 8280 Greensboro Drive, McLean, VA 22102-3807

August 2000

First Class
U.S. Postage
PAID
Laurel, MD
Permit #1290