

perspectives

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Benesch Friedlander
Coplan & Aronoff LLP

MY BENESCH MY TEAM

Trends and topics in not-for-profit management

Not-for-Profit Spotlight

ANTIOCH COLLEGE

Antioch College is a 164-year-old start-up, determined to use its reopening to build and scale a model for what the liberal arts experience can be for all students in the 21st century—not a four-year retreat from the world, but a deeper engagement with it. Originally founded in 1850, Antioch has long been an agent of disruptive change, having been the only liberal arts college in the country with a required work component for more than 100 years. The cooperative education program reflects Antioch's critical pedagogical insight that the separation of classroom learning from the world of work is artificial—a philosophy that has produced Nobel Laureates, Fulbright and Rhodes scholars, and notables in the arts, government, business and education. The words of Loren Pope, former education editor of *The New York Times* and author of *Colleges That Change Lives*, speak to Antioch's unique capability: "Antioch is in a class by itself. There is no college or university in the country that makes a more profound difference in a young person's life, or that creates more effective adults. None of the Ivies, big or small, can match Antioch's ability to produce outstanding thinkers and doers." The College, located in Yellow Springs, Ohio, is a Candidate for Accreditation with the Higher Learning Commission.

One of the most effective ways to support students and faculty at Antioch College is by contributing to the Annual Fund. Contributions to the Annual Fund make possible the unparalleled opportunity of an Antiochian education by paying for the day-to-day operations of the College—sustaining the critical foundation upon which young Antiochians learn to win victories for humanity. Click [here](#) to learn more about supporting Antioch College.

Visit www.antiochcollege.org for the latest news at Antioch College.

Not-for-Profits Are Not Immune: An Ounce of Prevention...



J. Allen Jones III

The U.S. Department of Justice and State Attorneys General continue to increase antitrust enforcement efforts to achieve laudatory goals, earn political capital or manufacture other sources of revenue. Your company, or industry, is not beyond their reach. Investigators will not be in the least deterred by not-for-profit status, and they will show no sympathy based upon the mission, purpose or service of your entity.

In the U.S., antitrust laws are designed to promote free and fair competition, prevent anti-competitive behavior, protect competition and protect consumers and small businesses. Unlawful or anticompetitive activity can

include, among other things, price fixing, bid rigging, customer allocation, product allocation, territorial allocation and group boycotts. In short, antitrust laws in the U.S. prohibit any agreements in restraint of trade, monopolizations or attempts to monopolize, unfair methods of competition, and price discrimination and discriminatory promotional allowances and services.

Penalties for antitrust violations can be very severe, and may be imposed regardless of motive or intent. Thus, the risks involved in engaging in anticompetitive behavior, knowingly or unknowingly, can include imprisonment, substantial fines, additional civil liability (plaintiffs' class action lawyers are always lying in wait), litigation costs, business losses and other tangible and intangible costs. The government's investigatory phase alone can cost your entity hundreds of thousands of dollars.

In order to protect your entity and employees from potential antitrust liability, consider the following practices, among other important considerations:

- Develop and implement an antitrust compliance program. The program does not need to be cumbersome and complex. In fact, it should be easy to understand and simple to follow.
- Always discuss with your attorney any documents that reference pricing, market allocations, and agreements or requests to refrain from dealing with a company, customer or supplier.
- If you have reason to believe that any communication may contain questionable material regarding pricing, market allocations, and agreements or requests to refrain from dealing with a company, customer or supplier, bring it to the attention of a supervisor, senior manager or attorney immediately. The failure to object to these types of communications can be used to demonstrate proof of an agreement to engage in these types of prohibited conduct. The risk of being charged with an antitrust violation increases with every communication with a competitor about prices, market shares, customer or market allocation, or similar matters—even if no action is taken.
- Avoid common "red flags," like agreements with competitors, maintaining hard copy or electronic files containing a competitor's nonpublic price and marketing information, exchanging nonpublic business information with a competitor, and trade association or group activities.
- Avoid unclear or careless statements in email communications that may be misinterpreted or construed against you in an investigation. Importantly, many antitrust actions are based not on the "smoking gun," but are cobbled together with circumstantial evidence. Strive to be very clear in any email communication regarding the purpose of the message, and avoid discussions about, among other things, your company's prices or prices charged by

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Not-for-Profits Are Not Immune:
An Ounce of Prevention...

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- competitors, costs, profit margins, terms or other sensitive information. Establish a practice of performing a “compliance review” before pressing the send button.
- Similarly, while attending trade association meetings or other group meetings (in-person or over the phone or Internet), *do not* discuss with fellow trade association members or attendees information about (1) your company’s prices for products, assets or services, or prices charged by competitors, (2) costs, discounts, terms of sale, profit margins or anything that might affect your prices, or (3) any other competitively sensitive information concerning your company or a competitor’s company.
- Never stay at any meeting or gathering if discussions are taking place regarding pricing, market allocations and agreements or requests to refrain from dealing with a company, customer or supplier.
- Seek management and/or legal approval for any special pricing, rebates and discounts, exclusive dealing arrangements or agreements to offer pricing below your variable costs.
- Provide copies of your antitrust compliance guidelines to all participants at a trade association meeting, or all employees in your company.
- Use existing personnel and training opportunities to speak to and train your employees regarding antitrust compliance. Encourage reporting and disclosure by your employees and staff members.
- Uniformly and consistently enforce violations of any antitrust compliance policy created and adopted by your company.

Careful attention to antitrust compliance, including an antitrust compliance policy, may not prevent an investigation or criminal or civil enforcement action, but it may prove to be the ounce of prevention that is worth a pound of cure.

For more information on this topic, please contact **J. Allen Jones III** at ajones@beneschlaw.com or (614) 223-9323.

Proposed Legislation Affecting Not-for-Profits



Martha J. Sweterlitsch

The 131st Ohio General Assembly is in full swing, spending most of its time on the state budget appropriation and related bills. However, a couple of bills have appeared that may be of specific interest to the not-for-profit community.

The first is **Senate Bill 86**, sponsored by Senator Randy Gardner, that would add “**quarter auctions**” to the types of gambling that charitable organizations may operate. “*Quarter auction*” means a form of bingo in which one or more prizes are won by one or more persons who have given valuable consideration for a chance to win a prize by purchasing one or more numbered bid paddles that correspond to the same numbered chip or token that is placed in a receptacle. The one or more winners of the quarter auction are determined by selecting a chip or token from the receptacle and matching the number of the selected chip or token to a numbered bid paddle held up by a person before the selection of the chip or token.

Quarter auctions would be treated under statute as a form of bingo, but would NOT require the operator to obtain a bingo or gaming license. A charitable organization is defined as an organization that is, and has received from the Internal Revenue Service a determination letter that currently is in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code; or a volunteer rescue service organization, volunteer firefighter’s organization, veteran’s organization, fraternal organization, or sporting organization that is exempt from federal income taxation under subsection 501(c)(4), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code. The organization shall have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under section 2915.08 of the Revised Code or the conducting of any game of chance permitted under statute. The bill has been referred to the Senate Finance Committee.

House Bill 65, sponsored by Representative Denise Dreihaus, and including cosponsors of both parties, would create a “**Tax Expenditure Review Committee**” to periodically review and appraise the effectiveness of tax expenditures. Tax expenditures are items that exempt or except otherwise taxable property or transactions from being taxed by the state or local government. They generally include charitable or religious property tax and sales tax exemptions along with many other examples of tax credits or deferred taxation. Newly created tax expenditures would be scheduled for review as part of the legislation creating the expenditure and existing tax expenditures would be scheduled for review by the committee. For each tax expenditure reviewed, the committee would report on the following items:

1. A statement of the purpose served by the tax expenditure.
2. An appraisal of the tax expenditure’s effectiveness in serving its purpose.
3. An evaluation of whether the tax expenditure’s purpose serves a public need.
4. An evaluation of whether other statutes have enhanced or impeded the tax expenditure’s effectiveness in serving its purpose.
5. An appraisal of whether the tax expenditure promotes economic growth and development.
6. An estimate of the amount of revenue lost each fiscal year because of the tax expenditure.
7. A recommendation as to whether the tax expenditure should be repealed.
8. Any other information the committee considers relevant.

In an appendix to its report, the committee may include a draft of a bill that would improve the tax expenditure’s effectiveness in serving its purpose; redefine the tax expenditure’s purpose to serve or better serve a public need; retain or improve the statutes that enhance, or amend or repeal statutes that impede, the tax expenditure’s effectiveness in serving its purpose; improve the tax expenditure’s effectiveness in promoting economic growth and development; reduce the amount of revenue lost as a result of the tax expenditure; or repeal the tax expenditure. The bill has been referred to the House Ways and Means Committee.

For more information on this topic, please contact **Martha J. Sweterlitsch** at msweterlitsch@beneschlaw.com or (614) 223-9367.

Tax Implications of Social Enterprise



Jessica N. Angney

Many tax-exempt organizations are moving into the realm of social enterprise as a way to increase top-line revenue. However, the tax implications of engaging in new activities must be considered before jumping in blindly.

The first question is whether the new activity fits within the tax-exempt organization's exempt purposes. The tax-exempt organization must not only consider its exempt purposes as set forth in its

Articles of Incorporation and its request for exemption filed with the Internal Revenue Service, but must also consider how it plans to operate the social enterprise. For example, the Internal Revenue Service (IRS) has held that activities are outside of an organization's exempt purposes if the activities are greater in scope and scale than is required for the organization to fulfill its exempt purposes. In general, the more the activities are operated on substantially the same scale and scope as a commercial endeavor, the less likely the IRS will consider the activity within an organization's exempt purposes. Consider the organization in Revenue Ruling 73-127, which operated a retail grocery store to sell food to residents of a poverty-stricken area and to provide training to unemployed individuals from the area. The organization hired some unemployed individuals as part of its training program, but most of the organization's employees had grocery store experience. The IRS found that the organization's grocery store activities were conducted on a scale larger than necessary for the performance of training.

If the activity does not fit within the organization's exempt purposes, the organization must consider the applicability of the dreaded unrelated business taxable income. Unrelated business taxable income is generally defined as income derived from a trade or business, regularly carried on by the tax-exempt organization, which is not substantially related to its exempt functions. A number of exceptions and modifications exist, which should be carefully considered.

We often tell our clients that unrelated business taxable income is not a terrible thing, so long as the organization understands that it will pay income tax on such income and so long as the organization is not generating too much unrelated business taxable income. If an organization's unrelated business taxable income is substantial as compared to its other gross revenue, the organization's tax-exempt status is potentially at risk. Although the exact threshold is not entirely clear, most practitioners agree that if an organization is generating unrelated business taxable income equal to or greater than 20% or more of its gross revenue, the organization is putting its tax-exempt status at risk. Hence the reason that tax-exempt organizations must carefully consider the tax effects of engaging in a new social enterprise.

For more information on this topic, please contact **Jessica N. Angney** at jangney@beneschlaw.com or (216) 363-4620.



Minds Matter
CLEVELAND CHAPTER

Benesch attorney Brent A. Shelley Elected President of Minds Matter Cleveland



Brent A. Shelley

Benesch is pleased to announce that **Brent A. Shelley**, associate in Benesch's Corporate & Securities Practice Group, has been appointed President of Minds Matter Cleveland for a three-year term. Prior to this appointment, Mr. Shelley served as Executive Vice President of Minds Matter Cleveland and continues to serve as the Director of Programming on the Executive Committee of Minds Matter National.

Minds Matter Cleveland is a 100% volunteer not-for-profit assisting high-performing high school students from low income families to achieve academic excellence and gain admission to leading colleges by providing a three-year extensive academic and mentoring program and access to competitive college summer programs. Minds Matter Cleveland is a chapter of Minds Matter National, which was founded in 1991 in New York City and has expanded to 12 cities, including Boston, Chicago, Cleveland, Denver, Los Angeles, Minneapolis/St. Paul, New York, Portland, San Francisco, Seattle and Washington, D.C. 100% of all students graduating from Minds Matter have been accepted to a four-year college or university, with Minds Matter Cleveland sending students to institutions such as Harvard University, The University of Chicago, Columbia University and Case Western Reserve University.

Minds Matter Cleveland has established itself as a leading organization in the Cleveland community since its founding in 2008. Minds Matter Cleveland students have made substantial improvements in their writing and critical thinking, math and ACT skills, with cumulative ACT score improvements averaging 44 percentile points. Currently, the organization serves over 60 students, and expects to graduate 15 seniors at the end of this school year, all of whom have received multiple four-year college acceptances. This year will also see the graduation of Minds Matter Cleveland's first class from its four-year college programs. Minds Matter Cleveland also enlists the generous services of over 200 volunteers representing over 50 companies in Northeast Ohio, who serve as mentors, tutors, instructors, writing counselors, executive team leaders and board members.

Please visit the [Minds Matter Cleveland](http://Minds Matter Cleveland website) website for more information, or contact mindsmatterofcleveland@gmail.com.

Ohio House Passes House Bill 39; Would Allow Asthma Inhalers in Schools and Camps



Rachel Winder

More than nine million children in the U.S. have asthma. According to Dr. David Stukus, Director of the Complex Asthma Clinic at Nationwide Children’s Hospital, who testified before the House Health

and Aging Committee, asthma is a leading cause of missed school, missed work for parents, emergency department visits and hospitalization. During an asthma attack, the muscles around the airways squeeze and tighten, making it difficult to breathe. This can occur suddenly, and often with little warning. Every child who has asthma should have albuterol as part of his or her treatment plan, as this provides immediate relief when unexpected symptoms occur. Albuterol begins to work within a few minutes and can last up to four hours. The earlier albuterol is used, the more effective it will be. Delayed administration of albuterol is a major contributing factor during severe and life-threatening asthma attacks. Last year, according to Dr. Stukus, two children in the Columbus, OH, community died due to an untreated asthma attack and neither of them had access to albuterol.

“Every child who has asthma should have albuterol as part of his or her treatment plan, as this provides immediate relief when unexpected symptoms occur.”

Rep. Mike Duffey (R-Worthington) introduced House Bill 39 to allow schools and camps to have asthma inhalers on hand for use in emergency situations. He testified that in some Ohio schools, as few as 25% of children known to have asthma are actually bringing their inhalers to school. Asthma is the cause of death for approximately 135 adults and 10 children in Ohio each year and results in the hospitalization of more than 585 children under the age of 18 per year—50% under age five. Specifically, Sub. H.B. 39 requires a school or a camp that elects to procure asthma inhalers to consult with a licensed prescriber and create a policy for use that includes, among other requirements, dosage, number of times an inhaler can be used, storage, replacement,

proper disposal, training of employees and reporting requirements to state agencies. The bill would allow schools and camps to purchase asthma inhalers directly from a registered wholesale distributor and provides civil immunity for acts or omissions associated with procuring, maintaining, accessing or using an inhaler under the bill, other than willful or wanton misconduct.

Substitute House Bill 39 passed the Ohio House of Representatives by a vote of 98-0 on March 18, 2015, and is now heading to the Ohio Senate for consideration.

For more information on this topic, please contact **Rachel Winder**, Government Relations Manager, at rwinder@beneschlaw.com or (614) 223-9316.

President’s Budget Proposes Change to Charitable Tax Deduction One More Time

For the seventh consecutive year, President Obama’s annual budget proposal to Congress for Fiscal Year 2016 includes a 28% cap on all itemized deductions for individuals in the top three tax brackets. It also includes a number of other proposals that would alter the application of the charitable deduction. The proposal adopts the Buffett Rule, named for its advocate, investor Warren Buffet, which would impose a minimum 30% effective tax rate on annual incomes above \$1 million. The charitable deduction would be the only tax deduction available to taxpayers subject to the Buffett Rule.

For more information on this topic, please contact **Martha J. Sweterlitsch** at mjsweterlitsch@beneschlaw.com or (614) 223-9367.

10 Ways to Lose Your Not-for-Profit Status

No. 4: Politics & Not-for-Profits—Know Your Boundaries



Cathy Paessun

Question—because I am employed by JDRF does that mean everything I say and do has to be in line with my role as a JDRF employee? The answer becomes at least a few shades of gray in today’s political environment.

As an employee, when acting in my capacity as an employee of a not-for-profit organization, I cannot make statements on political topics—except those that are in line with the approved statements from our Advocacy department. The best example is the Special Diabetes Program, currently set to expire on September 30, 2015. As an employee, and as a concerned citizen, I am encouraged by JDRF to reach out to my federally elected officials and thank them for their past support for this program. That makes clear our position on the importance of the program but does not make a direct ask for the elected official to vote a certain way.

But suppose I also felt strongly about something like legalizing marijuana at the national level. I am legally allowed to state my views, and make it clear I am not speaking in any official capacity for JDRF, but...this is where the shades of gray come in. People know me in my professional capacity and may assume a connection between my stance and JDRF policy where such a connection does not exist. If the presumed connection becomes so strong in a community that my views and JDRF are presumed linked—when they shouldn’t be—then JDRF has every right to terminate my employment. And I agreed to that in the employment contract I signed when I was hired. In situations such as this, I know to work with my Advocacy and Human Resources Departments to ensure I’m staying within the boundaries of my employment agreement.

Similarly, what about meeting with elected representatives? When does informing and educating cross the boundary to lobbying—which is forbidden for not-for-profit organizations and their employees?

The easiest way to keep these activities clearly separated is to ensure that as employees and volunteers of a not-for-profit organization, you do NOT make a specific ask of the elected official to vote a certain way on legislation.

Educate, inform, thank for past support. Stick to these three activities only and you (and your not-for-profit organization) should be fine.

About the author: Cathy Paessun is Executive Director of the Juvenile Diabetes Research Foundation (JDRF) Mid-Ohio. As an organization development professional focused on the not-for-profit sector, she works with organizations to support their goals of revenue stabilization and growth through implementation of business best practices. Ms. Paessun can be reached at cpaessun@jdrf.org or (614) 464-2873.

Tax Credit for Contributions to Community Foundations Surfaces Again in Ohio

A coalition of community foundations is once again proposing up to a \$20,000 tax credit against Ohio tax for contributions by individual donors to the endowed funds of community foundations as a way to strengthen those organizations and promote endowments that will grow and provide much-needed income to fund community programs. House Bill 128 was introduced with Representatives Sears and Amstutz as the chief sponsors. The credit pool would be capped at \$20 million and the local government and public libraries held harmless from the loss to the general fund. However, the legislation favors only accredited community foundations, which prevents faith-based foundations, United Way, private foundations or the endowed funds of any other 501(c)(3) organization from benefiting from this credit.

For more information on this topic, please contact **Martha J. Sweterlitsch** at msweterlitsch@beneschlaw.com or (614) 223-9367.

Events

The Dramatic Rewards of Donor-Centric Fundraising

The Association of Fundraising Professionals of Greater Cleveland (AFP Greater Cleveland)

Date: Thursday, April 23, 2015

Time: 7:45 A.M.–9:30 A.M.

Location: DoubleTree Cleveland East–Beachwood, 3663 Park East Drive, Beachwood, OH 44122

Donors are essential to the success of not-for-profit missions. “Donor-centric” is another way of saying “building trust.” A donor’s relationship with your organization deepens or frays based on how much trust you can create in three areas:

- Trust that donors play an essential, vital, central role in your mission’s success.
- Trust that your organization does worthwhile things with donor gifts.
- Trust that your organization conducts its operations efficiently.

John T. Petures Jr., President and CEO, Akron Community Foundation, and his team, Margaret Medzie, Vice President, Development & Donor Engagement, and John Garofalo, Vice President, Community Investment, will explain how to maximize limited resources and enhance your organization’s brand by focusing on your donors. They will share how they developed and implemented a donor-centric approach to raising funds for the Akron Community Foundation. They will also share tips on how to rally donors, your board and community leaders to support your mission.

1.0 Continuing Education points have been approved by CFRE International

Registration: Member—\$25 early bird, \$30 after April 9, 2015
Nonmember—\$42.50

Visit the [AFP Greater Cleveland](#) for more details and registration information.

AFP Central Ohio Monthly Education Program

Date: April 14, 2015

Location: LifeCare Alliance, LA Catering and Event Center, 670 Harmon Ave, Columbus, Ohio 43223

Pre-Lunch Program - The Realities of Consulting RFPs

Open to AFP Members and their CEOs, EDs and Board members only.

Time: 10:45 A.M.–11:00 A.M. | Registration for Pre-Lunch Program
11:00 A.M.–11:45 A.M. | “The Realities of Consulting RFPs”

Putting together a request for proposals (RFP) for consulting services can be a daunting task. And, the elements in an RFP can be different depending upon whether you are looking to build capacity, launch a special event or write grants. Our panelists will share best practices and price realities, and answer your questions.

Lunch Program – Need A Consultant? Now What?

Open to Members and Guests

Time: 11:30 A.M.–12:00 P.M. | Registration for Lunch Program
12:00 P.M.–1:15 P.M. | “Need A Consultant? Now What?”

If not now then at some point in your career it may be time to plan for a capital campaign, reorganize the development office, find a retreat facilitator or upgrade your donor database. You need outside help, and the stakes are high. In this session, hear tips for selecting a consulting partner, defining accountability and managing the relationship. You’ll hear candid, insider insights from a leading consultant. A panel of senior development officers will tell of their experiences with a variety of consulting relationships.

For more detailed information, visit the Education Programs page of the [AFP Central Ohio Chapter website](#).

The RSVP Deadline is Thursday, April 9.

Click [here](#) to register.

Events (continued)

Planning a Social Enterprise and Building Your Business Model

Date: April 16, 2015

Time: 7:30 A.M.–5:00 P.M.

Location: L Brands, 5 Limited Parkway, Reynoldsburg, OH 43068

You're a leader in a not-for-profit organization. You have a great idea for a new venture that will earn extra revenue and support your mission. Now what?

Now it's time to roll up your sleeves and get to work!

Join the Center for Social Enterprise Development on April 16 to learn how to start shaping your idea into a successful social enterprise. You'll spend the whole day elbow-to-elbow with your peers, working your way through the critical segments of planning for a successful, sustainable social enterprise. They will provide the tools, the templates, the hands-on learning, the individualized coaching and the information you need to start molding your raw idea into shape.

This all-day program prepares you to develop a social enterprise to create social impact while earning positive net revenues and provides practice in refining the business model for your social enterprise. You will find the program especially productive if you attend with a project team that is committed to exploring a social enterprise idea for your organization.

For more detailed information and to register, click [here](#).

Annual Giving Today

**Presented by Chrystal Struben, President and CEO, AYS, Inc.
AFP IN, Indiana Chapter: AFP-IC Luncheon Program**

Date: April 15, 2015

Time: 11:30 A.M. | Registration and Lunch Open
12:00 P.M.–1:15 P.M. | Program

Annual giving is the cornerstone to any successful fundraising program. In this session, we will explore the changing dynamics of annual giving, discuss best practices and talk about results. Attendees should come prepared to share successes and lessons in this interactive discussion.

Chrystal Struben currently serves as president/CEO for AYS, Inc., a not-for-profit organization operating before- and after-school, early childhood and summer programs across central Indiana that serve over 2,000 children each year. As a not-for-profit executive for more than 15 years, she has honed her craft as a fundraising and marketing professional while increasing her effectiveness as a leader. She has dedicated her career and volunteer work to youth-and-family-serving organizations and is passionate about family and children's issues.

Cost: \$30 AFP Members; \$60 Nonmembers

For more information and registration click [here](#).

Benesch's Not-for-Profit Team assists not-for-profit and tax-exempt clients in a broad array of matters, ranging from filing for nonprofit status and preparing federal and state tax exemption applications to training in not-for-profit regulatory compliance. Our not-for-profit attorneys are committed to protecting our clients' assets so that they can continue to drive the missions and goals of their organizations.

For more information regarding this edition or any not-for-profit issues, please contact:

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