

Ohio Attorney General's Nonprofit News

Protecting the Integrity of Nonprofits



Fall 2016

Charitable Giving Hit Record High Last Year

Americans gave an estimated \$373.25 billion to charitable organizations last year, setting a record for the second year in a row, according to Giving USA's [Annual Report on Philanthropy](#), which tracks giving from individuals, foundations, and corporations.

Giving USA Foundation reported a 4.1 percent growth in giving from 2014 to 2015. The largest share of charitable gifts came from individuals and totaled \$264.58 billion. Gifts from all sources increased over the year, although giving by individuals accounted for two-thirds of the growth. Growth of 6.5 percent was seen in giving by foundations which have seen growth in their assets in the recent period.

The report is used by charities throughout the country as an indicator for gauging future giving prospects. It concludes that the growth in giving in the past two years signals that the economic recovery from the recessionary period continues and that household finances have stabilized. The report also notes that charitable giving grew at a higher rate than gross domestic product growth, showcasing American generosity.

Charities aren't exempt from fraud

While charitable giving reaches highs, fraud also continues to affect charities, according to the Association of Certified Fraud Examiners' annual report on occupational fraud and abuse. The report concluded that charities or businesses may lose five percent of their revenues annually as a result of fraud.

In its 2016 "[Report to the Nations on Occupational Fraud](#)," the association concluded that billing schemes and check tampering schemes posed the greatest risk to organizations. Not surprisingly, the median loss from those schemes increased the longer the fraud lasted. The median duration of frauds included in the study lasted 18 months. The most common concealment methods were creating and altering physical documents.

The most common detection method in the study was tips from others. Small organizations had lower rates of implementation of anti-fraud controls and suffered the same median loss from fraud as larger organizations. But these losses have a greater impact on small organizations.

In charitable organizations, the frequency of loss from billing schemes, fraudulent expense reimbursements, and check tampering were much higher than average compared to all industries.

These findings underscore the importance of appropriate board governance activities within charities. The Ohio Attorney General's "[Avoiding Theft in Your Nonprofit](#)" publication includes a number of suggested procedures and policies aimed at preventing fraud within charities.

Three Federal Issues to Watch

There are several issues that have been moving on the federal front that deserve attention from charitable leaders.

- **Federal overtime rules.** A major issue of concern for some charities is whether new U.S. Department of Labor standards on overtime pay affect their employees. The changes, which take effect December 1, 2016, update the salary levels for white-collar workers who are exempt from overtime pay requirements. The change raises that level from \$23,660 a year to \$47,476 annually. Workers paid below those levels are deemed to be eligible for overtime pay for employers that are covered by the Fair Labor Standards Act. The Department of Labor has created a [publication for nonprofit organizations](#) about these changes. Visit the department's website to find additional information about which kinds of organizations and employees that are affected by the change.
- **Fees to seek tax-exempt status.** The Internal Revenue Service (IRS) has lowered the fee for organizations seeking tax-exempt status under the new Form 1023-EZ procedures. Organizations seeking tax-exempt recognition that have assets of less than \$250,000 and receipts of less than \$50,000 are eligible for the shortened process. The fee was previously \$400 and now will be \$275. The fees must be paid online by credit or debit card, or directly from a bank account.
- **Political activity restrictions.** During this campaign season, it is critical that leaders of 501(c)(3) organizations remain mindful of the restrictions against political activities, including endorsements and contributions to candidates' campaigns. Inappropriate political activities can result in revocation of a group's tax-exempt status. The prohibited activities do not include preclude charitable organizations from engaging in lobbying or attempting to influence legislation, as long as those activities are insubstantial in relation to their exempt purpose activities. [Additional information](#) about the permissible and impermissible political and lobbying activities of charities can be found on the IRS website.

Enforcement Actions Protect Donors and Charities

Ohio Attorney General Mike DeWine's Charitable Law Section investigates charitable fraud and pursues enforcement action to help recover misused charitable funds, stop fraudulent activity, and protect donors and charities.

Recent enforcement actions include:

- **Gem City Rottie Rescue** and its board president Karen Stephens were ordered to turn over proceeds, pay civil penalties, and stop soliciting for charitable purposes in Ohio, according to a default judgment granted in August in the Franklin County Common Pleas Court. The Attorney General filed a lawsuit in May 2016 after the organization failed to register according to Ohio law despite multiple attempts by the Attorney General's Office to bring it into compliance.
- **Cakes by Brian Foundation** and its operator Brian Foley agreed to dissolve the organization according to a June 2016 Assurance of Discontinuance. Investigators determined that Foley failed to keep proper records and failed to prove that all donations were used for the solicited purposes.

Foley had solicited donations on Facebook and in public places, allegedly using the names or images of a child or a charity without permission. Under the assurance, Foley agreed not to hold a position with a charitable organization in Ohio for five years and to pay \$1,500 to the Ohio Attorney General's Office.

- **Brian D. McElroy** entered into an Assurance of Discontinuance, agreeing not to incorporate a nonprofit in Ohio and not to work as an officer, trustee, or employee of a charity in Ohio. McElroy was the former president of Elgin Youth Football, a youth sports organization that has since been reorganized. An investigation determined that McElroy used charitable funds for personal expenses, and he pleaded guilty to theft in 2014. The Assurance of Discontinuance includes injunctive relief that bars McElroy from holding positions with charities in Ohio.
- **KWH Promotions Inc.**, a professional solicitor based in Elkhart, Indiana, agreed not to solicit for any charitable purpose in Ohio according to a May 2016 Assurance of Discontinuance. The assurance resolved allegations that KWH had solicited in Ohio without first filing the appropriate notice with the Ohio Attorney General's Office. KWH denied any wrongdoing but agreed to settle through the assurance.

Charitable enforcement actions can help redirect misused funds to their original purpose. For example, in early August Attorney General DeWine announced that his office had awarded a \$50,000 grant to the Ohio Military Veterans Legal Assistance Project (OMVLAP), which arranges legal services for low-income Ohio military veterans and active service members who cannot afford an attorney.

The grant funding was awarded in part from funds seized from the former veterans' charity scam artist known as Bobby Thompson, or John Donald Cody, who ran a scam charity called the U.S. Navy Veterans Association. Cody solicited funds nationwide but pocketed as much as \$2 million in proceeds. A fugitive of the law, he was arrested in 2012 in Portland, Ore. He was convicted in 2013 on 23 charges and sentenced to 28 years in prison. Money seized during Thompson's arrest was awarded to the Ohio Attorney General's Office for distribution to legitimate veterans charities.

Questionable charitable activity can be reported to the Ohio Attorney General's Office at www.OhioAttorneyGeneral.gov or 800-282-0515.

Searching for Donors to 'Children and Family Services Inc.'

Donors who contributed to a telemarketing operation called Children and Family Services Inc. (among other names) are urged to contact the U.S. Attorney's Office for the Northern District of Florida. A Florida man will be sentenced in September for running the scheme.

Gary R. Tomez was found guilty of conspiracy to commit mail and wire fraud and mail fraud following a jury trial in May. The Ohio Attorney General's Office cooperated with the U.S. Attorney's Office in the case.

Between December 2008 and May 2012, Tomez ran Children and Family Services Inc. (later called Children's Charitable Services Inc.), a telemarketing company that solicited charitable donations via telemarketing calls to donors in Alabama, Arkansas, Florida, Indiana, Mississippi, Ohio, and Tennessee. Tomez instructed his employees to tell donors that the solicitors were volunteers, that 100 percent of donations would go to the charity, and that all raised funds helped children in the state where the donor lived. However, investigators found that less than 10 percent of the over \$2 million received in charitable

donations went to charitable causes. The rest went to pay employee salaries, business expenses, and Tomey's personal expenses.

Consumers may have been affected by the scheme if they donated to any of following:

- Children and Family Services Inc.;
- Children's Charitable Services Inc.;
- Ohio Children Services;
- Alabama Children Services, or Alabama Children and Family Services;
- Arkansas Children and Family Services;
- Florida Children and Family Services;
- Indiana Children Services, or Indiana Children and Family Services;
- Mississippi Children Services Inc., or Mississippi Children and Family Services;
- Tennessee Children and Family Services; or
- Youth Achievement League Inc.

Donors who may have contributed to these organizations are encouraged to contact Victim/Witness Specialist Gretchen Busbee at the U.S. Attorney's Office in Florida at 850-444-4000 or at Gretchen.Busbee@usdoj.gov.