

## TRADE ASSOCIATIONS

### OVERVIEW

Trade Associations, Business Leagues, and Professional Associations have unique legal needs to fulfill their missions of advancing the interests of their industries and their members. BCLP lawyers understand the unique organizational, commercial, transactional, and public policy needs of Associations. We have extensive experience representing Associations at both the national and state levels, and routinely provide value-added advice and counsel to assist Associations in fulfilling their missions.

#### **Service as Outside General Counsel**

BCLP's attorneys serve as outside general counsel for numerous first-tier Associations. In such capacity, we work closely with the directors, officers and the staff of Associations to effectively service all of the legal needs of the Association, as well as to pro-actively identify potential legal issues or concerns which the Board and management should consider.

In our role as outside general counsel, we routinely attend board of directors and executive committee meetings, advise internal management, prepare minutes and meeting materials, counsel Associations on key policies and corporate governance issues, and manage the commercial and transactional needs of Associations.

We have a proven track record of seamlessly integrating the legal services of numerous legal areas (corporate governance, non-profit tax, applicable government regulations, intellectual property, anti-trust, contracts, transactions, government relations, lobbying, etc.) to provide for all of the legal needs of our Association clients.

#### **Organization and Formation**

Associations have organizational concerns that are significantly different than for-profit or other non-profit entities. In challenging economic times, successful Associations are becoming more creative in structuring their membership categories, as well as their internal staffing in order to maximize the impact of dues and other revenues. The operational efficiency of an Association often depends upon how well the internal committees and groups are organized, as well as the level of oversight that is provided for the important corporate governance and operational policies (including antitrust oversight, human resources policies, other key operational policies).

We lead our clients through various strategies to assure that the Association's organizational structure matches and aligns the needs of the Association and its members.

In the formation area, we routinely prepare, create, and advise Association clients on articles of incorporation, bylaws, committee charters, organizational minutes, Form 990 required policies, and other similar matters.

## **Corporate Governance and Liability Limitation**

As non-profit or tax-exempt organizations, Associations have unique corporate governance requirements that must be appropriately documented and maintained.

BCLP regularly assists Association clients in creating policies, guidelines and procedures in order to ensure their compliance with corporate law, Internal Revenue Service requirements, and non-profit best practices. BCLP's attorneys know that a properly structured corporate governance framework must be tailored to the culture of the Association in order to assist the client with

Such policies and procedures often include: membership classifications, committee and voting policies; Executive Compensation Policies; Antitrust policies; Conflicts of Interests policies; Whistleblower policies; Record Retention policies; and other compliance policies.

In today's litigious world, many business leaders are strongly focusing on the potential for liability created by serving upon non-profit boards of directors. Our lawyers provide guidance on D&O insurance nuances; indemnification agreements, and exculpation of liability in charters. BCLP's lawyers have also been successful in helping many of our Association clients to address these concerns by crafting corporate governance policies that simultaneously limit the size of the statutorily-defined board of directors while still providing meaningful input for members.

## **Merger and Acquisition Transactions and For-Profit Subsidiaries**

Associations, like their member and other stakeholder companies, are becoming more sophisticated in their approach to business operations and financial management, participating more often in business transactions and interacting more often with for-profit organizations. BCLP provides comprehensive support through attorneys experienced in corporate transactions, commercial contracting, and joint venture arrangements.

BCLP's trade association attorneys have extensive experience in negotiating trade show, convention, and exposition contracts with convention centers, hotels, and service providers, including with the largest exposition spaces in the country (e.g., the McCormick Center in Chicago, the Orlando Convention Center, the Las Vegas Convention Center, etc.).

In such transactional matters, the Tax-Exempt Team provides invaluable input and counsel on IRS and State tax code requirements in order to avoid issues of private inurement, private benefit, services to members, and similar qualification or exemption issues.

Transactions undertaken for Association clients include: mergers of non-profit Associations; formation of subsidiaries (both for-profit and non-profit); strategic partnerships; collaboration agreements; leases; asset acquisitions; commercial contracts and forms; executive employment agreements; and other major transactions.

## **Public Policy**

BCLP represents Association clients at the federal, state and local level before regulators, legislators, and government bodies. BCLP regularly assist clients with Federal Election Commission (FEC) compliance matters, including advising on the formation, reporting, and management of Political Action Committees (PACs). In such capacity, we routinely advise Association clients on PAC formation issues and bylaws, solicitation procedures, contribution restrictions, reporting requirements, distribution limits, and other requirements.

## **Standard Setting**

Many Associations engage in formal or informal standard setting on behalf of their industry or member groups. BCLP's attorneys regularly advise our Association clients on the complex procedural and regulatory issues surrounding standard setting. We understand the sensitive nature of such collective conduct, including but not limited to the need for gaining appropriately broad industry input, providing due process, ensuring procompetitive and efficient standards are sought, protecting against undue restrictions to competition, and communicating of such standards once established. BCLP's attorneys possess the necessary experience to help Associations safely navigate the antitrust and anticompetitive regulations promulgated, interpreted and overseen by the Department of Justice (DOJ), Federal Trade Commission (FTC), and other regulatory bodies. BCLP has also represented international Associations and standard setting organizations in proscribing settings for their industries.

## **Tax and Compliance Issues**

With the input of our non-profit tax attorneys, we assist many Associations in key tax issues, including analysis as to whether the association performed any particular services for the convenience of its members and application of the unrelated business income tax rules.

## **Representative Association Clients**

Associations which we currently represent or in the past have represented include:

AORN (Association of periOperative Registered Nurses)

Alternative Investment Forum

America's Natural Gas Alliance

American Association of Orthodontists

American Consulting Engineers

American Institute of Physics

American-Kuwaiti Alliance

American Society for Transplantation

American Soybean Association

Association of Christian Schools International

Automobile Club of Missouri

Christian Bookseller Association

Christian Leadership Alliance

Coca-Cola Bottler's Association

Congress of Neurological Surgeons

Council for Christian Colleges and Universities

DVD Copy Control Association

Evangelical Council for Financial Accountability

Greater Kansas City Chamber of Commerce

Heavy Vehicle Electronic License Plate, Inc. (HELP)

International AIDS/HIV Alliance

International Association of Administrative Professionals

Missouri Biotechnology Association

Mortgage Bankers Association

National Association of Home Builders

National Association of Insurance Commissioners

National Collegiate Athletic Association (NCAA)

National Multifamily Housing Council

The Endocrine Society

United States Telecom Association

Visiting Nurse Association

World Anti-Doping Agency

World Association of Lebanese Neurosurgeons

## **RELATED PRACTICE AREAS**

- Tax & Private Client
- Business & Commercial Disputes
- White Collar
- Public Policy & Government Affairs