

**BUSINESS LEAGUES AND TRADE ASSOCIATIONS:  
OVERVIEW OF STATE ASSOCIATIONS IN TEXAS**

**RICHARD W. MEYER**  
Attorney at Law  
Austin, Texas  
rmeyer@justice.com  
www.nonprofitlawandpolicy.com

State Bar of Texas  
**GOVERNANCE OF NONPROFIT ORGANIZATIONS**  
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**Chapter 3**

## **RICHARD W. MEYER**

Attorney at Law

P. O. Box 50041

Austin, Texas 78763

(512) 451-3000

[rmeyer@justice.com](mailto:rmeyer@justice.com)

[www.nonprofitlawandpolicy.com](http://www.nonprofitlawandpolicy.com)

**Richard W. Meyer** is an attorney practicing in Austin, Texas, with more than 30 years' experience with state associations, nonprofit organizations, foundations and quasi-governmental entities. His background is in business ventures and investments, government agency operations and contracting, and legislative matters. He was the Course Director for the 2015 State Bar Governance of Nonprofit Organizations CLE course and has been a frequent speaker, lecturer and conference participant nationwide.

As former Board Chair and Counsel for the Texas Association of Nonprofit Organizations (TANO), he monitored pending legislation involving the interests of nonprofit entities in the Texas Legislature and U.S. Congress. Rick serves as counsel for large nonprofit enterprises that contract with government entities for goods and services, and he advises association boards on regulatory, legislative and compliance matters.

He represented state agencies in federal courts across the nation while with the Law Enforcement Division of the Texas Attorney General's Office (1981-85) and served as a special investigator in nonprofit organization matters. Always involved in historic preservation efforts, he was counsel for the Texas Historical Commission (1981-85), was the first counsel for the State Preservation Board (which restored and enlarged the State Capitol), was the first counsel for the highly-successful Texas Main Street Program, was a founder of Preservation Texas (a statewide advocacy organization), and served as chair of the Austin City Historic Landmark Commission for six years and vice chair of the Austin Downtown Commission. He has founded and served on the boards of numerous nonprofit and faith-based organizations, has lectured and written articles for nonprofit managers and for legal and accounting continuing education seminars, and was an advisor in the M.B.A. program at St. Edward's University of Austin for graduate student consulting projects. He practiced in Los Angeles from 1975 to 1981.

Rick is a graduate of the University of Texas School of Architecture (1970) and the School of Law (1974), and is a lifelong supporter of UT Austin including active participation in the Texas Exes, Chancellor's Council, Friar Society, various fundraising and mentoring initiatives, the University PAC and the annual legislative lobbying day.

He is admitted to practice in Texas and California, has served as an arbitrator, and is a Texas registered lobbyist. Telephone: (512) 451-3000; e-mail: [rmeyer@justice.com](mailto:rmeyer@justice.com).

# OVERVIEW OF STATE ASSOCIATIONS IN TEXAS

Richard W. Meyer  
Attorney at Law  
Austin, Texas

State Bar of Texas  
16<sup>th</sup> Annual Governance of Nonprofit Organizations Course  
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### I. INTRODUCTION

Attorneys, accountants and other professionals may encounter state associations and trade associations only infrequently. In Austin and other Texas metro areas they are a significant factor in the economic sector and in advancing their members' interests, social change, public policy and legislative initiatives.

Virtually every adult Texan is connected directly or indirectly to a nonprofit "association" or statewide organization that reflects the person's interests, profession or social relationships.

Individuals and local organizations are usually affiliated with a statewide association that, in turn, may be affiliated with a national association or federation of considerable standing and influence. Local "chapters" may or may not be separately incorporated.

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## II. OVERVIEW OF THE ASSOCIATION SECTOR IN TEXAS

- 65,000+ Section 501(c)(3) public charities
- 5,700 Section 501(c)(3) private / public foundations
- 22,000 Other Section 501(c) nonprofit organizations
- \_\_\_\_\_ Section 501(c)(6) associations Independent Sector
- Employment of more than 433,000 people
- \$16.8 billion in wages annually
- \$114 billion in annual revenues

Texas Society of Association Executives (TSAE) 2013 data from economic impact study by CliftonLarsonAllen

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## STATE ASSOCIATIONS IN TEXAS

- 1,857 state associations with revenues greater than \$200,000/year
- Employ 21,000+ individuals with millions of volunteer and leadership hours contributed
- Two-thirds of Texans are directly or indirectly supporting associations (and may not realize it)
- Two-thirds of all major associations have their main office in Austin or the DFW metro area

TSAE 2013 Data

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## PROFILE OF STATEWIDE ASSOCIATIONS

### Tax-exempt status:

- 501(c)(6) - 50 %
- 501(c)(3) - 28 %
- 501(c)(4) - 2 %
- 501(c)(5) - 17 %

40% of associations have an affiliated or partner nonprofit

### Associations with an affiliated (c)(3) charitable nonprofit:

- Revenues > \$5 million annually - 79 %
- Revenues \$1-\$5 million annually - 44 %
- Revenues < \$1 million - 24 %

TSAE 2013 data

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## BUSINESS MODEL OF STATE ASSOCIATIONS

Program-generated revenues and member dues:

- Member dues = 50% overall revenues
- Member services (training, professional development)
- Conference, meeting and event management
- Trade or professional credentialing programs
- Business partnerships, product endorsements, "affinity" programs

7-8 million attendees at association events generating \$5.8 billion in annual economic activity (2013)

Associations have to deliver a value proposition for their members and business partners

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## III. CURRENT ISSUES

What does *member* or *membership* really mean?

- Board-governed or member-governed?  
In certificate of formation, bylaws, Bus.Orgs.Code
- If member-governed, clearly define who is a member
- Membership classes, associate (non-voting) members
- Criteria and policies for approving and renewing memberships, removal of members, "alumni" members
- Timely payment of dues or assessments
- Who attends and votes for an entity member? Proxies
- Who can attend meetings, conferences and events?
- Access rights to the association's books and records
- Managing disputes or public controversies

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CURRENT ISSUES

## RISK MANAGEMENT

- Cyber-security and protection of data, records and I.P.
- Training to avoid sexual harassment and discrimination claims
- Volunteer training, liability and background checks
- Event entry and participation restrictions (RFID badges, wristbands, mobile phone pass)
- Event facility security; active shooter scenarios
- Special event or alcoholic beverage liability and special insurance coverage
- Best practices should always be observed

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**AN ASSOCIATION'S AFFILIATED CHARITABLE ORGANIZATION**

- The attraction of a Section 501(c)(3) charity or foundation
- Why?: additional support from members; affiliated groups or businesses; deductibility of contributions; scholarships; receipt of government or foundation grants
- Governance and separation issues
- Movement of funds, accounting and disclosures
- Clear disclosures to members

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**STANDARDS, MEMBER EDUCATION AND CREDENTIALING**

- Credentialing programs: continuing education; certificates; certifications; accreditation; registration; licenses (state licensing authorities are involved)
- Professional standards; ethical practices; voluntary self-regulation; uniform business practices
- Product, process or service standards (ISO)
- Technological advances and skills specialization have generated new titles and credentialing terms (undefined)
- Legal risks: antitrust; warranty; negligence; due process; defamation; disability (ADA) accommodations
- Consider a separate legal entity for credentialing

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**POLICY INITIATIVES, ADVOCACY & LOBBYING**

An association's place on the "advocacy spectrum":

- Common interests of the members - mission
- Public policy positions, messaging, strategic plans
- Advocacy – local, statewide and national
- Joining alliances led by others  
\* \* \* \* \*
- Lobbying – local and legislature
- Statewide or local ballot initiatives
- Candidate campaigns; *Citizens United* decision
- Political action committees – state or federal regulations
- National association's federal advocacy activities

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**COMMERCIAL PARTNERSHIPS AND ENDORSED PRODUCTS OR SERVICES**

- *Cause-related marketing* – an alliance with a for-profit entity to use the association's name or logo on products or messaging, with a "donation" to the association
- *Corporate partnerships* – association licenses its name or logo for use with products or services offered by a commercial "partner"; affinity programs and products
- *Member benefits plans* – associations offer an array of services such as health insurance plans, group discounts, financial and retirement advice
- *UBTI* – consider unrelated business taxable income when planning commercial partnerships

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**ANTITRUST COMPLIANCE ISSUES**

*A business or trade association is, by definition, a combination of competitors*

- Include antitrust compliance in bylaws and policies
- Avoid words with antitrust implications: *restrict, limit, regulate, fix, market, allocate, ban, profits, territory, enforce*
- Admonitions to members regarding discussions at meetings, conferences and events
- Leadership and member sensitivity to antitrust issues
- Contents of meeting minutes and external messaging

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**IV. Q & A**

**Question:** A member's association dues or fees may be paid directly or indirectly by a public entity, government agency or quasi-public entity. Problem?

**Question:** What are common "triggers" for a serious dispute among the members of a large association?

**Question:** What are some signals for a "tipping point" of programs or activities that may jeopardize the organization's tax-exempt status?

**Question:** When is an unincorporated nonprofit association a useful alternative? (Tex. Bus. Org. Code, Chap. 252)

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**V. REFERENCES AND RESOURCES**  
*Antitrust and Associations Handbook*, American Bar Association (2009)  
*ASAE Handbook of Professional Practices in Association Management*,  
 by John B. Cox and Susan S. Radwan, Jossey-Bass (3<sup>rd</sup> ed., 2015)  
*Association Law Handbook*, by Jerald A. Jacobs, Association  
 Management Press (5<sup>th</sup> ed., 2012)  
 International Standards Organization (ISO), [www.iso.org](http://www.iso.org) (standards)  
*Texas Associations Matter: An Economic Force*, Texas Society of  
 Association Executives study by CliftonLarsonAllen (2013)  
 Tex. Bus. Org. Code, Section 22.151 *et seq.* (members)  
 U. S. Department of Labor, *Certificate Finder*, [www.careeronestop.org](http://www.careeronestop.org)

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**YOUR COMMENTS WELCOME:**

**RICHARD W. MEYER**  
 Attorney at Law  
 P.O. Box 50041  
 Austin, Texas 78763  
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[rmeyer@justice.com](mailto:rmeyer@justice.com) [www.nonprofitlawandpolicy.com](http://www.nonprofitlawandpolicy.com)

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