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**Advancing the Common Good in the
Texas Legislative Process**

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ADVANCING THE COMMON GOOD IN THE TEXAS LEGISLATIVE PROCESS

Do nonprofits have a special role and status in public affairs?

By Richard W. Meyer

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INTRODUCTION:

Nonprofit tax-exempt charities, trade and professional associations, religious and faith-based organizations, and activist advocacy groups appear increasingly as active players in the public forum and in the political and legislative process. Each advocates for its mission and stakeholders and, expressly or not, claims to represent the higher purpose of its mission and activities to advance and benefit the common good. In return for these perceived benefits to the society at large, these tax-exempt groups receive substantial benefits and variances from government regulation and taxation at every level.

Some would question whether these groups are really not much different from other special interest groups that also compete and advocate in the civic forum and marketplace. Do nonprofits really calm and elevate the public debate by advocating for noble causes and the improvement of society? Does the impact of their activities truly justify a privileged “cost” to government in tax revenues not collected or regulatory exceptions not granted to other interest groups, businesses and persons?

The “common good” to be advanced by persons and groups is a concept going back to Aristototle’s observations on the virtues and shortcomings of the Greek city-states (...*governments which have a regard for the common interest are constituted in accordance with strict principles of justice and are therefore true forms....*). Benjamin Franklin also left us wise admonitions about virtuous civic involvement (*Well done is better than well said.*). And add Will Rogers’ pointed observations about the shortcomings of public high-mindedness (*There’s no trick to being a humorist when you have the whole government working for you.*). The idea of the common good implies beneficial outcomes such as justice, security and freedom from want achieved through positive citizenship, collective action and active participation in the public forum free of self-interest. (*Encyclopedia Britannica Online, <https://www.britannica.com/topic/common-good>*).

QUESTION PRESENTED:

Aside from the noble aspirations commonly attributed to well-intentioned tax-exempt nonprofit groups, how are they actually perceived when their interests are the subject of specific legislation in the Texas legislative session, in proposed rules promulgated by state agencies, or involvement in a contested campaign or ballot initiative? In these situations, these groups

become actors in a public, competitive and often hostile environment where the meek are often left behind. There can be criticism of their interests, motives and message. When they compete for the public dollar in the legislative appropriations process, are they any different from any other special interest group or person who believes that dollar should be theirs?

REALITY CHECK: A sampling of 15 years of Texas legislation affecting nonprofits from www.nonprofitlawandpolicy.com

Note: In the following, **HB** refers to a House Bill and **SB** a Senate Bill in the legislative session indicated. Bill numbers are in **BOLD**, and passed bills are **underlined and BOLD** (example: **SB 378**).

1. Tax-exempt status of nonprofits is considered a “cost” to state government

The total value of longstanding exemptions enjoyed by nonprofit entities from the state’s property taxes, business revenues taxes, sales and other fees continues to increase. To state budget analysts, legislators and critics, these uncollected taxes are a cost to state government in that they represent revenues that could be collected if taxing schemes were applied without exemptions or waivers. What is this “cost”? The State Comptroller’s most recent report, entitled *Tax Exemptions and Tax Incidence* (March 2017), reported to legislators that approximately \$55.5 billion in potential state tax revenue is bypassed due to previously enacted exemptions, waivers and preferences granted to commercial businesses, nonprofit organizations and quasi-governmental entities. In the past, legislators taking the long view of the state’s fiscal health have filed the following bills to examine and evaluate tax exemptions and the policies behind them—all of which should be of concern to the nonprofit sector as beneficiaries of these policies:

- **HB 1003** (84th Legislature, 2015) would have required the periodic “sunset” or automatic repeal of all state tax exemptions, credits or other exceptions unless re-authorized by the legislature after a review of the costs and benefits to the state. This bill got attention because it was the subject of a hearing by the House Ways and Means Committee, meaning the idea is gaining support.
- **SB 868** and **SJR 38** (84th Legislature, 2015) would have granted the legislature broad authority to review all state and local tax exemptions and preferences. All such breaks in the Tax Code would have had a six-year shelf life unless re-authorized by legislation.
- **HB 3201** (82nd Legislature, 2011) would have granted the Sunset Advisory Commission authority to periodically review all exemptions under the state’s tax laws, which would lapse (“sunset”) unless re-authorized by the legislature.
- In every session there are numerous bills to expand or clarify nonprofits’ property tax exemptions under §11.18, Tex. Tax Code. The regular additions to §11.18 grow longer and longer and are often “local” bills addressing a specific situation or unpopular ruling by a local tax appraisal board or court. At some point this invites a holistic review of the significant tax revenues bypassed by state and local government and a critical look at the vast real estate holdings of nonprofits and whether they advance a charitable purpose.
- **HB 440** (83rd Legislature, 2013) would have required a religious organization to file with its local appraisal district a public annual report of its tax-exempt real property holdings, the its current use, and the income derived from each parcel.

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