Associations represent the interests of professionals and industry members. They facilitate meetings and promote communication among competitors. There is potential for actions that may be “anticompetitive.” Association professionals and leaders should be observant of antitrust risk and association activities. Be sure to consult with legal counsel.

Precautions
Organizations can minimize their risk of violating antitrust laws with these steps:

- An antitrust policy statement should be included in the association’s documents, used at board meetings and discussed at an annual leadership orientation.
- At least annually the leadership should receive a copy of the antitrust policy statement; have it signed and dated. The association and/or the individuals should keep a copy.
- Leadership orientation should include a review of topics that should not be discussed at association meetings. These topics may include membership expansion and denial of services, setting prices, defining territories, boycotting a supplier, setting standards, inventorizing and collecting data, and other issues particular to the trade or profession.
- Minutes should be drafted so as not to include comments that may lead to antitrust violations; and then reviewed before they are distributed and approved.
- Publications of the association should be monitored for items that may be perceived or actual antitrust violations. Writers, contributors, and staff should be able to recognize items that may trigger antitrust concerns.
- Membership standards of acceptance and delivery of services should be consistent. Any deviation from consistent delivery of services, or expulsion from membership, should be considered for antitrust implications.
- At meetings, agendas should be carefully set and followed to avoid side bar discussions of potential antitrust violations.

Severe Penalties
The government takes violations of the antitrust laws very seriously. Conspiring to fix prices, for instance, is a felony with a potential fine of $10 million for organizations and $350,000 for individuals, plus prison time and damages.

The Antitrust
Statutes
- The Sherman Act – 1890
- The Federal Trade
Committee Act – 1914
- The Clayton Act – 1914
- Individual State Laws

Opportunity for Violations
Members may not realize they are joining in antitrust violations as they participate in activities. Consider these instances:

- How much do you add for supplies, I’m trying to recoup all my costs?
- Let’s decide to close at 3 p.m. on Saturdays; we can’t lose any business if we all shut down.
- What would you think about your firm targeting business east of the river and I’ll take the clients on the west side?
- I don’t mind selling to government agencies, but we must all bid higher to make it profitable.
- I’m tired of Internet companies selling to my customers at lower prices than I can buy inventory; let’s boycott mail discounters and Websites.
- By giving all our business to one supplier I know he’ll agree to our terms.
- Didn’t we decide if he’s not a member that we wouldn’t use him?
- We can do a quick poll to find out what others are charging.
- We pay a lot for telephone book display ads, let’s buy one size so nobody is larger or smaller.

Sample Sign-In Sheet

Meeting Sign-In Sheet

As the board president I should remind you that state and federal laws prohibit the exchange of information among competitors regarding matters pertaining to price, refusal to deal, market splitting and other topics which might infringe division, tying relationships and other topics which might infringe division, tying relationships and other topics which might infringe division, tying relationships and other topics which might infringe division, tying relationships and other topics which might.

These guidelines apply not only to the formal meeting sessions, but also to informal discussions during breaks, meals or social gatherings.

Please sign this Antitrust Avoidance Statement.

Meeting Date

Attendees Signatures:

X

X

X

X

X

Thank you for your cooperation — please return to staff.

Defenses
- Stick to the agenda — avoid side conversations.
- Have legal counsel brief the board about antitrust and review all minutes.
- Record in the minutes that volunteers were briefed and received the antitrust avoidance statement — annually.
- Keep file copies to show a paper trail that you made an effort to halt an antitrust violation.
- Include antitrust avoidance in the leadership’s orientation manual.
- Buy adequate insurance coverage.
- Implement risk management strategies.

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Strategic Planning • Leadership Development • Association Efficiency

Posting the Antitrust Statement

If the organization is inclined to discuss prices, terms, suppliers, etc. then communicate an antitrust avoidance message in various ways:

- On the backside of table tent name cards
- In a footer on the meeting agenda
- On the top or bottom of the meeting sign-in sheet
- As an insert in board packets
- In the leadership manual
- Verbal notice; recorded in the minutes
- On a sign posted in the meeting room

Antitrust Avoidance
Additional Copy – Color $12
Available from: HMG-NPRC
C/O Bob Harris, CAE
555 Beard St., Tallahassee, FL 32303 USA
Association Self-Auditing Process®
Building an Association Management Co.®
Strategic Planning
Leadership Orientation
Association Operating Systems
Antitrust: Laws designed to preserve the free enterprise of the open marketplace by making illegal certain private conspiracies and combinations formed to minimize competition. Most violations of antitrust laws involve either price-fixing, boycotting, setting unrealistic standards, ethics or certification qualifications, member expulsion, restraint of trade, allocation of markets or agreements on contract terms.

Association Activities and Antitrust
- Pricing of Services
- Surveying
- Membership Exclusion-Expulsion
- Product Standards
- Codes of Ethics and Standard Setting
- Articles, Publications, Website
- Liserv Discussions
- Meetings, Speakers
- Certification
- Trade Show and Advertising Exclusion
- Referrals and Recommendations
- Discount Programs

Compliance Illustration

The XYZ Association is a not-for-profit organization. The association is not organized and may not play any role in the competitive decisions neither of its members, nor in any way restrict competition among members or potential members. Rather it serves as a forum for a free and open discussion of diverse opinions without in any way attempting to encourage or sanction any particular business practice.

The association provides a forum for exchange of ideas in a variety of settings including its annual meeting, educational programs, committee meetings, and board meetings. The board of directors recognizes the possibility that the association and its activities could be viewed by some as an opportunity for anticompetitive conduct. Therefore, this statement supports the policy of competition served by the antitrust laws and to communicate the association’s uncompromising policy to comply strictly in all respects with those laws.

While recognizing the importance of the principle of competition served by the antitrust laws, the association also recognizes the severity of the potential penalties that might be imposed on not only the association but its members as well in the event that certain conduct is found to violate the antitrust laws. Should the association or its members be involved in any violation of federal/state antitrust laws, such violation can involve both civil and criminal penalties that may include imprisonment for up to 5 years as well as fines up to $500,000 for individuals and up to $10,000,000 for the association plus attorney fees. In addition, damage claims awarded to private parties in a civil suit are tripled for antitrust violations. Given the severity of such penalties, the board intends to take all necessary and proper measures to ensure that violations of the antitrust laws do not occur.


Apparent Authority
An association can be held responsible for anticompetitive conduct of volunteers (i.e. committees) and staff who have no authority but take actions (statements, letter writing, interviews) that appear to represent the organization and violate antitrust laws.

When the conversation won’t stop
There will be times when you should say, “This sounds like it may violate an antitrust law, let’s not discuss it.” However, others will continue to chat and you will feel very uncomfortable.

At that moment, remove yourself from the conversation and the setting. By communicating your displeasure with the discussion and requesting that it stop immediately, you may establish a defense for yourself. In meetings of committees and boards where minutes are being taken, ask that the minutes reflect that you left the meeting and note the time.

[Really want to leave an impression that you were not involved? ... Knock over that cup of coffee and you’re sure to be remembered for leaving the room!]

The association or any committee, section, chapter, or activity of the association shall not be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, expressed or implied, among two or more members or other competitors with regard to prices or terms and conditions of contracts for services or products. Therefore, discussions and exchanges of information about such topics will not be permitted at association meetings or other activities.

- There will be no discussions discouraging or withholding patronage or services from, or encouraging exclusive dealing with any supplier or purchaser or group of suppliers or purchasers of products or services, any actual or potential competitor or group of actual potential competitors, or any private or governmental entity.

- There will be no discussions about allocating or dividing geographic or service markets or customers.

- There will be no discussions about restricting, limiting, prohibiting, or sanctioning advertising or solicitation that is not false, misleading, deceptive, or directly competitive with association products or services.

- There will be no discussions about discouraging entry into or competition in any segment of the marketplace.

- There will be no discussions about whether the practices of any member, actual or potential competitor, or other person are unethical or anti-competitive, unless the discussions or complaints follow the prescribed due process provisions of the association’s bylaws.

- Certain activities of the association and its members are deemed protected from antitrust laws under the First Amendment right to petition government. The antitrust exemption for these activities referred to as the Noerr-Penington Doctrine, protects ethical and proper actions or discussions by members designed to influence: 1) legislation at the national, state, or local level; 2) regulatory or policymaking activities (as opposed to commercial activities) of a governmental body; or 3) decisions of judicial bodies. However, the exemptions does not protect actions designed to cover-up anticompetitive conduct.

- Speakers at committees, educational meetings, or other business meetings of the association shall be informed that they must comply with the association’s antitrust policy in the preparation and the presentation of their remarks. Meetings will follow a written agenda approved in advance by the association or its legal counsel.

- Meetings will follow a written agenda. Minutes will be prepared after the meeting to provide a concise summary of important matters discussed and actions taken or conclusions reached.

- At informal discussions at the site of any association meeting all participants are expected to observe the same standards of personal conduct as are required of the Association in its compliance.

Signed:
Date:

[It is recommended that each volunteer leader read, sign, date and keep a copy of this statement for personal files.]

A sample sign-in sheet is provided on back.

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