

**NONPROFITS
FOULSTON SIEFKIN ISSUE ALERT**

Certain nonprofits receiving public funds subject to Open Records Act

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The Kansas Open Records Act ("Act") was recently amended, and significantly expanded the information many nonprofit organizations must provide to the public upon request. The new reporting requirements under the Act are effective with respect to a covered nonprofit as of the first day of the nonprofit's fiscal year, which commences on or after July 1, 2005. The amendment can be found in Section 8 of Senate Bill No. 78. The remainder of that Bill contains several other important changes to the Act as well.

Generally, the amendment applies to "nonprofits" receiving at least \$350 of "public funds" during the year. Although the provision refers to "nonprofits" repeatedly, it does not expressly define the term, although it does exclude nonprofit "health care providers". Since the provision refers to nonprofits generically (as opposed to certain groups of nonprofit organizations, like public charities specifically), we believe the new provision applies not only to Internal Revenue Code Section 501(c)(3) organizations, but also to social welfare organizations exempt from tax under Section 501(c)(4), trade/business associations exempt from tax under 501(c)(6), recreation/social clubs exempt from tax under Section 501(c)(7), as well as other types of tax exempt organizations not expressly excluded from coverage by the Act.

Under the amendment, if a covered nonprofit's "accounting practice" does not segregate public funds from other fund sources, ALL of the nonprofit's expenditures and receipts must be made available to the public.

On the other hand, if public funds are segregated, a covered nonprofit is only required to provide the requester with itemized information regarding receipts and expenditures of the public funds. The Act contemplates that the public disclosure requirement can generally be satisfied by providing a copy of the itemized invoice, grant report, etc., which was filed with the relevant governmental agency providing the funds. Also, the requirement can be satisfied in some circumstances upon filing the report with the relevant governmental agency. The organization may charge a reasonable fee for providing copies of the requested information.

Wrongful failure to comply with an Open Records Act request is punishable by a fine of up to \$500 per violation, plus the payment of the record requester's attorney's fees. Unfortunately, with little guidance provided in the Act, a nonprofit organization will be faced with many questions regarding the adequacy of its public fund segregation accounting practices and Open Record Act disclosures. In light of the potential penalties imposed under the Act for wrongful noncompliance, however, we believe nonprofit organizations should be conservative in their interpretation of the new provision.

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The bottom line is that a nonprofit organization receiving public funds must be aware of its disclosure obligations under the Act. Organizations can then make informed decisions regarding whether it is desirable to receive such funds, and if so, how to best account for and disclose them.

¹The term "public funds" is defined as monies received from the United States, State of Kansas, or political or taxing subdivision thereof, or any officer, board commission, or agency thereof.

²The term "health care provider" generally includes nonprofit dental, medical, and hospital corporations, indigent health care clinics, and adult care homes.

For Further Information

Foulston Siefkin regularly counsels clients on issues relating to nonprofit organizations. If you are interested in additional information regarding the Open Records Act, please visit our website at www.foulston.com or if you would like to discuss specific ways in which the author can help you, call **Kevin J. Arnel** at (316) 291-9761, or email him at karnel@foulston.com.

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