



CALIFORNIA DEPARTMENT OF

FOOD & AGRICULTURE

Karen Ross, Secretary

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D2026-01

TO: District Agricultural Association Fairground Managers and Board Chairs

SUBJECT: District Agricultural Association and Non-Profit Relationships

This circular outlines the legal and policy framework governing how District Agricultural Associations (DAAs) may engage with nonprofit organizations (NPOs). The guidance below is intended to ensure compliance with applicable state laws, nonprofit operational standards and transparency requirements under the Bagley Keene Open Meeting Act.

Ensuring transparency and maintaining legal separation between the DAAs and affiliated nonprofit organizations is crucial. This can best be done by establishing a Memorandum of Agreement (MOA) and a contract for each specific event and campaign.

LAWS GOVERNING NONPROFIT ORGANIZATIONS

The Attorney General's Office (AGO) has released the *Attorney General's Guide for Charities: Best Practices for Nonprofits that Operate or Fundraise in California*. Most NPOs are organized as public benefit corporations. A public benefit corporation must serve charitable or public purposes and cannot be used for the private gain of any person. NPOs must register and report to the Attorney General's Registry of Charitable Trusts to operate in California.¹

The assets of a public benefit corporation are irrevocably dedicated to charitable purposes and cannot be distributed for private gain.² Those assets must be used for charitable purposes for which they were raised. If the public benefit corporation changes their purpose, the assets or funds raised must be transferred to the DAA for whom the funds were raised or to another NPO that has the same or similar purpose.

NPOs have various registration and reporting requirements and should be in good standing with all relevant oversight agencies to conduct business with DAAs. These requirements include:

1. Internal Revenue Service – annual tax filings
2. California Franchise Tax Board – annual tax filings
3. California Secretary of State – annual Statement of Information filings

¹ Gov. Code §§12585, 13586 (a); Cal. Code Regs. tit 11 §§300-307

² Corp. Code §§5130, 5237, 5410



4. California Attorney General's Registry of Charitable Trust – registration and annual reporting

While NPOs are typically not subject to open meeting law requirements, they may be considered subject to these requirements based on substantial funding received from government entities or government agency affiliation. As DAAs are state entities, an NPO fundraising on behalf of the DAA could be subject to open meeting law requirements. While DAAs are subject to the more restrictive Bagley Keene Open Meeting Laws, the AGO suggests the NPOs utilize the less restrictive Brown Act.³

Many existing affiliated NPOs outline their primary purpose being to assist the DAA in their Articles of Incorporation. The NPO should incorporate into its bylaws, as well as the MOA with the DAA, information on board meetings, quorum requirements, whether Bagley -Keene or Brown Act open meeting rules will be used and voting requirements. There are also other recordkeeping requirements required by the AGO that NPOs must follow.

**DAAs should not use NPOs to sidestep or evade the State processes required for conducting business.*

SEPARATION BETWEEN DAA AND NPO

It is essential that there is transparency and clear separation between the DAA Board meetings and finances and that of the NPO. There should be a clear distinction between DAA operations and the operations of the NPO.

- Distinct and separate physical offices and mailing address
 - DAA staff should not serve as administrative staff for NPO
 - DAA should not receive mail on behalf of the NPO
- Distinct and separate websites. The DAA website can include a link to the separate NPO website and vice versa, if both parties agree.
- Distinct and separate board members and board meetings
 - DAA Board members should not serve on NPO Boards
- Separate financial records and banking accounts

The DAA Board must ensure transparency on all board discussions as they relate to the NPO. This clear separation of powers ensures that the DAA is not held responsible for any actions of the NPO and vice versa.

MEMORANDUM OF AGREEMENT (MOA) GUIDELINES

³ Gov. Code §§ 54950 – 54963 (Ralph M. Brown Act) / Gov. Code §§11120-11132 (Bagley-Keene Open Meeting Act)

The MOA is considered the umbrella document which outlines the roles, responsibilities, and operational procedures of each entity; ensuring that in practice the DAA and the NPO are separated. The MOA is used in lieu of an agreement or contract to describe the means, processes, functions and details of the relationship, governing how the two separate entities shall interact including when, how, and by what means information, reports, financials, and compensations are shared. *The MOA should clearly state that both parties intend to be bound by the terms and conditions of the MOA.*

Each specific activity, donation, or project should be established using a separate contract, approved by the DAA and NPO board of directors, and signed by authorized representatives of both organizations. This includes any specific event, campaign activity, or capital improvement project sponsored or funded by the NPO on the fairgrounds. The purpose and intent of a contract per activity, donation, or project is to outline and detail the specifics for each task, ensuring the DAA can legally ensure completion of the agreed upon terms.

The MOA between the NPO and the DAA should include the following information:

- Interorganizational Representation:
 - Who will serve as liaison between the DAA board and the NPO board? DAA board members should not serve as board members on the NPO board. However, a DAA representative can serve as an ex-officio member (non-voting member) of the NPO board. It is common to have a representative from the NPO board provide a regular update on events and projects at the monthly DAA board meetings.
- Meetings:
 - How will the NPO board meetings be run? Will the NPO board operate under Bagley-Keene or Brown Act open meeting rules? What is the frequency for NPO board meetings as well as quorum requirements and required votes for approval of items? NPO Board meetings should be open to the public and regular meeting minutes should be made available if requested.
 - The NPO Board should also provide the DAA with copies of their Articles of Incorporation, Bylaws and Policies (if applicable) at the time of the execution of the MOA. If these documents are updated during the term of the MOA, the NPO should provide the DAA with updated copies as soon as possible.
- Projects:
 - How will annual or multiyear projects be selected? The DAA Board should compile a list of capital improvements, projects or equipment purchases that require funding on an annual basis. The NPO Board should then select one or more of the listed projects to support. If the NPO has a specific idea for a project, it should be approved by the DAA board before the NPO begins fundraising for that project.

- If the project selected by the NPO involves installation, construction, or renovation of an existing building on DAA property, the NPO must also comply with all applicable state rules and regulations. NPO facilitation of these types of projects does not remove the requirement that they follow applicable rules related to public contracting or public works projects.
- Fundraising Campaigns:
 - Once a project has been selected, the NPO should coordinate with the DAA Board regarding the methods by which funds will be raised. If the NPO wishes to use DAA facilities for fundraising purposes, the NPO will need to pay the relevant rental fees for the use of the space. If the DAA and the NPO jointly sponsor a fundraising event, event space can be the DAA contribution if the NPO provides the other necessary preparations and staffing for the event.
 - If the NPO solicits memberships as part of their fundraising campaigns, a list of members should be provided to the DAA upon request. It is also important to note that the NPO must pay fair market value to the DAA for any benefits it provides to members as a part of their membership (i.e. fair admission passes, parking passes, carnival passes, special event tickets, etc.) The funds being raised by memberships must exceed the value of the benefits package being provided by the NPO.
- Financials:
 - The NPO should agree to cooperate with any financial or compliance audit of the DAA if necessary.
 - The NPO and DAA should agree on the frequency of financial reporting whether monthly, quarterly or another frequency. This allows the DAA to track and follow the progress on agreed upon goals or projects.
- Intellectual Property and Trademark Issues:
 - How, when and where the NPO may utilize the logo and name of the DAA should also be included in the MOA. This is particularly important for those NPOs who have broader purposes and support more than the DAA in their fundraising efforts. It is critical that any advertisements or promotions which suggest funds are being raised to benefit the DAA result in funds being transferred to the DAA and not given to other organizations or used for other non-DAA purposes.

NPOs AND LIQUOR LICENSES

NPOs (valid 501(c)3 entities) may obtain and hold the alcohol license for all DAA events (master beverage concessionaire). This should be outlined under a separate contract pursuant to the terms of the MOA. The contract should specify the method for use of the NPOs liquor license for interim events, including timeframe, paperwork and contact at the NPO. It should also specify the percentage of sales the DAA will receive (revenue sharing), the frequency of reports and payments to the DAA (due dates – i.e. within 30 days of the event or monthly) and provisions allowing the DAA to audit or monitor sales reports.

Summary of Documents:

Every 3-5 years: Memorandum of Agreement

Annually: Priority Fundraising Project Identification
Priority Project Fund Development Plan
Alcohol/Concessions Contract
Fundraising Event Contract(s)

Quarterly/Monthly: Fundraising / Event Updates, including accounting

By following this structured approach – using an umbrella MOA, individual contacts for each activity, and strict organizational separation – DAAs and NPOs can collaborate effectively, maintain public trust and stay fully compliant with all legal requirements. If you have any questions about DAA and NPO relationships or questions about specific terms within your MOA, please reach out to your F&E Resource Coordinator or the CDFA Legal Office.

Sincerely,



Michael Francesconi
CDFA F&E Branch Chief

Enclosure: Sample MOA between DAA and NPO