



Escaping Newly Enacted Socially Controversial Laws

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On March 26, 2016, the State of North Carolina passed the Public Facilities Privacy & Security Act (Act), which requires everyone, including transgender people, to use public restrooms according to their biological sex listed on their birth certificates. The Act has, in part, caused many businesses, entertainers, and even other state governments, to refuse to conduct business in North Carolina. Those that have determined, at this time, to refrain from entering the North Carolina market, have done so on the grounds that their personal or business philosophy or culture is incompatible with the Act. Some companies have decided not to open up new headquarters or factories in North Carolina. They may not have contractual obligations in place and therefore, their refusal to do business in North Carolina would not result in contractual penalties -- theirs is a philosophical position. However, many organizations have entered into contracts to do business in North Carolina and, since the passing of the Act, want to terminate these contracts. Such decisions are more complicated because they may have significant financial ramifications.

North Carolina is not the only state to have laws such as the Act nor is it the first state to enact socially controversial legislation. For example, in 1986, under then Governor Evan Mecham, the State of Arizona officially refused to recognize Martin Luther King, Jr.'s birthday as a state holiday. In that case, many businesses, including the National Football League, threatened not to hold their events in Arizona.

The enactment of these types of socially controversial laws may cause significant problems for tax-exempt organizations. Most tax-exempt organizations have committed to holding their annual meetings and conferences many years in advance of the events. What if a tax exempt organization is under contract to have its annual meeting in a state that subsequently enacts socially controversial laws which are antithetical to the mission and purpose of that organization? This can cause political, philosophical and financial problems.

Suppose your organization (and its members) is pro-labor and must, as a matter of policy, conduct its annual meetings in a pro-labor state. What if, after you enter into hotel and convention contracts, the state where you are having your meetings enacts anti-labor laws? What is your organization's response when its members demand that the new law makes it impossible for them to come to the annual

meeting/convention and that the organization must cancel the meetings in that locale? How do you assuage your members and limit your organization's liability risk?

Your organization can decide to cancel the meeting and be responsible for the penalty amount set out in the contracts' cancellation clauses, but, this may be prohibitively expensive and certainly is not desirable. You can try to negotiate with the hotel and convention center to see if they would be willing to let you walk from the contracts, but this seems improbable, especially since you are unlikely to want to do business in that state in the future. So, if you don't have insurance for this type of event, what can you do to prevent this potential problem about which you, as the staff officer in charge of these arrangements, will be blamed?

When negotiating hotel and convention contracts you should demand that the contracts provide your organization with an escape clause for this possibility. This way if the state or local jurisdiction enacts laws or regulations that are in conflict with your tax-exempt organization's mission and purpose, you can terminate the contracts by providing the contractually required advance written notice. Depending on your leverage in the negotiations, you may be able to do this with minimal or no penalty. Hotels and convention centers have not been overly receptive to these clauses in the past. However, given the recent spate of socially controversial laws, you may now have enough ammunition in your arsenal to support your demand to terminate the contracts in the event that your organization cannot conduct business in a state whose potential future laws conflict with the organization's mission and purpose.

Imagine the different scenarios facing you if your pro-labor organization finds itself having a convention in a state that recently enacted anti-labor laws. You are a hero if you have an escape clause that minimizes or eliminates liability risk; you and your organization may be in trouble if you don't have such an escape clause. Which scenario do you prefer?

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