

*A Legal Newsletter  
For Independent  
Higher Education*

# Lex Collegii



## Contents

Institutional Advancement: Tainted Gifts,  
Reneging Donors, and Donor Control 1

Interrogatories: Rising Racial and  
Ethnic Challenges 7

## Editorial Board

**Kent M. Weeks**  
Editor and attorney

**Paul Hardin**  
Attorney and former chancellor,  
University of North Carolina,  
Chapel Hill

**Phil Moots**  
Attorney

**Linda Lorimer**  
Attorney and Secretary,  
Yale University

**Vic Hahn**  
Attorney and vice president,  
Capital University

**Lex Collegii**  
College Legal Information, Inc.  
P.O. Box 150541  
Nashville, Tennessee 37215

## Institutional Advancement: Tainted Gifts, Reneging Donors, and Donor Control

Several problematic areas plague college and university advancement including: (1) tainted gifts, (2) the reneging donor, and (3) donor control. First, unsavory donors most often taint gifts. A gift from Kenneth Lay of Enron to the University of Missouri at Columbia is an example of a gift being tainted by its donor. Second, donors occasionally renege or do not fulfill their gift to an institution. Donor reneging became an issue when high-tech entrepreneurs pledged gifts in stock that would later plummet in value with the implosion of the high-tech economy. Third, some donors have increasingly wished to exert control over the institution's use of their gift.

As tainted gifts, donor reneging, and donor control become more common to university advancement, institutions should reflect on their approach to giving. All colleges and universities should develop a solid, modern gift policy. When reviewing gift policies, university administrators should be aware of several current issues in institutional advancement.

### *Tainted Gifts*

When asked about tainted gifts, Salvation Army founder William Booth said, "T'aint enough," meaning that taint is not enough to merit returning the gift. Universities receive billions of dollars each year in donations, and the ever-important ranking and prestige of the institution directly correlates to the ability to raise large sums. Universities have a long history of not speaking ill of donors, and the action of returning a gift represents perhaps the ultimate speaking ill of a donor.

Gifts may become tainted in two principal ways. First, the unsavory actions of an individual donor reflect the most common way an otherwise generous gift becomes tainted. Second, a gift may become tainted as a result of changing cultural and social sensibilities. Once a gift has become tainted, by whatever means, the institution must make the decision whether to refuse or to keep the gift.

### *Donor Taint*

A donor's negative reputation easily taints a gift. As reported in *The Chronicle of Higher Education*, Harvard University returned a \$2.5 million gift from the president of the United Arab Emirates. In 2004, Harvard returned the gift to its Divinity School after students asserted that the United Arab Emirates had a problematic human rights record and had affiliations with anti-Semitic and

anti-American individuals. However, both Columbia University and Georgetown University received millions of dollars in gifts from the United Arab Emirates that neither university returned.

Beside the Harvard example with the United Arab Emirates, a few other institutions have turned down significant gifts due to taint. Georgetown did not accept a gift from the Libyan government, and Dartmouth did not accept a gift from *Playboy* magazine. Duke turned down a gift of \$1 million from a donor accused of embezzlement, and Yale rejected a \$20 million gift from a donor who wanted to reinforce Western civilization in the university's curriculum. The University of Oregon returned \$850,000 from an individual accused of misusing investor funds, and the Alamo Community College District returned a \$5,500 gift that may have been an illegal contribu-

## It is estimated that institutions have received upwards of \$100 million in recent years from individuals with current, future, or implied criminal legal difficulties.

tion from one of its trustees.

The trend, though, appears that universities have almost uniformly kept gifts given by donors whose ethics have come under popular scrutiny. It is estimated that institutions have received upwards of \$100 million in recent years from individuals with current, future, or implied criminal legal difficulties.

The following are selections from the abundant list of tainted gifts kept by institutions:

- Harvard, Brown, and Michigan kept gifts from Alfred Taubman who was convicted for price fixing when he was chairman of Sotheby's, including buildings and schools that bear his name;
- Brown also kept a gift from Gary Winnick whose leadership of Global Crossing has come under significant scrutiny;

- Mississippi College kept \$36.5 million from Bernard Ebbers that he allegedly paid with company funds while he was CEO of WorldCom;
- Seton Hall has taken millions from those involved in the Tyco scandal;
- The University of Missouri at Columbia kept a \$1.2 million gift from Kenneth Lay despite a challenge from its faculty, and Rice University and the University of Houston have faculty chairs named after Lay;
- The medical school at Cornell University is named after Citigroup CEO Sanford Weill whose actions relating to the Enron collapse caused pursuit by prosecutors;
- The University of Houston also kept a \$51.4 million gift from John Moores, who is under investigation by the Securities and Exchange Commission for fraudulent accounting practices;
- Oklahoma State University kept a gift from Dynegy for a simulated stock-trading environment even though the company had paid millions in fines for securities fraud and faces allegations of price manipulation leading to the California energy crises; and

- St. Olaf College has kept approximately \$26 million from Dean Buntrock though he has been accused of fraudulent earnings reports for his company, Waste Management.

Tainted gifts have a fascinating history in institutional advancement. Leland Stanford had a reputation as an unethical businessman and gave significantly to the university that bears his name. Saunders Hall at the University of North Carolina at Chapel Hill was named after an alum and Ku Klux Klan leader. Thus, the history of keeping tainted gifts may partially explain the hesitation for universities to return tainted gifts.

### Cultural Change

Changing culture can also taint a once-acceptable gift. Vanderbilt Univer-

sity officially changed the name of one of its buildings from "Confederate Memorial Hall" to "Memorial Hall" on its Peabody College campus. The United Daughters of the Confederacy gave money for the building's construction approximately 100 years earlier and sued Vanderbilt for changing the building's name. In *United Daughters of the Confederacy v. Vanderbilt University* (2003), the court found that Vanderbilt had upheld its contractual obligations to the United Daughters of the Confederacy with regard to the building's name. Beyond upholding its contractual obligations, the court also asserted that Vanderbilt could promote racial tolerance by removing a racially charged word from one of its buildings. This case demonstrates that political and social shifts in American culture can themselves taint a gift. The case is on appeal.

Though tainted gifts have an interesting history and often involve famous names, institutions have not taken significant steps to end the receipt of tainted gifts. The Council for Advancement and Support of Education has not addressed the issue of tainted gifts; the council's president asserted that tainted gifts have always been a part of nonprofit fund raising and the taint applies to the individual donor's name, not the institution.

The "taint enough" approach appears to be thriving in contemporary university development for three reasons: (1) institutions have historically taken gifts from unsavory individuals, (2) institutions are very concerned about raising money, and (3) institutions do not want to speak ill of donors. A university must balance its needs with the appearance of impropriety when choosing whether to accept or reject a tainted gift, and institutions have almost uniformly weighed in favor of their own needs.

### *The Reneging Donor and Unpaid Pledges*

Donors who cannot fulfill their pledges are a continuing problem in fund raising. Gift fulfillment becomes particularly problematic in times of economic



uncertainty. For example, the explosion of high-tech stocks in the late-1990s represented an entirely new era of prosperity on paper for many Americans. One result of the successes of high-tech stocks was gifts in stock to colleges and universities. Given the increasing pressures to raise huge amounts of money, institutions gladly accepted the gifts of stock in high-tech companies. When economic uncertainty followed, universities faced a problem of gift fulfillment of completely different proportions than previously considered.

Institutions have long had to confront pledges of gifts in cash that go unfulfilled or are reneged. Historic examples abound. Elihu Yale failed to pay £200 per year that he pledged to Yale University. Charles Alberding died before paying his \$10 million pledge to Cornell for an athletics facility, and his heirs did not honor his pledge. More recently, a Harvard alumnus could not meet his \$250,000 pledge to the university because of a downturn in economic circumstances. Another contemporary example is the late oil tycoon, Howard Marshall, who reneged on a \$25 million pledge to Yale Law School. In all of the situations above, the institution simply accepted that it would not be receiving the gift as had been pledged.

Gifts in stock are often used by persons who have benefited from stock options although cash gifts still represent the majority of gifts made to universities. The high-tech economy yielded many millionaires on paper, and those individuals often chose to be benevolent with their new wealth by donating stock in their companies to universities. As noted in *The Wall Street Journal*, Michael Wolfe pledged \$1 million in stock in his company to his alma mater, Stanford University; since his pledge, the stock's value has diminished to \$100,000. Like unpaid gifts in cash, institutions traditionally accept the reduced value of the gift in stock.

Reduced value in a gift in stock would provide little practical legal recourse as compared to the possibility of legal

recourse for a gift in cash. While a university could technically pursue a wealthy donor who did not fulfill a pledge in cash, the donor of a gift in stock that plummets often has little personal wealth remaining. Thus, a gift in stock has inherent risks attached to it that provide the university little recourse.

Very rarely do institutions sue donors to collect funds pledged; however, Allegheny College did sue one of its donors to collect a pledged gift. Mary Yates Johnston pledged \$5,000 to Allegheny College for a scholarship; she paid \$1,000 with the remaining \$4,000 to become effective 30 days after her death. Shortly after Johnston paid the initial \$1,000, she reneged on the remainder of the gift. Allegheny College sued Johnston's estate 30 days following her death, and the litigation resulted in a legal opinion that is a landmark case in institutional advancement.

In *Allegheny College v. National Chautauqua County Bank* (1927), New York's highest court found in favor of Allegheny College because Johnston's promise caused the college to go forward with the scholarship with the expectation of later fulfillment of the gift. As the court noted, "the fair inference to be drawn from the acceptance of a payment on account of the subscription is a promise by the college to do what may be necessary on its part to make the scholarship effective." Thus, because the college began the scholarship program in anticipation of the remaining portion of the gift, the court allowed Allegheny College to collect from its reneging donor.

In most situations in which the donor cannot or does not fulfill the pledge, the university seeks no redress; indeed, this has been seen as a pitfall inherent in operating and developing a nonprofit institution. Haverford College, though, has recently explored the rare territory of taking a donor to court. Since 1976, Howard Marshall pledged millions to Haverford. As a result of pledges, Haverford named several scholarships, professorships, and a fine arts center after

Marshall. Upon Marshall's death, however, Haverford had received less than \$2 million from Marshall, and the college had to dip into its endowment to pay a \$1 million loan for construction of the fine arts center. Haverford decided not to take the same path that Yale Law School had taken in not seeking redress against Marshall for his unfulfilled gifts. Haverford's relationship with Marshall involved many gifts, some paid but most pending upon his death, some written and others oral, that spanned the terms of several college presidents. Although it's

## Very rarely do institutions sue donors to collect funds pledged.

unclear why Marshall reneged on his gifts, it appears that a likely explanation would be the confusion surrounding his estate combined with Haverford's aggressive (perhaps overly aggressive) pursuit of his money while he was alive. Haverford was not as successful as Allegheny College in challenging its reneging donor in court. Haverford will collect \$1.2 million, millions less than it expected, from a trust established from Marshall's estate to pay his charitable debts.

The reluctance of institutions to sue donors is not mutually exclusive. Donors, particularly their estates and heirs, have sued universities to revoke gifts. One example is Francis Snyder. Snyder pledged \$2 million to Texas A&M – Corpus Christi when she was ninety-nine years old. Snyder's estate sued the university foundation and its president, claiming that she was not mentally competent to make a \$2 million gift. In *Holmes v. Furgason* (2003), the Texas Court of Appeals permitted the lawsuit by the estate. Thus, the administrator of a donor's estate may bring a claim against an institution for undue influence, among other claims.

Sometimes donor heirs sue because the gift is no longer being used for its intended purpose. For example, the dental school at Washington University was the beneficiary of a trust established by Joseph Kimbrough. When Wash-

ington University closed its dental school, Kimbrough's heirs sued the institution. In *Obermeyer v. Bank of America* (2003), the Missouri Court of Appeals held that a donor's specific intent as reflected in a trust may cause the trust to revert to the heirs when the donor's specific intent no longer exists. Thus, when the beneficiary of a trust is a part of an institution that no longer exists, the trust may revert to the heirs rather than to the university. Institutions have traditionally not sued donors while also having to guard against litigation from donors, including their estates and heirs, who wish to renege.

Both gifts in cash and gifts in stock can seriously affect university coffers when pledges go unfulfilled or diminish

## Restricted gifts are common to institutional advancement where donors desire that their money be used in a certain way.

in value, particularly in times of economic uncertainty. Whether litigation becomes more prevalent between institutions and donors has yet to be determined. However, another related circumstance may occur: donors renege on their pledge in an effort to assert control. In 1999, William Davidson stopped paying a \$30 million pledge to an Israeli university because he was not impressed with the speed or success of the business-school program he sponsored. Though Davidson allowed the university to keep the \$7 million already received, his action served to assert his control of university actions by renege on the total pledge. Issues in advancement are fluid, as evidenced by similarities involved between donors renege and donor control.

### Donor Control

Donors may choose to renege on a pledged gift because they do not agree with the use of the gift, which in turn is an exercise of control over the gift. Thus,

donor renege and donor control can often be interwoven issues. A thin line also exists between tainted gifts and donor control. A gift with too many restrictions may become tainted. For example, Yale University returned a gift from AIDS activist Larry Kramer that was intended to endow a chair in gay studies. Yale asserted that such a chair would be too restricted academically, to which Kramer retorted, "It shouldn't be such a problem to give your money away." The Yale-Kramer situation demonstrates a significant and topical issue for those in university development: how much control should the institution allow the donor to retain?

Chairs endowed by corporations are common and topical examples of restricted gifts. In the past decade, corporations have endowed significantly more faculty chairs. The following is a list of examples as reported in *The Chronicle of Higher Education* of chairs

endowed by corporations:

- University of Minnesota: General Mills chair in cereal chemistry and technology;
- University of Southern California: Blue Cross chair in health-care finance;
- University of Memphis: FedEx chair of information-management systems;
- California Institute of Technology: Boeing chair in aeronautics; and
- Marquette University: Sears-Roebuck chair in retail marketing.

MIT has 69 chairs endowed by corporations, and Stanford has 22. Corporations give approximately 20 percent of all support to higher education. Corporations have asserted vastly different levels of control for their endowed chairs: while some universities retain all control of the chair, others allow the corporation to assert a continuing influence on the chair.

In the area of corporate-endowed chairs, UPS's relationship with the University of Washington received significant public attention. The UPS Foundation wanted to endow a chair to the

University of Washington in occupational orthopedics. UPS hoped to endow the \$2.5 million chair partly in response to the workers' compensation lawsuits filed against the company relating to workplace injuries. UPS also wanted to appoint the first individual to receive the chair; the company hoped to have a researcher that held views consistent with and helpful to company positions. The University of Washington was concerned about the corporation's control and restriction on the gift. As negotiations appeared to be reaching agreement, the UPS Foundation suddenly declared that it was in no position to endow the chair. It seems that since the 1970s, the UPS Foundation had stopped endowing chairs.

Corporations often desire results favorable to the company in return for an endowed chair. For example, Wayne State University has a marketing chair endowed by Kmart. Research done by the professor that held the chair for 11 years saved Kmart millions of dollars. Thus, the University of Washington-UPS example demonstrates an institution insisting on retaining control, even at the loss of an endowed chair, while the Wayne State-Kmart example demonstrates an institution willing to benefit alongside the corporation from having the endowed chair.

Corporations have also given many renewable grants to institutions, which is another method by which the corporation may retain control over its gift. Given that chairs in certain areas may one day not be needed, corporations instead can give a non-endowed professorship as a renewable grant. Rather than a permanent, endowed chair, the corporation can review its gift in the future based on whether the area in which the professorship was given remains current. While the institution does still get funding for a professorship, it also cedes control to corporations whose motives, interests, and fortunes can change dramatically over time.

Corporate chairs, though, represent only one aspect of restricted gifts in the current landscape of university develop-



ment. Restricted gifts are common to institutional advancement where donors desire that their money be used in a certain way. Indeed, a significant amount of all gifts to institutions may be considered restricted. For example, when an alumnus checks a box for a new field house on a giving form, a restricted gift has been made. Such restrictions on gifts are common.

Universities often suffer when they do not respect a donor's wishes. For example, the University of Nebraska lost the support of longtime donors Leland and Dorothy Olson, who had donated more than \$10 million because of an administrative mistake relating to the naming of a building. Another example comes from Iowa State University, which sold a farm that had been left to the university against the donor's explicit wishes in her will that the university maintain the farm. In 2002, William Jewell College returned more than \$2 million in gifts because an internal audit uncovered that many donor intentions had not been met. William Jewell officials had not properly recorded some gifts and had misdirected funds for other gifts, and the college felt that the best resolution to the discrepancies was to return the gifts. Institutions must be careful to respect the wishes of donors, particularly wealthy and influential donors because not honoring donor's wishes can have a negative impact on future development.

Augsburg College confronted a situation that highlights all three areas of tainted gifts, renege gifts, and gift restrictions. In 1987, Elroy Stock donated \$500,000 to the college for a new building. Stock had mailed approximately 500,000 letters in the 1980s condemning interracial marriage, including three to the president of the college who had an interracial marriage in his family. It does not appear that Augsburg communicated its decision to Stock not to use his name. Augsburg never placed Stock's name anywhere on the building, and Stock recently sued the college demanding return of the gift plus interest. The Augsburg-Stock scenario

demonstrates that a tainted gift can have substantive future ramifications, and ignoring the wishes of a donor because of taint may subject the institution to future liability.

Who can sue an institution to assert donor control? Standing to sue is a complex issue. However, many questions relating to standing to sue can be answered in the seminal case of *Herzog Foundation v. University of Bridgeport* (1997). The Herzog Foundation had made several gifts for scholarships in medical education to the institution, and the foundation sued the university after it closed its nursing school. In *Herzog*, the Supreme Court of Connecticut held that a donor may not bring a lawsuit against an institution for not enforcing the gift's terms unless the donor had expressly reserved the right to do so. This case is so important to institutional advancement because it quelled fears of administrators who were afraid of liability for completed gifts. Thus institutions must balance donor control with exposure to liability. Thinking about that balance reflects a first step toward university administrators taking preventive steps.

### *Preventive Steps: Toward a Comprehensive Gift Policy*

It is often difficult for those involved in university development to keep a proper eye on the implications involved in tainted gifts, renege donors, and donor control because the inherent focus of institutional advancement is to raise money. Indeed, some institutions may neglect to implement a comprehensive gift policy in fear that such a policy will negatively impact the ability to raise money. However, all university administrators, especially those involved in development should learn to think in light of the modern paradigm of giving: raise money with an eye on the implications of the gift. In simply keeping in mind the possibility of negative implications of gifts, university development will be able to avoid many of the pitfalls of modern institutional advancement.

### *Policy Development*

In the current landscape of institutional advancement, many gift policies are brief, only consisting of a couple pages. Having a gift policy that goes beyond defining, procuring, and securing a gift may be extremely beneficial for keeping the institution well-protected from liabilities. Reviewing the gift policies of other universities may be a useful exercise in working toward a revised gift policy. The following considerations could be elements that may flesh out a gift policy.

First, gift policies generally contain statements that all gifts must be consistent with the university's mission and other designated principles. Gift policies could be more specific in what the institution will and will not accept. For example:

*Solicit gifts only for programs, positions, and purposes consistent with the university's mission. The university does not solicit or accept:*

- a) Gifts which obligate them to break the law or other university policies.*
- b) Gifts which limit, beyond a general description of the subject area, the research or work of a faculty member or student.*
- c) Gifts which inhibit the university from seeking gifts from other donors, be they similar or different, foreign or domestic.*
- d) Gifts that expose the university to potential environmental liability.*
- e) Real estate subject to debt exceeding 50 percent of its value.*

*Donative intent must be the primary motive for gift giving, that is, the intention to give something of value for the betterment of the university.*

Second, consider implementing a policy that would allow the institution to strip the name of a donor from the tangible aspect of a gift (for example, a building or chair) if the donor's malfeasance negatively impacts the institution's reputation. Such a policy would have insulated Augsburg College from liability against Elroy Stock. In addition, future donations by the Ken Lays and Enrons of the corporate world could be prevented

from maligning the institution's name. A taint policy could address this issue:

*If a named gift subsequent to its receipt causes serious harm to the university or negatively impacts the institution's reputation, the university reserves the right to return the unexpended amount of the gift to the donor or after due consultation to change the name on the gift or to make other adjustments as agreed to between the university and the donor.*

Third, development officials should consider the impact of gifts in stock. Though it would be difficult to enact a policy against all gifts in stock because it could prevent significant gifts, institutions

## Universities should consider a policy that would reserve naming to one institutional body, perhaps the board of trustees or regents.

should consider rethinking how stock contributes to development. For example, a university could take all gifts in stock and place them in a separate fund so that the fluctuations in the stock market would not have a severe effect on the short-term financial goals of the university, such as immediate building, scholarships, and professorships. Some universities have begun asking for gifts in forms other than cash or stock, such as trusts, and guidance to potential donors should be considered as well.

An institution policy could address this issue by requiring that all funds for the endowment or other gifts must be paid within a specified time period or the gift will be adjusted to the actual value of the amount gifted.

*In the event that the donor is unable to fulfill the pledge by the end of a five-year period, the endowment will either be dissolved or redesignated to one that reflects the actual money paid.*

Fourth, a detailed policy on the restrictions allowed by a donor for an endowed chair should be seriously considered. For example, the University of Washington-UPS situation could have

played out differently if UPS had known that the university would not permit the type of restrictions on which it insisted. Though development officials do not want to prevent donors from endowing chairs, it is in the interest of the institution to prevent high profile and protracted negotiations with individuals and corporations. If a potential donor knows how much control they can exert in contemplating the gift, the institution will be best protected from future issues with that donor.

For example, a donor-control policy for an endowment might include:

*The university recognizes and respects the right of a donor to channel gifts to a favored, restricted purpose, and the restriction of any gift accepted by the university will be implemented faithfully. In recognition, however, of the problems for the university and the donor*

*often implicit in restricted gifts, the following policies apply:*

1. *Gifts that necessitate illegal discriminatory use or administration violate university policy and will not be accepted.*
2. *If consistent with the donor's intention, any restriction should be couched in precatory, non-legally-binding language.*
3. *When the terms of any gift are so restricted as to present a serious risk that changed circumstances may render its use extremely difficult or impossible, donors should be encouraged to include language that will permit an alternative use.*
4. *A restriction on the use or administration of a gift keyed to the incumbency of any individual in a university post ordinarily will not be accepted.*
5. *Gifts whose administration and use are to be directed by donors or other third parties ordinarily will not be accepted. All gifts solicited in the name of, and treated as a gift to the university shall be received and expended by the university through regular channels.*
6. *Gifts to support scholarships, fellowships, loans and other forms of*

*financial aid to students (a) should not be limited to relatives or descendants of the donor and (b) to the fullest extent possible should avoid restrictions as to interest rates or conditions for the repayment of loans that would impair desirable flexibility in the administration of university resources.*

Fifth, institutions should take steps to ensure that donor's wishes are honored. The University of Nebraska-Olson situation, where an administrative error caused the naming of a building to go to another donor, is a nightmare for anyone in university development. Universities should consider a policy that would reserve naming to one institutional body, perhaps the board of trustees or regents, so that the power of honoring the wishes of donors is concentrated rather than scattered among several offices and administrators.

Sixth, administrators eager for gifts must be sensitive to the donor needs and not cross the line into undue influence. Long years of cultivation of a donor can lead administrators to believe their institution is entitled to something after all of the time and effort devoted to the potential donor. Ultimately, however, whether the gift is made, is up to the donor and that process must be respected. A general policy addressing undue influence might include:

*A gift shall not be accepted by the university if such acceptance would not be in the interest of the donor. A determination of the donor's interest shall include, but not be limited to, the donor's financial situation and philanthropic interests, as well as any tax or other legal matters identified while planning for a gift. The university shall not encourage any gifts that are inappropriate in light of the donor's personal or financial situation.*

Contemplating how the issues of tainted gifts, reneging donors, and donor-control impact the institution is a solid first step toward rethinking how giving should be approached by the institution. The dialogue on the review of a gift policy should cause university administrators to comprehend possible problems that may arise from gift getting so that the future



financial stability of the university is balanced with exposure to donor issues that create controversy and that can harm the institution.

– Kent M. Weeks  
– Christopher Murray

## Selected Bibliography

### Cases

*Allegheny College v. National Chautauqua County Bank*, 159 N.E. 173 (N.Y. 1927).  
*Herzog Foundation v. University of Bridgeport*, 699 A.2d 995 (Conn. 1997).  
*Holmes v. Furgason*, 2003 WL 22025904 (Tex. App. Aug. 29, 2003).  
*Obermeyer v. Bank of America, N.A.*, 2003 WL 22004833 (Mo. Ct. App. Aug. 26, 2003).  
*Tennessee Division of United Daughters of Confederacy v. Vanderbilt University*, 29 Tennessee Attorneys Memo 8-27 (Davidson Chancery 2003).  
*Warren v. Board of Regents of the University*

*System of Georgia*, 544 S.E.2d 190 (Ga. Ct. App. 2001).

### Articles and Publications

Annotation, “Enforceability of Subscription Under Conditional Charitable Pledge,” 97 A.L. R.3d 1054 (1980).  
Annotation, “Lack of Consideration as Barring Enforcement of Promise to Make Charitable Contribution or Subscription—Modern Cases,” 86 A.L.R.4th 241 (1991).  
Basinger, Juilanne, “Increase in Number of Chairs Endowed by Corporations Prompts New Concerns,” *The Chronicle of Higher Education*, April 24, 1998, at A51.  
Brittingham, Barbara E. and Pezzullo, Thomas R., “The Campus Green: Fund Raising In Higher Education,” *ASHE-ERIC Higher Education Report*, November 1, 1990.  
Budig, M., Butler, G. and Murphy, L., “Pledges to Nonprofit Organizations: Are They Enforceable and Must They

Be Enforced?,” 22 *University of San Francisco Law Review* 47 (1992).

Duronio, Margaret A. and Loessin, Bruce A., *Effective Fundraising in Higher Education* (1991).  
Golden, Daniel, “College Finally Got Alumnus to Pledge; Next Job: Collecting,” *The Wall Street Journal*, July 24, 2003, at A1.  
Loftin, Lisa, “Protecting the Charitable Investor: A Rational for Donor Enforcement of Restricted Gifts,” 8 B.U. *Public Law Journal* 361 (1999).  
Pulley, John L., “Tainted Gifts,” *The Chronicle of Higher Education*, January 3, 2003.  
Smith, F. S., *Looking a Gift Horse in the Mouth*, National Association of College and University Attorneys, 1996.  
Weeks, Kent M., *Nonprofit Institutional Advancement and the Law*, College Legal Information, Inc., 2001.  
Woodward, Kenneth L. and Stone, Brad, “Gift Horses with Reins,” *Newsweek*, September 1, 1997, at 54.

# Interrogatories

## Military Recruiters and the Solomon Amendment

“Interrogatories” is a column that responds to readers’ questions. Send questions to: *Lex Collegii*, P.O. Box 150541, Nashville, Tennessee 37215-0541. We have received several questions concerning the legality of excluding military recruiters from campus.

**Question:** What is the military recruiter issue?

**Answer:** The Solomon Amendment enacted by Congress in 1995 as amended provides that the Department of Defense could deny federal funding to institutions of higher education that did not provide military recruiters with access “equal in quality and scope” to that offered nonmilitary recruiters.

**Question:** What prompted the Solomon Amendment?

**Answer:** In the 1980s some law schools, citing their nondiscrimination policies, refused to provide access and assistance

to military recruiters because of the military policy on homosexual conduct and/or orientation. Representative Gerald Solomon of New York objected to this practice and promoted legislation that would deny defense funding to institutions that denied access to military recruiters. During the debate, Solomon noted that it was the right of the universities to make exclusion decisions, “But do not expect Federal dollars to support your interference with our military recruiters.” Representative Ronald Dellums, in opposition stated that “we should not . . . chill or abridge privacy, speech, or conscience by threatening a college with a Federal funds termination because it chose for whatever reason to deny access to military recruiters.” Apparently the Defense Department did not support the amendment because it was “unnecessary” and

“duplicative,” and that withholding funds from universities could be potentially harmful to defense research.

**Question:** Was a lawsuit filed challenging the constitutionality of the Solomon Act?

**Answer:** Yes. A group of law schools under the name of the Forum for Academic and Institutional Rights, (FAIR) filed a lawsuit in federal court along with other groups and individuals. The American Association of Law Schools, the American Association of University Professors, and others filed *amici* briefs supporting FAIR.

**Question:** What did the plaintiffs seek?

**Answer:** They argued the legislation was unconstitutional and asked the court to grant an injunction that would immediately prevent the law from being enforced pending a full trial on the merits of the constitutionality of the Solomon Amendment.

College Legal Information publications are designed to inform college decision-makers of the changing law and to help them make strategic preventive decisions that will limit legal challenges, reduce exposure, and implement good practice.

### RESOURCE MANUALS

#### Complying With Federal Law

This manual identifies compliance requirements for over 23 statutes including:

- Title VI and VII of the Civil Rights Act of 1964
- Americans With Disabilities Act of 1990
- Age Discrimination in Employment Act of 1967
- Title IX of the Education Amendment of 1972
- Family Educational Rights and Privacy Act
- Campus Security Act of 1990

#### Faculty Decision Making & the Law

This manual helps college administrators understand the legal implications of faculty decisions. Topics include:

- Academic Freedom
- The Faculty Handbook and Contractual Claims
- Confidential Materials
- Duty to Advise Students
- Student Challenges to Academic Dismissals

#### Institutional Advancement & the Law

This manual addresses legal issues encountered by advancement administrators. Topics include:

- Collecting and Enforcing Gifts
- Developing Gift Policy
- Managing Endowment and Trustee Duties
- Managing Alumni Organizations
- Public Relations and the Legal Environment
- Liability and Training of Volunteers

#### Managing Admissions, Records & the Law

This manual is designed to inform admissions and records personnel about the legal implications of their decisions. Topics include:

- Misrepresentation and Negligent Admissions
- Fraudulent Credentials
- Students With Disabilities and Admissions
- Admissions Criteria: Sex, Age, Race
- Minority Scholarships
- Changing College Requirements

#### Managing Campus Conflict Through Alternative Dispute Resolution

This manual examines litigation alternatives and their application to campus disputes. Topics include:

- Evolution of Dispute Resolution
- Campus Ombudsman
- Mediation
- Grievance Systems
- Arbitration
- Faculty, Student, and Staff ADR Policies

#### Managing Campus Cyberspace & the Law

This manual provides good practices and litigation reducing strategies to help prevent liability over campus Internet and computer networks. Topics include:

- E-mail
- Computer Use Policies
- Copyright
- Distance Education
- Adaptive Technology
- Privacy

#### Managing Departments: Chairpersons & the Law

This manual is designed to help department chairs deal with, or avoid the legal challenges that can emanate from their daily decision. Topics include:

- Academic Freedom
- Sexual Harassment
- Dismissal for Cause and Lesser Sanctions
- Academic Fraud and Scientific Misconduct
- Duty to Advise Students
- Faculty Employment Discrimination

#### Managing Liability & Overseas Programs

Explores the responsibilities of overseas program administrators. Topics include:

- Organizational Relationships and Legal Exposure
- Students and Off-Campus Misconduct
- Sources of Liability
- Orientation and Program Assessment

#### Managing Student Disability Compliance

This manual helps college administrators develop, implement, and manage disability compliance. Topics include:

- Identifying the Disabled
- Assessment of Disability Claims
- Admissions
- Retention and Dismissal of Decisions
- Academic Accommodations
- Student Housing
- College Athletics

#### Record Retention & Disposal

This manual examines document retention and disposal policies. Topics include:

- Personnel and Employment Records
- Faculty Records and Files
- Student Records
- Financial and Tax Records
- Gift and Alumni Records

#### Student Affairs Decisions & the Law

This manual informs student affairs administrators and staff about the legal implications of their decisions. Topics include:

- The College Catalog and Contracts
- Campus Security
- College Rules and Liability
- Liability and Releases of Liability
- Disclosure and Retention of Student Records

#### Student Behavior: Policies Programs & the Law

This manual focuses on reducing potential liability emanating from student alcohol and drug abuse, suicide, and obesity. Topics include:

- Suicide and Institutional Liability
- Binge Drinking
- Drug Abuse
- Parental Notification
- Liability for Alcohol Related Injuries on Campus
- Social Norming
- Healthy Lifestyles
- Duty to Protect

### FORMS MANUALS

#### \*Contracts for Campus Administrators, Faculty, Students & Coaches

This manual analyzes contracts utilized by university decision-makers, and provides practice tested and ready to use form contracts. Contracts include:

- President Contracts
- Faculty Contracts
- Coach Contracts
- Internship Agreements
- Residential Housing Agreements
- Releases and Waivers
- Administrator Contracts
- Athletic Director Contracts

#### Implementing Student Policies: A Formbook

This manual provides specific examples of edited, alternative policy forms for implementing various student policies. Topics include:

- Judicial Proceedings
- Disability Compliance
- Student Organizations and Activities
- Liability Releases and Waivers
- Buckley Compliance

### POLICY MANUALS

#### \*Faculty Handbook Policies

This manual provides edited, alternative policy statements for faculty handbooks. Topics include:

- Dismissal for Cause
- Sexual Harassment
- Academic Fraud and Scientific Misconduct
- Academic Freedom
- Tenure and Post-Tenure Review
- Computer Use

#### \*Staff Handbook Policies

Provides examples of edited, alternative policies statements for staff handbooks. Topics include:

- Conflicts of Interest
- Family and Medical Leave Act
- Sexual Harassment
- Disabilities
- Drugs and Alcohol
- Disciplinary and Grievance Procedures
- Termination

#### \*Strategic Legal Planning:

#### The College & University Legal Audit

This manual provides a 40-page legal audit assessment, six checklists, and seven sample policies. Topics include:

- Governance
- Academic Affairs
- Research and Grant Accounting
- Administration
- Endowment and Development
- Student Affairs

#### \*Student Handbook Policies:

This manual provides edited, alternative policy statements for student handbooks. Topics include:

- Cheating and Plagiarism
- Computer Use
- Drugs and Alcohol
- Sexual Harassment
- Crime on the Campus



# COLLEGE DECISION MAKING AND THE LAW

## ORDER FORM

### Lex Collegii

The widely-read quarterly legal newsletter for independent higher education is directed to college decision-makers. Recent topics include sexual harassment, dismissal for cause, liability for extracurricular activities, disabled students, financial exigency, academic fraud, collegiality and sex and age discrimination.

- \_\_\_\_\_ One-Year Subscription: \$48.00
- \_\_\_\_\_ Two-Year Subscription: \$78.00
- \_\_\_\_\_ Back Issues with Binder (Vol. 16 - Present): \$160.00

### PLEASE INDICATE THE QUANTITY ORDERED:

#### Resource Manuals

- \_\_\_\_\_ \$60.00 **Complying With Federal Law: A Reference Manual for College Decision Makers**
- \_\_\_\_\_ \$60.00 **Faculty Decision Making and the Law**
- \_\_\_\_\_ \$60.00 **Institutional Advancement and the Law**
- \_\_\_\_\_ \$60.00 **Managing Admissions, Records, and the Law**
- \_\_\_\_\_ \$60.00 **Managing Campus Conflict Through Alternative Dispute Resolution**
- \_\_\_\_\_ \$60.00 **Managing Campus Cyberspace & the Law**
- \_\_\_\_\_ \$60.00 **Managing Departments: Chairpersons & the Law**
- \_\_\_\_\_ \$60.00 **Managing Liability & Overseas Programs**
- \_\_\_\_\_ \$60.00 **Managing Student Disability Compliance**
- \_\_\_\_\_ \$60.00 **Record Retention & Disposal**
- \_\_\_\_\_ \$60.00 **Student Affairs Decisions & the Law**
- \_\_\_\_\_ \$60.00 **Student Behavior: Policy, Programs & the Law**

#### Forms Manuals

- \_\_\_\_\_ \$60.00 **Contracts for College Administrators, Faculty, Students & Coaches: A Formbook**
- \_\_\_\_\_ \$95.00 **Contracts for College Administrators, Faculty, Students & Coaches: A Formbook**  
Manual & Computer Disk
- \_\_\_\_\_ \$60.00 **Implementing Student Policies: A Formbook**

#### Policy Manuals

- \_\_\_\_\_ \$60.00 **Faculty Handbook Policies: A Forms Manual for College Decision Makers**
- \_\_\_\_\_ \$95.00 **Faculty Handbook Policies: A Forms Manual for College Decision Makers**  
Manual & Computer Disk - *Windows format*
- \_\_\_\_\_ \$60.00 **Staff Handbook Policies: A Forms Manual for College Decision Makers**
- \_\_\_\_\_ \$95.00 **Staff Handbook Policies: A Forms Manual for College Decision Makers**  
Manual & Computer Disk - *Windows format*
- \_\_\_\_\_ \$60.00 **Student Handbook Policies: A Forms Manual for College Decision Makers**
- \_\_\_\_\_ \$95.00 **Student Handbook Policies: A Forms Manual for College Decision Makers**  
Manual & Computer Disk - *Windows format*
- \_\_\_\_\_ \$85.00 **Strategic Legal Planning: The College and University Legal Audit**
- \_\_\_\_\_ \$110.00 **Strategic Legal Planning: The College and University Legal Audit** Manual & Computer Disk (*Windows format*) of Legal Audit Assessment

\_\_\_\_\_ \$200.00 **Ready Reference Legal Library**  
Purchase any four manuals at a special reference library price and save \$40.00. *The Legal Audit and computer disks are not available with this special offer.* Indicate the four manuals desired by checking the appropriate blanks.

The manuals are written or coauthored by Kent M. Weeks, a practicing attorney in Nashville Tennessee, and for many years a Professor of the Practice of Education at Vanderbilt University. A graduate of Duke University law school, Weeks is experienced in advising colleges, universities and education associations. He is editor of Lex Collegii, a widely circulated legal publication for independent colleges and universities. Weeks has written several books and more than 43 articles and papers for scholarly journals and has presented numerous workshops for colleges throughout the country. He serves as legal counsel to several colleges and national and international education associations.

Enclosed is my payment in the amount of \_\_\_\_\_.

*Please add a shipping and handling charge of \$10.00 for publications.*

*You may use your credit card when ordering these publications directly from the CLI web site at [www.collegelegal.com/public.htm](http://www.collegelegal.com/public.htm)*

Name \_\_\_\_\_

Position \_\_\_\_\_

Institution \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**Send order and payment to:** College Legal Information, Inc.

P.O. Box 150541  
Nashville, TN 37215-0541  
(615) 383-3332  
[www.collegelegal.com](http://www.collegelegal.com)