Private Philanthropy:
Vital & Innovative? or Passive & Irrelevant?

The Donee Group Report & Recommendations

The Donee Group is a coalition of
public interest, social action
and volunteer groups acting as advisors to
The Commission on Private Philanthropy
& Public Needs

Contents

In the late 1960s and early 1970s, many American institutions wielding large amounts of apparently unaccountable power came under scrutiny by citizen groups and Congress. Private philanthropy, dispensing billions of dollars annually and responsible primarily to its own good judgment, was not excepted. The Tax Reform Act of 1969 was interpreted in the philanthropic community as a punitive measure, and possibly only the opening move in a campaign to alter the power relationships which had long prevailed in the closed world of philanthropic giving.

It was in this context that John D. Rockefeller III initiated the Commission on Private Philanthropy and Public Needs in the fall of 1973. Since the problems of private philanthropy were thought of as inextricably connected to the tax law, the encouragement and support of Wilbur D. Mills, then Chairman of the House Committee on Ways and Means, and George P. Schultz, then Secretary of the Treasury, along with William E. Simon, the current treasury secretary, was sought in creating the Commission.

Known as the Filer Commission, after its Chairman, John H. Filer, Chairman of the Board of Aetna Life and Casualty Company, it has spent over $2 million in conducting a study of private philanthropy and the nonprofit sector.

The membership of the Commission was chosen overwhelmingly from among prominent businessmen, judges, religious leaders, University presidents and foundation executives. Given this membership and the Commission's auspices, its work was sure to have a significant impact in any future discussion of the role of private philanthropy in our national life.

The Commission worked in relative obscurity until late 1974 when a group of public interest and social change organizations became interested in and concerned with the direction the Commission seemed to be taking. A catalyst for these concerns was an article written by Pablo Eisenberg, now President of the Center for Community Change, in the January 1975 issue of The Grantsmanship Center News. He noted that the Commission had stressed the problems and concerns of only one half of the philanthropic equation--the givers--and had neglected the very real and pressing needs of the recipients or would-be recipients of philanthropic largess.

Mr. Eisenberg noted that "the questions, Who gets what?, What are the priorities of foundations and voluntary organizations?, and Do current conditions meet society's changing needs? have either been played down or largely ignored." He postulated that the emphasis of the Commission's work was at least partly the result of the composition of the Commission and its advisory committee. He noted that they reflected "very disproportionately the establishment side of both the voluntary sector and philanthropic organizations."

The Commission responded to this criticism by asking Mr. Eisenberg to assist them in convening a meeting with public interest groups and others in Washington on March 6, 1975. As a result of that meeting and subsequent ones, the Commission, at its April 18, 1975 meeting, approved a proposal developed by public interest, social action and volunteer organizations to provide additional research and consultation on issues important to recipients of philanthropy and to the Commission. This proposal outlined the following tasks:

1. To obtain the views, information and experience from a broad range of organizations within the donee community.

2. To explore the public needs and organizational concerns that philanthropy is either neglecting or not meeting.

3. To help review and critique the studies and papers already prepared for the Commission, thereby identifying gaps in its research that should be filled.

4. To commission additional studies that could fill the research gaps that had been identified or broaden the perspective of pertinent subject areas.

5. To provide specific comments and concrete policy recommendations on the major issues before the Commission from the perspective of the donee community.

6. To help the Commission members, staff and consultants think through, redefine, and possibly, expand the policy issues, assumptions and recommendations that will characterize its final report.

7. To study and recommend the ways in which the donee community can continue to make a contribution to any research and work on private philanthropy and public needs that follow the official termination of the Commission's life.

The Donee Group (as it called itself partly for want of a better name) has carried out these tasks by engaging in a variety of activities, including consultation, research and the sponsoring of several meetings attended by a wide cross section of interested organizations and individuals. The group is composed of organizations involved in minority rights, urban affairs, tax reform, voluntary action, environmental action, public interest law, housing, women's rights, community organizing, service to the handicapped, children's rights, social service, consumer rights and citizen participation activities in addition to scholars and some observers from the donor community. Since April 15, 1975, the Donee Group as a whole has met on ten occasions. There have also been meetings in California and New York with donee organizations which were not members of the Donee Group. In addition we have met individually with representatives of a wide range of organizations, including foundation executives, advocates for the American Indian, the physically handicapped, local art groups, religious organizations and local social action and community organizations in various parts of the country. The staff and members of the Donee Group consulted with Commission members and staff on a regular basis. We have had various research studies prepared by outside consultants and have produced analyses of our own.

Through all of those efforts we have attempted to get this Commission on Private Philanthropy and Public Needs to deal with the questions that are implied in its title. For instance, in our interim report of June 16, 1975, we urged them to examine the questions:

"What are the nation's public needs? How are they being met by private philanthropy? By government? Which needs should be met by government? Which by private philanthropy?"

Because the concerns of the Commission seemed to center almost solely on technical tax considerations, we urged that it take a larger perspective and ask:

"Who benefits? And who should benefit from private philanthropy?" Once these value-laden priorities were determined, we suggested, the "How" questions would then be placed in proper perspective. These "How" questions include the tax issues as well as governance, donor control, and accessability. We maintained that "all of these are basically methods or means to attain certain ends. If these ends are clearly understood, methods of attaining them become easier to find."

To a large extent we failed at our effort to have the Commission seriously and directly address these basic questions, as an examination of the Commission's report will reveal.

We succeeded in moving the Commission to accept our point of view in some areas. But now that the Commission has completed its work and we have fulfilled our obligation to them, we feel we must call attention to our differences both on the basic policy issues and on the recommendations which flow from them.

We have three groups of recommendations which are discussed in detail in this report. They arise from our findings that:

1. Access to the philanthropic process must be widened and made more readily available to many organizations presently shut out of the system. Similarly, greater accountability and changes in governance are necessary to strengthen as well as to provide greater access to the system.

2. The donor community must be redefined and broadened by giving all people (including non-itemizers and non-filers) the incentive to allocate money to charity.

3. The present system of government regulation and control of philanthropic organizations must be overhauled to eliminate impediments to certain necessary activities and to provide exempt organizations with competent, conscientious and non-partisan oversight and supervision.

It should be noted that those of us who have signed this report do so as individuals and not as representatives of our organizations. We have met together as an ad-hoc association of concerned citizens and have made specific recommendations to the Filer Commission and now to the public in hopes of providing the debate over these important issues with a perspective that it would not have otherwise had. It is for that reason that we have made many compromises and come to conclusions which are by no means unamimous in several instances. Those signing this report do not necessarily agree with each specific recommendation. However, they do agree on the general values and principles embodied herein which suggest that a drastic reevaluation and improvement of the workings of philanthropy must be brought about. Therefore, we hope that debate will center on the principles which lead us to make those recommendations as well as the recommendations themselves.

I. INTRODUCTION

What role will private philanthropy play in our national life in the next decade?

Will it provide the resources for constructive innovation, the seed money for new institutions and new issues, the venture capital for social change? Will it contribute to the solutions of the hard problems of American society in our most perilous period? Will private philanthropy become an open, vital and accessible force for progress?

Or will it continue in the patterns of the past, basically supporting established programs of established institutions, largely refusing to recognize new needs, and continually fighting a rear-guard action against mounting public and Congressional concern with the private use of public money? These are the questions one would expect a Commission on Private Philanthropy and Public Needs to address. In this context, it is also worthwhile to ask: Does the Commission's report meet the challenges of the future, or is it just another study to be shelved and forgotten as irrelevant to the needs of America at the beginning of its third century?

We recognize the significant contribution to many areas of our national life which the nonprofit sector has made in the past. Much of the work of various foundations stands out as excellent examples of the best of philanthropy. But we fear that more of the same from the vast majority of the nonprofit sector will not suffice. At present, philanthropy has largely failed to meet or has barely met the needs of many constituencies within our society. It has also failed to have substantial impact on the most pressing issues of the day, such as nuclear proliferation, the energy crisis, inflation, world hunger, women's rights, to mention only a few. Future problems promise to be dramatically different from the past in both degree and kind. Private philanthropy will be called upon to meet more complicated and difficult challenges, calling for innovation and new solutions, not the "tried and true."

Shortly over two years ago, the Commission on Private Philanthropy and Public Needs, in their own words, "launched a broad-range, in-depth study of philanthropy, its relationship to government and its role in American society." They listed the following "basic areas for study and analysis."

- Should our society continue to encourage the formation and support of private organizations and institutions as a major means of satisfying our public needs?
- Would the fabric of American society be altered if government replaced the private initiative and effort which traditionally defined and met our public needs?
- What is the appropriate relationship between government and private society in harnessing national resources of creative initiative, energy and money to define and meet our public needs?
- Is the present system of private support providing adequate resources for society's needs or should new sources be found? How can existing sources be strengthened, perhaps through public support in the form of improved tax incentives? Should the present trend toward increased governmental support be encouraged?
- Are our society's resources devoted to satisfying

community needs being appropriately allocated among the many purposes, organizations and institutions which depend on private support?

- Is the federal tax system an effective and desirable means for encouraging private donations? Should the present system be modified to achieve more equity and tax rate progression?
- Are other means possible to encourage and supplement private support for public needs in addition to, or in lieu of, the present tax system?
- How has private philanthropy adapted to changing issues and expectations and to changes in the role of government?
- What is the nature and extent of non-financial philanthropy, such as donated time by individuals and organizations and how is this related to incentives for financial philanthropy?

All of these questions implied that the Commission was going to make some qualitative judgments about how philanthropy had performed in the past and how it should perform in the future. Instead, the Commission has dealt mostly with quantitative assessments of the economic and tax law problems facing established philanthropic institutions.

It is our view that the Commission's report fails to deal adequately with many issues of present and future importance to the private nonprofit sector. The report fails to recognize the need for profound reform to improve the philanthropic process; it opts for exhortation and pleas to open and reform the process when legislation and structural changes may be necessary; it continues to plead for the status quo; it fails to recognize the needs of new and emerging issues and organizations; it fails to deal adequately with problems of corporate and union donors and federated drives such as United Way; it fails to deal with problems of regulation by the Internal Revenue Service; and it postpones many important issues in the hope that the proposal to create a permanent Commission will soon be implemented.

It is worth remembering that the tax and financial matters which occupied so much of the Commission's time and resources are not ends in themselves, but merely means to achieve policy goals. We regret that the Commission too often failed to recognize that it was dealing with public policy issues affecting the lives of real people.

Our basic dissatisfaction with the Commission's major findings and conclusions may be briefly summarized as follows:

1. Important groups and issues have been given inadequate consideration in the Commission's report. These groups have been variously described as social action or public interest or minority advocate organizations. They include the following: a) the smaller, newer, primarily local organizations dealing with a wide spectrum of concerns; b) groups advocating minority and

---

[1]David Horton Smith describes these groups as having the following characteristics: smaller, newer, poorer, local, "grassroots," unaffiliated, participatory, self-help, technical assistance oriented, minority, disadvantaged, social action, advocacy, experimental, social change oriented, innovative, issue oriented, public interest, corporate/governmental monitoring. See also, Appendix D. "List of Participants," Summary Report on June 30, 1975, Los Angeles Conference, for the types of organizations considered here.

women's rights; and c) groups engaged in overseeing, monitoring and evaluating government and other institutions of the society. These include public interest law, consumer and environmental organizations as well as those institutions providing technical services to otherwise powerless organizations.

Although the Commission recognizes the support of organizations such as these to be one of "the enduring pragmatic functions seen for nonprofit organizations," it does not make recommendations to remedy the lack of support which these issues and organizations have received from the nonprofit sector.

2. The report does not deal adequately with the need for improving the philanthropic process by providing greater access, accountability and changes in the governance of private nonprofit organizations. The report recognizes the problems, yet the recommendations which follow do not provide the means to achieve these rhetorical goals. Also, the draft fails to deal adequately with the special problems of accountability of and access to United Way, corporate and union donors.

3. A major concern of the report is the need to protect established institutions of higher education, health, welfare and the arts. The Commission has not adequately considered, or has rejected, non-philanthropic means of supporting these institutions in spite of the fact that the need to find alternative sources of support is clearly understood.

4. The changing relationship between the public and private sectors has not been analyzed and no recommendations for the future have been made. The Commission has failed to answer two basic questions. The first is: Which public needs should be met

by private nonprofit groups and which by public bodies? The second is: Which needs should be met with government funds and which with philanthropic funds? Not only has the Commission failed to clarify these issues, it has further confused them by equating public funding with public auspices. The Commission should have dealt with finding ways to preserve the independence of nonprofit groups while providing them with necessary government funding.

Although this report is to some extent a catalog of our disagreements with the Commission, there are some issues on which we agree and others on which our differences are minor or ones of degree. The Commission's recommendation on lobbying and personal or institutional self-benefitting are substantially the same as ours. Those on donor control of foundations, expenditure responsibility, public information requirements and others represent different approaches to solving the problem but also reflect our agreement on the principle behind those approaches.

II. THE BASIC POLICY ISSUES

This section will attempt to set forth the Donee Group's values and concerns as reflected in the meetings and other activities which we have sponsored. We also will attempt to assess what we believe to be the Commission's major value assumptions in an effort to provide the context from which we believe the Commission's policy recommendati flow.

It should be noted that the Donee Group agrees with many of the most important Commission value assumptions, such as the need to preserve and strengthen the private nonprofit sector and the need to preserve freedom of choice for philanthropic support. Disagreement arises, however, on questions of the relative utility of certain kinds of giving, the proper role of government and the need for basic reform in access and governance.

A. THE PERSPECTIVES OF THE DONEE GROUP

We view the issues of private philanthropy and public needs in the context of a society in which power and resources are grossly misallocated. Ours is a society in which racial, ethnic, sexual and other forms of discrimination deny many the political, economic and social advantages enjoyed by other Americans. It is also a society in which misallocations of power and discriminating patterns have created wide-spread distrust and disaffection for institutions of power of all kinds. But it is a society nonetheless with many mechanisms, both public and private, for remedying its ills.[1]

Given this general point of view we view private philanthropy as a valuable tool to be used in meeting public needs. When philanthropy does live up to the ideal of an innovative, fearless agent of social change and an advocate for those who are most in need, it becomes invaluable. Sarah Carey, in her paper "Philanthropy and the Powerless," points to several instances of support for organizations such as the National Welfare Rights Organization, the Mexican American Legal Defense and Educational Fund and the Southern Regional Council Voter Education Project which illustrate philanthropy

---

[1]For a most thoughtful analysis of these issues, see Thomas R. Asher's paper, "Public Needs, Public Policy and Philanthropy."

at its best. As Marion Fremont-Smith and Adam Yarmolinsky state in their paper[1], private philanthropy "...can foster constructive innovation, and it can sustain valuable but neglected ongoing activities, making room for diversity, and broadening the field of choice for possible government support." They also acknowledge that "...it can simply indulge in an exchange of back-scratching favors within a narrow circle of wealth."

We believe that instead of being the venture capital for social change, philanthropy has, for the most part, patterned itself after its corporate and governmental counterparts. Most of it has become bureaucratic, safe and more conservative and less willing to take risks than the government.

Other observers support this contention.

For example:

1. Archibald Gilles, President of the John Hay Whitney Foundation in an article entitled "Real Politics" in the January/February 1975 issue of Foundation News finds that less than 1% of foundation grants in 1972 and 1973 dealt with fundamental questions relating to the functioning of major political and economic institutions in the United States.
2. Herman Gallegos in his study, Foundations' Responsiveness to Concerns of Minority Groups finds that less than 1% of foundation grants in 1972-73-74 went for the benefit of social and ethnic minorities.
3. Sarah Carey in her Commission paper, "Philanthropy and the Powerless" says, "Regardless of how the pie is sliced, there is no question that grants made directly for social change or to assist the powerless are dwarfed by the massive philanthropic contributions made annually in support of education, the arts, health services and the like."

---

[1] "Preserving the Private Voluntary Sector: A Proposal for a Public Advisory Commission," to be published by the Commission.

4. Mary Jean Tully in her Donee Group paper "Who's Funding the Women's Movement?" finds that projects designed to improve the status of women amounted to less than 1/5 of 1% of foundation grants between 1972 and 1974.
5. The figures in Giving, U.S.A., 1975 show that 35.4% of all philanthropy goes to established institutions of higher education, hospitals, museums and the like with another 43.1% expended on religion. Most of what remains is used to support institutions with large overhead expenses which perform functions and provide services similar, if not identical to those performed by government.

We believe that a critical role for philanthropy is support of organizations monitoring, overseeing or seeking changes in government, industry and other established institutions. We agree with Waldemar Nielsen's conclusion that the essential role of a private philanthropy is to support "independent centers of initiative to challenge, criticize, and provide a creative spark for the massive governmental, economic, social and religious institutions which increasingly dominate our national life." Equally important, private philanthropy must help to build institutions and provide technical assistance for deprived communities (such as women, Blacks, the Spanish speaking, etc.) as they begin to partake of the rights of the majority and to consolidate and maintain the gains they make.

We do not believe that philanthropy should have as its primary purpose the support of private institutions performing essential public services that are being delivered by business or government. Higher education, health care, the arts and other public functions may be performed by public or private institutions. In either case, it is done largely with public rather than private funds. Since the amounts available from philanthropy for support of service organizations will never be equal to the task those organizations must undertake, philanthropy must consider altering its objects of support to make optimum use of its limited resources. It can do this by applying relatively small amounts of money to social change, monitoring and oversight functions which can have longlasting impact of great significance.

As philanthropy has an impact in certain areas, it should, (except in cases of certain minorities which need substantial "catching up"), move on to new concerns and leave to government or other institutions the burden of permanent funding, a task which the nonprofit sector cannot be expected to fulfill. Private philanthropy should permanently maintain only those groups which oversee, monitor and "goad" the ongoing process. In order to maintain the responsiveness to changing needs that such a system requires, philanthropy must provide greater access to those new issues and organizations that reflect emerging needs. In many cases that will not be enough. Philanthropy will have to actively seek objects of support rather than remaining essentially passive while supporting established institutions.

It is equally important for nonprofit organizations which are recipients of philanthropy to remain open and responsive. Many of these groups act as though the preservation of the organization is more important than meeting the needs of the public. Given the key role they must play, it is especially important for these groups to evaluate themselves critically in relation to the public they serve.

Most other institutions in our society have recognized or have been made to recognize the value of openness and accountability. Freedom of information and "sunshine" laws are increasingly regulating the process of government. Some corporations have responded to the corporate responsibility movement and the demands of the general public by revealing more and more about their operations. The citizen movement which propelled this process has found that philanthropy is lagging far behind in openness and responsiveness to many constituencies. Many people ask the same questions that Mavity and Ylvisaker pose: "Why, in a society that values equality of opportunity so highly, should such a vital process as the private allocation of otherwise-taxed resources be so organically tied to private wealth? Isn't it time to democratize philanthropy, and make certain -- as we have with other vital processes, of more equal access and participation?"

In summary, we believe that there is a permanent role for a private nonprofit sector. Monitoring institutions of power and providing vehicles for emerging minorities to gain their rightful place in society will always be necessary tasks and these tasks are even more important as government on all levels grows larger and further removed from the citizen.

B. COMMISSION PERSPECTIVES

There are several explicit and implicit value assumptions permeating the draft of the Commission's final report. These value assumptions include the following:

1. Preserving the Status Quo

"For now and the forseeable future, however, the Commission feels that any inducements to giving should not be contstructed so as to discourage giving to current recipients." (Filer Commission Report, p. 127). Thus, baldly stated, is the Commission's major assumption--preserving favored treatment of established private institutions in the areas of higher education, health, welfare and the arts. As we have attempted to demonstrate through research papers and meetings, there are, of course, competing values and competing organizations which are given insufficient attention by philanthropy in general, and by the Commission's report. These organizations, which are described in greater detail below, include those engaged in efforts to achieve social justice or social change and those which advocate for or on behalf of underrepresented minorities.[1] There are occasional references in the draft to these groups, but there is little recognition that these are new constituencies which philanthropy must serve. Nor is there sufficient recognition of the many worthy causes which are underfunded or ignored. Moreover, no effort is made to analyze the structural or institutional reasons that social change and newer and smaller organizations and issues have such difficulties.

While the report recognizes that support of "cutting edge" issues and organizations is one of the most valid justifications for private philanthropy, this is little more than lip service when one considers the major thrust of the report and the hierarchy of Commission values. The report contains many examples drawn from the problems of higher education and health care delivery but virtually nothing about public interest, consumer, or environmental law, or organizations engaged in public policy development, or overseeing government, the market place and the media, or community organizing and advocating minority rights.

---

[1]See also, Thomas R. Asher's paper "Public Needs, Public Policy and Philanthropy," especially pp. 8, 16-17, 25, for further description of the types of organizations to which we refer.

Although one of the Commission's "Basic Issues" was an examination of the appropriate relationship between government and private society in defining and meeting our public needs, there is no serious debate over whether there is a continued need for private support of certain kinds of institutions. For example, it is widely recognized that there is excess capacity in the country of hospital beds and institutions of higher education. Yet the Commission has not grappled with the hard questions of reallocating limited philanthropic dollars from these areas to those in greater need.

In addition, the report contains no analysis of the purposes for which philanthropic dollars are given, beyond the calculation for "welfare" or "education" or "health." Within these general categories, moreover, most grants are made to the relatively established organizations and for relatively "non-cutting-edge" purposes. The Commission states that "private funds can provide an 'edge of quality'...," but does not analyze the uses made of philanthropic dollars. It is quite clear that the purposes for which grants are made are often no more innovative or imaginative than the choice of organizations receiving the bulk of philanthropic giving.

2 - Failure to Assess Public Needs

As indicated above, once the Commission had determined, *a priori*, that established objects of giving should continue to be supported, there was no need to assess relative public needs. And, not surprisingly, the Commission has made no attempt to discuss or catalog such needs or to decide which public needs should be publicly supported and which supported by private philanthropy.

Why, for example, is higher education or the arts of such concern to the Commission and not problems of housing or nutrition or reform of our criminal and penal laws? Why is the report full of health-care-delivery examples, but so little on preventive medicine or occupational disease? Why is there no mention of the role of private philanthropy in the energy crisis or in problems of nuclear proliferation or inflation or dozens of other crushing problems? Are these not public needs with which private philanthropy ought to try to deal?

In short, the Commission has only done half of its job unless and until it makes an effort to answer the kind of question it initially set for itself: What are our "public needs" and how are they to be supported?

3 - Fear of Government

The report recognizes the increasing role of government support to higher education, health care, welfare and the arts, but insists, without adequate substantiation, that such support inevitably diminishes independence and leads to political interference. This fear of government pervades the report. It is implicit in the dismissa of most alternative methods of support for these institutions, such as a voucher system or matching grants, and it is explicit in the refusal to accept a greater role for government in governance, access and accountability. Yet the Commission's research largely fails to substantiate these fears. The report does not document its concern with government interference in the programs and operations of institutions receiving government support. It also does not distinguish between the role of government as philanthropist and its role as regulator. As Professor Galbraith has observed, "...the role of government, when one contemplates reform, is a dual one. The governme is a major part of the problem; it is also central to the remedy."

There have, in fact, been examples of political interference in the exemption and audit process conducted by the I.R.S. And there surely must be examples of government attempts to interfere in program and policy decisions of organizations receiving government support. But is the alternative of interference by private philanthropy preferable? The report fails to recognize that very often private sources of support will dictate to potential grantees in an equally egregious manner. For example, Yale alumni recently reduced their contributions in order to force the University to change their admission policy which had resulted in fewer progeny of graduates being admitted.

In short, the problem is not meddling, control or interference; it is the potential <u>source</u> -- government -- which gives rise to the Commission's fears. It is our view that not only are fears of government not documented, but that the Commission has not adequately recognized the methods by which private sources of support exert equally extensive bonds over recipients of giving.

The Commission should have focused on how to retain the privacy and independence of those institutions during a period in which the proportion of their budgets coming from government is increasing. This is one of the fundamental problems of a pluralistic society. We are no further toward its solution than we were two years ago.

4 - <u>Excessive Confidence in Self-Regulation</u>

The Commission has an unjustified belief in the efficacy of self-regulation. Many of its recommendations on governance, access and accountability rely on exhortation and self-regulation. This is partly based on fear of government interference, but it does not recognize the futility of self regulation.

In a paper on "Self-Regulation in Private Philanthropy" prepared by Peter Meek for the Commission it is stated:

> During this study several persons expressed the opinion that self-regulation by the private sector, including philanthropy, is a myth in the United States. It is a concept which the private sector believes it practices and behind which it rallies when the threat of government intervention is perceived. (181)
>
> On the basis of present knowledge and understanding of self-regulation in philanthropy, the cynical observations ... cannot be convincingly contradicted.
>
> Certainly it was the absence of effective self-regulation that contributed to the restrictive regulations imposed on private foundations by the Tax Reform Act of 1969. This report makes it evident, too, that self-regulation mechanisms have made no startling progress among private foundations since 1969. (182)

Previous studies on philanthropy such as the Peterson and Treasury Reports have suggested reforms through self-regulation. They have not succeeded in accomplishing much, nor is there reason to believe that any institution willingly alters its procedures, especially toward greater openness and accountability, without outside pressure of some kind.

III. RECOMMENDATIONS

The Donee Group, working with essentially the same information as the Filer Commission, has come to different conclusions on most issues because of the different perspectives discussed above. However, we feel that in many instances our recommendations are more in concert with the Commission's own research than are theirs.

We present our recommendations in the hope that debate over these important issues will be stimulated. We strongly believe that it would be detrimental to both philanthropy and society in general if the questions we raise are not part of that debate.

A. IMPROVING THE PHILANTHROPIC PROCESS

The Donee Group's most important conclusion is that individuals, and organized philanthropies must reorder their priorities for giving to insure that, in the words of Alan Pifer, President of the Carnegie Corporation, "the benefit should go to those who are most in need of benefit. That is, the poor, the downtrodden, those that have suffered discrimination." Such an exhortation is ineffective unless specifically implemented, but given past history, it is unlikely to be acted upon voluntarily. Therefore, we endorse the following specific legal remedies which, in our opinion, will change the rules of the philanthropic marketplace sufficiently so that groups engaged in "citizen empowerment" and other social change activities will be able to compete on a more equal basis with the older, larger and more nationally oriented groups now enjoying a substantial monopoly.

1 - Limit Donor Control

In order to improve access to the philanthropic process, the Donee Group recommends a phase out of donor control over charitable organizations. Specifically, <u>the governing boards of all foundations would be required by law to have no less than one third public members immediately and no less than two thirds public members after five years. Public members would be defined negatively to eliminate donors, their relatives and business associates</u>.

The Filer Commission takes the opposite approach of providing incentives for decreasing donor control of foundations through creation of a new entity called an "independent foundation" which would not be subject to the limitations on giving placed on private foundations by the Tax Reform Act of 1969. The Donee Group does not reject its approach but feels that it should operate in tandem with our phase out plan.

Although we recognize that many of the larger, national foundations already comply with our recommendation,[1] we believe it will prove useful in reforming those small, local and tightly controlled foundations which constitute the vast majority of grant-making organizations. It would make clear to donors that, as the Council on Foundations report to the Commission puts it, it's "not our money, but charity's." All too often donors view foundations as their personal property. "My foundation" is the standard form of reference used by most donors. We agree with the view expressed in the "1965 Treasury Department Report on Private Foundations" (on whose model our recommendation is based) that many charities

> "continue in existence year after year without achieving any of the external indicia of unique advancement of philanthropy. They attract no public attention; their endeavors gain no public support; they appear to open no new areas, develop no new vistas, create no rearrangements or alterations of focus among charitable enterprises generally."

---

[1]A survey done for the Donee Group by Amy Libenson showed that the majority of private foundations listed in the Foundation Directory Edition 5, had substantial donor control. The method used to determine "donor control" was simply to identify only those trustees whose surname matched the surname of the donor. This is the most conservative method of determining donor control since it excludes relatives with different last names, employees, business associates and personal acquaintances.

We agree with the Treasury Report that by "broadening the base of foundation management, the recommendation (to eliminate donor control) would bring fresh views to the foundation's councils, combat parochialism, and augment the flexibility of the organization in responding to social needs and changes."

2 - Broadening Membership of Governing Boards

We believe that the removal of donor control is just the first step in realizing needed changes in the governance of philanthropic institutions. Those replacing the donor and his designees must bring new ideas and perspectives to those boards or there may be no change of consequence.

We therefore recommend that organized philanthropies with broad purposes be required by law to expand their governing boards to include significant representation from the general public and nonprofit agencies and, in particular, women and minorities. For those philanthropies which have a specialized purpose or geographic or program limitation, we recommend that the law require representation of those communities which are affected by or which have a special interest in those programs or areas.

We do not agree with the Commission that such changes are likely to occur through exhortation. Their proposal will result, at best, in some additional window dressing. We also reject the Commission's contention that a proposal such as ours will "undermine and important distinction between the voluntary sector and government." Our proposal will actually make philanthropy more pluralistic by making it more able to represent "different priorities, differently arrived at."

3 - Staffing is Essential

Opening the boards of some private philanthropies to more points of view will not improve access for some charities because the lack of professional staff is an even greater impediment. There can be no rea consideration of proposals, much less affirmative outreach, unless the is adequate staff.

The Peterson Commission in 1970 urged foundations to hire staff themselves or "to consider merging into existing community foundations or "to pool their resources to share the services of a professional administrator" or to "form associations of foundations interested in a similar program area and jointly hire an expert."

The report of the Council on Foundations to the Filer Commission indicates that there are indeed more foundation staff now than in 1969 But the survey also demonstrates that, for the most part, staff were hired to deal with the administrative complexities of the Tax Reform Act of 1969 rather than to enhance the foundations' program functions. By all accounts, the vast majority of foundations have no professional staff and of all reported staff, 23% work for either the Ford or Rockefeller Foundations.

The survey by the Conference Board done for the Commission also indicated a similar need for staff in corporate giving. The survey stated, "although professional staff analysis is the most widely used evaluative technique, the fact is that there is a minimum of professional staff employed specifically for the contributions and foundatio functions. More than four out of ten companies have no professional or clerical staff. Only one out of four companies has one full-time professional working in this area."

"It has been previously noted that a number of corporate leaders (23%) indicated they would increase contributions if they had more confidence that their contributions programs were successful. Perhaps part of the problem lies in this area of professionalization and evaluation. If 41% of the companies lack professional staff, how can they assess the need for new grants, the effectiveness of on-going grants, the performance of donor agencies?"

Since exhortation has not been successful in the past in changing the staffing of grant-making organizations, the Donee Group recommends that there be a legal requirement that any organization making grants in excess of $100,000 per year employ at least one full-time professional (i.e. not a bookkeeper, accountant or donor's secretary) or, as an alternative, join in a cooperative venture with other organizations sharing common staff.

4 - Expanded Public Information Requirements

Governance and staffing are not the only barriers to accessibility to philanthropic dollars. The absence of information is at least as important. At present, only 352 private foundations out of the total of 26,000 go beyond the legal requirements and publish reports which define their program areas and describe grant procedures. In the case of religious, corporate, union and United Way funders, there are no legal reporting requirements. Except for United Ways, almost none of these groups reports voluntarily.

Aside from insufficient reporting, it is generally believed (as stated, for example, in our meetings with local organizations in California and New York) that organized philanthropies often fail to adhere to minimal courtesies unless the seeker of funding has the "right contacts." Foundations often refuse to communicate at all. A survey published in the April-May, 1974, issue of the Grantsmanship Center News showed that even among the larger foundations, 78% made no response to a simple request for information. When there is a response, very often it is a form letter containing a negative reply to a request for funds whether such a request was made or not. It rarely contains any reason for denial.

All of these persistent problems lead us to recommend that all grant-making organizations which are exempt or which receive deductions through their grants (including churches, unions, corporations, United Ways, etc.) be required by law to publish annually: a) nature of the program areas in which they make grants; b) criteria by which they make decisions between individual applicants; c) amounts available in each program area; and d) a list of grant recipients with amounts and a short description of the purposes of the grant and the recipient.

Those grantors with $250,000 or more in assets devoted to grant programs or $100,000 or more in total grants per year would additionally be required by law to provide applicants with specific explanations for rejection of grant requests. They would also be required to publish annually a formal procedure of request for proposals; a statement of the organization's efforts to evaluate its programs in light of changing public needs; a statement of the methods used to recruit new members of the governing board and new staff; a list of staff, consultants and board members with their salaries and fees; and a statement of efforts to work with other grantors to avoid duplication and to seek out worthy projects for funding. "Publish", in these recommendations, means to produce a printed document written in narrative form in clearly understandable language containing the above information. It also means distributing it to the media, interested citizens and groups and making the document available to anyone requesting it in addition to filing it with the Internal Revenue Service. Since all of these recommendations are designed to improve communication between donor and donee, we would further urge that the grant-making organizations insure that language barriers do not prevent or impede that communication.

5 - Annual Public Meetings

As a corollary of the public information requirement, we recommend that the law require annual public meetings of the governing boards of grantors with $250,000 or more in assets or $100,000 or more in total grants per year. These meetings, which are standard procedures for organizations in other sectors, would include a program assessment; a preview of future priorities; a review of staff and board member selection; a review of major grants; a forum for the public to state grievances and such other matters as members of the public may wish to raise. Appropriate notice to the public and affected constituencies should be required.

6 - Eliminate Expenditure Responsibility

One special barrier to access to philanthropic funds by new and struggling organizations is the expenditure responsibility requirements placed on private foundations by the Tax Reform Act of 1969. Under the Act foundations and their managers are subject to severe financial penalties if they made grants to organizations which use the funds for non-charitable purposes. This has caused a tremendous decrease in foundation grants to non-tax-exempt organizations.

Before 1970, 39% of foundations made such grants while now only 20% do.

Therefore, we recommend that the law be amended to eliminate expenditure responsibility requirements.

In addition to increasing the funding of new and controversial organizations, such a change in the law would reduce the administrative costs of foundations and make more money available for charity.

If the Congress and regulators feel that there must be such requirements, then we strongly urge that the requirements be eliminated for grants under a set limit, which should be no lower than $50,000.

7 - Federated Fund Raising: Non-Exclusive Access; Prevent Conflicts of Interest; Reduce "Effective Donor" Control

One of the types of organized philanthropies which presents special problems of access is the federated fund-raising organization, such as United Way. (One of the great voids in the Commission's work is the absence of any substantive comment or recommendations on federated fund raising campaigns.) It is for this reason we have included such federated campaigns in our other recommendations on access such as broadening membership of governing boards, public information, public meetings, etc.

Among major problems those recommendations do not solve is the virtual monopoly United Way fund-raising campaigns hold on access to workplace solicitations and accompanying payroll deduction plans. This monopoly prevents federations representing areas of public needs or communities unrepresented or under-represented in United Way from using a highly successful technique. It is a classic example of a monopoly market, denying the "worker-consumer" the right to "buy" the charitable cause of his or her choice. We therefore recommend national legislation to require businesses to provide equal access to workplace charitable solicitation and payroll deduction programs for all federated charitable campaigns if access is provided to any such campaign.

Once equal access to fundraising is solved, it then becomes necessary to provide more equal access to the allocation process for the funds raised. At present, United Way board and committee members participate in financial allocation decisions that can and do affect other charitable organizations that they as individuals represent or to which they have a fiduciary and trustee relationship. This pattern of interlocking directorates results in a stagnant allocation pattern by United Ways. This is demonstrated by a study by Professor David Horton Smith for the Donee Group which shows that for a recent year there was an average change of only 0.56% in United Way allocations nationally for 72 agencies for which records were available.

Very seldom are agencies removed from or added to the United Way list of recipients and when such changes are made it involves only a tiny fraction of the total funding allocation. The planning process which supposedly assesses public needs and gives the board and staff information on which to base allocation decisions is non-functional. As Beatrice Dinerman noted in an article in Nation in March, 1970, "...the supposedly difficult and delicate process of distributing Community Chest contributions becomes little more than a charade designed to lull the lay decision maker into the belief that he is, in fact, reaching monumental decisions."

To end the charade and at least make outright self-dealing impossible, we recommend legislation to prevent conflicts of interest between the governing boards and allocation committees of federated fund-raising organizations on the one hand and the governing boards of recipient agencies on the other.

Another governance problem in federated fund-raising organization is donor control. Control in this case is different than that address in our recommendation on foundation donor control. Effective control federated fund-raising organizations is most often exercised by major corporate or governmental executives whose organizations have major pa roll deduction, fund raising, or other workplace-based campaign. Thes people may or may not be major donors as individuals, but they control large amounts of both corporate and employee giving.

Although of different type than donor control of foundations, thi type of control results in the same parochical, inflexible and unresponsive management as it often does in foundations. We, therefore, recommend that the governing boards of all United Ways, United Funds and similar, ostensibly representative federated fund-raising organizations should be discouraged from having more than minimal (preferably 1/4 or less) control by effective donors.

B. REDEFINING THE DONOR COMMUNITY

In discussing changes in the tax laws affecting charity, we must first state that the Donee Group favors basic tax reform to restore the progressivity of the income tax and to eliminate those preferences and other devices which allow great disparities to continue. We do no however, believe that if tax reform is gradual and piecemeal, as it is likely to be, that the tax incentives for charitable giving should be the first to go. We believe that there are far more unfair and costly tax preferences than the charitable deduction. They should be tackled first, since the benefits they provide do not compare with the support (meager though it may be) given to many useful movements and organizations for social changes.

1 - Charitable Deduction: Tax Credit Available to Everyone; Optional Tax Credit

As long as the tax incentive remains, however, it should be available on an equal basis to all citizens without regard to income or filing status. We feel strongly that the 8 million households which do not earn enough to file a tax return and the 50 million taxpayers (60% of all taxpayers) who do not earn enough to itemize their deductions should also receive a government subsidy for charitable contributions. It is indeed these people who are most in need of a vigorous nonprofit sector performing advocacy roles for their interests

We feel very strongly that the Filer Commission recommendations extending the charitable deduction to non-itemizers and allowing increased deductions for those with incomes of less than $30,000 does not go far enough towards democratizing charitable giving. Even more important it does not correct the great inequity of the present system which reverses the progressivity of the income tax by adding $70 to the $30 contribution of a wealthy taxpayer in the 70% tax bracket, only $14 to the $86 contribution of those in the lowest tax bracket and nothing to the contribution of those who don't itemize or file tax returns.[1]

---

[1] This occurs because of the varying actual cost to the taxpayer of identical donations given by donors in different tax brackets. A $100 gift given by a wealthy individual in the 70% tax bracket actually costs that person only $30 -- if the contribution had not been made, $70 of the $100 would have been paid in taxes. In essence, the government has added $70 to the wealthy person's $30 gift. However, for someone in the lowest (14%) tax bracket, a $100 gift has an actual cost of $86. And for someone who does not itemize deductions or file a tax return, there is no government subsidy -- a $100 gift costs $100.

We do not believe that the Commission's studies are adequate to predict what the changes in the present allocation pattern to various types of recipients will be as a result of democratizing the charitable deduction. However, in order to provide a period of adjustment for charities which might incur reduced income from such measures, we favor measures that would increase the total of philanthropic giving (and consequently reduce tax revenues) until alternative funding mechanisms can be implemented.

Therefore the Donee Group recommends that the charitable deduction be retained in its present form and that, as an intermediate measure, a 100% tax credit for a modest but not insubstantial amount (for example, $100) be made available to all adults whose incomes are low enough so that the benefits are concentrated on low income people, but the revenue loss to the Treasury is not excessive. This would give all adult citizens the opportunity to utilize the advantages available now only to the wealthy.

In addition, a tax credit equal to 30% of the amount contributed should be available to both itemizers and nonitemizers as an option to the charitable deduction. The present ceilings on the percentage of income that can be donated should be retained. Fixing the credit at 30% will reduce the inequity of the present system while increasing amounts available to all classes of recipients. We assume our plan is efficient since the 30% optional credit standing along, according to Harvard Professor Martin Feldstein's calculations for the Commission, results in an increase in total giving greater than the revenue lost to the government by $500 million.

After five years there should be a review of the effects of this system (i.e. the two recommendations above) to determine how efficient democratic and equitable it is in practice. After this period of evaluation a decision can be made as to whether the charitable deduction should be eliminated and the credits recommended here as options should take its place.

2 - Minimum Tax Required

We cannot support the contention of the Commission that "income deducted for charitable giving should be excluded from any minimum tax provision." It is our opinion that there should be a substantial minimum tax to prevent higher income individuals from avoiding taxatior through use of deductions or preferences. That, in order to implement such a minimum tax, limitations should be placed on the use of all deductions including the charitable deduction but that the charitable deduction should be impacted last and least so as to minimize the decline in charitable giving.

Anything less, in our opinion, would threaten the continued existence of the government subsidy to charity through the tax system by undermining public confidence in the fairness of the income tax as a whole.

3 - Charitable Bequests: Minimum Estate Tax Required

Our recommendation on the charitable bequest is a corollary of our recommendation on the minimum tax. We feel that since it is possible to avoid paying any minimum tax at death because of charitable gift that the charitable deduction not be allowed to prevent the payment of a minimum estate tax.

4 - Tax Gifts of Appreciated Property

The Donee Group believes that the deductability of gifts of appreciated property without a tax on the increase in value constitutes one of the worst examples of the inequity of the tax system. At present:

a. A gift of property costs a taxpayer less than a gift of cash.

b. Two taxpayers with the same income, giving gifts of equal value receive different government subsidies because of the nature of the gift.

c. It is possible for a taxpayer to realize a greater after-tax profit by making a gift of appreciated property than by selling the property, paying tax on the gain, and keeping the proceeds. (This is possible where a piece of property originally cost the owner nothing, is now worth $100 and the owner is in the 70% income tax bracket. By giving the property to charity, the taxpayer can subtract $100 from his taxable income and thereby pays $70 less in taxes. If the same property is sold, its after-tax value is $65 or the $100 sale price minus a $35 capital gains tax for a person in the 70% tax bracket. The property is worth $5 more to the owner if he gives it away than if he sells it and keeps the proceeds.)

d. These are tax preferences almost exclusively for the rich. (50% of appreciated property gifts come from those with annual incomes of at least $100,000.)

The Commission's recommendations would alleviate only the third problem listed above.

We favor taxing all appreciation in donated property. If such a change were made abruptly and in conjunction with other changes in the charitable deduction, it would have damaging effects on certain colleges, hospitals and others. Therefore we favor a transition period in which increasing proportions of the appreciation is taxed.

In addition we would vigorously support measures to insure public support of some institutions to substitute for those revenues lost through this measure.

5 - Charitable Tax on Corporations

The weak and vacillating recommendation of the Commission with regard to corporate giving is a consequence of the Commission's unwillingness to recommend mandatory change and its reliance on exhortation.

Employing exhortation to increase corporate gifts to charity is a futile exercise. The Commission's own research and even corporate members of the Commission acknowledged that mere talk has not and will not increase corporate contributions.

We recommend that there be a 2% tax added to the corporate tax which could be offset wholly or in part through gifts of cash to charity which were made through a private foundation, a majority of whose members were not corporate officers, board members, employees or otherwise under corporate control and which was subject to the disclosure and reporting requirements contained in our other recommendations.

This proposal would guarantee an increase in corporate giving. It would have the further advantage that public utilities (some of whom are not permitted by regulators to make contributions) and corporations under negative pressure from stockholders would relieve themselves from all objections to contributing by this measure.

6 - Allow Exemptions Only on Property Used for Charitable Purposes

The growing hostility of citizens to the property tax is bringing greater attention to the exemption of property owned by charities from that tax. A Filer Commission study indicates that $5 billion in property tax revenues is lost to local governments every year due to this exemption.

There is open questioning of the value to the public of the institutions which receive such benefits. For instance, in November, 1975, the District of Columbia City Council held hearings to ask nonprofit groups to justify their exemption from the property tax. The opinion of many on the Council was similar to that held in other cities, namely that the organizations are often providing benefits to suburban residents while using city services and paying no city taxes.

Other critics agree with the Filer Commission paper "The Exemption of Religious, Educational and Charitable Institutions from Property Taxation", which says that "by its very nature, the exemption runs counter to the ideal tax of uniform rate and broad coverage and may bestow a tax competitive advantage if used by recipients to provide goods and services that have a private sector analogue. Further exacerbating their drawbacks is the fact that, once invoked, the property tax exemption device can snowball in importance, making serious inroads into the ability of at least some local governments to raise revenue equitably."

However, because the exemption is of such great importance to many nonprofit organizations that its removal would create an intolerable financial burden for them, we recommend a measure which would make the exemption more equitable without abolishing it. It would deal with the problem of charitable organizations owning property which is used for commercial purposes, thereby creating hostility through permitting unfair competition and placing a greater burden on those who do pay the tax.

Therefore, we propose that state governments change their laws so that the exemption from property taxes of property owned by charitable organizations is limited to the property used for the charitable purpose of the organization.

C. GOVERNMENT REGULATION OF PHILANTHROPY

1 - Remove Exempt Organizations Function from I.R.S.

The Donee Group believes that there is a need for a highly visible, impartial, non-political agency to regulate private philanthropy. Present regulation by the Internal Revenue Service is, in Alan Pifer's words, "quite ineffective, it is characterized by a negative rather than positive attitude toward charity and it is located in the wrong place within the Government." It is our view that the I.R.S. is institutionally incapable of regulating and rendering adequate service to charitable organizations since exempt organizations are by definition excluded from the agency's main area of concern, which is raising revenue. The I.R.S. has given little attention, minimal funds and utilized the least skillful employees in their exempt organization activities.

We recognize that Congress has attempted to deal with the problem of elevating the status of the exempt organizations section of I.R.S. by creating a new Office of Employee Plans and Exempt Organizations, headed by a Presidential appointee. However, we believe that exempt organizations will continue to be given secondary treatment as in the past. This is borne out by the fact that since the passage of the pension legislation establishing that office, exempt organizations have continued to receive an inadequate share of resources and attention.

In addition, part of the case for removing exempt organization functions from the I.R.S. can be based on the past record of the Internal Revenue Service in supervising charities. There was no significant supervision of private foundations until Congressman Patman and others in Congress began complaining about I.R.S.'s oversight of charities in the early 1960's. With the passage of the Tax Reform Act of 1969, a heavy allocation of the Service's exempt organizations resources shifted to private foundations, but very large and important classes of charities outside the foundation area still get little or no attention year after year. Another example of the failure of present regulation is demonstrated by Senator Mondale's hearings on charities which solicit contributions from the public. These hearings show that some organizations continually pay very large amounts for fund raising and administrative expenses, with little of the money solicited from the public ever finding its way to charitable use. Another example is the series which the Washington Post ran a couple of years ago on nonprofit hospitals in the District of Columbia, exposing many self-dealing and other abuses. The discoveries in New York and elsewhere about nursing homes, many of them operating as tax exempt charities, provide a further example.

As one of the participants in the post-Ditchley group stated in a letter to the Donee Group, "The fact simply is that the principal objective of the Service has to be revenue raising. It is, as Sheldon Cohen has often observed, the name of the agency. Little revenue is to be found **among** investigations of charities. Hence, this activity will always take second, third, or last place among the priorities of the people at the Service."

Furthermore, I.R.S., being part of a Cabinet Department, is subject to political pressures with detrimental effects on exempt organizations. Some politically unpopular exempt organizations have been subjected to denial of exemption, excessive delay in rulings on exempt status and audit procedures extraordinary in both frequency and intensity.[1]

Contrary to the Commission's assertion that "except in several isolated instances, the Service has demonstrated its capacity for independent, impartial oversight of tax exempt organizations", the I.R.S. has:

1. During the McCarthy era, under both Truman and Eisenhower administrations, denied and revoked exemptions of "subversive" organizations.

2. During the Kennedy and Johnson administrations an "ideological organization project" was established which disrupted the activities of those exempt groups who were viewed as threats from the right or left.

3. During the Nixon administration a "Special Service Staff" was established to harrass left-wing tax-exempt organizations.

<u>We therefore recommend the removal of all ruling and audit functions regarding exempt organizations from I.R.S. and creation of a new independent regulatory commission with a Presidentially appointed board reflecting all elements of private philanthropy, including donees</u>.

---

[1] See Philip W. Moore's paper, "Foundation Grants to Corporate Activist Groups -- the Donee Perspective." See also Waldemar Nielsen's description of the Internal Revenue's Special Services Group and related examples of I.R.S. political involvement, in Nielsen, <u>The Big Foundations</u>, pp. 375-76.

Among other requirements, the law creating the agency should provide for regional offices and institutionalized citizen feedback and participation mechanisms. In addition, we recommend that the agency be empowered to engage in the "overview, analysis, and advancement" of philanthropic functions provided for in the Commission's recommendations. The new agency would be in a better position for information compilation and distribution than the Commission's quasi-public body.

2 - Congressional Oversight of Philanthropy is Necessary

Establishing a new agency to accomplish informational, regulatory and advocacy goals will not be completely successful unless Congress is given specific oversight responsibilities. At present, no full or part-time staff and no legislative committee or subcommittee in either the House or Senate is devoted exclusively to examining the impact legislation will have on private philanthropy either directly or indirectly. This situation allows many bills to pass without their impact on charitable groups being assessed systematically. In the absence of a staff or Congressional advocate for philanthropy with some "turf" to protect, bills with punitive provisions such as the Tax Reform Act of 1969 will continue to be passed and ignorance will continue to rule by default.

We therefore recommend a permanent, staffed, standing committee or subcommittee in the House and Senate having oversight responsibility over any permanent regulatory or oversight agency and power to review any legislation affecting the nonprofit sector.

3 - Limit Fund Raising Cost

There are presently three different bills in Congress dealing with charitable solicitation. Each is in a different committee, each has entirely different approaches to regulation and all could pass or be defeated without any joint review.

There is now no federal regulation of charitable solicitation, but instead a crazy-quilt pattern of state and local regulations with different accounting standards, fund-raising cost percentage limits, disclosure and registration requirements and regulating agencies. This greatly varying pattern allows gross fraud in some areas and unjustly penalizes legitimate charities in others and makes national fund raising especially difficult.

Organizations which solicit publicly for charitable funds have a responsibility to account fully to the public on the uses to which funds have been put in the past. Those which continue to violate the public trust through misapplication of funds should be prohibited from soliciting.

The Commission recommendation on this issue would not set a statutory limit on fund raising costs and even more importantly would require disclosure of fund raising costs only upon request of those being solicited. A recent study by the Office of Education determined that one out of every five adults in this country lack the basic knowledge to function in our society. A majority of American adults were found to be less than competent in dealing with consumer economics. Ascertaining fraud and deception in charitable solicitation requires even greater skills in consumer economics than the everyday skills being surveyed. The Commission's recommendation is totally inadequate to protect either the public or to rid philanthropy of charlatans.

We therefore recommend a uniform national law limiting to 30% the amount that may be expended for the expenses of solicitation by an exempt organization after its first two years of operation. All exempt organizations would be required to register with the new agency (or I.R.S. if a new agency was not created) and disclose to the public at the time of solicitation their financial audit and program evaluation. This would mean that the charity would have to prominently display their fund raising costs on all printed solicitations and make the costs clearly evident in all other media.

4 - Judicial Review of I.R.S. Determinations

Present laws prevent judicial review of the denial of exemption, revocation of exemption or I.R.S.'s failure to act on an application for exempt status. The only recourse is for the organization to pay a tax and then sue to recover the tax or to have a donor contest the disallowance of a deduction.

We therefore recommend that the law be changed to allow action for declaratory judgement in Federal District Court to be brought by a non-profit organization denied exemption or seeking a determination of exempt status from I.R.S. when action is delayed for more than 90 days.

The fact that I.R.S. has persisted in supporting the present statutes in the face of these grave difficulties is additional proof, incidentally, that tax policy and philanthropic policy should not be made in the same agency.

5 - No Limits on Right to Receive Fees for Services

Another problem with I.R.S.'s present policy is that it makes arbitrary distinctions between charitable organizations on the basis of source of funds. It is particularly difficult to understand why some tax exempt organizations (mainly public interest law firms) should have limits placed on their right to receive fees for services which are pursuant to their charitable purposes while other nonprofit groups (such as hospitals, colleges, etc.) operate under no such limits. We therefore recommend that no limit be placed on the right of non-profit groups' to receive fees for services rendered in connection with their charitable purpose.

6 - Abolish the 4% Excise Tax on Foundations

We believe that the present 4% excise tax on foundations deprives nonprofit groups of funds they desperately need. We also believe that tax exempt groups should not be singled out for taxation or the payment of audit fees. We therefore favor the complete abolition of the 4% excise tax.

7 - Permanent Payout Rate of 6%

The Congress appropriately addressed a real problem in 1969 when it legislated foundation payout requirements. However, we believe that fluctuations in the foundation payout rate are not useful for the long-term planning and good management of either foundations or foundation donees. We also believe that foundations should be encouraged to increase their incomes to as high a level as possible for the benefit of potential recipients. Therefore, we recommend a permanent payout rate of 6% of the market value of foundation assets plus one half of any excess of income over that. This would give foundations an additional incentive to increase investment income and make possible the preservation of the foundation's corpus.

D. EXEMPT ORGANIZATIONS AND THE PUBLIC PROCESS

1 - Remove Limitations on Lobbying

If philanthropy is to fulfill its role as the venture capital of social change, it is vitally important that certain recipients of charitable giving have access to the public decision-making processes. It is therefore one of our highest priorities that all limitations on lobbying by tax exempt organizations be removed. The present law is extremely confusing and ambiguous. It leads many tax-exempt groups to simply avoid any activities which might arguably be regarded by the I.R.S. as objectionable. Furthermore, it leads donors to be timid in making grants to groups that have an advocacy component. The important work of tax-exempt groups, such as public interest law firms, which are actively engaged in monitoring the processes of government, is significantly impaired by the limitations on lobbying.

Tax-exempt groups are permitted to pursue their program objectives through advocacy before courts and administrative agencies; yet such advocacy is prohibited if the same matter is considered by a legislature. For example, environmental protection groups participated in deliberations concerning the construction of an Alaskan pipeline in the Department of Interior and in the courts. They provided expert testimony and advocated the conservationist viewpoint. They were, however, prohibited from using their knowledge and expertise when the matter passed to the Congress. There is no justification for this distinction, and the public interest is disserved by excluding tax-exempt groups from the legislative process.

We believe that tax-exempt monies have an important role to play in supporting citizen action groups and the innovative programs which give citizens an opportunity to participate fully in the American political, economic and social life. It is precisely these groups who feel most acutely the limitation on lobbying.

We stress the importance of this legislative change from the standpoint of the donee organizations for whom this is a significant impediment. We concur with the recommendation contained in the Filer Commission Report which urges that lobbying restrictions be abolished. We do not agree, however, that the current prohibition against lobbying by private foundations should be maintained. No organization will be required to lobby; this recommendation would merely give them the right to do so.

We therefore recommend that all limitations on lobbying by tax-exempt organizations be removed except that no person should be allowed to form a private foundation for no other purpose than to influence legislation.

2 - Donee Accountability Requirements

We believe that the public trust implied by the granting of a tax exemption requires the exempt organization to give the public an accounting of its finances and an evaluation of its program. At present all 501 (c) (3) organizations must file an annual report. Only reports of private foundations are available for public inspection in their entirety. Religious groups and those having less than $5,000 gross receipts do not have to file either type of report. No group is required to report a program assessment; only financial information is required, and the financial reporting standards are not uniform.

We recommend that all exempt organizations which have been in operation for three years be required to file with the agency regulating exempt organizations (I.R.S. or the new agency) an annual report with a financial audit and program evaluation. This report must be made available for public inspection by the regulatory agency. The agency must devise a means for easy public access for viewing the report and provide copies free of charge upon request.

3 - Prevent Private Profit from Charitable Activity

The governors of exempt organizations also have an obligation beyond accounting to the public to refrain from using their positions to benefit themselves or their businesses to the detriment of the charity. Several instances of such self-dealing have come to light recently.

We therefore concur in the Commission's recommendation that all tax exempt organizations be required by law to maintain "arms-length" business relationships to profit-making organizations or activities in which any member of the organization's staff, any board member or any major contributor has a substantial interest, either directly or through his or her family. In addition, we recommend that any person be permitted to initiate an action in Federal District Court to enforce this provision and that upon a finding that activities proscribed have caused a financial loss to the charity involved, the excise tax penalties applicable to private foundations be assessed against the charity and its managers and governors.[1]

---

[1] It should be made clear to any readers who are not familiar with the arms-length standard that this provision does not prohibit dealings between a charity and its board. All it does is prevent transactions which are less favorable than the charity could get elsewhere.

4 - Revenue Sharing

The Donee Group is of the opinion that nonprofit groups have an invaluable role in monitoring government and influencing public policy, especially on the local level. In addition they can perform many public service functions as well as or better than government agencies by performing more efficiently or by being better able to relate to the community being served.

There is a trend towards exclusion of local, regional and national nonprofit groups from access to federal funds at a time when public needs are great, funding for nonprofit groups is declining and the responsiveness of local governments remains low. Many states have statutory provisions which prohibit outright or limit the granting of federal revenue sharing, special revenue sharing and block grant funds to nonprofit groups.

We recommend immediate legislative changes to guarantee the availability of revenue sharing funds to private nonprofit groups. In addition, we urge changes in the procedures for public notice, public hearings and the determination of criteria for local revenue sharing distribution so that nonprofit groups have equal access with government agencies to this important source of funds.

In addition, there is a need for the new agency, if it is created, or some other body to make a continuing and periodic evaluation of the relative effectiveness of profitmaking, government and nonprofit service providers in many human service areas. This would provide some basis upon which to make judgements about appropriate roles for public and private agencies.

MEMBERS OF THE DONEE GROUP

Those who have signed this report do so as individuals only and the names of their organizations appear for identification only. No endorsement of this report should be imputed to any group listed below.

Thomas R. Asher
Msgr. Geno Baroni, *President, The National Center for Urban Ethnic Affairs*
Barbara Bode, *Executive Director, The Childrens Foundation*
Wilfred Chabrier, *Association of Neighborhood Housing Developers*
Alicia Christian
Carl Clark, *Executive Director, Commission for the Advancement of Public Interest Organizations*
John Dixon
Pablo Eisenberg, *President, Center for Community Change*
George Esser, *Executive Director, Southern Regional Council*
Marge Gates, *Co-Director, Center for Women Policy Studies*
Charles Halpern, *Executive Director, Council for Public Interest Law*
Robert Hearn
Alice Kinkead
Norton J. Kiritz, *President, The Grantmanship Center*
Albert H. Kramer, *National Citizens Committee for Broadcasting*
Maggie Kuhn, *National Convener, The Gray Panthers*
Arthur Naparstek, *Director of Policy, Planning and Research, The National Center for Urban Ethnic Affairs*
Waldemar Neilsen
Peter J. Petkas, *Director, Southern Govermental Monitoring Project*
Lydia Ratcliff, *Good Health Center*
Walter Smart, *Executive Director, National Federation of Settlements and Neighborhood Centers*
David Horton Smith, *Professor, Boston College and Executive Director, Association of Voluntary Action Scholars*
Margery Tabankin, *Executive Director, The Youth Project*
Mary Jean Tully, *President, NOW Legal Defense and Education Fund*
Raul Yzaguirre, *Executive Director, National Council of La Raza*
Ann Zill

Donee Group Staff
James W. Abernathy, Jr.
Theodore J. Jacobs