

NYPGA - Antitrust Guidelines

THE ANTITRUST LAWS

The most important Antitrust Statutes applicable to NYPGA activities are Section 1 of the Sherman Act, which prohibits contracts, combinations and conspiracies in restraint of trade; and Section 5 of the Federal Trade Commission Act, which establishes broad prohibitions against unfair methods of competition and unfair or deceptive business acts or practices.

THE SHERMAN ACT prohibits any joint agreement or understanding affecting the price of a product, regardless of the purpose of the understanding. A price-fixing violation may be inferred from similar price behavior by competitors, even in the absence of an oral or written agreement. Mere attendance at meetings in which illegal price fixing is discussed may be sufficient to imply acquiescence to the plans discussed, and thereby make the individual liable to as great a penalty as those who were active participants.

THE FEDERAL TRADE COMMISSION ACT, unlike the Sherman Act, reaches anti-competitive acts committed by single persons or companies, whether or not there is any agreement or "combination"; like the Sherman Act, it also cover joint actions.

States have statutes with provision for enforcement of their state law on antitrust and each Office of the Attorney General has an antitrust unit that is authorized to proceed under both federal and state antitrust laws.

NYPGA, in its regular course of business, conducts meetings and other cooperative activities between competitors. NYPGA emphasizes its commitment to comply strictly and in all respects with the antitrust laws of the United States and each of the Northeast states. As a practical matter, such compliance is almost always a safeguard against violation of state or federal antitrust statutes.

GENERAL OPERATING PROCEDURES

To guard against unintentional conduct, all NYPGA meetings shall be conducted in accordance with the following procedures:

1. A written agenda will be prepared for each meeting and will be reviewed in advance by legal counsel
2. Accurate minutes, which provide a complete summary of each meeting, will be prepared.
3. Legal counsel will be present at all meetings deemed of a sufficiently sensitive nature to require additional precautions and protection.
4. All Association meetings will be properly schedule;, no "rump" sessions will be permitted.
5. In case of any doubt concerning the propriety of any topic or discussion, consult NYPGA staff or legal counsel before raising the issue in open session.
6. In the event an issue which appears of sensitive nature arises at a meeting, the Chairman should immediately adjourn the meeting temporarily to request advice of counsel on proceeding with any discussion of a sensitive nature.
7. When in doubt, ASK

ANTITRUST GUIDELINES

The Antitrust Laws are a comprehensive charter of economic controls aimed at promoting free competition. These laws rest upon the premise that the preservation of free competition will yield the best allocation of economic resources, the lowest prices, and the greatest material progress for the public welfare. Under the Antitrust Laws, competitors may not restrain competition via agreements or understandings regarding the price, production or distribution of products and services.

Competitors may not engage in any activity intended to restrict the competitive capability of their customers, suppliers, or other competitors.

The Antitrust Laws are immensely complex and are often of unclear applicability. Unlawful agreements can be inferred from circumstantial evidence. A conviction for violating the Antitrust Laws may result in stiff fines, extended jail sentences for individuals who participate in the violation, and forced disbanding of their trade association. Even if an antitrust case is won or settled, the demands upon the time of those involved can be tremendous. Legal fees and costs can easily run into the six-figure range and more.

The guidelines that follow are designed to assist you in avoiding even the appearance of questionable activity. At NYPGA meetings, the following will not be discussed:

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| <ul style="list-style-type: none">• Current or future prices. (Great care must be taken in discussing past prices)• What constitutes a "fair" profit level• Possible increases or decreases in prices• Standardization or stabilization of prices• Pricing procedures• Cash discounts | <ul style="list-style-type: none">• Credit terms• Control of sales• Allocation of markets• Freight allowances• Refusal to deal with a corporation or an individual because of its/his pricing or marketing practices |
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CONCLUSION

This statement is not a complete summary of all applicable laws: rather it is intended to highlight the basic principles of Federal Antitrust Laws. Any questions concerning these guidelines and procedures or any other antitrust-related concerns should be addressed to NYPGA legal counsel or staff.

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