



The Charges Against the Trump Foundation

NY AG says Foundation has operated in persistent violation of state and federal laws governing charities

The Attorney General of New York has petitioned a state court to dissolve the Donald J. Trump Foundation and prevent its directors, particularly President Trump, from having anything to do with a nonprofit organization in New York in the future. She has also referred the issues to the Internal Revenue Service for further investigation.

“For more than a decade,” she says, the Foundation “has operated in persistent violation of state and federal law governing New York State charities.” The “pattern of illegal conduct” includes “improper and extensive political activity, repeated and willful self-dealing transactions, and failure to follow basic fiduciary obligations to implement even elementary corporate formalities required by law.”

The Attorney General began an investigation in 2016 during the presidential election campaign when significant issues were raised in the Washington Post and other media about the operation of the Foundation and its relationship to the election. The investigation concluded that the Foundation, classified as a private foundation for federal tax purposes, “operated without any oversight by a functioning board of directors,” and “used charitable assets to pay off the legal obligations of entities [then-candidate Trump] controlled, to promote Trump hotels, to purchase personal items, and to support his presidential election campaign.”

She has filed a “special proceeding” to ask the court to dissolve the Foundation, to force President Trump, Donald J. Trump, Jr., Ivanka Trump and Eric Trump, the Foundation’s directors, to “make restitution and pay all penalties resulting from the breach of fiduciary duties,” to enjoin President Trump from serving as an officer, director or in any position involving fiduciary duties to a nonprofit in New York for ten years, to enjoin the others from such service for one year, directing the President to pay “an amount up to double the amount of benefits improperly obtained through related party transactions entered into after July 1, 2014,” to restrain the Foundation from any activities without court permission, and to grant “such other and further relief as the court may deem just and proper.”

Here is a litany of the charges from the Complaint:

Insufficient Board Oversight and Lack of Internal Controls

The Board existed “in name only,” the Complaint charges. It has not met since 1999 and “does not oversee activities in any way.” It has no criteria for the consideration, approval, or monitoring of grants and received no reports, allowing Trump to run the Foundation “according to his whim, rather than the law.” Trump was sole signatory on the bank accounts and had accounting staff of the Trump Organization issue checks for his signature.

The Foundation failed to adopt a conflict of interest policy, as required by amendments to the state’s Non-for-Profit Corporation Law in 2014. The Foundation did not have an investment policy, although required since 2010. Although it had an average monthly value of more than \$1 million, the Foundation kept its money in a money market account earning “negligible interest.”

2016 Political Activity/Related Party Transactions

“In 2016,” the Complaint charges, “the Board knowingly permitted the Foundation to be coopted by Mr. Trump’s presidential campaign, and thereby violated its certificate of incorporation and state and federal law by engaging in political activity and prohibited related party transactions.” In particular, the campaign “extensively directed and coordinated the Foundation’s activities in connection with a nationally televised charity fundraiser for the Foundation in Des Moines, Iowa on January 28, 2016.” This was the event Trump staged to raise funds for veterans’ organizations instead of attending a televised presidential debate for Republican candidates.

The fundraiser was “planned, organized, financed, and directed by the Campaign, with administrative assistance from the Foundation,” the Complaint says. Its website listed a campaign staffer as its “organizer.” The podium was decorated with a sign that “borrowed the Trump Campaign themes and slogans,” including its trademarked slogan Make American Great Again.

The fundraiser raised \$2.8 million in contributions to the Foundation, but senior campaign staff “dictated the manner in which the Foundation would disburse those proceeds,” directing the first distributions right before the Iowa Caucuses. The Complaint recites numerous specific directions from the campaign to the Foundation for grants that were promptly made. In several of the events in which Trump made public grants with large “presentation checks” from the Foundation, the checks carried the Make America Great Again slogan of the campaign. The campaign later claimed credit for making the gifts to the veterans’ groups.

The Complaint says the grants were “related party transactions” where the Foundation “ceded control over the grants to the Campaign” and that the grants “made Mr. Trump and the Campaign look charitable and increased the candidate’s profile to Republican primary voters.” It also said that “Mr. Trump had a financial interest in the Campaign and benefitted from the Foundation’s in-kind contributions to the Campaign.”

The Complaint said “Mr. Trump’s wrongful use of the Foundation to benefit his Campaign was willful and knowing.” It cited Trump’s public opposition to the “Johnson Amendment” that prohibits charities from participating in political campaigns as evidence of his knowledge that the Foundation could not participate in the election.

The “And Justice for All” Transactions

In September 2013, the Foundation issued a check for \$25,000 to “And Justice for All,” a political organization supporting the re-election of Pam Bondi as Attorney General of Florida. The Foundation’s Form 990-PF did not list the donation to the political group, but reported a gift to a charity in Kansas known as Justice for All. “The Foundation has no credible explanation for the false reporting,” the Attorney General said. After the situation was reported in the Washington Post, Trump personally repaid the \$25,000 and paid a 10% federal excise tax on the taxable expenditure by the Foundation.

Additional Self-Dealing/Related Party Transactions

In September, 2007, the Foundation made a \$100,000 payment to the Fisher House Foundation, a charitable organization, to settle legal claims against Mar-A-Lago, a private club of which Trump is a 99.99% owner. Trump reimbursed the Foundation, with interest, after the OAG commenced the investigation.

In February 2012, the Foundation made a \$158,000 payment to the Martin B. Greenberg Foundation to settle legal claims against the Trump National Golf Club when it tried to deny a \$1 million hole-in-one

claim by Greenberg at a celebrity golf tournament. The Foundation paid a portion of the total settlement. Trump repaid the Foundation with interest on this amount also.

In November, 2013, the Foundation made a \$5,000 payment to the DC Preservation League for promotional space featuring Trump International Hotels in a charity event program. The Trump International Hotel repaid the amount, with interest, and paid the excise taxes to the IRS for the improper expenditure.

In March, 2014, the Foundation paid \$10,000 to the Unicorn Children's Foundation to purchase a portrait of Trump at a charity auction. The painting was used as décor at the Trump National Doral Miami, owned indirectly by Trump. After the commencement of the investigation, the painting was returned to the Foundation, along with \$182.82, to compensate for the fair rental value of the painting, plus interest, "as determined by an outside appraisal report." Trump's organization paid excise taxes when the transaction was reported to the IRS as a self-dealing transaction.

In December 2015, the Foundation made a payment of \$32,000 to the North American Land Trust "in connection with a pledge by Seven Springs, LLC to fund the management of a conservation easement." Seven Springs, also owned indirectly by Trump, donated 156 acres for a conservation easement and pledged \$32,000 for the Land Trust's fund for managing the easements it obtains. The Foundation admitted that the contribution should have been made by Seven Springs, which reimbursed the Foundation, with interest, and paid the IRS excise tax. (*People v. Trump*, Supreme Ct., New York County, NY, No. 451130, 6/14/18.)

The Trump Foundation blasted the petition as "playing politics and nothing more." It said it had previously proposed its own voluntary dissolution more than a year and a half ago, and criticized the timing of the report "on the very day of the issuance of the Inspector General's Report on the Hillary Clinton e-mail investigation."

YOU NEED TO KNOW

These are only charges, of course, but they present a serious cautionary tale for people who agree to serve as director of a nonprofit corporation and then fail to pay attention to their duties.

According to the Complaint, the Foundation has admitted and has caused someone to pay the excise taxes on most of the self-dealing transactions

It is interesting to see how New York has prosecuted federal tax law prohibitions as state law violations by recognizing that the private foundation limitations are required provisions in the articles of incorporation of every private foundation. In some states, they are imputed into the articles or certificate as a matter of state law. In other states, they have to be directly written into the document. But in either case, violation of the federal standards is, by operation of law, violation of the state law governing corporate activity as well.