

7.5 Anti-Trust Policy

In order to minimize the possibility of antitrust problems, the Society of Tribologists and Lubrication Engineers (“STLE”) requires all of its officers, directors, members, and employees to abide by the terms of this antitrust policy (“Policy”).

1. No individual officer, director, member, employee, committee, local section, certification board or other party is authorized to speak or act on behalf of STLE unless specifically granted such authorization by STLE in writing.
2. The Board of Directors is the only party authorized to issue statements or adopt positions (public or otherwise) on behalf of STLE. Responses to questions or complaints from the public or from private parties must be handled in accordance with STLE’s Constitution and Bylaws and its Policies.
3. No individual officer, director, member, employee, committee, local section, certification board or other party is authorized to use STLE letterhead or STLE’s logo without the prior written consent of the Board of Directors, or its designee.
4. Agendas for STLE meetings shall be prepared in advance, with prior review by an appropriate STLE staff member, and followed at the meeting. Topics not included on the agenda shall not be discussed.
5. Only meetings of STLE members that have been approved by STLE shall be considered STLE meetings. Board members, committee members, local section members, and meeting attendees shall not participate in “rump” sessions (e.g., private group meetings, impromptu or informal group gatherings) outside of regularly scheduled meetings to discuss items not on the agenda.
6. A secretary shall be appointed to take minutes of all meetings. Minutes shall be submitted to the STLE office and reviewed by an appropriate STLE employee prior to distribution. Upon approval, such minutes shall become the “official minutes” retained by STLE. Members should not keep their own minutes.
7. Periodic written reports to the STLE Board of Directors are required from all STLE committees, local sections, certification boards, employees, and officers reflecting all pending matters, requests for action and approvals for preliminary decisions.
8. Committees, local sections, and certification boards can act only within the scope of their authority. Recommendations shall be made to the Board of Directors for other actions to be taken. All committee, local section, and certification board correspondence must be sent out through the STLE office.
9. All STLE officers, directors, members, employees, committees, local sections, and certification boards shall adhere to the STLE Antitrust Guidelines, a copy which are attached hereto as Exhibit A.
10. A copy of this Policy shall be made available to all STLE members and employees, and the need to comply with its terms shall be communicated regularly.

7.6 Anti-Trust Guidelines

Professional associations, although well recognized as valuable tools of American society, are subject to strict scrutiny by both federal and state governments. While such scrutiny should not prevent participation in, and support for, a professional association, members should be aware of, and comply with, certain relevant legal principles. Compliance with these laws does not prevent STLE members from lawfully engaging in a wide variety of group activities, as long as the purpose or intended effect of the activities is promotion of the profession as a whole, and not to promote anticompetitive activities or to act in restraint of trade or commerce.

The single most significant law affecting organizations like STLE is the Sherman Antitrust Act, which makes unlawful every contract, combination or conspiracy in restraint of trade or commerce. The Federal Trade Commission Act, the Clayton Antitrust Act and the Robinson-Patman Act also are applicable to associations, for they also forbid anticompetitive activities. Furthermore, virtually every state has enacted antitrust laws similar to the Sherman Act.

Between the state and federal laws, there is no organization too small or too localized to escape the possibility of a civil or criminal antitrust suit. It is thus imperative that every association member, regardless of the size of the association or the size of those comprising the membership, refrain from indulging in any activity which may be the basis for a federal or state antitrust action.

Main areas of antitrust concern for associations: price fixing, membership, self-regulation, and standardization and certification. The area of greatest concern historically has been price fixing. The government may infer a violation of the Sherman Act by the mere fact that all or most of the members of the association are doing the same thing with respect to prices or other terms and conditions of trade. It is not required that there be an actual agreement, written or unwritten, to set prices. Rather, price fixing is a very broad term which includes any concerted effort or action which has an effect on prices, terms or conditions of trade, or on competition. Moreover, such concerted actions (affecting prices) cannot be justified by showing that they will benefit customers, or that the prices set are otherwise reasonable.

Accordingly, STLE members should refrain from any discussion which may provide the basis for an inference that the members agreed to take any action relating to prices, services, production, allocation of markets or any other matter having a market effect. These discussions should be avoided both at formal meetings and informal gatherings. In fact, informal gatherings of association members are often looked upon with suspicion by the government.

The following topics are some examples of the subjects which should not be discussed at regular meetings or at so-called “rump sessions:”

1. Do not discuss current or future prices (be very careful of discussions of past prices).
2. Do not discuss what a fair profit level is.
3. Do not discuss standardizing or stabilizing prices or pricing procedures.

4. Do not discuss cash discounts or credit terms.
5. Do not discuss controlling sales or production or allocating markets or customers (this applies to services as well as products.)
6. Do not complain to a competitor that his or her prices constitute unfair trade practices and do not refuse to deal with a company or individual because of pricing or distribution practices.
7. Do not discuss anticipated wage rates.

In as much as association antitrust violations can subject all association members to criminal and civil liability, members should be aware of the legal risks in regard to membership policy and industry self-regulation. Because membership in an association can be of substantial benefit, associations must ensure that they do not in any way restrict or prejudice competitors from membership or illegally discriminate against non-members. Membership policies should avoid:

1. Restrictions on dealing with non-members.
2. Excluding from membership any qualified participant.
3. Limitations on access to association information.

In encouraging certain conduct, associations may lawfully establish a code of ethics. Codes that may have an anticompetitive effect, however, such as those banning advertising or competitive bidding, are prohibited. In general, professional self-regulation, ordinarily manifested by a code of ethics, must avoid:

1. Requiring refusal to deal with any member violating the association's code of ethics.
2. Arbitrary enforcement of the code.
3. Unreasonably severe penalties for violation of the code.
4. Regulations or polices which have price fixing implications.

Product and professional certification and standardization programs can be among the most beneficial activities in which associations engage. There is a substantial risk, however, that such programs will be used to restrict competition or discriminate against certain competitors. Thus, the following guidelines should be followed:

1. Standards or certification should be voluntary. Certification, however, can be a requirement for membership in a voluntary organization.
2. Non-members must be allowed to participate although they may be charged a reasonable, higher fee.
3. Proposed voluntary standards should be widely circulated for comment by affected parties.
4. Performance, rather than design standards, should be used.
5. Periodic review of standards and certification criteria should occur in order to account for changing technology.
6. Due process procedures for denials should be established.
7. Certification or standard validation by an independent authority may be beneficial.

A professional association may be held strictly liable for the illegal conduct of its members and agents acting under the association's name even if the association has not authorized the activity. Thus, an association must ensure that its members and agents are not using the association's legitimate activities for anticompetitive purposes. Associations which undertake standardization and certification programs are particularly vulnerable to this type of liability, and should closely monitor such activities. Thus, associations should consider:

1. Adopting written guidelines outlining the authority and responsibility of members and employees, including who may "speak" for the association and who may use association letterhead.
2. Requiring written committee reports of pending and completed matters.
3. Implementing due process procedures for decision-making and dispute resolutions.

The penalties for violating federal and state antitrust laws are severe. The Sherman Act is a criminal conspiracy statute. Therefore, active participants, as well as individuals who silently acquiesce in illegal activity, can be held criminally responsible. Each individual and each corporation which is found guilty of a criminal violation of the Sherman Act may be fined up to \$1,000,000 and \$100,000,000 respectively. Individuals and corporate officers may be imprisoned for up to ten years. Additionally, there are civil penalties such as cease and desist orders, requiring government supervision of association members, restricting the association's activities and disbanding the association.

The greater likelihood of occurrence, and possibly the more severe penalty, may be civil suits brought by competitors or even consumers. Civil antitrust actions result in treble damage awards. Thus, an antitrust violation which caused \$500,000 in damages would result in an award of \$1,500,000.

The government's attitude towards associations requires associations and their members to at all times conduct their business openly and avoid any semblance of activity which might lead to the belief that association members had agreed, even informally, to something that could have an effect on prices or competition. Thus, it is important that local chapters or chapter members contact the association headquarters for guidance if they have even the slightest qualms about the propriety of a proposed activity or discussion. Because of the importance of the antitrust laws to the successful functioning of the American economy, as well as the practical importance of professional associations to the system, strict compliance with the antitrust laws by associations and their members is critical.

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