

THE FEDERAL TRADE COMMISSION'S INVESTIGATION OF THE AGO FREQUENTLY ASKED QUESTIONS AND ANSWERS



As you may recall from my October column, the American Guild of Organists received a detailed letter of inquiry in late 2015 from the Federal Trade Commission, the government agency which is responsible for enforcing U.S. antitrust laws. The FTC expressed concern that certain of our practices and procedures were anticompetitive. Subsequently, in

the fall of 2016, after many months of negotiations with the FTC during which we were supported by our legal counsel, the National Council unanimously voted to enter into a settlement with the FTC to resolve their issues. Although this settlement requires the AGO to make some significant changes to its policies and procedures, our organization remains dedicated to its original principles as an educational and service organization that encourages high musical standards and promotes understanding and appreciation of all aspects of organ and choral music.

The FTC specifically raised concerns that certain portions of our Code of Ethics as well as our Salary Guidelines and Model Contract Provisions had the effect of lessening competition between organists. Federal law prohibits any group of professionals from entering into agreements among themselves to lessen competition. (The FTC had previously challenged other organizations, including the Music Teachers National Association, on similar grounds.) Accordingly, after careful consideration of the FTC's position in consultation with our experienced antitrust counsel, the National Council voted to enter into an agreement with the FTC to change the policies and procedures that the FTC questioned. The AGO did not admit to violating any law in entering into this settlement, but we have already begun taking specific steps to bring our documents and practices into line with the expectations of the FTC.

The questions and answers below may be helpful in understanding why the National Council decided that settling with the FTC was the proper course of action and what happens next.

1. Why is the FTC picking on the AGO? What prompted them to investigate the AGO in the first place? A member of the public apparently complained to the FTC about a rule that the AGO had in its Code of Ethics for many years. This rule stated that, "Members shall obtain the approval of the incumbent musician before accepting an engagement for a wedding, funeral, or other service requested by a third party. In such cases, the incumbent should receive his/her customary fee, and the third party is expected to provide it. It is the responsibility of the guest member to inform the third party of this rule." The Federal Trade Commission believed that by maintaining

this provision in its Code of Ethics, the Guild was violating Federal statutes. This prompted the FTC to investigate other provisions in our Code of Ethics as well as other AGO documents and guidelines.

- 2. What other practices and procedures were of concern to the FTC?** The FTC also focused on:
 - a) Our Code of Ethics provision that prohibited members from applying for a position held by someone else unless there has been a public announcement of a vacancy for that position. Complicating matters is the fact that we have a disciplinary procedure in place ("the Discipline") which could be used potentially to revoke the membership of a member who failed to follow the ethical rules cited above, which the FTC alleges are illegal in the first place.
 - b) Our publication of salary guidelines and model contract provisions. A key component of the FTC's concern is that AGO members are competitors with one another from the perspective of employers. Just as it would be illegal for all of the engineers in a city to join together in setting a suggested price list for everyone, or to agree that they would not apply for one another's jobs unless they are declared vacant, the same holds true for AGO members.
- 3. What laws are relevant to the FTC's inquiry?** The FTC alleged that certain provisions in AGO documents violate the FTC Act (see citations on page 7 of the October 2016 issue of TAO) because they unnecessarily restrict AGO members from competing with one another, restrict price competition, and deprive consumers of the benefit of competition between members.
- 4. In agreeing to this settlement, has the AGO admitted to violating any law?** No. To end the investigation expeditiously and to avoid disruption to its core functions, the AGO has voluntarily agreed to the settlement and entry of an FTC Order. In doing so, however, the AGO has not admitted to violating any law.
- 5. What does the FTC settlement require the AGO to do?** The settlement requires the AGO to remove any provisions that limit or restrict its members from competing with one another or interfering with members' efforts to provide services or compete on price. In addition to making changes to our operating documents and practices and affirming that we will abide by this agreement, the AGO must implement a number of internal antitrust compliance procedures that will ensure our membership and leaders understand and effectively implement the required changes.

6. **Where are the Salary Guidelines?** The Salary Guidelines have been permanently taken down from our website and are no longer available from the Guild in any form. We can no longer distribute them to members, churches, or anyone else.
7. **Why are the Salary Guidelines and Model Contract Provisions no longer on the AGO website?** We have removed these documents from our website to comply with the requirements of our settlement agreement. Chapters must do the same. For that matter if you, as a member, have an old copy of the AGO's Salary Guidelines, you must not use that document in salary negotiations. You should destroy it.
8. **Since the AGO's Salary Guidelines are gone, how can I negotiate a fair salary with my employer?** An employee may turn to a number of other resources, such as (1) what you currently earn, (2) what you understand other similarly qualified individuals earn, whether they are organists in your community or other professionals such as musicians in symphony orchestras, or university professors, (3) published information from unions of similarly qualified professionals such as the American Federation of Musicians, (4) data published regularly by the Bureau of Labor Statistics, and (5) guidelines published by denominational music organizations. It may be particularly useful to document what your time commitments will be to plan, prepare, practice, and perform service music, and to carry out all other duties expected of you for the position. You can also detail your academic study, years of training, and relevant experience. What the AGO cannot do, however, is provide you with salary data for this effort.
9. **As a chapter officer, I still have a copy of the old Salary Guidelines in my files. May I give them to my chapter members?** No. The AGO's settlement prohibits you from doing so. It is particularly important for all chapter leaders to comply with this provision rigorously.
10. **Why don't we fight back?** Our legal counsel advises us that if we attempt to litigate this matter in Federal Court, we will most surely lose after spending tens of thousands if not hundreds of thousands of dollars in legal fees. The AGO's position simply cannot be sustained in a court of law in light of other cases and legal precedents. Moreover, losing in court could entail fines and further penalties for the organization and possibly for its elected leaders as well.
11. **Unions are allowed to establish fee schedules. Why don't we become a union?** Unions are not permitted to accept tax deductible, charitable gifts from members, foundations, or government agencies like the NEA. This is a major source of income for the AGO and many chapters. Moreover, unions establish fee schedules for "labor" by negotiating with "management." Our members work for thousands of different employers. There is no central "management" representing all of the employers; i.e., there is no management representative with authority over the clergy with whom we could negotiate.
12. **Will we be able to go back to the way things were now that there is a different administration in D.C.?** No, this is not at all likely. While the new administration will have the power to appoint a new chair of the agency and to nominate additional commissioners, we believe the current staff recommending this action will remain in place, and we anticipate that the Commission as a whole will continue to believe that its action is warranted.

JAMES THOMASHOWER

AGO National Membership Directory Update

Publishing Concepts, the publisher of the *AGO Membership Directory*, has informed us that due to complications in the manufacturing process delivery of the directory is now scheduled for February 2017. If you purchased the directory you should have received an online access link to a digital version of the directory. This can be used until you receive your hard-copy version of the directory. Publishing Concepts can be contacted by phone at 800-982-1590 or by email at customerservice@publishingconcepts.com.

The AGO National Council regrets any inconvenience that this delay has caused and has taken substantive action to prevent a recurrence of this problem in the future.