

ETHICS



The Nonprofit Ethicist

by Woods Bowman

DEAR NONPROFIT ETHICIST, Recently, my organization's executive director proposed a new board member to our board governance committee. He is a private business owner who actively supports social-justice issues in our community. (Despite our substantial credibility within the community and with the justice system and local government, we have abysmal support from the business community for our inter-faith criminal-justice agency.)

The committee chair objected to the business owner's membership as a conflict of interest, however, arguing that as the business owner's wife does minor bookkeeping for the agency on a contract basis, he would have to recuse himself from voting on financial issues. And, the chair argued, since recusal would be problematic for the board, the candidate should not be considered.

At the same time, the board recruited an accountant to serve as board member and treasurer, and arranged for him to handle the agency's accounting at no cost. This plan was made without the involvement of the executive director, who objected to the arrangement because it might place the organization's accounting under the control of the board rather than the executive

director, and would eliminate the separation of fiscal responsibilities.

What's ethically right and wrong here?
Conflicted

Dear Conflicted,

Is this a trick question? Both actions are wrong for different reasons.

Situation one: Certainly the prospective board member should recuse himself from decisions involving his wife's contract, and he should not sit on the audit committee. But barring him from participation in any financial decision is ridiculous. It seems to be code for, "We just don't want him." The real issue turns on what you mean by "minor bookkeeping." If these tasks are more substantial than you think, other reasonable restrictions may be in order. At the extreme, if the wife is the de facto chief financial officer (CFO), the committee chair has a point.

Situation two: The answer is indirect, so bear with me. The Ethicist disapproves of executive directors who sit on their own boards, because they can subtly control the board's oversight function. It is worse when an executive director and a CFO both sit on a board. And it's worse still when a CFO sits on the board but an executive director does not, because the CFO can subtly control oversight of the finance function and create

all sorts of problems for the boss.

Do you see where this is going? A board member who does the organization's financial work, although a volunteer, is like the third situation: not good at all. This "super volunteer" should do one job or the other, but not both.

Dear Nonprofit Ethicist, One of our organization's board members is the mother of an employee. Is this a conflict of interest? Our executive director feels uncomfortable bringing personnel matters to the board, because we have reason to suspect that, unlike Vegas, what is said at the board meeting does not stay at the board meeting. How should we handle this?

Curious

Dear Curious,

It is so much better not to create this situation in the first place. Have people no anticipatory antennae? Let's assume that there is a compelling reason for this mom to be on the board, and take it from there.

Unfortunately, boards have a tendency to leak information like, um, the Titanic—even when dealing with sensitive issues that they would rather keep to themselves. This is a sad but true reality. Dealing with confidential information is always problematic. If the employee is

not in a policy-making position, the strict conflict of interest may seem minor, but the potential for leakage could be major because an employee may not feel duty-bound to keep sensitive information from rocking the boat.

I understand the executive director's discomfort. This is an excellent time to establish a personnel committee of the board, where sensitive personnel matters can be addressed—and where they should stay. Of course, the committee should not include mom. And maybe that same personnel committee might make it its business to address the nepotism issue with an eye toward protecting the organization more thoroughly.

The executive director may also be concerned about the mother leaking information that is not confidential in a technical sense (personnel and legal matters) but might be premature for the staff to find out. But even without a family relationship involved, this can and does happen. At some point, we have to trust the common sense of board members.

Dear Nonprofit Ethicist,
The CFO of a huge regional nonprofit in Houston, Texas, has fiduciary responsibility for roughly \$250 million, the majority of which is taxpayer funded. He is a convicted white-collar criminal who has been barred for life from serving as the CFO of any publicly traded American corporation. Is his hiring and tenure ethical in the third sector?

Worried

Dear Worried,

It's certainly unethical, and it's stupid to boot. It is alright to give convicted felons a second chance, but (1) there should be concrete evidence that they have reformed; (2) the organization should perform a background check to see whether other malfeasance arises; (3) they—and anyone who handles

money—should undergo a credit check; and (4) they should not be hired into jobs that offer the same temptations as those to which they succumbed when they broke the law.

Just as child molesters should be kept away from children, embezzlers should never be allowed to handle money. If this person is barred for life from serving as the CFO of publicly traded American corporations, the organization was stupid to put him in charge of its money. Considering the amount of money involved, it was really, really stupid.

Dear Nonprofit Ethicist,
I am on the board of two performing-arts organizations. In the recent past, both have run in the red—but one more than the other, and the other has no reserves. I believe that the nonprofit without cash offers a higher-quality product, but we all know that the world isn't fair. On the other hand, the organization with cash flow seems to be waiting for the other to fail so it can lay claim to the ruins—or whatever is left of audience share, donors, and so on. I believe that this wealthier organization has helped contribute to the instability.

This situation makes me uncomfortable. I have a duty of loyalty to both. If I quit the stronger one and stay with the one I prefer—which I am considering—it seems like a violation of my duty to keep quiet about what I know about the other organization's motives. On the other hand, I believe I have an ethical duty to the wealthier organization to keep inside information confidential. I am confused about what is ethical in this situation. Can you help?

Torn in Two

Dear Torn in Two,

If the financially weaker organization folds, there is no guarantee that the other can pick up the pieces, because

consumer loyalty may vanish with it. If the weaker organization is on the brink, why not use your good offices to minimize its immediate vulnerability or actively work to effect a merger? This would allow artistic issues to be worked out in advance, thereby minimizing loss of support for the surviving organization. You do, of course, have an ethical duty to keep inside information confidential, but that should not stop you from helping to host some “getting to know you” conversations between the weaker organization and the stronger one. It sounds like the larger organization, on whose board you sit, may be interested in a merger, but if there are other potential mates, get acquainted with them too.

Mergers are never easy, however. The Ethicist has never seen a merger of equals: one organization effectively acquires another. Usually, the financially stronger organization is in the driver's seat. But this arrangement both saves face for those associated with the acquired organization and, more important, minimizes service disruption for consumers.

The most difficult conceptual issue is reframing the mission, but the messiest practical issues involve personnel. Who goes? Who stays? The new organization would need to be a blend of both organizations to succeed. The boards of both would want to use the opportunity to rethink the needs of the community, and everyone should think outside the box. The goal would be for the merged organization to create new excitement about the arts.

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