

## ETHICS



# The Nonprofit Ethicist

by Woods Bowman

**D**EAR NONPROFIT ETHICIST,  
*I've been contracting with nonprofits for years as a writer and communications director. I presently find myself questioning the ethics of a director I've recently begun to work with. He is the executive director of a social services organization but he has a side business—a development company that raises money for organizations. Is it a conflict of interest for him to raise money for others through his business, since he is the chief fundraiser for the social service organization that employs him?*

*Suspicious*

Dear Suspicious,  
It looks bad all right. And when it comes to ethics, if it looks bad, it is bad. He is ethically tone deaf. However, the Association of Fundraising Professionals' Code of Ethics is not explicit on this point—probably because it is a rare arrangement. In principle, he could manage all of these business relationships ethically, but it would be tricky. The more his clients' interests overlap with those of his employer, the trickier it gets. At a

minimum, he should disclose the identities of all of his clients to each of his clients (and his employer), but most self-employed persons are reluctant to publicize their client roster. The Ethicist would love to see his conflict-of-interest statement. He should focus all of his productive efforts on his day job.

*Dear Nonprofit Ethicist,*  
*Immediately following Hurricane Katrina, in 2005, many companies and donors were quite generous in gifting nonprofits—furniture, automobiles, computers, rebuilding supplies, etc.*

*Now that many of the items have either met their gifted purpose or become obsolete, how does a nonprofit move them along without creating the whisper of impropriety or greed? One statewide NPO received a large gift of furniture, and after a series of reorganizations, simply sold it without mentioning that it had been donated.*

*When questioned by individuals who knew the furniture had been donated, the senior staff stated the furniture had met its purpose of assisting in hurricane recovery and now the organization needed the funds to continue its*

*According to our trusty Nonprofit Ethicist, "when it comes to ethics, if it looks bad, it is bad." Does it look okay for the director of a social services organization to raise funds for other organizations through a side business? How about if a board chair puts himself in the running for the executive director position but doesn't step down as chair?*

*It looks, in the Ethicist's words—*

*"Bad. Bad. Bad."*

*mission; the organization was downsizing and, not needing the furniture, decided to sell it instead of donating the furniture to other nonprofits.*

*BTW, it was good stuff: full office suites of solid mahogany and cherry.*

*What is the ethical way to deal with donated goods after their intended purpose has been completed? That explanation just sounded greedy.*

*Just Wondering*

Dear Just Wondering,  
Not to worry. It is quite all right for organizations to sell donated goods. Think of the Salvation Army and Goodwill Industries and all the hundreds, or maybe thousands, of donated vehicle programs throughout the country. However, such transactions should not be manipulated to create a tax scam. The IRS is alert to

this possibility, and has rules that I hope this organization followed.

This is a good opportunity to remind everyone that 501(c)(3) nonprofits must acknowledge gifts with a market value in excess of \$250, including donated goods. The acknowledgement should state that the nonprofit is a charity recognized as tax-exempt by the IRS under Section 501(c)(3), and further state that “No goods or services were received in return for this gift.” It should include the date of receipt and a description of the property donated. However, the nonprofit should not attempt to assign the cash value of the property—that is the donor’s responsibility. The last point is very important: a nonprofit runs the risk of being implicated in a tax scam if it accedes to a donor’s demand to attest to a gift’s value.

As for your specific issues: a 501(c)(3) organization should keep donated property for at least three years. If an organization sells, exchanges, or disposes of property worth more than \$500 for consideration within three years, it must file Form 8282, *Donee Information Return*, with the IRS within 125 days. (There are special rules for vehicle donations that use Form 1098-C.) The organization must give the donor a copy of its Form 8282, and failure to file may incur penalties. Donees are not obliged legally or ethically to disclose the fact that such goods were originally donated, but obviously they should not try to pass the goods off as new.

*Dear Nonprofit Ethicist,*  
I am on the board of an organization that assists persons with disabilities. Our executive director left suddenly to take another position. The board established a search committee to find a new ED. Meanwhile the executive committee is closely supervising the interim staff. I am not on the search committee, but one

*of the members told me that the current chair of the board of directors has stated that he will apply for the executive director position, adding that he has no intention of stepping down as chair, let alone resigning from the board.*

*This person has been the chair of the board for several years. He is very hardworking and well respected by other board members, the staff, our clients, and our funders. I do not think that this guy has the chops for the job, but I also pretty much know that saying so would create emotional havoc in the boardroom. Am I right to be troubled by this development?*

**I suggest proposing an amendment to the bylaws prohibiting the CEO, or any candidate for an organizational position for that matter, from serving on the board. In this way, you can avoid the much more awkward and premature discussion of the board chair’s capabilities through a perfectly legitimate and badly needed uncoupling of interests. If you lose on either issue, get out before the roof falls in.**

*I think that this issue has the potential to spin out badly even to the interim arrangement, since I know we have at least one internal candidate on senior staff. What to do?*

*In a Sticky Situation*

Dear In a Sticky Situation,  
Bad. Bad. Bad. First bad: it is disingenuous for the chair to pretend that his presence in the employment pool is not going to muddy the waters. Second bad: the fact that this guy does not know he should

get off the board during a search process should automatically disqualify him, and the fact that the board does not demand it makes the whole organization look hinky. Third bad: if he really doesn’t have the chops for the job and fails, good luck getting rid of him without a lot of blood on the walls. This is a terribly obvious no-no. The CEO and the board chair should not be one and the same. Francie Ostrower and the Urban Institute surveyed five thousand nonprofits, and discovered that organizations with CEOs on their boards followed fewer accountability best practices and had less board engagement (*Nonprofit Governance in the United States*, 2007). If he is serious about the CEO position, he should leave his chairship and get off the board, because he cannot, and should not, serve in both roles.

What to do? I suggest proposing an amendment to the bylaws prohibiting the CEO, or any candidate for an organizational position for that matter, from serving on the board. In this way, you can avoid the much more awkward and premature discussion of the board chair’s capabilities through a perfectly legitimate and badly needed uncoupling of interests. If you lose on either issue, get out before the roof falls in.

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