



# The Nonprofit Ethicist

By Woods Bowman

**Editors' note:** This unsigned story turned up in the *Ethicist's* electronic inbox as a posting to a discussion group. Traditionally the *Nonprofit Quarterly* does not publish anonymous letters, but the letter is in the public domain and the problem is regrettably all too common.

**D**EAR NONPROFIT ETHICIST, Along with several social-service agencies, I attended a United Way forum, and each entity gave its updates. One director asked everyone to call her and report on each homeless person he or she saw the following day. (It was nationwide census day.) Later I walked to Rotary with someone from another agency and I wondered aloud, "What if more than one individual reports the same residentially challenged person?" She replied, "Fine; then our community would receive more funding." This kind of attitude creates animosity and cynicism among many in the public—myself included.

Who Dat?

*Dear Who Dat?,*

*Right: sloppy data gathering opens the door to even more cynical and deliberate gaming of the system, which results in a misallocation of scarce public resources and poor service to the homeless. Someone in another community may wind up sleeping in a doorway because your local agencies got money that should instead have gone to these*

*organizations. Bad management almost always creates ethical dilemmas and always leads to bad policy. I presume that you called her out.*

Dear Nonprofit Ethicist,

I was just notified of a bequest to my organization. As I reviewed the donor's trust amendment, I noted that the former development director for my organization is also named and will receive twice the amount the organization will receive. I'm pretty sure that this is unethical, and I am analyzing the pros and cons of pursuing the issue informally or legally.

During the late 1990s, when the amendment was made, my organization did not have conflict-of-interest and gift administration policies as we now do. So the former development director had not signed these documents. I do not know whether she had a relationship with the donor that created the trust amendment naming our organization and her. Is this situation always unethical, and which factors should be considered as I decide how to proceed?

Upset

*Dear Upset,*

*This windfall raises some titillating questions, but the answers depend on the relationship between the decedent and your former development director. Maybe the relationship was on the up-and-up; the development director could be the decedent's favorite niece, for example, who begged to have your organization included. I doubt it, but if anything unethical occurred, the onus is on the development director. What is done is done. There is no point in refusing the bequest. Cash the check.*

*If the development director were still on your payroll, it would be incumbent on you to conduct a full-dress investigation. If she manipulated a feeble-minded donor to cut herself in, she would deserve to be fired for abusing her official position for personal gain. In extreme circumstances, her behavior might be considered fraudulent. Even if your organization had no policy regarding business decorum, egregious self-serving behavior detrimental to an organization is a firing offense.*

*But your organization should have a policy on business decorum. This situation should be a wake-up call. So first, consult the Association of Fundraising Professionals Code of Ethics ([www.afpnet.org/ethics](http://www.afpnet.org/ethics)). While you are at it, look for other areas in need of attention.*

*If you do not have a policy on client relationships, now is a good time to adopt one.*

*By the way, when an organization becomes aware that it has been named in a will, it should obtain a copy of the relevant portion of the document for its records. There are good business reasons for this practice, and it aids monitoring policies on business decorum in fundraising.*

Dear Nonprofit Ethicist,

On December 31, my organization's board treasurer told me—the executive director—that he had loaned \$3,000 to a donor so she can submit it with her own donation of \$2,000 to her employer to get a triple-matching donation from the organization. This was the first I had heard of this agreement. I told him that, at the least, we needed to have a loan agreement in place so we could start triage on the matter. He blew up at me, told me that we had an agreement, and said that I didn't need to know anything about the loan anyway. (I am not allowed to sign checks.)

At the next board meeting, I heard the tale and how much money we would get. It was alleged that there was a loan agreement (which I had not seen) and the donor's employer didn't care where money for the matching gift came from. I explained it was unethical and probably illegal for a board member to make a loan to any individual, especially when it is not designated for organizational mission purposes. In effect, the loan meant we were aiding and abetting fraud against the donor's employer.

The board member who I suspect set this deal into motion stated that there was, in fact, no loan agreement. It all just happened quickly; parties exchanged checks in a bank parking lot so the deposit could be made on December 31. In the end, after one of our employees threatened to write the state

attorney general and the IRS, the board agreed to decline a matching gift from the employer. But the board discussed other ways to give the donor the loan for future matching gifts. The board also claimed that a loan agreement would be put together.

I would love your take on all of this, but I want the movie rights.

Disgusted

*Dear Disgusted,*

*Beware easy money. You are right thrice over: (1) the proposal was an unethical scam; (2) assuming that loaning money to a board member is legal, you need a loan agreement for protection of the organization; and (3) insisting on movie rights is a good move.*

*The IRS might look askance at this transaction. Your clever donor might consider deducting the full \$5,000, but \$3,000 is repayment of the loan which, of course, is ineligible for deduction. The IRS requires you to acknowledge all gifts of \$250 or more. In this case, you should acknowledge receipt of only \$2,000.*

*The Ethicist loves to call a bluff. When someone said that the donor's employer does not care about the origin of the money for the matching gift, I would have asked the board to direct the secretary to write a letter seeking verification from the employer. If the organization really believed that nothing was wrong with the transaction, it would not care. But you just know that the board member would have rationalized why a letter was unnecessary and even undesirable while dancing around the real issue that it was just plain wrong.*

*As for legality, many states have laws prohibiting loans to board members for any reason, so the Ethicist defers to local lawyers on the question of legality. A few years ago, the Chronicle of Philanthropy studied all the 990 forms listed*

*in the GuideStar database and identified hundreds of nonprofits in putative violation of state laws.*

**Editors' note:** *The author of the previous letter was subsequently fired from her organization and sent the following postscript.*

Dear Nonprofit Ethicist,

I don't want to have anything to do with these board members, yet I truly believe in the mission and see tremendous potential in what the organization can do for the community, but only if it's done right. I hate to see the organization close its doors because of ignorant, arrogant, and greedy board members. That thought really hurts.

More Disgusted

*Dear More Disgusted,*

*All of us at NPQ feel bad that you lost your job, but you did the right thing. It is to your credit that you stood up to the organization. You can cite this experience to prospective employers as proof that you run a tight ship. There are plenty of boards that would agree with you that it is not enough to do good; doing good must be done well. When you find an organization with such a board, you will be home.*

**WOODS BOWMAN** is a professor of public service management at DePaul University.

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