



The Nonprofit Ethicist

By Woods Bowman

Dear Nonprofit Ethicist, My human-services organization is in the early stage of merger discussions with a nearby agency. The merger makes a lot of sense. But now I have learned that the agency submitted a bid on a project we started decades ago and anticipates continuing in some capacity—whatever the outcome of the merger. (The contract was open for bidding for the first time this year.)

We won the contract, but I'm perplexed by the other agency's failure to be open with us. Knowing that our agencies are exploring a merger and—I thought, looking for collaborative opportunities—I expect more transparency. We've executed a nondisclosure agreement as we undertake due diligence, but I didn't think a noncompete would be necessary—until now. Where is the line between professional courtesy and ethics?

Perplexed

*Dear Perplexed,
How about the line between ethics and common sense?*

Nonprofit mergers are always dicey, and it's always wise to conduct a trial run to test the waters. Submitting a joint proposal would have been a good exercise to determine whether synergies are possible and your staffs can work together. Alas, that is water under the bridge.

Effective due diligence requires full disclosure. This includes information on projects in prospect, in addition to funded projects. The Ethicist assumes that you had access to the agency's board minutes, and its board should have discussed pursuing this contract—but that is another issue.

The key to good ethics is anticipating the effects of a decision on others. Your "partner" should have considered that you could construe its interest in the merger as a façade for obtaining inside information that would aid it in preparing its proposal, which would sour your mutual relationship and inhibit future cooperation. Certainly professional courtesy and common decency required the agency to disclose its intent to bid on your long-standing contract.

Dear Nonprofit Ethicist, I am a fundraising consultant. I was asked to be on the board of directors of one of my clients. I was caught off guard and immediately accepted. Is it unethical for me to be on the board of directors of a client and still be paid for my fundraising services?

Blindsided

*Dear Blindsided,
In theory a board member can engage in an economic transaction with his organization, provided (1) he discloses his interest to the board, (2) the transaction is in the best interest of the organization, (3) and the board discusses and votes on the transaction in the absence of the affected party. In your case, these tests are easy, but I predict that your fellow board members will expect you to discount your rate. Unless you work for free, your rate will always be too high to satisfy your colleagues. Thank them for the honor, and resign now. Ethics is like spinach: it is good for you even if you have to make yourself eat it.*

Dear Nonprofit Ethicist,

A few weeks after I was hired to be the executive director of my organization, the board chair took me aside and said, "I just want you to know that one of our newest board members applied to be the executive director. She made it through only the second round of interviews, and we realized she wasn't a fit. But she had so many other qualities, we decided to put her on the board." I was so shocked that I didn't even know what to say. She is now becoming a problem and does not understand the difference between her role as a board member and her role in her working life as a paid consultant. She met with a funder without my knowing about it. Help!

Shocked

Dear Shocked,

This person is a professional consultant? She should know better. Important contacts should not be ad hoc. They must be part of a fundraising plan. Explain to the Lone Rangerette your organization's protocols on approaching funders. If you can, find a role for her, but she must acknowledge that you have to approve—in advance—all contacts with potential sources of funding. (Have her consider this scenario: suppose she wants to ask for \$10,000 from a funder,

while you plan to ask for \$1 million. Once the request has been made, you cannot increase it.)

The board opened the door to this problem by electing an ex-executive director candidate to the board. You will need help from the board chair to rein her in, and all board members now have an obligation to work with you to make sure everyone understands his or her role and respects boundaries.

On a more speculative note, it's possible that this person is still angling for your job. The fact that she was a willing candidate for the open position suggests that the consulting business is not going well. Be watchful and firm yet polite whenever she gets out of line.

Dear Nonprofit Ethicist,

We have a "minimum donation" to attend an event—say, \$1,000. People who give out of their foundations send in the \$1,000 but frequently do not send a separate personal check to cover the "nondeductible portion": the food and drink and cost for attendance of the event. The foundation is not supposed to cover those costs. Ethically and legally, these foundation members should pay additional monies to cover that non-tax-exempt cost.

Watchful

Dear Watchful,

It is the foundation's business who pays for the dinner and how it is accounted for, but you should do your part. Do not call an admission fee a donation. (Only if you admit everyone who shows up empty-handed is the suggested minimum truly a donation.) Your invitations should clearly state that \$X of the \$1,000 covers the cost of the rubber chicken and is not tax-deductible.

It is perfectly legitimate for a foundation or any nonprofit to cover board members' out-of-pocket expenses in the course of undertaking "company business." In this case, the foundation should account for the \$X as an expense and the balance as a grant. So release that poor bee from your bonnet, and be thankful for each seat you fill.

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

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