



The Nonprofit Ethicist

by Woods Bowman

Dear Nonprofit Ethicist, As far as we know, our recently departed executive director did not embezzle funds. But I believe that he “stole” from direct-service program budgets to beef up his administrative budget. Mind you, we add a 13 percent indirect charge to all program budgets for administration purposes. On more than one occasion, the executive director met with foundations that had received proposals from one program or another. And on every occasion of which I am aware, the grant proposal was denied, the relationship was damaged, if not destroyed, and the program’s financial position was compromised. Of course, program managers were held responsible. The board of directors awoke to these issues only as the executive was on his way out.

It seems to me that this is wrong. In its commitment to supporting its programs and operating in an ethical and moral manner (did I mention it’s a church organization?), the organization has an obligation to programs damaged by this person’s unethical leadership.

Innocent Bystander

Dear Innocent Bystander, You are right about his behavior being wrong, but be careful about using words like steal to describe it. The difference is between being criminal and being unethical. I think you mean that he did not respect approved program budgets by

spending money given for one purpose on something else. Assuming that your grantors pay attention to post-audits and your former executive director could not provide a good explanation for these changes in spending, your organization’s relationship with grantors is sure to be damaged. Damaging a reputation is irresponsible and unethical.

Now that he is gone, what to do? First, if it doesn’t have one, your organization needs an ethics policy. But just having a code is insufficient. There must be a well-advertised procedure for

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employees to file complaints anonymously and a procedure for investigating complaints promptly. A strong ethics culture is important too. The Ethics Center has identified these necessary components for a strong ethics culture: ethical leadership, supervisor reinforcement, peer commitment to ethics, and

embedded ethical values. I would also add strong internal controls to reduce opportunity. Your executive director should not have been able to move money around with his signature alone. Weak controls open the door to real stealing.

Dear Nonprofit Ethicist, The *New York Times* recently revealed that ACORN, a national community organization, and Dale Rathke, the brother of ACORN co-founder and chief organizer Wade Rathke, had embezzled nearly \$1 million. Although they learned about the embezzlement a decade ago, top ACORN managers decided to hide the discovery from the board of directors, never notified law enforcement or the IRS, and accepted a promissory note to be repaid over 30 years. Wade Rathke argued that ACORN is a low-income empowerment organization and that to reveal the problem would hurt the organization’s reputation, which would make it vulnerable to outside attack, hurt its mission, and ultimately hurt the people it serves. ACORN retained Dale as a paid staff member until this year, when the situation became public. What should ACORN have done differently? Who has a duty to whom?

Disappointed

Dear Disappointed, Ah, yes: the old it-would-have-hurt-our-mission gambit, a favorite of nonprofit miscreants. It is as though a \$1 million

theft was of no consequence. In Wade's defense, it must be hard to come up with an original reason for covering up an egregious ripoff. His argument is nonsense, and the 30-year note is worthless.

To be sure, a nonprofit's first duty is to the people it serves, and the board has ultimate fiduciary responsibility. Whoever first learned of the theft should have reported it up the chain of command and followed through to ensure that the board was also aware. It should have fired Dale Rathke, filed a police report, and recovered the money from its insurance company. (Let's hope ACORN at least had enough common sense to bond its employees.) It should start by telling its big donors first—before they read about it in the papers. But they have no fiduciary responsibility for ACORN and therefore have no role to play in cleaning up the mess.

If ACORN had been concerned about damage to its reputation, it would have been worth spending a few bucks on a public relations firm to tell its story. I envision something like, "We will not tolerate anything or anyone who stands in the way of our empowering low-income people, and our insurance company replaced the money." It could have emerged from this with an improved reputation.

This is a good example of the dangers of nepotism, especially when practiced by a founder. The Ethicist surmises that ACORN might have handled the situation differently if Joe Schmo had stolen the money.

Dear Nonprofit Ethicist,
We hired an early retiree as a job developer on a part-time contract basis. Her husband was an injured worker and was retraining as an accounting clerk at a local college. He has looked around for a job without success. We suggested he join our board to get volunteer recognition on his résumé. He has been a board member for a year, but he is still unemployed.

We run an annual event that is staffed by a volunteer member of the board and assisted by other board members, volunteers, and staff on their own time. This year his wife coaxed him to take it on. It takes about three months to plan, organize, and implement based on a tried-and-true template set up by previous leaders. To help defray expenses the contractor and his wife might incur, I agreed that we could pay an honorarium of \$1,000 into the wife's private business, because we cannot pay a board member and because the wife is involved in activities for the event. Now, three months into the project, he has emailed an invoice with a bill for each of three months totaling \$2,250. These "arrangements" were not put in writing.

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Now we have to try to unravel this. We do not plan to pay these invoices.

I have kept the board chair and our bookkeeper informed. They knew about the \$1,000 honorarium. I prepared a history of the event indicating that it had been operated on a volunteer basis and only, on one occasion, by a part-time staff person. No board member involved in the event has ever been paid. I have distributed the information to members of the committee and will share it with both husband and wife. I also plan to acknowledge the agreement to provide the honorarium. Any other discussions must take place with the board chair present. Do

you have additional advice for us?

Helpful

Dear Helpful,
Boy, did you blow this one. The Ethicist is reminded of those pictorial children's games that you see on restaurant place mats: "There are six things wrong with this picture, can you find them?"

Here we go: (1) You invited someone to join your board as a favor, not because they would strengthen the organization. (2) You invited someone to join your board who is related to an employee. (3) You paid a board member above and beyond out-of-pocket expenses. Apparently you do not have a written policy that defines an allowable expense. (4) You used semantics (honorarium instead of compensation) as a device for ignoring a long-standing policy to the contrary. (5) You compensated someone indirectly—writing a check to his wife in order to get money into his pocket. (6) You failed to put all economic arrangements in writing.

How do you dig yourself out of this mess? First, you are right not to pay his bill. Good start. Since there is nothing in writing, I suspect he would have a hard time proving that you owe him anything but my advice is: call your lawyer. Don't compound your problems by "winging it."

Sometimes tempering justice with mercy calls for bending a rule, but the lesson here is that bending rules, even with good motives, almost always causes ethical dilemmas. Bending multiple rules is a good way to cause a train wreck.

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To write to the Ethicist with your query, send an e-mail to ethicist@npqmag.org. Order reprints from <http://store.nonprofitquarterly.org>, using code 150301.