



The Nonprofit Ethicist

By Woods Bowman

Dear Nonprofit Ethicist, In mid-2008, the private nonprofit organization I represent successfully passed a tax referendum to increase our annual budget from \$1.4 million to \$2 million. The board approved the 2009 budget and revised wage scale with a proviso that the pay range for all staff, including the finance director and executive director, would “comply with an annual state wage survey that compiles information on 72 positions from 672 nonprofit organizations with 501(c)3 status.” The survey reports that a full-time executive director with 5.9 years of experience, a bachelor’s education, and annual operating budget of \$1 million to \$2.5 million (with 104 agencies in this category) had a “mean entry level” salary of \$82,351 (and a median salary of \$75,000).

I requested \$75,000 from my current wage of \$55,000. I thought it was warranted because the executive director goals for 2008 were met, and on a scale of 5.0, I received a board evaluation of 4.5 I also have 19 years of experience with the agency, 25 years of experience in the long-term care field, and a master’s in public administration. Over the past three years, the budget has also been balanced. The salary request also included a boost of the finance director’s salary, from \$36,000 to \$54,000.

Some board members believe that these salary increases send the wrong message to the community. I say they ensure the continued success of the organization long after I’m gone. I believe it is one of the ways the organization will better plan for its future by hiring candidates of high comparable experience and education.

Deserving Executive Director

Dear Deserving Executive Director, Thanks for giving the Ethicist a chance to remind readers of how the IRS regulates executive compensation. The fairly new method is called Intermediate Sanctions, and it can result in fines and penalties, plus restitution for all benefits. The burden of proof is on recipients to show that their compensation package is not excessive, unless their organization took certain steps in setting compensation. In that case, the burden of proof shifts to the IRS. The necessary steps are the following: (1) The arrangement is approved by members of the organization’s governing body or committee (GB/C) thereof, none of whom have a conflict of interest; (2) the GB/C obtained and relied on appropriate data as to comparability or fair-market value; and (3) the GB/C adequately and contemporaneously documented the basis for its determination.

It sounds as though your process would satisfy the IRS.

Your board apparently did not question whether the salaries are deserved, in line with the market, and conform to IRS rules. It questioned whether large salary increases would send the wrong message to clientele. This is a question worth considering given the organization’s salary structure, staff turnover, staff morale, and quality of service. If low executive salaries compress salaries for lower positions, and if a low pay scale results in high turnover, low-quality hires, low morale, and low service quality, it would be unethical not to raise salaries throughout. Having access to more money through a new tax, however, is not sufficient to justify higher salaries.

Dear Nonprofit Ethicist,

I manage a nonprofit that collects eyeglasses through public donations at community events that are sponsored and run by sponsoring organization volunteers. In this partnership, the host groups provide the above-mentioned contributions and, equally important, an entrée into the community. In turn, my entity provides tools, training in prepping glasses for shipping, transportation to storage, and a reputable destination for the donations.

Three years ago, I was approached by a woman in our community whose son

(who was 11 years old at the time) wanted to collect eyeglasses to help people in South America. They proposed managing a collection at a local high school in a community where we had traditionally collected donations. I thought that this might involve “overfishing,” but the prospect of a young man wanting to collect eyeglasses for Latin America convinced me that it would generate good results.

To my surprise, their first collection netted nearly as many eyeglasses as our collections. The mother-son effort generated a lot of press attention—including spots on *Good Morning America* and CNN—and I gave them additional publicity. To my consternation, however, the mother-son team spoke primarily about their efforts (and obliquely referred to us on TV as a “company,” as though we simply provide a service). The mother excused her son’s comment as that of an 11-year-old, which didn’t excuse her own use of the nomenclature. I let it pass.

Subsequently, the mother approached me again, and we did additional collections. Again, to my consternation, she released inaccurate publicity, including a poster that highlighted her son’s organization and referred to our organization as merely providing transportation to Latin America. And an article featuring the young man in a local paper included inaccurate information on donation requirements and ignored our participation entirely.

The final blow came when the woman told her site managers that all donation checks were to be written out to her entity even while using our organization’s receipts for donors (we suggest a \$1 donation with each donated set of eyeglasses). This provoked conflict and resistance among assisting volunteers. Eventually, the woman deposited the funds in her entity’s bank account, deducted her expenses, and issued us a check for the remainder. I was livid.

Subsequently, a steering committee member and I met with the woman and presented a written list of concerns. We communicated that to work with us again, she must sign a written agreement satisfying all parties. We left uncertain as to her willingness to accept.

Months later, we received a phone call from her requesting collaboration again for another round of collections. In response, we sent her a draft memorandum of understanding (MOU). I arranged a meeting with her, and we explained our concerns. It appeared that we had agreement on some requirements, and the minutes signed by both parties substituted for a formal MOU.

With some trepidation given the woman’s behavior to date, I agreed to the lack of formal MOU; but it seemed the best way to move forward. We forwarded a copy and received nothing. Upon follow-up, the woman continued with excuses of being too busy planning the event—all with the assumption that our organization would participate as it had previously. She insisted that we were committed.

At this point, we informed her that we would not participate given the absence of a written agreement.

She has gone ahead without our participation. I have mixed impulses: on the one hand, I want to warn the public about this woman and, on the other, just want to keep quiet. Many in the public will assume we are involved and donate based on our reputation. Also, while we share the same objective, this has become a competitive situation. What is the proper response?

Hornswoggled

Dear Hornswoggled,
Let’s start with your behavior. It was casual, but reasonable. Even in the for-profit business world, many transactions are based on handshake agreements. But there is a greater danger that they will

go awry than when they are based on a formal agreement. Having terms and conditions in writing does not restrain bad actors, but written agreements usually contain penalty clauses that do.

The important thing is to maximize the number of eyeglasses collected and distributed to poor people around the world. It should make no difference who collects them. As long as your competing efforts increase donations overall, the poor people of Latin America will bless you both. (By the way, many successful charities have spawned copycats, and yours may be next.)

You describe your competitor as shunning transparency and accountability. This is worrisome. If people confuse your organizations and the other organization screws up, both reputations are sullied and the community is likely to donate fewer eyeglasses overall. Your options are limited, but your best tactic now is to ensure that your organizations’ names are sufficiently different to avoid public confusion. If the other organization’s name is dangerously similar, politely ask it to change its name. If it refuses, talk to a lawyer about making it happen.

Even smart people make mistakes, but really smart people learn from them. For the future, draw up a standard MOU with a penalty clause, and do not do business with anyone—even 11-year-olds—until the document has been signed.

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To write to the Ethicist with your query, send an email to ethicist@npqmag.org.

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