



The Nonprofit Ethicist

by Woods Bowman

Situations that raise the conflict-of-interest specter may not always turn out to be illegal but do always raise ethical questions. When in doubt, follow IRS-recommended procedures, your own conflict-of-interest policy, and your gut—the three together should go a long way toward helping you to make the right decision.

Editors' note: Right before Woods Bowman passed away, in July 2015, he presented the Nonprofit Quarterly with a cache of Nonprofit Ethicist columns. This is the second of four batches that we are running in the Quarterly as his parting gift to us all. This quarter's installment is on issues related to conflicts of interest.

DEAR NONPROFIT ETHICIST,
Is it appropriate for an executive director of a nonprofit organization to also serve as a board member of that organization?

Concerned

Dear Concerned,

I don't like it. This arrangement compromises the ability of a board to hold an executive director accountable. It is based on a for-profit model, where board members are duty-bound to represent stockholders. Because officers and directors of corporations are also stockholders, theoretically there is no problem with a CEO being a board member. However, a nonprofit's board has a fiduciary duty to its beneficiaries. I believe that a healthy dialogue between board and staff is the best way to discern the best interests of the unrepresented beneficiaries. A nonprofit CEO sitting on his or her own board, in my opinion, stifles give and take. In a spirit of collegiality, board members would tend to defer to the CEO. I also suspect the practice tends to inflate executive compensation.

*Dear Nonprofit Ethicist,
A local insurance agent who happens*

to sit on our executive committee has offered to head our efforts to increase our charitable gift annuity program. He has a vast knowledge of the product and sees the effect that a strong gift annuity program can have on our organization. However, he has requested a commission for the gift annuities that he brings into the organization. Our current bylaws and policies do not directly address this situation. What would your recommendation be in this situation?

Wondering

Dear Wondering,

It always disturbs me when board members try to make money at their organization's expense, although it is legal (and can be ethical but frequently isn't). Never, ever employ a fundraiser on commission; that arrangement breaches the Association of Fundraising Professionals Code of Ethical Standards. Looking past the threshold issue, this is an obvious conflict-of-interest situation. The IRS recommends procedures for dealing with a conflict of interest (see Appendix A to IRS Form 1023). I will quote the key section:

a. An interested person may make a presentation at the governing board

or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, and for its own benefit, and whether it is fair and reasonable. In conformity with

the above determination it shall make its decision.

Dear Nonprofit Ethicist,

As a philanthropic advisor, I am sometimes asked by clients for recommendations of worthy nonprofits. In the area of disaster relief, I have often recommended a particular organization whose work and financials I am familiar with and can endorse. This organization recently became a client of my company. Does this present a conflict of interest? If so, must it be disclosed to my company's other clients? Does this need outweigh the need to keep client names confidential? Should I recommend a different organization in the future?

Advice Seeker

Dear Advice Seeker,

Yes, you have a conflict of interest. The degree of conflict depends on how your company organizes its internal affairs, with firewalls and the like. Conflicts are ubiquitous in modern society. The trick is to manage them to achieve a fair result. Informed consent solves many ethical dilemmas, so I recommend disclosure whenever possible, but I always recommend honesty. If you believe that Agency X is the best, you should say so. If this is done in the context of a board meeting, you should follow the IRS recommendations and leave the room after speaking while the others debate and vote.

Dear Nonprofit Ethicist,

My company serves as corporate trustee with four individual trustees of a private foundation. The foundation was established by a couple, long since deceased, from a town that remains a focus of the foundation's giving, along with the broader region. The individual trustees must be residents of the town at the time of their appointment, and all are active in civic affairs. Recently,

one of the trustees ran successfully for selectman in the town. This trustee reviewed his plans in advance with the foundation, and all gave their blessing. He will certainly recuse himself from any votes involving grants to the town for any purpose (something that the foundation has supported in various capacities regularly). For a relatively small community, there is a surprising amount of political maneuvering that has occurred at the selectman level. This trustee is an ideal candidate because he brings integrity and professionalism to the role. Other than the clear responsibility of recusal from votes relating to the town, do you have any suggestions for ensuring that the foundation stays above any political fray and avoids the appearance of conflicts of interest?

Worried

Dear Worried,

I defer to the IRS recommendations. Let this individual make a presentation, but after speaking he should leave the room. Discussion of and the vote on the town's grant application should occur without his presence.

Dear Nonprofit Ethicist,

We are a grantmaking organization that issues grants for health-related organizations within our community. The father of one of our board members is on the board of a local healthcare nonprofit, and has applied for a grant from our organization. The grant request is not within our normal range of grant requirements, but the project this grant would fund could greatly improve our community. Our board member is pushing for us to grant this project, but as it doesn't meet our normal grant requirements, and given the father-son relationship, what would you recommend that we do in this case?

Uncertain

Dear Uncertain,

I worry about the statement that the grant request is "not within our normal range of grant requirements." A host of activities might "greatly benefit" the community, but you cannot finance them all. Follow your conflict-of-interest policy. If you don't already have one in place, nothing you can do will be entirely satisfactory—either ethically or practically. Get a conflict-of-interest policy before the next problem arises.

Dear Nonprofit Ethicist,

If a cotrustee on a grantmaking account is also a representative of a nonprofit receiving funding, we can recognize and employ conflict-of-interest strategies, but conflict of interest will be inherent in the relationship, particularly if this is a long-serving cotrustee and a key nonprofit organization. Are there best practices for cotrustees and fiduciaries to discuss in instances like this (key discussions to have, benchmarks and ratios to review/evaluate, procedures to implement)?

What to Do

Dear What to Do,

You are right, a conflict of interest is inherent in this scenario. There isn't a pat solution that resolves the situation you describe. If you can, add one disinterested cotrustee (or more) so the conflicted trustee can be outvoted if a grant is ill advised. In any case, be sure to treat similar organizations and similar grant proposals evenhandedly.

WOODS BOWMAN was professor emeritus of public service management at DePaul University in Chicago, Illinois.

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