



# The Nonprofit Ethicist

by Woods Bowman

If a donor confides illegal financial doings, better hire a lawyer. Even for the Nonprofit Ethicist, it's hard to know what to make of a luminary's request for a donation to his own foundation in exchange for being an honoree at another's gala. And if a misdirected donation comes to your mailbox, do you really need to ask the Ethicist whether or not you should notify the donor?

**Editors' note:** Right before Woods Bowman passed away, he presented NPQ with a cache of Nonprofit Ethicist columns. We will run these in this and the next three issues of the Nonprofit Quarterly as his parting gift to us all. This quarter's installment is on issues related to fundraising.

**D**EAR NONPROFIT ETHICIST,  
A fundraiser develops a close relationship with a donor. The donor relates that for years he skimmed money from his cash business, and it is in his house (his attic). What, if any, is the responsibility of the fundraiser after hearing this information? No donations were made with this "tainted" money.

Worried

Dear Worried,

Oh, for goodness' sake! Don't you know that when you take a large donation from someone with a bad reputation, the taint can rub off on you and sully your reputation? The donor's behavior is not just unethical—it is illegal. The fundraiser should point out to the donor the possible penalties he faces if the IRS catches him. Furthermore, the fundraiser is now complicit. The fundraiser should

consult a lawyer regarding his or her own liability exposure. Again, any charitable gifts from the donor are, in fact, tainted, because money is fungible. Besides, I suspect the donor plans to take a tax deduction on money he never intended to pay tax on in the first place.

Dear Nonprofit Ethicist,  
Did you see the story in the New York Times about Bill Clinton agreeing to be honored at a nonprofit's annual fundraising gala, but only in exchange for a "quid pro quo" donation of \$500K to his own foundation (Clinton Foundation)? I found this to be very interesting. While the story reported the basic facts, it did not make a thorough inquiry into the ethical implications of the scenario. I know firsthand how difficult gala fundraising can be. How much is too much to put into a fundraising effort, and where did

the various players in the scenario described above (the hosting nonprofit, the soliciting honoree) go wrong?

Inquiring

Dear Inquiring,

I, too, found it interesting, and I wondered: (1) Did Clinton's appearance attract more than his \$500,000 fee? (2) Was the payment to the Clinton Foundation intended to buy favor with a possible future presidency of another Clinton? I don't know the answer to either question. I need more information to answer the first question, and any answer to the second is necessarily speculative, and I'm not going there. (Perhaps Clinton should not have gone there, either—but who am I to say?)

Dear Nonprofit Ethicist,

How do you handle an NPO that wants to say thank you for a grant made from

*your foundation by offering to give you tickets for (or special access to, or seats or a table at) an event? Can it be seen as receiving a benefit? There is a cost associated with what is given, but the organization is giving it on a complimentary basis. Do I accept? If I decline, I may insult the client; but if I accept, could it be seen as client cultivation/stewardship? Am I taking advantage of the foundation's position in the community by accepting access/tickets?*

*Flummoxed*

Dear Flummoxed,  
First, the ticket is definitely a benefit, and it would probably create a tax liability for you. My advice is not to accept it. The problem is not taking advantage of the foundation's position but that it could be regarded as an inducement for future grants. You can avoid insulting your benefactor by saying, "I did not do you a favor. You earned it." For good measure, you might add that it would create a tax headache for you. Although you paid nothing for the ticket, you still have to come up with cash to pay the IRS for the market value of goods and services received.

*Dear Nonprofit Ethicist,*  
*We have been approached by a ninety-year-old man who has offered to give us his home. The house has been appraised at approximately \$1.2 million. However, we have been assured that the maximum price the house would sell for is \$600,000. What is our obligation in dealing with this situation as far as taking the gift? If the donor were to deduct the appraised value of the home but we were only able to sell for \$600,000, what would be the effect on the donor? What would be the effect on our organization? What would be the ethical way to approach this situation?*

*Uncertain*

Dear Uncertain,  
Your legal obligation is merely to give the donor a letter acknowledging the gift and describing it and its condition. Be sure to consult IRS regulations to get a complete picture of your obligations. However, I can tell you now that the IRS prohibits an acknowledgment letter from opining on the gift's value.

*Dear Nonprofit Ethicist,*  
*A nonprofit I am working with received a check from a communal fund for \$5,000. The donor is not in its database, the organization has no relationship with the donor, and the people the donor wants to honor with the donation are not known to the organization. However, the attached letter is addressed to the organization—let's call it ABC NY—at its address, and the donation is unrestricted. The assistant at ABC NY did some research (out of her own interest), and it appears that the donor has a relationship with an organization with the same name in another state—let's call it ABC CT. Is the nonprofit in question legally required to notify them of a possible mistake? How about ethically?*

*Wondering*

Dear Wondering,  
Ethically, yes, the organization should notify the donor of a possible mistake. Assuming they want to do the right thing, the legal question is academic.

*Dear Nonprofit Ethicist,*  
*Several of your recent columns have left me wondering about the concern that, as advice seeker "Hopeful" phrased it (in your column of October 15, 2014), "the money that could be going to programs is instead getting plowed back into Wall Street." Over my years in the field, I've worked with numerous very wealthy institutions. A few stand out*

*for their ongoing, indeed perpetual, fundraising efforts, even though the organization has >\$2B unrestricted assets. When is enough, enough? And, how much of every dollar should pass through to recipients and how much is best to support the nonprofit budget for sustainability? What is the best allocation ("93 cents of every dollar goes to support recipients . . ." etc.)?*

*Curious*

Dear Curious,  
There is no consensus on these questions, either. People continue to give to Harvard with full knowledge that its endowment is \$36 billion-plus. Limiting the size of donor-restricted endowments or unrestricted quasi-endowments would either force more rapid spending, which could be wasteful, or it would restrict donors' options, which would be unwise. The law does, however, require that private, nonoperating foundations "distribute" 5 percent of their assets every year. I have studied the sustainability issue and find that 5 percent is very close to the maximum sustainable rate of spending without exposing an investment portfolio to excessive risk. I think it is a good spending rate for public charities and operating foundations, too. You also raise the question of a proper overhead ratio. There is consensus among scholars that one size does not fit all.

#### NOTE

1. Woods Bowman, "The Nonprofit Ethicist," *Nonprofit Quarterly* 21, no. 3 (Fall 2014): 4.

**WOODS BOWMAN**, professor emeritus of public service management at DePaul University in Chicago, Illinois, passed away in July 2015.

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