



The Nonprofit Ethicist

by Woods Bowman

Dear Nonprofit Ethicist,
One day I was sitting at my desk when I overheard a coworker who had pumped up at a gas station which only charged him 31 cents a gallon for supreme gasoline. Mind you, I never get supreme gasoline. However, 31 cents a gallon was too good for me to pass up. I was on empty and about to do my errands for the day, so I figured why not go check it out and if it's still marked wrong, yep—I was going to take advantage of the situation.

Sure enough, I got 11.5 gallons of gas for just \$3.71. We were lectured for stealing by the president of the company. Those of us who did not confess our “theft” from a small business owner were terminated, and those of us who did confess were charged the full amount of fuel, suspended for three days, were not allowed to submit for promotion or raises for a year, and were required to write an essay as to why we wanted to continue our employment at the company and why what we did was wrong.

Honestly, I didn't think of this as stealing. I associated my behavior for getting cheap gas as a shopper would at Sears who found a shirt that was incorrectly priced at \$5 instead of \$50. I would have bought plenty and told my friends, unfortunately the same as I did for the gasoline.

Now I submit to you my question: Was my behavior unethical or technically ok? It wasn't against the law. They incorrectly priced the pump and are required to uphold the price by law, correct? Please advise.

—Opportunist

*Dear Opportunist,
This is a gag, right? Of course it's wrong. Let's try this shoe on the other foot. Suppose your employer made a mistake in your paycheck and moved the decimal point one position to the left. You looked at it, but because the first few numbers were right, you didn't notice. You deposited it to your account through an ATM—keying in the amount you expected in your pay-*

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check. You became aware of the mistake when your bank sent you an adjustment letter indicating that you had deposited 10 percent of the amount you thought you had. You go

to your employer to rectify the problem and he says, “Too bad, you cashed the check.” (By the way, under federal law your employer has to make good, but assume he doesn't know that.) How would you feel? You should be proud to be working for an organization that lives its ethics so emphatically.

Dear Nonprofit Ethicist,
In my agency's first-ever experience with an online charity auction, one of the items was a romantic weekend at a chichi bed and breakfast on an exclusive local lake. The package included a candlelight dinner at a local restaurant. The son of our executive bid and won the package and immediately started negotiating the details with his mother. He wanted a different (and more expensive) weekend and he wanted dinner at a different (and more expensive) restaurant—all without paying any additional. Long story short—she caved to his whining. She originally told the staff that she would pay for the difference herself since it was her son, but after the event I learned that she decided that the organization should pay. She based this decision on her research on what the package as it finally was structured would have cost against the amount her son had bid. Sure, we still made some money, but I feel like our director missed the point entirely.

Doing “the Right Thing:” Serving Immigrants

Dear Nonprofit Ethicist,

What are the ethical and moral obligations of nonprofits to serve people who have entered the U.S. as undocumented immigrants? Many nonprofits will not be reimbursed by funding sources—public or foundation—for undocumented immigrants. So when a child is a citizen but its parents are undocumented immigrants, is an organization obligated to serve the whole family or is it all right to serve just the child?

—Wanting to do the Right Thing

Dear Wanting,

The Ethicist has been waiting for this one. If he could award a prize for raising the most important ethical question to confront the nonprofit sector since the civil rights movement of the 1960s, he would give it to you. Not every nonprofit works with immigrants, but those that do are on the ethical frontier of today. It is a short step from your issue to churches providing sanctuary to immigrants trying to avoid deportation, and to foundations struggling to cope with anti-terrorism laws. Permit me to raise the broader question of what is the proper response to an unjust law? The answer is both simple and complicated.

First, the simple part: the reason we have nonprofit organizations is to serve the public interest, and they have an ethical obligation to follow

their mission wherever it leads. If it leads to conflict with civil law, then an organization needs to take time out for a values check. Precisely what is its mission? How does the law compromise its mission? Is it a just law? If, like Jim Crow laws, a law is unjust, an organization has an ethical obligation to do something about it. A litmus test for determining whether a law is unjust is whether it compromises a political principle that is enshrined in one of our founding documents (e.g., “all men are created equal”).

Now, life gets complicated. There are many possible courses of action beginning with advocacy and extending to civil disobedience. Nonprofit organizations do not do enough advocacy or public education these days, but let us focus on two points on this continuum: your question of providing services in the absence of reimbursement and, the toughest ethical issue of all, civil disobedience.

Only you can answer the questions posed above, but it sounds as if you think the law is unjustly interfering with your ability to carry out your mission. If the issue is just one of money, then by all means, your organization has an obligation to provide service and to redouble efforts to raise the necessary funds. But these efforts might be unsuccessful, so it is first necessary to ask whether the organization is acting in the best interests of all the people it

serves? Educate your constituency about the possibility of short-term adverse consequences and mobilize them in support of your policy of long-term reform.

The question of whether to obey an unjust law has been the subject of much writing since Thoreau’s famous 1849 essay. Dr. Martin Luther King, Jr. wrote “I [am] convinced that noncooperation with evil is as much a moral obligation as is cooperation with good.” This column has space for only a brief elaboration.

Civil disobedience is a last resort. Even if a law is unjust, proceed with caution, because respect for the law is (or should be) enshrined in all codes of ethics. One should consider: Are there alternatives? Have they been tried? Why not try them first?

Obviously, repealing immigration laws would leave a policy vacuum, so it is incumbent on those who disagree with current immigration laws to fashion a just alternative that a majority can embrace. Dr. Martin Luther King, Jr. understood this and articulated his vision in numerous speeches and letters.

As in the case of all ethical choices, one must openly acknowledge one’s actions, vocally defend them, and then accept the consequences—knowing that they are likely to be unpleasant. People willingly went to jail for civil rights. With hindsight, a rap sheet from that era is a badge of honor.

When I tried to reason with her about the ethics of her actions, she would hear none of it.

This is really bugging me. I believe she owes the agency \$175, which is the difference between the originally offered and the final package. What do you think?

—Upset

Dear Upset,

Back up. It is customary for organizations to exclude staff members and their families from games of chance and auctions. Such a policy reassures participants that the outcome will be on the up-and-up. In ethical matters, appearances matter. Moving on: if the CEO said she would pay for it out of

her own pocket, she should pay for it. That was the basis on which decisions were made. After-the-fact “research” and rationalizing doesn’t cut it.

Dear Nonprofit Ethicist,

An elderly donor, who had a long-term relationship with the organization, was targeted as a potential planned gift

prospect. The goal was to interest him in donating his very expensive home (valued at \$3.5 million) as part of a bequest to benefit the regional office. The donor was indeed interested and a cultivation process began where I had the lead responsibility. He was particularly interested in seeing the funds benefit the state wherein he resided.

On most of the initial visits the president of the organization accompanied me, and then in the latter ones I became quite close to the donor and conducted regular visits independently. All seemed fine until the final closing of the donation. With the president from the national office present, the donor explicitly asked me to assure him that the gift would be to benefit his home state. I assured him this was my understanding and promised his intent would be honored.

Upon leaving, the president was furious with me, saying that he intended the gift to go to the general endowment of the organization and not to make grants within that particular state as we had been communicating to the donor throughout the cultivation process. I was stunned and said that was not my understanding. The end result was that the gift did indeed go to the endowment with very vague wording that the specific state would be served. I know enough about these kinds of transactions to know that the language should have indicated that the funds were limited to use in that state. The donor, based upon my assurance that day, signed the documents my organization prepared.

The donor is in very poor health, and I have had a close relationship with him for the past seven years. Every time we have discussed his gift subsequent to that meeting he seems to be quite pleased that he has left a legacy for his state. I struggled with the option of revealing this to him but eventually decided not to as it seemed to be a way of destroying the joy he had in making this gift. I was unsuccessful in having

the language revised to honor his intent. What could I or should I have done in this situation? I've subsequently resigned from this position, as I did not feel confident that I could assure donors their intentions would be honored. Nevertheless, this experience has continued to bother me and I'd appreciate your observation on the appropriate action fundraising professionals should take should they be confronted with this situation. Thank you.

—Regretful

Dear Regretful,
The Ethicist's Rule #14A: Never promise anything that is not in your power to deliver. When the donor explicitly asked you to assure him that the gift would be to benefit his home state, you should have referred the question to the president from the national office who was present at the closing. The president was wrong not to have jumped in, taken control of the discussion, and negotiated a mutually satisfactory agreement. The donor erred by not getting the organization

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to commit in writing. (It never ceases to amaze me that people who work hard to amass wealth and manage it scrupulously are willing to turn it over to someone else on a handshake.) The Ethicist is a proponent of full disclosure, but since you have resigned and the donor did not follow up with the organization to ask what projects it actually funded with the money, I suppose you are off the hook at this point.

Dear Nonprofit Ethicist,
 If a nonprofit operates a grant-funded care management program and it contracts with for-profit providers to

deliver services to clients, should it ask its providers to support other activities of the agency through their direct donations or indirectly by buying vendor space at conferences, or paying for a speaker at an event? Should staff of the for-profit contractor be asked to serve on the board or committees of the agency? Should the for-profit contractor be treated any differently than the non-profit contractor?

—Vendor Bender

Dear Vendor Bender,
Treat this for-profit contractor like any other vendor. You need not be shy about asking it for money, but keep its representatives off your board and committees. They necessarily have a conflict of interest.

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REPRINTS of this article may be ordered from store.nonprofitquarterly.org, using code 140101.

Correction

The Maryland Association of Non-profit Organizations (MANO) noted some inaccuracies in Rick Cohen's Winter 2006 article entitled "Gloria Wise Boys and Girls Club: Implications of the Scandal" concerning a reference to MANO's review of the ethical standards of an organization called CHIMES. MANO points out that CHIMES had not been certified as compliant under MANO's Standards for Excellence program. MANO had begun a review of a related organization, the CHIMES Foundation, which was a member of MANO, pursuant to MANO's by-laws after seeing news reports about CHIMES in the *Baltimore Sun*. The CHIMES Foundation resigned its membership rather than respond to MANO's request for information.