

Recognizing Legal Compliance and Ethical Issues

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Introduction

- **Member of the Public Finance & Government Services Practice Group and the Corporate & Tax and Charitable and Non-Profit Groups advising clients on corporate policies, best practices and corporate governance;**
- **Adjunct professor at La Salle University (Masters of Science in the Nonprofit Leadership program) teaching the Law and Ethics course and Capstone courses;**
- **Board Member for several nonprofit organizations including being the founder and President of the Foundation for Wallingford-Swarthmore Schools, a 501(c)(3) nonprofit organization that works to ensure teachers and students continue to promote innovation, creativity and excellence, especially in difficult economic times.**



Agenda

- **Understanding your legal compliance obligations**
 - Legal Issues – can I take this action
 - Ethical Issues – should I take this action
 - Facebook Issues – responses from donors if action is taken
- **Trends facing nonprofit organizations**
 - Fiscal Sponsorship Model
 - Mergers
 - Cryptocurrency



Maintaining Tax-Exempt Status

- IRS Compliance Guide: <http://www.irs.gov/pub/irs-pdf/p4221pc.pdf> provides tips on areas in which nonprofits struggle to maintain tax-exempt status.
- Emphasizes the importance of timely filing of annual reports (Form 990), accurate record keeping, disclosure requirements.
- Does your Board provide training to its members and officers on a regular basis to ensure that they are familiar with the compliance requirements by the IRS?



IRS Exempt Organization Newsletter

- In order to avoid similar type of problems, it is important for Board members and officers to remain current with the ever-changing rules and regulations of the IRS.
- Board members and executive staff should become subscribers to the IRS Exempt Organization Newsletter: <https://service.govdelivery.com/accounts/USIRS/subscriber/new>
- The IRS will provide free e-mail updates regarding issues of tax policy and services provided by the IRS. The Exempt Organization Newsletter also provides news releases from the IRS relating to tax-exempt organization; new forms, guidance and other publications; upcoming IRS training events and any changes to the IRS Charities and Nonprofits website.



Continued Maintenance

- The IRS provides a helpful website for nonprofit general counsels, executive staff and board members: <http://www.stayexempt.irs.gov/>.
- In addition to providing overviews for becoming a tax-exempt organization, the website provides in-depth discussions on maintaining tax-exempt status and expanding the nonprofit organization's knowledge on common tax-exempt organization issues.
- By having Board members and executive management aware of new developments within the IRS, the Board will be able to make decisions that will safeguard the nonprofit against having its tax-exempt status revoked.



Board Governance

- **One of the most frequent concerns is whether a Board is adhering to its fiduciary duties.**
- **Board member should ask:**
 - Does the Board just show up for a meeting?
 - Is it an active or passive Board?
 - Are any questions asked of executive management during Board meetings?
 - Do Board members review Board meeting materials prior to a Board meeting?
 - Does the Board serve as a rubber stamp to the executive management's decision?
- **In order to ensure Board members understand duties, Board training should be conducted on a regular basis.**



Facebook Issues

- Social media has drastically expanded the ability of nonprofits to reach potential donors, volunteers, and corporations.
- Through networks such as Facebook and Twitter, a nonprofit may increase its ability to share its message and programs.
- With this expanded network, the need to be able to control the information shared through these sources is crucial to delivering the message of the nonprofit.
- In addition, fundraising sites such as Razoo.com and Indiegogo.com help to open the door to new networks of potential donors.
- Nonprofits need to be aware of the fees and costs associated with these sites before selecting the sites to use for various projects.



Establishing a Social Media Policy

- **Determine what the nonprofit would like to accomplish by using social media?**
- **What websites will the nonprofit use to establish its social media presence?**
- **Who sets up the social media sites and who is allowed to post to these sites?**
- **Is there any review by a supervisor and, if so, how frequent are the reviews?**
- **Who is the nonprofit's target audience for each form of social media?**
 - Donors
 - Volunteers
 - Other foundations
- **How often are posts made?**



Legal Issues Facing Facebook Posts

- Many nonprofits will use a particular example of an individual that benefitted from the nonprofit to better define the nonprofit and its mission.
- *Before* sharing this person's story, the nonprofit must ensure that it receives a signed release and waiver from the person. If not, the nonprofit exposes itself to a wide range of lawsuits by disclosing this individual information.
- Particularly when a person's health is involved, the nonprofit should not freely share the person's information without a release and waiver. For example, the parents of a child with cancer may want the services provided by the nonprofit but not want their child's diagnosis shared with a significant number of people.



Ethical Issues Facing Facebook Posts

- ***Before* posting any information about an individual, the nonprofit should consider whether this is information that helps to define the nonprofit.**
- **For example, a nonprofit helping children with cancer should not also disclose additional family information about the child (siblings, etc.) without first receiving approval from the parents.**
- **The nonprofit should consider the type of information shared and ensure that it is just enough to provide the reader with the work that the nonprofit is accomplishing.**
- **In the age of oversharing, a nonprofit must be careful to disclose only the information necessary to make its point.**



Trends Facing Nonprofits

- With the current backlog of Forms 1023 with the IRS, groups are looking outside of the traditional nonprofit entity formation in order to raise funds.
- One way in which groups looking to raise funds but not interested in becoming separate tax-exempt organizations is for these groups to turn to nonprofit organizations as a partner. This model is called “fiscal sponsorship.”
- Nonprofit leaders must be aware of the current trends facing not only nonprofits but also groups looking to raise funds for nonprofit purposes.



Fiscal Sponsorship

- A 501(c)(3) organization may agree to enter into an agreement with a group of individuals who are interested in fundraising when the purpose of the fundraising meets the mission of the organization.
- This agreement is called a Fiscal Sponsorship Agreement.
- The 501(c)(3) organization agrees to accept funds on behalf of the group for the group's specific fundraising purpose.
- By serving as an umbrella, the 501(c)(3) organization is able to extend the benefits of its tax-exempt status with the fundraising group.
- The funds are set apart from the 501(c)(3) organization's general funds in order to be used for the group's purpose.
- At all times, the 501(c)(3) organization must ensure that the funds being raised and being spent by the group keep with the 501(c)(3) organization's policies.
- If there are concerns with the group spending money on non tax-exempt purposes, the 501(c)(3) organization must reserve the right to withhold those funds.



Mergers

- **About ten years ago, the model for charities was to have a national organization and then create separate 501(c)(3) organizations on a state/regional/local level.**
- **Charities are finding that this wheel and spoke model led to high administrative costs and a questionable consistency of programs and services provided.**
- **As a result, many of these separate 501(c)(3) organizations are being merged either on a state or regional level.**



Additional Trends

- **Increase in need of services – many nonprofits are finding that following the pandemic, more and more people are in need of nonprofits' services.**
- **Partnerships/Collaborations – with the increased need of services, many nonprofits are looking to pool resources and seek help from other nonprofits.**
- **Additional programs – as the needs of the nonprofits change, many nonprofits are adding specific programs to address these needs.**
- **Cryptocurrency donations – does the nonprofit's gift acceptance policy need to change to allow the nonprofit to accept donations of cryptocurrency?**



Contact Information



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