Newsflash — communities stop poverty — firelight

5 April 2016

Dear Friends,

We're back! Please excuse the long delay in publishing this edition of the Newsflash. Here at Firelight we have been adjusting to an email systems change that impacted our ability to get this resource out to you. Thank you to everyone who reached out in the interim- we truly are glad to hear that you find the Newsflash to be a valuable resource. As always, we welcome your feedback and suggestions.

We hope you enjoy this month's edition of the Newsflash! This month, our focus is on conflicts of interest. Conflicts of interest are potentially damaging for community based organizations and non-profits regardless of size or location, so we hope that the information provided in this month's newsletter will help our readers keep their organizations best interests safe-guarded. We've included resources that clarify what constitutes a conflict of interest, provide examples of several common conflicts, give sample conflict of interest policies, and detail other steps that organizations can take to ensure transparency. We hope 2016 is off to a wonderful start for all our partners and Firelight friends, and as always, we look forward to providing you with the best support and resources we can throughout the year!

Sincerely,

The Firelight Team

What is a conflict of interest? How can a policy help? By: Molly Cullinane

When a member of a board of directors assumes office, the law requires that the best interest of the nonprofit prevail over the director's personal or business interests. A conflict of interest is an actual or perceived interest by an officer, board member/director, or staff member in an action that results in, or has the appearance of resulting in, personal, organizational, or professional gain. A conflict of interest most commonly arises when a person in a position of authority over an organization (like a board member or officer) could benefit financially from a decision he or she makes in his or her role as a board member of the nonprofit. Conflicts of interest can arise in many situations, including leasing property or buying services from a board member.

Nonprofits should adopt policies and procedures to ensure that those with decision-making power in the organization do not take actions that could benefit themselves, their families, or their business interests. Conflicts exist. What matters is how these conflicts are handled.

If conflicts are handled improperly, there can be legal problems and public perception consequences. But, in other cases, if a potential conflict is handled appropriately, it could result in a very beneficial arrangement for the nonprofit. For example, a board member who owns a catering company may offer reduced fees for the nonprofit's annual dinner. Or, a board member who owns a building may reduce the rent for the nonprofit. Maybe the nonprofit could benefit from working with the law firm of a board member, because that board member will ensure that the firm will do excellent work and will charge a discounted rate. Committed board members want the organization to thrive, and may go to great lengths to do the job excellently. The key question should be: What is in the best interest of the nonprofit, rather than an individual?

Different states set out how potential conflicts of interest are to be handled. In Texas business code, for example, describes the circumstances in which an interested director or officer must

- Identify a potential conflict of interest
- Disclose material facts of the interest or relationship, and then
- Participate (or not) in the decision involving the topic in question.
- Many nonprofits supplement state law with a comprehensive conflict of interest policy.

What is Allowed:

In many cases, the following are allowed. Check with a lawyer who specializes in nonprofits for state-specific requirements.

- Reasonable compensation for services permitted. A nonprofit may pay reasonable compensation to a director for services the director provides on behalf of the nonprofit. The key qualification is "reasonable," which will be determined on the basis of all the facts and circumstances of the situation.
- Interested director transactions may be permitted so long as certain steps are taken. Texas law permits transactions with directors under certain circumstances. The three points with regard to an interested director transaction are:
* Disclose material facts;
* Ensure that the transaction is fair to the nonprofit; and
* Document the decision-making process.

The material facts of the director's interest in the transaction should be disclosed to the board before a vote on the transaction, and a majority of disinterested directors should approve the transaction in good faith and with ordinary care. A transaction may be approved only if it is fair to the nonprofit when it is authorized. Any transaction with an interested director should be carefully documented in the minutes of a meeting at which the transaction is considered.

Prohibited Actions:

In most cases, the following are not allowed. Check with a lawyer who specializes in nonprofits for specific requirements.

- No financial loans. There is an absolute prohibition on paying dividends or lending the money of a nonprofit to a director. Directors who allow the making of a loan to a co-director will be personally liable for the full amount of the loan until it is repaid.
- No private inurement. There is also an absolute prohibition against “private inurement.” In order for an organization to be recognized as a public charity by the IRS, no part of the net earnings of the organization may inure to the benefit of a private individual. Private benefits may occur when the nonprofit pays more for goods and services than they are worth. Violations of this restriction may result in severe penalties and substantial legal problems for the nonprofit and Directors approving the transaction.

Tips to handle conflicts of interest:

There is always a potential for conflict of interest in any situation. What matters is how the nonprofit handles it. Some ideas:

- Implement a conflict of interest policy that is signed by all board members annually. The statement can be a simple declaration or require detailed information about the board members’ financial interests.
- Bids. If major purchases (for either goods or services) are involved, obtain competitive written bids to ensure that prices and product are comparable if a board member stands to benefit (financially) from a particular decision. A board member who owns a catering company, for example, can propose having her firm provide services for the nonprofit’s annual dinner. Before making any decision, the staff may invite other companies to submit proposals. And, the board member who is proposing her services would not be a part of the discussion or vote on the matter. The board will fully document, in minutes, how the decision was made.
- Ask, Discuss, and Record. Before major votes, have the board chair ask about potential conflicts of interest. Document this in the minutes and set out how the conflict was handled.

This article can be found online at http://bit.ly/1nNmGnr

Sample Conflict of Interest Policies By: CompassPoint NonProfit Services

SAMPLE CONFLICT OF INTEREST POLICY
Three straightforward safeguards can go a long way towards preventing and avoiding conflicts of interest. First, the organization can establish a policy related to conflict of

interest, which is signed by all board members at the time they join the board and perhaps renewed annually. The statement may be a simple declaration or it may require detailed information about the board members' financial interests.

Second, establish disclosure as a normal habit or practice. Board members should find it customary for someone to say, for example, "This next agenda item relates to joining a collaboration with other mental health agencies that receive county funds. Because I am on the staff of one of the agencies involved, I have a potential conflict of interest and I am going to excuse myself from the room for this discussion." In another situation a board member might say, "I have started to date the Clinic Director and as a result feel that I must resign from the board. I would like to continue as a member of the Fundraising Committee, but not as a board member." Disclosures and excusal from voting should be recorded in the meeting's minutes.

Third, if major purchases are involved, competitive written bids should be obtained to ensure that prices and product are comparable if there will be a financial benefit to a board member.

Perhaps even more than written policies, board and staff leadership must establish by example and attitude an atmosphere of personal integrity. Some situations may need only a brief informal comment to maintain that climate. In other situations a decision may be delayed because of the need to ensure that the decision has been made truly in the best interests of the organization. Each of us, by our words and actions every day, contributes towards a culture of integrity and responsibility.

Sample conflict of interest policy
The standard of behavior at the _______ Nonprofit is that all staff, volunteers, and board members scrupulously avoid any conflict of interest between the interests of the Willow Organization on one hand, and personal, professional, and business interests on the other. This includes avoiding actual conflicts of interest as well as perceptions of conflicts of interest.

I understand that the purposes of this policy are: to protect the integrity of the Willow Organization's decision-making process, to enable our constituencies to have confidence in our integrity, and to protect the integrity and reputation of volunteers, staff and board members.

Upon or before election, hiring or appointment, I will make a full, written disclosure of interests, relationships, and holdings that could potentially result in a conflict of interest. This written disclosure will be kept on file and I will update it as appropriate.

In the course of meetings or activities, I will disclose any interests in a transaction or decision where I (including my business or other nonprofit affiliation), my family and/or my significant other, employer, or close associates will receive a benefit or gain. After disclosure, I understand that I will be asked to leave the room for the discussion and will not be permitted to vote on the question.

I understand that this policy is meant to be a supplement to good judgment, and I will respect its spirit as well as its wording.

Signed: __________________
Date: ____________________

This resource and many others can be found online at http://bit.ly/1VosiyU

Now You See It, Now You Don't: Conflict of Interest Demands More Than Just a Policy By: Meg Gill
This article addresses conflict of interest policies against the backdrop of experiences lived inside real nonprofits. In December 2006, *Nonprofit Quarterly* called on its readers to share both their policies and their encounters with such conflicts.

Dozens of readers responded with policies ranging from the most basic frameworks to the most detailed and legalistic prescriptions, laying out exactly what is expected from whom in what kind of situation. Several readers indicated they were starting to develop policies and looked forward to the results of this initiative. Surprisingly, but not re-assuringly, many stated that they had never had occasion to use their policies. This, in and of itself, is cause to worry because even in the most squeaky clean nonprofit, opportunities for conflict are everywhere. A big "danger ahead" sign should flash when we do not recognize and resolve them.

Some conflicts are "easy" to spot in that they involve the most rudimentary question of individual vs corporate interest. That does not make them easy to handle. Ironically, just as I took on the task of putting *NPQ* reader responses together with my own experiences for this article, this e-mail request for help came to me from a distressed board member:

I am wondering if you have any articles that would specifically cover our conflict of interest situation. I'm on a board where the Chair has a proposal on the table for fundraising for the organization. This has the potential of making her a lot of money. She has not been asked to step down by the rest of the directors who seem to think I'm making a mountain out of a molehill.

I need something from a neutral party that they can read over and over again until they "get it" and understand that either the proposal must be taken off the table or the Chair needs to step down until the rest of the board members decide what they want to do with the project.

This request brought to mind another situation I encountered recently. I was consulting with a board whose chair had just completed an intensive training course for corporate directors. He was also a member of the organization's foundation board. While serving in both capacities, he was actively lobbying the foundation to employ him as a fundraiser. The parent organization had a conflict of interest policy, but the chair played fast and loose with the rules, creating unnecessary turmoil in both boards. Despite his training, this chair just didn't get it. Fortunately, the most influential of the other directors understood the seriousness of the situation and the chairman lost his position—and credibility—with both boards.

These two situations demonstrate that simply having a policy or offering board training won't automatically eliminate conflicts of interest.

But conflicts of interest aren't always crystal clear; they frequently arise from circumstances where ethical shades of gray may lead reasonable people to different judgements. This makes it essential not only to have clear policies and procedures, but to embed discussion of difficult topics into organizational culture. This has to be supported by a commitment to principles of integrity, transparency, predictability, and accountability.

Defining a Conflict of Interest

One *Nonprofit Quarterly* reader provided this definition of conflict of interest, which zeroes in on the concept with laser-like precision:

Conflict of interest means a conflict, or the appearance of a conflict, between the private interests and the official responsibilities of a person in a position of trust.

This is basically true, but with some caveats. Every organization should watch out for the standard warning signs that alert us to avoid business dealings, family influences, and financial transactions that benefit board members directly. But it also includes more complicated issues that aren't so easy to identify or settle. In these situations, you may find these four tests helpful.

The Peer Standards Test

The peer standards test, or the community and industry standards test, asks whether the behavior or relationship in question is commonly acceptable within a given sector. In other words, the question is, "Would the community accept and approve of this person's or organization's actions?"

One of the letters to the Nonprofit Ethicist in this issue asks for guidance about a situation in which an organization holds an auction, and the son of one of the organization's executives wins a vacation for two as a prize. The executive's subsequent behavior to increase the value of the prize only makes this situation more complicated, but the Ethicist rightly notes that it is standard practice for family members of staff to be excluded from such contests precisely because it raises questions of fairness. Had this agency adhered to the standard, it would have prevented the issue from causing conflict within its board.

But be careful in using this test. The excuse "Everybody else is doing it"—whether it's padding expense accounts, contracting with board members to supply services in small communities, or hiring family members as staff—doesn't give you a free pass. Applying only the peer standard poses the danger of ignoring unethical activity simply because it's accepted by that community. (Consider some of the recent ethical breaches by legislators, for example.)

Public Disclosure: The Smell Test

With this test, the questions are, "How might key stakeholders, the public, or the media react if this activity were publicly disclosed?" and "What impact would this activity have on the credibility of the organization and its leadership?" You should engage an active imagination in this consideration, sometimes referred to as "the smell test." A perceived conflict of interest can be just as damaging to an organization's or a leader's reputation as an actual conflict.

Lots of problems are relatively invisible to those involved because they evolve into real conflicts over time. A homeless shelter that started without funding in a church basement, for example, was accustomed to checking with its board chair first when it was ready to place someone in permanent housing. It was understaffed, and the board chair, who had worked tirelessly to help establish the shelter, owned several rooming houses, which made the necessary transactions easy. For years the practice persisted until nearly all his rentals were filled with placements from the shelter. An informed organization would have understood that, if an enterprising reporter were to expose the practice, the "smell" of potential conflict of interest could further threaten the shelter's already tenuous relationship with the town in which it was located—never mind embarrassing its funding sources. In this case, a consultant alerted the board, which in turn took action and developed protocols. That reform required more work on the part of housing placement staff, but it also protected the agency from loss of credibility with its funders and community.

The Reasonable Person Test

With this test, the question is, "What would a reasonably prudent person or board do under the circumstances?" This is very important, since it goes directly to the heart of a director's legal duty of care to "exercise the same degree of care, diligence, and skill that a reasonably prudent person would show in comparable circumstances."

Admittedly, this can lead to murky waters. The daughter of a director of a local children's services agency was planning a wedding and received a discount from a local hotel because the agency's board had used the hotel in the past for its own events. The director asked the board to decide whether providing a discount should be treated as a conflict of interest. The board decided that it wasn't for two reasons: first, the discount wasn't solicited and second, the board routinely researched hotels in the area for the best rates. In this case, the board reasonably decided that there was no conflict of interest Another board, however, might have viewed the matter differently and asked the board member not to accept the favor to maintain a less potentially tainted relationship between the the agency and the vendor.

The Best Interests Test

The requirement to "act honestly and in good faith in what the director considers to be the best interests of the corporation" is a "duty of loyalty' that goes hand in hand with the "duty of care." Board members often feel torn between their loyalties to a particular constituency and the nonprofit organization. Indeed, all boards have a "duty of due diligence" to seek as much information as possible before making a decision on a matter. Representatives of particular constituencies have an obligation to present both facts and perceptions on behalf of their constituencies and to declare which hat they're wearing—as constituent representatives or as board members—when contributing to discussions. But when the hour of decision arrives, it's a board member's responsibility to cast his vote by determining the "best interests of the organization at hand," regardless of the impact on his constituents. If a director can't make this decision, then s/he is obliged to declare a conflict of interest and abstain from the discussion as well as the voting. This is a delicate balance that requires diplomacy and integrity.

If the interests of the organization and those of its primary constituencies are frequently in conflict, then the organization should step back and reflect on its focus, purpose, and priorities.

Boards of directors are made up of human beings who are presumably personally invested in the work being done by the organization. While representation of personal interests has no place in a board's decision-making processes, it can be hard to know exactly what is at work in a particular situation. Lots of smaller organizations struggle with such situations. The example that follows from a reader allows us to look at the subtleties of some of the questions we face:

I serve on the board of a small nonprofit organization [with two employees]. One board member is hired every year as a short-term educator during the summer. Because the board member isn't financially benefiting from any decision the board makes (after all, it's the executive director who hires these educators), our policy doesn't address this as a conflict of interest. But, I can't understand how a board member can effectively oversee the work of our executive director and also be her employee. Is this the conflict of interest I see it as? If so, how can it be addressed in policy and practice?

This reader's focus on the question of supervision may bring to light only one element of a potential problem as is revealed by an example posed to us by another reader:

An instructor for a school who also serves on the school's foundation board might have a conflict of interest when applying to the foundation for funds to help pay for supplies needed in his instructional program. Of course, he could abstain when the foundation board considered the request for funds for his program, but the other board members will know who requested the funding and will more than likely be in favor of supporting this person in return for his support of other requests of interest to them!

Still, even this reader, after identifying the slippery nature of such situations, cautions us not to be so rigid in our conflict of interest definitions and practices that they work to the disadvantage of nonprofits, their board members, and staff.

No Bright Line

"How about this one?" asks another respondent: I sit on a board that is reviewing an array of programming that sometime in the near future I may have an interest in being a part of as a contracted consultant or possibly staff. Program planning is at an early stage, and I am not definite about my own thinking relative to being a part of the work. Still, my gut says I should minimally disclose and, if my (or the organization's) thinking is very seriously in that direction, then I should step down from the board of directors. What do you think? Conflicts of interest are so difficult to weigh and balance because the relationships between board members and the community also are a part of the contribution that board members make to the agency. Take another example of an organization buying a new computer. If a board member owns a computer store, the organization may well benefit from discounts and extra service by buying the computer at her store. It would be a mistake to prohibit working with board members as vendors.

This may be particularly true in communities that have a limited pool of suppliers for a particular product or service. Social, business, religious, and service club networks are often the glue that hold these smaller communities together and that sustain the nonprofit agencies in their midst. We need to take care that our approach to conflicts of interest doesn't weaken that glue yet also maintains principles of fairness and transparency.

Still, without constant vigilance, situations can devolve into self interested quicksand and remain there for far too long. Here are some examples from my own experience:.

One-third of the board of a national organization with a mandate to support education, services, and research related to a specific disease comprised researchers seeking endorsement of their research proposals from this organization. The potential conflict of interest was repeatedly discussed by the board but remained chronically unresolved.

The members of a service organization within a narrow “community of interest” elected to its board a half-sibling of the executive director from whom he had long been alienated. He claimed the ability to separate the personal history from his judgments about her performance. Let the nightmare begin!

A local community arts organization—in essence a producers’ co-op—owned a property that accommodated theater and musical productions and art shows. The board chair was the executive director of one of the member arts organizations. He made arrangements for use of the facility for a theater production, assuming that his organization would have free use of the facility. When the executive director of the arts group questioned that assumption in the absence of a conflict of interest policy, sparks began to fly.

Encourage a Board Conversation!

Conflicts of interest are always personal and can be highly emotional. Some boards are willing to confront their issues directly, particularly with the aid of an independent facilitator. I’ve found that others need to be eased into confronting their issues by first discussing a hypothetical situation or another organization’s experience. That helps to generate insight into their own circumstances in a less threatening way. In these situations, a case study may be helpful to facilitate a board’s conversation on the issues. Managing conflict of interest will be challenging for any board, even one with the best policies and practices. But the more that board members openly discuss these issues, the better equipped the organization will be to deal with any conflicts of interest that may arise.

Conclusion

During my work with hundreds of organizations, I’ve found unresolved conflict of interest issues in about forty percent of these organizations. In many instances, volunteers encounter difficulty in challenging other volunteers. Many organizations draw board members from a network of personal and business associates who sometimes allow these relationships to cloud their judgment about what is best for the organization.

Most nonprofits would like to be known as rigorous in their approach to conflicts of interest but active vigilance is the price for this high regard. The first step is to recognize that conflicts of interest are inevitable at some time in most organizations and in most human interactions. Some organizations start every board meeting with a time for members to declare possible conflicts.

Constructive management of conflict of interest is an essential element of sound risk management practices.

In all fairness, many situations with potential for conflict present in various shades of gray, where personal judgments are required in the absence of obvious solutions. While conflict of interest policies are essential, so are clarity of roles and expectations with respect to standards of conduct based on organizational values, and principles of good governance—integrity, transparency, predictability and accountability.

Basic Conflict of Interest Guidelines:

Here are some guidelines that can help organizations define conflict of interest and frame formal conflict of interest policies:
- A conflict of interest may be real, potential, or perceived.
- Board members are considered to be in a conflict of interest under the following circumstances:

*when they- or when members of their family, business partners, or close personal associates- could personally or professionally benefit, directly or indirectly, financially or otherwise, from their position on the board;

*when they use their position on a board to the disadvantage or detriment of a third party;

* when they solicit or obtain preferential treatment related to services received from or rendered to the corporation, including contracted work, employment, or honoraria;

* when circumstances arise that compromise, or appear to compromise, the ability of board members or staff to make unbiased decisions;

* when they appropriate financial or other resources for personal use (e.g., information, property, equipment, supplies, transportation, training);

* when they seek, accept, or receive material personal benefit from a supplier, vendor, individual, or organization doing or seeking business with the corporation;

* when they are involved in the contracting, employment, supervision, grievance, evaluation, promotion, remuneration, or firing of a family member, business associate, or friend of the director;

* when non-pecuniary interests may present a moral conflict of interest, if not a legal conflict.

Board members may create a moral conflict under these circumstances:
- When their personal interests conflict with the interests of members or clients or are otherwise adverse to the interests of the corporation;
- When their membership on the board or staff of another organization could create interests that conflict with the interest of the corporation or its clients and where their activities on one board might materially affect their capacity on another board

Managing Conflict of Interest:
Even with the best policies and practices, conflict of interest issues will arise and need to be managed. Below are some principles and procedures for managing conflicts of interest drawn from my own experience and reader responses:
- Board members should disclose conflicts of interests early and often.
- Conflict of interest should be a regular item on every board agenda and periodically discussed by the whole board.
- In cases where a board member may not perceive that a conflict of interest exists, it is the responsibility of other board members who are aware of a real, potential, or perceived conflict of interest on the part of a fellow board member to raise the issue.
- If the board is contemplating a financial transaction with a board member, the process should be conducted through a fair and open process in which board members who have no personal or business interests in the matter make the final decision about awarding contracts.
- Finally, the organization should report annually (for example, on its Web site or in its annual report) any conflict of interest disclosures and their disposition in relation to any financial transactions.

This article can be fond online at http://bit.ly/1TlVWX1

Open for Proposals: Women's World Summit Foundation Prize DEADLINE: April 30, 2016

The Prize aims to draw international attention to laureates' contributions to sustainable development, food security and peace, thus generating recognition and support for their initiatives and projects. While rural women are vital in providing examples of sound practices in their communities, they still do not have full access to tools needed for development, such as education, credit, land rights and participation in decision making. By highlighting and awarding creative development leaders and their work, innovations and experiences enhancing the quality of rural life, WWSF participates in empowering rural women in their contribution to end rural poverty, improve gender equality, and advance women's rights to peace and well-being.

Eligibility: Nominees should be women and women's groups currently active in rural life whose efforts have not yet been acknowledged by other awards. They may not nominate themselves.

The nominating organization or individual must have direct experience of the nominee's work. The nominator may not nominate a family member, be a member of the nominated organization, nor can an organization nominate its senior officer (i.e. founder, president etc.). No more than 3 candidates may be presented by the same person/organization in the same year. The nominator commits, if possible, to organize an award ceremony if the candidate is selected for the Prize and invites the local and/or national media.

For more information or to apply, visit: http://bit.ly/1MiQv7l

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Open for Proposals: Open Society Initiative for Eastern Africa DEADLINE: Open

OSIEA plays an active role in encouraging open, informed dialogue on issues of importance in Eastern Africa. Through a combination of grant making, advocacy and convening power, OSIEA is able to support and amplify the voices of pro-democracy organizations and individuals in the region and to strengthen their capacity to hold their governments accountable. This includes efforts to defend and support rights activists and pro-democracy advocates who come under attack for their work.

OSIEA occupies a unique niche as a donor organization in Eastern Africa. We are both a donor and implementor working locally and internationally, which gives us an enormous flexibility in terms of reach and impact. We join processes that are consultative and participatory. Our ability to be flexible in our funding criteria allows us to respond quickly to changing situations. We add our own voice to debates and are not shy to take on rights issues that are deemed as politically sensitive or controversial. We support initiatives with a demonstrated capacity to positively transform society in innovative ways that embrace inclusiveness and diversity.

Eligibility Criteria
OSIEA supports projects in the following programmatic areas: Media and Access to Information, Governance and Accountability, Health and Rights, Justice and Human Rights, Regional Programs

Grant seekers should carefully review our program priorities on our webpage to better know what we fund under each of the focus areas.

For more information or to apply, visit:http://osf.to/1FkIheS

As part of the Firelight Foundation's Capacity Building Program, Firelight provides "Newsflashes" to share relevant resources and information with our active grantee-partners via weekly emails and via post on a monthly basis. We hope that by facilitating access to information for grassroots, community-focused organizations, programming for children and families, as well as organizational development, is enhanced. Past editions of the Firelight Newsflash can be found on our website:
http://www.firelightfoundation.org/resources/newsflash

We welcome your comments, feedback and ideas for upcoming Newsflashes at newsletter@firelightfoundation.org

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