



BOARD WORKS

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◆ IDENTIFYING CONFLICTS OF INTEREST

By: Rick Stiffney (in consultation with attorney Randall Jacobs)

A few years ago, when talking with a board about governance matters, I introduced the topic of conflict of interest. When I asked if board members had been dealing responsibly with conflicts, the room became strangely silent. I sensed a problem.

For years the board had been granting major construction contracts to the owner of a construction company who was also a board member. Although he always said that he was discounting his price, the board had no policy for securing competitive bids or even excusing this board member when contracts were considered.

A conflict of interest exists if a board or staff member stands to realize a personal gain as a result of the decision made by the board. Such conflicts may be real or perceived. For instance, a board member might be an insurance agent who sells insurance to the organization. This situation can obviously compromise the board's ability to give serious and candid consideration to other options for insurance coverage.

Senior staff members who routinely interact with the board on important decisions can also have potential conflicts of interest. Conflicts will inevitably arise within organizations with close community connections.

◆ SO, WHAT IS THE BIG DEAL

The quick response to this question is simple – boards are required by law to address conflicts of interest. New IRS 990 requirements for not-for-profit 501(c)3 organizations require disclosures of conflicts of interest.

Additionally, several years ago the IRS began “recommending” that all organizations applying for exempt status have a conflict of interest policy in their governing documents. Currently, if an organization submits an application without a conflict of interest policy, it will be sent back with the suggestion that one be adopted.

As a practical matter, a conflict of interest policy has become a required part of the organization's governing documents, just like a clause prohibiting involvement in political campaigns or a dissolution clause. In addition to initial qualification issues, in extreme cases, an organization may lose its tax-exempt status unless it operates consistently within its charitable purposes. Serving private interests more than just insubstantially is inconsistent with a charitable purpose. All charitable organizations should be able to answer “yes” to the following questions in

order to remain in compliance with the new requirements:

- Does the organization have a written conflict of interest policy?
- Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts?
- Does the organization regularly and consistently monitor and enforce compliance with the policy?

However, beyond the requirements of the law, it is critical that faith-based not-for-profit boards function on the highest possible moral level. A board serves as the trustee of the organization's assets, which may come from many sources: supporting constituencies, donors, state and federal governments, and fee-paying clients and residents. As stewards of these resources, the board must be able to make decisions that represent the wisest use of these resources. Undisclosed and unmanaged conflicts of interest in the board room significantly compromise the board's ability to do this.

Other Examples of Conflicts

Other examples of potential conflicts arise when a board member who is a real estate agent represents the owner of land that the organization might want to acquire. Or a board member might be the CEO of the local hospital that could benefit from a decision of the organization to establish a joint venture with the hospital.

Fuzzier, but no less challenging, are the potential conflicts that arise when a board member has family members who are employees of the organization or who are residents or clients served by the organization. The board's agenda might include issues that have a significant consequence for that family.

◆ EFFECTIVELY MANAGING CONFLICTS OF INTEREST

Here are some ways to manage conflicts of interest effectively:

- Adopt a conflict of interest policy that meets IRS disclosure requirements. This [sample document](#) addresses the necessary questions.
- Review the policy and require the signature of all board members each year. Board members – board chairs in particular – should receive training to help them recognize common potential conflicts of interest.
- Create a board room environment that enables board members to quickly and freely name potential conflicts and provide a graceful way for affected individuals to recuse themselves from decision-making. In some cases, the individual involved should make themselves absent from even discussing a given matter.

◆ SOME QUESTIONS YOUR BOARD SHOULD ASK

1. Do we have a conflict of interest policy?
2. Is our policy current with IRS disclosure requirements?
3. Do we annually review the disclosure policy and have directors sign it?
4. Do we practice what our policy requires?
5. Do we have a climate of board interaction that is perceived as inviting disclosure?
6. Do we have any current conflicts of interest that need to be named and appropriately managed?

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For further information or to suggest topics for future issues of Board Works, please contact MHS Alliance at Emily@mhsonline.org.



234 South Main Street, Suite 1
Goshen, IN 46526
Phone: 574.534.9689
Fax: 574.534.3254
Web Site: <http://www.mhsonline.org>