

Community Services of Northeast Texas, Inc

Serving Bowie, Camp, Cass, Delta, Franklin, Hopkins, Lamar, Marion, Morris, Rains, Red River, & Titus Counties

Safeguarding Against Conflict of Interest

What is "conflict of interest"?

When the personal or professional concerns of a board member or a staff member affect his or her ability to put the welfare of the organization before personal benefit, *conflict of interest* exists. Nonprofit board members are likely to be affiliated with many organizations in their communities, both on a professional and a personal basis, so it is not unusual for actual or potential conflict of interest to arise.

Why must boards be concerned about conflict of interest?

Board service in the nonprofit sector carries with it important ethical obligations. Nonprofits serve the broad public good, and when board members fail to exercise reasonable care in their oversight of the organization they are not living up to their public trust. In addition, board members have a legal responsibility to ensure the prudent management of an organization's resources. In fact, they may be held liable for the organization's actions. A 1974 court decision known as the "Sibley Hospital Case" set a precedent by confirming that board members can be held legally liable for conflict of interest because it constitutes a breach of their fiduciary responsibility.

Does conflict of interest only involve financial accountability?

No. Conflict of interest relates broadly to ethical behavior, which includes not just legal issues but considerations in every aspect of governance. A recent statement by INDEPENDENT SECTOR, a Washington, D.C based coalition of more than 800 nonprofit organizations encouraging philanthropy, volunteering, nonprofit initiative and citizen action, describes three levels of ethical behavior:

1. Obeying the law
2. Decisions where the right action is clear, but one is tempted to take a different course
3. Decisions that require a choice among competing options

The third level of behavior can pose especially difficult ethical dilemmas for nonprofit board members.

What can we do to prevent conflict-of-interest situations?

Self-monitoring is the best preventive measure. Implement a system of checks and balances to circumvent actual or potential conflict of interest, beginning with well-defined operating policies on all matters that might lead to conflict. Most important, create a carefully written conflict-of-interest policy based on the needs and circumstances of the organization. Ask each board and staff member to agree in writing to uphold the policy. A conflict of interest policy should be reviewed regularly as part of board self-assessment.

What should be included in a conflict of interest policy?

A policy on conflict of interest has three essential elements:

- *Full disclosure* - Board members and staff members in decision-making roles should make known their connections with groups (or individuals) doing business with the organization. This information should be provided annually.
- *Board member abstention from discussion and voting* - Board members who have an actual or potential conflict of interest should not participate in discussions or vote on matters affecting transactions between the organization and the other group.
- *Staff member abstention from decision-making* - Staff members who have an actual or potential conflict should not be substantively involved in decision-making affecting such transactions.

Examples of Actual and Potential Conflict of Interest

1. Organization policy requires competitive bidding on purchases of more than \$1, 000, but a printing firm owned by a board member's spouse receives the \$25,000 contract for the annual report; no other bids are solicited. Situations like this one are difficult to explain to the media or community at large, especially since they went against a stated organizational policy requiring competitive bids.

2. A board member serves on two boards in the same community and finds herself in the position of approaching the same donors on behalf of both organizations. Although many board members solicit donations for multiple causes, especially in small communities, the appearance of a conflict can be alleviated if the board member is upfront about her position with both the funder and fellow board members. It might be helpful for her to be accompanied by another representative of each organization on fund raising visits - doing so will emphasize the purpose of the particular visit.

Can an organization contract with a board member for professional services, such as legal counsel or accounting?

Attorneys, accountants, and other professionals can contribute valuable expertise to a board. At the very least, a board member who is associated with a firm competing for a contract should abstain from discussion and voting in the selection process. If a competitive bidding process results in the selection of that board member's firm, he or she should disclose the affiliation and abstain from voting on future board actions connected with that firm's contract with the organization.

For its part, the board must be realistic about its expectations should it contract with a board member or his/her firm. If the work is pro bono, the board must consider whether or not it will get the same quality pro bono as it would if it paid for the work. The board must also hold a fellow board member (or his/her firm) to the same standards it would an outside entity.

Further Reading: The BBB Wise Giving Alliance recommends standards for nonprofit management and governance, including dealing with conflict of interest. For more information visit www.bbb.org/us/charity/.