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# DOING THE RIGHT THING: ETHICS & LEGAL ISSUES FOR NONPROFITS



## TELE-WORKSHOP SPOTLIGHT SPEAKER

### Pam McCarthy

Director, Central Community House  
Columbus, Ohio

#### Speaker Profile:

*With over thirty years of experience, Pam McCarthy draws from a practical background as a director of a nonprofit organization and knowledge gained from working as a teacher and trainer for many organizations. She offers real-world examples from in-depth familiarity with budget creation, board development and ethics. Pam presented a workshop on similar topics at the National Scenic Byways Conference in October 2005 in Cleveland.*

## MAKING ETHICAL DECISIONS

Ethical overtones surround your day-to-day actions and decisions. Both personally and as a member of an organization, you constantly face decisions with consequences that affect many people. In addition, the legal environment surrounding nonprofit and for-profit organizations is moving

toward making organizations more accountable to their members and the general public. You need to be aware of these legal changes. Of

course, the Tele-Workshop and this Fact Sheet won't turn you into an expert—and it should not be construed as legal advice—but this information should help you to become more cognizant of the ethical and legal issues to consider.

"Ethics and values together shape our conduct. They're linked in managing organizations," said Pam McCarthy, Director of the Central Community House in Columbus, Ohio, who shared insights on ethics and board policies for the byway community during the November Tele-Workshop.

"Before you can even get to writing your ethics policy or statement, I

believe your group needs to talk about its values. What is it that your organization believes?" Pam asked. "Out of your conversation, you might identify values such as honesty, accountability, diversity, responsibility, environmental preservation, etc. The discussion helps drive some ethical decisions your organization may need to make." Pam suggested a common

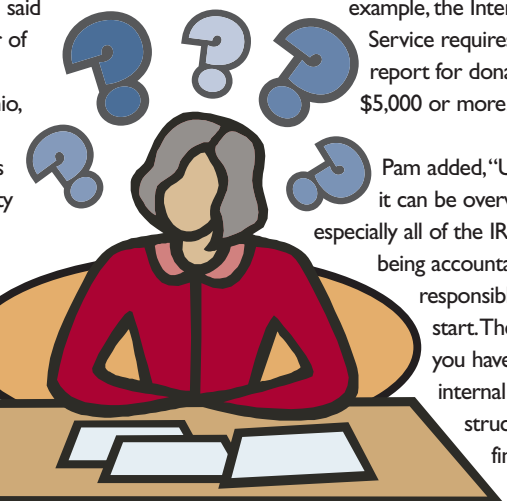
litmus test about ethics. She said, "Ask yourself: 'Did I say or did I neglect to say something or did I do something that could possibly embarrass me, my organization or my family?' That sums it up simply."

According to Pam, ethics also encompasses compliance on legal and financial issues. She said, "There are many federal, state and local regulations to consider, including taxes, licenses and registrations. Lobbying, human resources, and everything connected to fundraising are also legally regulated. For example, the Internal Revenue Service requires a special report for donations of \$5,000 or more."

Pam added, "Understandably, it can be overwhelming, especially all of the IRS regulations. Just being accountable and responsible is a good start. Then make sure you have established internal management structure with financial controls."

*"Action indeed is the sole medium of expression for ethics."*

*Jane Adams*



## ETHICS PUZZLER

Let's say a donor gives you \$5,000 to build a trail that your byway has wanted for a long time. The donor declares that he wants the trail named after him in exchange for the donation. This restriction on the gift raises several issues.

- ? What about previous donors who gave \$5,000 or more and did not receive any similar public acknowledgement?
- ? Won't they be mad?
- ? Is it more advantageous or disadvantageous to accept the donation?
- ? Does that fit with your group's values?
- ? Do you have a policy for handling this?

### FUNDRAISING GUIDELINES

#### For Solicitation:

Communicate truthfully and accurately. Be careful in communication to the general public that may create an impression that's not true. If you're soliciting donations, explain what the money will be used to fund. Then use the dollars for those purposes.

Disclose your fundraising and management costs. For example, a nonprofit group wanted to raise money for firefighters' families (a noble cause). The group hired a marketing company to run the fundraising campaign. It turned out that 10 cents went to the fund and 90 cents went to the marketing company. The costs became public afterward and donors were outraged. No matter how good the cause, nondisclosure can ultimately damage a group's mission.

#### For Donations:

Honor the intention of the gift. For example, if a donor gives money and earmarks it for a special project, then you need to know if your values match and if you're capable of actually doing the project. The money, of course, must be spent on the intended project.

Respect donor privacy. After a donation, donors are inundated with further requests. You risk angering those donors. And don't sell your lists.

Offer an opt-out for donors. The confirmation letter to the donor should note a method for the donor to be excluded from future mailings. This is especially important for memorial gifts, when your organization likely is not the giver's charity of choice.

Avoid noncash gifts. If you receive noncash gifts, do not determine a fair market value—that is the donor's responsibility for tax purposes.

### GIFTS POSE ETHICAL QUESTIONS

Pam advised listeners to evaluate the receipt of gifts within the scope of ethical issues.

- 1 Is the gift compatible with the mission and values of your organization?**  
Corporations might offer donations or gifts to schools and youth groups in exchange for allowing advertising, samples or other materials in the facilities, newsletters or other venues that reach a young audience. The corporate message or products may or may not be compatible with the school or youth group's mission or values.
- 2 Are there conflicts of interest?**  
Broad in scope, "conflict of interest" usually means that someone in a voting or decision-making capacity benefits from donating a gift or other financial involvement with the organization.
- 3 Is the gift legal?**  
You may need to do some background research on the person or organization offering the donation. Sometimes, this might also require consulting legal counsel, particularly regarding tax obligations or other financial implications for your group. In addition to the legal liabilities with some gifts, there may be additional costs or usage restrictions associated with the gifts. Are you willing to abide by the limitations, contingencies or other restrictions?
- 4 Does your organization have the capacity to accept the gift?**  
Consider if your group received a gift of property. You probably will need legal counsel for the transaction or other resources to review the title condition, provide an appraisal or check zoning and permit limitations. You also need to ascertain if you have the capacity to maintain the property. Should you sell it for the cash? Can you sell it? What's its marketability?

Pam concluded that byway organizations and other nonprofit boards should start evaluating their internal structure and policies now. She emphasized that by simply documenting your group's values and policies, you'll be able to make better decisions when questions arise. ★

## Q&A

**Q. We're hearing that SOX was targeting for-profit organizations, but that we should expect the implications to trickle down to nonprofits. Are you aware of legislation in the works for us?**

**A.** Senator Paul Sarbanes and Representative Michael Oxley led the effort to implement the Sarbanes-Oxley Act of 2002, nicknamed "SOX." The legislation took shape in response to Enron and other corporate scandals. Covered previously in *Vistas*, SOX was directed primarily at for-profit companies; however, experts believe its emphasis on compliance and internal controls will shift to the nonprofit world. SOX is at the federal level, but a lot of accounting-related regulations are legislated at both the federal and state level. There are a lot of discussions happening, so it's hard to say what legislation will actually pass. Most important, the gist of SOX is mainly common sense, practical and not difficult. Do the foundation work now, and it will be easier to react in the future.

**Q. What are some actions that organizations should take now in anticipation of future ethics legislation?**

**A.** Review your values. Write an ethics statement or policy, as well as a conflict of interest policy. Establish an outside financial review. Small nonprofits may not have the funding for a full-blown audit, but you should plan to have some sort of objective certified financial review. Board members are liable for the organization's finances. Check that you have the internal structure and financial controls in place, including any education or training related to

nonprofit structure and governance and fiduciary obligations. You should also have a whistle-blower procedure and protection built into your policies that includes a statement of non-retaliation. In addition, every organization should have a document-retention policy; you don't want documents destroyed that need to be kept for a certain period of time. All of this can be simplified into about one written page; board members read and sign the policy statements.

**Q. Many small nonprofits can't afford legal advice and auditors. How can they comply without going broke?**

**A.** Look for volunteer attorneys, county legal aid, or perhaps a corporate or community foundation might lend expertise or absorb costs. Ask for in-kind donations—be specific. Don't just ask for money. Overall, it's probably rare that you'll need attorneys for ongoing work.

**Q. If an organization accepts a gift from a group or people, how do you keep their values and beliefs from transferring to you?**

**A.** Again, internal conversations within your group about your values will set boundaries. Then, ask the donor before you accept if there are strings attached. And, if there are, consider whether you're willing to get tied up in them. Secondly, be familiar with the organization or company's mission and values. Ask for the donor's mission statement and study up on the donor's background. The "value clarification" conversation within your group can give you a foundation for choosing what money to accept.

**Q. Is it a conflict of interest for a board member to be hired to perform a particular job for the board?**

**A.** Yes, for a nonprofit it is a conflict of interest for a board member or even family members to be hired. A for-profit board may be different, depending on the officers' situations. However, if a staff or board member makes in-kind donations to the board, that may not be a conflict of interest if it does not benefit that member or that member's business. If the member discloses any benefits ahead of time, then it's possible that the disclosure will negate the conflict of interest.

**Q. So if the board member donates space or an in-kind contribution that's a tax write-off, is it still inappropriate?**

**A.** It could be, because the person is personally benefiting from the donation. By divulging the benefit and including the information in the minutes, then the board is aware of the situation. It may not be a conflict of interest then.

**Q. What if the donor doesn't divulge the benefit?**

**A.** I think you need to ask why wasn't it divulged. Be aware! Ask questions. Is there personal gain? If yes, and if it's above-board, then ask if it's still okay with your organization's board members. For a lot of these questions, it really comes down to your board demonstrating that it has shown due diligence and that it has documented those efforts. ★

## RESOURCES

**SOX Online Forum**  
[sarbanes-oxley-forum.com](http://sarbanes-oxley-forum.com)  
An interactive site with discussion boards and downloads for groups interested in the Sarbanes-Oxley Act of 2002; includes link to PDF of the actual Act.

**The Finance and Business Litmus Test**  
[gwsae.org/executiveupdate/2005/Jun/litmus.htm](http://gwsae.org/executiveupdate/2005/Jun/litmus.htm)  
American Society of Association Executives – Greater Washington Region

**Society for Nonprofit Organizations**  
[snpo.org](http://snpo.org)

**The Board Cafe**  
[boardcafe.org](http://boardcafe.org)  
Online board member newsletter. Insights and information for anyone connected to nonprofit boards.

