

Santa Barbara Association of Fundraising
Professionals
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“Ethical Considerations for Non-Profit Fundraisers”

Presented by: Roy Schneider, Esq.
Schneiders & Associates, L.L.P.
300 E. Esplanade Drive, Suite 1980
Oxnard, CA 93036
(805) 764-6370 | rschneider@rstlegal.com

Non-Profits are Big “Business”

Statistics

- \$360 billion donated in 2017
- Nearly 14 million people work for non-profits
- 2 million U.S. non-profits
- 2.6% of gross domestic product
- \$2.9 trillion in assets
- 80,000 + Non-Profits registered with the CA Attorney General

What Ethics is **NOT**

- Ethics is not the same as feelings
- Ethics is not religion
- Ethics is not simply following the law
- Ethics is not following socially accepted norms
- Ethics is not science
- What Ethics is for non-profit Fundraisers is:
Standards and principals for maintaining public trust
 - Now, let's see how this actually works!

Defining the Ethical Dilemma that Surrounds Us All

- The Kidney Sale
- The Ford Pinto Catastrophe
- Falsifying Fundraising Expenses/Lack of Transparency on Where Funds Spent – It is Hardly Ever Zero.
- California Attorney General Recently Sued Two Charities Claiming to Support Veterans – Exorbitant and extravagant expenses by management – First Class Air Travel
- The Case of the Hot Cup of McDonald's Coffee

Defining the Ethical Dilemma that Surrounds Us All

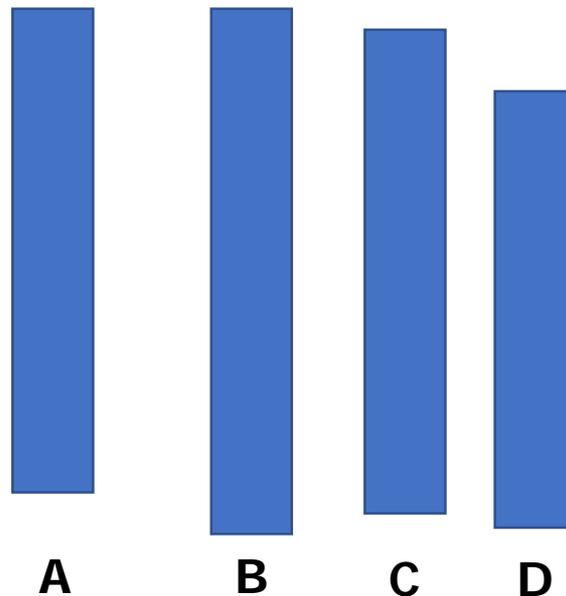
- 1000s of Non-Profits report a “significant diversion of assets” (a nice term for embezzlement) on their 990s.
- Excessive Compensation for key employees increases lack of trust among donors and potential donors – New York Public Library CEO \$800,000.00 Salary
- U.S. Department of Justice has recently recovered Billions in False Claims Act settlement and judgments – Health Care and Housing charging for falsifying records and charging for unnecessary or nonexistent services
- These incidents and news stories make fundraising more of a challenge than it already is – Best for fundraisers to be aware of these improprieties and be prepared to respond if questioned

Definition of Ethics

- The Inquiry into the Nature and Grounds of Morality
Where the Term Morality is taken to Mean Moral Judgments, Standards and Rules of Conduct
- It is the Study and Philosophy of Human Conduct, with an Emphasis on the Determination of Right and Wrong
- Is it “Black or White” or is there a Spectrum of Behavior? Can ethical conduct ever be “gray”?
- Not really the same as a Code of Professional Conduct which identifies certain standards of conduct for members of a profession without consideration of moral judgments or values

Some Reasons People Make Obviously Unethical Choices

- Is it just Greed? – Monetary reward is not always the motivator
- No Accountability – The Invisible Wrongdoer – No one will ever find out
- The Conformity Concept – If everyone sees it this way, I must be wrong



Some Reasons People Make Obviously Unethical Choices cont.....

- Group Think – “ How can I go against the group?”
- Bystander Apathy – Kitty Genovese and the do-nothing bystanders
- Electric Shock Study – Yale University and Stanley Milgram – The results of the study is the real shocker!

Can the Law Affect Ethical Behavior?

- Some Laws have no Moral or Ethical Basis – Driving on the right side of the road
- Some Laws are Immoral – Depends on individual moral standards so difficult to quantify; abortion, death penalty, same-sex marriage
- Can Society Actually Legislate Morality (Ethics)? – it tries! Not often successful
- Does Society's Ethical and Moral Values Change Over Time? If that is true, which it is, how can we ever really know what is ethical? Does it matter?

Does Mere Compliance with the Law Satisfy all Ethical Considerations?

- Toy Story – The ethics of selling “legal” but potentially harmful products to foreign countries
- English Only Warning – Should warning labels be provided in different languages? Does this have application for non-profits?
- Grey areas, *i.e.*, deceptive advertising – How many more chips should be in the Giant Size over the King Size to justify charging \$.50 more? What is deceptive in non-profit advertising? “We serve 2500 hot meals each day” – What if we serve only 1500? 2000? 2300? When is this representation deceptive?

Is Ethics in Business (Whether For Profit or Not For Profit) Simply Playing the Game?

- Non-Profits are a Business – Are there different ethical standards for non-profits and for profit businesses? Both must watch the “bottom line”
- Is Business Amoral?
 - What Would Adam Smith Say? Does the “invisible hand” really work today? Does it work in the non-profit world?
- Albert Carr
 - Author of key business article entitled: “Is Business Bluffing Ethical?”
 - Developed the Game Theory of Business

Is Ethics in Business (Whether For Profit or Not For Profit) Simply Playing the Game? cont...

- In the Non-Profit world –
 - Is overstating accomplishments and understating overhead and fundraising expenses ethical? Or is that “playing the game”? “We serve 2500 meals a week” (actually you only serve 2000)
 - What about accepting gifts from “ethically questionable” sources? Michael Milken, Tobacco or Alcohol Industries, Marijuana Dispensaries, Convicted Felons, Proceeds from a Crime, Donor’s Reputation, A Gun Store – Does it depend on the charity? – Would acceptance undermine the purpose and mission of the charity?
 - Compliance with California laws pertaining to gaming, raffles and poker nights – Very few non-profits comply – Fundraisers need be aware of the law!

Theories for Making Correct Ethical Choices

- Relativism
 - What is “right” is only what a particular society, culture or organization (or industry group) says is right - “Every non-profit does it this way so it must be Ok”
 - Limits moral criticism and doesn’t recognize moral progress
- Deontological - Immanuel Kant – Absolute Rules and no deviation, ever!

Theories for Making Correct Ethical Choices

- Teleological – John Stuart Mill – Utilitarian and the ends justify the means – overstating accomplishments will result in a bigger gift which will do lots of good
- Can lying be the ethical choice? Is there such thing as a “white lie”?
- Is Ethics Cultural? Is Ethics Situational? How does this affect international non-profits? Does gender equality matter over donor preference?

Ethical Guidelines for Non-Profit Boards Which Assist the Fundraiser – Establishing a Code of Ethics

- Planning for Developing a Code of Ethics – Useful in Fundraising
 - Useful tool to show donors and to place on the website
 - Form advisory committee – One goal is to increase donations through the establishment of high ethical standards
- Identify relevant issues Code of Ethics should address
 - Seek input from external stakeholders; foundations and other donors, clients, vendors, etc.
 - Not only consider non-discrimination and preserving the environment, but also consider key issues such as gifts and entertainment, kick-backs and “facilitation” payments, harassment, use of organization’s assets, obligations to donors, etc.
 - Unify the Code around a common theme or set of themes, i.e., the organization’s commitment to its stakeholders.
 - Interject the organization's culture and values into the Code. Not just “feel good” statements or “window dressing” but really more in the nature of expanded mission statements or credos.

Ethical Guidelines for Non-Profit Boards – Establishing a Code of Ethics cont.....

- Drafting the Code of Ethics – Points to Consider and Share with Donors
 - Articulate standards in a positive and inspirational manner – Statement of Values
 - Make sure the structure is easy for all board members and employees to use and to be able to show prospective donors
 - Discuss employees - fair treatment, discrimination, harassment, etc.
 - Discuss vendors - fair treatment, timely payment, etc.
 - Discuss donors - accurate books and records, appropriate use of assets, complying with donors' wishes, transparency, etc.
 - An ethically sensitive non-profit has a better time obtaining meaningful donations

Ethical Issues for Fundraising and Solicitation

- Exemplary behavior vs. normally acceptable behavior – Deontology, Teleology, Ethical Relativism – “We never exaggerate our program or successes”?
- Adoption of a key ethical philosophy in fundraising
 - Begin with Trustworthy Fundraisers
 - Accountability
 - Donor Intent – Respect Your Donors;
 - End face-to-face approaches politely and immediately upon request
 - Send timely gift acknowledgements – Ask how the donor wishes to be acknowledged
 - Respect restrictions
 - Financial Management – Should be able to accurately identify fundraising expenses, such as postage and printing, staff time, event costs, etc.
 - Competency
 - Transparency – Communications accurate and honest
 - Respond to Complaints about Fundraising

Ethical Issues for Fundraising and Solicitation

- Coercion
 - Bottom line oriented
 - Ends justify the means
 - No morality possible – “Just bring in the dollars”
 - Best to curb aggressive tactics
- Institutionalize an ethical culture - Start at the top! – Maintain public trust
- Promote ethical decision making with a Code of Ethics

Ethical Issues for Fundraising and Solicitation continued...

- Professional solicitation v. Voluntary solicitation
 - If use professional fundraisers make sure they are registered with the State of California under the Non-Profit Integrity Act as Commercial Fundraisers or Fundraising Counsel
 - “Need for professionals to solicit funds because volunteers won’t (or allegedly can’t), and we don’t have time to train them.”
 - May see short term success but ultimately detrimental to the heart and soul of philanthropy – Consider how to pay professional fundraiser (agreed upon payment or percentage of collections)
 - Planned giving – “Too complicated for volunteers?” Not true - have the Board learn basics about planned giving

Ethical Issues for Fundraising and Solicitation Cont....

- Proper use of donated funds
 - 1/3 of funders and donors claim this as greatest area of ethical concern
- Naming structures after living donors – Probably not a good idea
- Maintaining donor privacy – sale of names
- Oversight and review of fundraising and fundraisers – proper training
- Complete honesty and accuracy in fundraising- Not always easy
- Use of Commission Based Fundraisers – Is it Ethical? Not according to the Association of Fundraising Professionals – Too much risk of coercion, misrepresentation and promises that won't be met

Ethical Issues for Fundraising and Solicitation continued...

- Proper handling of discrimination and sexual harassment by donors-A major ethical dilemma
- Business Judgment Rule – Protects the Board
 - Defense to fundraising decisions or activities that turn out badly – House Raffle
- Does organization have well-structured program to ensure compliance with grants or contract terms and conditions?
- Tread lightly when soliciting online – Compliance with state's registration requirements may be burdensome

Establishing a Gift Acceptance as an Aid to Fundraising

- Gift Acceptance Policies Will Help to Avoid Ethical Lapses
 - Maintain discipline in accepting gifts to prevent acceptance of gifts that will cost the non-profit time, money and possibly reputation
 - When to say “NO” – Better to know what is or is not acceptable before acceptance and later returning gift
 - Think about carrying costs, storage, transportation and insurance, e.g., gift of a large boat
 - Avoid “make policy as needed” approach to eliminate inconsistency

Establishing a Gift Acceptance Policy as an Aid to Fundraising cont...

- Policy should consider:
 - Mission & purpose
 - When to use legal counsel, e.g., for gifts of closely held stock
 - Urge donor to seek independent counsel – Don't advise donor on deductibility of the gift
 - Permissible restrictions on gifts – Must follow restrictions of the donor – Establish guidelines in advance; ie., minimum dollar amount to establish a restricted gift
 - Types of gifts, e.g., real estate and potential environmental liability
 - Identify organizations whose gifts won't be accepted

Ethical Issues and Form 990

- Statement of Revenue requires a break out of fundraising income and expenses – Remember fundraising expenses is seldom Zero!
- Claiming no fundraising expenses on the 990 is very common
 - A recent Urban Institute study found that 59% of 58,000 charities that received public donations, either reported 0 fundraising expenses or left the expense line completely blank
 - Industry standard is spending \$1 for every \$3 raised
 - Nonprofits state that because of the complexity of the tax return and the number of boxes, they often report items on the wrong line
- Part V and VI of the 990 include many questions that should be reviewed each year to answer correctly.
 - Merely answering the questions the same as the year before is not good enough
- There are certain questions which the IRS may use to choose their future audits

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