



Legal Brief

Considerations When Joining a Board

Charitable organizations are playing an increasingly important role in our communities, and the purposes for which charitable organizations are being formed continue to expand. At some point in your career, you likely will be asked to serve on the Board of Directors of a charitable organization. While the responsibilities associated with your new position will vary greatly depending upon the specific charity, the following discussion may help you add value to the organization.

Background

The first step is to find out as much information as you can about the specific charity. Speak to as many of its representatives as possible. Make sure you understand the organization's charitable mission and ask for an overview of its operations. Find out exactly what will be asked of you and how much time you will be expected to dedicate to the organization. For existing organizations, review all financial statements, tax returns, annual reports, and other operating data that the organization can supply to you. Much of this data (for example, IRS Form 990) is available online.

For start-up organizations, ask to review the business plan. Be certain that plan contains specific, detailed information regarding the organization's budget and the structure of its operations. Make sure the assumptions contained in the business plan appear reasonable.

Structure

It is also very important to understand and evaluate the legal structure of the organization. The charity should have organizational documents, such as Articles of Incorporation, which contain very basic information regarding the entity.

The charitable organization should also have Bylaws that provide more specific information regarding governance/management and the scope of the authority granted to the organization's Board of Directors and other management personnel. The

Bylaws should also contain a detailed conflict of interest policy. It is important that the Bylaws are carefully drafted and tailored to meet the needs of the specific organization, and that the charity is actually operated in a manner that is consistent with the Bylaws.

For organizations that have already been granted tax-exempt status by the Internal Revenue Service (IRS), ask to review the IRS determination letter. If not tax-exempt, the Directors may consider whether such status is desirable.

Operations

Regardless of the charity, it is important to understand the obligations associated with your new role. Each Director has a duty of care requiring that he or she act prudently when handling corporate affairs. This duty involves attending and participating in board meetings, keeping abreast of the organization's operations and finances, and obtaining any information necessary to make informed decisions on behalf of the organization.

Directors must act at all times with the best interests of the organization in mind. This means that Directors must avoid acts of self-dealing. It is also important to avoid conflicts of interest and to maintain strict adherence to the organization's conflict of interest policy.

Once assets are dedicated to charitable purposes, the Directors essentially act as the trustees of the charitable assets and hold such assets for the benefit of the public. The Pennsylvania Attorney General and the local Orphans' Court provide oversight to make sure charitable assets are not diverted from their intended purposes, and charities must often obtain prior approval before entering into certain transactions. It is imperative for Directors to understand the restrictions on the use of charitable assets.

The Directors may consider purchasing Directors and Officers Liability Insurance to protect them from personal liability for decisions made on

behalf of the charity.

Compliance

Directors of charitable organizations also are responsible for compliance with all federal and state statutes and regulations, and must be sure to keep adequate records and implement necessary financial controls. For instance, charities must file an annual information return with the IRS. Charitable organizations also must file annual statements with the Pennsylvania Department of State, and, depending on the particular charity, various other Pennsylvania agencies.

Conclusion

With careful planning and evaluation of a particular charity's organizational structure and operations in light of the foregoing parameters, the Directors can avoid potential management issues and focus their attention on achieving the organization's charitable mission. Additional information for Directors of charitable organizations is available in Pennsylvania Attorney General Tom Corbett's *Handbook for Charitable Nonprofit Organizations* (available online at www.attorneygeneral.gov). ☆

For further questions about legal matters regarding nonprofit organizations, contact Mike Thomas at MacDonald, Illig, Jones & Britton LLP at 814/870-7711 or mthomas@mijb.com.

Michael P. Thomas is an associate at the law firm of MacDonald, Illig, Jones & Britton LLP. A graduate of Juniata College and the Dickinson School of Law of the Penn State University, he practices in the areas of estate planning, estate and trust administration, tax and business law.

