



A Few Things Every Board Member Should Know

What is a 501(c)(3) non-profit and how is it different from a for-profit corporation? Most people's initial answer has to do with a nonprofit's tax-exempt status – it doesn't pay taxes on its earnings, and contributions to the organization qualify for a tax deduction for the donor. While true, that's just part of the story. At the most fundamental level, a for-profit corporation is run for the benefit of shareholders, while a nonprofit is run for the benefit of the public. And this requirement for "public benefit" is at the heart of describing the responsibilities of a board of directors.

Think of it this way: We as a society have said that a healthy nonprofit sector is important, and in order to support the activities of a wide range of health, human services, educational, environmental, arts, and spiritual organizations, we're willing to forgo the revenue that would have otherwise flowed to our treasury by allowing people to reduce their taxes by contributing financially to nonprofit organizations. Given that arrangement, as taxpayers all of us are supporting the 1.5 million nonprofits operating in the U.S. today.

Governance

With that public trust, the first order of business for the board of any nonprofit is their fiduciary duty, which covers three main areas:

- First, the Duty of Care, which essentially means that board members are responsible for making prudent decisions on behalf of the organization, and to ensure that those decisions are for the public benefit. It also means that board members are responsible for making sure the organization has the resources necessary to carry out its mission.
- Second, the Duty of Loyalty, which simply means that board members may not have any conflicts of interest. In other words, they can't engage in decisions that provide any kind of benefit (private inurement) for themselves, their family, their business interests, or other close associates.
- Third, the Duty of Obedience, which requires board members to know, and obey, the laws that pertain to the organization they govern.

Can a nonprofit make a profit? Absolutely. It's just that any profit earned can't be distributed to individuals, it must be used to further the public benefit purpose of the organization. In fact, there's an expression "no margin, no mission," meaning an organization can't grow to fulfill its purpose without the capital that comes from a net margin.

Board Role/Staff Role

Theoretically, there's a bright line between the roles and responsibilities of board members and staff members. Boards set policy and determine the direction for the organization, staff (led by the Executive Director) executes policy and runs programs. It's important to understand this line, because only trouble occurs when board or staff members cross that line uninvited. If everyone is clear on where the line is, it's okay to invite someone across it when appropriate.

But reality and human nature being what they are, it's also important to understand a more pragmatic, shared model of governance for the organization. Looking at the matrix below, we can see that without board or staff engagement in governance, it happens by default, if at all. With high staff engagement, but low board engagement, we have management masquerading as governance. On the other hand, with high board engagement and low staff participation, we have micro-management. The most effective governance happens when we have both board and staff engaged at a high level, with each contributing their perspectives and wisdom in to the decision-making process. Think of it this way:

- Who decides what the organization will pay attention to?
- Who tends to frame the problems?
- Who decides what a given problem or opportunity means for the organization?
- Who has the most influence over what gets onto the organization's agenda or list of priorities?

In a shared and functional model of governance, these questions are brought up and answered by board and staff, equally and together.

This can sometimes cause confusion, because board members wear multiple hats. If we go back to the bright dividing line of roles and responsibilities, we know that board members determine policy, and staff executes. But board members only have authority for making those high-level decisions when they're sitting around the board table with a quorum. Individually, they have no power to make decisions, give direction, or take action on behalf of the organization (with the possible exception of the board president to whom the by-laws may grant some limited authority to sign contracts). This means that, outside of a board meeting, individual board members working in the organization are acting as unpaid staff (volunteers) and do so under the direction of the chief executive, who is responsible for the successful execution of the board's direction.

In the next article, we'll look at why leadership is so important and at the elements that build an effective board.

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