

Hot Legal Topics: What Nonprofit Executives and Board Members Should Know

At a recent presentation, a senior staff attorney at Public Counsel highlighted legal issues that are challenging nonprofit organizations today. While Thurlow/Associates doesn't provide legal counsel, we're certainly interested in legal developments — regarding tax and corporate compliance, allowable advocacy, unrelated business income and more — that may impact our clients.

The following two topics are of particular importance:

Articles of Incorporation and Bylaws

Your articles of incorporation establish — in a broad framework — who you are as an organization. Your bylaws codify your governance and operating procedures.¹ It's important that you review these documents regularly to ensure that they are accurate and up-to-date.

Some questions to consider when reviewing your articles and bylaws include:

- Are our current exempt activities the same as stated in our articles of incorporation?
- Does the number of directors actually serving match the authorized number of directors? If bylaws provide for a range, have specific number of directors been set by resolution? Are board term limits, if any, being observed?
- Do the titles of officers match the titles noted in our bylaws? Are officer terms and term limits, if any, being observed?
- Do we meet the required quorum before taking board action?

A Legal Guide to Fund Development

Don't overlook legal issues that are associated with your organization's fund-development activities. For example, are you aware of (and following) the requirements regarding corporate and tax filings, including how you identify and report unrelated-business income tax? Do your donation acknowledgement and procedures for contracting fundraising vendors meet all the relevant laws and regulations? Are you in compliance regarding any charity auctions, raffles/opportunity drawings, and commercial co-ventures? It's important to follow the latest rules and guidelines, to avoid legal problems, or even loss of your exempt status. (Compliance also helps ensure your donors will enjoy the appropriate tax deduction for their support.)

As you consider legal issues associated with your fundraising efforts, you may find the information at this link useful:

<http://www.publiccounsel.org/tools/publications/files/0221.pdf>

¹ *Typical bylaw provisions should include how many directors your organization has; who elects board members and how you fill vacancies on the board; the terms of office and any basis for removal from office; the time, place and manner of meetings; voting procedures; director and officer duties; and committee structure.*