Coming to Terms with a Conflict of Interest

Source: https://boardsource.org/resources/coming-terms-conflict-of-interest/

What should happen when a board member clearly has a conflict of interest but does not recognize it or won't acknowledge it? Is it acceptable to join a board if you come with an apparent conflict of interest? These are both questions with which many boards struggle. Educating board members about potential and perceived conflicts, having appropriate policies and procedures in place, and ensuring that these policies are respected are the beginning steps in eliminating bias from decision making.

Can you be a board member with a conflict of interest?

It is probably impossible to find a board member who will never have any conflicts of interest. An active board member often has numerous professional and personal affiliations and undoubtedly some of them cross paths with his or her activities as a board member of your organization. He or she may have been chosen as a board member because of these particular associations or contacts. However, if a board candidate has a major obstacle in fulfilling the duty of loyalty, one of the main legal obligations of nonprofit board service, it may be necessary to re-evaluate his or her suitability to serve on this board right now. Examples might include:

- The chief executive of the organization is a spouse or close relative of the board member.
- The board candidate is also the chief executive of an organization with a similar mission and program structure.
- The board candidate is expected to participate in fundraising but is affiliated with an organization that is competing for the same funding.

A solid policy

As conflicts of interest are inevitable, the only way to handle them is to deal with them in an organized manner. Without a solid policy, it is difficult to address disputable situations. A comprehensive policy defines the purpose of the policy and includes a statement of commitment and understanding of this purpose by each board member. A policy incorporates a disclosure form that every board member signs annually after listing all financial, professional, and other relevant affiliations that might affect his decision making during the coming year. This disclosure is kept on file and updated as necessary. The policy also describes the manner in which it addresses board members with conflict. Each board member should be expected to bring up any unexpected conflicts of interest that may arise during deliberations.

Policy implementation

The full board needs to discuss how to implement the policy. A few boards allow board members with a conflict of interest to participate in discussion of the issue but not in voting. Most boards require that the board member in question leaves the room altogether before any deliberation begins to allow for a free and unencumbered exchange of opinions. Whatever approach is chosen, all board members need to respect it and be responsible for self-monitoring.

Disputes about a conflict of interest

What is the appropriate course of action when a board member does not realize that he or she has a conflict of interest or seems to forget that he or she needs to leave the room before deliberation? The

chair should take responsibility for handling this situation. The chair can be prepared by reviewing the disclosure documents while creating the agenda. During the meeting, the chair needs to remind the board member in question and ask him or her to recuse him or herself. The reminder can be a gentle comment first but, if necessary, the discussion should be stopped until all disqualified members have left. That is the only way to show that the policy is being enforced.

If a board member does not agree that he or she has a conflict of interest in an issue on the agenda, the final solution — to avoid a public embarrassment — is for the chair to call an executive session or even to allow the executive committee to make a decision. Deliberation should wait until this incident has been resolved. The minutes should reflect who participated in the voting.

Board vigilance

Help your board avoid a major conflict of interest.

- Keep board composition diverse and size adequate to encourage good discussion and to bring all points of view to the table. Don't allow a major conflict of interest to dominate your board.
- Deal with the issue before it becomes an issue. Discuss potential conflicts and how your board deals with them during recruitment of new board members.
- Talk about conflict of interest with the authority that chooses your board members if you have government or other publicly mandated positions on the board.
- Familiarize your board members with the duty of loyalty.