

The Role of a Nonprofit Board of Directors

Excerpts taken from *Legal Guide for Arkansas Nonprofit and Volunteer Organizations*.
By Bonnie Johnson, M.P.A., J.D. Williams & Anderson PLC. (Pp 10-11).

The role of a nonprofit board of directors is to safeguard the public trust by providing effective governance for the organization. Nonprofits occupy a privileged position in our society. Generally, they are exempt from income tax and enjoy other significant benefits. The tradeoff is that nonprofits exist to serve the public, not make profits for individuals.

While everybody concerned –board, staff and volunteers – carries the responsibility of holding the organization to the highest standard, the board of directors sets the standard and oversees compliance with it. Even seasoned board members are sometimes surprised to learn that they have legal duties to the organization and may incur legal liability as a result of their board service. It is only fair that directors have the opportunity to understand and evaluate both the benefits and risks of being a member of a nonprofit board. Accordingly, they should be educated about their legal obligations and provided with ongoing information on the subject before they agree to stand for election.

A director has three legal duties under the Arkansas Nonprofit Corporation Act of 1993:
1.) the duty of loyalty, 2.) the duty to act in good faith, and 3.) the duty of care.

The Duty of Loyalty

The duty of loyalty requires board members to act at all times in the best interest of the organization. To ensure compliance with the duty of loyalty, a nonprofit should establish policies and procedures to address potential conflicts of interest between the organization and its board of directors. A conflict of interest is defined as a transaction with the corporation in which a director has either a direct or indirect interest. How can organizations ensure that conflicts of interest do not exist? First, avoid choosing board members who have obvious conflicts, such as close relatives of staff members, those who serve on the boards of organizations that compete with them for grants or contracts, and individuals who have connections to entities that might do business with the organization. Second, develop a comprehensive conflict-of-interest policy. Third, each board member should be asked to complete and sign a conflict-of-interest statement each year. Finally, each board member should disclose conflicts of interest when they arise and recuse from discussion and decision-making that creates a conflict.

The Duty of Care

The duty of care means that directors must be reasonably informed and participatory. They must pay attention, ask questions, and oversee the management of the organization in a responsible manner. Directors should review minutes, financial statements, audits, plans, policies and other board documents. *Ignorance is no excuse*. In fact, failure to attend meetings and participate in the decision-making process increases the possibility that a director will be held personally liable for an act of the board or the organization. Nonprofit board members generally will not be held liable for action or inaction taken as long as they fulfill their legal duties, acting in good faith and consistent with their duties of care and loyalty. Directors are expected to make reasonable efforts to be informed and to follow the organization's established decision-making process. A board can decrease the possibility of adverse legal consequences of a controversial or difficult decision by making a serious effort to inform itself and discussing the matter thoroughly before taking a vote.

The minutes should reflect these activities, so directors can show that they met their duty of care.