



The Leadership Letter

The Legal Side of Board Service

You've agreed to serve on a non-profit Board of Directors and it seems fairly straightforward about the expectations of your service. You have been asked to serve because you possess knowledge and skills that will help to advance the mission of the group. You're a volunteer who is willing to commit your time and energies to promoting a cause or organizational agenda.

Did you know that along with that service comes a set of legal responsibilities that can impact both you personally and the organization that you serve? You can be held responsible for failing to meet those obligations and responsibilities.

According to the *Association Law Handbook, Third Edition*, by Jerald A. Jacobs, "**Officers, directors, and other volunteers who serve associations in positions of responsibility, although they are not compelled to serve and are not compensated for their service, nevertheless have certain legal obligations to the associations. They are not free to do anything they want because of the absence of compensation. Volunteers have a fiduciary duty, including the duties of care and loyalty. Volunteers must avoid conflicts of interest. Volunteers are required to maintain the confidentiality of association information.**"

This *Leadership Letter* is dedicated to exploring the issue of the legal obligations of non-profit board members and we'll give you the basics so that you can make sure that your board is working in a professional and responsible way.

We'll explore these three (3) major areas of legal responsibility for Board members, as well as provide you with some information on the personal liability that you accept when you agree to serve.

The three major areas are:

- 1) Fiduciary Duty
- 2) Conflict of Interest
- 3) Confidentiality

These areas apply not only to members of the governing board of an organization but also to chairpersons or other persons in positions of responsibility, such as the chair of a task force or committee.

"These legal obligations of association volunteers may be enforced by the association itself, by members of the association, or even by nonmembers who are injured by the failure of association volunteers to honor their obligations."

Let's get started!

Source: *Association Law Handbook, 3rd Edition*, by Jerald A. Jacobs, (1996), ASAE, www.asae.org

Inside this issue:

<i>Fiduciary Duty: What's That?</i>	2
<i>Board Training</i>	2
<i>Conflicts of Interest</i>	3
<i>Confidentiality</i>	3
<i>Personal Liability</i>	4

Leadership Commission Members

- * *Jeff Leffler, MS*
- * *Anita Dailey, GA*
- * *Marti Nicholson, OK*
- * *Susan Barnes, VA*
- * *Suzi Brodof, WV*

Fiduciary Duty: What's That?

That word keeps coming up. What exactly does it mean?

Fiduciary: "An individual, corporation or association holding assets for another party, often with the legal authority and duty to make decisions regarding financial matters on behalf of the other party."

Source: <http://www.investorwords.com/1932/fiduciary.html>

As a member of a governing board, you're responsible for:

- Monitoring monthly financial reports and assuring the integrity of the financial system within the association.
- Adopting an annual budget and adapting that budget as circumstances dictate. This adaptation requires keeping abreast of financial trends (revenue, expenditures, investments, etc.).
- Reviewing an annual audit/

financial review to determine if the finances of the association have been properly managed.

- Participating in an annual review to determine if the organization's goals have been met for the year and if the finances of the association have been directed toward the accomplishment of the goals and objectives set forth by the board.

You're also responsible for exercising "reasonable care" in the performance of your duties which means exhibiting honesty and good faith. This is particularly important when you are conducting activities, making comments or otherwise representing the association as a volunteer. What you say and do in that capacity reflects on the organization as a whole and it's your responsibility to accurately reflect the mission and goals of the association.

It's also assumed that you will promote the best interests of the

association before your best interests and that you will act on behalf of the association to promote its integrity and mission.

This isn't the "fun" part of your board position but it's a critical one. Be sure to commit the time and effort to learning about and managing the "business" of the association. You'll find that a well managed and prudently operated association will ensure that the reason you joined the board (to make a difference) is the end result of your service.

You'll find more information on the [Legal Aspects of Associations and Non-profits](#) on the SECA website. This training module includes an informational document and a PowerPoint presentation that can be used to train your Board.

A second module, [The Board of Directors, Structure, Activities](#) provides more information on these topics.

How Would We Know? It's All in the Training!

Your board meets only a few times a year and it's challenging to conduct the business you need to complete and provide training at the same time. We know you need training that can be used when you have 5-10 minutes at the beginning or end of a meeting.

On the SECA website, you'll find a series of Training Modules that are designed to support these efforts.

These modules have an information document, a series of questions, and a PowerPoint that can be utilized for a brief training session.

[#1: Association Non-profit Basics](#)

[#2: Legal Aspects](#)

[#3: Articles of Incorporation, By-laws](#)

[#4: The Executive Director](#)

[#5A: Board of Directors: Structure,](#)

[Activities](#)

[#5B: Board of Directors: Training, Recruitment](#)

[#6: Volunteers, Employees](#)

[#7: Tax Compliance](#)

[#8: Finances, Fundraising](#)

[#9: Political Activities](#)

[Click here](#) to access the accompanying PowerPoint presentations.

Conflicts of Interest: Avoiding Problems

One of the major duties of a board member is loyalty to the organization. This means that the board member acts in the best interests of the organization rather than realizing personal gain from actions taken.

Conflicts of interest can arise in many different ways. Many of our associations find this to be a particular challenge because of limited resources and professional interests that coincide with association business.

For example, conflicts of interest can arise when:

- ⇒ A board member is asked to vote on a vendor contract and the member has some type of professional relationship to the vendor that would predispose them to vote a certain way.

Perhaps the board member serves in a training/consultant role for that vendor. In this case, the relationship should be divulged prior to any discussion or action.

- ⇒ The association is considering hiring a spouse or relative of a board member to perform certain administrative duties for the association. In this case, the board member should recuse themselves from the vote. Hiring someone in this capacity can be done successfully by a board if the related board member announces the conflict of interest and removes him/herself from the initial vote and any review/evaluation of that person's performance. (*NOTE: Audits require that this conflict of inter-*

est be reported on the audit and any compensation paid to the individual disclosed to the entire board.)

- ⇒ Actions undertaken by a board member result in personal gain, such as purchases from a company owned by the board member.

The minimum requirement of board service in this instance is disclosure of the conflict of interest. More serious conflicts of interest must be reviewed by the board and could ultimately lead to resignation by the affected board member.

Remember: The key is to ensure the integrity of the association and transparency in all its business decisions and actions.

Who Told You That?

CONFIDENTIALITY: We've all known board members who didn't take this seriously. They either:

- ◆ Didn't understand that certain things should remain confidential until the board took action, or
- ◆ They disagreed with the board's action and chose to put the issue out for public review.

Either action can have serious negative consequences and the volunteer does not have the right to overrule the board's decision to maintain confidentiality. Additionally, the responsibility to maintain confidentiality does not end when

the volunteer completes board service.

Associations can maintain confidentiality in certain instances. Examples include:

- ◆ Opinions or information provided by legal counsel.
- ◆ Proprietary information such as members contact information unless the member allows it to be released.
- ◆ Executive sessions in which personnel evaluations and reviews are conducted.

Because our associations are non-profits, we are subject to disclosure

in many instances and members have the right to request information. Minutes of board meetings, the 990 tax form and audits should all be available to any member of the association and cannot be deemed confidential.

However, discussions that occur within the board on sensitive issues may be deemed confidential and members are expected to maintain that confidentiality. Your role is to support the association in conducting business in an ethical and legal manner. Use your best judgment on when and how to share the association's "business."

Resources to Help You Navigate the Legalities



SOUTHERN EARLY CHILDHOOD ASSOCIATION

1123 S. University, Suite 255
Little Rock, AR 72204

1-800-305-SECA (7322)
Fax: 501-227-5297

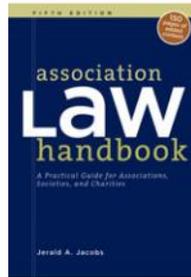
Email: info@southernearlychildhood.org

*Promoting Quality Care and Education for
Young Children and Their Families*

SECA is a "Voice for Southern Children"

*This newsletter is written and produced
by Glenda Bean, Executive Director.*

www.southernearlychildhood.org



Association Law Handbook (5th Edition) by
Jerald A. Jacobs (2012), American Society
of Association Executives (ASAE),
www.asae.org, ISBN 978-0-88034-349-7

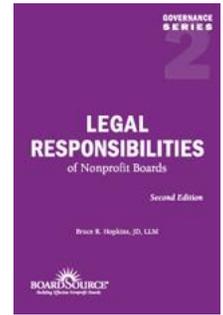
Legal Responsibilities of Non-profit

Boards (2nd Edition) by Bruce R.

Hopkins (2008), Board Source,

www.boardsource.org. Available in

both print and as a PDF.



Article:

www.grantspace.org
www.grantspace.org

(includes a list of resources & websites)

Your Personal Liability

You've agreed to serve in a Board role within your association and are that dedicated, committed volunteer. Did you have any idea that your service on the Board can potentially subject you to personal liability claims? For most of us, this isn't something we consider when making a decision to serve. However, it is something that your Board needs to consider, particularly if you have staff and financial resources that you are managing.

We've already discussed the issues of fiduciary duty, conflicts of interest and confidentiality. These are the areas which are most likely to subject you to personal liability as a member of the Board. For example:

◇ It comes to light that funds

have been mismanaged (or in extreme cases embezzled) and the Board has remained oblivious. There is the potential for personal liability in this case, particularly if funds received by the association were designated for certain purposes and have been utilized inappropriately. (These might be grant funds that weren't spent on the authorized purposes in the grant agreement.)

◇ Conflicts of interest have occurred within hiring decisions without full disclosure and the Board has allowed the hires to be maintained.

So, how would you ensure that your personal liability is

minimized? The best way is to "act in good faith", using ordinary diligence and care. Additionally, consider these strategies.

- Purchase E & O (Errors and Omission) insurance that covers the liability of your Board. This is standard practice for professionals and associations.
- Make sure that you are receiving and monitoring monthly financials and take time to review any audits or financial reviews.
- Be an engaged board member. Don't be afraid to ask questions. All activities within the association and the office should be transparent and open to review.