



## Real Examples from the Field

### Board Director Profits by Edging out Competition

Harold Brown sits on the Hav-A-Kid Foundation Board of Directors as they discuss recent turnover problems. Everyone suspects the director of human resources is not performing effectively; however, the board wants to be sure before they act. Brown is a partner in his human resources consulting firm. So, the board naturally turns to him for advice.

Brown sees this as an opportunity to improve his firm's bottom line and offers to audit the department for \$75,000. This is vastly more than it will cost his company to do the audit, which is something that he knows but the rest of the board does not.

### CEO's Community Service Lacks Return on Investment

Sharon Simmons has been the CEO of Beyond Children for three years and enjoys the prestige that comes with the job. She is asked to become the paid director of several for-profit

companies and she snaps up the chance as a way to nicely supplement her already generous salary.

Simmons also serves on the board of the local arts council where she socializes extensively with the city's elites, often at Beyond Children's expense. An internal audit concludes that she has been away from the agency for more than 175 work days in the past two years—well over twice the number of her authorized vacation days.

### Board Chair Profits at Organization's Expense

Fred Land owns a racquetball club that he acquired in a real estate deal five years ago. The club is a dud; however, he plans to turn it into a gold mine. He is the chair of the Many Fine Youth Board of Directors. The organization keeps at-risk kids out of trouble by engaging them in gymnastics.

Land leases the building to Many Fine Youth for a modest rent and quickly begins leading the building's remodeling efforts. In five years,

the club is upgraded to Class A specifications—all at Many Fine Youth's expense. He then sells the building at a tidy profit and keeps 100 percent of the proceeds.

### Executive Charges Costs for Personal Ventures

Cynthia Janson is bored with her role as CEO of Families 2-Day, a small suburban agency. In addition, her husband recently lost his job. The couple decides they should embark on a new venture in internet sales of children's toys and books—a perfect extension of what the organization does every day.

They use the agency's attorney to incorporate and charge his fees to Families 2-Day. All of the company's startup costs, including developing a catalog and purchasing merchandise, are charged to the agency. By the time Janson leaves the organization, the unauthorized costs have hit six figures.

yours" activities. You will be amazed at how the regular infusion of new blood will strengthen your board and inoculate it against relationships that are too cozy.

**Manage Conflicts Wisely.** Make directors aware of your conflict of interest policy. If you have a policy that requires annual acknowledgment of the policy, honor this commitment. But, don't bury good board members in trifling conflicts. If you have someone from Kraft Foods on your board, it doesn't mean you have to stop serving Oreos in the dining room.

**Monitor both the Board and the Executive.** Assign someone the task of watching out for potential conflict situations at the board and staff levels. Be sure to document the process used when the board deals with potential conflicts, and ensure that dissenting votes are clearly marked in the minutes.

When it comes to executives, require that time spent away from the agency during office hours, excluding vacations, serves the agency in some capacity. This includes professional and community

involvement, as well as for-profit leadership. Make potential conflicts of interest a part of the executive's annual performance evaluation.

**Remember: Not Every Conflict is Prohibited.** The first step in analyzing disclosed conflicts is for your board to determine whether or not the reported activity actually constitutes a conflict. If it does, only then must your board decide whether or not it can be engaged in. A transaction that invokes the conflict of interest policy may, in fact, be the best one for the organization.

The sample conflict of interest policy I have provided gives organizations a clear process to follow. I urge you to review it carefully. ■

#### ENDNOTES:

1. The Form 1023 instructions can be found at the IRS website at [irs.gov/pub/irs-pdf/i1023.pdf](http://irs.gov/pub/irs-pdf/i1023.pdf)
2. View the sample conflict of interest policy at [alliance1.org/magazine/nonprofit-law](http://alliance1.org/magazine/nonprofit-law)



*Kathryn Vanden Berk practiced law for nine years before serving as the president of two residential treatment centers for children. Now practicing in Chicago, she focuses*

*on nonprofit start-ups, corporate and tax law, and employment issues. She serves as adjunct faculty at several Chicago universities, and is a member of the Advisory Board of the Axelson Center for Nonprofit Management at North Park University. She authored a handbook on starting nonprofits that is available from the Nonprofit Financial Center, Chicago, and a chapter in the Illinois attorney's handbook Not-for-Profit Corporations, 2004 Ed., Illinois Institute of Continuing Legal Education. In 2004 she authored Retooling Employment Standards for the Future, a publication of the First Nonprofit Educational Foundation, Chicago. She can be reached at 312-558-1690 or at [kvandenberk@nonprofitlawchicago.com](mailto:kvandenberk@nonprofitlawchicago.com).*