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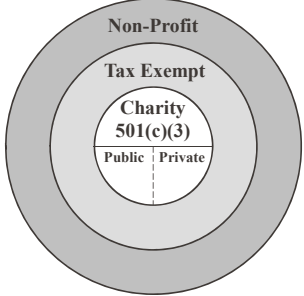
CEO & Trustee Essentials


 **Philanthropy**
southwest
Connecting Grantmakers. Inspiring Excellence.

Andrew Schulz

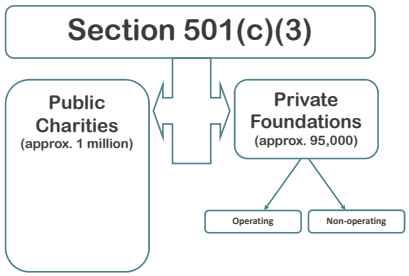
Colorado Springs, CO Thursday, October 27, 2016


The Nonprofit Universe



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Public Charity v. PF



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Governance



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State Law: Three Fiduciary Duties

- Duty of Care
 - Reasonable diligence- awareness and participation
- Duty of Loyalty
 - The foundation comes first
 - Avoid conflicts of interest
- Duty of Obedience
 - Honor donor intent
 - Focus on the charitable mission
 - Observe rules and policies



Practical Responsibilities

- Effective Planning
- Adequate Resources
- Mission, Purpose, and Strategy
- Programs and Services
- Public Standing
- Law and Ethics
- Executive Staff
- Board Succession, Evaluation



Working Effectively

- Understand roles and responsibilities
- Build appropriate structure for the work
- Using committees – delegate, don't abdicate
- Focus on issues that need board input
- Make decisions
- Work as a team both within the board and with the staff



Conflicts of Interest

- Personal interest differs from the foundation's
- Conflicts range from per se legal violations to ethical considerations
- Not all conflicts are prohibited; often may be managed
- Adopt and follow written conflict of interest policy
 - Disclosure
 - Abstain from voting (some leave the room)
 - Document, document, document




Mission, Vision, Strategy

- Mission – In what areas do you want to make a difference
 - Review of mission statement with Board and staff
 - When to modify or change
 - Honor legacy, but be intentional
- Vision – What goals do you wish to accomplish
 - What is it we wish to accomplish and by when?
 - Setting Goals
- Strategy – How will you reach your goals
 - Who should we listen to?
 - What is the process?
 - Realism and change
 - Evaluation




Governance Policies


- Should be in writing, approved by the Board, reviewed at least annually, and updated as needed
- Common Policies
 - Board membership
 - Meeting management
 - Personnel (if any)
 - Records retention
 - Investment and spending
 - Travel & expense reimbursement
 - Attending fundraisers
 - Trustee compensation
 - Whistleblower
 - Conflicts of interest



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Operational Issues



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Private Foundation Rules

- Excise Tax (§4940)
- Self-dealing (§4941)
- 5% Payout (§4942)
- Excess Business Holdings (§4943)
- Jeopardy Investments (§4944)
- Taxable Expenditures (§4945)




Self-Dealing

- No transactions with “disqualified persons”
 - Officers, directors, trustees
 - Substantial contributors
 - Family members of the above
 - Businesses they control
- Major Exception – Compensation
 - Reasonable
 - Furthers exempt purposes
 - Personal services (legal, accounting, banking, investing, etc.?)
- Penalties – 10% on self-dealer, 5% on managers




5% Payout

- Basic Rule
 - Each year make qualifying expenditures that equal or exceed about 5 percent of average assets
- What counts?
 - Grants
 - Program-related investments
 - Reasonable administrative expenses (except for investment management)
 - Direct charitable activities
 - Cost of assets purchased to carry on charitable activities
- Set asides



Excess Business Holdings

- Private foundation may not own a controlling interest in a for-profit company
 - Generally 20 percent
 - Add up what the foundation owns PLUS all shares owned by disqualified persons.
- 2 percent safe harbor
- 5 years to divest assets



Jeopardy Investments

- Investments that jeopardize exempt purposes
- There are no *per se* jeopardy investments
- Investments considered in context of risk/asset allocation of the entire portfolio
- Some will attract extra IRS attention
- Penalties apply managers, then foundation.



Taxable Expenditures

- Political activity
- Lobbying
- Grants to individuals for travel, study or research
- Grants to other than public charities
- Grants for purposes that are not charitable





Applying the Rules



Hiring Family Members

- Personal Services:
 - Banking, legal, accounting, investments
 - Not – interior decoration, janitorial
 - Query – real estate management
 - Narrow interpretation by IRS
- Reasonable:
 - What similar people get paid for similar work in similar circumstances
 - Generally no percentage based compensation
- Necessary: Consistent with exempt purposes



Determining Compensation

- Data – use appropriate comparable
- Decision by disinterested directors
- Document, document, document

President, Family Foundation

Assets (millions)	Salary		
	Median	Mean	Range
\$20 to \$50	\$121,000	\$123,000	\$80,000 to \$305,000



Travel Expenses

- Spouses and children are disqualified persons
- Paying travel expenses for them is self-dealing
- Two Exceptions:
 - Family has reasonable foundation duties, or
 - Treat as taxable income to person who is related to the reimbursed
- Expenses must be reasonable
- Note: training for future boards



Paying Pledges

- Can't assume debt of a disqualified person
- State law determines whether a pledge is legally binding
- Be careful in communicating with potential grantees



Grants to Non-Charities

- You can make a grant to any organization—as long as it is for charitable purposes
- Safest grants are to IRS recognized charities
- Otherwise — “expenditure responsibility”
 - Pre-grant inquiry
 - Written agreement
 - Funds held separately by grantee
 - Regular reports from grantee
 - Summary status on Form 990-PF



Grants Outside the U.S.

- PF can make a grant anywhere in the world
- Three Options
 - IRS recognized Grantee
 - Expenditure Responsibility
 - Equivalency Determination
- OFAC, SDN lists and other anti-terrorism concerns




We'd like to apply for a grant!




Scholarships

- Pursue education, achieve an objective, develop a skill
- Charitable class
- Objective and non-discriminatory basis
- No disqualified persons
- IRS pre-approval required



"I know so much, I don't know where to begin."






Managing Risk



Organizational Risk

- General liability
- IP infringement
- Contract breach
- Slander / Libel
- Fraud / Fidelity
- Discrimination and Harassment
- Wage and hour
- OSHA
- Retirement (ERISA)
- Securities
- State registrations
- IRS rules
- Patriot Act/ FCPA
- Child protection
- Campaign Finance
- FEC / LDA
- Etc...



Personal Risk

- Directors can be held personally liable for their actions as directors
- Directors can be named as defendants for actions of the foundation
- Defending a case can be expensive for both the individual and the foundation



Indemnification

- Coverage depends on state law
 - Good faith
 - Best interest of the foundation
- If the standard is met, coverage is broad
- Permissive vs. mandatory
- Third party claims vs. derivative claims
- Doesn't protect the foundation



Directors and Officers Insurance

- Protects directors and the foundation
- Coverage depends on the policy
 - Breach of duty, neglect, error, misstatement, omissions, etc.
 - Attorney fees and court costs
 - Excludes bodily injury and property damage
- Usually excluded:
 - Knowing and willful violations of the law
 - Dishonesty, criminal acts, state law fines and penalties, nuclear waste, ERISA