

Questions of Ethics

ASSOCIATIONS NOW - VOLUNTEER LEADERSHIP ISSUE, January 2010

By: Katherine L. George, CAE

Remember Pinocchio's friend/conscience Jiminy Cricket singing, "Always let your conscience be your guide"?

Unfortunately, when it comes to ethics and board service, association boards might not all remember the savvy insect's advice, says Joan Eisenstodt. While Enron and other corporate players have been caught with their ethics down—and penalized accordingly—nonprofits categorically, in her view, prefer values statements to detailed ethics guidelines.

"Ethics needs to be talked about constantly," says Eisenstodt, who is chief strategist for Eisenstodt Associates LLC as well as chair of the education subcommittee on ASAE & The Center's Ethics Committee. "Ethics are partly values, how we behave with others, what we do in work and individually. Everybody faces ethical situations. These should be discussed, and people need to have the comfort to ask the questions."

There is far more interest in ethics today than in years past, according to Thomas C. Dolan, CAE, president and CEO of the American College of Healthcare Executives (ACHE) and a former chair of ASAE. "With the new IRS Form 990, there is more transparency."

"Business statistics bear out that the cultures where leaders act ethically create more ethical behavior," says Janice M. Dahl, CAE, president of Anchor Management Group, which specializes in governance, business process, and strategy for nonprofits. A former member of ASAE & The Center's Ethics Committee, Dahl has served on numerous nonprofit boards and is the former executive director of the United Soybean Board.

Avoiding Conflicts of Interest

All ACHE board meetings start with the chairman asking if anyone has a conflict of interest, says Dolan. He knows a thing or two about conflicts of interest: When he was on staff and in the running to become ACHE's president and CEO 18 years ago, the association's board chair and another board member also applied for the position. ACHE developed its first code of ethics in 1941, and its website has a host of ethics guidelines available to its members, staff, and the public.

"It is critically important that those in leadership positions in an association put the association's agenda first. Essentially, the mission," says Dahl. In an imperfect world, some leaders put other agendas first—perhaps a future business contract, ambitions to be president, or any number of other examples that mean personal gain. Thus, Dahl believes, "The best possible solution is to establish an association culture where other leaders will step in to stop the individual."

"Boards might have adopted a conflict-of-interest policy, but few boards can tell you what their organization's policy says in terms of identifying potential conflicts and the process for handling them," says Eileen Morgan Johnson, an attorney with Whiteford Taylor & Preston.

Johnson regularly works with boards of nonprofits and associations in drafting, revising, and implementing conflict-of-interest policies, codes of conduct, and codes of ethics. She recommends an annual disclosure process for actual and potential conflicts of interest "with reporting during the year as situations arise." On ACHE's website, anyone may take an ethics self-assessment that addresses leadership, relationships, boards, colleagues and staff, clinicians, buyers, payers, and suppliers.

Over the past decade, surveys by ASAE & The Center have shown that ethics policies or codes of ethics for boards are not universal in the association sector. Only 54 percent of respondents to the 2001 ASAE *Policies and Procedures in Association Management* study said their organizations had a formal code of ethics. Last fall, an ASAE & The Center "Benchmarking in an Instant" study asked participants whether their nonprofit board had "formal, written processes, policies, procedures, or roles" relating to a code of ethics for board members and for staff. Of nearly 70 respondents, two thirds said yes to a code for board members, but only 36 percent had one for staff.

Johnson finds these codes to be more prevalent in professional or individual membership associations, where the expectation is that all members, including board members, abide by the organization's code of ethics and "where failure to comply could result in sanctions including termination of membership." She easily rattles off a list of ethical issues that boards may face:

- Directors soliciting donors for other organizations while at a fundraiser for the organization on whose board they sit;
- Directors investing their personal portfolio the same way as a foundation's fund manager advises for the foundation or wanting to invest the foundation's portfolio with their personal investment manager or in funds that they also own;
- Directors trading votes;
- Directors who think they represent their state chapters on the board rather than serving the association as a whole;
- Directors who do not support the goals or values of the organization but joined the board hoping to change them or to enhance their business or political credentials.

Dolan cites yet another potential issue: when board members disclose confidential information from a board meeting. He says, "We make it clear that as a volunteer leader, you must be careful not only not to take advantage of ACHE but also avoid the appearance of taking advantage. We agree with the old saws: 'Don't do anything you wouldn't want your mother to know about,' 'Don't do anything you wouldn't want to see on the front page of The New York Times.'"

In fact, Johnson thinks that such a violation of the confidentiality of board or board-committee discussions "happens much more frequently than conflicts of interest and yet gets far less attention."

Whistleblowing in the Dark

Perhaps the most personally risky and costly ethical deliberations a board member may face concern whistleblowing. That may be why, in the 2005 ASAE *Policies and Procedures in Association Management* study, only 22 percent of respondents' organizations had adopted a whistleblower policy. And for three fourths of those who had, their policy was adopted only after the Sarbanes-Oxley Act of 2002.

Effective whistleblowing policies will fit the organization's size, budget, and governance structure, Johnson says. Where there is an active ethics committee, complaints are more likely to go to that committee, she adds, although there could also be a staff ethics officer who reports directly to the CEO.

What happens when a staff member approaches a board member with a problem? If the board member is not well versed in the organization's governing documents, including whistleblowing and confidentiality procedures, he or she should postpone the conversation, says Janice Dahl. "This is not a conversation to have lightly, and it is not a gossip session."

Above all, Dahl and Eisenstodt agree, the whistleblower's identity must be protected. Eisenstodt says she firmly believes that "systems need to be in place so that anonymously, if necessary, a problem can be looked into without fear of repercussion."

A final warning on the topic comes from Dahl: "Sometimes in association work, we let our egos get in the way, thinking that only we can solve the whistleblower's problem," she says. "Bottom line, though, is that we have to follow our association's policies and procedures."

Gifts Galore—and More

The consequences of board members behaving unethically spread far, according to Dahl. "Where the leadership allows unethical behavior to continue, you will see other board members and staff mimicking that negative behavior—conflicts of interest, cheating on expenses, giving contracts to friends or family members."

"People think they have a right to things," Eisenstodt says, citing the example of someone who wins a big prize at an exhibit he is attending as a representative of a nonprofit ("Whom does it belong to—the person or his association?") or the day-to-day freebies some seem to take for granted. For example, she'll see on Facebook that someone she knows is being taken to a sporting event by a supplier, which leads her to conclude, "Whomever they work for doesn't have a policy, or this person may not be telling the organization that he's accepting—and vendors obviously are not asking ahead of time about the policy."

"The duty to respect corporate opportunities" is how attorney Jerald A. Jacobs characterizes this topic. In his article "Board Member Legal Responsibilities" in the Board Primer section of the 2010 *Associations Now Volunteer Leadership Issue*, he calls "appropriating corporate

opportunities" an impermissible form of competition. For those unclear on the concept, he spells it out: "A corporate opportunity is a business prospect, idea, or investment that is related to the activities or programs of the organization that the individual knows or should know would be in the best interests of the organization to pursue."

"If It's Legal ..."

"One thing I heard in a boardroom that brought me up short was, 'If it's legal, it must be ethical,'" says Dahl. "That's not the case. Legal is just the starting point on ethics. From there, board members have to decide if it's right."

"I'm bigger on being proactive," says Dolan. "Many organizations may have a code of ethics, but we enforce ours," he explains. "If a member lodges a complaint or we read something in a trade publication [that a member might have done], staff will call it to our attention and we will investigate." ACHE has an ethics committee, and the ethical policy statements it produces—nine now, in all—are available on its website.

Nor is ACHE averse to getting outside help and validation. The association works with an ethicist at Dartmouth College who also consults to government agencies, as well as another ethics consultant who teaches. The ethics columns that those two and others write for *Healthcare Executive* magazine will appear in a second edition of the book *Managing Ethically: An Executive's Guide*, published by ACHE in December 2009.

For board members who really want to do the right thing, Dahl suggests an ethics filter called "PLUS," which she describes as "a compass on ethics decisions if you get stuck":

Policies. Is it consistent with my organization's policies, procedures, and guidelines?

Legal. Is it acceptable under the laws and regulations?

Universal. Does it conform to the universal principles and values my organization has adopted?

Self. Does it satisfy my personal definition of right, good, and fair?

(More information on PLUS can be found in the Ethics Resource Center's [Ethics Toolkit](#).)

Johnson concludes with more practical advice to ensure complete fairness: "A board committee other than the executive committee should be assigned the task of handling ethics or conflicts complaints. This is usually a governance committee, but sometimes it's the audit committee."

And always let your conscience be your guide.

Katherine L. George, CAE, is an award-winning business writer and editor based in Fredericksburg, Virginia. Email: catacomm@cox.net

Sidebar: Fight or Flight? When You Disagree on Principle

When facing an ethical dilemma, sometimes board members must ask themselves whether the right thing to do is to resign or to battle for change from within. For example, last September, Nike resigned its board position with the U.S. Chamber of Commerce to protest the chamber's position on climate-change legislation. However, the same day, a General Electric spokesman told *Politico*, "The chamber does not speak for us on climate legislation, but we are still a member."

When Nike announced its resignation, the athletic company's statement pronounced, "We believe that on the issue of climate change the chamber has not represented the diversity of perspective held by the board of directors." Apple and three major energy companies had also resigned their chamber membership by early October.

But is that an ethics issue? "Probably not and maybe so," says Joan Eisenstodt of Eisenstodt Associates LLC. "I view it broadly. But if your values are different from the organization you belong to, and the organization is espousing something that conflicts with your beliefs, it's an ethics issue, and you have an obligation to do something."

At the law firm of Whiteford Taylor & Preston, Eileen Morgan Johnson frames it as a matter of business ethics. "If a company has made a public commitment to support and practice certain values, then acting on those values is an ethical issue." She adds, "Companies like Nike that pride themselves on having ethical practices that touch on the environment and social justice, for example, are practicing what they preach when they take actions such as resigning from the chamber."

The day before Nike's resignation from the chamber board, Thomas J. Donohue, president and CEO of the U.S. Chamber, explained, "We oppose the Waxman-Markey bill because it is neither comprehensive nor international," adding, "We have vigorously supported the production and use of renewable and alternative energy."