

Philanthropy Corner – 11-1-09

“Lack of Good Governance and Trust...Shocking”

Dianna L. Sutton

Trust is at the very essence of philanthropy and the nonprofit sector. In the nonprofit sector, trust is bestowed on the individuals serving on the governing board who are expected to uphold the public trust on behalf of the organization as the designated trusted party to fulfill policies, ethical codes and the law. Unfortunately, the lack of understanding or embracing of what it means to serve as a trustee of an organization leads to abuse of this public trust that has resulted in a series of local and high-profile scandals that are alarming and shocking.

The responsibility of trust begins when a nonprofit organization receives authorization by the state and federal government as having the legal right to act on behalf of the public trust. It starts with the approval of the Articles of Incorporation and by-laws by the state which guarantees an organization's commitment to fulfill the “rights, privileges and liabilities of corporations for nonprofit.” And then for a charitable nonprofit when it receives its written determination letter from the IRS Department of Treasury certifying that “grantors and contributors may rely on” the organization's tax-exempt status.

These organizational documents create the foundation for how a nonprofit will engage in business, and specify certain requirements and restrictions for upholding and maintaining the right to operate as a nonprofit organization. To be incorporated as a nonprofit corporation, certain actions are excluded, such as no individual can receive personal gain and the organization cannot engage in political campaigns and self-dealing. Additionally, in order to maintain tax-exempt status, the organization must comply with state and federal tax laws. These documents create more than an expectation, but a legal, binding contract entrusted to a governing body to uphold.

All nonprofit organizations are required to have a governing board. A nonprofit board has the responsibility to ensure that the charitable organization “fulfills its obligations to the law, its donors, its staff and

volunteers, its clients, and the public at large.” The governing group, referred to as a board of trustees, board of directors or board of governors, has the responsibility for providing leadership and governance of the nonprofit organization. The board represents the interests of the public and is charged to protect the public purpose of the organization, to ensure funds are used responsibly and effectively, and comply with tax and legal requirements. “Trustees are in effect moral decision makers.” Simply stated, trust goes hand-in-hand with transparency meaning operating with openness, communication and accountability.

All too frequently volunteers who serve on boards are not aware of their legal obligations and responsibilities to the public and forget to refer to the governing documents when making decisions. To serve on a nonprofit board means the public has bestowed the individuals that comprise the governing body with the responsibility and accountability for the conduct and performance of the organization. Individuals who volunteer to serve as a member of a board are typically motivated by mission and passion. According to a survey on nonprofit governance by BoardSource, 80 percent of the board members surveyed chose to serve on boards where this is a fit between mission, personal interests and beliefs.

Board leadership is grounded in ethical practice and principles and nonprofit boards have three fundamental legal duties: the duty of care, duty of loyalty, and duty of obedience. David O. Renz Ph.D. at the Midwest Center for Nonprofit Leadership defines these as acting in good faith by exercising good judgment to advance the interests of the organizations rather than engage in personal interests, and adopting a standard of behavior, both personally and organizationally, that adheres to required laws, rules, regulations while advancing the mission, bylaws and policies.

Although nonprofit organizations are subject to civil and even criminal sanctions, including sanctions imposed by the IRS in cases of inappropriate personal benefit, the best safeguard against misconduct in the nonprofit sector is a well-informed community of volunteers. To that end, CFFK has established the Leadership Success Academy in order to train members of our community interested in serving on boards to be responsible stewards to uphold the public trust. This free six-session workshop teaches the aspects of

board governance and equips individuals with the tools to be effective leaders. For more information, visit [www.cffk.org](http://www.cffk.org).

Trustees today are being held to a higher degree of accountability to maintain the public trust in the institutions they represent. As responsible stewards of philanthropic assets, trustees must reflect fundamental values of honesty, integrity, openness and accountability. There is an honor of being chosen to serve as a trustee, but it takes ethical and responsible behavior to earn the right to be called a trustee.