

A Business Lawyer for Non-Profits — We Know Your Business

BY LEAH COHEN CHATINOVER

A business leader, serving on the Board of a nonprofit organization exclaims, “This organization should run like a business!” Meanwhile, the organization’s executive director is thinking: “Yes, but we aren’t a business.” Both are right. While a nonprofit organization is not a business, it is similar to a business in many ways. The bottom line is that businesses exist to make money for their owners, while nonprofits exist to achieve a mission for the public good. But strong nonprofits, like well-run businesses, innovate, demand professional management and rely on knowledgeable professionals.

Here are some ways nonprofit organizations compare to traditional businesses:

RESOURCES

Different: Businesses routinely put resources into capacity building and engage skilled professionals, such as lawyers and accountants. Under pressure to minimize administrative expenses from funding sources and their own business-minded directors, nonprofits survive in a culture of doing more with less.

Alike: An effective nonprofit must attract and retain talented management and engage the right professionals. Like businesses, nonprofits need legal guidance for many aspects of their operations. Nonprofits also face unique legal issues, such as tax exemption, that require a lawyer experienced with these questions and with nonprofits’ distinct cultural nuances.

GOVERNANCE

Different: The CEO of a nonprofit (the Executive Director or the President) wields less authority and control than the CEO of a small business. In nonprofit organizations, important decisions are made by the Board of Directors. This leads to a slower decision making cycle that requires consensus building among diverse stakeholders.

Alike: For both nonprofits and businesses, the organizational documents – the certificate of incorporation or articles of association and by-laws – set the foundation for governance. Clear by-laws are critical for nonprofits, where decisions are made by a group. Without intelligible by-laws, the leaders of an organization lack a road map to guide them if a disagreement occurs.

CONTRACTS

Alike: Here, the overlap is almost total. Like businesses, nonprofits sign:

- Technology licenses
- Leases
- Contracts to purchase and sell real estate, equipment and intellectual property
- Agreements with service providers, vendors and customers
- Loans
- Insurance contracts
- Agreements with employees and consultants
- Government contracts.

A business lawyer can explain and negotiate contract terms, such as termination provisions, deliverables, payment deadlines and confidentiality.

Different: Nonprofit organizations often may also have agreements with



a variety of funders. A business lawyer can make sure nonprofit leaders understand their organization’s obligations under its agreements and the risks and benefits of its contractual relationships.

TAXES AND GOVERNMENT REGULATION

Alike: Nonprofits and businesses are all subject to federal, state and local regulations, including:

- employment practices
- wage and hour laws, unemployment (in some cases), workers’ compensation
- environmental protection
- zoning
- health and safety.

It may come as a surprise that nonprofits pay most of the same taxes as businesses. Nonprofits must withhold and pay FICA and other employee payroll taxes. Generally, a nonprofit in Connecticut withholds and turns over sales tax on goods and services it sells. And, while nonprofits are exempt from paying federal income tax, they must all file an information return (the Form 990), that is like a tax return, with the IRS. They also pay Unrelated Business Income Tax (UBIT).

Different: Unlike businesses, most nonprofits are exempt from federal and state income tax. This is why “nonprofit” and “tax exempt” are commonly used interchangeably. Organizations exempt under Section 501(c)(3) of the Internal Revenue Code may also accept tax deductible donations. These nonprofits are generally also exempt from paying sales tax on purchased goods and services, and may benefit from real and personal property tax exemptions. ■

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