Foundations

Beware common myths, misperceptions about foundation governance rules

With literally hundreds of pages of federal statutes and regulations governing the operations of charitable foundations, it's no surprise that even deeply knowledgeable foundation leaders occasionally buy in to false assumptions regarding the law. Unfortunately, common misperceptions abound—often passed on from peer to peer—many of which could get foundation executives in legal hot water, according to Daniel N. Belin, founder of Belin Consulting, which specializes in providing advice and assistance to charitable foundations.

Nonprofit Business Advisor spoke recently with Belin about some of the common myths he's encountered during his consulting work, the sources of confusion underlying them and how foundations can avoid running afoul of the law.

Q: *The first myth you talk about is the belief that foundations are only permitted to support 501(c)(3) organizations, whereas in reality, they can make grants to a range of organizations and entities so long as they comply with certain legal requirements—namely, undertaking a preliminary inquiry, committing to reporting requirements and so on. Could you give a bit more detail about this process?*

A: The purpose of the preliminary inquiry is to enable a foundation to gather information about the prospective grantee and its officials that would be sufficient to assure a reasonable person that the grantee will use the granted funds for proper purposes.

There is no "one size fits all" approach for the preliminary inquiry. Its scope may vary from situation to situation, depending on factors such as the size and purpose of the grant, the period over which it's to be paid, and the grantor foundation's previous experience with the grantee. For example, an inquiry might look into the past history and experience of the grantee and its managers and focus on information that is readily available concerning the organization's activities, management and practices.

The IRS has stated that if the grantor foundation's experience is that the grantee has used all of its previous grants for proper purposes, no further inquiry will "ordinarily" be necessary. The use of the word "ordinarily" is to hedge against the possibility that despite the grantee's proper use of previously granted funds, some special circumstances might lead to the conclusion that, in fact, further inquiry is necessary.

Q: *Another common myth centers around benefits that result from having "insider" status with a foundation—for example, tickets that a foundation purchases to a charity fundraising event that are then used by a trustee and his or her family members and friends. What other examples of insider benefits can you give us? And is there a succinct definition or method of evaluating whether something is a benefit resulting from insider status, or if someone qualifies as an insider?*

A: There are many examples of benefits from insider status that would be prohibited. A trustee of a foundation making a substantial grant to a university, for example, may not accept preferential seating at university sporting events that the university offers as an expression of appreciation for the grant. A foundation trustee or family member may not accept free church membership and membership privileges as a thank-you for a foundation's grant to the church. A foundation trustee or family member may not accept a deluxe VIP hospital room at a standard room rate as an expression of appreciation for the foundation's grant to the hospital.

The term "insiders" generally applies to foundation donors, trustees, officers, or family members and their ancestors, descendants, and spouses. The technical term that applies to insiders is "disqualified persons."

The best way to determine if insider rules are being violated is simply to ask if the benefit is available to persons other than the foundation's donors, trustees, officers or family members and close friends. If it isn't, and if the benefit cannot be considered to be what the IRS describes to be "tenuous and

(See **FOUNDATIONS** on page 8)

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FOUNDATIONS (continued from page 5)

incidental," such as naming a building or program for a foundation trustee, there's a good chance that receipt of the benefit is prohibited.

Q: *Another misperception is that foundation donors, trustees and officers are permitted to satisfy personal pledges of financial support out of foundation assets so long as the pledges are made to organizations that have received 501(c)(3) determination letters from the IRS. In reality, the law specifically prohibits this. Where does this confusion stem from? Is it simply a matter of board members/trustees speaking on behalf of themselves when they should be speaking on behalf of the foundation?*

A: I've seen a number of cases in which foundation donors and trustees committed financial support to Section 501(c)(3) public charities without mentioning the foundations they serve, and then the foundations satisfied those pledges out of foundation assets. Even more frequently, I've seen situations in which a foundation funded a pledge even though a foundation trustee signed a public charity's confirmation letter delivered to the trustee's personal residence address that thanked the individual for the pledge and didn't mention the foundation at all.

IRS Regulation Section 53.4941(d)-2(f) makes it clear that a foundation's payment of a disqualified person's personal pledge constitutes a prohibited act of self-dealing.

The issue in my personal experience has always involved the appearance of impropriety and not actual impropriety. Nonetheless, a mistake can be extremely costly to a trustee if the IRS on audit finds evidence of a foundation satisfying a trustee's personal obligation and takes the position that this constitutes actual impropriety.

The key to compliance is for foundations to ensure that both the giving and receiving parties are clear about who the pledging party is and where the financial support will actually come from.

Q: *You have noted the hundreds of pages of statutes and IRS and court interpretations that apply to foundations. What level of expertise or knowledge should foundation trustees and staff possess to ensure they stay in compliance with them all?*

A: Foundation executives do not need to understand every detail of the Internal Revenue Code and regulations as they apply to tax-exempt charitable organizations. They should, however, have an understanding of the basic principles that is sufficient to enable them to identify problematic situations, come up with alternative ways to meet the foundation's objectives, and recognize when the foundation needs experienced professional assistance to ensure compliance with the law. By relying on widely held assumptions that may be incorrect, trustees and executives could inadvertently put a foundation's tax-exempt status at risk—and undermine its mission and potential.

For more information

Daniel N. Belin is the owner of Belin Consulting, which provides consulting services to charitable foundations and their trustees. He is the author of *Charitable Foundations: The Essential Guide to Giving and Compliance* (Five Columns Press, 2015). *For more information, visit* http://www.belin-consulting.com, *or email him at* db@belin-consulting.com. ■

VOLUNTEERS (continued from page 7)

SDGs, have fallen short of their mark in some ways because countries' development efforts have not sufficiently reflected the needs of all citizens. The corollary to that is that the SDGs will only succeed if they also include the voices of all people, and look into ways to engage communities more effectively, including through the power of volunteers and volunteering, the report said.

According to the report, countries that provide a supportive "enabling environment" for volunteers tend to reap the rewards of their inclusion in decision-making. But, it said, too many governments are failing to acknowledge the immense potential of volunteers to help them chart a successful development path.

The report said governments need to take concrete steps to help the world's volunteers actively contribute to the decisions that affect people's lives, such as:

- Engaging more volunteers in the process of crafting policies and putting them into action.
- Integrating volunteers formally into national development frameworks and SDG strategies.
- Engaging more volunteer women and marginalized groups in local and national decision-making.

The report can be viewed in full at http://www.volunteeractioncounts.org/SWVR2015. ■

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