

Nonprofit Leaders Should Support Enhanced Scrutiny of the Sector



Harvey P. Dale is director of the Program on Philanthropy and the Law at the New York University School of Law. Professor Dale has served as an advisor and consultant on exempt organizations for

many groups, including the Internal Revenue Service. He was a speaker at NCNB's 1993 National Leadership Forum, November 14-16 in Washington.

There is virtual unanimity among informed observers of our legal system that nonprofit entities are significantly less regulated than the other portions of our society. There are two explanations for this. First, nonprofits do not have shareholders and partners, who have proved to be quite potent in calling management to account in the for-profit universe. Indeed, there are very few classes of persons who have legal standing to question the activities of not-for-profit organizations, and even those who have standing often lack any significant interest in asserting it. Second, government regulators (and most particularly state attorneys general, to whom the law confides the principal role in policing charities) tend to allocate their scarce regulatory resources to other, more politically potent portions of their domains. In most states, the charity bureau of the attorney general's office is inactive, ineffective, overwhelmed, or some combination of these.

There are, to be sure, some countervailing forces. The Internal Revenue Service, on the federal level, scrutinizes some (but far from all) aspects of the operations of tax-exempt organizations. State regulation of charitable fund raising has increased. Many charities impose high standards on themselves and police their own activities carefully. Some associations of nonprofits and a small number of standards-setting organizations occasionally exert a helpful hortatory influence. The news media, now including several vigilant nonprofit-sector newspapers and magazines as well as reporters on the "philanthropy beat," cast penetrating gazes on abusive conduct in the independent sector.

All of this is generally welcome, even though any of us could complain about

particular aspects of it. It would be unfair to dismiss it as irrelevant. A balanced judgment, nevertheless, would still find the nonprofit community to be much less accountable and much less scrutinized than the other major sectors of our society.

This state of affairs cannot and should not continue. I believe that additional scrutiny is inevitable, and that independent sector groups should favor this trend even though it will entail additional compliance burdens and costs. There are several reasons for this.

First, if my diagnosis is correct, leaders of the nonprofit community should be prepared to come forward to support steps to redress the imbalance between the growing importance of the sector and the inadequacy of existing legal structures for its accountability. Our sector differs from government and business in many ways; one has been a deeper devotion to values and ethics. We contribute to society not only through the pursuit of our core missions, but also through the exemplary way in which we conduct ourselves. We should be, and we should be seen to be, willing to have our activities scrutinized. We should be, and we should be seen to be, willing to hold ourselves to a higher standard.

Second, I believe I am recommending not only the course of honor but the course of prudence. If increased accountability is inevitable, wisdom suggests constructive participation in molding its forms rather than futile opposition to their development. Our voices will not be heard if we are perceived as merely self-serving opponents to such changes. Only through constructive participation can we hope to balance the demands of accountability with the claims of our unique sector, including the central claim of diversity and pluralism, which could come undone if too much or too rigid regulation stifles charitable initiative and inventiveness.

Third, abuses hurt the sector. In the wake of the televangelist scandals, donations to almost all television ministries fell dramatically. When Father Ritter came under criticism, Covenant House was severely and adversely impacted. Although government can raise funds by forced exaction, and business can tempt investors with profits, the nonprofit

sector has nothing to offer except its good image, good purposes, and good activities. We should be vigilant to seek out and eliminate undesirable conduct before it corrodes and tarnishes the lustre of our activities. We should be concerned, then, when an inadequate level of supervision and scrutiny leaves an enlarged scope for undetected abuses.

I do not mean to suggest that greater accountability will eliminate all charitable abuses. It will not. Yet more scrutiny should deter abuses to some extent. If the independent sector were already highly accountable, we could debate whether the benefit of further regulatory strictures would outweigh their costs. But the sector is not highly accountable. It will not do to argue against change on the ground that abuses will continue even if accountability increases; that will be perceived as perverse. Rather, we should support enhanced scrutiny of the sector in the hope that the potential for abuse will be reduced, and in the certain knowledge that an appropriate level of accountability will be a cloth to help maintain the lustre of all charitable organizations. ■

CHECKLIST

Why Boards Sometimes Fail to Act Accountably

To fulfill their role as guardians of the public trust, board members must understand the obstacles to accountability. Five of the most common are:

- ✓ The board may lack time and quality attention on the part of its members.
- ✓ The board may be too narrow, ingrown, and self-serving, and not sufficiently open, diverse, and outward-looking.
- ✓ The board may be composed of prima donnas whose concerns are more egocentric than corporate.
- ✓ The lines of authority between board and staff may be confused.
- ✓ The board may discourage vigorous discussion about the ideas that guide the organization and about the evaluation of performance.

Adapted from *Fulfilling the Public Trust* by Peter D. Bell, published by the National Center for Nonprofit Boards (\$12; \$9 for members).