



Boston

Concord

Hanover

Manchester

## Articles - Other

### **Non-Profit Board Membership- A Legal Crib Sheet**

*New Hampshire Business Magazine*

Service to nonprofit organizations can be among the most rewarding and fulfilling parts of one's life. That reward should not turn into punishment because of carelessness, ignorance, or poor management. Particularly in light of heightened scrutiny of the conduct of board members of both for-profit and non-profit organizations, those who serve as directors, officers, or trustees of such organizations should have a basic understanding of the rules of New Hampshire law that apply to most nonprofit organizations.

The state attorney general has statutory oversight authority over so-called "charitable trusts" in New Hampshire under Chapter 7 of the Revised Statutes Annotated ("RSA's"). "Charitable trusts" are broadly defined to include most situations in which an individual or entity holds property for charitable purposes, although religious organizations are specifically exempted from the coverage of the rules discussed in this article.

This article is not intended to be exhaustive with regard to such requirements, but to point out some of the more important ones.

Registration and reporting requirements. RSA 7:28 requires covered charitable trusts to register with the Director of Charitable Trusts, an official in the Attorney General's office and to file annual reports on their activities. Other sections of the law require filing of reports regarding certain specified fundraising activities, in particular the use of paid solicitors. Any organization using paid fundraisers should carefully review the law governing such activities.

Conflicts of interest and "Pecuniary benefit transactions." All covered charitable trusts are required to have policies on "pecuniary benefit transactions" and conflicts of interest. The Director of Charitable Trusts has proposed model language for such policies.

Specific statutory rules apply to directors, officers, and trustees of covered charitable trusts with respect to financial transactions with charities they serve - so-called "pecuniary benefit transactions". These rules are grounded on four principles: disclosure; nonparticipation; record-keeping; and public notice.

Any transaction involving more than \$500 between a covered charitable trust and a trustee, officer, or director of that charitable trust (or a member of such a person's immediate family) is considered a "pecuniary benefit transaction", and is prohibited unless it fits within specified criteria. Ordinary compensation to professional staff is permitted, as is reimbursement of legitimate expenses. Ordinary business transactions are permitted (e.g., a hospital board member who operates a car dealership may sell cars to the hospital) if approved by 2/3 of the directors or trustees who are not financially involved in the transaction, if the details of the transaction are fully disclosed to and discussed by the board, if the approving vote is taken "without the participation, voting, or presence" of any interested board member, and if the transaction is "in the best interest of the charitable trust" - this last criterion suggesting that the Director of Charitable Trusts has the power to challenge an otherwise permitted transaction on the ground that it is "unfair".



A charitable trust must keep records of all pecuniary benefit transactions and their approval in its minutes, and must keep a list of all such transactions available for inspection by members of the governing board and contributors. The Director of Charitable Trusts may demand production of records from any officer, director, or trustee engaging in a pecuniary benefit transaction.

Notice of pecuniary benefit transactions involving \$5000 or more (or a group of such transactions aggregating that much) must be published in a local newspaper and reported to the Director of Charitable Trusts, before consummating the transaction.

Loans by charitable trusts to trustees, officers, or directors are flatly prohibited. Real estate transactions between a charitable trust and a trustee, officer, or director require probate court approval (except for bona fide gifts to the charitable trust.)

Remedies. What happens when a prohibited transaction is uncovered? The statute declares that a prohibited pecuniary benefit transaction is "voidable" - it can be undone, which, in the circumstances of a particular case, may be difficult and burdensome for all involved. Moreover, anyone engaging in a prohibited transaction may be ordered to make restitution of all amounts received, and may be fined up to \$10,000 for each violation.

Conclusion. The rules applicable to non-profit organizations are extensive, but with a small amount of effort, an organization and its board can comfortably live within them.