WINTER 2012

Nonprofit Observer

Better governance starts with a better executive/board relationship

Double strength
Merging can make your nonprofit twice as effective

How op-eds help you get the message out — for free

A quick look at recent IRS releases

LAUTZE & LAUTZE

CPAs & FINANCIAL ADVISORS

San Francisco Office
303 Second Street,
Suite 950
San Francisco, CA 94107-1327
Office: 415/543-6900
Fax: 415/543-7240

San Jose Office
111 West Saint John Street,
Suite 1010
San Jose, CA 95113-1123
Office: 408/918-0900
Fax: 408/918-0915

www.lautze.com

Better governance starts with a better executive/board relationship

Most nonprofits are led by an executive director (ED) and a board of directors — separate parties that, nevertheless, rely on one another to be effective. For example, if an ED fails to keep her board apprised of a developing financial crisis, the board can't develop strategies to address it. Or, if a board fails to provide its ED with performance feedback, he may not know how he needs to improve — and, by extension, how the organization as a whole could be doing better.

Many boards and EDs do work well together, of course. Nevertheless, a recent study by CompassPoint Nonprofit Services and the Meyer Foundation found that there's plenty of room for improvement.

SURVEY SAYS

The study, *Daring to Lead 2011*, revealed that, of the more than 3,000 EDs surveyed, only 20% were "very satisfied" with their boards' performance. Almost 50% of respondents were "somewhat satisfied" with their board, leaving 32% who were "a little dissatisfied" or "very dissatisfied."

Blame for less-than-stellar board performance shouldn't fall to the board alone, though. The majority of survey respondents admitted to spending 10 hours or less per month working with or supporting their board. Despite frustration with issues ranging from board members' low fundraising participation rates to receiving little to no job performance feedback, the typical ED devoted only 6% of his or her working hours to board business.

Wherever your nonprofit falls on the spectrum, it can probably benefit from improving the board's effectiveness. This starts by opening the lines of communication between the executive office and the boardroom — and committing to keeping them open.

RULES OF ENGAGEMENT

Boards can't do their job if they don't know what that job is. Not surprisingly, the most common source of conflict between boards and EDs is confusion about roles and responsibilities.

Make sure your board understands that it has specific duties that are distinct from the ED's. In effect, the board *governs* and the ED *manages*. The board makes policy and maintains the organization's financial integrity and the ED implements policy and ensures that the nonprofit runs efficiently and effectively.

Consider writing a job description for your board as well as lists of expectations for individual

board members. (For examples of specific duties, see "Board member to-do list" at right.) And be sure to provide all new board members with a thorough orientation to your nonprofit's mission, goals, policies and operations. The orientation process should include mentorship by an experienced board member who has a good working relationship with your ED.

OVERLAPPING SPHERES

Although nonprofits have separate spheres for executives and boards, in reality the jobs often overlap. Your board members, for example, may be expected to court big donors and assume such operational responsibilities as organizing fundraisers and contacting grant-making organizations about funding.

The most common source of conflict between boards and executive directors is confusion about roles and responsibilities.

Similarly, your ED doesn't determine your board's meeting agendas, but his or her input is essential if the board is to focus on your organization's critical issues. While your board members should never act as an ED's rubber stamp, they must recognize that the ED is probably better acquainted with your organization's most pressing needs. What's more, your board needs to create an environment that invites your ED to seek its assistance when he or she doesn't have time to solve a problem or simply can't solve it alone.

Multiple surveys have found that the board is a key factor in how satisfied nonprofit EDs are with their positions — as well as how long they stay in them. By seeking the ED's opinion often, boards foster a partnership, rather than a subordinate relationship.

RECOGNIZE ROLES

If your board and ED don't work well together, your nonprofit may suffer the consequences. To help improve communication, boards must ensure that their members know their responsibilities — and how they differ from the ED's. Likewise, EDs must recognize the role they play in improving board performance. This means they should try to increase the amount of time they devote to board business. ✱

Board member to-do list

Depending on their mission and size, different nonprofits may expect their boards of directors to assume different responsibilities. But for governance to be effective, your nonprofit's board should consider the following duties essential to the job:

- Perform financial oversight and essential fiduciary duties of care, loyalty and confidentiality.
- Create and maintain a strategic plan.
- Hire the executive director and regularly evaluate his or her performance.
- Ensure that executive compensation is reasonable.
- Write policies, including whistleblower, conflict-of-interest, gift acceptance, related-party transaction, and document retention and destruction policies.
- Maintain an audit committee of financially knowledgeable board members to oversee internal and external audits.
- Regularly review risk exposure, ensuring that insurance policies are in force, internal controls are enforced and investment policies are followed.
- Develop a leadership succession plan, as well as other emergency procedures.

Double strength

Merging can make your nonprofit twice as effective

The weak economy has been particularly hard on nonprofits. Reduced government funding and donor support and stiff competition for grants have forced some to even question how long they'll be able to remain in operation.

If your organization is struggling and other nonprofits provide similar services in your community, you may want to consider a merger. Teaming up with another nonprofit enables you to pool resources, cut costs and possibly better serve your constituents.

A HARD DECISION

The decision to merge isn't an easy one to make. But if your organization has experienced steady declines in grants and donations, it's worth considering. Duplication and overlap of services may be another valid reason to merge. Bringing organizations together can be a powerful way to build unity, achieve objectives faster and use funding more efficiently.

You might also consider joining with another nonprofit to gain access to a larger skill set. Perhaps another organization has an outstanding and dedicated staff, while you have excellent fundraising skills. Combining forces may enable you and the other nonprofit to provide better services and maximize capabilities.

ARE YOU READY?

If you're mulling a merger, think about what you really want to achieve. Develop realistic objectives stated in measurable terms, such as striving for a 25% increase in donations or an expansion of services into an adjacent community.

You also need to assess your readiness to be a partner. Assemble a committee of managers, board members and advisors to discuss potential financial, legal, public relations and other implications of a potential merger. Invite critical outside stakeholders, such as major donors, to provide input. If you're going to lose funding because a merged entity would deviate from a major funder's goals, it's better to know before you make your decision.

In general, nonprofits are better merger candidates when they have stable management, including a strong relationship between the executive director and the board (see "Better governance starts with a better executive/board relationship" on page 2) and a good handle on their strategic challenges. Nonprofits that are growth-oriented, with a history of successful risk-taking, also may be better candidates.

RECOGNIZE POTENTIAL OBSTACLES

Naturally, nonprofit mergers involve considerable risk of stakeholder resistance and other hurdles. For example, it may be difficult for staffers of the two organizations to set aside differences and work in the spirit of cooperation. Fears, egos, politics and personal concerns are all likely to be visible as everyone struggles with making major organizational changes.

Funders, program partners and community leaders also may object. Good communication can help alleviate much — but not all — resistance. Legal obstacles are another possibility. Many states have specific procedures that must be followed and forms that must be filed when nonprofits merge. Further, you may need to get consent from donors to legally transfer gifts or grants.

Finally, consider just how much time and other resources are needed to successfully merge two entities. Depending on the size and complexity of the organizations, a merger can take as long as two years to complete. The process also will involve additional costs, such as for consultants and attorneys.

GUIDE THROUGH THE PROCESS

Whether the idea of merging is new to you or you've been approached by another nonprofit and are ready to take the leap, talk with advisors experienced in handling nonprofit combinations. They can guide you through the complicated process, including due diligence, negotiations and integration, and help ensure that your merger will improve your nonprofit's long-term viability. ✱

How op-eds help you get the message out — for free

Nonprofits can't thrive if they don't have the support of their community and its politicians, policy makers and other leaders. But if you've had to tighten your public relations budget over the past couple of years, you may be having a hard time getting your message heard by the right people.

Fortunately, not all outreach efforts have to be expensive. Placing opinion editorials, or op-eds, in your city's newspapers and other media can be an effective way to target your communications — for free.

PRINT ISN'T DEAD

Despite rumors to the contrary, newspapers still have enormous reach — particularly in small and midsize markets where many local papers are actually increasing their print and online readership. At the same time, these publications remain accessible to the public and usually welcome op-ed submissions from community members.

But a local paper's willingness to accept almost anything doesn't give you the green light to submit a recycled speech or fundraising brochure. To be effective, your op-ed needs to be written specifically for its audience and medium.

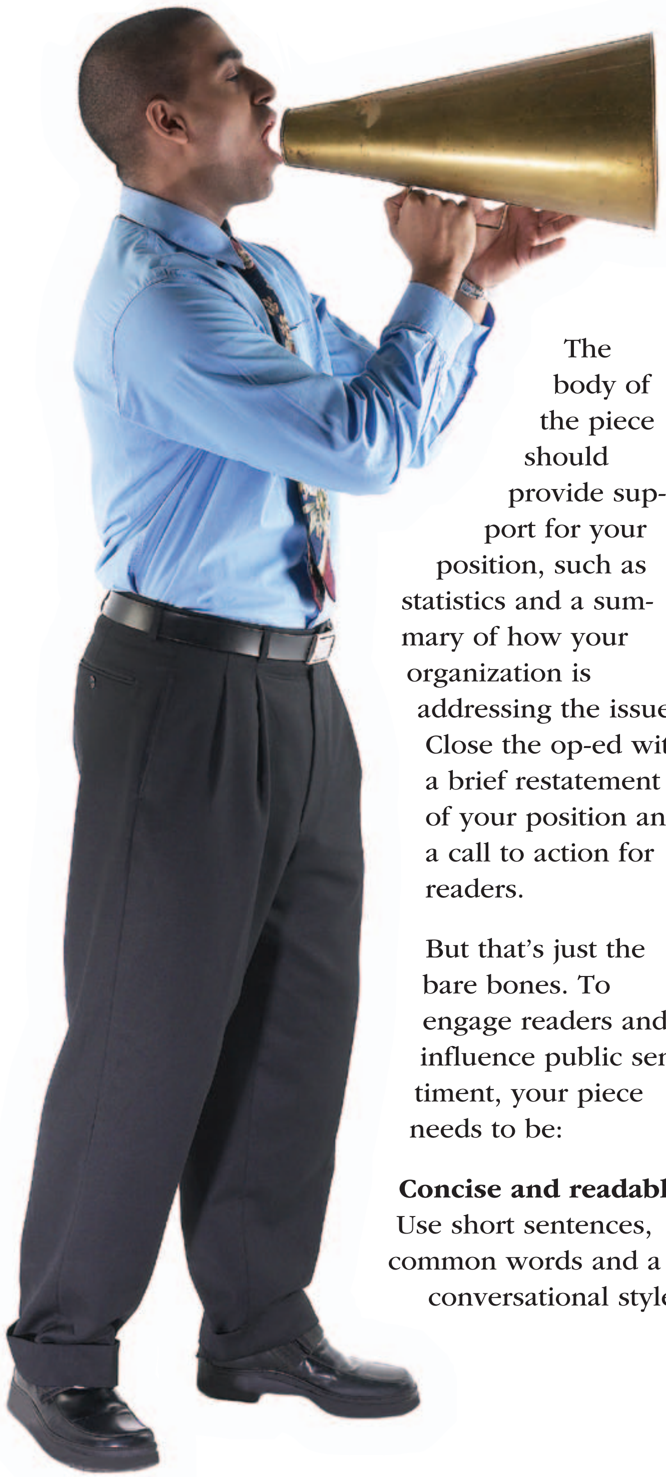
Share your nonprofit's success stories — and the heartbreaking failures that have influenced your position.

Familiarize yourself with the paper's style, tone and target reader and learn its submission requirements, such as word count (500 to 600 words is typical). It's also a good idea to e-mail or call the publication's op-ed editor to assess his or her interest before you write your piece.

This way you won't waste time writing something the editor won't publish.

CRAFTING YOUR MESSAGE

When drafting an op-ed, laser-like focus is critical. Your first sentence should name the issue you want to address — preferably a hot-button topic or one with which readers will be familiar (for example, pending legislation) — and assert a clear opinion about it.



The body of the piece should provide support for your position, such as statistics and a summary of how your organization is addressing the issue. Close the op-ed with a brief restatement of your position and a call to action for readers.

But that's just the bare bones. To engage readers and influence public sentiment, your piece needs to be:

Concise and readable. Use short sentences, common words and a conversational style. Avoid industry jargon and academic writing styles.

Local. Even if you're talking about a national issue, frame it with references to local people and institutions your reader will recognize.

Timely. Submit pieces close to election dates and legislative votes you hope to influence. Or prepare pieces to run during "awareness" dates such as Earth Day or Breast Cancer Awareness Month, and anniversaries related to your cause or organization.

Controversial. Op-eds are intended to start — or continue — conversations and shouldn't, therefore, be wasted on neutral positions. Don't insult or malign opposing opinions, but take a firm stand that will get people talking.

Emotional. Emotional "evidence" is as important as statistics, surveys and case studies. Share your nonprofit's success stories — and the heartbreaking failures that have influenced your position. These are more likely to ignite reader interest in your nonprofit than dry, scientific data.

DON'T GIVE UP

Even if your first published op-ed is effective, don't stop there. If a paper is willing to keep running your opinion pieces, keep submitting them.

If, on the other hand, you're having trouble getting an op-ed published, don't give up. Submit it to other newspapers and websites. Also be sure to introduce yourself to local radio producers and television reporters who may be interested in your perspective for a program or story they're working on.

POWER AND INFLUENCE

As long as op-eds have been properly vetted first within your organization, they're a public relations no-brainer. At worst, they'll be ignored. At best, they'll enable you to frame important issues for a large audience, publicize your nonprofit's work and influence people in positions to effect change. ✱

A quick look at recent IRS releases

Nonprofits must pay careful attention to all IRS releases regarding tax-exempt entities. If you don't comply with the rule changes and guidance issued, your nonprofit could end up wasting a lot of time — and even lose its tax-exempt status. Two recent IRS actions merit your attention.

1. FORM 990 RULES FINALIZED

On Sept. 8, 2011, the IRS released final rules for the redesigned Form 990. Also known as "Return of Organization Exempt From Income Tax," this is the form most nonprofits must file annually.

Form 990 was overhauled in 2008, and many of the finalized rules have been in effect since then. These include:

- Revised threshold amounts for reporting compensation,
- Elimination of the advance ruling process for new nonprofits, and
- Implementation of a five-year public support computation period.

If you're unsure about how the revised Form 990 might apply to your organization, contact your tax advisor.

2. REINSTATEMENT GUIDANCE ISSUED

In 2011, approximately 275,000 nonprofits lost their tax-exempt status because they'd failed to file annual reports with the IRS for three consecutive years. Although most nonprofits on the automatic revocation list likely ceased operations, that still leaves thousands that forgot or were unable to file. This past June, the IRS published guidance to help organizations desiring reinstatement.

If your organization is among them, you'll likely want to seek a retroactive reinstatement to the date your tax-exempt status was revoked.

Otherwise, donations since the revocation date will be considered taxable to your organization and your donors won't be able to deduct them. To get the process rolling, file one of these forms within 15 months of the revocation date:

- Form 1023, "Application for Recognition of Exemption Under Section 501(c)(3)," or
- Form 1024, "Application for Recognition of Exemption Under Section 501(a)."

You'll need to include several support documents with your form, such as a statement that provides reasonable cause for failing to file the required forms (for example, your nonprofit is staffed entirely by volunteers); a statement that describes safeguards you've put in place to prevent such oversights in the future; tax returns for the years during and after the consecutive three-year period; and a legally binding declaration signed by an authorized person, such as an officer or director.

It's critical that you follow the IRS's guidance to the letter. Contact your tax advisor for a detailed explanation of the reinstatement process, as well as special rules and possible transitional relief for nonprofits with gross annual receipts of less than $50,000. ✱