# Boardroom Bearings

**Navigating to Board Excellence**

Centerpoint Institute

**December 2016**

## Is Governance Ho Hum?


Courtesy of stockimages at FreeDigitalPhotos.net

Before you stifle a yawn about governance practices, read the article on Goodwill Omaha -- a story of governance gone astray. And be sure to read the article on recommended compliance practices.

For the most part, good-hearted people serve on nonprofit boards. But they do not necessarily know their responsibilities and sometimes they make very bad decisions that get them in trouble.

Take a lesson from Goodwill Omaha. If it can happen there, it can happen in your organization. Please review the 29 recommended governance practices in the [August, October, November issues] and read about the compliance practices in this issue.

## Goodwill Omaha -- the Latest Nonprofit in Trouble


Investigative reporting by the *Omaha World-Herald* (Nebraska) several weeks ago uncovered a number of questionable practices related to salary and bonus levels, conflicts of interest among both board members and administrative staff, and deceptive trade practices.

Quickly, the scandal led to 1) a sharp reduction of in-kind donations, 2) financial donors declaring their intent to stop funding the organization until trust could be re-built, and 3) the resignations of some executives. And now, [according to the Omaha World-Heard], the organization is under review by the Nebraska Attorney General's Office.

So far, no board members have resigned but clearly they fell short in the fiduciary duties department. The unusually high salary and bonus levels, issuance of more than $5 million no-bid contracts to with two companies whose executive sit on the nonprofit's board, and hiring of family members of staff and board could

### In This Issue

result in legal action against board members. The Attorney General has the authority to remove current directors, order the recovery of assets from directors and officers, and even dissolve the organization.

The board has ordered a thorough review of pay structure and a third-party assessment of operations, governance, and ethics - but this is after the alarm bells should have been ringing. To understand conflict of interest, read this article: Is a Conflict a Conflict, Disclosed or Not? Goodwill of Omaha'sTangled Ball of Relationships.

## Apply the "Front Page Test"

"Wake Up Call" image from Nonprofit Quarterly

In a *Nonprofit Quarterly* editorial, "Goodwill Omaha's Wake-up Call Provides Ethical Reform Blueprint for Other Nonprofits," Ruth McCambridge wrote "...many nonprofits out there have similarly unexplored issues that, if surfaced publicly, would pose problems with stakeholders."

Experts agree that the number one board governance issue that gets nonprofits in trouble is directors and senior leadership failing to be sufficiently active and informed. When I train nonprofit boards or make presentations about governance as I did recently in Bolingbrook, IL, I always emphasize the fiduciary duties of care, loyalty, and obedience.

In plain-speak, I urge people to use the **"front page test"** when making decisions about their organization: "Would you like to have this decision dissected on the front page of your local newspaper or in social media?" And I also recommend the **"sniff test"**: "If it smells wrong, it probably is." I hope not to read a front page article about a scandal at your organization!

Read more here and here.

## Benchmark Your Board against the Recommended Compliance Practices


This article is the last in a 4-part series on BoardSource's recommended governance practices. See how YOUR board measures up! Read the eight Essential Practices in the August issue of Boardroom Bearings and the 16 Leading Practices in the October and November issues.

The recommended compliance practices are:

**Meeting Frequency.** A board should meet often enough to fulfill its fiduciary duties - certainly more than once a year as required by most State laws.

**Executive Compensation.** The board must have a formal process with defined guidelines for setting appropriate compensation for the chief executive and approve the compensation package. The board should follow the IRS's safe harbor measures and seek comparative data when determining compensation and benefits.

**Review of IRS Form 990.** The full board should review the Form 990 before it is filed. Form 990 is the most widely viewed public document concerning the organization, its finances, activities, and governance practices. Constituents, donors, and media are looking at the Form 990 -- board members need to be sure that it presents an accurate picture.

**Document Destruction and Retention.** The board must ensure that no records are destroyed when an organization is under federal investigation. All organizations should have a policy for document destruction and retention and ensure that the law is understood and respected.

**Whistleblower Process.** The board must ensure that no employee is punished or discriminated against because he or she reported improper conduct. Federal law states what must happen if improper conduct is alleged and reported. All organizations should have a formal, written process for dealing with complaints and preventing retaliation.

BoardSource has decades of experience working with tens of thousands of board leaders and conducting extensive research on board practices in all kinds of nonprofit organizations. The organization has distilled 29 recommended governance practices that, when adopted and practiced by boards, lead to improved effectiveness. The 29 recommended practices are divided into three categories: 1) Essential Practices, 2) Leading Practices, and 3) Compliance Practices.

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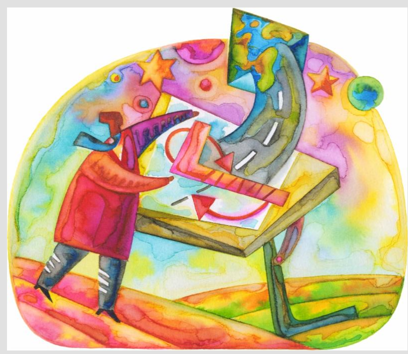
## Trends in Committee Structure



August's *Boardroom Bearings* presented an article about four types of committees: standing, ad hoc, advisory, and organizational. See the August issue here.

Compare your board's committee structure with the following trends identified in national research conducted by BoardSource.

**1. Boards are keeping the committee structure simple and flexible.** Except for executive committee, they don't list committees in their bylaws. Instead they use a provision that empowers the board to create and disband committees and work groups as needed.

**2. There is movement away from committees that mimic operations or staff structure.** The committee structure should mirror board priorities, not the organization's administration/management. It is fine to have operational/organizational committees that DO work directly with staff but they are not BOARD committees. Examples are program, facilities, and human resources.

**3. Boards have fewer standing committees and use more ad hoc committees** (limited-time task forces). Ad hoc committees are aligned with strategic initiatives or with specific actions such as the purchase of real estate. Some boards employ a zero-based committee structure - they start each year with no committees and establish only those that are needed in the coming year. Committees are disbanded once they meet their objective.

**4. Boards are establishing a governance committee to take the place of nominating committee.** Governance committees have a larger, year-round scope of work that includes board education, assessment, retreats, and other duties in addition to the customary work of nominating new members.

**5. There is increased use of an audit committee, separate from the finance committee.** Given the number of nonprofit scandals that involve money, boards cannot be too scrupulous. Audit committees need to be independent and can include non-board members.

**6. There is less use of executive committee due to its tendency to usurp board powers.** Executive committee should never meet regularly. Its role and authority should be closely limited in the bylaws and, when it meets, it should report its action promptly to the full board.

**7. Committees are being used to build productive relationships.** For example, when appropriate, non-board members can serve on board committees. Committee service is a way to groom future board members or keep retiring board members involved. Organizational work groups are being used to support staff work and don't report to the board. An example is a special events committee.

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## Question of the Month

**Q: Who owns a nonprofit?**

**A:** While boards of directors are accountable for the organization they serve, they do not "own" it. In fact, no one "owns" a nonprofit organization.

According to Judith L. Millesen, assistant professor of political science in the College of Arts and Sciences at Ohio University, "Nonprofit boards have both a legal responsibility to discharge a public benefit purpose and an ethical obligation to meet the expectations of those on whose behalf the organization exists. By law, nonprofit ownership is vested in the community, which has granted it certain exemptions and entrusted it with scarce resources to serve a particular social need."

Founders, donors, vendors, staff, board members are NOT owners. A nonprofit belongs to the public at large. The members of the board of directors are responsible and held accountable to govern the organization on behalf of the public.

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## Please remember:

You are invited to submit questions by emailing them to kdw@centerpointinstitute.com. And if you have a troubling governance issue and need someone to talk with, confidentially, at no charge, call 815-545-1300 or send an email.

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## Boardroom Bearings...

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