



Jessica Birken, MNM, Esq.
Birken Law Office PLLC
1400 Van Buren St. NE
Suite 200
Minneapolis, MN 55413
www.birkenlaw.com
Office: 612.200.3679

Case Of The Copied Nonprofit - Transcript

[Speaker 1]

Welcome to Charity Therapy, a podcast from Birken Law about building better nonprofits. I'm your host, Jess Birken.

All right, so I'm here today in the studio at Berkman Law Office with my intrepid wing woman Meghan Heitkamp.

[Speaker 3]

Hello.

[Speaker 1]

And my guy Friday, Dr. Horsepower, a.k.a. Jim Hall.

[Speaker 2]

Hello out there on radio land. Actually podcast land.

[Speaker 1]

Radio land sounds better. It totally does. So Jim, thanks for stopping by.

I pulled you into the studio again so you can be our nonprofit question and answer narrator today.

[Speaker 2]

I love it. It's fun to do.

[Speaker 1]

All right. So we've got, I think, four Q&As and we're just going to try and like do a little rapid fire. Let's do them and see what we can learn.

Yeah.

[Speaker 3]

These are harvested from the great halls of the Internet.

[Speaker 1]

Good old Reddit.

[Speaker 3]

I always find some great stuff on Reddit.

[Speaker 2]

Thanks Al Gore.

[Speaker 3]

The questions y'all have.

[Speaker 2]

All right. First one, interesting question. Do we need separate exemption for a new spinoff org organization?

Our nonprofit wants to form a new nonprofit tax exempt subsidiary. The new organization or org will do things that are related but different from our mission. The parent org provides housing, education, and supportive services to people in recovery from drug and alcohol addiction in an urban setting.

The new org will be a treatment center for inpatient and outpatient services with a holistic approach incorporating things like yoga, nutrition, and natural medicine in a rural setting using a different name. And we use the parent's status to fundraise for the new nonprofit.

[Speaker 1]

Okay. This is an interesting one because this is kind of like they're adding another program. I don't know why they feel like they need to start a new organization unless it's just to limit their liability and sometimes groups will want to limit the liability and kind of contain costs in one

organizational bucket, you know, kind of put like the corporate shield around their program so that the mothership is protected.

[Speaker 2]

Yeah.

[Speaker 1]

I don't necessarily get that vibe. The thing that's problematic to me is that they're saying it's related but different from their mission. So they would need to start a new nonprofit because you can't do stuff that's not related to your mission or you will be subject to unrelated business income tax, which is fine and you can do stuff that's unrelated and pay tax on it.

But if it gets to be too much, then you can jeopardize your tax exempt status because you have too much unrelated activity.

[Speaker 2]

Okay.

[Speaker 1]

But the facts here, I mean, they're still.

[Speaker 2]

Would it matter if we knew what the parent organization did?

[Speaker 1]

Well, it says that provide housing, education, and supportive services to people in recovery from drug and alcohol addiction in the city. So I guess that's where I'm like, this isn't that different just because you're in a rural setting versus an urban setting.

[Speaker 2]

Just a different location.

[Speaker 1]

It's inpatient and outpatient services with a holistic approach. But the mission sure seems related. So I almost wonder if they might be better off expanding their purpose to include more of the things that aren't expressly covered by their exempt purpose right now and keeping it all under one organization.

Because depending on the size here, you know, starting up a subsidiary or that's a lot of management and compliance and you need a separate board and.

[Speaker 2]

So just broaden the scope of what they're doing and keep it under the same.

[Speaker 1]

Yeah. I mean, unless there's some, I mean, we don't have a ton of facts here for me to go on, but I almost think if they're really expanding their programming, then they could just do it under the parent and then they could fundraise, but they would need to expand their purpose

statement potentially depending on what it says. So they can't use the parent's status right now and they could potentially act as the fiscal sponsor to a new organization.

But I'm just kind of stuck on whether they really need and want a new organization. They might.

[Speaker 2]

So this would be a good scenario where you can like talk to somebody like yourself.

[Speaker 1]

Oh, yeah. I mean, clearly the answer here is there's a lot of it depends and they should be seeking professional guidance and not posting this, you know, to an Internet forum. They should be paying for some advice that takes into account all of their circumstances for sure.

But there are reasons you would want a spinoff and reasons you would not want to spin something off. And so I think they should just get more guidance.

[Speaker 3]

Yeah. This sounds a little bit like some of our clients in the sense that sometimes we have really awesome clients who want to do things right and they kind of like work themselves into this really complicated plan. Yes.

That they're doing something wrong or improper and it's really great to be able to say that you don't have to do that. You don't have to work that hard. They overworked the help.

But yes, sometimes it's not as hard as you think it's going to be.

[Speaker 1]

Right. And if you just ask for the advice. Yeah, that's so true.

Like sometimes when we do that ourselves, right, like we make it like overly complicated thinking that it's gotta be harder than this. But if you just ask for some professional guidance, you might find that you're making it harder to start than it needs to be. I myself am definitely guilty of overthinking.

[Speaker 2]

I think a lot of people are a lot of people are like that in this quote modern age where you gotta everything just seems more involved. But it's also refreshing to come back and know that it isn't.

[Speaker 1]

Yeah, I'd much rather have somebody who's overthinking it than somebody who runs out in the middle of the road without looking either direction. So right. More power to him.

Yeah.

[Speaker 3]

Good job. Call your lawyer.

[Speaker 1]

All right. What do we got next?

[Speaker 2]

Next question. Is it illegal to break Robert's rules? During a recent public forum on our community theater group, two former board members accused the current board of violating Robert's rules of order in our protocols and of making decisions to benefit board members and their families financially.

They said this could jeopardize our 501c3 charity status and might constitute a crime, which yeah. We pay our small production staff an honorarium of no more than \$500 for the run of a play. Is there any validity to this charge and or should we be concerned?

[Speaker 1]

Okay. So first of all, Robert's rules are a way of conducting a meeting. So it's like a rule book for how it's almost like how government works.

You know, like I make a motion that's seconded. You know, I'm the person in charge.

[Speaker 2]

A protocol or.

[Speaker 1]

Yes, exactly. It's a meeting protocol and it's super complicated and hard to do. And a lot of times lawyers will want to put it in your bylaws that you will use Robert's rules.

And I always put it in the bylaws that you may use Robert's rules or any other reasonable method. Because what the hell? Like who knows how to use Robert's rules?

It's super convoluted. There's an entire manual you have to follow. And are you really going to use that every time you have a board meeting?

Give me a break. So, you know, and put it in there because people like the sound of it. But in the reality, like it's not.

[Speaker 2]

Pain in the rear.

[Speaker 1]

It's a pain in the rear. Also, it's not required by law. So there's no rule that law statute anywhere I've ever heard of that says you have to follow Robert's rules.

That's just not true. And I mean, there's probably a whole other story here about the former board members that are showing up being angry about decisions the current board is making. That's probably a whole other like human drama that we are not getting the details on.

But they said publicly, which I'm sure caused that was the talk of the town for the next week and a half. Right. Making decisions to benefit board members and their families financially, which I assume is this \$500 honorarium that they pay to the production staff.

It's not super clear in this question that that's what they were talking about, but we'll just assume that it is. And there's no way anybody is going to be. Having a private benefit, private annulment, IRS violation over \$500 honorarium.

[Speaker 3]

Agreed. Especially after, you know, I assume this means that that person is the one, you know, heading the staff and putting it all this huge show together, which is a ton of work.

[Speaker 1]

That's fine.

[Speaker 3]

Like I. Yeah, that's the way I read this.

[Speaker 1]

Yeah. I mean, 500 bucks doesn't even meet the threshold for filing a 1099 for these people. It's like not even reportable income to the IRS.

It's just it's a non-issue. This definitely just sounds like some people are mad. Yeah, I feel like there's busy bodies.

There's a people problem here. That is why they're not on the board anymore, potentially, or they were on the board forever. And now it's something else is happening and they don't like it.

And yeah, blah, blah, blah.

[Speaker 2]

So next we have. This one, I think, is another interesting scenario, which I really like.

[Speaker 3]

OK, hit us with it.

[Speaker 2]

Making a church is cheaper than a regular 501 C3. This is kind of a statement, but a question. So after a lot of research on the subject, I've become I've come to the conclusion that if you create a church, you can solicit for donations in every state without registering in each state.

It seems like a regular nonprofit needs to get permission for almost every state and pay fees in every state. It also seems that starting a church is easier than cheaper than getting help to set up a regular nonprofit. If you start a church, your mission can be your regular mission, plus that you believe in God.

So, you know. So my mission is to take this is great. My mission is to take care of old racehorses that used to belong to Jesus, right?

And the money we bring in will just go to that instead of to crosses and holy water. Am I right?

[Speaker 1]

Am I right? Cue the gift.

[Speaker 2]

Worship the horse.

[Speaker 1]

Oh my gosh. OK. Red flags.

This is hilarious because after a lot of research on the Internet, this person has come to a conclusion. Yeah, no, this is this is an interesting set of conclusions that they've come to.

[Speaker 2]

So, I mean, they're not wrong as far as looking at it in a completely literal state.

[Speaker 1]

Oh, yeah. I mean, there there's definitely some concrete reasoning happening here, which is the hallmark of five year olds. So most of the time in most states, if you're a religious organization, you don't need to register with the state's attorney general's office, whereas

other homeless shelter, whatever they need to register if they're going to do fundraising in the state.

And there's usually a filing fee and an annual report that goes along with that. So they're technically kind of right as far as the fundraising compliance is a little easier if you are a church. But it is not necessarily easier and cheaper than getting help like this person would never be a client here ever.

So, I mean, the thing is, churches don't file IRS Form 990s. They don't have to. And they don't have to go through the whole determination letter application process.

But you should so that your donors have a piece of paper that they can refer to and it gives you a lot of credibility and you can claim your GuideStar profile and blah, blah, blah. So on the one hand, there is a certain element of it is a little cheaper and easier if that's your focus. If your focus is on running the cheapest, easiest, scammiest nonprofit ever, you're good.

But you're not going to be a nonprofit that's trying to do it right or get stronger, which is my fundamental problem with this. But the part where this really blows up for me is your mission can be your regular mission, plus you believe in God.

[Speaker 2]

Yeah.

[Speaker 1]

That's not that's not the standard. The standard for churches is that you have a sincerely held religious belief and you hold regular worship services like you.

[Speaker 2]

Okay.

[Speaker 1]

The standard is that you are a church. Sure. Not that you want to save the racehorses and buy a little holy water on the side or what?

I don't know what they think they're going to do.

[Speaker 2]

Basically, you need to conduct yourself in a way where if a government entity that monitors you, if they agree with what you're doing, that's fine.

[Speaker 1]

Yeah, you can't just say, well, we're a church.

[Speaker 2]

Yeah.

[Speaker 1]

You have to be able to document through brochures and schedules and.

[Speaker 2]

Sure.

[Speaker 1]

The evidence of your sincerely held religious beliefs.

[Speaker 2]

Yeah.

[Speaker 1]

So that's where this really falls apart. The idea to take care of old racehorses is important, and that is something that needs to be done. But I just feel like this person is not going to get very far.

[Speaker 3]

No, if you're immediately looking to scam the system and you're willing to make it a religious organization in order to do it, even though your mission is clearly not religious, you've got some strange motivations, and you might have some trouble getting people.

[Speaker 1]

Well, right, because that's the thing, right? We were just talking about this earlier, Meghan, how people start out and they do the thing and then they realize how hard it is. And the part where it gets hard is where you have incorporated as church of the old racehorse.

And then you have to go out and ask people for money and they're looking at you like, what?

[Speaker 2]

Yeah.

[Speaker 1]

I make the checkout to who?

[Speaker 2]

And some people might. Oh, yeah, that sounds pretty good. Yeah.

OK, and they'll give them money. But there's going to be more people in this instance that are like, what are you doing? And then somebody is going to find out about it.

Then you're shut down. And you just, I mean, you completely wasted all of your.

[Speaker 1]

Yeah. Yeah. Yeah.

It's not ideal. Do it right or don't do it at all.

[Speaker 2]

Correct.

[Speaker 1]

OK.

[Speaker 2]

Next. This is another good scenario, especially with the interwebs we have these days where things are easy to find and potentially copy. Somebody is concerned.

Somebody copied my nonprofit. I own a nonprofit organization, and I am doing many things with it. I was on Instagram and found another nonprofit in the same state and their Instagram has the same word admission statement.

They have a different name, but they copied my idea. It says it's a 501 C three, but I kind of doubt it. I started mine before they did, and I'm not sure what to do.

Please give me some advice.

[Speaker 1]

I want to hear from Meghan on this one.

[Speaker 3]

I mean, I have a lot of problems with this one being that if you wrote this, you have to be 16 years old. And what are you doing? I'm a nonprofit.

[Speaker 1]

Come on, Meghan, they are doing many things with it. Many things. I own a nonprofit organization, and I am doing many things.

[Speaker 3]

Yeah, right. Problems, problems all across the board. But I guess the biggest problem is just that, like, if you firmly believe in your mission and you're trying to make a problem better, I think it would be best case scenario to find that there's another organization that thinks this is a major problem and is trying to fix it.

And I would hope the reaction would be, oh, great. How can we work with them?

[Speaker 2]

How can we let's get ahold of them?

[Speaker 3]

Exactly. Versus this weird territorial, like, no, this is my social problem. How exactly do you come towards my problem?

[Speaker 1]

Yeah. So, OK, let's just put all nonprofit stuff aside. Right.

Well, no, first the nonprofit stuff. All right. If this need is so important and this comes up with founders all the time and I tend to see it more with churches where it's like we have this model for ministry and we want to do it this way.

And then they don't want other churches to copy their ministry model. It's like, well, if you're really going to help the homeless people and this is what you want to do and this is a need, then just do your thing. And don't worry if other groups are doing the same thing, because guess what?

You probably can't serve every single person out there anyway.

[Speaker 2]

Right.

[Speaker 1]

So it should just be like, yes, more people doing the good thing. Right. So that's the nonprofit angle.

Put that aside and just go with purely entrepreneur business angle. Right. The worst business idea you can come up with is something that nobody cares or wants or recognizes.

That's called the labor of love. And it's actually market validation to see that there are other companies doing the same thing in the world and that there are, quote, customers for this business. So it's actually market validation.

And so don't think that you just get 100 percent of the market share because you're out there and you have this mission.

[Speaker 2]

You're going to have Instagram.

[Speaker 1]

You're going to have to compete.

[Speaker 2]

Yeah, right.

[Speaker 1]

Just because you're on Instagram. You're going to have to compete with everybody. And frankly, you're not even competing with all of the other organizations that do the same thing with you.

You're competing with everything. Every donor has 100 different places they could put their money.

[Speaker 2]

Yep.

[Speaker 1]

Every person who wants to work at a nonprofit has 100 different places they could apply. So all you can ever do is be the best organization that you can be and grow and be strong and the best at what you do and hope that people copy you. You should hope that you become the model that everybody wants to copy.

[Speaker 2]

Yep.

[Speaker 1]

So I just think this person's worrying about the wrong... They're worrying about the wrong stuff.

[Speaker 3]

Absolutely.

[Speaker 1]

Get out there and make something that's worth copying. That's what I got to say.

[Speaker 3]

Mic drop on that.

[Speaker 1]

Where's the mic drop sound effect?

Well, that was super fun. And I think Meghan's got a hot date, so we got to end.

[Speaker 2]

Sweet.

[Speaker 1]

All right, folks, that's our show. Be sure to follow me on Instagram or Twitter at Jess Birken.

We want to hear from you. Send us a message at our website, [Charitytherapy.show](https://charitytherapy.show). And don't forget to subscribe to our newsletter at BirkenLaw.com/signup. Charity Therapy is a production of Birken Law Office, PLLC.

Our theme song is by Whalehawk. And remember, folks, this podcast is produced for your entertainment and is not a substitute for actual legal advice.

About the Author



Hi, I'm Jess Birken.

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

Let's connect!

jess@birkenlaw.com | [612.200.3679](tel:612.200.3679) | [@JessBirken](https://www.linkedin.com/in/jessbirken)
www.linkedin.com/in/jessbirken
www.facebook.com/birkenlaw