



Jessica Birken, MNM, Esq.  
Birken Law Office PLLC  
1400 Van Buren St. NE  
Suite 200  
Minneapolis, MN 55413  
[www.BirkenLaw.com](http://www.BirkenLaw.com)  
Office: 612.200.3679

## Ghouls and Goblins Unite - Transcript

[Speaker 1]

Are you haunted by unfinished business at your non-profit? Spooked about witchy board members? Afraid of skeletons in your non-profit closet?

Don't worry my little ghouls and goblins, you're safe with us at Charity Therapy. Running non-profits should be a treat, not a trick. Welcome to Charity Therapy, a podcast about building better non-profits.

I'm your host, Jess Birken. So today my guest is the intrepid Jordan Couch. Jordan happens to be a lawyer and my friend.

But Jordan, I think you also have some non-profit experience as well, right?

[Speaker 2]

Yeah, not these days. I'm currently a lawyer doing personal injury and workers' compensation out in Tacoma. But when I was in law school, I helped run a pro bono legal clinic that worked with victims of domestic violence, sexual assault, and stalking.

So, a little bit of work there.

[Speaker 1]

Right on. I also saw on your website that you worked at NASA and I thought that was deeply cool and nerdy.

[Speaker 2]

Yeah, it was the weirdest thing I ever got to do, some fun legal work for NASA. It was interesting.

[Speaker 1]

I can only imagine. Well, so what's interesting about doing this today other than it's our Halloween episode is that I think it would be cool to do some listener Q&A with you just because the both of us are lawyers. And so why not?

So would you be up for that?

[Speaker 2]

I think that is a phenomenal idea.

[Speaker 1]

Okay, right on. I'm going to let you go ahead and deal with question number one and we shall be off to the races.

[Speaker 2]

Listener question number one. Our nonprofit works closely with the local Goblin Elementary School. The principal asked our group if we would be able to purchase a van or hearse for the school, own it for the school, carry the insurance on it, but let them use it to transport little goblins and ghouls as needed.

My board is worried about whether we should do this. You know, you have to be really careful when kids are involved too because the last thing you want is to do something messed up and have kids go crying home to mommy.

[Speaker 1]

All right. Well, you know, don't let it get too complicated because you don't want to end up with a Franken-van.

[Speaker 2]

This is a pretty complicated situation. They've kind of developed into this, unfortunately.

[Speaker 1]

It is. This is a real question, even though we've made it absolutely Halloween-puntastic. What's your reaction to this, Jordan?

I've got a reaction. I'm curious to hear what your thoughts would be for this person, this nonprofit.

[Speaker 2]

I firmly believe when lawyers work with businesses, the job is to say, yes, but the way you do it is you say sometimes, yes, and this is what I need for you to do this. This is one of those where

it doesn't sound like it's the ideal situation. I think there's a way you can do this, but you're taking on a lot of risk and there's going to be a lot of work you have to do to make sure you're protected doing something like this.

[Speaker 1]

Yeah, that's absolutely where I'm at too. I'm like, okay, we're going to need to get all of this in writing and some kind of disclaimers. The other thing that jumps to my mind is I would really want this nonprofit to actually talk to somebody at the district level because it says that the principal asked them from the local school, but in my experience working with school districts, they have in-house attorneys that work with them and they represent the entire district, not just a particular school.

I have a hard time imagining that the school district would actually be okay with this or even let this move forward. So I would want them to go check it out with the district.

[Speaker 2]

And I'll tell you my biggest concern on this coming from the personal injury side is the insurance on this, right? If they're carrying the insurance and someone else is using it, you might run into some serious issues of whether or not the insurance applies. And the last thing you want to have is this bus would get into an accident and now your insurance is fighting with the school's insurance while someone else is trying to sue both you and the school's insurance.

And that can create a big mess for you and you might be covered. You might be okay. You might have insurance.

But as one of my law professors liked to say, that doesn't mean they're not going to get into court. And who wins when you go to court? No one.

[Speaker 1]

Right? True that. Yeah.

And the other thing is it sounded to me like the school would be doing everything. So I'm sort of like, why would the nonprofit want to take on this risk anyway?

[Speaker 2]

And that is kind of a question, you know, that comes up with a lot of these things that get a little confusing like this is, you know, why doesn't the school just ask you to donate a van?

[Speaker 1]

Right.

[Speaker 2]

You know, that's something you can do. Is it the cost? Can you donate a van and also donate a little extra money to the school to help them pay for insurance?

Where's this? Why the shifting risk?

[Speaker 1]

Well, and I do know from some of the groups that I've worked with that busing and transportation is actually one of the most expensive things. So like I worked with a group that supports a national U.S. Fish and Wildlife Refuge. And they actually had a fund that would pay for the busing to bring the kids to the refuge because the schools just simply couldn't afford to like have that extra busing cost to participate in that programming.

So I think that's probably where the school is coming from with this. But I like your idea. Just raise money for the van and donate it if you could.

[Speaker 2]

Or even, you know, for the van and some insurance to go forward or to cover costs of it. But it sounds like, you know, from this that the school has drivers for it. You know, they have.

So I'm wondering, does the school have an existing system as well that this van would be getting incorporated into? Because if the school has, you know, has buses or has vans already that they're carrying insurance on that they're having in their system and this van is just being an add into that system. I don't know.

You know, you might get a little even more convoluted that way.

[Speaker 1]

Yeah. Ultimately, though, I think the board is right to be worried about whether they should go into this. And I would probably say they should do some more due diligence before making any kind of decision.

[Speaker 2]

I agree.

[Speaker 1]

For sure.

[Speaker 2]

And talking to the district is a really good idea.

[Speaker 1]

Yeah. All right. So what else do we have?

[Speaker 2]

All right. Listener question number two. Two, two, two.

A few years ago, I started a nonprofit, but then life got chaotic for me taking care of my mom. I haven't raised any money and I was not able to get the work of the nonprofit going. The board members are basically ghosts and we haven't met for over a year.

I just got a notice from the IRS that our tax exemption was revoked. I'm probably behind on my corporate registration, too. I kind of want to quit, but I'd also like to be able to bring it back to life.

At some point, if my life settles down, what should I do? You know, it sounds to me like they've got a little bit of unfinished business there.

[Speaker 1]

Yeah, it sounds like this nonprofit is haunting her. It's going to be a skeleton in her closet.

[Speaker 2]

But thankfully, at Halloween, bringing things back to life is our specialty.

[Speaker 1]

One thing that jumps out at me right away about this question is the fact that it's I, I didn't do this. I haven't raised money. I'm behind.

There's no we referenced in here at all, which is kind of telegraphs to me that this person probably had a board that was not. A lot of times what in my experience with working with founders, the founders like the one who is passionate about this, and sometimes they will just be like, hey, you're my brother and hey, you're my friend. Will you be on my board so I can get this thing done?

Because I legally have to have at least three people on this board. And that seems like a good idea sometimes. But what happens is these board members end up turning into ghosts.

They're apparitions and poltergeists when it comes to actually doing the work. And so if our founders life got chaotic, taking care of her sick parent, sounds to me like this board wasn't really on board with their mission, because it sounds like she was doing everything by herself.

[Speaker 2]

One good thing that does seem to be going for this, though, is it does sound like she's doing everything by herself. There aren't other employees that have to be worried about and something like that. It sounds like it's kind of she's doing it.

I think, yeah, there's some opportunity there. I think one of the bigger questions is what needs to be done to properly close it if they want to close it to make sure that it is able to come back



to life if they want to later on. Or is it something that can be run in the background a little while?

If you're not raising money all the time, you can have something kind of static and sit a little bit.

[Speaker 1]

Yeah, so there's a couple of things with that here. One is it is possible to have sort of a zombie nonprofit, at least in the state where I'm sitting. The secretary of state's office that does the corporate registrations will involuntarily dissolve you if you fail to register.

And that's really not a proper dissolution. There's a statutory process, at least in my state, for dissolving a nonprofit or for-profit corporation. And you would have to follow that process to be properly dissolved.

But effectively, you could just let it go and be sort of in this weird nonprofit purgatory and then resuscitate it. Get your Franken-nonprofit zapped back to life at some future date by simply re-registering or renewing the registration. The bigger problem, I think, is the IRS revoking their tax status.

[Speaker 2]

Yeah, and there's no indication of what might have caused that as well.

[Speaker 1]

Well, I think it was probably for non-filing. Because they say it was a few years and the IRS, by default, will revoke your tax-exempt status after three years if you don't file. So you could be around for 15 years and you forget to file your 990s three years in a row and the IRS will revoke you.

But again, you can bring this back to life, right? You can do a voodoo witch-doctor-zombie dance and apply for reinstatement from the IRS. It's just a big pain in the butt.

[Speaker 2]

My question, looking at that too, would be if you do just kind of let it go to death, let it go silent, I guess, into its coffin, is it going to be a bigger hassle bringing it back to life? Or is there a way you can kind of close it up a little simpler right now to allow it to come back to life? Wrap it up, embalm it, get it all prepared for death first.

[Speaker 1]

I love it. The bummer about this is the IRS revocation. They will have to go through the application process again.

So there's really no way around that. What they could have done, which would have been better, is considering that they want to keep the nonprofit sort of in this cryogenic cold storage or whatever. They could have just filed a 990 postcard, which is like a two-minute process online.

As long as you brought in less than \$50,000 in revenue every year, you can file that postcard and just sort of limped it along for a while. I mean, they can bring it back, but there's no way to get around redoing your application.

[Speaker 2]

So whether they wrap it up now or they do it later on, they're going to have to redo the application. There's no benefit, necessarily, in doing it now.

[Speaker 1]

Well, technically, if you did it right now, you could slide in with a retroactive reinstatement if you filed your reapplication within 15 months of the date of revocation. Oh, that's some jargon right there. I was about to say.

Yeah, you could, but this person doesn't sound like they want to spend time and money doing that. So you could, but it would cost money or it would take time.

[Speaker 2]

Yeah, and this person doesn't seem like they're at a point in their life where they really have the time to do that sort of thing.

[Speaker 1]

Yeah, I feel like new nonprofits are a lot like restaurants. You know, 9 out of 10 fail in the first year or two, and this sounds kind of like one of those, unfortunately.

[Speaker 2]

But it's good that you have the spirit to kind of, you know, bring this back if you want to and hold on to that.

[Speaker 1]

Yeah, for sure. Don't let your passion for the mission die. Even if this organization isn't the vehicle that you're going to do your important work through, you may end up volunteering somewhere that's got a similar mission.

[Speaker 2]

And in the future, you might find some more passionate board members. You know, if you care this much about it, there will be other people that care that much about it.

[Speaker 1]

Well, that's a great point, because if you really can't get... This is what I tell my founder clients that are struggling to find a board. If you can't get three people to be passionate about your mission, you have bigger problems.

[Speaker 2]

Don't go into the haunted house alone. Get your friends with you.

[Speaker 1]

That's right. Oh, so what else should we talk about, Jordan?

[Speaker 2]

So I had a question I wanted to talk about. It's been a while since I was in this situation. But I and a few other classmates, like I said, ran a legal aid clinic in law school to help victims of vampire bites.

That's what I said. And because it was a law student driven organization, there was in some ways a complete turnover of all leadership and volunteers every three years, because you had law students going through it. And there was one professor who supervised a lot of stuff.

But things changed pretty quickly. And work could carry on beyond that three years, let alone beyond one year when leadership might turn over a little bit. So coming into leadership in that was a little scary, to say the least.

I had no idea what skeletons were in the closet or what I was dealing with sometimes in some of these cases. And you're coming into this and saying, OK, now you're in charge. And it's like, well, am I in charge of other people's mistakes?

So one question I had really for you was, how would you recommend that a new leader in a longstanding nonprofit protect themselves and really come into something, you know?

[Speaker 1]

That's a great question.

[Speaker 2]

You don't want to end up in a 501c werewolf where everything seems fine until the full moon comes out.

[Speaker 1]

Yeah. I mean, this is kind of an interesting one, because student groups are sort of a different beast than sort of your garden variety nonprofit, just because you do have such high turnover. I know I've worked with some student groups, and it's like two years, one year later, you have an entirely new board.

And the new leader coming in is in a little bit of a tight spot there, because unless the organization already has a really great process around exit interviews or succession planning, you might just be coming in and sort of having no clue what's been going on. So to some

degree, no matter how great you are, you're kind of at the mercy of how haunted their house is, right?

[Speaker 2]

What do you think are the most important things to kind of check in and look in, say, like, you know, within six months of taking over in leadership, what are the things you should audit yourself and kind of take a look at?

[Speaker 1]

Well, for sure, I would want to look at the governance and just see what are our organizing documents, right? How do our bylaws work? How do our articles work?

Have those things been updated in the last 10, 15 years? Are we actually running our organization according to our bylaws? Those would be some, like, base level 101.

I would also probably want to talk to, so if you're coming in as, like, the new board chair or president or whatever of the student association, I would probably want to try and find time to have coffee or a phone call with some of the outgoing folks, if they're willing to give you some time, just to get a sense for, you know, where were we at with things? Another great way to do that, if you're not able to connect with those folks individually, is to actually review, like, the last year of meeting minutes, assuming that there are meeting minutes and that they're kept in a way that a person could actually read. A lot of times that is not the case, so that's why my go-to is, like, let's talk to people first.

But I think taking a look at the meeting minutes, and all of these are not only opportunities for you to educate yourself about the organization and what's been happening with it, but also to, like, identify areas where we might need some improvement so that the next round of leadership coming in has a better situation than you do. And then I think, like, if the organization has any kind of staff, like support staff or long-term volunteers, those people are

probably your greatest resource. Like, anywhere there's been a point of continuity that you can at least talk to them and figure out, you know, organizational history is a really good thing.

[Speaker 2]

I think that's good. One of the gifts I had that was the leadership team right before me put in place was they wrote out, you know, nice spell books of all the things that happened and all of your job duties and all of that. So you get to kind of look down that, memorize the incantations, and you could follow that framework because they had a perfect little book for it already set up for you.

And actually part of what we did was update it every year.

[Speaker 1]

Yeah, which is great. Sounds like it was a top shop. That's really awesome.

[Speaker 2]

I say every year. I did it my year. I'm hoping the person I brought in place underneath me did it as well.

She's a friend. She better have.

[Speaker 1]

Well, that's awesome. I think that's good advice for, you know, it's like going on a nature hike, right? You want to leave the place better than when you found it, and I think that's true with any of our temporary positions in non-profit leadership is, you know, try and fit better than you found it.

[Speaker 2]

So you're suggesting I don't TP the forests? No egging houses?

[Speaker 1]

The haunted spirits of the forest would not be happy with you for that, Jordan.

[Speaker 2]

All right, no egging from me then.

[Speaker 1]

Well, Jordan, what do you have going on for volunteer work in your life right now?

[Speaker 2]

You know, a lot of Bar Association activity. That's my biggest stuff. I get to do a little pro bono work, but these days I do as much as I can giving back to the legal profession.

So working with state bars, local bars, now the National Bar, it's a lot of fun. So it's good organization to be a part of, but talking about, you know, how much you rely on the staff. Oh my gosh, when I work with Bar Associations where you have lawyer leadership turnover all the time, I rely on the staff on a daily basis with that stuff because we come in as volunteers for a year term and they're like, you have no idea what's going on.



Let me just take care of you. Thankfully, those are big organizations where the staff has been there a long time.

[Speaker 1]

Yep, staff are indispensable.

[Speaker 2]

And full of lawyers, so you don't have to worry about compliance as much.

[Speaker 1]

Exactly. Yeah, they've got their part covered at that organization, don't they?

[Speaker 2]

It's a high driver. The more lawyer you look at, another one comes up. They're all over the place.

[Speaker 1]

I think that's probably a wrap for us today, Jordan. Any parting thoughts you want to leave us with?

[Speaker 2]

No, thank you so much for having me. All I have to say is, don't go up to old man Dickerson's house.

[Speaker 1]

Because it's haunted. Cue the Scooby-Doo reveal scene where they pull off the mask.

[Speaker 2]

That was terrible. That's my best Scooby-Doo, apparently.

[Speaker 1]

Raggy! All right, Jordan. Well, thanks for being here and I hope your haunted mystery machine adventures at the Bar Association are successful and we will see you on the flip side.

[Speaker 2]

Thanks for having me.

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