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## Mystery Of The Zombie Nonprofit - Transcript

[Speaker 1]

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

[Speaker 2]

Hey, Jess. How's it going?

[Speaker 1]

It's going good. I'm really excited because we have Jason Viana here with us. Hi, Jason.

[Speaker 3]

Hi, Meghan and Jess. How's it going?

[Speaker 1]

It's going good. So, Jason, you and I went to grad school together and tell our listeners who you are.

[Speaker 3]

That's a very existential question, Jess. But from a professional sense, I'm the executive director of an organization in Dakota County called The Open Door, where we provide fresh and healthy food to people. So, I lead an organization.

Jess decided to go help people figure out how to lead all the organizations. So, I'm a little more focused in my work.

[Speaker 1]

I like the dig in there. That's awesome.

[Speaker 3]

There's no dig, there's no dig.

[Speaker 1]

Grad school friends are the best.

[Speaker 2]

Should we just get started?

[Speaker 1]

Yeah, go for it.

[Speaker 2]

So, the first question we have is about nonprofit liability. So the person says, I recently started a new nonprofit to help distribute food to people experiencing hunger in my town.

I don't have my 501c3 status yet, but I'm ready to start distributions. I am worried about one thing, though. Can the organization get sued if someone gets sick from the food that I provide?

How can you prevent that?

[Speaker 1]

Well, Jason, this seems like an ideal question for you to take a stab at.

[Speaker 3]

It does. And I'm going to kick it back to you at some point, because in general, first of all, good job starting a nonprofit to give out food. I'm a big fan of that. It's what I do. I'm certainly hoping that this person checked to make sure there were other places and they're working with them. But separate question.

Are you safe handing out food? The answer is yes, because there was a federal act. I think it was the Bill Emerson Good Samaritan Act, if I'm correct.

And it basically says if you donate food to a nonprofit organization, it's done in good faith and it protects you from any liability. Now I did last time I read it, I think it says to a nonprofit organization, so I'm not sure the fact that you're not incorporated, but I would imagine you should be pretty, pretty safe. What do you think about that, Jess?

[Speaker 1]

Yeah. So, this question is a little bit funky because they say they started a new nonprofit, but I don't have my C3 status yet. So, I wouldn't say that they aren't incorporated.

Hopefully they are incorporated, and they just don't have tax exemption at this point. So, there's really no reason that they couldn't start distributions just because they don't have a tax-exempt status yet. I mean, if they're not incorporated, they would be an all-volunteer association and have more exposure to personal liability.

But like here in Minnesota, once you start a nonprofit corporation, regardless of whether you have your tax exemption or not yet, there is limited liability for the volunteers working at the organization. So, to some extent, state law protects every nonprofit from liability for sort of doing their good deeds. And that extends to directors and officers who would probably be the people getting sued if someone got sick from the food that they provided.

Now that said, I don't think you should just be like, whatevs, like I'm just going to give out the foods. And like, if you get sick, that's on you.

[Speaker 3]

Yeah. Well, and just to jump in there, Jess, I mean, that's for sure. I mean, handing out food, food comes in lots of forms and there are food safety rules for a reason.

So, I believe my understanding is you're protected, but there is, I hate to use legal terms, but gross negligence. I mean, if you've got milk sitting outside all day and give it to somebody and they get sick, you can be held liable for that. So, there's a food safety common sense element.

But the spirit of the law, as I understood it, was to ease concerns mainly for people donating the food that they wouldn't get in trouble. But I think as long as you're taking reasonable steps, again, that's why I'm hoping they're taking other steps besides just good intentions.

[Speaker 1]

Well, then what, you know, running a nonprofit that feeds people, I wonder if you have, do you have like state health department compliance that you need to do, Jason?

[Speaker 3]

That's a really interesting question, Jess. And we are not regulated by the health department. We are regulated by the Department of Agriculture.

[Speaker 1]

Oh, interesting. I did not know that.

[Speaker 3]

Well, if you ever notice every year when they have the arguments about the farm bill and suddenly somehow.

[Speaker 1]

Yeah, I know that food stamps go through the farm bill, so that makes sense, actually.

[Speaker 3]

Yeah. So, it all gets weaved together. So, we are overseen by the Department of Agriculture, and we have a set of standards and rules that we must adhere to.

But I don't know that the Department of Agriculture inspects or checks in as frequently as the health department. But we do have rules and regulations we are to require, to follow.

[Speaker 1]

Hmm. Okay. So that's interesting.

I think that this person probably needs to just be a good distributor of foods, don't you? I think this is one of those things you don't, you're like worrying about the wrong thing.

[Speaker 3]

Yes, you're exactly worrying about the wrong thing. Take five minutes, Google your local health department. They have a safety, probably an online food safety course that you can take.

Take it, understand the rules, you'll be just fine.

[Speaker 1]

Right on. Great. All right.

[Speaker 2]

So, moving on to question number two, here we go.

There is a local nonprofit that has been lying dormant for the past 10 years. All the board members have died, and no one has stepped up to get it operating again. I went to the Secretary of State's office and filled out some paperwork to become its registered agent.

I checked the bylaws and there's nothing written that prevents me from becoming the registered agent. On this basis, am I legally the nonprofit's registered agent since no one owns the nonprofit anymore?

[Speaker 1]

Okay. I, there are so many things, so many questions. Okay. So, first of all, I like how this person writes about it as if it's just like this random nonprofit.

There is a local nonprofit that's been lying dormant for the past 10 years. What? How?

Okay. So, first of all, the nonprofit probably has been involuntarily dissolved by the state's secretary, you know, Secretary of State or the state registrar or the entity for corporations in their state. All the board members have died.

I just, I have like so many questions. Like it's there, like the, the sitcom creator TV writer in my mind is like, how did that happen?

[Speaker 3]

What sort of like, it's like they went into a murder scene and the only thing they got concerned about was who left this pencil here? It's like, there's so many other questions that you have about what happened to this organization.

[Speaker 1]

All the board members have died. Was it a murder suicide or like how bad did that last board meeting get? You know, now I'm just teasing.

I'm sure the people were just elderly, but like if your board members start dropping off and you know, passing away, how are they not replacing anyone? It's just a bizarre situation.

[Speaker 3]

And if you stumbled upon this, the thing that you really keyed in on was, you know what, I want to be the registered agent. Like that's, that's really where I want to put my time and effort. I'm going to go all the way to the secretary of state to be the registered agent like that's, and I'm good.

[Speaker 1]

Okay. And then where they say, I've checked the bylaws and there's nothing written that prevents me from becoming the registered agent. Well, how does this person have the bylaws?

Like what? There's so much more to the story here. I'm like, who are you?



How do you know about this nonprofit to the extent that you actually have a copy of their bylaws? And bylaws are usually, that's not a public document. It's an internal document.

So where did you get them?

[Speaker 3]

I recently joined the PTO at my kid's school, and they don't even have a copy of the bylaws. So, I feel like this could be the beginning of the first ever Netflix series on a nonprofit organization just to figure out all of the details around what happened over the last 10 years.

[Speaker 1]

Yeah. So, you know, and just, I don't know what it's like in every state, but in most states, it takes about three clicks of your mouse to reincorporate, you know, restore the corporate status of a nonprofit that's been involuntarily dissolved. So basically, my read on this is this person went to the website, clicked renew, you know, reanimated the zombie nonprofit and put themselves down as the registered agent.

Okay. So, on this basis, they say they are legally the nonprofit's registered agent since no one owns the nonprofit. Well, yeah, you're the registered agent, but so what?

Well, like the registered agent's purpose is to receive legal notices. Well, that was like, if you get sued, the legal notice can go to the registered agent for the corporation. Like literally anybody could just be the registered agent.

Sometimes attorneys do it. There are services that do it. This doesn't give them any special status.

They don't get to vote on the board. I don't understand the end game here. They're going to get official mail for the nonprofit.

[Speaker 3]

That was kind of my question, Jess, is if you successfully become the registered agent, what did you win? I mean, because you're right. You can't be on the board.

You just get mail.

[Speaker 1]

Right. You're going to get the mail. You're going to get the junk mail that comes from the bulk mailing lists that the Secretary of State sells.

I don't know what their end game is here. They're not saying like, I want to be on the board. I want to revitalize this nonprofit.

But congratulations, you are now the registered agent. It's such a like, I want to find this person and interview them and find out what was going on here.

[Speaker 2]

You know what, Jess, as a listener of this podcast, I would donate funds to support you traveling. If you found him, just so I could hear the interview.

[Speaker 1]

We need to hire a PI and get more information. Right. Oh, I feel like the follow up next two paragraphs of this question would be revealing some sort of weird plot line where they are going to use this nonprofit as a tax loophole for their personal gain.

This feels it feels shady.

[Speaker 3]

This is the guy in your neighborhood that knows when the mail person is late and keeps them on a clock. And this has become his quest. It's got nothing to do with public service.

This is about order and making sure that things get done on time. This is. Yeah.

Anyway.

[Speaker 1]

There's nothing in the bylaws that prevents me from becoming the registered agent. Well, good for you, buddy. Enjoy your junk mail.

[Speaker 3]

Because we don't know how many times he was passed over. He probably tried to be the registered agent, and this is his chance.

[Speaker 1]

Oh, yeah. There could have been some whole backstory where this was their M.O. that they wanted this status. But first they had to murder all the board members.

[Speaker 2]

Then wait 10 years or whatever.

[Speaker 1]

Yeah. To let the hubbub die down.

[Speaker 2]

Make sure there's no suspicion.

[Speaker 3]

All right. You should probably go to the next question. I can go really weird places on this.

[Speaker 2]

Yes. Moving on from that weird place. All right.

So, I have one last question here, and this one's a little bit meatier. So, here's the situation. I am a founder and executive director of a nonprofit that has grown tremendously in the past few years.

When we first started five years ago, I never expected it to get so big so quickly, and we weren't prepared. Currently, we're short-staffed, and I'm doing several jobs at once. With all the moving parts and staff to manage, I'm now teetering on the edge of a massive burnout.

The stress of everything is beginning to cause my mental health to deteriorate, and I've started having panic attacks. I don't want to leave, because I love this organization and its mission, but I'm not sure what else I can do to preserve my health.

[Speaker 3]

Yeah. That's a heavy one. You want to go first, Jess?

[Speaker 1]

No. I'm going to let the executive director go first.

[Speaker 3]

Yeah. Well, I'm processing my thoughts on that, because there's a lot in that. I have a big job, and my organization has grown tremendously in the four years since I've been here.

But ultimately, I believe self-care is so much your responsibility, and it's regardless of the stress level and the busyness. Self-care is something you have to make a part of. The work will never all get done.

I could work all day, every day, for the rest of the year, and there would still be more work to do. And so, part of it is, I mean, that's on you to figure out. Now, there's a lot of questions around the growth of your organization, and my really big question is, where is your board in this?

Because if you're having that much growth, you need your board and your staff to help you figure out where those growing pains are and how to address them. If you're growing, that's a good sign, as long as you're meeting the need of your mission. If you're carrying out your mission, if you're growing, hopefully that means support.

So, maybe it's an HR consultation. There are solutions to spreading out the work of your organization, whether it's through volunteers, whether it's through staffing. I've seen, and I'm sure you've seen this as well, Jess, there is a, I don't know if it's a culture or kind of a badge of honor sometimes in our sector about burning yourself out.

And I just, I don't think it has to be that way. And again, that's, I don't know their situation, but every time I hear that, I always want to start with the person and figure out what they could do to take care of themselves. And then I look at the board for the structure.

[Speaker 1]

Yeah. No, I think you're dead on there. The first couple of things that come up for me are this person needs to work on better boundaries.

They probably could benefit from seeing a therapist. And I don't mean that in a derogatory way, like, hey, I've been going to therapy for five years. You have to learn to figure out how to manage these things for yourself, because you are in control of you and the world will always be crazy and there will always be a bottomless pit of work to do.

And we talk about this here at the law firm all the time, right? It's like the to-do list is never ending. The client's needs are bottomless.

And sometimes you just have to turn it off. You have to enforce not checking your email at nights and weekends, things like that. And you're absolutely right.

That starts with the person. The second place I go is, why are you not staffing appropriately to match your growth? What's the problem there?

And I never expected to get so big so quickly. So, one of the things that I know can happen is we take big grant money. And to grow super quickly, either you have the ridiculous disaster funding that all of a sudden pours in in a very short period because people are jazzed about your mission all of a sudden.

That's one kind of growing quickly. But another way you can grow really quickly is by successfully taking foundation or government grant money. What I have seen several times, especially when I was in-house, is that program staff will write grants that do not actually cover the organizational cost of expanding in that way.

So, you take all this grant money in that doesn't cover the cost to staff up appropriately to deliver on things or to manage the back office or whatever it is. And now you actually don't have the unrestricted dollars to fund the staff that you need. So that could be a problem too.

But again, that's on you. Program staff don't like to hear that they need to raise money to support the organization. So, you either need to build in an indirect rate or raise that money separately in order to expand the programming.

Because you cannot run the nonprofit without the staff to do the work. And that includes back-office staff as well as frontline staff.

[Speaker 3]

And this sounds like a very different scenario than we've lost a funder and we've lost staff and I'm desperately trying to keep this thing afloat. And that also is a place where you need to have discussions about boundaries and help. But if you're growing that fast, you know, the other part is and I'm thinking just about our current, you know, in the middle of this COVID response, sometimes you just have to say no.

And that's a hard thing to do. One of the things when I started with our organization, we had a saying that my staff now give to me, every time you say yes to say something, you're saying no to something else.

[Speaker 1]

Yes.

[Speaker 3]

And every time you say yes to a funder, like we've had funders during this coronavirus response, come to us and say, we want to give you X amount of money to spend in the next four months. And I've had to go back to them and say, thank you so much for thinking of us. I've received so much money that I can't spend it all in the next four months.

Now, if you're willing to sit down and have a conversation about how we view this response as a 12-to-24-month response, because we know that's going to be the economic impact, I would love to talk about how you can make an impact with our organization. But if not, I'm going to encourage you to go somewhere else. And so, if you're growing because people are throwing money at you, sometimes you have to say no to the money if it doesn't come in the right way, with the right timelines, or if it isn't supporting the right part of your staff.

[Speaker 1]



Yep. And again, this gets back to this sort of toxic mentality in the sector that is the scarcity mindset, that we have to take every dollar that comes in. Oh, well, the funder wants us to do it this way and that money might not be there if we don't say yes.

So, we have to say yes. No, you don't. You don't have to say yes.

[Speaker 3]

You don't. And it's hard. It's really hard unless you realize that it's not that hard, because your answer shouldn't be one to make your donors happy.

Your obligation has to be to those you serve, to your volunteers, and to your staff. And if saying yes right now puts you in a pickle a year from now, you didn't really help them. And so that's – I mean, it goes back to the same just concept of self-care and boundaries, because honestly, if you've got someone that has a hard time with boundaries, you could burn out, quit this job, and take another job, and you're going to have the same thing.

[Speaker 1]

Oh, yeah. Yeah, you'll just do it again.

[Speaker 3]

Yeah. And so, I echo what Jess said. My first year in this job, I started therapy, and I will tell you, it has been remarkably impactful in helping me learn how to manage myself, which has ultimately made me a much more effective leader.

[Speaker 1]

Yep. You heard it here first, folks. All nonprofit professionals should go to therapy.

I wish there was a free year of therapy every decade, just as you're right as a human being in the United States. Like, when you turn 25, here's a free year. When you turn 35, here's a free year.

We would get so much out of that.

[Speaker 3]

I mean, the free therapy would be great, but just the concept of it. I mean, this whole concept of Hero Ball, of just being able to do it all by yourself, no one does that. And I used to think it, because people hold that myth up, and it's just not true.

I hope in our sector and in other sectors, people get comfortable admitting when they can't do things, asking for help, and just not being shamed for it. We should celebrate, folks. Everyone should read Brene Brown all the time, because she's amazing.

[Speaker 1]

She is amazing. Well, Jason, this was absolutely fantastic. You have to come back and do this with us again.

[Speaker 3]

I am down for Reddit Q&A anytime, anyplace.

[Speaker 1]

Right on, thanks for being here.

[Speaker 3]

Thanks so much for having me, thanks, Meghan.

[Speaker 1]

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

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## 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!**

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