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Space Cadets & Nonprofit Comas - 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 pretty good. I ordered a new smartphone and it's on the way.

[Speaker 2]

There you go. There you go. Exciting times ahead.

[Speaker 1]

Oh, man. I just can't wait. Something to look forward to.

[Speaker 2]

Well, today we've got some questions from nonprofits who are falling on some hard times. Obviously, we're all living through a hard time right now with the COVID-19 pandemic. Jess, like what kinds of things have you been seeing from clients throughout all of this?

[Speaker 1]

You know, I'm finding there's kind of a spectrum between clients right now. Some people are like, amazingly, you know, right now we're almost a year into this thing. And some clients are white knuckling it, waiting for everything to go back to normal.

That's one end of the spectrum of dealing with everything. Other clients are making like or did make big executive decisions or big changes. And I think I'm seeing better results from the clients who made big changes, especially earlier, because they just committed really hard to whatever they were deciding.

[Speaker 2]

That makes total sense. You know, it's like, you can only wait for so long. And what is normal anymore, anyways.

[Speaker 1]

Right? True dat.

[Speaker 2]

Yeah. So, the two questions I have today are from folks who are like right on the edge of making those big decisions for their nonprofit. So, you ready for the first one?

[Speaker 1]

Yeah, let's do it.

[Speaker 2]

Let's do it. Okay. Number one.

Our small cultural history museum has been closed for some time now due to the pandemic. On top of that, we were just evicted from our physical space. That's a bummer.

We put all the museum property in a storage facility with the plan to find a new space once we're able to reopen. A couple of citizens are outraged that we handled the situation in this way. And they're demanding that we hand over all of the museum items to them.

They claim they are that as the community, they own the museum's artifacts. Do these people have a case against us or the nonprofit?

[Speaker 1]

Well, okay. So obviously, like, I can't really give a legal opinion, because all I have is this question to go off on. But it's probably not likely that a couple of citizens from the community would be able to successfully bring a suit.

Now, I say that knowing full well that people waste your time and money with lawyers and bad lawsuits all the time. So, I say it with a caveat, right? It's just like, in reality, these citizens probably don't have all of the time and money to waste hiring a lawyer to chase you around with a lawsuit.

So, it's probably all talk and no action, which means it's a PR problem. Now, if there really is a violation here, and there could be because the person says that they're running a small museum, and depending on what state you're in, there are specific laws around museums and how a museum specifically can dispose of its property. So that's just something to be aware of that, you know, the board may not even know that that exists if they're very small.

So that's just something to put in the back of your mind. But here, the question is not saying they disposed of property, they put it in storage, and they plan to reopen. So, I'm not sensing that there's any legal problem.

And even if there was, it wouldn't be, you know, a citizen's arrest or whatever these crabby people are trying to pull off here. The Attorney General's office is sort of the nonprofit police that would do law enforcement of a violation if there is one. So again, you know, this becomes a communications problem and the board's job is to act in the best interest of the organization, right?

They have the fiduciary duties to do what's the right thing for the nonprofit and putting everything safely in storage and holding down the fort until their resources allow them to move forward is probably in the best interest of the nonprofit. They say they're getting evicted, or they just got evicted. So, my guess is, you know, typically you get evicted because you're not paying your rent or it's possible that the owner of the building sold the building and just kicked them out and they're kind of using the word evicted loosely, but they have no home for their stuff.

So, they're putting it in storage, and they don't have resources to reopen right now. The whole pandemic thing is not allowing them to be open right now. So, I think they're probably doing the right thing.

You know, ultimately this is going to come down to how they communicate to diffuse the anger in the change. You know, these folks are just potentially looking for a place to vent some anger and this board is just going to want to handle their communications sensitively so the citizens can save face and back down rather than like come out blustering and like saying, no, we're doing the right thing and screw you guys. They're going to want to have like a softer touch probably to communicate how they're acting in the best interest of the nonprofit.

[Speaker 2]

Right. I mean, based on the question, I wouldn't be that surprised that there has been a history of conflict potentially because it seems like a very specific thing to be very outraged over suddenly. So, if there is context there.

[Speaker 1]

Oh, totally. That's a very good read between the lines. Absolutely.

And the fact that it's a cultural history museum, there may be a very specific interest group that feels like their ancestral items are being appropriated or some other like issue that makes this much more emotional. And so that's kind of where I'm coming from with the like, this is how we communicate to our community and calm everybody down because you don't want to end up dealing with a frivolous lawsuit. Right.

[Speaker 2]

Right. Yeah, absolutely.

All right. I've got another question for you. So, I've had to temporarily suspend my small 501c3 organizations operations, except for our online material that is still live online.

And I'm wondering how much of the internal operations we still need to conduct for legal purposes, things like officer elections, board approving the budget, which is now essentially non-existent. I'm still doing all the external things required by the state government, but there isn't anything for the board to discuss or approve or any need to elect new officers. What are we legally obligated to do until the organization can go back to normal?

[Speaker 1]

OK, this is a great question, and I mean, yeah, this is probably coming about because of coronavirus. But man, if I had a nickel for every small nonprofit that had to go into some sort of temporary shutdown, I would be, I would at least have a couple of bucks. Yeah, nickels don't go as far as you'd think.

I know. We have to upgrade that phrase. So, there's a couple of things here.

What are we legally obligated to do is one thing. But then also the idea of getting the organization back to normal is another thing. So, what these folks want to do is what I would call putting the nonprofit into hypersleep.

And when I say hypersleep, I'm specifically imagining the movie *Aliens* starring Sigourney Weaver, and they're like launching into space and they get in these pods for the long journey. And this is before they go find the aliens and all get like murdered in space. So, this is they're in hypersleep on the long journey for millions of miles to go to whatever godforsaken planet has the alien queen on it.

And they go into like this coma. And then when they wake up on the alien planet, they're just fresh as daisies. And that's what you want for your nonprofit, right?

You don't want to lose your tax exemption during this time. You don't want to be involuntarily dissolved. So, there's some legal, basic compliance stuff that needs to happen while the organization's in this sort of hypersleep mode.

You've got to renew your corporate registration. You need to file a 990. And if there's very little financial activity, you can probably file a 990-N, which is just a few clicks of a mouse.

You need to file your charitable solicitation report if your state requires you to do that. That's something that you want to find out. Then we get into the like governance piece, which the questioner is talking about when they're saying approving the budget and this, that and the other.

Yes, this is where it gets a little bit trickier because you still need to follow your bylaws. And so, if your bylaws say like your board's going to meet monthly and you're going to do this and you're going to do that. That may not be realistic while you're in this mode, right?

So, what can you accomplish? Typically, by law, like in my state here in Minnesota, we have to do at least one meeting per year. And if you're a membership-based organization with voting members, there's certain things you have to do at your annual meeting, like report to the members.

Then there's also like you got to elect directors. What if in the time that you're going to be hibernating, all of your directors terms are going to term out? You don't want that to happen.

Now, what do you do? Well, the board could pass like a resolution to follow a different meeting schedule and meet just the bare minimum, right? To just follow the law and the state standards for like the next year.

But then at the same time, we're trying to get back to normal. So, we don't want to go into too deep of a coma because frankly, your board members are just going to like find other things to do and they're not going to care about dealing with this nonprofit anymore. And so, you want to keep people engaged enough that you can actually come out of hypersleep and you don't, you know, nobody pulls the plug on you while you're under.

So, you don't want to go too crazy with the bare minimum or people might forget or lose interest in the organization and it will become impossible to sort of come back from that. So that's it's a little bit tricky on the people side, but the maintaining the compliance is pretty straightforward. Yeah.

[Speaker 2]

So, Jess, question for you. What is the takeaway here for these orgs that are running into these tough times?

[Speaker 1]

Well, I mean, like, you know, right now we are living through some crazy times and sometimes stuff happens that you just couldn't have planned for. And like big change tends to be upsetting to people. So, if your organization is going to decide to go through some big change, I guess I would just say make sure you give yourselves and everybody around you some grace because change is really hard and a big change is likely to make somebody unhappy, even if it's in the best interest of the organization.

But it's really how you handle it and how you sort of weather that storm that matters. So that's what I would say about that. Meghan, thank you for being here today as my co-pilot on our journey to outer space.

Happy to be here in a coma with you, Jess. My fellow space cadets, if you enjoyed this episode, do me a huge favor. Share this episode with a friend.

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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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