



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

We Don't Need to Be Cops - Transcript

[Speaker 1]

Welcome to Charity Therapy, the podcast where we explore the ups and downs of the nonprofit sector and answer your burning questions. I'm your host, Jess Birken, owner of Birken Law Office, and I'm excited you're here. Imagine hanging out with me and my super smart, funny nonprofit expert pals.

You get to ask them anything about your nitty gritty nonprofit life and get their wisdom for free. Whether you're a seasoned pro or just strapping on your nonprofit boots, we're here to share stories and remind you, you're not alone on this journey. So get ready to join the conversation and bring me the tough questions.

I ain't scared. Ready to rock? Let's dive in.

Hello and welcome to this episode of Charity Therapy. I'm here again with my wing woman, Meghan. Hey Jess, how's it going?

It's going good. It's hot as balls here in Minnesota right now. It has rained every day for the last two months.

There's dams breaking. It feels like the end of the world. And now I just want to sing that REM song.

This is how my brain works. Exactly like that.

[Speaker 2]

Exactly like that. So this is a little bit of a spoiler alert, but we're talking about some like questionable financial transactions today.

[Speaker 1]

My favorite.

[Speaker 2]

Yeah. And I know that whenever you end up dealing with this stuff with clients, after the dust has settled on the initial drama, we're focusing on financial controls from there on out. So as a good teaser for the real question today, Jess, what are some basic financial controls that every nonprofit should have in place?

[Speaker 1]

Well, okay. So not to be like lawyer mode right away, but it does sort of depend, right? It sort of depends on what you have going on, but generally you should have some kind of segregation of duties.

What does that mean? So that means that there's not one, one person who has all of the control and all of the visibility like for themselves. So I see a lot of small nonprofits where it's

like the executive director slash founder is the only person on the bank account is the only person who keeps track of the financials.

And it is also the only person who pays bills or cuts checks. Like you, you want to have secondary approval of some kind. I'm not saying you have to make all of this bureaucracy, but like you should have two people on the bank.

You should have somebody set up the checks and someone else approve the checks before they get sent out. The other thing you really want to have is a budget so that everybody at the beginning of the year has an agreement about, this is what we think we're going to spend money on. This is what our revenue goal is.

And we all agree, we're going to spend money on these things. And as long as I am staying within that budget, I don't need to go to the board for permission for every little thing, right? Because the flip side of it is I see a lot of small nonprofits where they literally are having the board convene and vote on every \$50, \$200 expense.

And it's like, you are wearing people out, set a budget, make a goal. And as long as you are spending budget, budgeted funds, and you're reporting back to the board on how it's going, you're reporting back on budget to actuals. That's really what you need to do.

Then you can just have the other rule is if it's going to be 10% over budget, you need board approval, right? So have some like reasonable things that trigger another set of eyes on this transaction. Right.

Well, I could probably go on, but like, that's enough.

[Speaker 2]

And it's one of those things where all of those things are common sense. But also, if you are operating on under the assumption that like, oh, we're all here for the mission. We're all doing everything with good intentions.

It might feel extra like it feels like, oh, we don't need to do all that. Yeah. But it's like, no, we do.

We are using donated funds. And we need to be able to make sure that we're using them properly.

[Speaker 1]

It feels like you're assuming somebody might be a bad actor. And that can feel bad. But you really should take the approach that, of course, nobody's a bad actor.

And we want to prevent a bad actor from ever sort of like getting a toehold. And we want people just make mistakes, like we're all human. Right.

So having checks and balances helps us all be better. It doesn't have to be like, we inherently think one of us is stealing.

[Speaker 2]

Which perfect segue into what happens when someone is stealing. So let's talk about our question for today. Okay.

All right. Our treasurer spent money we cannot track that went into his personal account, about \$1,500 that we know of right now. He refuses to share the books with anybody else and becomes aggressive when we ask for more information.

The board wants to vote him off completely. However, this guy is well connected in the community and definitely has access to high powered lawyers. I said we should file a police report to back up our claims and protect the organization.

Everyone just wants to keep it hush, hush, hush, hush, vote him off and move on. But I'm worried about him suing for defamation or worse. Any advice?

[Speaker 1]

This is so hard. And I wish I could say I didn't see this very frequently. But this has all of the elements that we see all of the time.

So, oh, okay. It's just so difficult because every situation has some layer like this. And every nonprofit doesn't really want to air their dirty laundry and have everybody be talking about how there was fraud.

Because does that really inspire people to give to you? No, not really. Okay.

So let me just kind of break this one down line by line. So the treasurer spent money that we can't track. Okay.

So right there we're that stuff I was just talking about a minute ago. Ding, ding, ding. The system is broken.

So we're going to get to the like immediate crisis. But what I know if you were my client, I would be like, okay, and what is the system we're going to create in the future so that we can track all the expenses because we had some money leave and go to someone's personal account is not great. So I'm going to guess that they have bank statements because they must be getting access to those somehow that they can see the transfer went to his personal account.

I like, yeah, no, they said him. I was like, am I gendering this person? No, they said him.

The treasurer refuses to share the books. Again, the fact that one person had sole control over the books and that they must now be shared. We really want to have the situation be that there is visibility into the books.

Even if you're not the person updating it, there should be transparency into the books so that other people can see them. So in my, the back of my brain, I'm going, okay, the corrective action plan here is we need more transparency into those books. He becomes aggressive when we ask.

Yeah, because he's a thief. Like, why would he want to share that with you? Yeah, I mean, this just has all of the hallmarks of like this person stole the money.

And there can be things that happen where it's like, they didn't mean to steal the money. They just meant to like borrow the money. You know, they're in a financial bad way.

They have access to this big pot of funds. They're about to be late on their mortgage. I'll just pay my mortgage payment this one time and I'll pay it back later.

That's how fraud happens, right? It's not necessarily that like people are like, I'm going to defraud this organization. It could be that there is a problem in this person's life and they just had a weak moment or whatever.

Now the board wants to vote him off. Yes, a hundred percent, because he has breached his fiduciary duty. We need to remove this guy, but he's well-connected in the community.

And this is the has access to high powered lawyers. Everyone's always afraid that someone's going to go lawyer up. But just because you know people who are lawyers doesn't mean that you have the money to pay lawyers.

Doesn't mean that the lawyers are going to do stuff for you. Sometimes they will, but if you have enough of a paper trail to show the money going to his personal account, you have a pretty good leg to stand on. That doesn't solve the problem of everybody in town is going to be talking about this and you don't want that.

So I don't know that I would go straight to file a police report. I think if this were a client here, I would probably understanding the complexity and the PR and the like that the nonprofit is having about this. I would probably try, you know, who has sort of the best rapport with this person, have that person plus one other person approach the treasurer, call a meeting, and talk to that person about resigning.

So one, if we can get the treasurer to like save some face by quitting versus voting them out, that's always preferable. And then I would probably also try saying, listen, we see this money going into your account, whether it was a mistake or whether it was on purpose. We don't need to know that, but we do need that money back.

And here is our credit card donation button. You can just go ahead and put your credit card in there right now. Let's get the organization paid back and call it good.

Because here's the thing, what do you really need to do? You are fiduciaries, you need to protect the organization and safeguard its charitable assets. So you need to get that money back.

So if you can kind of quietly get that person to quit and pay the organization back, great. That's an excellent resolution. In my mind, I'm like, you know what, that's about the best case scenario that avoids all of the PR drama, right?

Right.

[Speaker 2]

You don't need to make the problem bigger in order to like fulfill your fiduciary duties. Like you have to think about what is really the goal here. And the goal is not necessarily taking this guy to task.

It's to protect the organization, get the money back, move forward in a like positive direction for the nonprofit.

[Speaker 1]

Right. And somebody somewhere is like, but a crime has been committed. I'm like, well, you know, maybe it has been, maybe it hasn't been.

We're not cops. We're not cops. We don't need to be cops.

Here's the thing. We don't need to be cops. That's the title of this episode.

Jotting it down. Totally sounds like we're on the wrong side of the question for that. But the reality is when I have had clients in this situation or something similar to this, and they want to go to the police 99.99% of the time, the police say, this is a civil matter. Sorry, we're not going to do anything about it. So yeah, you could file a police report, but like to what end, right? Right.

I think the goal is to get the money paid back. And for this person to not be on the board anymore. And then secondary goal is, yeah, we'd like to not lose standing in our community.

And if anyone ever asked about this or found out about this, we would want to be like, we handled this with integrity. We protected the organization. We took steps to make sure this person no longer had access.

And then we had a corrective action plan where we worked with financial people and legal people to make sure that this sort of thing could never happen again. That is what you would want to be able to say. And so that's where I'm like, yeah, police report.

Okay. But first I would try this way. And then if that doesn't work, then you got to go to plan B.

But plan A is usually I'm trying to get that person to resign and pay the organization back.

[Speaker 2]

So this question has a set of facts where it seems like this happened maybe once. We're talking about maybe \$1,500, you know, things like that. It's clearly we just like we're not prepared for something like this.

Would your answer change if the facts were more like it was \$150,000 over several years of like a concerted effort of funneling funds away from the nonprofit? Like what would it look like in an imaginary world? Probably.

Yeah.

[Speaker 1]

I mean, that's a much larger amount that also presumes it's a much bigger organization. Right. So it's sort of like at least dollars wise, it's going to be a bigger organization in that sort of case.

I mean, it really just depends on the situation, but it could be that you need to go get your state attorney general involved and sort of give them the we're so sorry this happened on our watch. We need your help to resolve this because it may be that your state attorney general has the power to go in and like bring this person to justice through the courts and, you know, get restitution out of them. Yeah.

Yeah, absolutely. It really depends on the situation. I just do want to address to the like I'm worried about him suing for defamation or worse.

And it's like this is the thing, like people are like, I'm going to sue and they're going to sue and this that. And yes, we live in a litigious country and like everybody seems like they're suing each other all the time. But a defense to defamation is only saying things that are true.

So defamation inherently means that you knowingly made this guy look bad and it was false and you knew it was false. So, yes, they could like chew up a lot of your time or send you a cease and desist letter or whatever. But I'm less concerned about that and more concerned about the PR and the optics and the like fallout and the Facebook comments and whatever.

And how do we sort of like end run that? And how do we minimize this man feeling attacked and then being defensive and then attacking in order to like put up some fake defense? Right.

So can we minimize all of that time suck and time waster? Right.

[Speaker 2]

If I keep this from becoming a public scandal where everyone feels the need to weigh in and throw accusations around, much less likely this guy is going to care too much about defamation beyond maybe some blustery comments to the board.

[Speaker 1]

So, yeah. And again, this is just based on these facts. I mean, like if you're working at like a feeding our future and you're just seeing like payments going for thousands of fake children that don't exist, please blow the whistle.

Okay. I'm not saying we should sweep things under the carpet that are like \$250 million fraudulent things. I'm being real here.

This is how I would advise a client.

[Speaker 2]

Especially because really the focus on this is what can we do to protect the organization and have you fulfill your fiduciary duties. And when we're talking about something like this, it's just a very different set of circumstances than some big concerted fraud over a lot of time. So it's just different.

Okay, awesome. Well, I have some takeaways for us here today. Just do it.

First is that every organization should have some level of internal controls for their financials. And having financial controls does not mean that you're assuming everyone is going to do bad things. But it's just good safeguards for everyone to have in place and for everyone to help everyone work better.

Some of those financial controls should include things like a segregation of duties. So having like an approval process and transparency in your books among the board or the upper levels of the organization. And a proper use of budgets so that everyone knows where the money should be spent.

And if the spending needs to vary, that is a discussion that we can have and not something that we have no idea what's going on. And then the final thing I will say is that if you are dealing with a situation of fraud, you want to really think about what the goal is for the organization. And oftentimes, that goal is let's get everything put back where it's supposed to be and shore ourselves up for the future.

And we don't need to make a giant stink and go through this sort of like investigation of this person unless that is truly warranted for the situation. So really think about your fiduciary duties and your goal for the organization. And that's all I got.

Anything else, Jess? That's perfect. Love it.

Love it.

[Speaker 1]

All those things. All right. Well, hopefully we just scared some treasurer who sold \$1,500 and happens to be listening.

[Speaker 2]

Exactly.

[Speaker 1]

If this is you. Go put that money back. You put that money back and you quit right now.

Okay? It's not your money. All right, folks, if you enjoyed this episode, do me a huge favor.

Share it with a friend. Leave us a review. Give us five stars on Apple, whatever.

It really, really helps other people find the pod and it makes me happy. So you should definitely do it. If you have a question or a story to share, I would love to hear from you. Send me a note online at charitytherapy.show. And thanks for listening.

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