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## You're not a (Dill Pickle) Lemonade Stand - 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.

Hey y'all, welcome to this episode of Charity Therapy. I am back and it's still summer and Meghan is here too.

[Speaker 2]

Hello, hello. It's barely summer. It's state fair season in Minnesota.

And I feel like with our new VP pick, everyone is paying attention to Minnesota and the Minnesota State Fair this year.

[Speaker 1]

Yes, I have currently no plans to go eat food on a stick. It's kind of sad. You're like not Midwestern enough, Jess.

Get it together. I know. Maybe I can remedy that by this weekend.

[Speaker 2]

I sure hope so. You better report back or we might have to like revoke your Midwestern. Need the dill pickle lemonade in my life.

Oh, that dill pickle lemonade is gross. Is it? Yeah, it's really bad.

[Speaker 1]

Oh man, don't.

[Speaker 2]

I do recommend the dill pickle pizza.

[Speaker 1]

Oh, dill pickle pizza. It's surprisingly good.

[Speaker 2]

Does it have a white sauce? It's like a ranch sauce with pickles and fresh dill and I don't remember what else. Like I fully expected to hate it, but it was good.

[Speaker 1]

It seems like it would be good. I mean like salty stuff on a pizza is always good. So like, well, that makes sense.

I'm partial to like the traditional corn dog, you know, get a sundae in the dairy barn. I'm not a complicated person. I'd be very happy with just the standard things.

[Speaker 2]

I mean, the ridiculous food is most of the fun though, for me at least. I'm a big like this year. They have a weird mustard flavored beer that I feel like I need to try.

Like it's gonna suck, but why not? But I'm gonna pay for that.

[Speaker 1]

Okay, well, we've identified a fundamental difference between Meghan and I. There you go. Sure have.

What are we doing today, Meghan? Are we nonprofit and mustard flavor? What's happening?

[Speaker 2]

No, no, we're not talking about mustard, but we are talking about founders in this episode. So we've talked about nonprofit founders a lot in the past, but I feel like it's worth diving in in a little more detail because it affects so many small organizations, their relationship with their founder. So Jess, can you give us the lowdown on like the real difference between being the founder of a small nonprofit versus being a founder of a small for-profit like an LLC or something?

[Speaker 1]

I mean, it just comes down to when you start a business, you are the owner. And when you start a nonprofit, you don't own shit. You're not the owner.

You don't own it. I mean, that's fundamentally the main difference. One is a charity.

One is a business that you own.

[Speaker 2]

Well, and going along with it, you don't start it to make money or you shouldn't be in a nonprofit.

[Speaker 1]

Yeah, I mean, I can expand from there. Like when you're an owner, you get to pocket the proceeds. You get to make money off of the business and buy yourself a mansion and drink as much bad dill, pickle, lemonade, and mustard beer as you want with that money.

When it's a nonprofit, you don't own it. So you can't personally benefit from it. And if there is money left over at the end of the year, it's not for you.

It's for the charity. That's the like nutshell version.

[Speaker 2]

Right. And it feels like one of those things that's like, duh, you know, like, it's not hard to understand that difference. And yet, like in the weeds of running and operating a nonprofit, it is something that can get overlooked that it's like, yeah, no, this fundamental difference is important to understand.

So let's go right into our listener question on that note. So they write in and say, I've done lots of research on this topic, and I can't seem to find any definitive answers. Does a nonprofit founder have any rights to the nonprofit after a majority board vote to dissolve the organization?

[Speaker 1]

So in short, no. Yeah, because you don't own it. Yeah, let me break this down.

So just the way the question is written, like, doesn't make any sense. So it's like, what is happening? So let me just break this down.

So the nonprofit founder, you know, is working and doing things. And the board has decided this nonprofit doesn't work. And we are going to go out of business.

So what I'm reading is the nonprofit board voted to dissolve, which means they voted to say, we're going out of business. We don't want to do this anymore. We don't think it's working for whatever reason.

So we are going to wind down this corporation, and it is kaputsky. That is the end of the story for this organization. By law, the nonprofit that dissolves, and we have other episodes on this topic, you have to give all of your remaining funds to same or similarly situated nonprofits.

So if you're a cat rescue, and you go to business, and you have cats that are being fostered, and you have money in the bank, those cats need to be rehomed to another cat shelter, and your money needs to go to another cat shelter, or animal rescue. So there's not it's not like, well, it almost reads like they're like, well, we don't want to do this anymore, but you can. That's not a thing.

So I feel like that's what this person is asking. Like, they don't want to do it anymore. But can I just pick it up and go with it?

Or like, do I still own some piece of this because I started it? No, because you never owned anything in the beginning. You never owned anything to start with.

You were never an owner, because nonprofits don't have owners. So you don't have any right. When you say, does the founder have any rights to their nonprofit?

No, because you never had any rights in the beginning, because it was never yours in the first place. If you wanted something that you could own and have rights to, then you should have started a business.

[Speaker 2]

This, to me, like reading between the lines of this very short question. So who knows if this is really the case, but we've seen this come up before where the founder is sort of the big visionary person who's willing to like grind it out and make it happen and really wants this to work. And the board maybe does not see that vision or cannot get on board, so to speak, with what needs to be done in order to make it happen.

Or maybe they do see that it's not going to work in a way that the founder is not willing to accept. You know, it's like there are disagreements between the person who maybe came up with this idea originally, and the people who are now in charge of carrying it out. And especially when the founder is not on the board at all, or there's a lot of other board members with strong opinions.

It's like, it's not up to the founder whether or not it continues to go forward. You know, it's like if the board has a majority vote to dissolve, the founder can't come in and say, no, never mind, I'll just take it back from this board. You know, it's the board's decision.

[Speaker 1]

You know, that's the risk of starting a non-profit and then giving up your seat on the board to be maybe a paid executive director. Now you're staff and you're not on the board anymore. So that could be the case here.

It could also be that they want to continue as a non-profit and this board is giving up, in which case the founder could say, hey, y'all, I know you don't want to continue, but I have found three

or however many people who are willing to continue this non-profit and you don't need to dissolve. We just need you to, you know, elect more people to the board so you all can quit. It doesn't sound like that's the case.

It is a very short question, but it doesn't feel like that to me. It feels like this is an organization that's going under and the founder is wondering whether they, maybe they want to take the name and take the website and be like, I own these assets, these intellectual property assets, and I'm going to go start a business doing this myself using the same name and web domain because I started it. So therefore I should have the right to do that.

That's complicated. The intellectual property of the non-profit is supposed to get transferred to another non-profit or you would have to purchase it for fair market value. And what is fair market value?

You would have to get an appraiser to give, you know, an independent appraisal and then you would purchase it from the non-profit. It's just like, if what you're trying to do is continue the work, but as a for-profit entity, you know what? Just pick a new name.

Just pick a new name. Just pick a new web domain. Like you're not entitled to anything.

You shouldn't have started a non-profit in the first place. You probably should have started a business. Now it's time to hit the reset button and have a do-over and start the business you should have started in the first place if that's the case.

Right.

[Speaker 2]



And it's one of those things that just because a non-profit goes under doesn't mean you can't continue to do the work that the mission of the mission of the non-profit. Like great, you can go volunteer somewhere or do the work or do your non-profit. You can do all of those things, but you don't have any right to the actual entity or its assets just because you're the founder.

[Speaker 1]

Yeah, no person has any right. That's the thing. No person has any rights.

You started this organization to benefit the community and when you did that it was considered an asset of the community, which is why it had tax exemption, which is why the Attorney General's Office wants to know what you're doing with your fundraising because you're doing it for the community, not theoretically, not for yourself. Does that make sense? Yeah, yeah.

I'm with you. Okay. All right.

What do we have for the lessons learned here besides Jess is good at ranting.

[Speaker 2]

This is why we have a podcast, Jess. So a couple lessons learned. One is that there are no owners of a non-profit.

Founder is not a synonym for owner in the way that it sometimes might be used in the for-profit world. So there are no owners. When a non-profit dissolves, it is fully going away.

There's nothing left for someone to pick up and continue. It's like, nope, we are shutting down the whole entity and all of its assets. No one gets to say, I'll just take what's left over and do it again.

And then I think a big one is that the founder does not control how the non-profit operates or does not operate alone. So especially when a founder is a staff member or a volunteer and not on the board, they don't have a voice in whether or not the organization continues in something like a vote on a dissolution. If the board decides to dissolve and the founder isn't on the board, they don't get to make that decision.

And even if they are on the vote on the board, if they are outvoted, that's it. So the board is the one to make decisions about things to do with their fiduciary duties. And the founder has no rights to it.

And that's sort of the end of it.

[Speaker 1]

You can find, there's lawyers in the world who will try and make a dollar by selling you on the concept that they'll write your bylaws. So you have all these rights. That doesn't make it the right thing.

So fair warning. All right. Well, folks, if you enjoyed this episode, would you please do me a huge favor and give us a rating, share it with a friend, subscribe.

If you haven't subscribed yet, you really, you know, it's good. You're here. It's the end.

You listened all the way through. So you should just totes subscribe. Do the thing.

Do the thing. Do the thing. Also do the thing where you send us a scenario, a question, a story.

We love to hear from you. And thank you kindly for listening. Have a great rest of your day.

See you next time.

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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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