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When an Entrepreneur has a "Really Good" Nonprofit Idea – Transcript

Jess Birken 00:00:02 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 Birkin, owner of Birkin 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 question. I ain't scared. Ready to rock? Let's dive in. Hello and welcome to this episode of Charity therapy. It's me, Jess, and I'm here with Meghan. Hi, Jess. How are you? I'm good, I'm good. We're recording on a Friday, and I'm ready for the weekend, baby.

Meghan 00:00:59 Same, same. I just had the cutest little coffee shop interaction earlier that I stole my friend's little mug.

Meghan 00:01:06 You can't see this. This is an audio medium, but it's this cute little, like, handmade like pot coffee pot. And it's the in the pot coffee mug. Calling it a coffee pot.

Jess Birken 00:01:18 It's a mug with no handles.

Meghan 00:01:20 It's a mug. It's a cup. The ceramic cup.

Jess Birken 00:01:23 People don't listen to Meghan.

Meghan 00:01:25 She doesn't know what.

Jess Birken 00:01:26 She's.

Meghan 00:01:26 Saying.

Jess Birken 00:01:27 Friday afternoon.

Meghan 00:01:28 How dare you ask me to say words in a order that makes sense on a podcast?

Jess Birken 00:01:32 I told you we shouldn't record right now, you guys. Before we started, I was like, I don't know, man. I don't know if we're gonna do it.

Meghan 00:01:41 Clearly, my three cups of coffee is not helping.

Jess Birken 00:01:44 Oh.

Meghan 00:01:45 All that to be said.

Jess Birken 00:01:47 Like.

Meghan 00:01:47 Cup. It's a swing cup with the, like, 90s Dixie print on it where it used to. The Dixie cups had that like blue and purple, little like wavy pattern on it. Abstract pattern? Yes. Every like kid in the 90s who used to get their little like cup of water at school and the little Dixie cups knows what it is.

Meghan 00:02:05 And it was funny because there was a generational divide at the coffee shop when I went to go fill it up of the slightly older people were like, oh my gosh, I love your mug because we all had our school nostalgia moment and.

Jess Birken 00:02:16 Other people were like, that's basic.

Meghan 00:02:19 Yeah. The Gen Zers were.

Jess Birken 00:02:21 Like.

Meghan 00:02:21 What do you mean? I don't know what that is, I don't care. Yeah, just.

Jess Birken 00:02:24 Looks like teal and purple sloppy paint. Why?

Meghan 00:02:28 And I'm like, oh yes, I can tell who went to a roller rink in like 1999 and who. Yes.

Jess Birken 00:02:35 Always root beer. Root beer. Always root beer in the white cup with the teal and purple swishy paint lines.

Meghan 00:02:44 And at least at the roller rink that we went to, the root beer was always kind of sad, like they didn't put enough syrup in or something. So it was like kind of a pale, sad root beer in the in the fountain.

Jess Birken 00:02:56 No shade to.

Jess Birken 00:02:57 Albertville roller rink.

Meghan 00:02:58 It was actually Monticello.

Meghan 00:03:00 So the Monticello.

Jess Birken 00:03:02 Your roller rink. Root beer sucks. Get it together.

Meghan 00:03:05 Yep. We're not big enough for a roller rink. Oh, I'm sure it's not. Although there's no, you know, roller rink that's coming back. There's one in Burnsville that people go to. It's very funny.

Jess Birken 00:03:15 All right, so I told you I was too tired. And you better give me an episode that I can rant, so I can.

Meghan 00:03:21 Don't worry. We can make this one cup.

Jess Birken 00:03:23 Within to get the energy to be vibrant on this podcast. So what are we doing?

Meghan 00:03:29 I got you, I got you, I got you. Before we get into this lightly ranty question, I have a question for you. So can you tell us what an exempt purpose really is to the IRS and why it matters?

Jess Birken 00:03:42 Well, the exempt purpose statement is like it's just a gross version of your mission. Basically, like when we do articles of incorporation for a new non-profit, it's like, tell me your mission, tell me your vision, what you know, tell me your beautiful marketing statements.

Jess Birken 00:03:59 And then I just take that and mash that up with some IRS jargon that they like to see. And then we call that your exempt purpose. Yeah.

Meghan 00:04:08 Why do they like to see it, though?

Jess Birken 00:04:10 Raison d'etre. Is it the worst French accent ever? It's your reason for being. It's why you exist. It's. It's the thing you do that justifies you not paying income tax.

Meghan 00:04:24 Yeah. It all hinges on the IRS being like, yeah, that's a good enough reason. Yeah, yeah. Okay. I have to say, as soon as you said that, in my mind, I was picturing Lumiere from The Beauty and the beast in his terrible French accent. So be your.

Jess Birken 00:04:40 Guest. Be your guest. Okay.

Meghan 00:04:41 All right. Actually, that fits in really well with this question, so let's just jump right into it.

Jess Birken 00:04:46 Okay. Let's go.

Meghan 00:04:47 Listener writes in and says, I have a bit of a unique situation. I'm a small business coach, and one of my clients came to me with this question, but I know I'm not the right person to answer it.

Meghan 00:04:57 This client owns an old building on a historic main street in his small town, and he wants to restore it. The building is an old hotel, so he's planning to restore it and eventually rent it out on Airbnb or Vrbo. There are lots of people and small businesses in this town that want to donate to help with the restoration, but he's not sure the best way to do this. Can he start a nonprofit to accept all these donations to restore the building and then close the nonprofit once the restoration is complete? I was thinking that maybe the nonprofit could own the building and pay for all the restoration, repairs, property taxes, etc. and he just rents the building from his nonprofit. He's got a good opportunity here, but I don't want him to get into trouble either. You all can't see Jess as, like, vibrant.

Jess Birken 00:05:44 This. If you are listening to this and going, that's a great idea. I should do that. Get out. Get out right now, you fraudster. Okay, here's the thing.

Jess Birken 00:05:55 This is why entrepreneurs starting nonprofits are such interesting clients to work with, because they come up with all of these ideas that are basically they seem really good except for. They're like all tax fraud. I wrote a book. What if we had a nonprofit whose mission was to buy my book and distribute it for free to schools? Oh, yeah. Okay.

Meghan 00:06:26 See, and this gets back to our little initial question up top, you know. Yeah. That exempt purpose, if you're exempt purpose is fix this building so that I can turn it into a profitable business for myself. Like that's not charitable. The IRS is not going to be like, yes, you deserve not to pay income tax on that activity. Okay.

Jess Birken 00:06:46 Okay.

Meghan 00:06:46 Break it down.

Jess Birken 00:06:47 I'm so snarky right now. Here's the thing. Let's let's talk this through, okay. For I was really concerned in the beginning of this question. I was like, small business coach, why are we here? Okay, so the client, the entrepreneur owns the building right now.

Jess Birken 00:07:05 Yep. Its historic Main Street wants to restore it. That sounds to me like it's a historic building. That's cool. I love that for you, old hotel. Love it. Yes. Let's bring it back. Let's do it. Business idea to rent it out as an Airbnb genius. Love that. There's one of those in Duluth. It's awesome. My friends stay there all the time. Okay? People in town want to help you with this. They are like, yes, please restore the old hotel. What can we do? I love that too. That's amazing. Yay! Can you just start a nonprofit for the purpose of funneling people's donations into a charity and then spitting them out the other side for your business to profit from? That's where the problem comes in. This is where the issue is.

Meghan 00:07:56 This big red flashing arrow right there. That's the problem, right?

Jess Birken 00:08:00 It's not a tax exempt purpose. That's what Meghan was saying. The IRS is not going to be like, you know, what would be great is if your business got free money and everybody else took a tax deduction.

Jess Birken 00:08:15 That's not a thing. That's not a thing. That's called tax fraud. And you can't do that that way. So that's that's just is what it is. Let's I'm going to put in the parking lot. How could we get this done. Because I think that's important to talk about too. But I want to get into this other one. I was thinking maybe the nonprofit could own the building and then pay it could pay for all the restoration repairs, and then I'll just rent from the nonprofit. No. Okay, so here's the thing. This is what when people come in and they're like, I'm going to buy this property, and then I'm going to donate it to the nonprofit. So like, we can have a horse rescue or whatever it is. Well, I always try and explain to people is that if you use your money to buy this land, this building, and then you donate it to the nonprofit. You're not getting it back. You're not getting it back without paying fair market value.

Jess Birken 00:09:20 So if that building value goes up. You're going to pay the new fair market price. If the value of the land for your horse rescue increases, you're not. There's not going to be like some discount because you gave it to them in the first place. You will have to get an appraisal and prove that you paid the same amount as any random stranger who came and bought the property. That feels bad to most people, and that's where I convince them, no, don't do that. Because what they really want is to keep their asset, which is their property. And a lot of times people are coming in, they're like, I've got 100 acres and I could just lop off ten and give it to the number. Well, okay, so that's just a bad plan because you already own this building and it's yours. And you're when you donate it now, it's a charitable asset, doesn't belong to you. It belongs to the community. If you're cool with that and you want to give it to the town.

Jess Birken 00:10:15 Sure. But you don't get to transfer the property to the nonprofit. Take a tax deduction, probably on the way, and then also run your business out of the non profit there. I mean, theoretically there's ways you could structure it where like you maybe could get it done. Like if you had nothing to do with the nonprofit you're in no way related to the nonprofit. If the nonprofit then rented to you and you paid fair market rent, just like it's just it's a bad idea. It's a bad idea. Don't do it. It's not a good idea. Not a good plan.

Meghan 00:10:50 This is one of those where it's going to make your life way more complicated, even if there is a way to do it. Like, legally, it's not worth the effort that you'll go through in order to make it happen.

Jess Birken 00:11:01 And the other thing is, what are the optics on? This is a small town, Even if we like. This is what I say to clients all the time. Even if we can cobble together and like, work all the loopholes and sort of bend over backwards to like, make it fit all the rules, which probably could be done in some fashion.

Jess Birken 00:11:19 It's going to look scammy and people in town are going to be like, what is that guy all about? That feels shady, right? And so it's not worth the social capital you lose by seeming like you're pulling some scam, right? The Facebook comments aren't worth it, right? Usually. So if it's a historic building, one thing I would say to to be like, how could you do these things? Perhaps it could be registered as a historic place, and maybe there is a way to get money for the restoration of the building, and maybe there's a way to partner with the historical society for the rehabilitation of the building. Maybe there is another group that folks could donate 82 for the rehab of the facility because it's preserving the historic nature. And that's not, you know, maybe that's benefiting you, but maybe, maybe, I don't know, you're going to need to talk to a lawyer. Maybe there's some way that through historic preservation, that you could fund it. I don't know. Talk to your lawyer.

Jess Birken 00:12:28 Maybe these folks don't care if it's a nonprofit. Have we thought of that? Because you're assuming you have to have a nonprofit. And I see this all the time. You're assuming that because people want to support you, that it needs to be a nonprofit. That may not be the case. What else could you do? Right? People in the town want to support this. Well, what does that look like? Maybe you're doing a Kickstarter. Maybe you're setting up ways where, hey, if you contribute to the restoration at this level, you get X number of nights at the Airbnb. You get to attend the private tours you get. You know you don't. This doesn't have to be a nonprofit thing. Yeah. People can still invest in your business. Think about all that. If you don't know what Kickstarter is, go Google it right now. Because there are tons of small businesses that get started with. People just want to support this cool thing coming into the world. There is no charitable aspect and you can completely get things done that way.

Jess Birken 00:13:39 You don't have to start a nonprofit, possibly commit tax fraud, possibly risk getting penalties from the IRS, or just looking shady to all your neighbors. There's other ways to get to this, and I'm just like, let's just not let's exercise some nonprofit birth control here.

Meghan 00:14:00 Absolutely. This is one where just to like, bring it back to the actual person. It's really clear how this happens, where it's like, oh, like the town wants this. Like individual people in the town or the the neighboring businesses. Like they consider it a public good to not have what is probably an eyesore on their main street, and instead have a nice, beautifully restored building. That doesn't necessarily mean it's charitable, but you have the community backing, and so it feels like, oh, like this is a community led or community supported move. So therefore it's a public good, but it's still a private business that you're going to make money from. So I can like absolutely see how you get there without thinking you're committing tax fraud, right? You're thinking, no, people do want to support this.

Meghan 00:14:55 This is a benefit to everybody. This is something that people want. I do have good intentions. But your taxpayer. So it's one of those where it's like okay yes. Super great that you have the support, super great that you have the backing from your community that the second you get the IRS involved, it's no longer just about the people and the intentions. It's about literally, what is your charitable purpose? Why do you deserve to not pay income tax? And helping set up your business is not a charitable purpose at the end of the day. Yeah.

Jess Birken 00:15:31 I mean, my head just starts to fill up with ideas, right? Like do a Kickstarter and for the individual people you support at this level, you get invited to our grand opening party and you have it catered and you invite everybody and you say, thank you and amazing contribute at this higher level, and you get two free nights at the

Airbnb to use between one opening and 20, 28, whatever. And you're saying small businesses want to help grow? Well, great.

Jess Birken 00:15:59 You know what? Small businesses want advertising. So how can you do some deals with them where they're getting free advertising by supporting you and you agree that you're going to sell there. You're going to do like a little store in the lobby for the the little trinket shop in town, or you're going to supply your Airbnb with their soap for two years. Or, you know, whatever. I don't know if it's creative.

Meghan 00:16:26 Absolutely.

Jess Birken 00:16:27 Yeah. Out of this. It's going to be a chair. It's not charity. It's a business.

Meghan 00:16:31 And. But you can be.

Jess Birken 00:16:32 The native with your business.

Meghan 00:16:34 All of these options are easier than starting a nonprofit. So, yes, that's the other piece of it. Even if it was doable and it could be charitable and it could work. It's a lot of work to do this just for this purpose. You there's so many ways to get this done, and it's a few clicks of a mouse online to put up a Kickstarter or click starter, a Kickstarter.

Jess Birken 00:16:55 Starter versus folks.

Meghan 00:16:58 Absolutely. Versus going through all the agony of forming a new corporation and finding a board and, you know, getting your tax exempt status and all of the process that it takes to serving with.

Jess Birken 00:17:10 The 10 billion regulations that come with having a non profit. You will hate your life. Don't do it, just don't do it. And if we're talking like you have business owners who want to like give you \$100,000 and there's really no advertising deal that's going to like make up for that. Well, great. Go talk to your local business attorney about do you want to offer shares and make this hotel into an S Corp or an LLC and have literal investors in your business? Because this is a business and you're allowed to do that, whereas non profits aren't. So anyway rant over. Don't do.

Meghan 00:17:50 It. Yeah I got a couple takeaways for this whole rant here. First, if you are a very entrepreneurial like business minded for profit business owner and you start

coming up with a win win solution that has to do with a non profit, like hit the brakes like yeah.

Meghan 00:18:10 Win win win for who? Hit the brakes. We see this a lot. It's may not have bad intentions, but it is often not allowed under non-profit rules.

Jess Birken 00:18:20 So do not bring it too far down the road.

Meghan 00:18:24 Yeah. Do not be starting a non profit just because it'll make your business work okay. Secondly, even if you can start a non profit along with your business for all non profits, we have to worry about optics. We are dealing with donated funds. We are dealing with people's hopes and dreams about what a non profit really is. And if it looks funny, even if it is all set up correctly, that matters. And you're going to deal with the PR problems of having something that could look shady or questionable. And lastly, if you have community support for something that benefits more than just you and your business, that's awesome. And it doesn't mean that you need a non profit in order to engage the community or receive that support. There are other ways to do things beyond just starting a charity, especially when it is not a charitable purpose that you are trying to get done here.

Meghan 00:19:16 So get creative outside of the nonprofit sector to help engage the the community that wants to support your efforts.

Jess Birken 00:19:26 Love it. Love it. Listen, folks, if you're trying to restore an old hotel and think you should start a nonprofit.

Meghan 00:19:34 There's so many of.

Jess Birken 00:19:34 Those.

Meghan 00:19:35 Out there, I'm sure. I'm sure there's like, hundreds of people who own an old historic hotel right now.

Jess Birken 00:19:41 Share this episode with those friends of yours who are doing that so they can hear what a terrible idea that is. Leave us rating, subscribe and your podcast app. It helps people find the show. If you have a wild story like this to share, I bring it. Bring it in. We'll keep it anonymous. Send me a note. Online charity show. And as always, 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!

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