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What a Nonprofit Executive Committee Should Actually Do – 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 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.

Jess Birken 00:00:41 Hey there and welcome to this episode of Charity therapy. Today we're pulling this episode from our backlog and this one has a special treat for you. It actually has two listener questions. Both of them are getting at the same larger issue, which is what is an executive committee and what is it actually supposed to be doing. This is a problem that comes up for a lot of non-profits with their governance.

Jess Birken 00:01:05 And trust me, you don't want to miss it.

Jess Birken 00:01:08 Hello, hello and welcome to this episode of Charity therapy. My co-host Meghan and I are here and ready to dive into some questions. What do you have lined up for us today, Meghan? Hey, Jess.

Jess Birken 00:01:20 Today we.

Jess Birken 00:01:21 Are.

Jess Birken 00:01:22 Gonna.

Jess Birken 00:01:22 Dive.

Meghan Heitkamp 00:01:23 Straight into the world of governance and specifically the board executive committee.

Jess Birken 00:01:30 Bam bam bam.

Meghan Heitkamp 00:01:31 Exactly. I feel like board committees and executive committees in particular, are those governance things that cause a lot of drama and people problems at the board level, at non-profits. Jess, can you give us just a little rundown of what an executive committee should be doing in an ideal nonprofit?

Jess Birken 00:01:51 Right. So in an ideal world, the executive committee gets the agenda put together for each board meeting and typically supervises the executive director. Like they do their performance review and that sort of a thing. They also might be the go to committee for reporting problems like significant problems, or they might do some legwork for the rest of the board at like a very high strategic level.

Jess Birken 00:02:20 But they are not a stand in for the full board. Now, the old way of thinking about executive committees and the current best practices are super different, and I have a feeling we're probably going to see that today in our questions. So what have we got? Megan.

Meghan Heitkamp 00:02:39 Yeah, you're feeling is correct. So let's jump right in. First questioner writes in and says, I am the board chair for a local nonprofit. We had to let go two of our three staff recently, and that means that we are essentially back to being a working board of directors. The executive committee, which is three of us, have been putting tons of work into the nonprofit, while the other six board members mostly just show up to the monthly meetings they're technically meeting the obligations they signed up for, but their absence during the month is making it hard for us to get anything done in between meetings. How much authority can the exec committee safely assert to make decisions without full board participation? Our bylaws are kind of vague.

Meghan Heitkamp 00:03:22 They just say that the exact committee can act on behalf of the board between meetings, but that all decisions must be ratified at the next meeting. What if the decision can't be undone, but the full board doesn't agree on it?

Meghan Heitkamp 00:03:35 Oh my God.

Meghan Heitkamp 00:03:37 Okay, it's a doozy.

Jess Birken 00:03:39 Yeah, this is a doozy. Because you know, the thing there layers to this question.

Meghan Heitkamp 00:03:48 Like an onion.

Jess Birken 00:03:49 It's like an onion. All right. So first of all, they had to let go of two of three staff and are back to being a working board. Ouch ouch ouch. I my heart kind of goes out to this exec committee because obviously something happened here, whether it's we don't have the financial resources, and we had to lay off two thirds of our three person staff or there were extreme people problems. The other thing that's weird in this question is they're not indicating whether they have an executive director. And so that makes me wonder if this is a board that is just hiring staff, but doesn't have an executive director, which is something that I've seen before, which is interesting from the perspective of like the board has sort of done this to themselves in that case, because now there is no executive to do the work of the organization.

Jess Birken 00:05:00 And if it's financially motivated, there is no money to rehire the people who are gone. So this group is kind of between a rock and a hard place. And I, I just want to be sensitive to that because I'm about to also like, skin them alive a little bit here. Here's the thing. The other six board members show up to the monthly meetings. That's what they signed up for. They signed up to be part of a governing board. You had staff that you were not a working board. It's not necessarily reasonable to expect that board who signed up for a true governance role, have the capacity to roll up their sleeves and now dedicate 20 hours a week to this organization because we don't have staff. So I also want to be cognizant of those people. and it's like there's a little bit of a vibe that like, they're slacking off right now, but this is not what they agreed to when they agreed to board service.

Meghan Heitkamp 00:06:11 Yeah. These board members are volunteers. Like they you know, they agreed to a set of obligations.

Meghan Heitkamp 00:06:17 Absolutely right.

Jess Birken 00:06:19 At the same time, this exec committee is now sort of injecting themselves into the staff role and maybe being a little bit mastery, like, because if you have a choice, we don't know. Right? We don't know if that was a financial reason that they're they had to let go of two out of three staff. They may feel like they don't have a choice, but you also have a choice to say, should we exist at all, what is happening here?

We don't have enough money. Why is that? Is our mission not important to our community? Like maybe some internal work needs to be done instead of just being like, well, we'll just jump in and roll up our sleeves and get everything done. I don't know, there's not there's not enough to go on here, but I do at least want to call that out. That just jumping in and trying to save the day isn't necessarily 100% the right move. I don't know that it's not the right move, but I just want to say that out loud.

Meghan Heitkamp 00:07:22 Well, and it just sounds like, again, not knowing fully the context here, no matter what, that's not a sustainable solution of yes.

Jess Birken 00:07:31 Thank you. Exactly. Yeah. It's not sustainable. Right. So at some point you need to be able to go back to being a governing board or hire staff or recruit volunteers that have 20 hours a week to dedicate to the organization or decide none of this works and you need to merge or something. So now to like going down to the bottom of the question, how much authority can the Executive Committee assert without full board participation, I would say the best practice is none. I realize their bylaws say that they have the authority to act between meetings, but I am really not a fan of that practice because every single board member has a fiduciary duty to do what's in the best interest of the organization, to uphold the law, to follow policy and procedure. And when your executive committee just does stuff without the input of the other six people, you're not letting those people execute their fiduciary duties, and then you're asking them to come by later after the fact and be like, yeah, that was fine.

Jess Birken 00:08:42 It's not fair. It's not fair, and they're not actually executing any fiduciary duties, but they're still legally on the hook for everything you do. So I don't like it because to their point, what if the decision can't be undone? Yeah, exactly. I'm wondering, though, if there is a different way to solve this problem. Sometimes we have a tendency to just like, well, we've always have had an executive committee, so like that's what we should just do. But maybe there is a different reality, because if a couple of people are willing to take on those staff roles as volunteers, which is kind of what's happening right now, maybe they shouldn't be acting in their capacity as board members when they do that. Maybe they should be recognized as volunteers in a different role with a different job description. That is not the board. Because your staff didn't have a board meeting every time they needed to make a decision. They do the operations and they report back to you under your policies and procedures.

Jess Birken 00:09:53 So maybe the problem here is calling yourselves the executive committee. And maybe what we should do is say, you know what? We lost two out of three staff. Let's just say it was layoffs. And we're going to have, you know, Hussein and Salih are agreeing to step up into those roles on a part time basis as volunteers for now, and they have a job description. And it's very clear when they're acting in their capacity as those staff, quote unquote, roles versus coming to a board meeting, that can get a little tricky. And I you might need a little bit of guidance around how to do that, but that actually may be a better solution here, because it's not a good practice for the exact committee to just start, like running the organization without the rest of the board. And I think there's some blurring of the lines here, because you did have staff doing stuff, and it wasn't the board acting between meetings. Right? So I that's kind of a roundabout non-answer, but I just think there are different ways to think about this problem, then the titles that they hold right now.

Jess Birken 00:11:05 Does that make sense?

Meghan Heitkamp 00:11:06 Right. It does because you're saying that basically just because you are a board member doesn't mean every single thing you do is a board action and decision. You know, if you are rolling up your sleeves and saying, hey, I need to like be the one that's handing out the meals at the food shelf today. Like, that's not a board decision to say, oh, we're out of meals. We need to close. That's a running the food shelf decision day to day staff decision. Yeah.

Jess Birken 00:11:32 That's not the exact committee taking action without the board.

Meghan Heitkamp 00:11:35 And clarifying what that actually means and where those lines are so that, you know, when you are crossing into, okay, this is a board decision and needs to be brought to the full board for a decision and not something we can make on the fly. You know, that's an important distinction to make so that people know where they stand. And it's not just this idea that the exact committee is doing all of the work,

and the rest of the board members just rubber stamp it when they show up to their meeting.

Jess Birken 00:12:02 Right. And that's where having, like, clear roles, clear policies and procedures. When is it a board decision? Maybe that wasn't clear with your staff. Maybe that's why you had people problems and had to let people go? I don't know, but getting some clarity around what are our thresholds? When does the board need to approve a contract? Well, if it's going to be spending over X dollars, or if you know you're going to go over budget by more than 10%, whatever, you need to have some rules around what is a board decision and have it be clear what is staff and operational stuff. I think you're dead on with that.

Meghan Heitkamp 00:12:42 Absolutely. Okay. Well, our next question gets at the same problem just from the opposite perspective. I'm a new board member at my neighborhood organization, and I am so frustrated. I wanted to serve on the board to make a difference in my community, but it seems like there's just no point. The executive committee, three people is doing everything themselves without consulting the rest of us, and they barely even update us on it.

Meghan Heitkamp 00:13:08 It's clearly frowned upon that we ask any questions, or even try to get involved in the day to day work. What do I do about this?

Jess Birken 00:13:17 Oh, this is the other side of the coin.

Meghan Heitkamp 00:13:19 Yep.

Jess Birken 00:13:20 This is. This is so great because it's like these are the other six people from that last question, right? And this is where you're seeing like the people problems that are going to come up the board schism, the board drama that spins out of

situations like this, because you have one group of people who feel completely disenfranchised, like their presence is unappreciated. It doesn't matter, why am I doing this? Then you have one group of people who probably are like, I'm overloaded. No one appreciates how hard I'm working. If I wasn't here doing all of this, nothing would be happening. That's why this whole the executive committee can do stuff on its own is so toxic. So what do I do? That's what they're asking, right? I am a new board member. Well, first, I guess I would take a look at the bylaws and see if the bylaws say that the executive committee.

Jess Birken 00:14:27 You already heard me say, I don't like that when your bylaws say that. So if they don't say that, then the executive committee is sort of acting without authority. Now, does that mean you should go to the next board board meeting and start a big fight and be like, you all are acting without authority, and it has to stop now? No. This is where things get really tricky. Because why is the exact committee doing everything themselves? Is it that they are the only people who are willing to do stuff because there's a lot to be done and nobody to do it. Is it that they, there's like, I, I usually call this like the survivor island mentality, where there is like a cadre of people who have an agenda at the organization and they're just trying to get stuff done their way. That's always toxic. I guess what I would want them to do is try and put aside the emotion and look at the people and think, what is going on here objectively. Because if you're an all volunteer organization that is doing so much that you really should have staff, that is an issue that you can raise because people probably are feeling overloaded.

Jess Birken 00:15:53 They probably do need an executive director. And that could be an issue that you bring up to say, you know, you guys are doing a ton of work. I'm, I'm worried about the long term sustainability of this. Can we look at the budget for bringing on an executive director? You also could go get some advice from someone like me about your bylaws, about your governance. You also could leave. Yep. You're you know, you're a volunteer, that sometimes that is the thing that people need to remember and they need to hear is that this is a volunteer role. You are not obligated to be there. If you feel like there's some fraudulent thing happening, it's a good idea to get some legal advice. But at the end of the day, you're a volunteer. So if it's a totally toxic culture and there's not going to be any headway made, you can just walk away. If you feel like these people don't really realize they're excluding us, you know? reach out to me, I'll do an article and put it on my blog so you can print it out and share it with your board.

Jess Birken 00:17:08 I don't even. Maybe we already even have something like that. Share this podcast episode with them. Write that. If you feel like this and you think that the people involved are good, decent people, but the setup is just wrong, I think it's fair to raise the issue and just to say like, you know, I'm not sure why the rest of us are here, it feels like there's not really any meaning to me being here. Are you sure that this is the way we should be doing it, or are you open to talking about this? Because it doesn't feel very meaningful to me to have this board service in my life. And I really believe in this mission, and I want to give back to this community. But can we talk about it? Right. And that can be a difficult thing to do without making people feel defensive. so there's not really a clear answer on what to do here, because there's so much of it depends. But I love that this question points out, like the other side's perspective.

Jess Birken 00:18:15 And this is why I don't like executive committees doing stuff without the rest of the board, because it absolutely disenfranchising people makes them feel like they don't matter. And eventually you're going to feel burned out and you're going to have nobody to turn to for help because you've been hoarding all the work and excluding everybody. So stop it. And if you need if you need bylaws, we have a DIY solution. We do check it for people, you know, like you can get some really great bylaws from our DIY tool. Even you don't have to do it this way. It's it's bad for your organization. And these two questions perfectly illustrate that.

Meghan Heitkamp 00:18:56 Well, and I feel like this brings up a lot of different things about the culture of the organization. Maybe it started in a way that we were just trying to fix an immediate issue, but turned into this long term culture of toxicity that no one even knows why we're doing it this way anymore. It's just the way that it's always been, and it's so hard to break out of it.

Meghan Heitkamp 00:19:17 And I know you've talked to some guests about this before, but the culture is the slowest and hardest thing to change. And so, you know, when you're running up against that, you have to recognize that, like, okay, what it says on our paperwork, on our bylaws or things like that, that absolutely matters and things that we should work on. But this is ultimately a people and a culture problem. And as a new board member, if you're really committed to trying to improve the culture, that's amazing, and you're going to have to consider how you want to deal with that and deal with the people involved. But you may decide that it might be better worth your time to

find an organization that has a culture that's a little bit more accepting of your help, but it's not just an executive committee problem at this stage, that's for sure.

Jess Birken 00:20:04 Absolutely. And to be fair, we don't have a ton of information. There may be a real reason. Like, I'm thinking of some trade associations we've worked with where the president, past president and president elect roles are, like intense.

Jess Birken 00:20:23 Yeah. Like, it's basically a part time job. Yep. And that can be a problem because it lends itself to some members of the board working really, really hard. And some members of the board feeling like they're not very important. That sometimes is a function of all volunteer associations. And these are not easy problems to solve.

Meghan Heitkamp 00:20:48 Nope. You got to start somewhere.

Jess Birken 00:20:49 Right. What do you have for takeaways for us, Megan?

Meghan Heitkamp 00:20:53 Yep. I got a couple. So first. And the biggest one. Your executive committee is not and should not be a board within a board. They should not be making, you know, big decisions on behalf of the board for the rest of the board to rubber stamp when they meet. This is something that could be in your bylaws. That is allowed, but it is not best practice. The entire board has fiduciary duties, and they need to be able to be weighing in on every decision and voting. And having the executive committee make all those decisions is essentially taking that away from them.

Meghan Heitkamp 00:21:33 It's not a board within a board. And then the other big one would be that it's important to have clear policies and roles defined for the board of directors, like what is a board decision, what is running the nonprofit on the day to day getting your activity is done, having a clear delineation of what kind of work is, you know, in the purview of the board, what kind of work is run by volunteers or staff. All

of those things are really important to to to differentiate. So if you get to the point, like in our first question where you have to let go of your staff, it's clear what roles people are inhabiting.

Jess Birken 00:22:11 Yeah. That's awesome. And I think just remember your volunteer, you know, if you really hate it, sometimes I think people forget that.

Meghan Heitkamp 00:22:20 Absolutely. There's lots of ways you can forward a cause that you care about, even if you decide not to be on the board anymore.

Jess Birken 00:22:28 Yes. Well, Megan, thanks for being here.

Meghan Heitkamp 00:22:31 Thanks for having me.

Jess Birken 00:22:32 If you enjoyed this episode, do me a huge favor. Share it with a friend. Rate us. Review us. Subscribe on your podcast app. It really helps me out. If you have a question or a story to share, I would love to hear from you. So send me a note online. 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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