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What You Can and Can't Do With Restricted Funds – 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 questions I ain't scared. Ready to rock? Let's dive in. Hello, it's Meghan.

Meghan 00:00:43 And welcome to this episode of Charity therapy. Year end giving season is fast approaching, and we all know that some of those gifts are going to come with strings attached. So this week on charity therapy, we are replaying an episode about restricted gifts. Can you move money around? Can you change restrictions on gifts you've already accepted? Do you even have to say yes to a restriction? Keep on listening.

Meghan 00:01:08 To find out, Jess will cover all of these in this rather giggly episode.

Jess Birken 00:01:13 Hello. Welcome to this episode of Charity therapy. Today I've got my wing woman and co-host Megan here and we have the giggles. We've had like three bloopers trying to get started right now. And we're we're feeling a little silly. I don't have any witty banter for you, because I have been trying to get this podcast started for like 15 minutes, and Megan and I have lost the thread.

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Meghan 00:01:37 You will hear it in my voice.

Meghan 00:01:38 That I cannot stop laughing and I can't control that. And I'm sorry, but I'm so happy to be here. How are you? This?

Jess Birken 00:01:45 I'm good. It was only a four egg day. Yesterday was a five egg day. The ducks. You may remember I started raising ducks last summer. I know Megan knows this. I bet them they started laying eggs. And I am up to my eyeballs in duck eggs. and it is the greatest thing ever. I love my ducks.

Jess Birken 00:02:06 And recommended enough.

Meghan 00:02:07 Just.

Meghan 00:02:07 On time as everyone is freaking out about the price of duck or the price of ducks. About the price of ducks has also gone up. Now you just have an unending supply of eggs and you don't have to buy them.

Jess Birken 00:02:20 Right? I feel like I will recoup the costs of raising them for a year and building shelter for them after about 1500 eggs. So, you know, there's still some pretty expensive duck eggs, but it's worth it.

Meghan 00:02:35 It's a long term investment. That's right, that's right.

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Jess Birken 00:02:39 All right. What are we doing? What's going on? Megan? What are you doing here?

Meghan 00:02:42 So today's episode is all listener questions about donations and gifts, and this time, not about how to get them, but, like, more what to do with them once you have them. Jess, I know you get lots of clients who have questions about how they're allowed to spend certain funds, especially if they came in as a restricted gift. So first of all, can you give us a quick definition? What does it mean to take a restricted gift?

Jess Birken 00:03:10 Yeah.

Jess Birken 00:03:11 So this you know, and I'm not an accountant and I'm not giving you any tax advice, but what I can tell you is a restricted donation or a restricted gift is basically a contribution to the nonprofit that has been sort of earmarked for specific use. So an example that you might see is you are being asked to support like a parks and trails organization, and they're asking for donations to support buying some land that will add on to McKinley Park. if you donate to the Buy the Land campaign, they're going to have to use that money to buy the land and not for other general operations. Like it can be a great way to inspire people to give. But restricted gifts can also get really tricky if you don't manage them well. The biggest scandal I can think of, actually, in this realm was like the Red cross. And this is like, I don't know, a hundred disasters ago, but that's sad. Disaster comedy. That's where my brain is at right now, folks. It's a blooper day.

Meghan 00:04:18 It's the depressing reality. It's fine.

Jess Birken 00:04:21 Right. So it was like a hundred disasters ago. Maybe it was a decade. Maybe it was five years. I don't know, I'm old. I can't tell anymore. But the Red cross basically was soliciting donations to support hurricane whatever, right. And people sent millions and millions and millions of dollars because this was before people had disaster fatigue and they got in trouble because that money was restricted. It was send money to support Hurricane Katrina relief. Well, they had more money than they could

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possibly ever spend on that disaster. And so they started using it to support other disasters. Right. Just general operating. And they got in big trouble. It was all over the media because those were restricted gifts. The ask was support this disaster. And when you do that, when you ask for the money, that way it can cause a legal restriction on the gift.

Meghan 00:05:18 Right? And it makes sense that it's something non-profits want to do because it's something very like tangible.

Meghan 00:05:24 And it makes it an easy ask for people to want to give money. They want to donate to something that they can envision the way their dollars are going to be used.

Jess Birken 00:05:32 Yeah. And, you know, like you need just money for the general mission. So there are ways to to do the ask where you can still ask like in a way that makes people think like $50 buys, you know, ten school bags for these kids who don't have school supplies. But that's not saying all you're going to do is buy the backpacks. Yeah, right. You can make a metaphor out of it. You can be like, you know, $200 helps a family buy a goat so they can sustain their family with selling goat milk or something. Heifer international I assume that the donations to have for an international are not actually restricted to the Goat, so there's a way you can do it, and it is important that people are are motivated. But you you do need to fund your general operating expenses.

Meghan 00:06:25 All right.

Meghan 00:06:25 Well, I've got some questions from people who are in that situation.

Jess Birken 00:06:29 Let's do.

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Meghan 00:06:30 It. All right. First, I am a grant writer who just started working for a nonprofit, and I'm pretty nervous about the Ed's attitude toward obtained funding. We have restricted grants received for specific program costs, but the Ed thinks we should be able to just move money we've received around anywhere we might need it. I'm not an accounting person, and I'm not experienced with managing and allocating funding once it's been received, but my understanding of restricted funding was that it's supposed to go where the donors have specifically stipulated. The Ed says that the nonprofits move money around internally all the time, and that's the only way they can stay afloat. I'm just wondering if what this organization is doing is normal or if they are mismanaging their funds.

Jess Birken 00:07:15 Yeah. This is exactly what you're not supposed to do with restricted funds. Ding ding ding ding ding ding ding. This is not the winner. When we say that the donated funds have to be used for the purpose they were given, it's not like a suggestion.

Jess Birken 00:07:31 It's a legal requirement. It's an IRS regulation. They care that you do it right. There are accounting standards for SB 116 if you care to look it up. GAAP accounting, you have to do this right. You could get in big trouble, lose your tax exempt status, lose your grants, become an excluded party, whatever. If you mishandle restricted funds, especially if they're state or federal funds. But if a grant funder found out that you spent their grant money on something else entirely and not what you proposed, they could legally ask you to return all of the funds to them, and you would have a big bill and never get another grant from them. So I don't want to say that moving money around isn't normal. I mean, everybody has to manage cash flow. But the thing that you have to understand is if you have, let's say, ten grand, $10,000 in restricted funds, that needs to be reflected on your general ledger as restricted funds until you incur an eligible expense, and then that amount is released from restriction.

Jess Birken 00:08:40 So at all times in the bank, you need to have the total amount of restricted funds available. So if you have $10,000 in restricted funds and you have a $100 expense, well you got to have $9,900. I'm really bad at math. $9,900 in the bank still, right? So you can't borrow from that restricted pool to like, cover payroll. So if the

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money is getting moved around where we're not maintaining the cash balance of our restricted funds, that's a problem. So you got to think about it like you could have at any moment. That grant funder could come to your office tomorrow and say, you know what? We changed our mind. Whatever you spent on the grant is fine. But like anything you have left, we want it back. We decided we don't want to do this. And you got to be able to cut a check today. Right. And so that's kind of how you have to think about restricted funds. They're not yours and they're not yours to just use for whatever.

Jess Birken 00:09:44 This organization probably needs to level up their accounting. They probably need a third party. Or maybe they can't hire someone internally, but they could hire a bookkeeper and a, you know, controller outside controller services and get their GL straightened out, get their cash management figured out, maybe some stronger financial controls. Sounds like they just need some help leveling up.

Meghan 00:10:09 And you know, this is one of those things where it's coming from the grant writer, this question. And it's possible this is all just, you know, they don't know. They don't know. That's how you're supposed to do it. So it's like it may not be intentional mismanagement or intentional, you know, nefarious dealings. It is just they didn't know how strong of a line you need to have around that restriction.

Jess Birken 00:10:30 So it's tough to know.

Meghan 00:10:32 Yep. All right. On to the next question. I am on the board for a five one C3 church, and I have received verbal consent from a donor to reallocate funds from a roof fund to our general fund to keep the church from having a shutdown.

Meghan 00:10:46 What do I do now? Do I need to document this decision?

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Jess Birken 00:10:50 Okay, I love this. This is how you go about changing the purpose of a restricted gift. Yes, because let's be real, shit happens. You know, I would recommend always documenting a decision like this. In writing, it says they got verbal consent. If they could get an email that's like, hey, just confirming it's cool with you if we do this and they just write back and say, yes, that would be amazing. If you can't do that, it's just not really possible for you. Just writing a memo to your internal files that you had the phone call, what day you had the phone call that you clearly said, you know, communicated everything. I see this a lot with like churches where the congregations are sort of dwindling. And maybe they had a building fund and they were they were planning on having a building someday, but now, like, they're never going to use it. And they really need those funds for operations.

Jess Birken 00:11:42 It's really can just be good to let send a letter to the congregation and let everybody who has ever made a donation know what's going on and just ask for their approval to reallocate those funds to general operating.

Meghan 00:11:57 Yeah. So it's possible to change the restriction if you go about it the right way.

Jess Birken 00:12:02 Yep.

Meghan 00:12:03 Absolutely awesome. All right. I got one more question for you, Jess. I run my own nonprofit, but I'm fairly new to it, and I know I need more education.

Jess Birken 00:12:14 I do, too, because you said my nonprofit, right?

Meghan 00:12:18 I've got almost nothing in the bank. And a generous donor has offered to give me my first major donation. Woohoo! They want to give me a hundred grand to buy a building in my town for office space. I found an awesome location. I'm moving on,

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but I I'm realizing their gift isn't going to be enough to furnish the space or get insurance or anything else beyond that. Now what?

Jess Birken 00:12:41 Well, Hallelujah. You know, this person, even though they started out with I run my own nonprofit, which is always the like red flag number one, you actually are doing fundraising.

Jess Birken 00:12:54 You get this huge gift that I'm sure that's amazing. Feels awesome to have someone motivated by your mission. I don't know what that is. You didn't give us much to go on here, including a reason why you need a building. So we're not working with a lot of details here, but you've done the work on understanding this isn't the only cost. Like after the day of closing, you're gonna. You. Maybe you own a home and you get it right. Like, the the the price is one thing, and then the ongoing upkeep and maintenance is a whole other thing. The question that comes up for me is, do you actually really need a building right now? And what I wouldn't want to see is that somebody like, hey, I'm a donor and I think you need a building and I would like to give you money for that. And you're like, okay, what? And because it's new and we don't have a lot of, like, chops around fundraising, it's very tempting to just kind of like take what they're offering.

Jess Birken 00:13:58 But is this really the best way to, like, use these funds? Just because the donor is like offering money for this purpose doesn't mean you have to accept it for that purpose, or should accept it for that purpose. I mean, I feel like they've already identified like owning real estate is a big deal and especially for a tiny organization. And it's it's going to cost a lot more than just the purchase price. Right. This is such a tough situation for this person. If and I don't know if it is important to have space. So if it is important to have space, physical space right now, and you've already figured out that the money isn't going to be enough to pay all the costs associated with it. Don't just run into this situation half baked, right? Maybe there are other options, like could you rent space for a couple of years in a short term lease? Maybe this gift would fully prepay your rent so you could focus on other things, like fundraising and growing the program and figuring out what your ideal space would look like.

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Jess Birken 00:14:59 Let's make sure that the nonprofit is having good success before we commit to real estate. It's like getting married to somebody you don't even know. I've talked to a lot of people who have said yes to something that sounded amazing, or there are people pleaser, or they didn't know how to, like, turn the conversation with the donor to make it meet the nonprofit's needs. And it might seem generous, but like if it actually puts the nonprofit into a place of getting into trouble, you need to consider where the nonprofit really needs to be going and how to work with your donor, and whether this money really moves you closer or further away from your goals. And when I say you bet, I'm saying you your board because you alone cannot make this decision by yourself. Include your board because legally you need to have a board and you don't own the nonprofit. So make sure you're including the other people with fiduciary duties in the decision making. That's worth saying.

Meghan 00:16:05 That makes total sense. Okay, Jess, I have a couple of takeaways here.

Meghan 00:16:09 Are you ready for them?

Jess Birken 00:16:10 Hit me.

Meghan 00:16:11 First. This is a big one. Restrictions are real and not just a suggestion. Yeah, if you have a restricted gift, you have to respect that restriction. And the funds have to be used for what they were given for and kind of hand in hand with that, it can be hard to manage those restrictions. So it's important to get some help both on the fundraising side so you understand what gifts are actually restricted and what gifts are not. And also on the accounting side with how you are going to manage that on your books. Second, you can change restrictions, but there is a process and you need to get donor approval. It's not something that can just be done because you decide you need to do it. And then the last one is that you don't have to accept every restricted gift that is offered. Some may be a great fit for your organization and some may not. And you have to really consider the whole picture and not just be blinded by the dollar signs like in our last question.

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Jess Birken 00:17:09 Yes, I love those. Those are awesome. And I would just add. There are ways to ask for gifts that make them seem very tangible, but also don't create a restriction. So don't create accidental restrictions that you didn't mean to create. Because we've seen that before.

Meghan 00:17:28 Carefully craft your fundraising language.

Jess Birken 00:17:31 That's right, that's right Megan. As usual, this was super fun, folks. If you enjoyed this episode and you like our bloopers, do give us a thumbs up. Rate it. Review us.

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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.

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