



Everyday Ethics for Local Officials

Fundraising Ethics: Brother, Can You Spare a Dime?

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QUESTION

A local nonprofit organization has asked me to serve on its board of directors. I know the organization is having financial challenges, and fund-raising will be a major part of the job. I am honored to be considered for the board and being associated with this organization will look good on my political résumé.

The president of the organization has suggested that I would be a great fund-raiser because of all my contacts with agency vendors and permit applicants. This feels uncomfortable to me. Am I right to have ethical concerns?

ANSWER

Yes, you are right to have ethical concerns. For better or worse, there is an inextricable relationship between the need for money and the ability to do good things. The local Boys and Girls Club, cultural events, social services organizations and political campaigns all need money to be successful in pursuing their respective missions. Because local officials care about their communities and want to make them better, local officials will find themselves fund-raising for worthy causes.

Moreover, as a respected member of your community, you have credibility that is important to any fund-raising effort. As a local leader, you know what the community's needs and priorities are. Your involvement with a group also assures potential donors that the cause is legitimate.

Threshold Questions

The first ethical question to ask yourself is whether the cause is worthy of your commitment. After all, the organization is borrowing your credibility,¹ and your credibility is not something to lend lightly. If your primary motivation is "résumé value," you risk putting yourself in the position of pitching a cause in which you do not truly believe. Even though this might be an example of doing a right thing for the wrong reason, such an approach may still generate concerns about your personal integrity and trustworthiness.

Are you willing to or have you contributed to this particular cause? Many fund-raisers believe that being willing to do what you are asking others to do is vital to the credibility of anyone engaged in fund-raising. If you are not willing to give your own money, you may want to decline the invitation to sit on the board.

What's In It for the Donor?

Once you conclude that the cause is worthy, the next series of ethical questions relate to the motivations of would-be donors. It's critically important to ensure that the would-be donor is not given the impression that supporting your request for donations would result in special treatment – either positive or negative.

There are many legitimate reasons why individuals respond positively to requests for donations. These include understanding the worthiness of the cause and the donor's stake in that cause being accomplished. If the cause is the local Boys and Girls Club, how will that organization's programs benefit the would be donor? If the cause is a ballot measure campaign, how will the passage or failure of that measure affect a potential donor?

In addition, it is common political wisdom that people contribute to both worthy causes and campaigns out of a desire to have a "connection" with you. As an ethical local official, you need to have a clear idea how far that "connection" goes. Does it mean that you will greet that individual warmly by name whenever you see them on the street or at community events? Sometimes all people want is that personal connection with respected individuals in the community. To the extent that people feel more connected with their communities and their leaders, such a connection is an ethical positive.

What Cannot Be at Stake

What if this "connection" means that the person expects special preferences in his or her dealings with the agency? Or maybe the person expects his or her calls to be returned more promptly. Perhaps this individual expects to get a meeting with you when others

Aspirational Goals

Relevant ethics code provisions relevant to this topic include:

- **Trustworthiness**
I avoid any actions that would cause the public to question whether my decisions are based on personal interests instead of the public's interests.
I do not use my public position for personal gain.
- **Fairness**
I am impartial and do not favor those who either have helped me
or are in a position to do so.
- **Compassion**

I convey the agency's care for and commitment to its community members.

Other sample ethics code provisions are available under the "ethics codes" tab of the Institute's website at www.ca-ilg.org/trust.

cannot. What if the donor's expectation is that his support of your cause will make you more favorably disposed toward his pending project, bid or franchise renewal? Worse, what if the donor fears that if he or she does not give, there will be negative consequences?

These are all issues to which a public official needs to be extraordinarily sensitive. The notion that one has to "pay to play" in government is very damaging to the public's faith in the fairness of the decision-making process. Such faith is vital to your leadership and your agency's ability to address the issues of the day.

Under no circumstances should your fundraising pitch on behalf of any cause lead the listener to believe that your official actions will be influenced by whether the listener gives or does not give – even by implication. Absolutely no mention should be made of any pending permit applications, contract proposals or other business your would-be donor might have with your agency. Such an approach is a "shakedown" in which the would-be donor is left with the impression that the donor's gift is a precondition for your favorable action. No matter how worthy the "ends," this kind of "means" is totally unethical.

As a public official, your reputation for absolute integrity and fairness is critical. Such a reputation takes time to build and can be undermined in an instant. If you have any sense that a would-be donor could believe that there may be a connection between his decision to donate and your actions as a public official, don't ask. The cost is too high.

The Ties That Bind

There is a flip side to the fund-raising issue. What are the implications of receiving money from certain kinds of donors? The easiest illustration is to imagine Mothers Against Drunk Drivers accepting money from the alcohol industry – that's very unlikely to happen.

At the local level, the issue can be subtler. For example, one former local official describes the situation in which nonprofits become "unwitting dupes" for their donors by receiving contributions from such donors and then being asked to advocate those donors' interests before the agency. These kinds of situations are why, for example, the Institute for Global Ethics recommends that nonprofit organizations, as an ethical matter, scrupulously avoid "transactions or relationships that may impair, or reasonably appear to impair, the ability to make decisions solely on merit."²

The issue is the same as a donor expecting special consideration from an elected official: Either the donation is or is not perceived as being a quid pro quo (or an exchange) for support of the donor's position. Again, while the ends (money for a worthwhile cause) may appear to be worth the means (advocacy of the donor's interests), using such an approach erodes an organization's credibility. And credibility, once eroded, is difficult to regain.

The Blackout Period Option

One option is to have a self-imposed blackout period for both political and charitable fundraising. Some donors also use this approach by refusing to make a contribution while they have business pending with an agency.

The way a blackout period works is that a public official will not solicit and/or a company will not donate within a specified period during which the agency will be acting on an issue of concern to the would-be donor. This way, it is less likely that a critic could credibly assert that a contribution is a quid pro quo (or an exchange) for favorable treatment.

Bottom Line: It's All in The Approach

In short, fund-raising for worthy charitable and political causes is a very sensitive issue for public officials. Approach is critical. Any fundraising pitch needs to center on the would-be donor's interest in the cause – not on the benefits of currying favor with you. This is why your own personal commitment to the cause (and your sense that the donor has a bona fide interest in the cause being accomplished) is so important. If you genuinely believe in the cause, your sincerity will come across in discussions with prospective donors.

Use of Agency Resources for Fund-Raising Efforts

Can an elected official bolster the credibility of the fund-raising pitch by using agency stationery or staff to help generate the solicitation letters for a charity? No. This is an improper use of public resources. The answer is the same – no – if the solicitation is for political purposes.

After the Fact

What if a donor does come to you with a request for special consideration on a matter pending before the agency? The Institute for Local Government's video, "Ethics and the Elected Official: Avoiding the Slippery Slope," offers some advice. The video shows the local official responding by saying that she gives "every application fair consideration on the merits." When pressed further for special consideration, she keeps repeating her original response, indicating that such fairness is what her constituents expect of her and that's what she delivers.

Other Issues to Consider

As local officials ponder becoming involved in local charities, they may also want to consider whether there is a potential for such involvement to create conflicting interests and loyalties – or the perception of such conflicts.

Some questions to ponder:

- Does the nonprofit receive funding from your agency or other in-kind support?
- Does it lease space or provide services for the agency?
- Will you have to abstain or disqualify yourself from voting on such issues when the nonprofit comes before the governing body?
- In spite of such an abstention or disqualification, will the public or some other group competing for the same benefits nonetheless perceive that your group has the “inside track” because of its relationship with you?

No matter how worthy the cause, such relationships can undermine the public’s perception of the fairness of your agency’s processes. The issue for each official to decide is how to weigh the competing advantages and disadvantages of helping a worthy cause versus potentially jeopardizing the public’s confidence in local government.

Again, fund-raising is a common fact of public life. The key is how – and when – a local leader does it.

Fundraising Issues

Fundraising for Legislative, Governmental or Charitable Causes

Elected officials who are successful in getting someone to contribute \$5,000 or more to a legislative, governmental or charitable cause during a calendar year are subject to special disclosure requirements under the Political Reform Act. Within 30 days of reaching the \$5,000 threshold, the elected official must file a report with the official’s agency (typically the clerk).³ The report contains the following information:

- The contributor’s name and address;
- The amount of the contribution;
- The date or dates on which the payments were made;
- The name and address of the contribution recipient;
- If goods or services were contributed, a description of those goods and services; and
- A description of the purpose or event for which the contribution was used.⁴

The official must make this report once a single donor (whether they are individual or an organization) has given more than the \$5,000 aggregate threshold for a calendar year, all payments the donor has made for the calendar year made must be disclosed within 30 days after: 1) the date the \$5,000 threshold was reached or 2) the date the payment was made, whichever occurs later.⁵

What is a “legislative, governmental or charitable” cause? The law does not say, but charitable causes typically involve 501(c)(3) organizations. A “governmental” cause might include such things as fundraising for a new public facility, an inaugural celebration committee,⁶ litigation expenses,⁷ a breakfast honoring public safety personnel⁸ and youth conferences.⁹

The reference to a “legislative” cause apparently has its roots in a 1996 Fair Political Practices Commission opinion addressing a situation in which a state senator asked a private party to pay for the airfare and expenses for a witness to come testify at a legislative hearing.¹⁰

There is some indication that, under limited circumstances, this requirement does not apply to elected officials whose employment involves fundraising for nonprofits, when no connection is made during those fundraising efforts to the fundraiser’s status as an official or candidate.¹¹

Soliciting Fellow Officials and Staff

State law strictly prohibits elected officials from soliciting their same-agency colleagues or staff for political contributions, including contributions to ballot measures.¹²

Soliciting Those with Entitlement Applications Pending

Local officials should be aware of a Political Reform Act provision¹³ that limits soliciting campaign contributions from those who have applications pending for licenses, permits or other entitlements.

The restriction applies to people who sit on appointed boards or commissions, such as joint powers agencies, planning commissions or local agency formation commissions. It also applies to elected officials who are acting as redevelopment agency of directors, if that agency’s board is composed of both elected and non-elected officials.

The prohibition applies to contributions of \$250 or more and applies while the application is pending and three months after. If a contribution was received prior to the application being filed, there is also a disqualification requirement.

Even if the prohibition against campaign contributions doesn’t apply, elected officials are wise to consider voluntarily refraining from such solicitations. The Fair Political Practices Commission also has an information sheet on its website on this topic:
<http://www.fppc.ca.gov>.

This piece originally ran in *Western City Magazine* and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.

Endnotes:

¹ Joe Garecht and Brent Barksdale, *25 Fundraising Secrets* (2002) at 21.

² Institute for Global Ethics and Council on Foundations, *Ethical Choices for Family Foundations* (2001) at 67.

³ See Cal. Gov't Code § 82015(b)(2)(B)(iii). Note that the section refers to "candidates" who engage in fundraising activities. The FPPC has opined that elected officials retain their status of candidates. See *Sundberg* Advice Letter, No. A-05-087 (May 27, 2005) n. 2.

⁴ See *id.*

⁵ *Id.* ("Within 30 days after receipt of the report . . . local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements"). See Fair Political Practices Commission webpage: "Where to File Campaign Reports" at <http://www.fppc.ca.gov/index.html?id=19>.

⁶ See *Sutton* Advice Letter, No. A-05-256 (January 11, 2005).

⁷ *Stoen* Advice Letter, No. A-03-185 (February 11, 2004) (district attorney's expenses in suing a private company when governing body withdrew funding for effort).

⁸ *Gallegos* Advice Letter, No. A-00-059 (March 24, 2000).

⁹ *Gallegos* Advice Letter, No. A-98-192 (September 17, 1998).

¹⁰ See *Schmidt* Advice Letter, No. A-96-098 (March 26, 1996).

¹¹ *Priamos* Advice Letter, No. A-04-191 (November 9, 2004).

¹² California Government Code section 3205(a) provides:

An officer or employee of a local agency shall not, directly or indirectly, solicit a political contribution from an officer or employee of that agency, or from a person on an employment list of that agency, with knowledge that the person from whom the contribution is solicited is an officer or employee of that agency.

¹³ Cal. Gov't Code § 84308.