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Guiding

Principles for

Trustees of

Not-for-Profit

Organizations

Robert W. Crawford

ON

BOARD

**Guiding Principles for Trustees of
Not-for-Profit Organizations**

Robert W. Crawford

Published by
Western States Arts Federation (WESTAF)
with the generous assistance of the
L.J. Skaggs and Mary C. Skaggs Foundation

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Foreword

Jillian Steiner Sandrock

During the 1980's, a turbulent and difficult time for most not-for-profit agencies struggling to accommodate to new economic realities, many grantmaking organizations added technical assistance programs to their ongoing funding programs. After years of experience of simply providing financial support to their grantees, many foundations and other grantmakers realized both from their own observations and from comments and suggestions received from the field, that a sound governance and administrative structure and regularly implemented planning processes were equally as important to grantees' success in a competitive marketplace as was the receipt of direct financial support. Such technical assistance programs generally supported the work of experienced consultants to help grantee agencies identify problem areas, develop long range plans, establish realistic time lines, and suggest specific pathways around chronic obstacles.

The L.J. Skaggs and Mary C. Skaggs Foundation was one of the first mid-sized foundations in the nation to see the importance of a strong technical assistance program which would interact with traditional grants to help insure the long-term viability of its grantee organizations. Among several others, Robert W. Crawford was the consultant the foundation employed (and continues to employ) most frequently to assist grantees with structure and governance issues; so much a part of the Skaggs family did Bob become that we all affectionately referred to him as our "Arch-Consultant."

Bob's ability to provide insightful, positive guidance to large and small organizations, both "in-crisis" and "overwhelmed-with-sudden-success," accounted for our programming his phone number into our auto-dialers and calling him without a moment's hesitation when we felt that an organization could benefit from working with him. Almost invariably, the grantee's response, after having us suggest, arrange, and underwrite the consultancy, was "How could we ever have survived without Bob?" Dr. Crawford has become a valued partner in these agencies' ongoing planning processes, and in many cases he continues to work with organizations long after they are no longer grantees of the Foundation.

Bob's earlier work, *In Art We Trust*, published in 1981 by FEDAPT, has become a much-used, dog-eared companion to hundreds of arts agencies (and other not-for-profits who used the book despite its arts orientation), but Bob felt it needed to be updated and revised to accommodate the vast changes the not-for-profit landscape had undergone since the book's publication. It was only natural, then, that when Bob mentioned his desire to write a new book, that the L.J. and Mary C. Skaggs Foundation felt that it was entirely appropriate that we underwrite this effort as a means of getting his wonderfully concise and clear approach to not-for-profit governance out to a much wider audience. With the support and direction of WESTAF, this new handbook has become a reality.

We are honored to have been able to get to know Bob Crawford through the years. In addition to his providing invaluable help to our foundation as one of the nation's most experienced observers and commentators on the not-for-profit scene, he has also grown to be one of our closest advisors and friends. It is the Foundation's fervent hope that this information will be as useful to the many trustees, administrators, artists, visionaries, and volunteers who will be using it as his direct guidance has been over the years to our Technical Assistance Program grantees, and that those using this book will learn as much from his accumulated years of experience as we have at the L.J. and Mary C. Skaggs Foundation.

Jillian Steiner Sandrock
Program Director
L.J. and Mary C. Skaggs Foundation
November, 1990

Why a Board of Trustees?



The real reason a not-for-profit institution has a board of trustees is to satisfy the legal requirements which determine qualification for tax-exempt 501(c)(3) status. Without such status, an institution cannot provide the private sector donor (individual, business, or corporation) with a receipt valid for tax deduction purposes. Nor is it eligible to receive grant support from private foundations or from public sector grant making entities such as federal, state, county, and city governments. In order to be eligible for contributed income from such sources, an institution must be governed by a board of trustees as specified in the not-for-profit corporation codes enacted by the various state legislatures and recognized by the Internal Revenue Service.

Some Legal Responsibilities of Board Members



Membership on the board of a not-for-profit institution should not be taken lightly. Each state (and each province in Canada) has its own legislation covering the organization and activities of not-for-profit corporations. Some of these not-for-profit codes are more restrictive than others and some more all-inclusive. However, there are some basic commonalities applicable to all, which are stated explicitly or understood implicitly.

A fundamental difference between the for-profit and not-for-profit corporation is that the for-profit corporation has an owner or owners. The basic purpose, or reason of existence, of the for-profit corporation is to provide some sort of return to the owner or owners through the sale and delivery of services and/or products. Thus all decisions made by the staff and board of directors of a for-profit corporation should be made on the basis of providing that return.

In contrast, the not-for-profit corporation has absolutely no owner or owners. It is a corporate entity that is held in trust for the public good by something called a board. The emphasis in all not-for-profit corporate codes is on the fiduciary responsibility (the trusteeship) of the board as a whole, as well as of the individual board members. This fiduciary responsibility is not limited only to overseeing the fiscal well-being of the institution. While that is a vital part of fiduciary responsibility, under the not-for-profit codes, board members have total ultimate responsibility for the institution. Very importantly, this responsibility includes seeing that the reason of existence—the purpose, or the mission—of the institution is worked towards. Thus, it is totally inappropriate to state, as many people do, that the only real function of a board of trustees is to raise money and to see that the institution is fiscally well managed. The responsibility is much broader. However, this does not mean that the board as a board should in any way be involved in the day-to-day implementation of the programmatic or administrative activities of the institution. The board delegates this implementation to the artistic, programmatic, and/or administrative heads of staff.

Because of the emphasis on the overall fiduciary responsibility of the board, it is more appropriate to call the board of a not-for-profit corporation a

board of trustees rather than a board of directors. Most state corporation codes use the term board of directors for the boards of both for-profit and not-for-profit corporations. This is undoubtedly so because corporate codes are written by lawyers. Those who go through law school receive little if any training in the field of not-for-profit law. Hence, the semantics of the for-profit sector are understandably carried over into the semantics of the not-for-profit sector. Interestingly, the not-for-profit code of the State of Vermont refers to the board of directors as the "group of persons vested with the management of the affairs of the corporation *irrespective of the name by which such group is designated.*" There are some who argue that because the not-for-profit codes use the term "board of directors," the term "board of trustees" cannot be used. This simply is not true. For example, there are many private colleges and universities which have boards of trustees. They operate under the same not-for-profit codes as other types of not-for-profit corporations, including arts institutions.

In 1978, the California legislature recognized the existence of three major different types of not-for-profit corporation, all governed by the State's revised Nonprofit Corporation Law. These three are described as: public benefit corporations; mutual benefit corporations; and religious corporations. The public benefit corporations include such institutions as performing and visual arts organizations, private colleges and universities, and private sector social service agencies. It is to the public benefit type corporation, albeit using many examples from arts institutions, that this manual is directed. Public benefit corporations are formed for a public or charitable purpose and are not operated for the mutual benefit of their members, but for some broader good. Members of public benefit corporations (if there are any members) have no meaningful ownership interest in the corporation and upon dissolution of the corporation, its assets must go to some other appropriate not-for-profit organization.

Individual trustees are required under the law to act according to what is known as the prudent man concept of the law. Different states have varying wording in their codes, but the intent is identical. The New York code specifies that a trustee must act "in good faith and with that degree of diligence, care and skill which ordinarily prudent people would exercise under similar circumstances." The California code states that board members are expected to perform their duties "with care, including reasonable inquiry, as an ordinarily prudent person would use under similar circumstances."

Inherent in the prudent man concept of the law is the obligation for each trustee to make informed judgments. In order for them to do so, it is reasonable to expect trustees to attend board meetings, to read and understand material sent to them in their capacity as trustees, and to not be afraid to ask questions about something they might not understand.

Trustees also should be sure not to put themselves in any actual or apparent conflict of interest situation. Again, the states handle this differently in their varied not-for-profit corporation legislation. California is perhaps the most explicit. Its code states clearly that not more than forty-nine percent of the members of the board of a not-for-profit corporation may receive any sort of remuneration from the corporation. While board members may not receive compensation for service as board members, some institutions have salaried staff serving also as board members. In the case of many community theaters, or

other organizations of similar structure, board members may be paid for services to the organization for other than board service, but observing the forty-nine percent rule. In all states, board members may be reimbursed for direct costs incurred in connection with board service, but not for board service itself.

Board members may not be passive in their trusteeship. Under the law, they are considered to have voted for whatever action is taken at a board meeting unless they register a negative position in the minutes of that meeting. This is true whether or not they are present at the meeting. Absence from a meeting does not relieve the trustee from responsibility for what transpires there. The same is true in the event of actions taken by an executive committee. An executive committee normally is empowered to act on behalf of the board of trustees between meetings of the board. If an executive committee takes action, all members of the board are considered to have voted for whatever action is taken unless they register dissent to such action. It is truly amazing and frightening how many executive committees take action and do not distribute minutes of the meeting, including such action immediately to all board members. At best, most report their actions at the next board meeting.

Most state codes now provide some sort of protection to board members if they take their legal obligations seriously. Typical of the intent of most codes (if not the exact, then similar wording) is the provision in the Vermont code which states that a director, officer, or trustee of a nonprofit organization "shall not be held personally liable for damages resulting from: (1) any act or omission within the scope of the person's official functions or duties which is done in good faith, unless it constitutes gross negligence or an intentional tort; (2) any act or omission of an employee of the nonprofit organization; (3) any act or omission of another director, officer, or trustee."

Despite these provisions in the codes, it is wise for the by-laws of not-for-profit corporations to include two separate provisions. First, it should be stated that no trustee is personally liable for any of the debts of the corporation. Second, the by-laws should include at least a paragraph providing for indemnification. A suggested paragraph is included in the sample set of by-laws to be found at the end of this manual. In the event a trustee is sued (and it does happen), the indemnification clause provides that the corporation will cover the costs of the trustee's defense unless he or she is found to have acted in bad faith or to have been liable by reason of willful misconduct or willful negligence in the performance of his or her duty as trustee.

Despite the above indications of protection for trustees, there is one situation in which each trustee is held personally liable—there is no escape from this liability. If the money which is due the federal government for withheld taxes and social security contributions is used by the institution to cover current other financial obligations (e.g., a cash flow problem), the Internal Revenue Service will look for the "deepest pocket" to collect the due funds. Part of the fiduciary responsibility of each trustee is to be informed of what is taking place in all parts of the institution. If management is not forwarding the appropriate funds to the federal government, the trustees may well be held personally liable.

What Should be Expected of Board Members?



Unfortunately, many board members have little if any knowledge of what is expected of them when they agree to serve on a board of trustees. There appears to be a widely held understanding that everyone really knows what is expected, and those recruiting new board members assume that those being considered really understand their responsibilities and what is expected of them, particularly if they already have served on other boards. And sometimes those doing board recruiting are afraid they might put off a potential individual if they make the responsibilities sound onerous or too time-consuming. Rarely is there any direct discussion of money, particularly if the individual being approached is really being sought for board membership because of his or her presumed wealth or access to such wealth.

The lack of a clear understanding of what is expected in common from all individuals who agree to serve on a particular board of trustees leads to confusion and many times to resentment. On every board there usually is a core group of "doers" and often a larger group of trustees who seem willing, but who often appear to be non-involved. Over time, the workers tend to resent the non-workers, and the seeming non-workers frequently feel there is no meaningful role for them as the inner circle appears to take care of everything.

In order to correct this type situation, some organizations turn to the creation of detailed (and sometimes very long) job descriptions for board members. These somewhat structured job descriptions may help, but after all the hours of compiling them is completed and they are discussed by the board, they tend to get filed away or, at best, become part of a board manual which is rarely looked at.

Better than creating such job descriptions is the delineation of a succinct list of things which a board decides should be expected in common of everyone who agrees to serve. Such a list serves as a type of job description, but mainly enumerates what is determined essential for board members to bring to the institution. If something is not essential, it should not be included. Such expectations will vary from organization to organization, but it is recommended

that all consider the following.

1) ***Each board member is expected to be an active advocate of the organization.*** Although an individual may be able to serve on more than one board and be an active advocate for each, it probably is not a good idea for one person to serve on two boards of the same "discipline." For example while an individual may be able to serve effectively on a theater and a hospital board, he or she probably could not be an equally effective advocate for two theaters in the same community.

2) ***Each board member is expected to attend the programming of the organization and to be a subscriber if there is a subscription season or series.*** It is impossible to be an advocate of something if one does not know the "product." The most effective way of learning about the "product" is for the board member to attend the programs of the organization—the performances of a performing arts organization, and the exhibitions of a visual arts institution. It also is very important for trustees to attend other aspects of programming, if they exist, such as educational programs or outreach services. If they exist, such programs are an integral part of the programmatic implementation of the organization's mission or purpose. In being an advocate of the organization, the trustee is the advocate of the whole, not just one part. If, as a matter of policy, an organization has a subscription season or series, it is important for the trustee to be a subscriber to demonstrate active support for the implementation of the policy. Also it is very important to attend, not just subscribe.

3) ***Board members are expected to attend board meetings and to prepare themselves for meetings.*** The by-laws of many not-for-profit corporations provide for the possibility of the dismissal of a trustee from the board if he or she misses three consecutive board meetings without being excused. This provision is very rarely implemented, and if a trustee is courteous enough to phone in advance to say he or she will not be able to attend, that normally is considered to be an excuse. The result is that non-attending board members continue to be considered as board members and continue to be part of the total number from which a quorum is determined. In some organizations, such individuals are considered as being "inactive." Unless there is a special provision in the Articles of Incorporation or Articles of Association, providing for the existence of inactive board members, all board members are considered as active in terms of their fiduciary responsibility and their obligation to act according to the prudent man concept of the law. It is much more appropriate for board members to be told they are expected to attend meetings. The quid pro quo for this is that the schedule of the regular meetings of the board be fixed a year in advance so that each trustee can get it entered into his or her calendar.

Board members also should be expected to prepare themselves in advance for each meeting. In order to do so, staff must send out appropriate material far enough in advance (but not too far) so that it can be studied. A good rule of thumb is to provide trustees with pertinent material a week in advance of a meeting. Further, the material providing information for any substantive decision to be made at a meeting should definitely be sent out in advance to provide each trustee the opportunity to study the issues beforehand. This is particularly relevant to budgets and budget revisions. For a trustee to try to study a budget proposal or revision while someone is walking everyone through it in a summary

fashion has to be an exercise in frustration. There is no time for thought or understanding, nor time to formulate pertinent questions for further clarification.

4) **Board members are expected to serve actively on at least one board committee.** If the board has a committee structure, it is reasonable to assume that the committees are essential to the effective working of the organization. If this is true, then it certainly is incumbent upon each trustee to do his or her part. In addition to attending board meetings, serving on a board committee is a commitment of personal time. Not all committees will or should meet with the same frequency, but it is only fair for the trustee to know before joining the board what the projected committee meeting schedules are.

5) **Every board member is expected to bring some sort of in-kind contribution to the organization.** Some trustees have particular professions which enable them to provide measurable in-kind contributions to the organization (e.g., lawyers and accountants), but all trustees bring something of value from their personal background, experience, or profession which may not be measurable in the same way. Such in-kind contributions are separate from, and should not be considered a substitute for, other tangible contributions.

6) **Each board member is expected to make a personal cash contribution to each annual operating budget.** If contributed income is necessary to attain the projected annual budget, it is vital that each trustee make a personal cash contribution to that contributed income goal. Institutional donors (e.g., foundations and corporations) are interested in seeing how many board members support the organization which is requesting assistance. In order to have a successful annual fund raising drive, it is vital that a hundred percent of the board are contributors. If they are not, it is much more difficult to raise money. Also, board members who have given are much better fund raisers.

There are a variety of approaches to board giving. Some believe that there should be one particular figure to be expected from each board member. Others believe that an in-kind service is a substitute for the personal gift. Others believe that if a person brings in a contribution from his or her company or business, that takes care of the personal gift. This manual recommends strongly that none of the above be pursued. Rather, that each trustee should be expected to make an annual contribution which is a meaningful personal stretch for him or her. In this way, all trustees will be giving equally in terms of their personal resources. To set a specific common figure for each to give may well prove burdensome to some, while at the same time letting those who could afford a good deal more off the hook. The important thing is that each individual trustee should give an annual personal gift which represents a stretch for him or her.

7) **Each member of the board is expected to assist in some way in the raising of the contributed income necessary to the implementation of the approved budget.** When board members approve a fiscal year budget, they vote approval of the entire budget. Some board members tend to think that in approving the budget they really are approving the expenditures and understand their responsibility to overseeing the expense side of the budget on a regular basis. Often, they forget they also have voted approval of the income side and are equally responsible for seeing that it is implemented. Assuming the existence of a fund raising plan for the upcoming fiscal year (see below in Fund Raising Committee section), each board member will have some assigned role in the

total contributed income activity. Each board member will not be expected to do the same kind of fund raising. Some may be involved in direct solicitation while others will be active in special events categories. But each trustee should be expected to assist in some way appropriate to his or her situation.

This manual strongly rejects the give or get approach to fund raising by Trustees as advocated by many. Rather, it heartily recommends the give **and** get approach. Under the give or get system, a specific dollar figure is usually established as the responsibility of each trustee. If the trustee is able to contribute the amount personally, he or she is not obligated to participate in other fund raising activities. However, if the trustee cannot afford to make such a personal contribution or does not have a family business or foundation to write the check, then he or she must make up the difference in what is personally affordable through other fund raising activities. It is fairer to the trustees, and healthier for the organization, for each trustee to be expected to make a personal contribution and to assist in the raising of the other contributed income.

8) ***Each board member is expected to exercise discretion in conversations with others and to honor confidentiality.*** From time to time within any organization there will be disagreements—some trivial, some major. Ultimately, these disagreements are resolved, normally through the voting process at a board meeting. When disagreements occur, they should remain within the organization. Discussions of a sensitive nature must remain internal. It is totally inappropriate for board members to "air the linen" with non-board members. Unfortunately, this frequently happens, particularly by board members who have lost out on some particular issue. Once a disagreement has been resolved, it should not be discussed further outside the organization. If a board member cannot go along with the final decision, then he or she should step down from the board, while at the same time honoring his or her previous commitment to confidentiality. Further, it should be decided who is the spokesperson(s) for the organization. If a trustee receives a query from some outside source on what might be a touchy issue, the questioner should be referred to that spokesperson.

9) ***Each board member should be expected to exercise his or her fiduciary responsibility.*** Because this is the law, board members should be made aware of it.

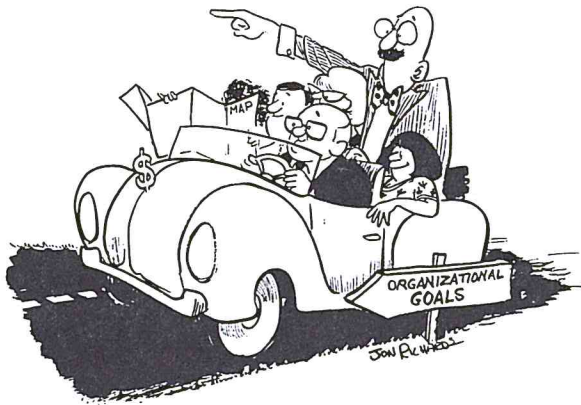
There may well be other expectations that should be included in such a list for a particular institution. For example, if a dance company or theater company is really a company in residence throughout a season or year, it may be appropriate to let board members know they are expected to get to know members of the company—if that is desirable. Often, board members do not want to appear to be "stage-door-johnnies" or intrude upon the artists. But if it is encouraged, then board members should know it.

Whatever the final list of expectations is, it should be brought to the full board for discussion and a formal vote of approval. It should not be a consensus agreement, but should be a formal board action, included in the minutes of the meeting where it is enacted. Further, upon recommendation of the nominating committee, it should be reconsidered once each year and revoted. This list of expectations has two important uses. First, it serves as a tool for use during the recruitment process of new board members. Individuals will know in some detail what is expected of them before they agree to nomination and presumed

election. If a potential trustee cannot live up to the expectations, and if the expectations are what the organization believes necessary for its well being, the individual under consideration should not be invited to join the board until he or she is able or willing to make the necessary commitment. It is far better to know in advance if an individual will not be able to provide what is deemed necessary. There may be an occasion where a particular expectation is waived because of some other overriding advantage to having a particular person as a board member, but such exceptions should be rare.

Another use of such a list of expectations is in connection with the measuring of the service of current board members. Each year, the nominating committee should review the service of each board member to see how well he or she has lived up to the agreed upon expectations. If, as a result of such a review, it is found that one or more trustees have not fulfilled what they had agreed to, they should be talked to in order to find out the reason. Sometimes, an individual is not a self-starter and may not have been asked to do things, but is willing to do his or her part if guided. In other cases, an individual may have made a mistake in joining the board. In others, individuals may be tired. For whatever reasons given, it is better for both the trustee in question and for the organization to have a means of clearing the air. Further, if the service of each trustee is reviewed annually, potential so-called "dead wood" can be identified early and dealt with without any particular individual being singled out for special treatment. If a trustee cannot serve in the manner expected, he or she should be gently asked to leave the board so that the place can be filled by someone who can better serve the organization's needs. Or at the very least, when such a trustee is up for possible nomination for another term, such nomination should not be made. Having a clear list of what is expected in common from each trustee can preclude subjective actions.

Roles and Functions of a Board of Trustees



As mentioned earlier, the basic reason for the creation of a board of trustees is to enable the organization to obtain tax-exempt status and to provide a legally constituted body which, in the absence of ownership of the not-for-profit corporation, holds it in trust for the public good. Further, because the board has ultimate oversight responsibility for all aspects of the institution, it is charged with establishing policies, or approving policies recommended to it by staff or board committees. In a very real sense, the basic purpose of a board is to participate in any and all appropriate ways, through whatever actions and activities are deemed necessary, to assure that the institution is moving effectively toward fulfilling its mission. The board of trustees is not an entity which is an end in and of itself. Rather, it is an integral part of the institutional team comprised of board, artistic or programmatic leadership and staff, management leadership and staff, non-board member volunteers and, in some instances, audience and community.

In addition to its basic purpose, the primary role of a board is to provide through its actions and its efforts the best possible total environment conducive to the fullest implementation of the purpose or mission of the institution, consistent with prudent and creative management.

In order for a board to fill its role as an integral part of the institutional team, it must be active. A board cannot be passive if the institution is to flourish. Board members must be prepared to react to what is presented to them by artistic and management leadership, approving or disapproving recommendations in the context of better achieving the institution's purpose or mission. In addition to reacting, board members also should work in an effective proactive way for the institution, assist in providing the means to implement programs, and share their particular expertise with others in the institution for the benefit of the whole. No individual board member has the right, power, or authority to take any action on behalf of the institution. Rather, the power is vested in the board as a whole.

Board members work in their trustee capacity as volunteers. In contrast to members of boards of directors of for-profit institutions, board members of

not-for-profit institutions receive no pay or honorarium for their service. They are expected to provide time, energy, and money to the institution without any form of monetary or in-kind compensation. However, in order to work effectively as a trustee, the individual board member must receive some sort of compensatory satisfaction. The trustee must feel that his or her work and participation really makes some sort of difference, or the effort will be directed elsewhere. But in order to work effectively, the trustee must understand clearly the purpose or mission of the institution and must also be thoroughly cognizant of current programs. Further, the trustee should know clearly why he or she was asked to serve on the board and understand, at least privately, why he or she accepted board membership.

Frequently, there is confusion in regard to what is board responsibility and authority and what is the authority and responsibility of staff. This is particularly true in smaller budget institutions where there is likely to be a very small staff, or in organizations where there is no staff. In such organizations, board members frequently fill unpaid staff positions or functions while at the same time serving as trustees. In such instances, it is absolutely vital that the different roles be identified and understood. Staff members, paid or unpaid, implement programs and provide support mechanisms recommended by artistic and management staff leadership, approved normally by the board through the budget approval process. Board members as board members do not, and should not, have any hands-on implementation role in terms of day-to-day programming or administration. Because most board members have full-time occupations or high priority personal commitments outside the institution of which they are trustees, the responsibility for specific artistic, programmatic, and administrative decisions is normally delegated by the board to the artistic (programmatic) and managerial leadership of the staff. Boards normally hire (and fire) the top artistic or programmatic staff person and the top management person, delegating to them the responsibility for the hiring of the rest of the artistic and administrative staff within the context of the approved budget.

When a board member assumes the responsibilities of a staff position on a volunteer, unpaid basis, he or she is doing so not in his or her capacity as a trustee, but rather as an unpaid volunteer responsible to the appropriate staff person. A clear understanding and appreciation of this subtle relationship can help preclude at least some of the friction and potential problems inherent in the confusion of roles among board and staff when one person serves in both capacities at the same time.

The following is a specific example of the difference in roles between board and staff. Normally, the proposed budget for an upcoming fiscal year is drafted by staff (the artistic and management leadership) and reflects the artistic or programmatic leader's best judgment of how to work toward the better implementation of the purpose or mission of the organization. The proposed budget is then usually presented to the finance committee of the board for review and discussion. If this committee feels the budget is out of line (e.g., too large in terms of expenses in relation to what the potential realities of income might be), the committee or the board not only has the right, but also the responsibility, to inform the staff that it must come back with a revised budget projection, based on different budget assumptions. However, neither the committee nor the board

should instruct the artistic and management leadership to remove any particular program or activity from the budget. It is the staff responsibility to come back to the board with a revised budget based on staff readjustment of program priorities.

This example in no way implies that a board should serve merely as a rubber stamp for the programmatic or management leadership. Although the board delegates the responsibility for making specific programmatic choices to the program head, any reasonable artistic director or program director will share with the board the evolution of thought going into the creation of a season or of upcoming programs, including the rationale and vision underlying the final selections. In an institution where there is a healthy and creative relationship between the board and the staff leadership, the trustees learn through the process of discussion (not just presentation) why a season or series of programs is, what it is, and how it relates to implementing the purpose or mission of the institution. They also learn in advance of any part of the season that might be, or might appear to be, a deviation from the accepted norm, what might be of an experimental nature, and the why of both. It is very important for staff to understand that board members should be faced with a minimum of surprises. In turn, during the course of these discussions, the board members share with the staff leadership any concerns they may have about the proposed season in terms of the mores of the community in which the institution is located. But the final responsibility for the actual selection of what is done programmatically remains with the staff leadership, not with the trustees.

If a majority of board members become disenchanted with the staff leadership, they always have the option of dismissing him or her. However if one or two trustees dislike what is being done, while the rest of the board supports it, and if such programming is directly related to implementation of the purpose or mission, it is probably better for the continued health of the institution for the disgruntled board minority to resign rather than to pursue a divisive role.

The board normally delegates considerable responsibility to the top management or administrative person. Management provides what is necessary to implement the artistic or programmatic purpose of the institution. A great deal of constructive advice and support can and should be provided by board committees, but day-to-day management should be the responsibility of the salaried top management person on the staff. Unfortunately, it is written in the by-laws of many not-for-profit institutions that the president of the board is the chief executive officer or chief operating officer of the institution. This simply is not the case, nor should it be, in the not-for-profit sector. In the for-profit sector, the chief executive officer or the chief operating officer is normally the senior salaried individual who may well have the title of President. However, the president of the board of trustees of a not-for-profit corporation is not a salaried person. No member of the board can receive a salary in his or her capacity as a trustee. While a salaried staff member of a not-for-profit corporation may serve on the board of the organization, he or she is paid as a staff person, not as a trustee. Depending on the nature of the organization, the chief executive officer may be either the artistic or management leader, but not the president of the board of trustees.

Board Size



There is absolutely no right or wrong size for a board of trustees of a not-for-profit organization. In order to obtain federal tax-exempt status, it is necessary to have a minimum of three persons. It seems to be generally accepted that three is too small a number; possibly five should be the absolute minimum. Each organization should determine how its needs can best be met in terms of board size. The size will depend on what the organization really expects from its board. An error made by some groups is to believe that the only way of getting help (time) or money from an individual is to put him or her on the board. This may be true in some instances, but in any community there normally are people with time and/or wealth who prefer not to make the serious commitment necessary of being a member of a board, but who are willing to contribute to something they believe in. Further, people are often willing to provide service to an organization by working on a board committee, but not as a board member.

If an organization wishes its board to be a truly working board, the number of board members should not be too large. If the board numbers more than eighteen to twenty-three, it tends to become a bit unwieldy and for the sake of efficiency, an executive committee (empowered to act on behalf of the board between board meetings) assumes increasing responsibility for the affairs of the organization. When this happens, board members who are not members of the executive committee may feel frozen out of the real decision-making process. Many individuals who do not feel part of that basic process lose considerable interest in working for the organization as they perceive their role as being of little real value. In some instances there is a valid reason to have a large board. If this is the case, it should be clearly understood by all what the real roles of the board and executive committee are.

The size of the board is usually specified in the Articles of Association or Incorporation and in the by-laws. It is recommended that in the Articles it be stated that the size shall be no less than required by law, with the exact number to be determined from time to time by the members of the Board of Trustees then serving in office. The by-laws of many not-for-profit organizations provide that the

board shall number not less than "x" nor more than "y," the exact number to be set by the trustees then serving. The problem with establishing a range is that over a period of time, board members and staff tend to believe there are vacancies until the top number is reached. Many people argue that unless there is a top number, there is the possibility of the board becoming too large. If the board is aware of what it is doing in terms of recruiting people to the board there is no reason for the board to become larger than it need be. While by-laws may always be amended, it would seem more logical and constructive to state in the by-laws something similar to the following: the board of trustees shall number no fewer than five, the exact number to be determined from time to time by the trustees then serving in office.

Board Committees



For efficient operation, as well as for more efficient use of board members' time, committees can be very helpful. There is so much time wasted, particularly in smaller-budget, small-sized board organizations by the board sitting as a committee of the whole dealing with everything. It is much more efficient for a board to create standing and ad hoc committees to deal with appropriate basic issues, or to work on behalf of the rest of the board, and then report back to the full board with its recommendations for action. In order to be effective, however, the committee reports should be informative enough so that board members not serving on that committee get a real sense of how any differences were resolved and how the final recommendation was reached.

Committees should be committees of the board, not of an executive committee. They should report directly to the board, not through the executive committee, except in the case of an emergency situation. If committee reports come to the board via the executive committee, there may be a sense (or the reality) that the committee recommendations have been sanitized. There have been instances where an executive committee has not forwarded committee recommendations to the full board.

In the organization's by-laws, it should be clearly stated that the executive committee is the only committee of the board authorized to act on behalf of the board between board meetings. All other committees, standing or ad hoc, should be advisory to the board. From time to time, a board may wish to delegate final authority to a committee for a specific purpose and may do so by board action, but in general it is recommended strongly that the executive committee be the only committee empowered to act for the board.

The not-for-profit corporate codes of the state in which an organization is located should be reviewed to determine if there are any quirks in regard to committees and their authority. The New York code is probably unique in that it indicates that if a committee is called a standing committee, it may have the authority to act on behalf of the board. Furthermore, it has been interpreted that under the New York code, only members of the board may serve on standing or

special committees. In 1972, a category called "committees of the corporation" was included in the legislation. Such committees may include individuals who are not board members. In New York, or in any state with similar legislation, not-for-profit organizations should designate the executive committee as the only standing committee and probably have all other committees under the category of "committees of the corporation" to enable non-board members to serve where appropriate. The not-for-profit codes of most states are not restrictive. They permit organizations to provide for what they want in their by-laws. However, if an organization does not provide for something, then the code indicates what it should be. Some lawyers advise their not-for-profit clients to virtually copy the corporate code in the preparation of their by-laws. This can result in some pretty ridiculous inclusions in some states. Each organization should determine what it wants covered in its by-laws, be as flexible as it can, and cross check what it wants against its state's code.

As indicated above, there are two basic types of committee, the existence of which should be provided for in the by-laws. These are standing committees and ad hoc committees. Standing committees are those that the institution feels are necessary for its continuing effective operation. Ad hoc committees are those created to deal with particular problems or opportunities over a specific, limited period of time. When its purpose has been achieved, an ad hoc committee ceases to exist.

Standing committees may be divided into two basic categories. Those which are generic in nature and those which are established to assist in the implementation of what is normally a staff function (e.g., a marketing committee). All not-for-profit organizations do not need to have the same committees, but the following are examples of "generic" committees that should be considered as potential standing committees: nominating; finance; fund raising; planning; and executive.

Types of Committees

Nominating Committee: The nominating committee is probably the most important committee. It deals with the future life of the organization through its nomination of trustees and officers. Unfortunately, in many institutions the committee meets sometime before the annual meeting of the board to decide on nominations for board memberships and for officer positions. Discussions frequently are based on who knows whom who would be good for the board and who might be willing to serve as president or in other officer capacities. If an individual is eligible for renomination for an additional term, there usually is little discussion about whether or not the person should be renominated. If he or she is willing to serve again, they usually are asked.

The nominating committee, as a standing committee, should establish a regular schedule of meetings. Its primary responsibilities should include the following: 1) it should create and recommend for board approval what the profile of the board should be and review this recommendation on an annual basis; 2) it should identify how each current member of the board fills at least one aspect of the total profile; 3) it should nominate individuals for election to the board; 4) it should nominate individuals for election to officer positions; 5) it should see that new board members receive appropriate orientation; and 6) it should review the service of each board member on an annual basis.

In order to determine the desired profile of the board, the committee should base its discussions on what kind of people and with what qualifications are necessary to assist the organization in moving toward a better implementation of its purpose or mission. Since the rapid expansion in the number of not-for-profit organizations, particularly arts institutions, from the mid sixties on, both public sector and private sector donor institutions (e.g., governments, foundations, and corporations) have played an increasingly significant role in indicating to applicant organizations what the composition of their boards should be. Certainly the increased pressure for fiscal accountability which emerged in the mid and late sixties was valid, but some of the arbitrarily created musts for boards (in exchange for financial support) have proved inappropriate for some organizations. Public sector (e.g., governmental) agencies must operate in certain ways, but private not-for-profit corporations are not government agencies. Their meetings do not need to be open, nor do they need to have representation on the board from diverse sectors of the community, unless there is a valid reason for that in terms of purpose or mission. Further, if a person is brought on to a board to represent a particular group, it may put the person in a sometimes untenable position. As a member of the board, he or she has a fiduciary responsibility as discussed earlier in this manual. As a board member, he or she no longer can have primary loyalty to or interest in the group supposedly being represented. The primary responsibility is to the institution of which he or she is a board member.

When the nominating committee has determined what it believes to be the best profile of the board, it should recommend it to the board for discussion and approval. Approval should be by vote, not by presumed consensus. When the proposed profile is approved, the committee then has a basic tool with which to work. It reviews current board members in terms of the profile in order to determine where the "gaps" are and takes steps through the board member recruitment process to fill those gaps.

There are many ways of going about board recruitment, with some differences dictated by the community in which the organization is located. The committee should ask all board members for suggestions and help, but no board member should be permitted to approach any individual about joining the board without committee approval. This restriction should apply to the board president as well. Assuming the board has passed by resolution what it expects in common from everyone who agrees to serve on the board, the committee has another recruitment tool which should be used to preclude misunderstandings. The interviewing of a potential board member should be done by the most appropriate person, whether or not a member of the committee, but always authorized by the committee. Further, no individual should be nominated formally without having had a chance to meet with the artistic or programmatic leadership. If an individual is joining an arts board, it is imperative that he or she understand the artistic vision or point of view of the person responsible for the creation and implementation of programs. Further, it should be determined that the potential board member has at least a strong empathy for the particular art form.

When recruiting new board members, it is very important—particularly for newer or small organizations—not to have a mendicant attitude. The new member is not being asked to grant a favor by joining the board. Rather, the

organization is providing the new individual with a unique opportunity to support and work for something of value.

When the nominating committee feels it has identified a person or persons who might be good new board members, it is a good idea to bring these names to the board informally, prior to any interviews. In this way, if someone on the board knows of any particular reason why a person might not be a good member (e.g., offers to do things, but rarely follows through), it gives the committee the opportunity not to pursue the matter. Once conversations about possible board membership are started, and if the potential member agrees to serve on the basis of what is expected, it is very difficult to pull back from the process. Potential members should be informed of the steps in the process and when they may expect to hear. The by-laws should provide that while board members are normally elected at the annual meeting, they may be elected at any time.

The nominating committee should also have the responsibility of recommending to the board the slate of officers to be elected at the annual meeting. There are conflicting views in regard to whether a member of the committee should be eligible for nomination as an officer. Each organization should determine its stand on this issue and include the result either in its by-laws or as a matter of policy enacted by board resolution.

Although it may be the staff that provides the actual orientation of new board members, the nominating committee should have the responsibility of seeing that it is provided. There are some who believe a new board member should remain essentially quiet during the first year on the board. This is a waste of time. There is no reason a person cannot begin to function well if he or she receives the appropriate background material and information. The reading of at least a year's worth of minutes (board, executive committee, other committees) can provide some valuable insights.

Finally, the nominating committee should be given the responsibility of reviewing the service of each board member annually, using what is expected in common from board members as the basis of the review.

Finance Committee: In most not-for-profit organizations, the finance committee should have the following responsibilities: 1) to work with the staff at the appropriate time on the creation of the upcoming fiscal year budget; 2) to present budget recommendations to the board for discussion and approval; 3) to see that staff prepares a comprehensive cash flow projection for the upcoming fiscal year at the same time the budget is prepared; 4) to monitor the implementation of the approved budget on a regular basis; 5) to recommend to the board any proposed budget revisions; and 6) to recommend to the board appropriate policies for the management of the organization's assets.

Each organization should determine what the best fiscal year is for it. Many use a July 1 - June 30 year, others the calendar year, some use the October 1 - September 30 year, and a few have unique ones. What is important is that the organization elect a fiscal year that works best for it. The definition of the fiscal year should be included in the by-laws. No organization should ever begin its fiscal year without a board-approved budget. Without this, there is absolutely no authorization for the spending of funds—unless the organization copies the federal government and operates under some form of continuing resolution. It is

surprising how many not-for-profit organizations do not have an approved budget prior to the beginning of the fiscal year. When this situation exists, it is difficult to assume the trustees are exercising their fiduciary responsibility.

The budget of an institution is a set of guidelines for the use of projected dollar resources for the implementation of its purposes or mission. Normally, the draft of the budget should be prepared through the combined efforts of the artistic and management leadership, based on what they believe the organization should do in order to work toward the implementation of the artistic or programmatic purpose or mission. Together, they cost out the overall program. They then face up to fiscal realities, establish programmatic priorities, and make trade-offs to arrive at what appears to them to be an attainable budget on both the income and expense sides. During this process, all forms of earned income are projected. The resulting gap between total projected earned income and total projected expenditures becomes the budgeted income gap. This gap is the dollar amount that must be raised by the staff and board through all types of contributed income in order to attain a balanced budget. Normally, a board will not approve a budget that does not appear to be in balance.

When the artistic and management leadership have completed their work on the draft budget, they present it to the finance committee. The main responsibility of the finance committee at this stage is to understand clearly all the assumptions that have gone into the budget preparation. Expenses are normally much easier to estimate than income, and earned income should be easier to estimate than contributed income. In order to make a budget appear to be balanced, there usually are areas of softness on the projected income side. It is imperative that the finance committee understand where such softness is. It must not be buried in the estimates of earned income. Nor should too much of the projected contributed income be wishful thinking. Normally it is impossible for anyone to know with any degree of certainty what the actual final total contributed income figure will be, but the projected figure must be based on some sort of understood and accepted rationale. This certainly requires input from the fund raising or development staff and committee during the budget formulation process.

During its discussions with staff, the finance committee may well recommend changes or adjustments. However, as indicated earlier in this manual, the committee should not assume it has the authority to direct changes in specific programming. It has every right to request staff to come back with a modified budget proposal, but it is up to staff to determine which programs must be cut back or eliminated. When staff and committee have come to terms with the budget, it should be presented to the full board by the chair of the finance committee. Staff, of course, is present for and participates in the discussion, but it is important that the budget comes to the board as a recommendation of the board committee which has been delegated the responsibility for doing the background work on behalf of the board leading to the recommendation. The proposed budget should be mailed out in advance to all trustees so they have time to study it before the meeting. In addition, it is very important that the finance committee chair make sure that all members of the board truly understand the budget. There is a tendency on the part of some board members to feel financial things are incomprehensible and therefore the finance committee

should take care of fiscal matters. Each board member has equal responsibility for making decisions based on the prudent man concept of the law. Each board member must make informed decisions.

After the budget is approved by the board, the finance committee has the responsibility of monitoring its implementation on a regular basis. It is amazing how many board and staff members seem to believe they can monitor the fiscal activities of an organization without a cash flow projection for the year in addition to the approved accrued budget. In the absence of a cash flow projection, there is a tendency to divide the accrued budget by twelve to determine if the institution is fiscally on target.

At the same time the accrued budget is prepared, the staff should prepare a comprehensive cash flow projection for the year, at least initially on a monthly basis. The same assumptions that go into the budget preparation will be used for the cash flow projection. Again, the expense side of the projection will be the easiest to determine. Also, the earned income section should be relatively simple. In the case of a performing arts organization, the schedule of performances is known, ticket prices (single and subscription) are known, so it should be easy to project when the dollars will be received for single and subscription tickets. Pursuing this example, when a subscription campaign has been completed, it is known by a specific date whether or not the projected income for this part of the budget has been attained. If it hasn't, there is the real potential of a budget problem, in addition to the reality of an unexpected cash flow problem. It is important that the staff recognize the problem immediately and make recommendations to the finance committee. If the staff does not take the initiative, then it is imperative for the finance committee to do so.

Perhaps the most important aspect of the cash flow projection is that it can identify, prior to the start of the fiscal year, when a cash flow problem is likely to exist so that plans for coping with this can be made in advance. Trustees and staff are often confused by the difference between budget and cash flow problems. Often an institution which seems to have a budget crisis is in reality having a cash flow problem. The sense of being or about to be in crisis is enervating to both board and staff and does not need to occur as much as it does if there is a clear understanding of the difference between cash flow and budget problems, and if steps are taken to deal with each as a result of early identification.

The most difficult part of the cash flow projection is the contributed income section. In order for the cash flow projection to be valid, the estimates for when contributed income will be received must have some basis in reality. Very few organizations have realistic cash flow projections for the simple reason that they do not have a fund raising plan for the upcoming year in place prior to the beginning of the year. This will be discussed below in the fund raising committee section. To provide the possibility of real communication, one of the members of the fund raising committee should also serve on the finance committee.

Any proposed budget revisions should be prepared by staff, presented to the finance committee for discussion, and recommended to the board for its approval by the finance committee. Normally, staff is accorded certain flexibility in transferring funds within a particular budget category as long as the total for that category is honored. However, if a potential budget problem is identified

during the course of the regular monitoring by staff and committee, it should be dealt with prior to its becoming a real problem.

Finally, the finance committee in cooperation with the staff should recommend policies for board approval related to overall fiscal management, as well as the management of the organization's assets. Too often, what are really policy decisions are left to staff without providing them input from trustees.

Fund Raising Committee: Contrary to the wishful thinking of many board members, the fund raising committee (sometimes known as the development committee) does not have the responsibility of raising all the contributed income necessary to achieving a balanced budget. Rather, its responsibilities include: 1) working with staff to create a series of annual goals for each source of contributed income category; 2) establishing time lines for the raising of funds from each source of income category; 3) presenting the proposed fund raising plan to the full board for its approval; and 4) assuming responsibility for assuring the timely raising of funds to meet the projected cash flow estimates. While the individual members of the committee participate in the actual raising of money, as do all members of the board, as committee members, they function primarily as choreographers of the overall fund raising.

It is not necessary for the committee to be large. It should include an overall chairperson as well as enough individuals to head up sub-committees based on source of income categories: public sector; individuals; foundations; corporations and business; and special events. Thus, a basic committee of not more than six is needed, five if the chair assumes responsibility for one of the sub-committees.

The person or persons responsible for fund raising on the staff level should draft a rough basic fund raising plan, including a breakdown of the overall contributed income goal into source of income category goals, including sub-goals within each category, and also should indicate a proposed time line for achieving each of the separate goals. This draft plan should then be presented to the committee for discussion, modification, and ultimate approval. When the fund raising plan has been approved by the committee, the committee chair should present the proposed plan to the full board for its discussion and ultimate formal approval by motion and vote. As in the case of the presentation of the budget by the finance committee, the fund raising plan should be mailed to all board members prior to the meeting where it will be discussed, so they have the opportunity to study it.

It is important that the fund raising plan be approved by the board prior to the beginning of the fiscal year, as it is an integral part of the final budget. Not-for-profit organizations usually do not have board approval of fund raising plans. The dollar goals are approved indirectly through the approval of the general budget, but the plan for implementation, in which all board members are expected to participate in some way, is rarely—if ever—discussed at the board level. If board members vote approval of the plan, they may be more likely to assist in its implementation.

Once the plan has been approved, it should not be necessary for the fund raising committee to meet very often. Rather, the source of income sub-committees meet separately to direct and oversee the details of achieving their goals. There is no reason for a person who is working in the area of

corporate fund raising to spend time listening to a special events discussion unless, of course, there is an overlap.

Each source-of-income category should be broken into sub-sections, based on the different types of approach necessary to achieve the identified goals. The individuals category should be broken down into three sub-sections: 1) trustees; 2) major individual gifts; and 3) general gifts. Each requires a different approach to achieve the goal. If each trustee is expected to make a personal contribution, the chair of the committee or the board president should be the one to contact each trustee to find out what his or her gift will be. A staff person should never be put in the position of soliciting a trustee. In order to obtain a major gift from an individual who is not a trustee, it normally is necessary to have some sort of direct contact with the donor, while general, smaller-level gifts are usually obtained as a result of a mail solicitation. Plans should be made for the acquisition of each type of gift from within the three sub-sections of the overall individual category. Normally, staff takes responsibility for solicitations by mail.

The foundations category should be divided into two sections: 1) professionally staffed foundations; and 2) family foundations or trusts. Usually, the approach to professionally staffed (or institutional) foundations is through the appropriate staff member at the foundation, not to a trustee of the foundation. Most foundation staff resent a group trying to approach through a trustee. If it is appropriate to approach a trustee of such a foundation, the foundation staff member should let the applicant know. Many professionally staffed foundation personnel want to deal directly with the artistic and/or management leadership of the applicant organization, not with the development director nor with a board member unless the board member is well versed in the programmatic and fiscal aspects of the applicant organization. However, a board member can be of great help if properly prepared for the foundation interview.

In contrast, in the case of a family foundation or trust, it is totally appropriate to contact a trustee. Such foundations or trusts are usually managed by a lawyer or banker and tend to operate at the direction of the trustees.

The corporation and business section should be divided into three sub-sections: 1) corporations with structured corporate giving programs (e.g., corporate foundations or contributions committees); 2) corporate public relations or community relations offices; and 3) local businesses. Again, the approaches are different. Corporations with structured corporate giving programs usually have some sort of professional staff involved with the giving program and also usually have deadlines for applications. Separate from the contributions activities is the apparently increasing opportunity to receive support from the public relations division of a corporation. In fact, such support usually is not actually a contribution (although it may be considered as such) but is rather a payment for services out of the firm's public relations or advertising budget.

Finally, business support should be planned separately from corporate support. This will include approaches to local small business as well as local more substantial business. Unless these different parts are separated out, it is likely that a potential source of contributed income will be overlooked.

While the solicitation of funds from the public sector (e.g., federal, state, county, and city governments and agencies) is normally the responsibility of the

staff, it is important to recognize this as a part of the overall fund raising plan. It is also of value to have a board member head up this sub-committee, as there are many times when it is valuable and necessary to have board assistance in the politics of such solicitation.

Finally, special events should be a separate fund raising category. Carefully conceived special events can be very worthwhile, but often something is undertaken which is more of a drain on staff and board time and resources than it proves to be worth.

If each board member is expected to assist in some way in the raising of the contributed income necessary to achieve a proposed balanced budget, then each board member will be expected to participate actively in one of the sub-committee areas of fund raising activity. If time lines are established for the work of each sub-committee, each board member will know how much time he or she is expected to give toward fund raising. For example, if the individual major gifts campaign is scheduled to last for a three-week period late in the calendar year, then the fund raising commitment of the board members involved in that category will be completed at that time.

It is strongly urged that the fund raising year be considered as ending at least one month prior to the end of the fiscal year. In the event there is make-up work to do, it provides time for that. But more importantly, it provides time for the detailed planning for the upcoming year's fund raising, prior to the beginning of the year. Historically, the contributed income part of an organization's budget is the part least likely to be attained. This usually is not due to lack of good will or sometimes frantic effort, but in most cases is due to lack of detailed planning and follow through on plans. Staff often feel that it is the board's responsibility to get the money from the private sector and are frustrated that board members are not more active. However, if there is not a detailed plan for obtaining contributed income, board members will not be active. They have limited time to devote to the organization. That time should be used wisely and effectively. This is more possible through planning and providing in the plan for check points so that accountability is included.

Planning Committee: At some point, every organization should make a commitment to plan. Each time an annual budget is created, a one-year plan is made. Without a longer-range approach to planning, however, planning remains ad hoc and it is impossible to work effectively toward a comprehensive approach to the organization's future, directed toward a better implementation of purpose or mission. When a commitment to planning is made, it should include the commitment to keep the plan alive. As the first year of the plan comes to an end, a new final year should be added so that the original second year of the plan becomes the new first year. In order to do this, the current status of the organization should be reviewed in terms of the plan, adjustments made in the plan to reflect the then current reality, and a new final year added. Although there is much talk about the necessity of having five-year plans, it is probably impossible for most institutions to look that far ahead when they first start planning. It is, however, possible for any institution, no matter how large or small, to create a three-year plan. But it is not worth the initial effort unless there is a commitment to maintaining and updating it.

Institutional plans come into being in a variety of ways. This manual

recommends strongly that the first draft of the plan should be made through the joint efforts of the artistic and management leadership, not by a board planning committee. It should follow essentially the same process as recommended for the finance and fund raising committees. The staff should take the initiative on the first draft of the plan as they are the ones directly concerned with the programming and the day-to-day operation of the institution. After the initial plan has been drafted by staff, it is presented to the board planning committee for its review, discussion, change, recommendations, and final presentation to the full board. The final plan will emerge as a result of several steps.

The first draft prepared by staff should deal only with programs. Cost should not enter the discussion at this early stage. Too often organizations plan for the future based on an assumption of a certain level of resources being available. This is an inhibiting process. Rather, the staff should identify each current area of program activity. In the initial planning process, these areas should be dealt with separately from each other. The various component parts of each program area should be identified using the current fiscal year as the base year. Knowing what is being done in the current base year, the staff should then determine what it really wants to be doing in that area of programming three years from the current year. Then it should determine how it will get programmatically from the base year to the third year—what should be done in the first year, what in the second, and what in the third. It may well be that the desired goal for the third year in a particular program area is attainable in the second year. Each program should be dealt with separately, with no reference to cost. The approach to planning is that, subject to necessary funds being available, this is the direction in which the institution should move. It is suggested that the plan be created visually, in a matrix form, with program areas listed vertically on the left side of the working paper and years across the top.

If this first step is done as suggested, there is little doubt that the third year of the proposed plan would cause programmatic indigestion. It is at this point that program priorities should be established and the relation of one area of program to another be determined. But again, cost should not be an inhibiting factor. If an institution knows where it really wants to go in a program or artistic sense, it will be able to use its available resources, however limited, to better move in the planned direction. This affords the opportunity of a more creative use of limited resources rather than having a perception of limited resources dictate what programs should be.

When the planning committee has completed its discussions with staff on this first step, the committee should recommend to the full board that, subject to funds being available, this is where the institution should go. That discussion will be difficult at first because there are always some trustees who cannot conceive of talking about planning unless they know what the cost will be. It is a potential block to planning which must be dealt with—if necessary by a directive from the board president.

If the board votes approval of this stage of the plan, always subject to funds being available, the next step is the costing out. When dealing with the number of staff necessary for the implementation of programs, full-time equivalencies should be used, rather than thinking in terms of particular persons. In order to achieve a particular program, what percent of the time of a full-time

staff person would be necessary? In this way, it is better possible to determine the necessary staffing pattern and how many staff should be full- or part-time.

It is probable the staff will realize that the proposed plan is much too costly to be realistically attainable. They then should adjust the program aspirations into program priorities in order to come up with more attainable budget projections. All costs should be projected in base-year dollars with no inflation included. Using base-year dollars throughout will indicate clearly the cost implications of program changes. It is vital for staff and board to understand that when the board is asked to approve the plan, it is not being asked to approve three years of budget in advance. Each year the plan will be revised prior to the beginning of the upcoming fiscal year, and the budget for that fiscal year will be developed in the normal way. Any deviation from the plan will be made in a conscious manner, not on an ad hoc basis.

When the plan has been costed out, the planning committee deals with it again and brings it, with whatever revisions have been incorporated, to the full board for final discussion and ultimate approval. As in the case of other substantive decisions, the draft of the plan should be sent to all board members prior to the meeting at which it will be discussed. After whatever discussion is necessary, the plan should be brought to a formal vote.

The existence of a plan will be of enormous help to the institution. In addition to its important internal value, it also will serve as an excellent fund raising instrument as it will show donors, particularly institutional donors, where the institution plans to go and how contributions affect the ability to achieve programmatic and fiscal goals. As unexpected opportunities arise, they should be considered in terms of the plan and be incorporated if appropriate. If a financial problem arises in a particular year, the plan will be of immense help in deciding where retrenchment may be least harmful. Sometimes what may seem to be the logical area for program or staff cutting may in fact be of serious harm to the future of an organization. A carefully conceived plan can help identify this.

Executive Committee: Every not-for-profit organization should provide in its by-laws for the existence of an executive committee which is empowered to act on behalf of the board between board meetings. It is wise to provide for a committee which can take emergency action if such is needed. Normally, the executive committee includes the four principal officers (president, vice president, treasurer, and secretary). If it is a larger committee, it frequently includes the chairs of the standing committees as well.

As mentioned earlier in this manual, it is very important for each organization to determine exactly what the role of the executive committee should be. Although empowered to act on behalf of the board, the full board still has the ultimate responsibility for actions taken on its behalf. When a trustee is absent from a board meeting, he or she is considered as having voted for what is passed at that meeting unless he or she registers a negative in the minutes of the meeting. When an executive committee takes action, each board member is considered to have voted for the action unless he or she registers a dissent.

For the supposed sake of efficiency, some boards have agreed to giving the executive committee seemingly unlimited power. In such cases, all committees report to the executive committee, and it decides what goes forward to the board and in what form. Normally, such an executive committee meets

prior to the board meeting, decides on the board meeting agenda, and reports its recommendations to the board for their action. In fact, this often is not an efficient use of trustee time. If those on the board who do not serve on the executive committee are to receive full information on matters to be voted on, and if they are to have the opportunity for discussion in depth, those who serve on the executive committee really are attending two meetings covering the same information. Usually, those serving on the executive committee are active in a variety of ways serving the organization. They should not waste their time attending two meetings covering the same material.

There may be valid reasons for an institution to have an executive committee which really is the equivalent to a working board. If the board is very large, it probably works better to have an executive committee of seven to nine trustees who can "get things done." But the question remains, why such a large board? It is not always necessary to elect someone to a board in order to get help or money. If the reason for a large board is to be able to use the names of a large number of community leaders—the Good Housekeeping seal of approval approach—might there be another way of creating an "in" support group which would not actually be a legal part of the governance structure? Whatever the final decision, each institution should determine very carefully what it wants from its board members and what type of executive committee structure is best for it.

Regardless of the decision, it is important that all board members know of all executive committee discussions and decisions. The minutes of the executive committee should be distributed to all board members shortly after the meeting. Further, actions taken by the executive committee should be subject to board discussion and approval at the next meeting of the board. And finally, any member of the board should be able to attend any meeting of the executive committee if he or she has the time or interest. If the committee meets on a regular basis, all board members should know the time and place of the meeting.

Other Committees: In addition to the "generic" standing committees suggested above, the institution may wish to create other standing or ad hoc committees such as facilities, marketing, public relations, or volunteers. In each instance, careful thought should be given to what the role of the committee will be. For example, if a marketing committee is created, is it because the staff is incompetent (or non-existent) in marketing, and board members feel they have the expertise to fill this function, or is it because the board—and perhaps the staff—feel that with a committee, the staff will be better able to tap into the professional expertise of board members, or non-board members brought onto the committee? A clear definition and understanding of the purpose and role of each committee is essential.

Many not-for-profit institutions have one or more volunteer support groups. Some are well organized, some operate on an almost ad hoc basis. Support groups can be of enormous help to an institution if their roles are clearly defined, and if there is a real need for their services. If a support group is organized, it should be organized under the aegis of the not-for-profit institution it will serve. A support group should never be organized as an independent tax-exempt entity. While it may have its own by-laws to govern its day-to-day activities, those by-laws should be subject to approval by the board of the "parent" institution. If the support group has a bank account, the board of the

organization being served has ultimate responsibility. The chair, or president, of the support group normally should serve ex officio as a full voting member of the board of trustees.

Creating Committees

The institution's by-laws should provide for the appointment of standing and ad hoc committees. The by-laws do not need to specify the particular committees, except for the executive committee. Usually, committee chairs are appointed by the board president or chair, normally to serve for one year, but eligible for reappointment. In some institutions, the committee chair has the responsibility of appointing the members of his or her committee, often in consultation with the board president and appropriate staff. In some cases, the board president has the power to appoint committee members. It is up to each organization to determine what is best for it. This manual suggests that committee chairs, in consultation with the board president and staff, should be the ones to appoint committee members. Because board presidents sometimes assume too much authority, enabling committee chairs to appoint committee members can help preclude a board president from really taking full control of an organization. Leadership from and by a board president is vital to the health of the organization, but dominance can be detrimental.

There are two exceptions to what is suggested above. First, the composition of the executive committee should be specified in the by-laws. And second, the composition of the nominating committee, while probably appointed by the board president, should be ratified by board vote. It is important that the president not be possibly perceived as stacking the deck through nominating committee appointments. And it is important that he or she should not be able to do so. Members of the nominating committee should probably not serve on the committee for more than three consecutive one-year terms. It should be structured so that one-third of the committee rotates off each year.

Committee Membership

The by-laws should provide that board committees should normally be chaired by a member of the board and include at least two board members. (Care should be taken to check separate state not-for-profit codes. Some states, e.g., New York, require a minimum of three board members). The by-laws also should provide that any individual, whether or not a member of the board, may serve as a full voting member of any board committee except of the executive committee or any other committee to which the board delegates its authority.

Some organizations create fairly large boards in order to have enough individuals to fill all committee seats. This is not necessary. If the board committees (except the executive committee) are recognized as being advisory in nature, not having the power to act on behalf of the board, then there is no reason not to invite individuals with special interests or abilities to serve as full voting members of any board committee except the executive committee. Often, there are individuals in a community who would be willing to help an organization, but who do not wish to take on the responsibility of board membership. Such individuals can provide useful service through appropriate committee work. Having non-board members on committees also broadens the base of active community supporters—a very important factor. Further, such

committee memberships can serve as a testing ground for possible board members—do they deliver, or do they just talk?

Although it probably should not be included in the by-laws, as a matter of policy, at least one staff member should be assigned to work with each committee, not as a flunky, but as a participating member. No board committee should ever meet without a staff person present. The artistic and management leadership should designate which staff member participates where. Each committee needs the input into its discussions from the professional staff member whose job is most closely associated with the work of the committee. The staff person will, of course, assist the committee and will probably be the person who arranges the meetings and drafts the minutes, but he or she must be considered an integral committee member.

Committee Meetings

Each committee should determine how many regular meetings are necessary each year and should establish specific meeting dates at the beginning of each year. There is no point in having a committee meet unless there is something worthwhile for it to do. Further, committees should not make regular reports to the board unless there is something to report. Show and tell is a waste of trustee time. When committee meetings are set, members should have the courtesy to arrive on time, and the committee chair should end the meeting at the scheduled time.

When a committee has a report ready for the board or has a recommendation prepared for board action, the pertinent information should be sent out to all board members prior to the meeting at which discussion or vote will be held. At the board meeting, the committee chair should highlight the report, field questions from the board with the help of other committee members, and make sure the trustees understand the recommendation and how it was reached.

Board Elections



There are two basic types of not-for-profit corporation: 1) a legally constituted membership corporation where the members (as defined in the Articles of Incorporation or Articles of Association, or in the by-laws) elect trustees, normally at the annual meeting of the membership; and 2) what is known as a self-perpetuating corporation where the trustees elect their successors.

Many not-for-profit corporations, including many arts organizations, were incorporated as membership corporations as a way to raise money easily. Normally, members of a membership corporation pay some form of dues to become members and in exchange, receive a vote, in person or often by proxy, at any meeting of the membership. Members are the ones who elect the board of trustees of a legally constituted membership corporation.

This type of legal membership should not be confused with the membership category established by many not-for-profit organizations for fund raising purposes. Many individual contribution campaigns are based on so-called membership where contributors, called members, are frequently given certain benefits in return for different contribution levels. This type of membership has no legal status. Unfortunately, many people confuse the two.

There are certain types of institutions where it is valid for there to be legal members who elect the board. Community theaters are a good example of this, where the members and the board often serve in artistic and administrative capacities. Or a group may be essentially a collective in its approach or be committed to a fully democratic approach in regard to decision making. But for a professionally based not-for-profit institution, it frequently is courting trouble to have a broad-based membership elect the board. There is usually a somewhat complex nominating procedure, including provision for nominations from the floor at the annual members' meeting. The quorum for a meeting of members is usually low, sometimes even consisting of those who are present, and proxy voting is often permitted. Usually, there is more than one person running for each seat, so someone who has indicated a willingness to work for the organization

ends up a loser. And normally, name recognition, not necessarily qualifications, is what causes the election of an individual.

Another real danger of a membership corporation is that it is possible for a small group of disgruntled members to take it over if they are determined to do so, particularly through the use of proxy voting. Unless there is some overriding reason to have a legally constituted membership corporation, where the members elect the board, this manual urges the so-called self-perpetuating type legal structure where the board elects its successors and a nominating committee is enabled to function as described above. If an organization wishes to change from a traditional type membership corporation to the equivalent of a self-perpetuating one, it is easy to do so without amending the articles of incorporation. It simply defines the membership as the board of trustees by stating in the by-laws that the board of trustees constitutes the membership of the corporation.

Self-perpetuating does not, nor should it, mean the self-perpetuation of individuals. It is important that a rotation off the board policy be established to assure that a particular individual cannot continue to serve as a trustee beyond a specified period of time.

Trustees are normally elected to office at the annual meeting of the corporation. In a self-perpetuating type institution, the nominating committee makes its report and moves the election of the individuals it has nominated. After a second and a discussion, the vote is taken and—presumably—the new trustees are elected, usually by a majority vote of those present in person at a meeting where a quorum is present. Terms usually begin as of the date of the annual meeting. Some organizations have the annual election take place at a meeting earlier than the annual meeting, although the trustee does not take office until the annual meeting. Provision should be made in the by-laws for the election of trustees at any time in addition to the annual meeting.

Board Terms



Each trustee is elected to serve for a specific period of time. The by-laws of many institutions make it possible for a trustee to serve for life because no limit is placed on the number of consecutive terms a person may serve. In general, this is not healthy for most institutions. This manual recommends strongly that a rotation off the board policy be established so that a person, however valuable, must leave the board for a period of a year after completing a specified number of consecutive years on the board.

This does not mean that the organization need lose the support and service of such a trustee. If the trustee still has the energy and wishes to continue active participation, and if the board continues to want the relationship, there is absolutely no reason such a person should not be appointed to a board committee and continue service through that mechanism, but not as a voting member of the board. After a certain period of active service, most people tire and welcome a change. Further, trustees sometimes feel their way is the right way after they have served for a period of time and resist constructive change. Often, an institution evolves beyond what a trustee may believe it should be. When this happens, it is wise for the trustee to resign, or at least not be continuously re-elected.

There probably is no ideal term for a trustee to serve. Certainly, one-year terms are far too short for effective service and commitment. Also, one-year terms mean that the entire board is up for re-election or replacement every year. Staggered two-year terms are better, but it results in one half the board up for re-election or replacement—a sizable percentage. This manual recommends election of trustees to staggered three-year terms, with a trustee eligible for re-election to a second three-year term. With three-year terms, only one-third of the board is up for re-election or replacement. This provides for the possibility of six consecutive years as a board member. The trustee should become eligible for re-election after the lapse of one year following completion of two consecutive full three-year terms.

Principal Officers



The principal officers of the not-for-profit corporation should be the following: president; vice president; treasurer; and secretary. Some organizations have opted to have a chair and a vice chair instead of a president and vice president. That is a matter of choice. But this manual recommends that an organization not have both a chairman and a president. It leads to basic confusion and is actually a carry over from the for-profit corporate world where there usually is a chairman of the board of directors of the corporation and a president of the corporation who is the salaried chief executive or operating officer. This structure has no relevance to the not-for-profit corporate world, even though provision is made for both a chair and a president in many of the state not-for-profit codes.

President: The president of the board of trustees of a not-for-profit corporation is not the chief executive officer. Rather, he or she is the "choreographer" of the board and the primary liaison between trustees and the artistic/programmatic and management/administrative leadership of the staff. He or she is the main spokesperson for the organization in its community and beyond. And, most importantly, he or she should be a proactive leader for and in support of the purpose or mission of the organization.

The president chairs board meetings as well as the meetings of the executive committee. He or she normally appoints committee chairs and, depending upon the policy of the organization, sometimes appoints committee members. Normally, the president serves ex officio on each board committee.

A very important function of the president, in his or her capacity as chair of the board and of the executive committee, is voting when his or her vote affects the outcome of a vote. Most people interpret this as meaning breaking a tie. However, the vote also may be used to create a tie. This definitely affects the outcome as a tie vote kills the motion.

Vice President: Normally, the main structural reason for having a vice president is to have a person available to take the place and responsibilities of

the president in the president's absence or inability or unwillingness to act. Increasingly, not-for-profit organizations are tending to think of the vice president and president as a team, dividing some of the oversight responsibilities, but with the president in charge. Some organizations view the vice presidency as the next step before becoming president. Others do not. If a group really wants to identify in advance who the next board president will be, it might be more appropriate to elect a president-elect. A given vice president might serve well as vice president, but not make an effective president.

Treasurer: Under the not-for-profit corporate codes, the treasurer has very specific areas of responsibility which should be spelled out in some detail in the by-laws. Acting under the supervision of the board (which means the board has the ultimate responsibility), the treasurer is custodian of all the funds of the corporation and is responsible to see that accurate and adequate records are kept of all the assets, liabilities, and transactions of the corporation.

In many not-for-profit corporations, the treasurer also serves as chair of the finance committee. This may or may not be a good idea, depending on who is treasurer. But the treasurer should certainly serve as a member of the finance committee.

Secretary: As in the case of the office of treasurer, the secretary has certain specified corporate duties which should be spelled out in the by-laws. Generally, the secretary is responsible for all the records of the corporation not under the supervision of the treasurer. He or she is responsible for seeing that notices of meetings are sent in the proper manner, for seeing that minutes of board and executive committee meetings are taken and distributed, and for seeing that all required reports are filed in a timely fashion.

Many board secretaries spend their board meeting time taking minutes. This is a serious waste of a board member's time as it is virtually impossible to function as an actively participating board member while taking minutes. The Secretary's responsibility is to see that minutes are taken and distributed, not to take them. If a staff person or other secretarial service is available, the board officer with the title of secretary should not take minutes. He or she should review the minutes prior to their distribution, and the minutes should be sent out under his or her name.

Other Officers: Provision should be made in the by-laws to enable the board to elect other officers as needed. For example, it might be deemed wise to elect an assistant treasurer or assistant secretary. But this manual urges organizations not to create a string of vice presidents, such as vice presidents for planning or development. These are committee chairs. The creation of multiple vice presidents is another carry over from the for-profit corporate structure and has no real applicability to the not-for-profit world.

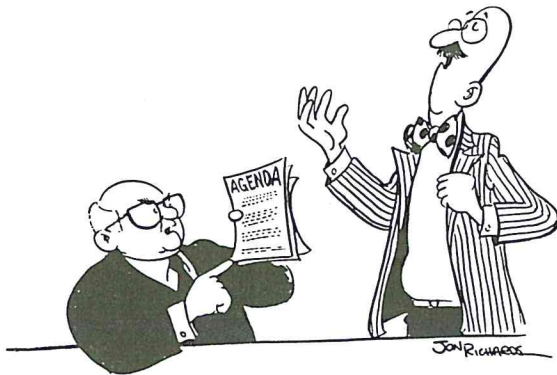
Officer Election and Terms of Office



Officers should be elected by the board of trustees, normally at the annual meeting, to one-year terms of office. Officers should be elected by the trustees from among board members then serving in office. Officers should not serve in any one office for more than three consecutive one-year terms, but should be eligible for re-election after the lapse of one-year out of that office, following completion of three full one-year terms. Some individuals, while agreeing to a limit on the number of years for a president, vice president, and secretary, feel strongly that a good treasurer should not have to leave office after three years. If in fact it proves impossible to recruit another capable treasurer, an exception might be provided for in the by-laws to cover such an eventuality, but if the nominating committee is really doing its job, it will be looking for new board leadership during the trustee recruitment process.

No trustee should hold more than one officer position at one time. Although most not-for-profit corporate codes provide that any person may hold more than one office, except that of president and secretary, this is inappropriate for not-for-profit institutions.

Board Meetings



The by-laws should provide for the holding of three types of meetings: 1) annual; 2) regular; and 3) special. Required notice should be included, as well as a provision for a meeting of trustees where no one attends.

Annual Meeting: The annual meeting (the one regular meeting normally required by law) usually is held for the purpose of electing trustees and officers. The annual meeting also is frequently used for public relations purposes. The date of the annual meeting should be the date best suited to the needs of the organization. Despite the belief of many, it does not have to have any relationship to the corporate fiscal year.

Regular Meetings: Although not required to do so by law, most institutions believe it is important to have more than one regular meeting each year. Each staff and board should determine how many regular meetings each year can best serve the institution's needs. Many feel monthly meetings are important, others bi-monthly, and others quarterly. For most organizations, it is doubtful that quarterly meetings are enough, unless the board virtually delegates its continuing responsibility to an executive committee. If board committees work actively, and make timely substantive reports, bi-monthly meetings may suffice. However, a good rule of thumb is to assume that monthly meetings are necessary to the well being of the organization unless proved otherwise. Whatever the decision, the specific dates for meetings should be established at the annual meeting so the dates get on trustees' calendars well in advance.

Special Meetings: Provision should be made in the by-laws for the calling of special meetings should they prove necessary. Unless the organization is facing some particularly serious problem or crisis, very few special meetings should be necessary. Provision should also be included in the by-laws for board action without a meeting if each trustee signs a consent to the action. This only can be done with unanimous written approval.

Quorum: No official business may be conducted at a meeting, or a formal vote taken, unless a quorum is present. Normally, a quorum is a majority

of trustees then serving in office, present in person at the meeting. This manual recommends that no proxy voting should ever be allowed by the board of trustees. Proxy voting comes from the for-profit sector. It is an appropriate mechanism for a meeting of shareholders of a for-profit corporation so that business can be accomplished. There is virtually no way a majority of shareholders of a major for-profit corporation can get together at the same time for a meeting. In contrast, there is no reason not to expect at least a majority of the trustees of a not-for-profit corporation to attend meetings. They have the fiduciary responsibility to do so.

Some organizations find difficulty in having a quorum at regular board meetings. As a result, one finds many by-laws which provide that one-third of the trustees then serving constitutes a quorum. There is something very wrong with a board that consistently has difficulty in getting a quorum. Perhaps the executive committee has assumed too much power, and board members not on the committee do not feel their presence, input, or vote makes any difference. Provision in the by-laws for a low quorum sends out a negative message about the governance of the organization.

Some organizations provide that once a quorum has been established, business may continue to be conducted at a meeting even though a quorum is not present for the duration of the meeting. In this event it is required that a majority of the required quorum be present to continue business.

A simple mechanism to assure the ability to do business if a quorum is not present is the following. At the same time the notice of the meeting is sent to the trustees, notice of a meeting of the executive committee also should be sent for the same time and place. In the event a quorum of the board is not present at the time of the meeting, but a quorum of the executive committee is present, the executive committee may come into session and conduct business, inviting other trustees present to join it. If a quorum of the board is present, the executive committee simply does not meet, or if someone feels it should meet because notice has been given, then it is called to order and adjourns immediately.

Conduct of Meetings: The president of the board normally chairs all board meetings. He or she should conduct the meeting in accordance with an agenda which has been prepared and sent to all trustees in advance of the meeting. The preparation of the agenda should be the joint responsibility of the president and the senior artistic or management staff person. It is suggested that each make a rough draft of a proposed agenda and then meet together to agree on the final agenda before it is sent out.

At the same time, the president and senior staff person should determine which are the most important items for discussion and/or action. It is suggested that a time frame be agreed to for each topic. This may of course be changed by the president during the meeting, but it can serve as an effective guideline, particularly if it is announced at the beginning of the meeting. Any especially verbose trustee is thus put on notice that he or she may be ruled out of order by the president. If possible, each meeting should have a particular focus, or theme, in addition to the necessary other business that may have to be conducted. When a vote is held, the president should make sure that everyone votes either for the motion, against it, or abstains. It is important for the minutes to reflect the details of each vote. Approval of a formal motion must not be

assumed by consensus.

It also is the responsibility of the president to see that all trustees have an opportunity to speak and that all understand what is going on, particularly if the question is dealing with some issue which is considered technical, such as the budget. Many times trustees are afraid to ask a question about something because they do not want to appear ignorant to their peers. It is amazing how widespread this fear is. It should be established very clearly that there is no foolish question.

However, if a trustee raises a question or issue because he or she has not done the homework necessary for preparing to attend the meeting, then the president should not waste the time of other trustees by bringing the errant trustee up to date. The same is true if a trustee comes late to the meeting. He or she has the responsibility of finding out during a break what has been covered. The time of those who arrived at the scheduled beginning time of the meeting should not be wasted.

The president should assure that meetings start on time and end on time. There is a rather general tendency in the not-for-profit world to assume that meetings will start late, therefore people arrive late. It is easy to correct this by starting on time—if a quorum is not present, but if a quorum of the executive committee is present, the meeting can begin as indicated earlier. Of equal importance is that trustees know when the meeting will end so they will be able to plan for and keep other commitments. Again, it is the role of the president to assure this happens.

As a general rule, meetings should not be held at mealtime, particularly at lunch or dinner. It is impossible to have an effective meeting and discussion while eating. The possible exception is a simple breakfast meeting where there are not as many interruptions and distractions.

There is no particularly good time for a meeting to be held. There always is at least the potential of conflicting with something else. Each organization should determine what is the best time for the largest number of board members and then stick to it. If it doesn't work out, it can be changed.

If possible, board meetings should be held on the premises of the organization. Even though it might be more comfortable to meet in someone's office or home, it is important that trustees have a real feel for and knowledge of the physical situation of the organization and the surroundings in which its staff works. If the space is simply too small and the meeting would disrupt the ongoing work of the staff, then the board should meet elsewhere.

General Comments



Much of the above information and suggestions may seem to be directed only, or at least primarily, to not-for-profit institutions which are reasonably well staffed and financed and which have a board of trustees numbering at least in the high teens or twenties. Nothing could be more incorrect.

It is true that a small board (e.g., five to nine members) does not have enough members to fill all the working committees recommended in this manual. However, it is possible at a board meeting for that board to meet first as one or more of what have been defined as generic committees and then report to themselves as board members. The important thing is that the committees function to serve the organization's needs. If necessary, while the board is very small it may function as a committee or committees of the whole and then as the board. Further, as indicated earlier, there is no reason for individuals who are not members of the board not to serve on board committees. Part of determining the appropriate size of a board is a clear understanding of roles, functions, and the best structure to serve the needs of the particular organization.

A question which has no clear cut answer is whether or not members of the staff—artistic or management—should serve as members of the board of trustees. This is a matter for each institution to decide. Normally, the founding artistic director of a performing arts institution serves on the board as a full voting member. More often than not, a successor artistic director does not. The artistic, programmatic, or management leadership of other types of not-for-profit organizations may or may not serve as voting board members. Each organization should make its own decision based on what is best for it.

What is far more important than whether staff should be on the board is that the board establish as a firm policy that the artistic and management leadership are expected to attend and participate actively in all board and executive committee meetings. In addition, other staff should be expected to attend when appropriate in terms of the agenda. An exception to the staff leadership attending all discussions would be if the board goes into executive session in order to discuss the salaries of the leadership or if one of them might

be on the verge of being dismissed

The board of a not-for-profit institution does not exist in a vacuum. It is part of the total institutional team dedicated to the continuing definition, and implementation through programming, of the institution's purpose or mission. Therefore, it is vital for the artistic, programmatic, and management leadership to be present at and participate in all discussions dealing with such definition and implementation. In the event one or the other of these staff leaders cannot attend, it must be assumed that the one who is present speaks for the other.

Finally, all board meetings should have some aspect of "fun" to them. This is not meant to be fun in the party or social sense, but rather the fun a trustee can have in being more acutely aware of the creative process which drives the organization. Too frequently at board meetings, trustees spend virtually all their time dealing with financial matters. Over time, this becomes discouraging, and trustees often wonder why they agreed to serve on the board. It is a draining process with little personal satisfaction. A period of time at each meeting, however limited, should be devoted to what really is being done to implement the institution's purpose or mission. How is the artistic director's or programmatic director's vision being implemented? For example, an artistic director's report should not deal primarily with figures about performances, but should include some of the whys of the artistic season, the successes and disappointments of each artistic product, and the whys of these. Further, from time to time other members of the artistic and management staffs might well join a board meeting to share with the trustees their particular areas of expertise. And at least once each year, the board should devote a full meeting—perhaps a special one—to updating itself in regard to where the organization is in terms of achieving its purpose or mission. During this meeting, the mission or purpose will be articulated again, putting the efforts of both staff and board into the proper and meaningful perspective.

Sample By-Laws



There is not one set of by-laws which can or should serve as a definitive model for all not-for-profit organizations. Each is different and each has possibly different needs in terms of governance and structure. By-laws must not violate any state or federal statutes governing not-for-profit institutions. However, while conforming to the not-for-profit corporate code of the state in which it is incorporated, the institution's by-laws may include provisions not prohibited by law but which might not necessarily be included in the law.

The following sample set of by-laws are offered for consideration as a suggested guideline. Each institution should alter them to serve its need. Some titles used (*e.g., artistic director and managing director*) should be changed to whatever is appropriate for the institution.

**BY-LAWS
OF
(Corporate Name of Institution)**

**ARTICLE I
NAME**

The name of the corporation is:

**ARTICLE II
PURPOSE**

The purposes for which this corporation is organized and formed are: (*include the text of the purpose or mission statement here*).

**ARTICLE III
MEMBERSHIP**

There shall be no members of the corporation.
(*Note: If state law mandates membership, or if the organization already is*

incorporated as a membership corporation, this section should read: The Board of Trustees shall constitute the membership of the corporation.)

ARTICLE IV BOARD OF TRUSTEES

Section 1. Purpose, Powers, and Duties. The Board of Trustees has the general power to 1) control and manage the affairs, funds, and property of the Corporation; 2) disburse the Corporation's monies and dispose of its property in fulfillment of its Corporate purpose; provided, however, that the fundamental and basic purposes of the Corporation, as expressed in the Certificate of Incorporation shall not thereby be amended or changed, and provided further, that the Board of Trustees shall not permit any part of the net earnings or capital of the Corporation to inure to the benefit of any private individual.

The Board of Trustees shall appoint an Artistic Director and a Managing Director who shall be responsible to the Board for the artistic, administrative, and business management of the Corporation. The Board of Trustees may further delegate authority to committees or to individual Trustees as it deems necessary for the carrying out of the purposes and business of the Corporation.

Section 2. Number. The number of Trustees, which shall be not less than five (5), shall be fixed from time to time by the Trustees then serving in office, except that a Trustee's term may not be shortened by a reduction in the Board's size.

Section 3. Election, Term of Office. Trustees shall normally be elected at the annual meeting of the Corporation by a majority vote of the Trustees then serving in office. Candidates for board membership shall be nominated for office by a nominating committee. Trustees shall be elected to office for a term of three years, or until their successors are duly elected and qualified, except in the case of their earlier death, resignation, or removal from office. A Trustee may be elected to a second consecutive three-year term, but may not be elected to a third consecutive three-year term. A Trustee may be re-elected to the Board after a lapse of one year following completion of two consecutive full three-year terms in office. The elected Trustees shall be divided into three classes of approximately equal size to provide for the election of approximately one-third of the elected Trustees at each annual meeting.

Section 4. Ex Officio Trustees. The President (*Chairman*) of the (*enter name of the volunteer support group*) shall serve ex officio as a voting member of the Board of Trustees. From time to time, by majority vote of the Trustees then serving in office, the Board of Trustees may designate additional ex officio Trustees with vote or ex officio Trustees without vote. Ex officio Trustees with vote shall be counted in determining whether or not a quorum is present at a meeting. Ex officio Trustees without vote shall not be counted in determining the presence of a quorum. (*Note: An example of the use of this provision would be the appointment to the board, with or without vote, of the artistic or managing director.*)

The Board also may appoint Honorary Trustees and/or Trustees Emeritus. The terms of such appointments shall be determined by a majority vote of the Trustees then serving.

Section 5. Resignation and Removal of Trustees. Any Trustee may resign by giving written notice of his or her resignation to the Board or to the President or Secretary of the Corporation. Such resignation shall take effect at the time specified in such notice and the acceptance of such resignation shall not be necessary to make it effective. Any trustee may be removed from office, with or without cause, by a two-thirds vote of all Trustees then serving in office.

Section 6. Vacancies. Vacancies in the Board, however arising, shall be filled by a majority vote of all Trustees then serving in office at any regular meeting of the Board or at a special meeting of the Board called for that purpose. Persons shall be nominated for Trusteeship by the Nominating Committee and the list of any such nominees shall be included with the notice of the meeting at which election is proposed.

ARTICLE V MEETINGS

Section 1. Annual Meeting. The annual meeting of the Corporation shall normally be held during the month of *(name the month)* each year, or on such other date as may be fixed by the Board of Trustees.

Section 2. Regular Meetings. The frequency and dates of regular meetings of the Board of Trustees shall be fixed by the Board of Trustees, normally at its annual meeting.

Section 3. Special Meetings. Special meetings of the Board of Trustees may be called by the President or Vice President of the Board or shall be called by the Secretary at the request in writing of any three voting Trustees then serving in office.

Section 4. Action Without a Meeting. Action may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the voting Trustees then serving in office.

Section 5. Telephone Meetings. Members of the Board or of any committee may participate in a Board meeting through use of conference telephone or similar communication equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting pursuant to this provision constitutes presence in person at such meeting.

Section 6. Notice of Meetings. Written notice of the time and place of the annual and regular meetings shall be sent to each Trustee to the last known place of business or residence of the Trustee at least seven days, but not more than thirty days, prior to the date of such meetings. Written notice of special meetings shall be sent to each Trustee to the last known place of business or residence of each Trustee not less than three days prior to the date of such meeting or by telephone, telegraph, or other electronic communications system, not less than two days prior to the date of such meeting.

Section 7. Waiver of Notice. Notwithstanding the provisions of any of the foregoing sections, a meeting of the Board of Trustees may be held at such time and place within or without the State of *(name of state)* as the Board of Trustees shall designate, and any action may be taken thereat, if notice thereof is waived in writing by every Trustee having the right to vote at the meeting.

Section 8. Quorum. Unless provided for differently elsewhere in these By-Laws, a majority of the Trustees then serving in office shall constitute a quorum for all meetings of the Board of Trustees. In the absence of a quorum, a majority of the Trustees present may, without giving notice other than announcement at the meeting, adjourn the meeting from time to time until a quorum is obtained. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Trustees if any action taken is approved by at least a majority of the required quorum for such a meeting.

Section 9. Voting. At any meeting of the Trustees, every voting Trustee present in person at such meeting shall be entitled to one vote and, except as otherwise provided by law or by these By-Laws, the act of a majority of the Trustees present in person at any meeting at which a quorum is present shall be the act of the Trustees.

ARTICLE VI OFFICERS

Section 1. Principal Officers. The principal officers of the Corporation shall be a President, a Vice President, a Treasurer, and a Secretary. All officers shall be elected to office from among the Trustees then serving at the time of the election. The Board of Trustees at any meeting may by resolution elect or appoint additional officers or engage agents and employees and determine their terms of office and compensation, if any, as it may deem advisable.

Section 2. Election and Term of Office. The officers of the Corporation shall normally be elected at the annual meeting of the Board of Trustees, but may be elected at any meeting of the Board at which a quorum is present, by a vote of the majority of the Trustees present in person at the meeting. The Nominating Committee shall prepare a list of nominations for officer positions, and such list shall be mailed to each Trustee then serving, along with the notice of said meeting. An officer shall be elected to serve a one-year term and shall hold office until the next annual meeting of the Board following election or until his or her successor shall have been elected, except in the case of death, resignation, or removal as provided for in these By-Laws. No Trustee may serve in one office for more than three consecutive one-year terms. Election to office shall not be used to extend the eligible period of service on the Board of any Trustee.

Section 3. Removal of Officers. Any officer may be removed, with or without cause, at any time at any Board meeting at which a quorum is present by a vote of two-thirds of the number of Trustees then serving in office.

Section 4. Vacancies. Vacancies among the officers, however arising, shall be filled by a majority vote of Trustees present at any regular or special meeting of the Board at which a quorum is present. The list of nominations for officer positions, recommended by the Nominating Committee, shall be included with the notice of the meeting at which election is proposed.

Section 5. President. The President shall preside at all meetings of the Board and of the Executive Committee and generally do and perform all acts incident to the office of President, and shall have such additional powers and duties as may

from time to time be assigned to him or her by the Board. Unless otherwise provided for in these By-Laws, the President shall appoint the chairs of each Board committee and be an ex officio voting member of each Board committee.

Section 6. Vice President. In the absence, or inability to act, of the President, the Vice President shall exercise the powers and perform the duties of President. The Vice President shall also generally assist the President and shall have such other powers and perform such other duties as may from time to time be designated by the President or by the Board of Trustees.

Section 7. Treasurer. The Treasurer shall act under the supervision of the Board and shall have charge and custody of, and be responsible for, all the funds of the Corporation and shall keep or cause to be kept, and shall be responsible for the keeping of, accurate and adequate records of the assets, liabilities, and transactions of the Corporation. He or she shall deposit, or cause to be deposited, all monies and other valuable effects of the Corporation in the name of and to the credit of the Corporation in such banks, trust companies, or other depositories as may be designated from time to time by the Board of Trustees. He or she shall disburse, or cause to be disbursed, the funds of the Corporation based upon proper vouchers for such disbursement. In general, he or she shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him or her by the President or the Board.

Section 8. Secretary. The Secretary shall keep, or cause to be kept, the minutes of all meetings of the Board and of the Executive Committee in one or more books provided for that purpose and shall see that the minutes of meetings of the Board and of the Executive Committee are distributed promptly to all members of the Board of Trustees. He or she shall see that all notices are duly given in accordance with these By-Laws and as required by law. He or she shall be custodian of the seal of the Corporation and shall affix and attest the seal to any and all documents the execution of which on behalf of the Corporation under its seal shall have been specially or generally authorized by the Board of Trustees. He or she shall have charge of the books, records, and papers of the Corporation relating to its organization as a corporation and shall see that all reports, statements, and other documents required by law are properly kept or filed, except to the extent that the same are to be kept or filed by the Treasurer. In general, he or she shall perform all duties incident to the office of Secretary and such other duties as may from time to time be assigned to him or her by the President or by the Board of Trustees.

Section 9. Bonding. Any officer or employee of the corporation shall, if required by the Board of Trustees, give such security for the faithful performance of his or her duties as the Board of Trustees may require.

ARTICLE VII COMMITTEES

Section 1. The Board of Trustees may by resolution at any meeting of the Board designate standing, ad hoc, and/or special committees of the Board. The Board may appoint an Advisory Council and/or honorary groups. The terms of appointment and expectations of service of any advisory or honorary group shall be determined by the Board of Trustees.

Section 2. Membership. Normally, the President of the Board of Trustees shall appoint the chair of each Board committee. Normally, the Chair of each committee shall appoint the other committee members in consultation with the President of the Board and appropriate artistic or management staff. Each committee normally shall consist of at least three members, at least one of whom shall be a voting member of the Board of Trustees. *(Note: check individual state not-for-profit codes to be sure this is possible.)* Unless otherwise provided for in these By-Laws or by the laws of the State of *(name of State)*, any committee designated by the Board of Trustees may include as full voting members of such committees such persons, whether or not Trustees or Officers of the Corporation, as the Board of Trustees shall determine. Each such committee shall have power to the extent delegated to it by the Board of Trustees and in accordance with the laws of the State of *(name of State)*. Each committee shall keep minutes of proceedings and report to the Board of Trustees. At least one member of the artistic or management staff of the Corporation shall be an ex officio participating member of each Board committee.

Section 3. Executive Committee. The Executive Committee shall include in its membership the officers of the Corporation and such other Trustees as may from time to time be designated by vote of the Board of Trustees. Unless a different person is designated Chair of the Executive Committee by resolution of the Board, the President of the Board shall serve as Chair. All members of the Executive Committee shall be voting members of the Board of Trustees.

The Executive Committee shall, during intervals between meetings of the Board, exercise all the powers of the Board in the management of the business and affairs of the Corporation, except as otherwise provided by law, these By-Laws, or by resolution of the Board. The presence of a majority of the members of the Executive Committee then serving in office shall be necessary and sufficient to constitute a quorum and the act of a majority of the members of the Executive Committee present at a meeting of the Committee at which a quorum is present shall be the act of the Committee. The Committee shall keep full and fair records and accounts of its proceedings and transactions. The minutes of the Executive Committee shall be distributed to all members of the Board of Trustees. All actions by the Committee shall also be reported to the Board at its next meeting and shall be subject to approval by the Board.

Section 4. Committee Meetings. Unless otherwise provided for in these By-Laws, a majority of the members then serving on a Committee constitutes a quorum for the meeting of the Committee and the vote of a simple majority of those present at a meeting at which a quorum is present, constitutes an action of the Committee. Each Committee shall determine and schedule the number of regular meetings it will hold each year.

ARTICLE VIII INDEMNIFICATION

Every person who is or shall be or shall have been a Trustee or Officer of the Corporation and his or her personal representatives shall be indemnified by the Corporation against all costs and expenses reasonably incurred by or imposed upon him or her in connection with or resulting from any action, suit, or proceeding to which he or she may be made a party by reason of his or her being

or having been a Trustee or Officer of the Corporation or of any subsidiary or affiliate thereof, except in relation to such matters as to which he or she shall finally be adjudicated in such action, suit, or proceeding to have acted in bad faith and to have been liable by reason of willful misconduct or willful negligence in the performance of his or her duty as Trustee or Officer. Costs and expenses of actions for which this Article provides indemnification shall include among other things, attorneys' fees, damages, and reasonable amounts paid in settlement.

ARTICLE IX MISCELLANEOUS

Section 1. Personal Liability. No Trustee shall be held personally liable for any debts of the Corporation.

Section 2. Fiscal Year. The fiscal year of the Corporation shall be (*specify here the beginning and ending dates*).

Section 3. Contracts, Checks, Bank Accounts, Etc. The Board of Trustees is authorized to select such banks or depositories as it shall deem proper for the funds of the Corporation. The Board shall determine who, if anyone, in addition to the President and the Treasurer, shall be authorized from time to time on the Corporation's behalf to sign checks, drafts, or other orders for the payment of money, acceptances, notes, or other evidences of indebtedness, to enter into contracts or to execute and deliver other documents and instruments.

Section 4. Corporate Seal. (*Note: include this if a seal is required by law or one is desired.*) The seal of the Corporation shall be circular in form and shall bear the name of the Corporation, the name of the State, and the year of incorporation.

Section 5. Loans. This corporation shall not make any loan of money or property to or guarantee the obligation of any Trustee, Officer, or Employee. Provided, however, that this corporation may advance money to a Trustee, Officer, or Employee of this corporation or any subsidiary for expenses reasonably anticipated to be incurred in the performance of duties of such Trustee, Officer, or Employee so long as such individual would be entitled to be reimbursed for such expenses absent that advance.

ARTICLE X AMENDMENTS

These By-Laws may be altered, amended, or repealed in whole or in part at any duly organized meeting of the Board of Trustees of the Corporation, by a two-thirds majority vote of the voting Trustees then serving in office. Any proposal to amend these By-Laws shall be included with the notice of the meeting at which the amendment is proposed.

Sample Articles of Incorporation

Although there may be some differences among states in terms of what they require for the incorporation of a not-for-profit corporation, the following sample Articles of Incorporation (or Articles of Association) should satisfy the requirements of most states. However, it is very important to check carefully whether or not this is the case.

ARTICLES OF INCORPORATION OF *(Name Of Organization)*

ARTICLE I

The name of this corporation shall be *(Name of Organization)*.

ARTICLE II

This corporation is a nonprofit corporation (*or, non profit public benefit corporation*), organized under the nonprofit corporation law of the State of () for charitable purposes. This corporation does not contemplate pecuniary gain or profit to any member thereof, or to any other individual. It is organized for nonprofit purposes.

The specific and primary purposes are *(include here the broad version of the mission or purpose statement)*

The general purposes and powers are to have and exercise all rights and powers conferred on nonprofit corporations under the laws of the State of (), including the power to contract, rent, buy, or sell personal or real property, provided, however, that this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of this corporation.

No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including

the publishing or distributing of statements) on behalf of any candidate for public office.

ARTICLE III

The principal office for the transaction of business of this corporation is located in the City of (), County of (), State of ().

ARTICLE IV

The general management of the affairs of this corporation shall be under the control, supervision, and direction of the Board of Directors, to be known as the Board of Trustees. The names and addresses of the persons who are to act in the capacity of Trustees until the selection of their successors are:

(list initial incorporators here)

ARTICLE V

The Board of Trustees shall constitute the voting membership of the corporation.

ARTICLE VI

The By-Laws of the corporation shall be adopted by the Trustees named in the Articles of Incorporation, and may thereafter be amended or repealed by any means provided in the By-Laws.

ARTICLE VII

The property of this corporation is irrevocably dedicated to educational and charitable purposes, and no part of the net income or assets of this corporation shall ever inure to the benefit of any trustee, officer, or member thereof, or to the benefit of any private individual. Upon the dissolution or winding up of the corporation, its assets remaining after payment of, or provision for payment of, all debts and liabilities of this corporation, shall be distributed to a nonprofit corporation, fund, or foundation which is organized and operated exclusively for educational or other charitable purposes and which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and which meets the requirements of the nonprofit code of the State of ().

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of (), we, the undersigned, constituting the incorporators of this corporation as well as the persons named hereinabove as the first Trustees of this corporation, have executed these Articles of Incorporation this () day of (), 19____.

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Toronto Theatre Alliance

AUTHOR

Robert W. Crawford has consulted with not-for-profit organizations since 1976 with clients including the National Endowment for the Arts, L.J. Skaggs and Mary C. Skaggs Foundation, Yale University, The East Harlem Tutorial Program, The Association of Cultural Executives, and the National Ballet of Canada. He has served on, among others, the Theater Advisory Panel for the National Endowment for the Arts, the Critical Choices Steering Committee of Upper Midwest Council, and the Advisory Group on Study of Needs of Professional Theater in America. His board memberships have included the American School of Tangier, The Minnesota Opera, the Guthrie Theater Foundation, The Children's Theater Company and School, and the Vermont Council on the Arts. He is also the author of *In Art We Trust: The Board of Trustees in the Performing Arts* and "The Overall Structure and Process of Planning," a chapter in *No Quick Fix (Planning)*, both published by FEDAPT, and "Ridwan the Maligned," a chapter in *The World of Islam*, Macmillan & Co.

ILLUSTRATOR

Jonathan Richards is a novelist and cartoonist. His editorial cartoons appear in the Santa Fe, New Mexico *Reporter* and are distributed by Sunmount Syndicate. His novels include *The Whitemarsh Chronicles* and *Santa Fe*.

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