

Commercial Co-Ventures for CA Nonprofits: Revisited

10.19.21 | Linda J. Rosenthal, JD



It was a scene likely played out countless times around the nation in the early days of the summer just ended.

The nonprofit executive, who had wearily watched as the COVID-19 crisis ravaged her organization's budget and operations, was buoyed by the wave of optimism from the vaccine rollout. It was the right time, she told the board, to schedule a September reopening fundraiser.

During the shutdown, she had (virtually) cultivated a new contact from the town's business community. A sports entrepreneur, he had expressed admiration for the nonprofit's mission. And she learned that the launch of his fledgling minor-sport-league franchise had been postponed due to the pandemic.

Their conversations over the bleakest months turned to examples of quite-common and mutually beneficial collaborations between charities and businesses. The "kids-in-need and sports stars" angle bubbled up as a perfect fit. The charity CEO and the start-up owner agreed to announce and then quickly plan the details of a joint outdoor carnival event for late September. They would tell their supporters and the community at large that they were developing additional activities and cooperation for the upcoming year. This "partnership" would likely include turning over a portion of the sports-ticket sales to the nonprofit.

Enter – at this critical point – a seasoned nonprofit consultant, retained for the challenging job of pulling off, in just a few short months, the September fundraiser.

From her first hours on the task, she spotted far more questions than answers. The details of the big day itself were only haphazardly sketched out. Which kids would be involved or invited? What types of carnival activities would grab and hold the attention for many hours of all attendees including

adults? Would there be an admission fee? Would loyal supporters be asked for a charitable contribution? What would be the financial contribution from the sports entrepreneur? There are multiple hazards with an impromptu scheme like this in such a vaguely defined relationship.

She quickly saw an additional “red-flag” here. This type of arrangement is defined as a “commercial co-venture” and is tightly regulated in almost half of the states including California.

Tactfully but firmly, the wise consultant pulled the emergency cord on this runaway train.

Collaborations-Model Origin

We explained in [Cause-Related Marketing: The California Rules](#) (November 17, 2015) how one of the nation’s finance giants, American Express, “[took a huge marketing gamble](#)” in 1983 “with a creative but entirely untested concept.” The credit-card behemoth teamed up with the nonprofit group that was spearheading the fundraising campaign to restore The Statue of Liberty on its 100th anniversary. [Regular readers of this blog may recall our tale in [Charitable Crowdfunding: Then and Now](#) (May 5, 2021) about the *original* fundraising effort for the beloved monument back in 1883. The French people generously donated Lady Liberty herself but shipped her off to our shores in many pieces and without a foundation upon which to rest. Conventional fundraising appeals failed until flamboyant newspaper publisher Joseph Pulitzer pulled off a spectacular (pre-internet-era) crowdfunding campaign to raise the needed money.]

The centennial fundraising effort centered on a novel advertising campaign launched by American Express in which the company donated to the nonprofit [a portion of each credit card purchase](#) and an additional contribution for each new, approved credit card application. It was a huge success for each side; the rest is history. This marketing experiment spawned a flood of copycat money-raising efforts joining the philanthropic and the business communities.

It has morphed into a “billion-dollar-a-year industry” as the “[model of choice](#)” for collaborations between nonprofits and for-profits.

Ticket-Sale Splits

The sales-proceed split model is just one of several variations of what is now commonly referred to in the business world as “cause-related marketing.” In government and legal circles, it’s more often termed a “commercial co-venture.” Either – and both – are correct, but state statutes governing these arrangements typically use the “commercial co-venture” label.

A “commercial co-venture” is typically defined as “[a]n agreement between a nonprofit organization and a for-profit business that serves to support charitable causes while generating commercial goodwill. Common features include, but are not limited to, a share of revenue being donated to the charity, a charitable event underwritten by a business, and activities of any kind that are advertised to benefit a charitable organization.” See [Commercial Co-Ventures and Cause Marketing](#), [harborcompliance.com](#).

“For-profit companies with well-developed corporate social responsibility programs are increasingly partnering with charities. These partnerships [serve two purposes](#): the for-profit brand is able to more

closely align itself with the interests of its customers, and the charity benefits from the financial support the business provides.”

But governments take an interest in these arrangements, particularly to protect the nonprofit – and thereby the general public. The primary oversight comes at the state level under its authority to regulate fundraising. But – often – a nonprofit/business collaboration is national in scope. While that adds complexity to the regulatory environment, it also creates the opportunities for state attorneys general to work together in egregious situations.

California Regulation

The “kids-at-risk and sports stars collaboration” example here is very loosely based on a nearby “disaster-averted” tale. Being strictly local in nature, the only applicable law would have been California’s key charitable-solicitation regulation statute: [Government Code secs. 12580-12599.8](#), the Supervision of Trustees and Fundraisers for Charitable Purposes Act.

See also our earlier discussions of this topic: [Cause-Related Marketing: The California Rules](#), referenced above, and [Taking Fundraising Outside The Organization](#) (September 3, 2015). Another helpful resource is [Commercial Co-Ventures and Cause Marketing](#) (undated), Jeremy Chen, Esq., jeremychemlaw.com [“In CA, commercial co-ventures are regulated by the California Attorney General. The reason ... is to curtail companies from misleading the public by overstating the amount actually donated and to ensure that the company follows through with its promised contributions in full.”]

For the most up-to-date rules and guidance, go to the [website](#) of the California Attorney General and its [Guide for Charities page](#). There, you’ll find the [newly revised \(June 2021\)](#) version of [The Attorney General’s Guide for Charities](#); Chapter 9 focuses on fundraising. There is a link to a (recorded) webinar discussing the full Guide; that video is available also on the California Department of Justice’s [YouTube Channel](#).

Conclusion

During the pandemic, there has been a laudable easing up of certain of our laws because of the emergency. But many relating to nonprofit organizations – including California’s fundraising statutes – have continued in full force and effect. Thinking “outside the box” [for flexibility under crisis circumstances](#) – which we’ve encouraged during the recent 18 months – doesn’t mean forgetting entirely that there may be legal boxes to check off.

As nonprofit-organization execs and boards happily begin to consider the way forward out of this crippling pandemic, it’s critical to review major plans with experts. The consultant in the case study here did not pull the plug entirely on this proposed collaboration with a business. Instead, she paused the action until more of the details could be nailed down including – first and foremost – the exact nature of this “partnership” and how it will comply with all applicable laws and safeguards.

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