

"The Girl Scouts and the Return of the Completed Donation"

08.13.15 | Linda J. Rosenthal, JD



It sounds like it could be the title of a 1960's-era teen mystery novel, and it's no wonder the story went viral. It had everything: schoolgirls excited about summer camp, an angel donor who turned into a Scrooge, Caitlyn Jenner, thin mint cookies, and a happy-ending, emergency crowdfunding campaign that quickly raised 3 times the amount of a lost contribution.

You've probably heard about it, too. The Girls Scouts of Western Washington received a \$100,000 donation "earlier this spring." That amount was "about one-quarter of what it raises each year to provide financial help for girls to go to camp and participate in other activities." In late May, the Western Washington council's CEO, Megan Ferland, "... received a letter from the donor" that read: "Please guarantee that our gift will not be used to support transgender girls. If you can't, please return the money."

News stories reminded us that late May was when "news of Caitlyn Jenner's transition was blowing up your" social media news feeds. Also, that month, the Girl Scouts' national organization had restated its existing policy of inclusivity and welcoming transgender girls.

Ms. Ferland was "very sad" upon receiving the letter," but quickly decided how to respond. In a short letter, she told the couple she would return their money. "Her reasoning was simple. 'Girl Scouts is for every girl.'"

It worked out, though. The girls – all of them – will be able to go to camp after all. Demonstrating good, old-fashioned, Girl Scout ingenuity and initiative, the council launched an online crowdfunding campaign, asking for help in making up the \$100,000. Within about 36 hours, the campaign had topped that \$100K goal, and soon raised almost \$300,000.

Were There Other Options?

One news story reported that the Girls Scouts were “forced to return a \$100,000 donation when the donor stipulated that the money not be used to support transgender scouts.” Is that what happened? Were the Girl Scouts forced to return the money?

We’re not in any way second-guessing or criticizing the Girls Scouts’ graceful, principled actions here. But this isn’t the first or last time that a philanthropist will have buyer’s remorse. What were the available legal rights and remedies of the Girls Scouts? Of the donor-couple? That’s our (legal) angle on this news item. It’s a learning opportunity.

Deciding questions of legal rights and duties generally hinges on the particular circumstances of each case. So let’s piece together what we know about the relevant facts from various news reports.

Unfortunately, most of the news sources were sloppy in their reporting. Headlines and leads included:

- “Donor says Girl Scouts can’t use \$100K gift for transgender girls”; “So the organization gave the money back....”
- “Girl Scouts refuse \$100,000 anti-transgender donation”; “The Girl Scouts ... said it has returned a \$100,000 donation because it came with the provision that the money couldn’t be used to support transgender girls.”
- “Girl Scouts refuse \$100,000 gift with transgender limits”: “It’s not every day the Girl Scouts or any non-profit is handed a \$100,000 pledge.”

We don’t expect every journalist to have a law degree – (although some do!) – but these news stories suggest fact patterns unlike the actual story. Different facts lead to different outcomes in lawsuits.

What Happened Here?

Of course, we’re not entirely sure because of the faulty news reports. And we haven’t interviewed the principals ourselves. So we’re doing a bit of speculation, but here’s our take: This doesn’t appear to have involved a pledge or other future payment situation. It looks like the contribution was made “earlier this spring”; a done deal – gift made and unconditionally accepted, and funds transferred.

It appears to have been an unrestricted donation when made, although we’re not sure what type of solicitations were involved, or if there had been any oral representations or conversations between the organization and the donors. (But if a gift isn’t expressly made on a specific condition, or with specific written directions, then oral understandings might not have any effect in any event.)

Note that the news reports cited here made clear that the Girl Scouts had in the past come out in support of transgender inclusion in their organization, so it’s unlikely that any type of informal or unwritten understanding about limits on use of the money for non-transgender girls would ever have been considered at all.

When, at the end of May, the donor-couple apparently became concerned that the funds could possibly be used for transgender girls, they made a written request couched in terms of “please

guarantee” and “please return” the money. This suggests they knew they had no legal right to demand the money back.

Even if there had been different circumstances, and there may have been some legal basis to renege, the Girl Scouts likely acted in reliance on the gift in the many weeks between the donation and this letter. First, they refrained from aggressively courting other donors to contribute this amount that was 25% of their budget. Second, summer was approaching, and undoubtedly camp plans had been made and invitations had been issued. It’s possible that some or all of the \$100,000 had already been spent by the Girls Scouts or had been obligated by them to various vendors.

Headlines like “Donor says Girl Scouts Can’t Use \$100K Gift for Transgender Girls” are seriously misleading, considering what appears to have happened here.

Legal Issues

Assuming these are the facts, then it’s likely that the donor-couple had no legal claim on the money. Generally, a completed donation with no strings attached – and no legitimate argument of misrepresentation or fraud – will stand. And it’s the donor-couple who would have to go to court, seeking a refund.

That’s different (and better) than the situation in which a philanthropist making a pledge later reneges on the promise. There, the organization must make the decision to go to court to obtain the funds. We’ve already written [here](#) about the legal nature of pledges and the situations in which donors have reneged – or threaten to renege – on a pledge. It’s generally a matter of state law. But in California, for instance, if the organization has detrimentally relied on the pledge, the courts are inclined to uphold the legal promise to make the future gift.

Conclusion

Had the Girl Scouts been interested, there may have been options available other than returning the money. (“Just sayin”; in case anyone else out there should face a similar problem down the line....)

By the way, we made up the part about the thin mints. But surely any celebrating at the Girl Scouts’ office would have included breaking out any leftover cookie packages from the storage closet.

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