FPLG: BLOG

Your Advisory Board: Welcome Them in Writing

10.06.14 | Linda J. Rosenthal, JD

In "Is it Advisable to Have an Advisory Board," we introduced the topic of advisory boards: what they are and what they (should) do.

We also suggested that – sometimes – an advisory board isn't a very good idea at all.

We recommended that an organization think carefully and consider various alternatives to establishing an advisory board.

But if it "makes sense to go the advisory board route," the group should "create comprehensive documents about its scope, purpose(s) and operation."

What about these "Comprehensive Documents"?

What did we mean? Is this a one-size-fits-all process culminating in a one-size-fits-all packet: board of director resolutions and amendments to the organization's bylaws, a charter for the advisory board, written "agreements" with or invitations to prospective advisory board participants, and background material about the organization?

No. Definitely not.

There are varied reasons why nonprofits decide to create advisory boards. They may seek the prestige of having influential people formally associated with them, or to spearhead fundraising efforts. They may need program guidance and expertise.

Or, as Simone Joyaux explains in her insightful and entertaining article in the Nonprofit Quarterly (March 2013):

> Do you want some kind of community council to engage people? Do you need a place to put those special people who don't want to be on your board? Or how about those people who you need to put someplace but who you don't want on your board? Are you desperately hoping to get more people to help you raise money? Do you want important people to put on your letterhead, hoping that will help you raise money?

The documents an organization prepares to support its advisory board should be tailored to its own specific facts and circumstances.

Is this Document-Preparation Process a Starting or an End Point?

Sometimes, in the process of planning and writing a documents package for a proposed advisory board, a board of directors comes to a seemingly unusual conclusion: to scrap the idea altogether.

This shouldn't be viewed as a failure or a waste of time. Deciding *not* to establish an advisory board may be the *right* decision at the *right* time for that nonprofit. It's an example of directors properly performing their fiduciary duties to act in the best interests of the organization.

The Charter or Agreement

An orientation package should include one or more documents that set out the parties' understanding of how the advisory board will operate, and the rights and duties of the organization and of each person invited to serve.

There may a charter or advisory board bylaws. In addition, or instead of this charter, there should also be something presented to, and signed by, a person invited to serve on the advisory board. This writing can be as formal as an ordinary contract or as informal as a "welcome" letter or invitation.

What to Include

A Short Recap about the Legal Status of an Advisory Board

We explained earlier that a California nonprofit corporation is governed exclusively by an elected board of directors according to this state's Corporations Code and, where the statutes are silent, under the corporation's bylaws. There are specific rules about the composition, function, and (fiduciary) duties of the board of directors.

By contrast, an advisory board is distinct from the board of directors. It has no official or governing function or duties. There is no requirement that a nonprofit corporation have an advisory board, and there are no set rules or procedures.

Because there are no rules for advisory boards in the Corporations Code, the organization can create them, so long as they do not usurp the board of directors' rights, powers, or duties.

An advisory board can be permanent or short-term; it can have one purpose only or multiple purposes. A nonprofit can create multiple advisory boards.

Suggested Topics

Bearing these points in mind, here are just some of the items that may be considered and addressed:

- Name of the group
- Duration of the group (open-ended or short-term)
- Mission and function
- Number and term of members
- Scope of authority of power
- Permissions to use name/affiliations of invited persons
- Reimbursement of expenses or compensation/stipend
- Commitment expected
- Conduct of advisory group meetings
- No authority to speak or act for the nonprofit or to bind the organization and create legal obligations
- Social media issues: (right to announce membership on organization's advisory board, or otherwise discuss affiliation or support)
- Evaluation and accountability: (how the success of the advisory group will be measured)

If you decide to go ahead with an advisory board, It's a good idea to write up these points, vote on them in the form of official resolutions of the board of directors, and add them to the corporate bylaws.
In later posts, we'll explore these points in more detail.