

Strategic Planning and Ice Bucket Challenges

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Does your nonprofit need some strategic planning? What does that mean, and what legal aspects should your nonprofit consider? The ALS Association is a useful and well-known example of how strategic planning provides pivotal opportunities, and raises important legal questions, for nonprofits.

For 30 years, the ALS Association aimed to raise awareness about amyotrophic lateral sclerosis (ALS). The organization wildly succeeded through its 2014 Ice Bucket Challenge: more than 17 million people uploaded their challenge videos to Facebook, and 440 million people reportedly watched the videos. Now that's awareness! Tied to this great success, however, is a host of new challenges for the ALS. How will the ALS Association work to achieve its more detailed mission, namely "to lead the fight to treat and cure ALS through global research and nationwide advocacy, while also empowering people living with the disease to live fuller lives by providing compassionate care and support?" This is the role of strategic planning.

Asking the Right Questions – Practical and Legal Aspects

What does strategic planning look like? In order to be effective and useful, a nonprofit's strategic planning process should include articulating specific goals, gathering related data, and developing the action steps and resources needed to accomplish the nonprofit's goals. Strong board and executive leadership is essential. As part of that process, the nonprofit's key leadership will need address important questions like the following:

- Should the nonprofit shift its mission focus at all? If so, in what ways?
- Can the nonprofit expect to maintain its current level of donations, or should the nonprofit continue (or start) pursuing other revenue options?
- How do donors expect funds to be spent, and how does that affect the nonprofit's next steps?
- How can the nonprofit best leverage changed circumstances (internal and/or external) to advance its mission?
- What additional data is needed to address these questions?
- What, if any, changes in board and/or staffing is warranted now, for optimal positioning going forward?

Accompanying legal considerations may include the following:

- Does the organization need to amend or refine its corporate charter to reflect any new mission adjustments, such as an expanded geographic focus or different targeted beneficiaries?

- Should board leadership be changed at all, such to bring in directors with newly needed expertise and perspectives?
- Should the bylaws be changed as well, to reflect any modified governance structures?
- With respect to fundraising activities, does the organization need to take new measures such as registering in additional states for charitable solicitation compliance?
- Will the new activities, mission, or activities trigger federal and state tax compliance considerations such as the public support test or other state tax issues?
- Do the planned (or current) activities in any way threaten the nonprofit's tax-exempt status?
- What agreements need to be developed to best protect the nonprofit, such as donation agreements, joint ventures with other organizations, employment protocols and consultant arrangements?
- What, if any, adjustments need to be made to the nonprofit's insurance coverage, to reflect its new developments?

These questions may present a myriad of legal issues. Consequently, the nonprofit's leadership may need to move from relying on an attorney board member informally to hiring legal counsel experienced with corporate, tax, employment, risk management and other matters affecting nonprofits. The board should also pay careful attention to financial implications, such as upgraded financial controls, IRS Form 990 reporting requirements, and yearly audits (as required under many states' charitable solicitation regulations.)

When nonprofits shift their mission focus or operations, conflicts of interest often come to the fore. Board members should address these conflicts proactively during the nonprofit's strategic planning. For example, a board member may now want to work as an executive staff member or perhaps as a consultant providing services to the nonprofit. To avoid impermissible conflicts of interest, any decision about that person's future role should be made *without* that person's involvement – either in board discussions or the vote itself. Only independent board members should vote on such matters. Unresolved conflicts can both impair a nonprofit's effectiveness and lead to serious legal problems.

Planning in Progress

The "strategic" part of a nonprofit board's planning process should include continual attention to changes within the organization and in its external environment as well as careful discussion on how those changes affect the future of the organization. Such strategic planning typically includes the following three steps. Each of them may give rise to accompanying legal issues, as identified above, in a host of varying iterations.

First, complete an environmental scan, to assess what is going on inside and outside of the organization. A common approach to strategic thinking is called a "SWOT" analysis -- an acronym for strengths, weaknesses, opportunities, and threats:

- Strengths are positive assets within your organization. Examples might include a highly respected board member, a successful fundraising event, a talented group of volunteers, or ownership of valuable intellectual property, such as a book or software.
- Weaknesses are negative aspects within your organization. Examples might include a shortage of volunteers or outdated technology.
- Opportunities are positive elements outside your organization. Examples might include a high demand for the nonprofit's services or availability of a grant in your topic area.
- Threats are negative elements outside the organization. Examples might include a competing nonprofit or the demise of a major funder.

Next, establish goals to accomplish over the next few years in order to capitalize on strengths and opportunities and minimize the effects of weaknesses and threats. During this process, the directors should articulate a desired future state in terms of goals for budget size, fundraising targets, program beneficiaries, staffing levels, and other parameters.

Last, identify how those goals will be reached within the constraints of the nonprofit's resources. Creating a list of objectives for attaining goals, along with coordinating responsibilities and timelines, will help ensure that the nonprofit stays on target. For example, the nonprofit may wish to expand its executive personnel, which likely will involve some degree of background due diligence, resources allocated to the interview process, checking up on the organization's hiring and other employment practices, and attentiveness to related timing considerations.

Putting It All Together

Strategic planning can be time-consuming and intense; it can also be tremendously successful and invigorating. As guardians of a nonprofit's mission and well-being, board members fulfill their core function by undertaking strategic planning with the nonprofit's executive leadership. Through such measures, they can help ensure a nonprofit's successful achievement of its mission.



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