

BEST BUSINESS PRACTICES
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Recently, the Internal Revenue Service published a list of what it considers the best governance practices for nonprofit organizations. While advisory, they make it less likely that the nonprofit organization will violate federal tax laws. I think they have merit for churches.

1. **Adopt a meaningful Mission Statement.** A Mission Statement explains why the organization exists, who it intends to serve, and what results can be expected from the organization's activities. For example, a church exists to lead people to Jesus Christ, disciple them into passionate followers of Jesus Christ, and create a community of believers that demonstrate love for each other and the world. The Mission Statement acts as a guiding statement by which all activities are measured. The Board of Directors keeps the organization on track by frequently referring to the Mission Statement as it reviews reports on activities and/or considers new activities.
2. **Adopt and enforce a Code of Ethics.** A Code of Ethics communicates to officers, employees, and volunteers the standard of behavior that is expected by the Board of Directors. The Board should enforce the Code of Ethics in a culture of strong legal compliance. This means that the Board annually engages a law firm to test whether the Code of Ethics is being followed.
3. **Adopt Whistleblower Protections.** The Board must adopt protections for employees and volunteers that report suspected wrongdoing. Generally, the nonprofit organization should publicize at least two individuals that can receive complaints, on an anonymous basis. The individuals must be empowered to investigate and report to the Board the results of that investigation. If the wrongdoing involves an officer or director, the Board should hire a law firm to investigate and take action correcting the wrongdoing.
4. **Require Directors to adhere to their duty of care.** Directors are required to care about the organization and take action that reflects that care. The Director must act like a reasonably prudent person would act in governing their own affairs. The Director must receive and understand the issues before acting. This means that the Director receives and reviews a package of background information before scheduled Board meetings. The Director must ask questions. Every decision is measured by the best interest of the nonprofit organization. That is, is this decision in the best interest of the organization?
5. **Require Directors to adhere to their duty of loyalty.** Every decision should be free from any real or perceived conflict-of-interest. Every nonprofit organization should adopt and enforce a conflict-of-interest policy. For a sample policy, please email me as indicated at the end of this article.

6. **Adopt an attitude of transparency.** The nonprofit organization should make full and accurate information about the organization's financial status and results. Since the organization is exempt from federal income taxes, it has the responsibility to be open and accountable to the general public.

7. **Adopt and follow a Fundraising Policy.** Gifts are the primary means of supporting a church's activities. Fundraising requires care and honesty. The Board should adopt a fundraising policy and monitor compliance. This means that no one is allowed to engage in fundraising without prior approval. Solicitation materials should be accurate, truthful and candid. Costs associated with fundraising should be monitored to assure that the costs are reasonable. If professional fundraisers are utilized, the contract should be reviewed by an attorney. The Board should take care that the professional fundraiser is fully licensed and adequately supervised.

8. **Conduct a financial statement audit.** A CPA conducted financial statement audit can assure that the Board and the public receive accurate and complete financial information. While not designed to assure compliance with tax laws, the CPA can detect problems that may create problems. The Board should create an Audit Committee to hire and supervise the CPA. The Audit Committee should not include any paid staff or anyone who is involved in the organization's finances. Smaller organizations should use volunteers to conduct a similar review of the organization's finances.

9. **Pay no more than a reasonable amount of compensation.** All executive compensation should be set by an informed, independent Compensation Committee. This means that the committee needs to conduct compensation study to determine what similar organizations are paying for comparable positions. For larger organizations, they should engage a compensation consultant to conduct the study. For smaller organizations, they should call at least 5 similar organizations and ask about compensations for similar positions. "Independent" means that no member of the committee is related to the executive or is employed by the organizations.

10. **Adopt a Document Retention Policy.** Federal law requires charitable organizations to adopt reasonable document retention policies. The policy should provide guidelines for handling electronic records, backup procedures, and regular checkups on the backups to determine whether they are reliable. By retaining documents, the organization (and federal investigators) can later determine whether federal law was followed.

While none of these standards, except No. 9, deal directly with federal tax law, the Internal Revenue Service believes that adherence to these standards will cause the Directors to become better informed about the federal tax law requirements of a nonprofit organization and will force compliance with federal tax laws. These practices will allow the public to monitor compliance with federal tax laws and allow the IRS to focus its resources on the really bad actors.

For sample policies, please email me at fsommerville@nonprofitattorney.com.