

The Legal Answer Book for Nonprofit Organizations

Bruce R. Hopkins



JOHN WILEY & SONS, INC.

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To
Jim Greenfield,
with admiration for his good works on
behalf of the nonprofit sector over the years—
and thanks for 32 questions

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Mr. Hopkins earned his J.D. and L.L.M. degrees at The George Washington University and his B.A. at the University of Michigan.

How to Use This Book

The Legal Answer Book for Nonprofit Organizations is designed for nonprofit executives, board members, fund-raising professionals, lawyers, and accountants who need quick and authoritative answers concerning the law governing nonprofit organizations. It is designed to help the reader not only better understand this law, but more importantly to show how to work with it and within its boundaries, while maintaining and enhancing a tax-exempt organization's activities and effectiveness. This book uses simple, straightforward language and avoids technical jargon when possible. This question-and-answer format offers a clear and useful guide to understanding the complex, but extremely important, area of the statutes, regulations, and other law governing tax-exempt organizations. Citations are provided as research aids for those who need to pursue particular items in greater detail.

Numbering System: The question numbering system has been designed for ease of use. The questions are numbered consecutively within each chapter (e.g., 5:1, 5:2, 5:3).

Listing of Questions: The detailed Listing of Questions that follows the Table of Contents in the front of this book helps the reader locate areas of immediate interest. This listing serves as a detailed table of contents that provides both the question number and the page on which it appears.

Index: The index at the back of this book provides a further aid to locating specific information. All references in the index are to question numbers rather than page numbers.

“I am your interface with the Celestial Library,”

· Ramda said. “My purpose is to access information you request, then present the answer in a way that will enable your knowing.”

—*The Celestial Bar*

Preface

Your author has had the pleasure of writing books for John Wiley & Sons for over seventeen years. The point of these endeavors has been to summarize and interpret the vast bodies of law that apply to nonprofit organizations and those who serve them. This book, however, is different from the others—for two reasons.

First, this book is unique in that it is the only one that was someone else's idea. It was, if you will, commissioned. The inspiration for it is the Acquisitions Editor at Wiley who manages this area, Marla J. Bobowick. She requested a book about the real-life issues that arise in my law practice. This time, she asked, don't just write about law—summarize the specific and practical advice given to clients. From the moment she started explaining what she had in mind, I knew exactly what she wanted me to do: Give away the store.

I admit to struggling with this idea for a seemingly interminable amount of time. Looking back, the problem basically was format; I was trying for a new one but could not conjure it up. I wanted this book to be nearly effortlessly useful for the nonprofit manager: a sourcebook that he or she could pick up and, through one mechanism or another, immediately find the item of advice needed.

This dilemma was gracefully resolved by my mother. One evening, during a casual chat, she asked about my writing projects. That being one of my favorite subjects, I brought her up to date on the status of them, including my ongoing trauma with the evolution of this book. Hardly missing a beat, she said, "How about using a question-and-answer approach?" After thinking about it and concluding that it was an excellent suggestion,

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I broached the subject with Marla. She gave the proposal her blessing and the format problem was thereby solved.

The second reason that this book is unique is that it was not to be merely a compilation of law on a particular subject. While law summary was unavoidable, the substance of the book needed to be advice. The content and tone had to be much like that used when speaking with clients. Most of the other books may read like written advice (opinion letters); this time, it was to be as Marla asked: Share your thoughts on the nonprofit law issues of the day as if the client was on the other side of your desk.

With the objectives and format in place, the hard work (and, I admit, much fun) began. The first task was to select the subject matter for the chapters; these were distilled to the dozen areas of nonprofit law that generate the most inquiries. Within them, I listed the questions that frequently arise in the practice, coupling them with law summaries in a tone and length used in a meeting or on the telephone with clients. Once the book had crystallized to this point, a group of individuals was asked to supply questions. My "inquisitioners" included Susan Kudla Finn, Carolyn Freeland, James Greenfield, William Peyser, James Terwilliger, and D. Benson Tesdahl. Their contributions were very helpful and are very much appreciated; they, of course, are not responsible for the content of the answers. (Toward the end of the project, Tom Hyatt, one of the lawyers in my office, submitted this question: "When are you going to stop writing books about nonprofit law?" The question was rejected because it was not germane.)

During the writing, I was very sensitive to questions that frequently arose in the office. Questions and answers kept being added and re-ordered down to the last minute.

While lawyers are welcome to purchase and utilize this book, it was written for the nonlawyer. Thus, in addition to some law summary, there is much in the way of general explanation of how things legal in import ought to be done. As to some topics, there is no "law" as such. Your author has been in practice in this branch of the law for over 25 years; a considerable portion of what is in the book is reflective of responses to the same questions that arise year in and year out. Some perspectives and commentary have been included.

The end product has real value only if those who need it can use it to promptly resolve a problem or answer a question before them. To facilitate its usefulness, all of the questions answered in the book are listed at the beginning. There is also an index. Endnotes have been

PREFACE

kept to the minimum. (For more, see "How to Use This Book" on p. vii.) Those who need additional information on a matter can turn to one or more of the books in Wiley's Nonprofit Law, Finance, and Management Series.

We are going to do this again. Questions and answers for another dozen subjects are being developed for publication in a second volume. (Send in your questions.) Periodically, each book will be revised, to take account of reactions to it, new questions raised, and changes in the law.

With this book, I have two hopes. One (that is earnestly shared with the other lawyers in the firm) is that clients will continue to call. The other is that managers of nonprofit organizations and others will use it to readily find answers to the basic questions they have.

Writing about the law is not always entertaining; there can be considerable tedium experienced while making one's way through statutes, regulations, and court opinions. This time, the experience was much different: there was much enjoyment in grappling with the questions and formulating responses that are intended to sound "just like being in the office."

Thanks, Marla.

Thanks, as well, to the others who helped in the production of the book, particularly Mary Daniello at Wiley, and Nancy Marcus Land and Maryan Malone at Publications Development Company.

BRUCE R. HOPKINS

*Washington, DC
December 1995*

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