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# IRS Releases New Guidelines for Regaining Exemption

by *Richard Koontz, INRC Director*

The IRS has released new guidelines on getting your tax exemption back if you have had exemption revoked for failure to file the annual information return. Remember that a nonprofit loses its tax exemption if it fails to file the Form 990, 990-EZ or 990-N for three years in a row. The new guidelines are set forth in Revenue Procedure 2014-11, which is available on the IRS website at <http://www.irs.gov/pub/irs-drop/rp-14-11.pdf>.

There are limitations on how nonprofits can use the new guidelines. If you have lost your exemption more than once, 2014-11 is not applicable. In essence it is only for first time “offenders.” It also only applies to nonprofits filing the 990-N or 990-EZ, which means if your annual gross receipts are over \$200,000 the 2014-11 cannot be used.

The application for reinstatement is streamlined. It must be done within 15 months of the revocation of exempt status. The organization must refile a Form 1023 application for exemption and write “Revenue Procedure 2014-11, Streamlined Retroactive Reinstatement” at the top of the form. If the organization should have been filing Form 990-EZ (i.e., had revenue of \$50,000 to \$200,000), it needs to file those returns for the three years that were not filed along with the Form 1023.

The fee for failure to file your annual returns will be waived (see IRC 6652(c)). If the annual returns that were not filed were 990-N's, past years' returns need not be filed.

The application for reinstatement gets more complex if it has been more than 15 months since the revocation of exemption. In addition to the filings described above, there must be a statement regarding the “reasonable cause” for the late filing. Examples of what constitutes reasonable cause are given in 2014-11.

If you are one of the thousands of Iowa nonprofits that lost exemption in 2010 for failure to file after the first three years of the then-new Form 990-N (and you have not yet reapplied for exemption), it will be necessary to do this additional statement of reasonable cause. And the filing fee for the Form 1023 is no longer the great bargain of \$100 spelled out in Rev. Proc. 2011-43. That expired at the end of 2012. Under the new procedure in 2014-11 the filing fee is either \$400 or \$850, depending on the revenue totals reported on Form 1023, Part IXA.

In summary, these new guidelines are great for very small nonprofits (those below \$50,000 in annual gross receipts) that have lost exemption. The solution for revoked exemption is to resubmit a Form 1023, much of which is likely to be similar to your original 1023. There is no need to redo the unfiled Form 990-N's and no need to prove reasonable cause, if the application is done within 15 months of revocation.

# Organizational and Community Development in Unpredictable Times

by Sally J. Scott, SJS Consulting

These are challenging times for those of us interested in strengthening nonprofit organizations and the communities they serve. Families and businesses are recovering from the Great Recession but the job market remains uneven. Political gridlock and budget stand-offs characterize national politics. Storms and droughts are more frequent and severe and leave deeper environmental, social and economic scars. It is distressingly clear that our world is less and less predictable. However, we do know that there will continue to be a need for effective nonprofit organizations to serve our communities and flexible strategies to help communities adapt to the constant change around us.

Over the last 25 years, I have worked domestically and internationally as a nonprofit staff person and researcher. This article will describe several tools that I have seen organizations and community coalitions use successfully to navigate unpredictable environments.

## Integrating Planning and Action

A planning process rarely excites staff, board or community members. The process can be long and grueling, and fail to yield tangible benefits. Yet without planning, we risk lurching from opportunity to opportunity or crisis to crisis without a map of where we're going or a plan as to how to get there. As predictability declines, it is wise to shorten the timeframe of planning processes. We should not abandon ambitious, long-term goals. Those are essential to building our organizations and communities and motivating our staff, supporters, and allies. It means shortening the planning process itself and injecting it into the lifeblood of the organization.

In *The Nonprofit Strategy Revolution* (2008), David La Piana writes, "the reality of nonprofit life requires a faster, continuous style of strategic thinking and action...not a separation of organizational life into reflective and active periods."

Effective planning better integrates thinking and doing and responds more coherently to rapidly changing situations. A good plan will inform management decisions, board meetings, and grant applications, and benefit from regular updates and revisions.

## Making Innovation Part of the Job

The foreclosure crisis is a good example of an unpredictable series of events that had a sudden negative impact on and spurred innovative thinking within organizations and communities.

**We found a way to innovate by building on existing knowledge and collaboration to create something quite new... Stacey Van Gorp of the McElroy Trust described this type of innovation as a "quarter turn."**

When the crisis hit, I was living in Baltimore, Maryland and working for a city-wide neighborhood revitalization nonprofit. Very early in the crisis (2005) we helped form the Baltimore Homeownership Preservation Coalition which connected nonprofit, public and private sector organizations affected by foreclosure. Sadly, we could not stop the damaging wave of foreclosures washing over the city. However, we could help neighborhood organizations train their staff in housing counseling, educate commu-

nity members whose homes were at risk, and advocate for more effective responses from city and state government.

We found a way to innovate by building on existing knowledge and collaboration to create something quite new.

At this year's Iowa Nonprofit Summit, Stacey Van Gorp of the McElroy Trust described this type of innovation as a "quarter turn". Instead of brainstorming a radically new and different approach, we shifted our focus, from neighborhood revitalization to foreclosure prevention, and developed a new, loosely structured coalition to address the problem. A useful guide to increasing innovation within an organization is *Intentional Innovation*, a study by the Monitor Institute and Clohesy Consulting for the Kellogg Foundation.

## Creating Networks that Foster Resilience

There is a growing body of work describing what makes communities resilient when faced with chronic challenges or sudden disasters. *Great American City*, by Robert Sampson, is a path-breaking long-term study of neighborhoods in Chicago which uses quantitative methods to prove what many of us have long believed, that nonprofit organizations make a measurable difference to a community's ability to engage in collective action.

Sampson does not undertake a program evaluation focused on the effectiveness of a specific organization. Instead he measures the positive impact of having multiple nonprofits working over the long haul within one neighborhood.

Like organisms in an ecosystem, nonprofit organizations should play distinct yet coordinated roles within a community. Creating a network like the foreclosure coalition described

*continued next page*

above that improves communication among nonprofits and links the public, private and nonprofit sectors is an important investment in community resilience. The United Way as well as community foundations can and do play this role in many Iowa communities. We should build networks to tackle persistent problems within our communities as well as those that cross jurisdictional boundaries, such as poor water quality within a multi-county watershed or lack of job opportunities in a depopulated region. Collaboration across sectors and jurisdictions is hard and takes time. When complex

**...the most important and persistent problems facing us now and well into the future are adaptive.**

problems arise, however, networked communities can respond more rapidly and effectively.

#### **Conclusion**

In a paper titled *Collective Impact* (Stanford Social Innovation Review, Winter 2011), authors John Kania and Mark Kramer make a useful distinction between technical problems and adaptive problems. A technical problem is well defined, and the answer to the problem is known. An example would be building a new performing arts center. Adaptive problems are complex, the answer is not known in advance, and no single entity can bring about the desired change. Therefore, "reaching an effective solution requires learning by the stakeholders involved in the problem who must then change their own behavior in order to create a solution."

My hypothesis is that the most important and persistent problems facing us now and well into the future are adaptive. These problems are unpredictable and cut across sectors and boundaries. They resist simple solutions. To address these problems, nonprofits and the communities they serve need to integrate planning and doing, build innovation into their work, and create diverse networks that foster resilience.

## **Iowa's Nonprofits Conclude Successful 2013 Summit**

The 2013 Iowa Nonprofit Summit was held at the Meadows Event and Conference Center in Altoona, November 6-7, 2013. Among the attendees were the winners of the 5000th Point of Light award, Floyd Hammer and Kathy Hamilton of Union, Iowa. The couple was recognized in July 2013 by President Obama and former president George H.W. Bush in a White House ceremony. Their organization, Outreach, Inc., has provided millions of free meals to children in 15 countries and the United States.

There was a variety of great workshops including those on the Iowa Principles and Practices for Charitable Nonprofit Excellence delivered by the INRC's Jude West, Sandy Boyd, and Richard Koontz. The Iowa Nonprofit Awards were presented by Governor Terry Branstad. Awardees are listed in the next column. Winners and their photos, along with those from past years, are on the Iowa Nonprofit Resource Center's website at <http://nonprofit.law.uiowa.edu/Summit%20Awards/awards-pics.asp>. Award criteria can also be found there.

The award committee reviews nominations each fall. Start making

a list of people and nonprofits you think contribute significantly to Iowa's communities and nominate them for the 2014 awards and watch our website for the next deadline. We want to recognize deserving nonprofits.

#### **2013 Iowa Nonprofit Award Winners**

##### **Nonprofit Spotlight Award**

Families Helping Families of Iowa, Cedar Rapids

##### **Nonprofit Board/Staff Leadership Award**

James R. Black, Youth & Shelter Services (YSS), Ames

##### **Outstanding Volunteer or Service Program Award**

Club hOpe, Maquoketa High School

##### **Outstanding Volunteer or Service Manager Award**

Bob Hellman, Build Our Ballpark, Waterloo

##### **Outstanding Nonprofit Collaboration Award**

Dubuque National Service Partnership



Kathy Hamilton and Floyd Hammer were awarded the 5000th Point of Light in July 2013 for their food distribution organization Outreach, Inc.

# Problems at a Nonprofit? Consider Next Steps Carefully

by Richard Koontz, INRC Director

At the Iowa Nonprofit Resource Center we periodically get phone calls from individuals concerned about what they believe are inappropriate actions at a nonprofit. They ask if there is some legal action they can take or if there is some agency to which the nonprofit should be reported. Certainly there are nonprofits that are doing inappropriate things, and there are laws designed to prevent them from doing so, but there is also the fact that over time, as new people become involved, nonprofits take new directions, and those having some relationship to that nonprofit find themselves disappointed in those changes. What follows are some considerations for nonprofits and nonprofit critics to think about before taking any action.

## Non-legal responses

Remember that nonprofits are private companies. Despite their tax exemption, they operate at the direction of the board. Nonprofits may be guided by a founder's vision, but after that founder is gone, the organization might take a new direction which can annoy people long associated with it. You might not like it, but it is perfectly legal for a nonprofit to do this. An executive director might have had a certain philosophy about how budgets were executed, but a new executive director practices a different philosophy. The executive director's method is certainly subject to review by the board of directors but not by the public at large, at least with respect to legal recourse.

Nonprofits do have strong reliance on their constituencies, and if you are concerned about a nonprofit's actions it is important to remember that you are a member of at least one of those constituencies.

So if the reason you think something is "wrong" with a nonprofit is due to this new vision or expenditure focus, let the nonprofit know, or let the press in your community know your concerns.

However, it is important to remember there is risk in bringing complaints to the press. If complaints are based on false information and harm is done to the nonprofit, there may be some risk of a defamation action being brought against you.

It might be better to stop participating in the nonprofit's events or discontinue your contributions. If you think there is a community need no longer being met, find a different nonprofit that does meet it, or start a new nonprofit for that purpose.

## Legal Issues

### *Fiduciary duty*

Board members have the responsibility to ensure the assets of the nonprofit are used for the organization's mission and to put the nonprofit's interests before their own. This is referred to as "fiduciary duty." There are statutory provisions in Iowa spelling this out, and these are referred to in the *Iowa Principles and Practices for Charitable Nonprofit Excellence* V.F.1.

If your perception is that a board is not using the assets of the organization to fulfill the mission or are diverting them for their own purposes then there may be a breach of fiduciary duty. For instance, a board member might make sure that all financial transactions of the nonprofit are run through a bank at which he is a board member. If there has been no conflict of interest disclosure, then the board member has breached the duty of loyalty.

### *Access to board records*

It's important to think about how much hard evidence you have when you perceive something is going

wrong at a nonprofit. In order to know what happens at the board meetings and to have evidence to support your contention, it is helpful to have access to records of board meetings. In general, board records are not open to the public, but they are available to any board member. If you are a board member, you can request board records. The Iowa Nonprofit Corporation Act states:

A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation. Iowa Code 504.1606

If you are not a board member, then you cannot access board records. If you know any board members, you can certainly ask them if they would tell you what went on at board meetings or share some of the records that you are interested in, but they may be reluctant to do that. *The Iowa Principles and Practices for Charitable Nonprofit Excellence* do encourage nonprofits to be open and accountable (IX. A.). Being responsive to community concerns may resolve rumors of wrongdoing better than concealment. Building trust is essential to nonprofit success.

Another important record that, unlike board records, is available to everyone is the Form 990. You can find it by searching on <http://www.Guidestar.org>. If you are dealing with a small nonprofit with less than \$50,000 annual gross receipts, check the IRS website at [www.irs.gov](http://www.irs.gov) in the Exempt Organization Select Check section. You can also access the

biennial report of a nonprofit if it is an Iowa nonprofit corporation. The biennial reports are posted on the Iowa Secretary of State's website at [http://sos.iowa.gov/search/business/\(S\(40li2vv5wmsbdw55hva2rpuw\)\)/search.aspx](http://sos.iowa.gov/search/business/(S(40li2vv5wmsbdw55hva2rpuw))/search.aspx)

### **Board member removal**

If an individual board member is causing the problems that you are concerned about, that person can be removed from the board of directors. The Iowa Code provides that:

8. A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws. Iowa Code 504.808

It is the board that can take this action at its meetings to remove a board member, so if you are not a board member, you cannot cause a board member to be removed.

### **Problems with executive director**

If the executive director is causing the problems, the director can be removed from the position by the board of directors. The Iowa Code provides that:

2. An officer may be removed at any time with or without cause by any of the following:
  - a. The board of directors.
  - b. The officer who appointed such officer, unless the bylaws or the board of directors provide otherwise. Iowa Code 504.844

It is the board that can bring this action at its meetings to remove the executive director, so if you are not a board member, you cannot cause an executive director to be removed.

### **Wrongful acts by directors and officers**

To be some form of legal wrongdoing, there has to be relatively significant activity that is reflected in Iowa or federal law. Disagreement with what is happening at a nonprofit does not make it illegal activity. There are a number of specifically identified wrongful acts for board members in the Iowa Nonprofit Corporation Act. For example, loans to officers and directors are specifically prohibited. Iowa Code 504.834.

If a director votes for a distribution of nonprofit assets and that is done in violation of the Nonprofit Corporation Act, then the director is personally liable for the amount. Iowa Code 504.835.

It is a serious misdemeanor for a board member to sign a document which is false in any material respect that is subsequently filed with the Secretary of State. Iowa Code 504.120

### **Actions that can be taken against a nonprofit**

Assuming you have adequate evidence for your concern about what is going on at a nonprofit, what actions can you take to try to resolve the problem?

Complaints can be made about a nonprofit to the IRS by members of the public on Form 13909. See <http://www.irs.gov/pub/irs-pdf/f13909.pdf>

Iowa's Attorney General is responsible for overseeing the behavior of nonprofits. Complaints about nonprofits can be made to the Attorney General on the Online Nonprofit Abuse Complaint Form at [http://www.state.ia.us/government/ag/file\\_complaint/index.html](http://www.state.ia.us/government/ag/file_complaint/index.html)

The Attorney General's office is busy. It has brought actions against nonprofits and fundraisers but must choose which cases it can pursue and which it cannot.

Iowa law does provide for *ultra*

*vires* acts. *Ultra vires* means "beyond powers", that is, something was done by the nonprofit that was not within its power to do. There are two kinds of actions:

1. A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the attorney general, a director, or by a member or members in a derivative proceeding.
2. A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee or other legal representative, or in the case of a public benefit corporation, by the attorney general. Iowa Code 504.304

When changes occur at a nonprofit you have loved working with, make sure you weigh what actions are appropriate. Consider the actual evidence you have before taking action, and value communication. Talk to the nonprofit about your concerns before considering legal options.

## INRC Founder Boyd Receives Honorary Degree

Iowa Nonprofit Resource Center founder and UI president emeritus Willard "Sandy" Boyd received an honorary Doctor of Laws degree from the University of Michigan at winter commencement exercises on the Ann Arbor campus on December 15, 2013.

Boyd is a University of Michigan alumnus; he received his Master's and Doctoral degrees in law from its law school. He joined the University of Iowa College of Law faculty in 1954, then served as the UI's fifteenth president from 1969 to 1981.



Boyd left the UI to become president of the Field Museum in Chicago. Upon returning to Iowa City in 1996, he founded the Larned A. Waterman Iowa Nonprofit Resource Center.

University of Michigan president, and former president of the University of Iowa, Mary Sue Coleman presented the award.

## National Volunteer Week Observed April 6-13

National Volunteer Week is April 6-13. Ideas, resources and information are available at the Points of Light website at [www.pointsoflight.org/](http://www.pointsoflight.org/)

## ISU Extension Releases 2014 Nonprofit Management Academy Offerings

Iowa State University Extension and Outreach has issued its 2014 Nonprofit Management Academy catalog for Johnson and Linn counties.

The one-day courses meet on Thursdays beginning March 27 and continuing through November 13.

To see the catalog online visit <http://www.extension.iastate.edu/johnson/news/nonprofit-management-academy-2014>

The first three courses are listed on page 8 of this newsletter.

## New Report Surveys Nonprofits' Contribution to Iowa Economy

The Larned A. Waterman Iowa Nonprofit Resource Center, along with the Iowa Nonprofit Collaborative, has put together a new report on how much Iowa's nonprofits contribute to the state.

*The Cornerstone of Community: Iowa Nonprofits* looks at various sectors like cultural, medical, religious, and environmental, and summarizes the contributions of each. A section describing the mission and activities of four nonprofits from each of Iowa's 99 counties is included.

A free copy can be downloaded from the INRC website at <http://nonprofit.law.uiowa.edu/updates/2013/Cornerstone2013.pdf> or request a copy by telephoning 866-500-8980 (toll free).

The report was organized by the Governor's Nonprofit Project. The printing was funded by the Mansfield Charitable Foundation in Belle Plaine.



The Cornerstone of Community: Iowa Nonprofits



The Larned A. Waterman Iowa Nonprofit Resource Center & The Iowa Nonprofit Collaborative for The Governor's Nonprofit Project

# Nonprofit Funding Opportunities

In each issue of the INRC Quarterly we feature four funding opportunities for Iowa nonprofits. If your nonprofit is a funder and you'd like to be listed, please let us know.

## Cherokee County Legacy Foundation

**Grant program:** Cherokee County Legacy Foundation Grants

**Grant description:** Funds arts and culture, community betterment, education, health and human services, recreation and environment, and youth development.

**Funding amounts:** \$250 to \$10,000

**Eligible grantees:** 501(c)(3) nonprofits benefitting Cherokee County.

**Grant application deadline:** February 1, 2014

**For more information:** [http://www.cherokeeiowa.net/legacy\\_foundation.htm](http://www.cherokeeiowa.net/legacy_foundation.htm)

## The Clarinda Foundation

**Grant program:** The Clarinda Foundation Grants

**Grant description:** Funds activities that concern community improvement, recreation, education, health and social welfare.

**Funding amounts:** \$150-\$4,000

**Eligible grantees:** Nonprofits within a 15-mile radius of Clarinda.

**Grant application deadline:** Usually early June.

**For more information:** [http://www.clarindafoundation.com/available\\_grants.htm](http://www.clarindafoundation.com/available_grants.htm)

## Alliant Energy Foundation

**Grant program:** Alliant Energy Sponsorship

**Grant description:** If Alliant Energy serves your community, you can request event advertising or sponsorship funds.

**Funding amounts:** unspecified.

**Eligible grantees:** Nonprofits holding local events in Alliant Energy service areas.

**Grant application deadline:** Request must be received at least 60 days prior to event being sponsored.

**For more information:** <http://www.alliantenergy.com/CommunityInvolvement/CommunityOutreach/RequestSponsorshipsAdvertising>

## Iowa Economic Development, Energy Office

**Grant program:** State Energy Program

**Grant description:** For demonstration of unique and innovative concepts for development of renewable energy.

**Funding amounts:** \$5,000 to \$50,000 with 20 percent cost share requirement.

**Eligible grantees:** Individual or nonprofit.

**Grant application deadline:** February 1, 2014.

**For more information:** <https://www.iowagrants.gov/insideLinkOpps.jsp?documentPk=1383671293715>

# Training Opportunities

## INRC staff:

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INRC Director

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Admin. Svcs. Coordinator

**Diane DeBok**

Editor & Content Manager

**Charlene Onnen**

Secretary

**W. Tyler Melling**

Student Editor

## Starting an Iowa Charitable Nonprofit

**Date:** March 15

**Time:** 9 am-4 pm

**Cost:** \$50 per person, payable by check.

**Location:** Boyd Law Bldg., University of Iowa College of Law, Iowa City, IA

**For details:** Telephone 866-500-8980 (toll free) or 319-335-9765 or email [brenda-steinmetz@uiowa.edu](mailto:brenda-steinmetz@uiowa.edu)

**Registration form at:**

<http://nonprofit.law.uiowa.edu/updates/2014/Start%20NPO%20reg%20form%203-15-14.pdf>

## Grant Writing USA

Two-day workshop offered by Polk County Sheriff's Office and Grant Writing USA. For grant seekers across all disciplines and experience levels.

**Date:** February 10-11

**Time:** 9 am - 4 pm each day

**Location:** Polk County Sheriff's Office, 2309 Euclid Avenue, Des Moines

**Cost:** \$425 per person; includes workbook and resource CD.

**Information at:** <http://nonprofit.law.uiowa.edu/calendar/index.asp?date=2-8-2014>

## About Our Organization

The Larned A. Waterman Iowa Non-profit Resource Center is a University of Iowa interdisciplinary collaboration created to make more accessible educational and service programs focused on strengthening the operational capacity of Iowa nonprofit organizations.

The INRC works collaboratively with government agencies, nonprofit organizations and educational institutions to impart new knowledge through activities

## Nonprofit Management Academy

Courses are co-sponsored by Iowa State University Extension & Outreach, Johnson County; Iowa State University Extension & Outreach, Linn County; the Iowa Nonprofit Resource Center; and United Way of Johnson County.

Registration per course is \$70. CEUs are available for an additional \$25. All classes meet Thursdays, 9 am to 4 pm at the Johnson County Extension Office, 3109 Old Highway 218 South, Iowa City.

For information and to register, contact Jacky Cole by telephone at 319-337-2145 or by email at [jkcole@iastate.edu](mailto:jkcole@iastate.edu). View the course catalog online at <http://www.extension.iastate.edu/johnson/news/nonprofit-management-academy-2014>.

March 27

### Employment Opportunities for All Citizens

Instructor: Paul Retish, University of Iowa College of Education

April 3

### Financial Management & Oversight for Nonprofit Organizations

Instructor: Stan Miller, Stan Miller Consulting Services

April 17

### Building Effective Boards & Committees

Instructor: Regenia Bailey, Bailey Leadership Initiative, LLC

## Legal Disclaimer:

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Although we have made every attempt to ensure accuracy, the INRC is not responsible for any errors or omissions or for the results obtained from the use of this information. All information is provided with no warranty of any kind.



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