

Thanks for joining the webinar on the responsibilities of charitable board members!

We will start around noon.

While we wait to begin, feel free to share a bit about you or your organization in the chat or question area of the interactive webinar fields.

You should have received a telephone number and code in order to hear the audio.

To receive a copy of this Powerpoint, drop an email to CharitableLaw@OhioAttorneyGeneral.gov.

Minding the Business While Changing the World

Charitable Board Member Roles and Responsibilities

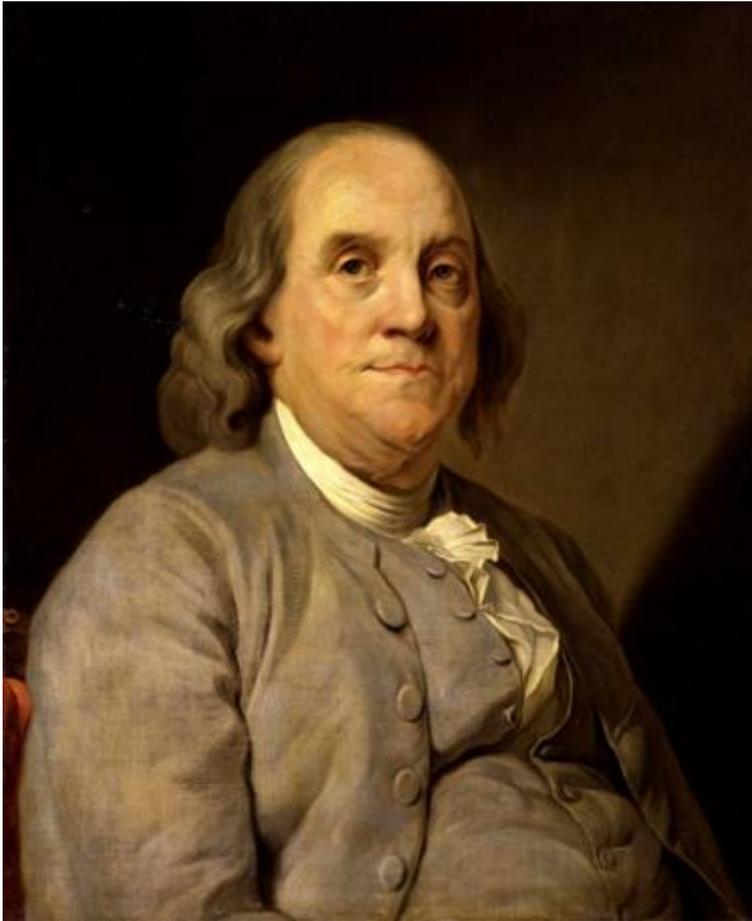
Ohio Attorney General's Office, Charitable Law Section



MIKE DEWINE
OHIO ATTORNEY GENERAL

“To pour forth benefits for the common good is divine.”

- Benjamin Franklin



Thank You!



The quality of life of all Ohioans is enriched by the important efforts of the charitable sector.

Role of the Attorney General

- Assisting board members in knowing and fulfilling their duties. Many resources are available through the web page.



Role of the Attorney General



- Attorney General's role in oversight of charitable trusts is one of the most ancient duties of the Attorney General
- Dates to the Elizabethan period
- Standing in the shoes of those with no voice



American Red Cross



CARING FOR HOMELESS CATS SINCE 1941



NATURE SOUNDS SOCIETY



HORIZONS FOR HOMELESS CHILDREN



Did you know?

- There are more than 1.5 million nonprofit groups in the US – a 31% increase since 1999.
- Roughly 1.1 million of those groups are 501(c)(3) groups – an increase of nearly 60% since 1999



Ex-nonprofit employee charged with embezzlement

Man allegedly took \$67,000 from Partners in Education

Former hospice worker indicted

Officials advise all nonprofits to routinely audit procedures, books

Friday, November 21, 2008 3:18 AM

BY JOSH JARMAN
THE COLUMBUS DISPATCH

NEWARK, Ohio -- All nonprofit organizations need to guard themselves against long-term embezzling such as that alleged against a former employee of a local hospice that is out more than \$400,000, officials said this week.

Kathleen Lee, 60, of Heath, was arrested Oct. 28 after police say she admitted to stealing \$411,858 over five years from Hospice of Central Ohio, her former employer. She has been indicted on felony counts of aggravated theft, forgery and engaging in a pattern of corrupt activities and faces 18 years in prison if convicted on all counts.

A Deitz Avenue woman was accused of forgery Aug. 16. She is accused of writing a check to herself from the Glover Elementary School PTA for \$2,400. Reports said that she is one of the signers of the check, but she forged the signature of the secondary signer.

PTA treasurer ordered to pay restitution

By Beacon Journal staff report

POSTED: 03:56 p.m. EST, Jun 09, 2008

A treasurer of an Akron elementary school PTA has been ordered to pay restitution for stealing money from the organization.

Katherine F. Delaney pleaded guilty last month to a felony theft charge stemming from the the alleged embezzlement of more than \$12,425 from the Sam Salem Elementary School PTA over a three-year period.

She was sentenced to 100 hours of community service.

Last week, Summit County Common Pleas Judge Brenda Burnham Unruh ordered Delaney to pay the organization \$3,961 — the balance owed to the organization.

Delaney told the court she already had paid part of the restitution.

Akron police have said the alleged theft came to light following a recent audit of the PTA's books for 2004 through 2007.

National Issues



- Fraud
- Who should regulate charities?
- Are all charities equal?
- Integrity and accountability

What's the role of a state charity regulator?

- Help us stop problems before they become major headaches – contact us with concerns
- Last year, the Charitable Law Section fielded nearly 1,000 complaints



Online Charitable Registration System

A more intuitive system that, based on the information provided, determines what filings or fees might be needed under the various statutory provisions

The screenshot shows a web interface for the Ohio Charitable Registration System. On the left is a teal sidebar with a 'Related' section containing links to a user guide, registration tool tips, research charities, and services for charities. Below this are 'Publications' and 'Links' sections, each with a plus sign icon. The main content area has a breadcrumb trail: 'BUSINESS > SERVICES FOR CHARITIES > CHARITABLE REGISTRATION'. The title is 'Charitable Registration'. A red warning message states: 'Please be aware that the filing system may experience slowdowns during peak hours.' The text explains that Ohio requires charitable organizations to file annual reports with the Attorney General's Office. It also notes that groups must use the online system to fulfill their duties under the Charitable Trust Act and the Charitable Solicitations Act. Multiple individuals from each organization are encouraged to create accounts for reminders on filing deadlines. At the bottom of the main content area is a blue button labeled 'File Online' with a right-pointing arrow.

Research Charities

- Check on registration status and filings with our office
- Other research information

Research Charities

Search Criteria:

Organization Name:

Employer identification number (EIN XX-XXXXXXX):

Search Results:

The form, **Verification of Registration** with the Ohio Attorney General's Office, is no longer available. Instead, charities and donors can use this page and search for a charity. The resulting information will indicate whether the organization is registered and current and can be printed as verification of registration.

Learning about an organization and its activities can help donors make wise-giving decisions. In addition to checking whether an organization is current with its registration requirements with the Ohio Attorney General's office, other good sources of information include:

- The IRS's Exempt Organizations Selection Check can be used to verify if an organization has a valid 501(c)(3) or other tax-exempt designation. The [IRS also lists organizations](#) that have had their tax exempt status revoked.
- Private watchdog organizations often review data and reports on organizations and may grade them based on various spending standards and other procedures. Some of those groups are [CharityWatch](#), [Charity Navigator](#) and the [Better Business Bureau Wise Giving Alliance](#). Your local Better Business Bureau may also be a resource and can be identified through the Wise Giving Alliance link above.

Organization Details:

Description of Organization's Purpose: Strengthen the capacity of

Organization Name: Ohio U

Organiza

Is the organization's registration status current? Yes

DBA Names:

DBA Nam

Employer identification num

Employer identification number (EIN): 31-4379529

Address line 1: 395 E Broad

Address line 1: 395 E Broad Ste 320

Address line 2:

Address line 2:

City: Columbus

City: Columbus

State: Ohio

State: Ohio

ZIP code: 43215-3844

ZIP code: 43215-3844

County: Franklin

County: Franklin

Country: United States

Country: United States

Telephone: (614)224-8146

Telephone: (614)224-81

Web address: www.ouw.org

Web address: www.ouw.

Date of formation: 07/04/19

Date of formation: 07/04/1913

Organization type: 501(c)(3)

Total Revenue: \$863,085.00

Total Expenses: \$843,472.00

Total Program Expenses: \$743,179.00

Percent of Total Expenses: 88%

Total Assets: \$672,066.00

Ohio Attorney General Responsibilities



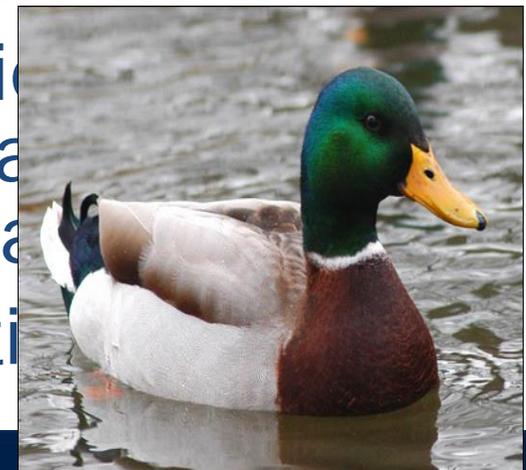
- Common law authority
- Statutes
 - Charitable Trust Act (ORC 109)
 - Charitable Organizations (Solicitation) Act (ORC 1716)
 - Gambling Code (ORC 2915)
 - Ohio Nonprofit Corporations Act (ORC 1702)
- Ohio Administrative Code

Ohio Charitable Trust Act

RC 109



- Charitable trust defined:
- Not limited to formal trust agreements
- Broadly defined as any organization that holds money or property for a charitable, religious or educational purpose
- Applies to the “nature” of the entity

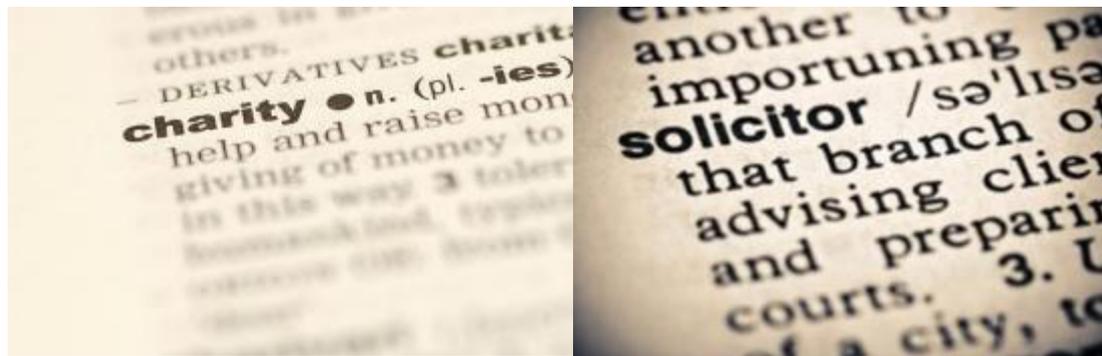


Ohio Charitable Trust Act



- Registration and Reporting
- Investigative powers and enforcement authority
- Necessary party to certain litigation
- Involvement in certain transactions

Ohio Charitable Organizations (Solicitation) Act (ORC 1716)



- Applies when an appeal is used that suggests a charitable purpose for a solicitation
- Registration of professional solicitors and fundraising counsel
- Enforcement and investigation powers
- Annual report on professional solicitors

Nonprofit Corporation Law- Chapter 1702

- Public benefit corporations
- Notice to Attorney General on certain sales of assets and mergers/consolidations



Gambling-Chapter 2915

- Bingo licensing, investigations, enforcement
- Raffles and games of chance
- Definition of eligible organizations
- Restrictions on activities





Regardless of size of the nonprofit, all board members share important duties

Fiduciary Duties

- Duty of care
- Duty of loyalty
- Duty to maintain accounts
- Duty of compliance



Duty of Care



- Standard of Care
- Directors of unincorporated charitable trusts must conduct themselves with the level of care, skill and diligence that an ordinarily prudent person would exercise in the handling of his or her own affairs.

Duty of Care

- Attend meetings
- Prepare for meetings
- Actively participate
- Establish policies
- Selection of organization's key staff members



Duty of Care Policies



Financial controls



Conflict of interest

Duty of Care Policies

Major
expenditures



Spending,
investment
and asset
allocation



Hiring professionals

Duty of Care Policies

Conduct of meetings



Whistleblower protection



Duty of Care

In short



Duty of Loyalty

Requires that the interest of the charity is foremost and is placed above any personal interest



Duty of Loyalty

Conflicts of Interest!



Types of conflict situations:

- Personal financial interest
- Loyalty or relationship that can influence decision

Duty of Loyalty

Conflict of interest policy



Duty of Loyalty

Conflict of interest policy



Gathers information on board members' affiliations and those of the board members' families

Duty of Loyalty

Conflict of interest policy



Requires
disclosure
of conflicts

Duty of Loyalty

Conflict of interest policy



Prohibits board members with conflicts from voting or seeking to influence decisions

Duty of Loyalty

Conflict of interest policy



Requires that minutes reflect when a member is excluded from discussion and voting

Duty of Loyalty

To avoid problems:

- Regularly update the disclosure statements.
- Cultivate a board culture that invites candid discussions of potential conflicts.



“Well, now we know what not to do.”

Duty to Maintain Accounts

Requires that accurate records are maintained and that financial matters are properly managed.



Duty to Maintain Accounts



- Keep accurate records of income, investments, expenses
- Develop and monitor budgets
- Establish internal control systems – checks and balances

Duty to Maintain Accounts

- Maintain accurate records of all organization activities
- Records retention policy



Duty of Compliance

Board must comply with all legal requirements and other obligations, including:



- Federal and state law
- Governing documents
- Agreements, contracts
- Representations made in solicitations

Duty of Compliance

Federal law

- Compliance with IRS regulations
- Filing of annual returns
- Sarbanes-Oxley (whistle-blower protections and prohibits destruction of documents if under investigation)

Duty of Compliance

State law

- Registration and filing with Attorney General
- Secretary of State
 - Incorporation, continued existence filings
- Other employer and industry regulations



Board Governance



Where to begin??

Special Challenges

Fiscal Management – Board Overview



Just like household budgets, charity budgets reflect projections of income and expenses. Just like household resources, you need to protect the charity's resources.

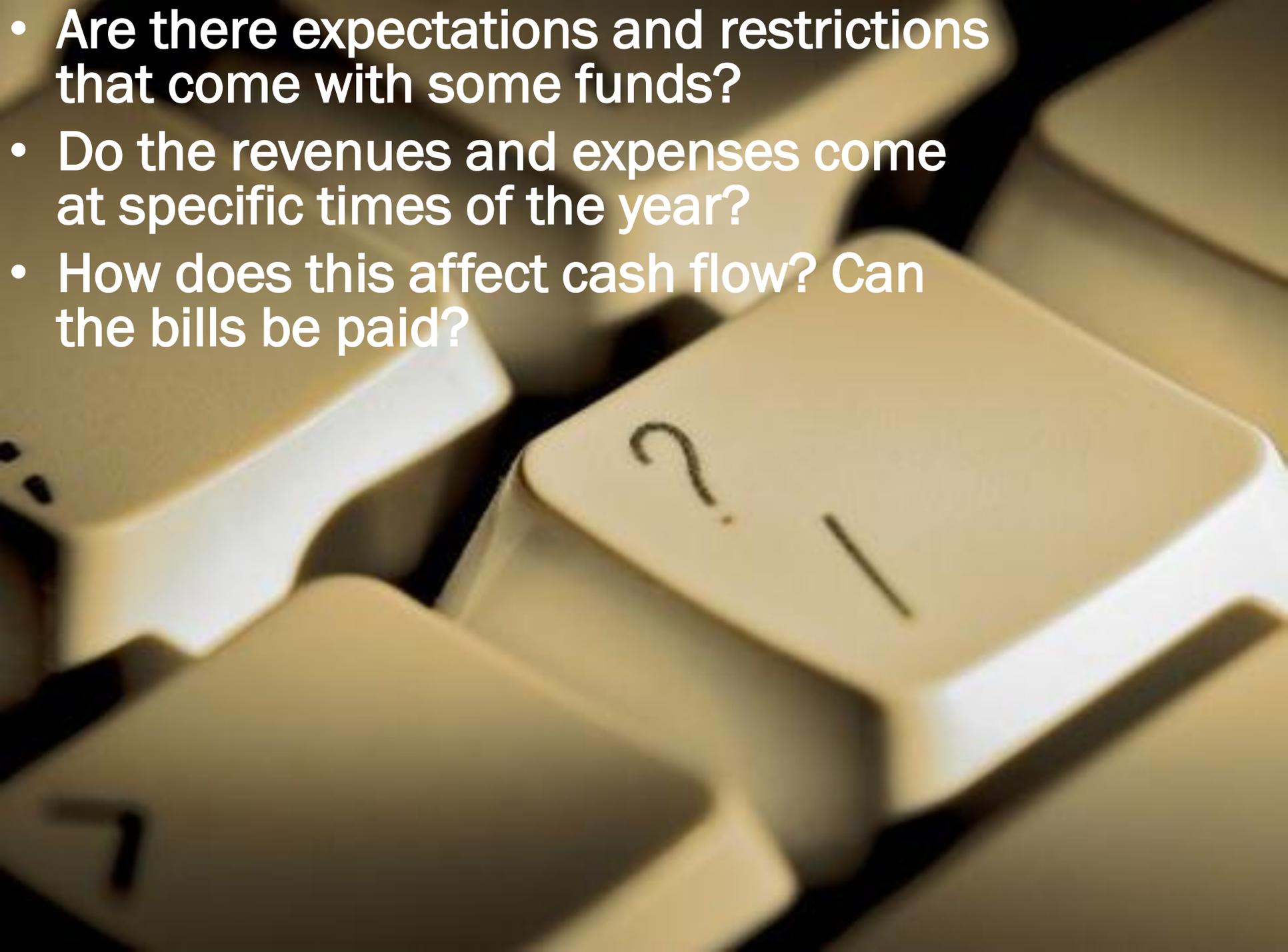
Know the basics



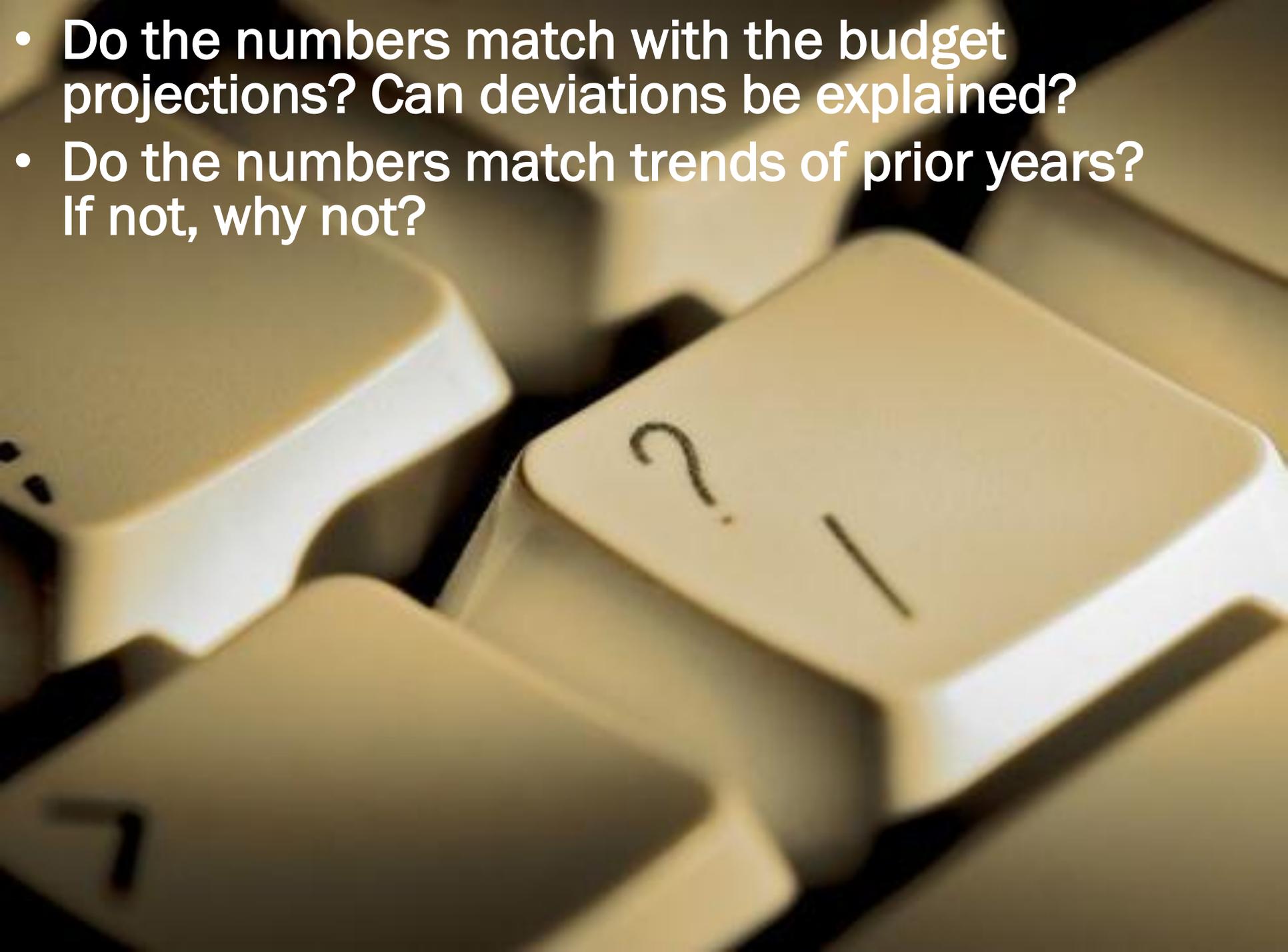
Sources of revenue:
donations, grants,
pay for services,
etc.

Expenses: salaries,
supplies,
overhead, etc.

- Are there expectations and restrictions that come with some funds?
- Do the revenues and expenses come at specific times of the year?
- How does this affect cash flow? Can the bills be paid?



- Do the numbers match with the budget projections? Can deviations be explained?
- Do the numbers match trends of prior years? If not, why not?



Boards need to understand and track the group's assets and liabilities

Assets

cash, property,
inventory, etc.

Liabilities:

loans, accounts
payable, etc.



Some Questions:



What changes are expected in assets and liabilities that change the bottom line for the organization?



What responses are needed to respond to changes?

Preventing Theft



Internal Controls

Boards are the first line of defense in adopting and monitoring sound internal controls.

Processes protect the people and the organization.

Boards must review and discuss financial reports. Staff can assist in compiling reports, but **boards need to exert independent oversight.**

Board treasurer, audit and budget committee members and others may play a crucial role in this.



Oversight of the Executive Director



Boards are sometimes guilty of failing to provide appropriate oversight of the executive director and relying too heavily on staff.

Oversight of the Executive Director

Board Policies and Practices

- ❖ Hiring process (what skills are needed, job description, ensuring wide pool of qualified candidates, objective interview process, references, background check, etc.)



Oversight of the Executive Director

Board Policies and Practices

❖ Setting goals for performance



❖ Expectations for communication



Oversight of the Executive Director

Board Policies and Practices



- ❖ Evaluation process (goals met, new objectives, board feedback, feedback from stakeholders, etc.)
- ❖ Compensation evaluation (seek information on pay levels for similar organizations, similar skills, etc.)

Board Policies To Consider:



- Budget policies
- Gift acceptance and receipt policies
- Reserve funds policies

- Investment policies
- Policies on purchasing/expenses (bidding, approval levels, etc.)
- Recordkeeping policies

Board Policies To Consider:



- Fundraising policies
- Audit policies
- Whistleblower policies

- Conflict of interest policies
- Record retention policies

Other Best Practices

- Annual ‘check up’ on organization’s well-being and compliance (review of by-laws, policies, conflict of interest policies, document review, etc.)
- Timelines and transition documents reviewed annually to note important dates and deadlines for filings and reports (AG, Secretary of State, IRS, employment taxes, budgets, audits, staff evaluations, officer nominations, annual meetings, etc.)



Other Best Practices

- Consideration of Directors and Officers (D&O) insurance coverage
- Board orientation
- Strategic planning – development of goals and assessment of performance (operational and mission delivery)



In effective organizations, the boards regularly evaluate themselves, too.



How well are you doing in being accountable to the organization?

There are lots of resources to help board members learn how to fulfill their many duties.



Good Resources

- Ohio Attorney General's web page --
<http://www.ohioattorneygeneral.gov/>

Check out Resources for Board Members
under Services for Nonprofits:

- AG Handbook for Nonprofits
- Board Member Guide
- Newsletter, etc.

Good Resources

- Better Business Bureau and Charity Seal Program (www.us.bbb.org)
- Ohio Association of Nonprofit Organizations and Standards of Excellence (www.oano.org)

Good Resources

- BoardSource at www.boardsource.org
- IRS Resources at www.irs.gov and www.stayexempt.org
- Chronicle of Philanthropy

Other Resources:

- Numerous books at libraries and bookstores on many nonprofit topics
- Talk with other nonprofits about how they have responded to specific issues
- Ask local businesses if they have an expert on a specific area who might volunteer, consult or serve on your board



Ideas?

**If you haven't got charity in your heart, then
you've got the worst kind of heart trouble.**

-Bob Hope





How to contact us

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