

PBPA Podcast Transcript

Structuring Board Committees for Success: Legal and Practical Advice

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[00:00:00] Sireesha: Today we're talking about board committees, a powerful but sometimes misunderstood tool of nonprofit governance for board members of small nonprofits. Committees can drive focus, accountability, and strategic impact when they're set up correctly. In this episode of the PBPA podcast, I'm joined by Jared Brandman to break down what board committees do, how to structure them effectively, and how to stay on the right side of legal and fiduciary responsibilities. Whether you're forming your first committee or reassessing existing ones, this episode is designed to help you govern with confidence.

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Jared Brandman is Chief Legal and Strategy Officer with National Vision. He's also a dedicated volunteer with PBPA. He has served on the board of multiple organizations, including our own PBPA. As both an attorney and an experienced board member. He's gonna have some great insight to share with us today. We really appreciate you being here with us, Jared.

[00:02:28] Jared: Thank you so much. It is truly a pleasure to be with you today. I'm excited for the conversation. I absolutely love being affiliated with Pro Bono Partnership of Atlanta. I often talk about how it is one of my favorite nonprofits to be affiliated with because of all the great help that it provides to nonprofits across Atlanta and beyond.

[00:02:49] Sireesha: Oh, I'm so excited to hear that, Jared, and the way we're able to do that is because of volunteers like you.

And let's start, for this episode, with some context about what is a board committee and what's the point of having them within a nonprofit board.

[00:03:08] Jared: Great. I think it makes good sense. Let's start at the basics. I'll answer your question and maybe let's go back even just one step and talk about the purpose of the board, right? The starting point for an organization is the board is responsible for overseeing the strategy of the organization, right?

You have the management members who are responsible for executing the day-to-day, the operations of the organization. And the board serves in an important oversight role. So the board has that

responsibility. And then the question about committees is an important one. And your intro teed it up nicely.

So on the one hand, you could have your board execute all its responsibilities just at the board level. That would mean the board effectively is doing everything that it is required to be doing in terms of oversight and the like. Why committees exist is it is a tool that enables the board to delegate components of its responsibilities of its duties to subsets of the board, focused on specific items.

So I'll use an example and then we can unpack, some other ones. For example, the compensation committee is a common committee. You could have the full board and in some cases nonprofits do this. You could have the full board take care of the specific compensation related topics. Largely that's often around executive director pay. But in lieu of doing that, you know, the ability to create a subset of the board that is focused on just those topics is why you would set up a compensation committee. And it allows people who have maybe expertise are more experienced in that area to be focused on it.

And also so that you can be more nimble and from a coordination perspective to be able to, set up those meetings and then bring back the information, to the full board what you know when it makes sense and as it makes sense.

[00:05:14] Sireesha: So if a board is thinking about creating some of these subsets or committees, can you share some suggestions on committee structure?

[00:05:25] Jared: Yeah, sure. So I think the starting point is to just acknowledge that it's not a one size fits all approach, right? That there is flexibility for your board and the organization to set up a structure that makes sense for the nonprofit.

And what I mean by that is, small nonprofit, large nonprofits, somewhere in the middle, you may make different choices based on you the size of your board, the size of your organization, and the like. The Georgia nonprofit code gives flexibility for the.

Boards to set things up really in any way that it, that the board thinks it makes sense. So that really helpful in terms of structure and we'll do size and then we'll talk about, a few other pieces. The code actually provides that if you're gonna set up a committee, that it has to be composed of at least two board members. So that's the starting point. , And then I think depending on what it is , a practical size is in that three to five member committee, which is a good balance of having the good, people with expertise but not being so large that it can be challenging from an administrative perspective. , That's a good starting point. I guess a rule of thumb when you're thinking about like size of committee

[00:06:47] Sireesha: And can non-board members serve on a board committee?

[00:06:52] Jared: That's a great question. This is something that comes up, I think, often when we're providing governance advice to nonprofits and even some for-profit companies. So maybe before we get into the specifics, it's good to differentiate or highlight that not all committees are created equal. And, but I, and what I mean by that is there are different types of committees.

So a standing committee of the board. Which is really what we were talking about originally, which is where the board is designating or delegating some of its responsibilities to a standing committee. Those

committees largely, like I talked about before, a compensation committee, a finance or audit committee, nominating governance committee, executive committee is, is another one. And a development committee is another one.

When a committee's responsibilities are focused on exercising what the board would otherwise be responsible for. In those cases, it's appropriate for those committees to only include board members. The one caveat to that, the nonprofit code does include some flexibility to include former board members as part of a committee. But that's a pretty limited exception.

So, the general rule of thumb is for standing committees, those important committees should be composed of just board members. There's another type of committee, which is called like an advisory committee or even an ad hoc committee where if the role or focus of that committee is more for a specific task or area, there's more flexibility in those cases for a non-board member to serve. But they would be basically serving in, providing more of an advisory perspective as opposed to taking formal action as the board. And so that's an important distinction. I think that's, sometimes nonprofits trip up on if they're not thinking about the distinction between a standing formal board committee versus an advisory or an ad hoc committee and what actually the committee is focused on.

[00:09:07] Sireesha: And where do special committees fit into that standing committee versus advisory committee kind of set up?

[00:09:14] Jared: Yeah. Great. So special committee to me isn't just another way it's another way of referring to an ad hoc committee.

Right. It's a committee designated for a specific purpose. So you could just think of some examples. I think it's always helpful, if you have an example or two. So let's say a nonprofit was in need to search for a new executive director or something like that, that would be a good example of why a board might look to establish a special committee, like a, an executive director search committee.

Another one where I've seen where it can be you know, more advisory in nature, including both directors and non-directors, is around strategic planning where of course the board is required to review and approve the strategic plan of the organization. Strategic planning committee when the work is being done to help put all of that together. That's another one, where including some board members and, and other stakeholders might be something that the nonprofit could look at. And then also things like capital campaigns and the like, where, you know, from a fundraising or development perspective, the ability to have both board members and other stakeholders, can serve to be beneficial to nonprofits.

Those are some examples.

[00:10:34] Sireesha: Now we know the different types of committees and the benefits of committees. How does an organization go about, or how does the board go about creating the committees?

[00:10:44] Jared: It's hard to do a governance podcast without talking about bylaws. And so I guess that's, this is our moment. This is the bylaws moment in the podcast.

So the starting point of course, as we already talked about was the Georgia nonprofit code, which authorizes or enables boards to create committees. From there you'd look at the articles of

incorporation or the charter document. But really where the committee structure is typically laid out is in the bylaws.

And the bylaws may lay out specific committees that are required, like the standing committees that we talked about. And if that's not the case, then what the board would need to do is effectively adopt a resolution to establish the committee.

The resolution is the formal action that the board is taking to establish what the committee is and also the key elements of the committee. Things like if you want to designate how many members, and then most importantly, what the committee has been established to you know, the purpose of the committee.

The way this typically works is the bylaws would have some of that information and then a charter would be drafted that would provide more of the detail mechanics about. How the committee works in practice, and the reason for that is you, the bylaws are a document that you want to have live, you know, longer. The board can review and approve and adopt changes to the bylaws at any time, but there's a process for right for that.

The committee charter is a separate document. Where you can provide more of the process and procedure of what the committee is going to do, including often there's like a laundry list of here's the responsibilities, here's the specific actions that a committee is going to take. It's used both as a benefit from a board perspective to be clear on what the committee is responsible. To do. It's also a helpful tool for the committee itself, almost as like a checklist to have the committee be looking at its charter regularly to ensure that it in fact is doing the things that the board has charged them to be responsible for.

[00:13:09] Sireesha: I'm wondering, how does it work in terms of what can a committee do independently. You mentioned that there are a subset within the board. Is every action that they do an official board action or is there approval required by the entire board for what they do?

[00:13:28] Jared: Yeah, great question.

And this is an area where you wanna be clear, right, as clear as possible from a board perspective and from a committee perspective. And so the starting point is when a committee is established whether it's in the bylaws and then also the charter, that you wanna have clarity as to whether the committee is acting on behalf of the board, like with formal responsibility or whether they're recommending things to the full board for the full board to take the action.

The starting point in the code and the law is that committees can act independently only when. Authority has been specifically delegated by the board. There are some things that the code you know, provides a default and says, I don't care what you may want to do. Things like amending the bylaws or electing directors.

Those things are always a responsibility of the board. And so things like that can never be delegated to a committee. But beyond those beyond those like floor governance items, there is pretty broad ability to delegate specific actions to a committee. You just wanna make sure that you're very clear about that in the bylaws and then the charter documents for the committee.

If you are talking about the advisory or the special committees, there you're really providing advice to the board or recommendations to the board versus actually taking a formal board action. So I think that's also a distinction that's important to highlight.

Advisory committees or special committees you know, are more limited in their ability to take formal board action.

[00:15:20] Sireesha: And going back to structure and thinking about structure of board committees, is there such a thing as too many committees within a board?

[00:15:31] Jared: So again, I think this is one where you want to create a structure that makes sense for your organization.

So, and that goes from what's the purpose of the nonprofit? How big is the nonprofit? How big is the board? As I said in the beginning, it is possible to not have committees and have the full board do right. Do it all, so to speak. The other side is how many is too many? And I think what you typically see is as the size of the organization gets larger and also based on the nature of the organization, that's where there are times where you would see more than kind of that standard three standing committees might make sense, three or four. But I think generally speaking, once you're starting to do five, six or more committees. You have a, you're trading one issue for another issue, which is, the coordination and administration and making sure that the committee activities are rolling back up to the board becomes a challenge in and of itself. Versus having the board, you know, trying to do too much.

So I do think that this is an area in governance where the organization really is looking for that Goldilocks approach based on the nature of the organization and it and its size. Where you wanna do, not too many, not too little. You wanna find that just right. And in most cases, for many nonprofits and organizations it's limited to the core standing committees that we referenced just a short while ago.

[00:17:16] Sireesha: Now my final question Jared has to do, if we're using Goldilocks as our reference point baby Bear. Do you have any special tips for small nonprofits? For example, ones with a board of just a handful of directors.

[00:17:33] Jared: Yeah. . That's good. Baby Bear. The Baby Bear have the. Too Parge is too hot and the parge is too cold. I forget, I forget which one. But certainly we wanna get it where it's just where it is, just right. So I think one for smaller committees more is not, like doing more is not necessarily the way. So I would almost flip it to say, what is the simplest, easiest structure to manage based on, the size of the organization and the size of the board?

And that it is challenging for the board to be responsible to do, you know, to do everything. But you also don't wanna go too far.

So, I do think a few tips and tricks. Consider establishing committees that have more than one responsibility, like you can combine tasks and responsibilities that as your organization gets larger could be split out. For example, compensation and governance can be, can be together as an example. And I think that's a good tip and trick for smaller organizations to consider when they're ready to go ahead and dip their toes into, delegating to committees.

The other thing to remember is the distinction between ad hoc and advisory committees or these standing committees and that, that's another way to just get some experience with the benefits of establishing a committee. Is doing something on a more of an ad hoc or special committee basis, just to make sure you understand like how the administration and the benefits of it work.

[00:19:19] Sireesha: Jared, this is really helpful guidance for nonprofit boards, whether they currently have committees, or if they're looking to change existing committees. This guidance will help them get it just right. Thanks for sharing your time and expertise with us.

[00:19:35] Jared: Great. Thank you all so much.

[00:19:39] Sireesha: We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.