DEVELOPING A WRITTEN CODE OF ETHICS

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We use the term “ethics” to refer to the principles of conduct governing a group's adherence to accepted professional standards. Ethical decisions are not always self-evident. They may involve difficult or subtle questions of rightness, fairness, and equity for which answers are not clear-cut. An institutional code of ethics can provide guidance in making these difficult choices. This bulletin examines resources and describes methods that can help an organization create a code of ethics that conforms to broad professional standards and that also addresses the organization's specific concerns about its moral obligations and duties.

Organizations may be classified as nonprofit, charitable, or both. They may be accountable under common law, statutory law, or Internal Revenue Service codes. Nonprofit status is achieved by filing with the secretary of state's office. It is a fairly simple process requiring the completion of a short application form that includes a statement of purpose and dissolution clause. It must be signed by a minimum number of directors; Illinois requires three, but the number varies from state to state. There is a nominal filing fee, and the organization must pick a name that has not already been filed. Nonprofit organizations include civic groups, museums and historical societies, preservation organizations, fraternal groups, clubs, condominiums and other associations. Nonprofit organizations are not necessarily classified as charitable.

Charitable organizations file with the Internal Revenue Service. This is a more complicated, time-consuming, and expensive process, and one that usually requires advice from an attorney. Museums, historical societies, and preservation organizations are among those frequently classified as 501(c)(3) organizations; this is a tax-exempt category that carries with it certain reporting requirements and obligations to serve the public. Many charitable organizations are also nonprofits, but it is not required. An example of a charitable organization that is not a nonprofit is a charitable trust. This bulletin is directed toward organizations that are both nonprofit and charitable.

Ethical standards are reflected in the decisions and conduct of people, acting collectively or individually. Organizations take actions as a corporation and also delegate to boards, to executive committees or other committees, to board members, to staff, and even to volunteers. The moral tone of the organization is set by the corporation in its governing documents, but much of the decision making is placed in the hands of the board, which acts as the official arm of the corporation, creating policies and providing oversight functions. Ethics must be firmly rooted in the law, which sets minimum standards of acceptable behavior; ethics exceed the letter of the law and demands a higher standard of conduct.

Developing an institutional code of ethics requires commitment from the board and staff. Leadership must originate from the board, as it represents the corporation. A small committee of board and staff could initiate the procedure, first studying what the museum has in place and what others have done. The process should begin with some basic reading. An understanding of legal requirements is the first step. Some excellent resources include: Museum Ethics, publications of the American Association of Museums; A Legal Primer on Managing Museum Collections and Museum Governance, both by Marie Malaro. Museum Trusteeship, by Alan and Patricia Utberg, and Of Mutual Respect and Other Things: An Essay on Museum Trusteeship, by Helmut J. Naumer, focus on both legal and ethical issues that confront boards. Additional readings are listed in the bibliography at the end of this bulletin.

A second step is to study carefully professional codes of ethics. Both the American Association of Museums (AAM) and the American Association for State and Local History (AASLH) have recently adopted codes of ethics. There are also codes of ethics issued by the American Institute for Conservation (AIC), the Society of American Archivists (SAA), the Association for Volunteer Administration, the College Art Association (CAA), the International Council of Museums (ICOM), the Registrars, Curators, Educators, and Exhibitors committees of the AAM, the Museum Store Association (MSA), and others. Each has a slightly different perspective, but all provide guidance about taking actions that serve the public and work toward a higher goal.

A third step is to look at what organizations similar to your own have included about ethics in their written documents. This is more difficult, as many times the statements are scattered through bylaws, collection policies, personnel policies, and other written documents. Writing a Museum Code of Ethics provides three examples of institutional codes of ethics.

There are some compelling reasons for an institution to gather ethics statements into one code. As of January 1, 1997, it is a requirement of the American Association of Museums for all accredited museums to have an institutional code of ethics. Marie Malaro points out in Museum Governance that professional codes gain stature by their adoption by individual organizations. Internalizing the code allows an organization to effectively monitor performance. She points out that it is also good risk management. Adherence to a code creates a substantial defense to most allegations of improper conduct. Another important reason for adopting a code is that it puts into writing what is expected, thereby creating a mechanism for a board to maintain effective control of actions.

Certain topics appear in most codes of ethics. These include statements that address legal responsibilities of the duty of loyalty and the duty of care. The following duties and responsibilities of board members are examples of trustees' fiduciary obligations:

1. Avoiding conflict of interest. The duty of loyalty requires that the interests of the institution (and by extension, the public) are placed above those of an individual. A conflict of interest can occur when a trustee's outside interests overlap with those of the museum. A trustee is expected to refrain from participation in any board action where he or she is in a conflict of interest situation, or even one where there is an appearance of conflict of interest. This conflict extends to the board member's relatives, friends or business associates. A trustee in continual conflict of interest should resign from the board.

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2. Avoiding self-dealing. Again the duty of loyalty places a restriction on the trustee where by reason of his or her position with the organization, privileged information could be used to benefit the trustee, relatives, friends, or business associates. The benefit could be monetary or otherwise. The point is to avoid any transaction that conveys (or gives the appearance of conveying) individual gain in contradiction to the organization's interest. The AAM code of ethics states, "Loyalty to the mission of the museum and to the public it serves is the essence of museum work, whether volunteer or paid. Where conflicts of interest arise—actual, potential, or perceived—the duty of loyalty must never be compromised. No individual may use his or her position in a museum for personal gain or to benefit another at the expense of the museum, its mission, its reputation, and the society it serves."  

3. Making prudent investments. The duty of care requires actions that are taken in good faith and that demonstrate sound judgement. When trustees delegate financial management they must maintain oversight of the care of assets. This includes avoiding waste, such as incurring costs that could have been avoided, leaving excessive cash in non-income-producing accounts, paying excessive salaries or fees, or failing to distribute funds and thereby not benefitting charitable beneficiaries. State law may provide some protection for trustees acting in good faith. The Illinois Not for Profit Corporation Act of 1986 provides limited liability for directors, officers and persons who serve without compensation. They are not liable unless involved in "willful and wanton conduct." An Illinois corporation may also indemnify officers, directors, employees, and agents if such persons act in good faith and in a manner he or she reasonably believes to be in the best interests of the corporation.  

4. Conforming to the organization's purpose and mission. This includes strict adherence to restrictions upon the use of income and monitoring programs to see that they are consistent with the organization's governing documents.  

5. Care of collections. For trustees of collecting institutions, this is a major responsibility. Collections are not considered assets to be acquired and disposed of for profit, or as a means of meeting financial needs for operation. One of the major points of discussion in adopting the recent AAM Code of Ethics concerned the use of funds from deaccessioned collection items. The final wording is: "the museum ensures that: ... disposal of collections through sale, trade, or research activities is solely for advancement of the museum's mission. Proceeds from the sale of nonliving collections are to be used consistent with the established standards of the museum's discipline, but in no event shall they be used for anything other than acquisition or direct care of collections."  

The AASLH statement of professional ethics also addresses the issue: "Collections shall not be deaccessioned or disposed of in order to provide financial support for institutional operations, facilities maintenance, or any reason other than the preservation or acquisition of collections."  

Most museums do not capitalize collections.  

Many museums include in their ethics statements a prohibition against personal collecting. This most frequently applies to staff, but could also set parameters about trustees or volunteers who collect in the same area as the institution. The AASLH statement addresses this under conflict of interest: "Board members, volunteers, and staff shall refrain from personal collecting in any manner that conflicts with the interests or credibility of the institution. Institutions are encouraged to obtain statements of personal collecting interests before individuals become associated with the institution." Some codes prohibit staff from purchasing objects that have been deaccessioned from their institution, even if sold at public auction. There are also prohibitions about storing personal collections or performing conservation measures on them within a museum's premises.  

Other staff issues that are common to many codes of ethics include outside employment, gifts and favors, confidentiality, representing the organization, and disclosure. Considerations about outside employment focus on whether such work is done on the institution's time or the staff person's, whether the institution's equipment is used in preparation, who owns notes or research materials, and copyright considerations. Staff persons also need to be careful about gifts and favors from vendors or dealers with whom the organization does business. Some codes have very specific regulations such as the permissible value of gifts.  

Both staff and volunteers need to maintain confidentiality about privileged information which they may acquire. Examples are financial information, security systems, museum collections, internal staff matters, or oral history information. Staff and volunteers also need to be aware that their activities outside the organization may be perceived as representing the institution. They need to make clear whether they are speaking for the organization or as a private person.  

In all things it is equally important for staff, volunteers, and trustees to provide disclosure. This includes information about personal collecting, outside employment and consulting, gifts, financial arrangements with any entity that does business with the organization, and any area that could appear as a conflict of interest with the institution.  

Collecting institutions have special concerns that are covered in codes of ethics. These include appraisals; truth in presentation; loans from trustees, staff, or volunteers; consumptive use; artifacts involved in illicit trade; and sensitivity to human remains and funerary and sacred objects. Museums typically prohibit staff from appraising items in the collection that are to be deaccessioned; outside appraisals must be sought.  

Several codes address truth in presentation. The National Association for Museum Exhibition (NAME) states: "It is the obligation of all members to strive for truth in presentation." The Registrars Code of Ethics says: "Registrars are responsible for creating and maintaining accurate records and updating them in light of new research, and for ensuring that the records reflect the facts insofar as they are known."  

A sensitive area is the loan of artifacts to a museum from a trustee, a staff person, or a volunteer. The exhibition of a private collection in an art museum or in other kinds of museums lends credibility and stature that may increase its market value. The Curator's Code of Ethics requires that objects lent by curators for an exhibition should be done so anonymously.  

The AASLH statement warns against consumptive use of collections. This topic has stimulated much discussion, especially among living history sites. Many sites are replacing original artifacts that are used in demonstrations (such as cooking utensils) with replicas.  

The ICOM Professional Code of Ethics takes a strong posi-
tion against trafficking in stolen property. In part, it reads, "The illicit trade in objects destined for public and private collections encourages the destruction of historic sites, local ethnic cultures, theft at both national and international levels, places at risk endangered species of flora and fauna, and contravenes the spirit of national and international patrimony. Museums should recognize the relationship between the market place and the initial and often destructive taking of an object for the commercial market, and must recognize that it is highly unethical for a museum to support in any way, whether directly or indirectly, that illicit market."

The Museum Store Association's Code of Ethics also addresses this topic: "Sale of illicitly acquired antiquities is offensive to the affected cultures and destructive to archaeological sites. The Museum Store Association fully supports existing laws and recognizes the need for their rigid enforcement in order to preserve and protect our dwindling cultural and natural resources from wanton commercial exploitation."

Even though most of the codes were written before the passage of the Native American Graves Protection and Repatriation Act (NAGPRA), several express concern about culturally sensitive objects in collections. However, even in the more recently adopted codes, the statements on this subject are very broad. The implementation of NAGPRA makes it a legal requirement of museums to inventory human remains and associated funerary objects and to notify affected Native American tribes, who may then petition to have certain artifacts with which they have cultural affinity returned to them. Museum staffs have an obligation to consider the ethical as well as the legal aspects of caring for and interpreting objects of diverse cultures.

Additional issues addressed by some organizations in ethics codes include accessibility, political activity, commercial support, operation of museum stores, care of collections, and gambling/lending. The AAM Code of Ethics charges museums to ensure that "programs are accessible and encourage participation of the widest possible audience consistent with its mission and resources." The Missouri Historical Society's ethics statements, which are included in Writing a Museum Code of Ethics, describe in detail the ground rules for permissible political activity as an individual and outline examples of behavior that is not permitted because it involves the use of the historical society's property, materials, supplies, or equipment.

The ICOM Code of Professional Ethics has statements about commercial support and the operation of museum stores. It urges caution in defining relationships between the museum and corporate sponsors, and it stresses that the operation of museum stores and other commercial activities should be guided by written policy, be relevant to the collections, and not compromise the quality of collections. The ICOM code also addresses the care and conservation of collections. It charges the museum to properly document objects and provide for their security. It states, "One of the essential ethical obligations of each member of the museum profession is to ensure the proper care and conservation of both existing and newly acquired collections," and it points to the need for preventive conservation of collections.

The potential for staff to become involved in compromising situations is addressed in the Smithsonian Institution's Standards of Conduct, a document that prohibits employees from participating in any gambling activities on the Smithsonian properties or while on duty, including operating a lottery or pool; lending money for gain; and borrowing money from subordinates.

Ethics codes help to guide organizations as they strive to promote the public good. Several of the codes address serving the public. The educator's code published by the American Association of Museums has a section titled "The Museum's Obligations to Its Public." The code's subsections "Audience Diversity," "Audience Needs," and "Diversity of Perspectives" describe the obligation to serve the widest possible audience. A good resource in developing a code of ethics that addresses service to the public is Excellence and Equity, a 1992 publication of the AAM. The ten principles listed in that work put into practical language specific actions that organizations can take to serve the public. Among them are assuring that interpretation reflects an appreciation for the diversity of the museum's public; achieving diversity among trustees, staff, and volunteers; and committing leadership and financial resources to strengthen the public dimension of museums.

As an ethics committee assimilates the information available, it needs to condense it and share it with other board and staff. Writing a Museum Code of Ethics contains charts that outline topics that might be considered in writing a code of ethics. A chart of topics compiled for a 1996 American Law Institute/American Bar Association course of study, Legal Problems of Museum Administration, also lists topics that might be included. Breaking the code into sections can help to make it more manageable. Sections might include: general principles, governance, staff and volunteers, programs, and where appropriate, collecting. The general section should affirm the institution's commitment to serving the greatest human good. It might provide reference to applicable laws, such as state not-for-profit corporation law, IRS provisions for charitable organizations (including the duty of loyalty and the duty of care), the Americans with Disabilities Act, the Native American Graves Protection and Repatriation Act, and other laws that affect standards of behavior in nonprofit charitable organizations.

The section on governance should include parameters of behavior for the board and board members, such as personal collecting and financial oversight. Permitted and proscribed behavior for staff and volunteers, such as maintaining confidentiality and being careful about outside activities, would come in the next section. The section on programming could cover topics such as serving a diverse audience, truth in presentation, and museum store operation. For collecting institutions, a section about acquiring and caring for collections, deaccessions, illicit trade, and dealing with culturally sensitive materials would be appropriate. A final section could list existing codes of ethics and might include excerpts from pertinent ones.

The code of ethics should be a living document, reviewed and updated periodically. Some organizations require trustees and employees to sign an ethics statement or conflict of interest statement, and to update them when there are changes or at a stated interval. A permanent ethics committee would be a good way to monitor how changes in legal and ethical requirements in the profession affect an institution, and would help keep the institution's code current.

Notes
2. Ibid., p. 18.
3. Ibid., p. 19.
8. Ibid., p. 2.
17. ICOM Code of Professional Ethics, pp. 4-5.
18. ibid., pp. 10-11.

For Further Reading
(*an asterisk indicates the publication is available from the Oklahoma Museums Association's lending library through most public libraries and the Otis interlibrary loan service of the Oklahoma Department of Libraries.)


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