CHARITABLE GIFT ACCEPTANCE POLICIES
FOR NON-PROFIT ORGANIZATIONS:
ISSUES TO CONSIDER IN FORMATION AND MAINTENANCE

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CHARITABLE GIFT ACCEPTANCE POLICIES FOR NON-PROFIT ORGANIZATIONS: ISSUES TO CONSIDER IN FORMATION AND MAINTENANCE[1]

I. INTRODUCTION

Gift acceptance by charitable organizations involve a written gift acceptance policy addressing gift asset types, entities and trusts through which gifts can be conveyed, valuation for tax purposes, as well as other considerations.

II. THE MERITS OF GIFT ACCEPTANCE POLICY IMPLEMENTATION

One of the most important decisions a charitable organization ("CO") makes during its life-cycle is the resolution to accept a charitable donation or gift from a willing donor, other than contributions without conditions attached. While the first inclination of CO may be to view any conveyance of money and/or assets as another positive step toward the fulfillment of its mission, the uneducated acceptance of a harmful offering could ultimately levy a debilitating blow to its future function and viability. Thus, the solicitation and acceptance of charitable contributions should be a task that warrants considerable focus.

To provide uniformity and discipline in making gift acceptance decisions, every CO should implement a gift acceptance policy tailored to its specific mission and financial situation. The provision of formal policies creates identifiable, consistent distinctions between acceptable and non-acceptable contribution policies through the utilization of a proper analytical process. The benefit of these policies is two-fold, increased education and consistency.

A gift acceptance policy is an accessible vehicle through which a charitable organization's board of directors and staff can be introduced to the many critical issues triggered by various assets and the forms through which these assets are conveyed. This knowledge can then be applied to a situation in order to preliminarily distinguish planned gifts that will truly benefit the CO from ones that may trigger additional, unprofitable expenses or that may be motivated by a donor's personal financial gain. Of equal importance in this learning process is the acquisition of the ability to determine when to seek outside counsel as a part of the gift acceptance process. The strengthening of a CO's overall knowledge on gift acceptance ensures that these issues will be properly recognized and discussed, leading to consensual, informed decisions that benefit the charitable organization's overall mission.

In addition to educating the CO, a gift acceptance policy provides the charitable organization with an objective lens through which to view donor transactions. The inherent discipline generated by the establishment of a formal policy helps to relieve the CO of subjective, uninformed decision-making that could cost time, money and donor relations. A written gift acceptance policy counteracts the inconsistent effects of staff turnover and the individual viewpoints maintained by different decision-makers, leading to similar outcomes and good judgment. This consistency is, perhaps, most significant with regard to the perpetuation of positive relationships with donors.

A charitable organization's interaction with its donors is one of its most valuable functions. Official gift acceptance policies can be essential in helping to preserve relations with donors when a gift must be rejected or cannot be accepted on the terms initially offered. By referencing the policy, a charitable organization can deflect a donor's dissatisfaction with the assurance that similar offerings and donors have been, and will be, evaluated in the same manner. This can help the decision seem less personal to the donor while also instilling a respect for the professionalism of the CO in its handling of the matter.

Conversely, a charitable organization's formal gift acceptance policy can function to prevent donors themselves from making mistakes with regard to the contribution of assets. It is conceivable that a donor's advisors do not have knowledge of the tax intricacies of charitable donations. A CO's provocation of pertinent issues in its discussions with the donor may enhance the donor's awareness of important financial questions that they may need to address before following through on their pledge.

From this initial discussion it can be ascertained that the implementation of a gift acceptance policy is an excellent step a CO can take toward positive financial growth.

III. THE CONSTRUCTION OF GIFT ACCEPTANCE POLICIES: CRITICAL ELEMENTS TO CONSIDER

Before a gift acceptance policy can be implemented by a CO, all important members of the charitable organization, including the executive director and the various other divisions involved in the CO's financial and gift planning activities, need to collaborate to draft and adopt a set of policies that accurately reflect its focus and function. The simple adoption of a standard policy, one size fits all, without specifically tailoring it to the individual organization's needs, is not realistic.

[1] The assistance of G. Matthew Loftin in researching and writing this article is acknowledged.

Legal counsel may be engaged in the formation of a gift acceptance policy, but it is not always necessary. The level of lawyer involvement should depend on the charitable organization's intended frequency of acceptance. If a CO chooses to confine much of its gifts to simple cash transactions (with no donor restrictions), or to the immediate conversion of any assets to cash, legal counsel may not be required. In most situations, however, the utilization of specialized advice will only serve to enhance the impact of a gift acceptance policy by broadening its expertise and, thus, expanding the types and forms of gifts a charitable organization can knowingly choose to safely accept.

While there may be other important factors for a charitable organizational committee to consider when constructing a gift acceptance policy, the following represents some of the more pertinent issues that should be discussed.

A. Mission, Purpose, and Guidelines

The charitable organization's mission should be a part of every document generated by a CO and these ideals should be pre-eminent in the formation of any gift acceptance policy. The purpose of the policy should also be expressly stated in order to demarcate how the policy relates to the mission of the charitable organization. These elements serve the function of reminding all donors and organization staff that these principles should predominantly guide all decisions.

B. Use of Legal Counsel by the Donor and Charitable Organization

As stated earlier, the engagement of legal counsel by a charitable organization can prove to be a useful tool in the creation of a gift acceptance policy depending upon the policies sought. Likewise, the ongoing consultation of an attorney in specific circumstances may be something that should be delineated in the policy in order to avoid inconsistency and uninformed decision-making. By stating that counsel will be engaged when appropriate, the policy informs both donors and the CO of the circumstances under which the charitable organization will hire legal counsel to assist with the gift acceptance.

The demarcation as to which situations necessitate legal consultation is relative to each organization's individual situation. However, there are circumstances that would usually require specialized knowledge of applicable law. One such occurrence would be transactions involving potential conflicts of interest, such as the lease of gift property to the charitable organization. Other situations which may warrant legal advice, with regard to certain gift types and forms, will be discussed later in this article.

It should be noted here that it is difficult to use board members as legal counsel in either a paid or unpaid capacity. When a board member does serve as a paid legal advisor, it becomes difficult to separate the individual's role as board member versus attorney. It is always best that any legal counsel be an independent observer and advisor.

Tantamount to the use of counsel by a CO is the installation of, in the gift acceptance policy, the recommendation that the donor seek independent professional counsel prior to giving a gift, as stated in Part VI of the *Model Standards of Practice for the Charitable Gift Planner*.

C. Donor Restrictions on Gifts

Gift acceptance policies should be utilized to explain a CO's perspective on the donor's ability to place restrictions or conditions on gifts. It is obvious that a CO should favor unrestricted gifts but many donors want to control, to the fullest extent possible, the use of their charitable dollars or assets by the organization. The CO through the gift acceptance policy should state the CO's policy on gift restrictions. Ordinarily, the larger a gift is, the more a donor will want to direct its use. All policies, however, should state that gifts which are not supportive or within the scope of the CO's mission and purpose will be turned down.

Restrictions that provide for return of the gift to the donor upon some event or failure to act by the CO will in all probability prevent the donor from obtaining the desired charitable contribution deduction.

The gift acceptance policy may also provide as to whom can enforce, on behalf of the donor, the restrictions on the gift. The policy may also include a time restriction, stated in lives in being or a term of years, in which the restriction will last. Such restriction may not be imposed unilaterally by being stated in a policy but may require a gift agreement between the donor and the CO. Several cases in which restrictions on gifts have been sought to be enforced are:

Georgia O'Keefe Foundation v. Fisk University
Tenn. 20th Judicial Dist., Davidson County, Part III, No. 05-2994-III. The case involved the efforts by the Georgia O'Keefe Foundation to prevent Fisk University from selling portions of the Alfred Stieglitz Collection to raise funds in violation of the terms of the gift by Georgia O'Keefe to Fisk University.

Robertson v. Princeton University
Superior Court of New Jersey, Chancery Division, Mercer County (Trenton). Information available at www.robertsonvprinceton.org – describes

> this as an attempt by the children of the donors to enforce donor intent.

Tennessee Division of the United Daughters of the Confederacy v. Vanderbilt University.

> Tenn. Ct. of App. No. M2003-02632-COA-R3-C.V. 5/3/05. Vanderbilt University can change the name of its "Confederate Memorial Hall" but only if it returns the present value of the original naming gift.

All of these cases involved enforcement of a gift agreement, although not a gift made under a gift acceptance policy. They are instructive of the need for gift acceptance policies.

IV. TYPES OF GIFTS

A comprehensive gift acceptance policy should outline each type of asset and the stance that the charitable organization will take with regard to its acceptance. COs in their infant stages may lack the expertise or resources for management of certain asset types. Yet without a policy clearly stating the gifts that are appropriate for the charitable organization, and the ones that are not feeling constrained to accept all assets.

Certain types of assets are easier to analyze and accept than others. Cash is an easy example of a donation that no organization should have a problem accepting, providing there are no restrictions. On the other hand, donations of real estate, life insurance requiring additional premium payments or tangible personal property will probably involve some sort of analysis before a charitable organization chooses to accept or deny an offer.

Some of the more popular types of assets will be briefly discussed below, each one in relation to its potential benefits and liabilities to the CO.

A. Cash

Gifts of cash, including checks, of all sizes are usually regularly accepted by CO. All checks should be made out to the legal name of the CO and never to any individual working on behalf of the CO. As discussed earlier, a charity should usually turn down gifts of cash if the donor wishes to place restrictions on the gift that are unacceptable to the CO or that are potentially illegal. A good example of this would be a donor's wish to exclude certain members of a protected constitutional class (race, sex, etc…) from benefiting from the endowed funds. Again, a CO may want to refuse a cash gift if the donor asks that the charitable organization use the gift in a way that is incompatible with its mission or purpose.

B. Securities

There are two different kinds of securities that a CO may encounter as gifts from donors: publicly traded securities and closely held securities. While securities are certainly an acceptable type of gift, CO's should be cautious and thorough in determining a stock's potential financial effect on the charitable organization. The timing of acceptance is crucial in regard to securities and, for this reason, a donor's offer of stock may warrant the retention of specialized tax or legal counsel in order to methodically assess the situation.

The timing of a security's conveyance is of utmost importance to both the CO and the donor. Improper delivery of the donation could result in excess costs to both parties in the form of taxes on the donor and unanticipated administrative costs for the donee. Because of these dangers, a charitable organization should initiate proactive measures, as outlined in its gift acceptance policy, to limit its exposure to potential pitfalls. These issues are discussed in more specificity below.

1. <u>Publicly Traded Securities</u>

Usually all COs should accept publicly traded securities readily traded on national or regional stock exchanges. It is recommended that gift acceptance policies state that any marketable securities will be immediately sold upon acceptance. Before the gift is made, a charitable organization should personally inform the donor that it would be the CO's right, as the new owner of the gifted security, to decide whether to sell it. This is important for the maintenance of donor relationships, as it is likely the donor will want the CO to keep the securities because they may feel that the stocks are a good long-term investment. Having a gift acceptance policy that mandates the sale of gifted securities at the time they are received helps in case a donor criticizes the CO's decision to sell securities that have later increased in value. Conversely, the continued management and maintenance of securities outside of the CO's investment policy securities can create additional expenditures of both time and money for the charitable organization.

2. <u>Closely Held Securities</u>

Closely held securities are generally defined as securities that are not broadly or publicly traded and include, not only debt and equity issues of C and S corporations, but also LLCs and LLPs. A large impediment to a CO's acceptance of a closely held security is the uncertainty of its value and, in relation, its marketability to buyers. The lack of a common market to determine what a willing buyer would pay a willing seller affects a stock's valuation upon receipt. A CO's gift acceptance policy should address how this valuation will be determined prior to acceptance, usually by an independent, qualified appraiser.

It is likely that the securities will be bought back by the company itself, as many have restrictions on transfer so that their ownership does not pass outside a small group. If this is the case, marketability issues may be a debilitating factor. In the alternative, a CO needs to ensure that the security is marketable. Consequently, a CO's policy should note that it is necessary to sufficiently gauge interest in a donated security as part of its analysis before acceptance.

While it is important that a CO determine a security's marketability, it must be careful not to prearrange a sale of the stock before it is actually gifted to the CO. A CO should have full discretion regarding all aspects of the stock's sale to another entity. If the donor gifts the securities after a firm commitment to sell is in place, they run the risk of incurring capital gains taxes on the transaction. *Ferguson v. Commissioner*, 108 T.C. 244 (1997) (opining that a donor is taxable on the gain in stock transferred to a charity under the anticipatory assignment of income doctrine).

C. Tangible Personal Property

Gifts of this type include a wide variety of assets that can be classified as personal property, such as jewelry, automobiles, boats, or art. Due to the vast array of items encompassed in this category, and the special challenges presented as a result, a charitable organization's gift acceptance policy should clearly define guidelines for analyzing such gifts while also including restrictions on what types of personal property will be accepted. In its policy, the CO should examine a potential gift of personal property for its financial value, its potential use by the charity, and its demand in the marketplace.

Before acceptance, a charitable organization should consider whether the donative gift is appropriate in relation to its mission. It is far easier for a CO to accept gifts that it can effortlessly absorb into its own business plan, such as the acceptance of art by an art museum, than to struggle finding a buyer for an item it cannot utilize.

Gifts of a more obscure relation to a charitable organization may prove to be too financially inefficient to accept, and it may be safer to wholly deny all offers. However, if an CO does decide to selectively accept personal property that is counter to its mission, it needs to determine, on an individual basis, whether it will be able to sell the gift without incurring significant costs due to, among other factors, maintenance, insurance, taxes, or storage.

D. Real Estate

Of all the potential assets a CO may be offered, none provide more opportunity for swings in value from great gain to substantial liability than the acceptance of real estate. As it is a very commonly owned asset, real estate is also a gift that most every CO will encounter at some time. A gift acceptance policy can help decision making to accurately value the real estate through the use of an outside appraiser and to establish how to research and test for environmental problems.

At the initial stages of the acceptance process, the CO will be considering the property as used for the mission of the CO for the location of a facility of the CO or adding adjacent property to the existing campus of a facility, or considering the property as an asset to hold only temporarily until it can be sold and the proceeds applied to the mission of the CO.

Whether to be held or sold, either way, in order to properly accept a gift of real estate, there are a number of factors to consider. The title to the property should be free and clear of any defects and liens, and held in the donor's name. The donor should disclose the existence of any and all mortgages, restrictions, reservations, easements, and other limitations prior to the gift's transfer, unless the net return on the property, minus the encumbrances, is substantial. These types of impediments on the property, which affect its use, can devalue the real estate and, additionally, decrease the ability of the charitable organization to re-sell it. The donor should also furnish a copy to the CO of all title information in their possession, such as the most recent survey of the property, and a title insurance policy, as well as disclose any carrying costs, such as transfer charges, taxes and insurance. If the property is to be sold, the CO will most likely be liable for property taxes for the period of time that it holds the property.

The policy should require the donor to provide, to the charitable organization, a reasonably current appraisal of the fair market value of the property and the interest in the property the CO would receive if the proposed gift were accepted.

Marginal properties that do not justify the cost of an appraisal should be a warning, and the gift acceptance policy should catch them. Lots in Florida and time shares may carry assessments and be impossible to give away. The fact they do not justify an appraisal should somewhere have caused something to click in the gift acceptance policy.

1. Environmental Concerns and Potential Exposure

Of all the risks a CO seeks to mitigate through the use of a gift acceptance policy, perhaps the greatest is the potential for liability due to environmental issues on real property. A blanket liability structure, created under the Comprehensive Environment Response, Compensation and Liability Act (CERCLA), places full responsibility for environmental clean up on the current property owner, regardless of actual knowledge of the problem, or actual contribution to the problem. 42 USC 9607(a)(1). The costs to make a property environmentally safe can be exorbitant, far exceeding its actual value. COs are not immune from environmental protection laws. *Id.* A gift acceptance policy should include the requirement of an environmental audit of the property prior to acceptance of the property.

2. Bargain Sales

If a donor makes a partial gift, partial sale, or transfers an asset, usually real estate, to a charitable organization for consideration that is substantially less than the value of the property, the donor is making a bargain sale and will be taxed on any gain. *Connell v.* Commissioner, T.C. Memo 1986-333, 842 F.2d 285 (11^{th} Cir. 1988)(for a conveyance to constitute a charitable contribution as a bargain sale, the fair market value of the property on the date of sale must exceed the purchase price). A bargain sale is treated, for tax purposes, as two transactions: one part sale and one part charitable gift. Treas. Reg. § 1.170A-4(c)(2)(ii). These types of transfers can be an effective gift tool in some circumstances. As bargain sales most often involve gifts of real property, a charitable organization's gift acceptance policy should include an evaluation process for bargain sales that is similar to its analysis of current gifts of real estate.

E. Life Insurance

There are two ways in which life insurance gifts can be utilized: the conveyance of a current policy that the donor no longer needs; or the transfer of funds in order for the charitable organization to purchase a policy on the life of the donor. Either option creates a benefit to both parties, as the donor is, essentially, allowing the charitable organization to realize much more value than the donor expends.

For a donor to make a completed gift of a life insurance policy, the charitable organization should be named as both the owner and the irrevocable beneficiary of the policy. Gifts of life insurance that require the CO to accept a donor's premium payments as gifts and send them to the insurer should generally be discouraged as they create unneeded administrative costs and can put a charitable organization in an untenable position should the donor stop making the premium gifts.

In its gift acceptance policy, a charitable organization should have clear guidelines regarding what action it will take upon the receipt of an insurance policy, often dependent on the type of policy offered. If the policy is term life, it usually is not advantageous to a charitable organization to make premium payments, as the term may expire prior to the donor's passing. However, if the policy is a whole life policy, the decision to accept and make premium payments is more uncertain. A charitable organization needs to decide if the financial expenditures to pay the premiums, the length of time the premiums are likely to be paid, and the ultimate payout, justify the acceptance of the policy.

There are also different alternatives than simply continuing to make the premium payments. A charitable organization could choose to either exchange the policy for its cash value or convert the policy to "paid up." Both will reduce the face value but will capture the worth of the policy on the date of gift.

V. GIFT FORMS

There are three primary categories that gift types can be placed, each differing in the timing of the offer or the financial relation to the donor: current outright gifts, charitable bequests and life income gifts.

A. Current Gifts

A current gift involves the donor's direct transfer during life of money or property to a charitable organization without the receipt of any economic benefit to the donor. Although the donor may place restrictions on the use of the property, the donor must retain no control over the money or property transferred or possibility of reversion to qualify as a current gift for federal income tax purposes.

B. Charitable Bequests

A charitable bequest involves the donor's transfer of money or property to a CO at the donor's death, through their will or trust. Unlike a current gift, the donor retains control of the asset during his or her lifetime.

A charitable organization should specify in its gift acceptance policy that its needs, policies and circumstances may change in the future. This is so the donor is aware that their endowment may not always be used in the exact manner specified in the initial bequest. The inclusion of this contingency clause gives a charitable organization the flexibility to use the funds in its best interest, while also remaining in accord with the donor's specifications. The gift acceptance policy should also advise donors to describe the specific purposes of their gifts as broadly as possible.

When a charitable organization receives a charitable bequest that it does not wish to accept, it can disclaim the donation under Texas Probate Code § 37A. Under this section, a charitable organization must submit "a written memorandum, acknowledged before a notary public or other person authorized to take acknowledgements of conveyances," to the probate court in which the donor's will has been probated

Texas Probate Code § 37A(a). A charitable organization must file its disclaimer not later than the first anniversary of the date the beneficiary receives the notice required by Section 128A or the expiration of six months after the filing of the inventory, whichever is later. Texas Probate Code §37A(h). Once a charitable bequest is disclaimed, it is irrevocable. Texas Probate Code § 37A(d).

C. Life Income Gift Vehicles

As the name implies, life income gifts are conveyances from which the donor receives income. Thus, these types of gift forms provide mutual benefit to both parties by supplying both income streams and tax advantages to donors and needed fund resources to COs. The vehicles also enable donors to make larger gifts, due to their ability to leverage the donation by receiving an income stream. The charitable organization then receives the remainder of the gift, which is the amount that is left over upon the donor's death after the life income has been paid.

A CO's gift acceptance policy should address the various issues associated with life income gifts. One of these issues is the imposition of a minimum acceptable amount. The cost of investing and administering a life income gift is high in comparison with other asset types and thus a CO needs to balance the management and administrative costs of the gift against the possibility of discouraging donors from making an offer. Time spent addressing this issue will prevent the CO from committing to a gift that in the long run could prove too cost-consuming for a positive financial gain.

1. <u>Charitable/Deferred Gift Annuities</u>

Charitable gift annuities are among the most popular and commonly planned life income-producing vehicles. A charitable gift annuity is a lifetime contract between a CO and a donor that legally obligates the CO to pay a fixed rate of income, which is locked in at the time the gift is made. The donor receives the income for the donor's lifetime and if desired for another beneficiary's lifetime. IRC § 514(c)(5)(B). Upon the death of the last beneficiary, the CO receives the remainder of the gift. A donor may not make additional contributions to a charitable gift annuity, but may enter into additional contracts.

To sell a charitable gift annuity, the CO must comply with the regulatory requirements of the state of the donor's residence. In Texas, there are notifications that the CO must give to the donor and to the Texas Department of Insurance. Texas Insurance Code §§102.101 and 102.102.

In addition to giving notice, a charitable organization can only initiate a qualified charitable annuity if it is deductible under federal tax law and if the charitable organization has, on the date of the annuity agreement, (1) been in operation for at least three years; and (2) a minimum of $100,000 in unrestricted cash, assets, or publicly traded securities in its reserves, not including the assets funding the annuity agreement. IRC § 501(m)(5); Texas Insurance Code § 102.002. A charitable organization must make sure that it qualifies under both federal and state laws before it accepts a gift from a donor as a charitable gift annuity.

A CO should also determine whether it wishes to initiate a deferred annuity program in addition to a regular program. Deferred gift annuities involve the donor making a current gift to a charitable organization, under the agreement that they will begin receiving an income stream at some point in the future.

If a charitable organization qualifies, and desires, to establish a gift annuity program, its gift acceptance policy should clearly outline certain qualifications for acceptance. There should be a defined minimum value the donor must give in order to be financially practicable for the charitable organization.

The policy should also discuss how additional gifts are handled. Charitable gift annuities cannot be augmented and each additional gift must be established as a new annuity. Accordingly, a charitable organization may choose to keep the establishment of a second annuity at the same minimum amount as the first gift annuity or set a lower initial amount to encourage subsequent gifts. However, if a charitable organization allows the donor to establish a second annuity at a lower amount, it should still individually determine how much less of a benefit it will receive in relation to administrative costs.

Because the payout rates on gift annuities are based on actuarial tables, a gift acceptance policy will want to include a minimum age requirement.

The American Council on Gift Annuities ("ACGA") publishes suggested rates based on actuarial information that factors in life expectancy, inflation, and investment returns.

The gift acceptance policy should address the acceptance of non-cash assets for a charitable gift annuity. As a gift annuity obligates a CO to pay an income stream based upon the gift's value on the date of establishment, the CO will want to appraise the gift's value and marketability before accepting, in order to accurately assess the merits of the transaction. The gift acceptance policy will in all likelihood state that unmarketable assets will not accepted as payment for charitable gift annuities.

VI. VALUATION, APPRAISAL AND SUBSTANTIATION OF A GIFT

Tantamount to the establishment of acceptable gift types and conveyance vehicles by a charitable organization, a thorough gift acceptance policy should include considerable analysis on how an asset's worth will be determined, as well as the provision to the donor of a clear procedure on how they can properly substantiate that worth to the Internal Revenue Service. This will help maximize the tax benefit to the donor, which indirectly encourages larger donations to the CO, and, thus, leads to an improved utilization of the inherently symbiotic relationship between the two.

A. The Fair Market Valuation of a Charitable Asset

As a general rule, the amount of any income tax, gift tax, or estate tax charitable deduction is determined by the fair market value ("FMV") of the gift contribution. With regard to federal income taxation, however, certain limitations must be taken into account that may reduce the deduction for a particular gift, or for a particular taxable year.

When the gift is property other than cash, the issue of valuation arises. As it is a donor's natural inclination to inflate the value of a gift to capitalize the tax benefit, the Internal Revenue Code and regulations have attempted to restrict the donor's opportunities for such action by providing guidelines for valuation, appraisal, and substantiation requirements as well as valuation penalties. It should be the purpose of a charitable organization's gift acceptance policy to help the donor avoid such valuation penalties by clearly demarcating a valuation procedure commensurate with applicable tax laws.

Fair market value has its usual tax law meaning as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts." *U.S. v. Cartwright*, 411 U.S. 546, 551 (1973). This type of valuation is relatively easy to determine when there is a prescribed valuation methodology and an organized market for the particular type of property involved. Valuation can become problematic when the methodology is subjective, usually because there is no organized market for the buying and selling of the type of property the subject of the gift.

The fair market value of a potential charitable gift can usually be established in three possible ways: (1) a qualified appraisal; (2) by the donor's acquisition cost, if the property was purchased in a bona fide arm's-length transaction shortly before the donation is offered; or (3) by the selling price of the property, if a charitable organization chooses to dispose of the gift shortly after donation. As noted earlier, if it appears that there was a binding obligation on the part of a charitable organization to sell the property, and this agreement was made with a donor before the charitable organization was actually gifted the property, the Internal Revenue Service may seek to tax the gain on the sale to the donor as if they had, essentially, sold the property and then donated the net proceeds. *See generally Ferguson v. Commissioner*, 108 T.C. 244 (1997)(ruling that plaintiff was taxable on the gain in stock transferred to a charity under the anticipatory assignment of income doctrine).

Gifts of tangible personal property can generally be valued at their fair market value. However, if such property is put to a use that is unrelated to a charitable organization's exempt function, the donor's tax deduction must be reduced by any long-term capital gain that would have been recognized if the property had been sold at its FMV. IRC § 170(e)(1)(B)(i). This "related use" doctrine should be of special importance to a charitable organization looking to properly assist a donor in its gift acceptance policy.

1. Qualified Appraisals

As discussed above, a qualified appraisal is a useful tool in assessing a charitable gift's fair market value for a donor's tax return. It may also be required in order for the donor to obtain a tax deduction. The CO's gift acceptance policy should be consistent with these qualified appraisal requirements.

IRC § 170(f)(11)(E) defines a "qualified appraisal" as an appraisal of property approved by the Secretary and "conducted by a qualified appraiser in accordance with generally accepted appraisal standards…" The level of appraisal documentation required to be submitted by a donor is related to the aggregate dollar amounts of all gifts of "similar items of property" for the year with thresholds drawn at $500, $5,000, and $500,000. *See generally* IRC § 170(f)(11). A qualified appraisal must be signed and dated by the appraiser and include, among other items: a detailed description of the property, the date of the gift, the physical condition of the property, any use restrictions, the appraiser's qualifications, and certain logistical information about the appraisal. Treas. Reg. § 1.170A-13(c)(3), (4).

To be "qualified," an appraisal must also be made by a person who declares, on IRS Form 8283, that he or she: has the credentials or qualifications to make appraisals of the particular type of property involved in the gift; and holds himself or herself out to the public as one who does such appraisals on a regular basis. Treas. Reg. § 1.170A-13(c)(5). There are "related party" prohibitions meant to assure that the objectivity of the appraisal is not compromised by some relationship between the parties. Treas. Reg. 1.170A-13(c)(5)(iv). A qualified appraiser may not be: (1) the donor; (2) the CO or an employee of the CO; (3) the person from whom the donor acquired the property; (4) an appraiser who performs only for the donor (*Kaplan v. Commissioner*, 43 T.C. 663 (1965)); or (5) an appraiser who is qualified but who has some incentive to overstate the value. *Id.* The IRS does not publish a list of acceptable appraisers but the American Society of Appraisers does publish a directory of certified appraisers by state and by specialty.

A qualified appraisal cannot take place earlier than 60 days prior to the date of the charitable gift transfer, and no later than the due date for filing the donor's income tax return on which the gift is first reported. Treas. Reg. § 1.170A-13(c)(3)(i).

B. Substantiation of a Charitable Gift – Applicable Tax Forms and Standards

Once a charitable gift is made to a charitable organization, the tax benefits of such a transaction can only be realized if the transfer is properly documented under IRS standards. A charitable organization will want to understand both its, and the donor's, responsibilities before accepting a donation. Understanding these responsibilities will help cultivate productive donor/organization relationships, maximize the taxable benefits received by both parties, and prevent the assumption of unwanted filing penalties. A CO's gift acceptance policy should implement procedures to properly follow completion of applicable forms and documentation.

1. <u>Contemporaneous Written Acknowledgement</u>

A charitable contribution of $250 or more must be substantiated by a "contemporaneous written acknowledgement" from the charitable donor, and a gift that is not so acknowledged is not deductible by the donor. IRC § 170(f)(8)(A). A CO should mention this requirement in its gift acceptance policy and automatically issue an acknowledgement to the donor for applicable gift transfers. A letter or written receipt that indicates the name of the donor, a description of the property (or amount of money) received, and the date of the gift should be sufficient. A charitable organization should also include a description and good-faith estimate of the value of any goods or services it provided in exchange for the gift (quid pro quo), or a statement that none were provided. Treas. Reg. § 1.170A-13(f)(1).

The acknowledgement should be "contemporaneous," meaning that it should be provided no later than the due date for filing the donor's income tax return on which the deduction is claimed. IRC § 170(f)(8)(C). A donor's failure to obtain a contemporaneous written acknowledgement, when applicable, results in a loss of any charitable deduction warranted by the gift.

2. <u>Donor Form 8283 for Noncash Charitable Contributions</u>

The section of a charitable organization's gift acceptance policy that addresses the transfer of tangible personal property should include a statement on IRS Form 8283.

A donor must file Form 8283 – Noncash Charitable Contributions, if the amount of the deduction claimed, for all noncash gifts, is more than $500 for the year. *See* IRS Form 8283. For gifts of more than $500 but not more than $5,000, a donor must complete Section A of the form. If one item, or a group of similar items, exceeds $5,000 in value, a donor must also complete Section B (an appraisal summary) unless the property is a publicly traded security. *Id.* A donor's appraisal summary must include: (1) a description of the property; (2) the appraised value; (3) the method of the donor's acquisition; (4) the acquisition date; (5) the adjusted basis for tax purposes; (6) the appraiser's declaration that the fee charged was not based on a percentage of the value; and (7) the signatures of the qualified appraiser and an *authorized representative of the donee charity*. *Id*.

The signature does not mean that the charitable organization agrees with the appraised value, merely that it has received the property and that it acknowledges that if it sells the donation within three years of its possession the CO must report the sale to the IRS under Form 8282. *Id.*

If a donor fails to provide to the IRS, the required documentation for a donation or does not attach Form 8283 to the donor's tax return when applicable the charitable deduction can be lost, even if the valuation is ultimately correct. *See generally John T. Hewitt v. Commissioner*, 109 T.C. 258 (1997)(taxpayer's deduction was limited because a qualified appraisal had not been secured, even though the IRS conceded that the gift was properly valued).

3. <u>Form 8282 – Donee Information Return</u>

A charitable organization must file Form 8282 to report, to the IRS, any sale or other disposition of donated property (other than publicly traded securities and cash) within three years after the contribution. IRC § 6050L(a)(1). The charitable contribution property (meaning one item or a group of similarly categorized items) received by a charitable organization must be worth more than $5,000 before it is required to submit this form. IRC § 6050L(a)(2). If an item from the charitable contribution property, sold by a charitable organization, was valued in the appraisal summary at $500 or less, the sale by the charitable organization is excepted from the information return requirement. Treas. Reg. § 1.6050L-1(a)(2)(i). An additional exception also applies to property that is consumed or distributed by a charitable organization, without consideration, in furtherance of its exempt purpose and mission. Treas. Reg. § 1.6050L-1(a)(3).

When required, Form 8282 must be filed with the IRS within 125 days of the disposition, and there are penalties for organizations who fail to comply. Treas. Reg. § 1.6050L-1(f)(2)(i); Treas. Reg. § 1.6050L-1(q). Charitable organizations must also provide a copy of the form to applicable donors. IRC § 6050L(c); Treas. Reg. § 1.6050L-1(d)(1).

The information that must be reported by a charitable organization includes: (1) the name, address, and tax identification number ("TIN") of both the donee and donor; (2) the amount received by the charitable organization upon disposition of the gift; (3) the date of the disposition; (4) a description of the charitable organization's use of the property; and (5) a statement indicating whether the use of the property was related to the purpose or function constituting the basis for the charitable organization's tax exemption. IRC § 6050L(a)(1).

VII. ETHICAL PROBLEMS AND SAMPLES

Attached as Attachment A is "Reflections on the Ethical Problems of Accepting Gifts: An Open Letter to the Harvard Community," which is an essay on accepting gifts by a university, by Derek C. Bak. This ground breaking work from 1979 raised interesting issues that still confront universities and COs today.

VIII. CONCLUSION

While there are a multitude of difficult issues involved in the construction and maintenance of a competent gift acceptance policy, the engagement of qualified individuals to assist in the process helps alleviate many of the complexities. It is also important for a charitable organization to internally surround itself with competent and knowledgeable individuals to consult within its institution. This will help the organization intelligently sustain its planned giving program through potential changes in federal and state laws.

Once in place, it is of extreme importance that a charitable organization reviews its gift acceptance policies regularly. The charitable organization can use this opportunity to educate and make changes where the current policy might not offer adequate legal protection, has produced negative results in the past, or has failed to provide appropriate guidance.

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Reflections on the Ethical Problems of Accepting Gifts: An Open Letter to the Harvard Community

All universities depend heavily on donations — from individuals, foundations, corporations, and even governments. Such gifts rarely present a moral problem. But disputes occasionally arise, either because donors seek to achieve improper objectives through their gifts or because they have previously acted in ways that seem reprehensible. Although such controversies have occurred over many decades, little effort has been made to consider the subject with care. As a result, I approach the topic with considerable diffidence, recognizing that the terrain is unfamiliar and the issues extremely complex. As we will discover, the arguments involved present a mixture of tangible and symbolic considerations that are often weighed differently by concerned individuals who approach the subject from widely divergent perspectives.

Students and faculty members may object strongly to gifts from donors who are implicated in controversies and injustices in the outside world. Since they are not burdened with the day-to-day problems of administering the institution and balancing its budget, they will tend to be more disposed than their deans to raise objections to gifts that seem to connect the university with evil practices. Because they have no continuing responsibility for the conduct of university affairs, they need not be greatly concerned with whether their individual protests can be translated into consistent, workable policies. And since they will rarely suffer the consequences of refusing a gift, they may be uncompromising in their objections and disinclined to give much weight to the practical problems of pressing their arguments to their logical conclusion.

Donors, on the other hand, look upon gifts to the university from an entirely different perspective. Since they believe they are doing the institution a service at considerable expense to themselves, they are bound to be affronted by the thought that their attempts to be generous may be greeted by inquiries into their motives, their character, or their moral standing. Their immediate reaction will be to retort that if a university is reluctant to take their money, they can easily find other institutions that will be only too grateful for their support.

Deans and presidents are well aware of the contrasting attitudes just described. Yet the nature of their responsibilities also forces them to recognize the need for principled, consistent policies that they can defend in public and apply to future cases without intolerable difficulty. They are likewise influenced by the constant problem of trying to maintain their institutions in a time of severe financial pressure. Students may overlook the substantial subsidies needed to support their scholarships, their living accommodations, their libraries, and athletic facilities. But administrators are constantly reminded that the real income of professors has declined significantly over the last decade, that parents are troubled by rapidly rising tuitions, that middle-income families feel increasingly unable to send their children to private institutions, and that talented people in the university are continually being denied opportunities to do creative work for lack of funds. These realities cause them acute concern for the future of their institutions and the welfare of their students and faculty. Yet these very anxieties may also lead them to seem less sensitive than some might wish to the ethical problems of receiving funds and to the objections raised by concerned members of the university community.

Gifts Improperly Restricted

Since the interested parties approach the subject from such different perspectives, the controversies that arise are bound to be difficult to resolve. In one group of cases, however, the lines have become reasonably clear. This category consists of situations in which donors seek to attach conditions to their gifts that invade what Justice Frankfurter once termed the "four essential freedoms of the university" — "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study."

As I argued in my first open letter, the preservation of these freedoms is vital if the university is to carry out its mission effectively and thereby make its greatest contribution to society. We need to work constantly to preserve them against encroachments, whether the incursions come in the form of government regulations or in the more seductive guise of restricted gifts. Accordingly, we must reject donations that force the institution to deviate from its chosen standards of admission, or permit the donor to determine the selection of professors or other academic personnel, or compel the university to promote a particular set of values or beliefs.

For these reasons, we recently refused to pursue the offer of a chair from a foreign government that sought to control the choice of professor, presumably to insure the selection of someone sympathetic to the donor regime. We would not accept a professorship restricted to promoting the values of socialism, the free market system, or any other doctrine. Nor would the Divinity School agree to a chair in Christian ethics if the gift required the incumbent to propound a predetermined set of beliefs or to refrain from criticizing some prescribed dogma.

On the other hand, universities have traditionally accepted gifts limited to specific purposes or fields of study. Thus, a donor may restrict his gift to research in French history or to scholarships for the School of Design or to the construction of a hockey arena. A university, of course, may decide to refuse such gifts if they do not fit within its plans and capabilities. For example, the institution may feel that it cannot afford to maintain a new facility that a donor desires to construct or that it lacks the personnel and library resources to enter a new field of study that some benefactor wishes to fund. Such decisions are often difficult, but they are not thought to raise issues of principle so long as the donor does not seek to impose restrictions that bind the institution in its selection of students and faculty or affect the ability of its members to express their views freely and teach in the manner of their choosing.

Since donors can determine the functions for which their gifts are used, we must acknowledge that universities will be influenced in important ways by the outside world. Business schools will be better endowed than schools of education, while medical research will expand more rapidly than classics departments. Individual scholars will likewise be affected by the availability of outside funding. Biomedical investigators are much more likely to explore the problems of cancer than to inquire into the causes of schistosomiasis, and young investigators are more inclined today to do research in fields such as energy and the environment than they were fifteen years ago.*

A university should attempt to moderate these influences by persuading donors to contribute to neglected areas or by shifting internal resources to fields that command too little external support. In a pluralistic society offering many sources of funds, such efforts will be at least partially successful. Yet the outside world will still leave its mark upon the institution, especially today when such a large share of external support comes from a single source: the federal government.

These external influences may at times seem unfortunate, but they are inevitable and often quite understandable as well. From the taxpayer's standpoint, it is far from clear that universities are better equipped than government representatives to determine how public funds for higher education should be allocated. Private benefactors may be more erratic in their choices. Even so, donors have a legitimate interest in choosing the purposes for which their money will be spent. Moreover, universities have little choice but to accede. Government agencies, foundations, and private donors will all be much less inclined to give if the only opportunity they have is to contribute unrestricted funds for the institution to use as it wishes. As a result, a university that insists on complete discretion in the use of all donations would not enhance its academic functions but severely inhibit them instead.

Because universities and their professors may be influenced by the priorities of outside donors and funding agencies, critics occasionally argue that all talk of independence and academic freedom is ultimately misleading and illusory. But arguments of this kind cannot

* Deans, department chairmen, and professors may also be influenced occasionally in subtle or unconscious ways by the desire not to offend funding sources from which they periodically seek support. In this respect, gifts are only one of a series of external pressures that can threaten academic integrity; others include a desire to gain consulting assignments, obtain prestigious government posts, or otherwise win favor or recognition from the outside world. These pressures cannot be neutralized by administrative rules; they demand constant vigilance by all faculty members and administrators to avoid compromising their academic independence.

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bear serious examination. There is an obvious difference between accepting a chair in American history and allowing the donor to name the occupant, or between receiving a federal grant for studying Chinese politics and permitting the government to censor the results. Despite the effects of outside funds, the "four essential freedoms" do serve to provide an intellectual environment for the pursuit of learning quite unlike the situation that prevails in countries where academic freedom is not respected. As a result, universities retain a vital stake in refusing any gift that would force them to sacrifice their independence in making academic decisions.

Controversial Donors

Quite different issues arise in the case of gifts from donors who are said to have earned their money by immoral means or to have acted in ways that conflict with strongly held values in the community. There is little evidence that Harvard has been reluctant in the past to accept such donations. In fact, one president is said to have refused to rebuff a benefactor who had repeatedly violated the law, arguing that Harvard had never assumed that its decision to accept a gift represented an affirmation of the donor's good character.

Proposals to depart from this policy raise many of the objections I discussed in the first of these letters. Severe problems would arise in trying to draw principled lines and consistent standards. It is hard enough to resolve the specific issues raised by a shareholder resolution, but it is infinitely harder to pass consistent, principled judgments on the welter of opinions held and activities undertaken in the life of a donor. How often can we expect to make such decisions in a university that receives thousands of gifts each year?

It is also more difficult to apply such standards than most people realize, for university officials often know very little about the lives of their benefactors or the ways in which they acquired their wealth. It is always possible to ask the donor, but one can imagine the reaction of university fundraisers if they were instructed to inform potential supporters that the institution would only consider accepting their gifts if they agreed to answer a number of questions about their past behavior and financial activities. Even if Harvard could be spared this duty, what are we to do if we suspect, but cannot be certain, that a generous contributor may have earned money from bootlegging during Prohibition or from trafficking in illegal drugs? How is the University to respond when it accepts a gift in good faith only to learn months later that the funds were unethically acquired? And how many donors will decide to direct their support elsewhere rather than risk public controversy and embarrassment?

In considering whether there are arguments that outweigh these problems, it is useful to distinguish between a donor whose unsavory acts and opinions did not contribute materially to his fortune and a donor whose very funds have been obtained by improper means. In the former case, the only apparent reason for refusing a gift is that a university should not associate itself with someone prominently linked with unsavory activities. An institution may consider it in bad taste to become involved with an objectionable benefactor and will certainly wish to refrain from celebrating the gift in a manner that implies support for the donor's behavior. But it is doubtful that universities have an *ethical* obligation to reject such gifts.

In and of itself, the act of accepting a donation does not imply an endorsement of the views or actions of the benefactor. If the questionable behavior has not contributed materially to the donor's fortune, a university will not profit from evil by accepting his gift nor will it actively promote immorality. Indeed, an institution will doubtless do more good by using such funds constructively than by forcing the donor to keep his money. History affords many examples. Thus, few would argue that the Ford Foundation should have refused to come into existence because Henry Ford expressed anti-Semitic views or resorted to strong-arm tactics to oppose unionization. If all charitable institutions felt obliged to reject the gifts of every person who had engaged in improper behavior or expressed reprehensible views, the world would be deprived of many valuable works in exchange for little, if any, tangible benefit.

What position should a university take when a donor has gained his fortune by unsavory means or through complicity with a repressive regime? Some of these cases can be resolved without great difficulty. For example, we can quickly agree that the University should not accept stolen goods. Thus, Harvard took the lead some years ago in developing rules for its museums that require curators to make every effort to insure that they do not accept objects which they have reason to believe were unlawfully acquired. We can also put aside those situations in which some tiny, indeterminate fraction of a donor's wealth can be traced to some objectionable practice or to investments in firms with operations in a totalitarian country. If all such donations were prohibited, the investigatory burdens would be enormous, and a very large proportion of donations might ultimately be disqualified.

Finally, we should probably not be troubled by gifts received from funds lawfully earned even though the donor's fortune can be traced back to questionable practices on the part of members of an earlier generation. For example, Harvard accepted a chair from the Krupp Foundation even though the Foundation might never have existed had it not been for the work of a previous Krupp in supplying arms to Nazi Germany. Today, however, the Foundation earns its funds from normal business activities, distributes its money to worthy causes, and is even headed by a man honored by the government of Israel for his actions during World War II. Under these circumstances, I felt that it was proper to accept the gift. In the end, there must come a point where the transgressions of earlier generations become irrelevant and any taint that may have existed becomes too attenuated to warrant further concern.

On the other hand, what should our position be if we receive a bequest to the Business School from an unscrupulous slumlord or an unpublicized gift to our scholarship fund from a prominent official in a repressive government? Accepting such donations puts the University in the position of reaping the fruits of immoral activity. As such, the action might be compared with earning dividends from investments in an illegal gambling syndicate or in a corporation doing business in South Africa. But receiving a gift differs in significant respects from investing in a corporation. The University does not assume the responsibilities of ownership in an immoral enterprise nor does it acquire a continuing stake in the perpetuation of an immoral regime. As a result, the analogy will not hold.

Even so, critics may still insist that to accept "tainted" money is ignoble and unworthy of Harvard's ideals. Such persons might test their convictions by asking themselves a number of questions. Should the University accept tuition from an unsavory parent or should it treat the student as if he or she had no means of support and thus qualified for full financial aid? Should civil rights organizations, community action agencies, and other social welfare groups have the same obligation to reject gifts from controversial sources? If not, what principles justify the use of different standards for different organizations? Finally, is it possible to articulate reasons for refusing tainted money that are strong enough to outweigh the opportunity to use such funds to help discover a cure for some debilitating disease or to assist a worthy student from a poor family to obtain a Harvard education? Some readers may still conclude that the University should not take gifts of this kind, and there is no logic that can prove them wrong. In extreme cases, I might agree. But on the whole, I would be inclined to accept such donations on the ground that the tangible benefits of using the money for scholarships or faculty salaries should overcome the more abstract, symbolic considerations that might lead us to turn down such benefactions.

Even harder cases may arise when an institution undertakes to name a building, a professorship, or a scholarship for a donor who has allegedly engaged in immoral behavior or earned his fortune in questionable ways. In such situations, the university can be accused of honoring immorality and legitimating unethical conduct. But once again, the issue is not that simple. To name a building for a donor, or the relative of a donor, is not to award an honorary degree; its meaning is much more ambiguous.

In practice, recipients of gifts and awards have regarded the use of a donor's name more as a way of acknowledging the source of the donation than as an affirmation of his moral character.* Students who accept the designation of Rhodes Scholar (and universities that help to administer these awards) do not believe that they are endorsing the racial and colonial views of Cecil Rhodes. Young men and women who become Fulbright scholars do not thereby condone the votes of Senator Fulbright in support of racial segregation. And universities naming their buildings after celebrated entrepreneurs of the nineteenth century have never been thought to endorse the business methods of men whom Theodore Roosevelt once described as "malefactors of great wealth."

On the other hand, reasonable people may argue that even if the naming of a building is not a certificate of good character, it does invest the donor with a certain respectability and carries at least a faint connotation that his life and works are not demonstrably at war with the values of the institution. Those who wish to drive this point home can easily conjure up grotesque cases to support their position. But no university could

* A different situation may arise when a donor wishes to name a chair or a building for some unrelated person. In such a case, the use of the name does not record the source of the funds but represents a form of honorific recognition that may arguably imply an affirmation of good character by the University and thus require more careful scrutiny.

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accept a Hitler Collection of Judaica or a Vorster Center for Racial Justice or a Capone Institute of Criminology. Such designations are highly inappropriate, since they depreciate the academic enterprise and mock the very programs they purport to designate.

Although these examples may seem farfetched, they do succeed in making the point that a university should not agree to use the names of donors when it knows in advance that their lives and conduct are in plain conflict with the values and ideals of the institution. Such cases, however, will be uncommon. The critical issue is whether a university should go further by imposing more exacting ethical standards before making use of a donor's name and by subjecting each donor's life to a careful moral examination to insure that its standards have been met.

We can all appreciate the sentiments that drive us in an imperfect world to seize on opportunities to affirm our principles and convictions. Yet one wonders whether those who urge strict standards on universities are prepared to apply the same prohibitions to their own lives. Certainly, few students seem reluctant to accept the honor of being called a Rhodes Scholar despite the ways in which Cecil Rhodes acquired his fortune in the mines of southern Africa.

We should also acknowledge the problems and disadvantages that would result from regarding each nameplate and plaque as an ethical statement. In actual practice, our controversial donors will be complex human beings of mixed and ambiguous behavior. They will probably have acted well in some respects and ignobly in others. Their conduct may seem more reprehensible in retrospect than at the time when it occurred. Under these circumstances, the likelihood of making arbitrary and inconsistent decisions looms very large.

In addition, the University will frequently be unaware of any questionable behavior when it accepts the gift and will therefore be urged to undo agreements entered into in good faith. Such actions constitute a public rebuke that will cause great resentment and may inflict pain on relatives and other persons who bear no responsibility for the controversy. While one may argue that Harvard should avoid these consequences by discovering such problems in advance, it would be extraordinarily difficult to investigate the many scores of donors who attach their names each year to scholarships, loan funds, professorships, book funds, and the like. As a practical matter, moreover, few contributors will wish to run the risk of inviting public inquiry into the moral quality of their lives or those of relatives whom they wish to recognize. Since many donors prefer to make named gifts, the use of detailed moral standards is likely to prevent the University from obtaining funds and putting them to good use without the redeeming virtue of achieving tangible benefits or avoiding tangible harm.

Under these circumstances, the case for detailed ethical standards seems much less clear. I would agree that the University should exercise good judgment in refusing to memorialize the names of donors when we know in advance that their lives and conduct are in plain conflict with our ideals and aspirations. But I am not yet persuaded that Harvard should have an obligation to investigate each donor and impose detailed moral standards before attaching his name. And I feel even more strongly that if we are ever to move in this direction, the way to begin is not by acting ad hoc in a particular case nor by proceeding retroactively to dishonor agreements entered into in good faith according to existing University practices. If there are those who believe that stricter guidelines are needed, let them propose clear and consistent standards and develop practical means for their enforcement. Only then can we consider the advantages and disadvantages of adopting new policies for difficult cases that may arise in the future.

Gifts with Ulterior Purposes

In certain other cases, a gift may be designed, not merely to benefit the University but to achieve some other aim that is ethically objectionable. On such occasions, to accept the gift is to aid in the pursuit of unworthy ends. Thus, I once turned down the offer of a professorship in Modern Greek Studies from the Colonel Papadopoulos regime after my inquiries disclosed that the gift was specifically designed to gain the good will of Greek-Americans, who traditionally send large amounts of money to their mother country. My predecessor, President Conant, likewise rejected a named scholarship proffered by a confidant of Hitler, in part because he feared that the gift had been proposed and specially publicized "to use Harvard as an American base to spread approval of the Nazi regime." *

* At that time the President and Fellows also felt, for reasons I have already acknowledged, that Harvard should not accept a named gift from someone whom it knew to be prominently associated with a political party that had "inflicted damage on the universities of Germany through measures which have struck at principles we believe to be fundamental to universities throughout the world."

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Other cases will be harder to resolve. What if the Greek government had offered a professorship with no specific aim in view? One may take the government at its word when it professes a benign desire to give a chair in order to further the study of its country's history and culture. But it would be naive not to assume that the government is motivated to some extent by the hope of attracting favorable publicity to improve its image. Of course, one may observe that governments come and go whereas an endowed chair will remain in perpetuity. One can argue even more forcefully that the tangible benefits of teaching and research should outweigh vague and often illusory hopes of good will that could not possibly affect the survival of the regime. And yet, it is still possible that by accepting such a gift, a university will be cooperating in a course of action that is designed in part to perpetuate immoral activities.

There is no certain answer to this dilemma. At such times, it is best not to be a university president. But in the end, if the government sought to publicize the gift and were as reprehensible as the Papadopoulos regime, I would treat the situation as a case similar to the one that confronted President Conant and quietly refuse the donation.

In expressing these views, I realize that there is scant hope of convincing all my readers. The conflicting values are too disparate, the points of view too varied, the perspectives too diverse ever to hope for unanimity. Under these circumstances, one can only ask that each reader make a conscientious effort to appreciate the sentiments of others who approach the problem with equal seriousness but with different interests, responsibilities, and experience. With enough good will, we may yet reach solutions that are tolerable to all even though they will never completely satisfy everyone who cares deeply about the issues.

Derek Bok

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