Conflicts of Interest

Taken from "Tales from the Boardroom," in the Winter 2012 issue of BoardLink

Tales from the Boardroom case studies are fictional examples created by the editor to illustrate common governance challenges.

Our scenario:
The Local Bar Association is about to make a major investment in some new membership management software. The executive director has outlined the pros and cons of three different packages, and is prepared to make a recommendation to the board at today’s board meeting.

During the meeting, a board member mentions the bar’s conflict of interest policy, discloses that a co-owner of one of the software companies is a family member and that she should probably abstain from the discussion. The president waives his hand. “It’s fine. You have important insight in the technology arena. We’d like your input.” The remaining board members are silent, and the board member remains in the room for the discussion and participates in the vote.

What’s the problem?
According to BoardSource:

“Board service in the nonprofit sector carries with it important ethical obligations. Nonprofits serve the broad public good, and when board members fail to exercise reasonable care in their oversight of the organization they are not living up to their public trust. In addition, board members have a legal responsibility to assure the prudent management of an organization’s resources. In fact, they may be held liable for the organization’s actions. A 1974 court decision known as the “Sibley Hospital case” set a precedent by confirming that board members can be held legally liable for conflict of interest because it constitutes a breach of their fiduciary responsibility.” (Why must we be concerned about conflicts of interest?“ BoardSource Knowledge Center Q&As)

And, if we learned nothing else from Emily Chan’s article “Form 990 Policies – Is it better to check ‘yes’ or ‘no’?”, we should know that it can be more damaging to have a conflict of interest policy and ignore it than not to have one at all. It’s the entire board’s responsibility to ensure that policies are observed and enforced.

Sample bar policies can be found on the Division for Bar Services Form 990 Resource Page.

Write me at jennifer.lewin@americanbar.org with your bar’s good practices and suggestions. We’ll share them in the next issue.