

perspectives

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Benesch Friedlander
Coplan & Aronoff LLP

MY BENESCH MY TEAM

Trends and topics in not-for-profit management

Not-for-Profit Spotlight



ChamberFEST Cleveland founders Diana Cohen and her father Franklin Cohen.

CHAMBERFEST CLEVELAND

Not-for-profit organization ChamberFEST Cleveland, the brainchild of Diana Cohen, concert violinist, and her father, Franklin Cohen, Principal Clarinet of the Cleveland Orchestra, had been a long-standing dream for the Cohen family. Each had participated in the country's leading festivals as performing artists, always relishing the festival spirit. Surprised that such an arts-loving community didn't have a festival of its own, the Cohens wanted to build a chamber music festival in their hometown of Cleveland that would extend this special sense of community.

ChamberFEST Cleveland will present world-class musicians for an intensive summer chamber music festival, exploring unique and immersive thematic programming, and creating original, engaging musical experiences for its audiences. A unique variety of offerings, including meet-the-artist gatherings, multimedia experiences, collaborations with local partners, and intimate performances, will provide a concert experience in which the audience actively engages with the artists and their performances. ChamberFEST also seeks to create personal connections between the performers and Cleveland residents.

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Road Hazards: Occasional and One-time Volunteer Drivers May Leave Your Organization on the Hook



Diana Hawkins

As the spring and summer festival season kicks off, there will be a large call for volunteers to perform a huge range of functions at upcoming church festivals and other charity events (including golf tournaments and galas). Volunteers will run the gamut from the set-up, through raffle sales and food sales, all the way through the clean-up after the festival. Whether you have everything you need, or instead, run out of something essential during the festival, inevitably, at some point, you will need your employees or volunteers to run errands that require them to drive. By and large, you have already thought about your property liability and your potential liability

for the actions of your employees. But what about your liability for the actions of your one-time or occasional volunteer drivers? Can you be held responsible for their negligence?

Several courts have said "yes." For example, an Indiana court found a church vicariously liable for an accident caused by a volunteer driver. In that case, the individual volunteered once a year, over a period of four or five years, to deliver cookies to shut-in members of the church as a part of a Christmas program. While delivering cookies to the members on the church's list, the volunteer struck and seriously injured a motorcyclist.

The court explained that the church had an employer-employee relationship with the volunteer on the day of the accident because it had the right to direct and control his conduct. More specifically, the court stated that the volunteer was driving on the church's invitation; he had similarly driven four or five times before; he drove on the date and to the homes specified by the church; he delivered cookies that were supplied by the church; and his sole purpose for driving was to deliver cookies to those members selected by the church. Based on these factors, the court found the church liable for the volunteer's actions.

Similarly, an Arizona court recently upheld a \$7 million verdict rendered against a non-profit soccer club based on the negligence of its one-time volunteer driver. In this circumstance, the soccer club's coach scheduled a practice session twenty miles away from the normal practice site and directed the team to meet at a local mall to carpool. At the mall, he asked a 16 year-old player to drive other team members to and from the practice site. The player agreed to drive, but on the way home she made an illegal left-hand turn, striking and permanently injuring a motorcyclist.

In this case, the court upheld the jury's finding that the player had subjected herself to the soccer club's control on the day of the incident because, although the soccer club did not normally control transportation of the players to and from practices and games, on the day in question the coach asked the player to drive and directed her to and from the practice field. Furthermore, the court concluded that the player's primary purpose for driving that day was to serve the club. Consequently, the soccer club was liable for the accident.

What can your organization learn from this?

We recognize that it may be impossible to avoid organizing or controlling volunteer drivers, however, there are some steps you can take to reduce your risk.

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Summer Festival Season is Also Alcohol Permit Season



Thomas Kern

For not-for-profits, with spring and summer also comes a variety of festivals, parties and other fun events. Indeed, at many of these festivals, alcoholic beverages are served. Ohio has carefully crafted its liquor control laws to grant temporary

permits to not-for-profits seeking to serve and sell alcohol at special events. A temporary permit is needed when a not-for-profit organization sells alcoholic beverages by the drink or through an entrance fee. A not-for-profit organization with ten or more members will qualify for most temporary permits.

There are different classes of temporary permits available to not-for-profits, but the most commonly used temporary permits are the "F" and "F-2" permits:

F Permit

- An F permit allows the temporary permit holder to sell only beer for a period of no longer than five days;
- The application, along with a \$40 fee, must

be filed 30 days before the date of the event;

- The Ohio Division of Liquor will issue no more than two F permits to an organization in any given 30 day period; and
- Beer must be purchased from a wholesaler or distributor and cannot be purchased from a retailer.

F-2 Permit

- An F-2 permit allows the temporary permit holder to sell beer, wine and liquor by the drink;
- Alcohol may be sold until 1:00 a.m. for no longer than two days (in a "wet" jurisdiction);
- The application, along with a \$150 fee, must be filed 30 days before the date of the event;
- Only two F-2 permits may be issued to a nonprofit in a calendar year; and
- Alcohol must be purchased from a wholesaler.

Other Requirements for F and F-2 Permits

- All F and F-2 permit applicants must notify the Chief Peace Officer of the given political subdivision, of the date, time, place and duration of the event;
- F and F-2 permit applicants must submit a form signed by the real property owner where

the event is being held, consenting to the sale of alcohol on the premises; and

- Each F or F-2 permit application must also include a description, including a drawing of the area where alcoholic beverages will be consumed.

If the F and F-2 permits do not suit your needs, there are a variety of other options. For instance, an F-1 permit allows for certain not-for-profits to serve alcohol at a municipal convention center. An F-4 permit allows certain not-for-profits to showcase and promote Ohio wines. An F-5 permit allows not-for-profits to serve alcohol on a riverboat and an F-7 permit allows not-for-profits to serve alcohol at a qualified "golf event."

Obtaining a temporary permit to sell and serve alcohol is not a difficult task. For relatively little expense, you can comply with the law and save yourself a lot of heartache and cash. For more guidance on understanding the law pertaining to temporary liquor permits, check out www.com.ohio.gov/liqr, or see Ohio Revised Code sections 4303.20 through 4303.206.

For more information, please contact **Thomas Kern** at tkern@beneschlaw.com or 614.223.9369.

Indiana Department of Revenue Updates its Bulletin on the Application of Sales Tax to Not-for-Profit Organizations

The Indiana Department of Revenue has updated its [bulletin on the application of sales tax to not-for-profit organizations](#) to clarify that purchases by nonprofit organizations must be directly invoiced to the organization and directly paid via the organization's funds to be exempt. A nonprofit organization registers for the sales tax exemption by filing Form NP-20A, available online at <http://www.in.gov/dor/3506.htm>.

New Estimate for Value of Volunteer Time

Independent Sector announced this spring that the 2011 estimate for the value of a volunteer hour has reached \$21.79, a 43-cent increase from 2010. The value of volunteer time provides one way to measure the impact millions of individuals make with each hour they donate to make a difference. More information is available in [this article on Independent Sector's website](#).

Online Giving Increases

Online giving, excluding donations for disaster relief, grew 17 percent in 2011 to \$138 million from the previous year for all 1.6 million donations processed by Network for Good for over 40,000 charities. Check out this [new report](#) in the *Philanthropy Journal* for more information.

Event Recap

Benesch and Blue & Co. present...

The Not-for-Profit Executive's Guide to Success



On May 30, Benesch and Blue & Co. co-hosted "The Not-for-Profit Executive's Guide to Success," a complimentary half-day seminar during which presenters provided useful tips and ideas to assist not-for-profit executives in successfully leading organizations. This seminar, held at One American Square in Indianapolis, was attended by several dozen Indianapolis-area not-for-profit executives and board members. **Marty Sweterlitsch**, Chair of Benesch's Not-for-Profit Team and **Meredith Rosenbeck**, a Health Care Group and Not-for-Profit Team associate at Benesch, presented on governing not-for-profit boards in an electronic age. Benesch Labor & Employment Group partner **Mark Waterfill** spoke to attendees about the ins and outs of employment law, from application to termination. Eric Jaske and Michael Shultz of Blue & Co. shared an update on key changes to the 2011 Form 990 reporting requirements and information related to future developments. The seminar concluded with a networking and cocktail reception.

Events

Tuesday, June 5, 2012

Benesch & Schneider Downs Present “Mergers & Acquisitions for Not-for-Profit Organizations”

This panel discussion will focus on the long-term future opportunities that not-for-profit organizations should consider when contemplating merging or acquiring another not-for-profit entity. Topics to be discussed include:

- An overview of the current environment in which not-for-profits are operating.
- Reasons for considering merging or acquiring not-for-profit organizations.
- Options that organizations must think about when considering merging or acquiring another not-for-profit.
- Legal and accounting due diligence issues that should be investigated when considering merging or acquiring not-for-profits.

Location: The Capital Club, 41 S. High St., Columbus, OH 43215

Time: 7:30 a.m. breakfast and registration; 8:00 - 9:00 a.m.

Roundtable presentation

Credits: 1 – Specialized knowledge (*accounting*)

RSVP: Please RSVP to Lindsay Brooks at 614.586.7202 or use this link to [register](#) by May 28.

Wednesday, July 11, 2012

The Ohio Association of Nonprofit Organizations (OANO) Offers “Board Orientation: Do Your Board Members Know Their Responsibilities?” Webinar

It may be a volunteer position, but just like any job, there are roles and responsibilities for board members. It is the role of the not-for-profit organization to educate its board members about their duties. This webinar is for the executive director looking for information to incorporate into his or her board orientation process or for the board member wanting to understand his or her role as a leader of a nonprofit organization.

Topics covered will include: best practices for board responsibilities, policies & procedures, board composition and evaluation, duty of care, duty of loyalty, duty of compliance and duty to maintain accounts.

Cost: \$20 for OANO Members, \$40 for Nonmembers

(Use one connection, and have your entire board participate for one registration price!)

Registration: Participants can register [here](#).

Wednesday and Thursday, August 8 and 9, 2012

Association of Fundraising Professionals Offers “Fundamentals of Fundraising” Course

This intensive program will provide an overview of skills, techniques and program components for individuals with zero to four years of fundraising experience. See more details about the course content on the chapter's [Fundamentals of Fundraising Course](#) webpage.

This course was developed by experienced fundraising professionals to meet the real-world needs and challenges nonprofit organizations face every day. The program includes case studies and projects for groups and individuals, making the learning experience both substantial and enjoyable.

Location: Ohio Dominican University's Griffin Center, 1216 Sunbury Road, Columbus, OH 43219

Registration: \$395 for AFP members; \$495 for non-members.

Course is applicable for 16 CFRE International education points, and comes with a workbook and course materials valued at \$190.

To register, complete the registration form located on the [Fundamentals of Fundraising Course](#) webpage. Course Registration deadline is July 18, 2012.

Scholarships: Scholarships are available for Central Ohio Chapter AFP members. To apply, visit the chapter's [Scholarships](#) webpage. If you have scholarship questions please contact Debbie Beyer, 614-361-3517 or dbeyer@columbus.rr.com. Scholarship Application deadline is June 15, 2012.

More information: Contact course chair Emily Campbell, CFRE at: ecampbell@mail.cosi.org or 614.629.3121.

Not-for-Profit Spotlight: ChamberFEST Cleveland

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The musicians will become members of the Cleveland community during their stay, living in private homes and joining in the activities and special events during the festival week. This annual event will attract a diverse audience base and bring to our community the joie de vivre of classical music played in a festival format.

ChamberFEST Cleveland kicks off its inaugural season on June 27 with a “Big Bang.” Over the five-day festival, patrons will have the chance to hear 15 worldclass musicians including preeminent cellist Ralph Kirshbaum, violinist Noah Bendix-Balgley, Concertmaster of the Pittsburgh Symphony, and esteemed piano soloist Orion Weiss. Concerts will be presented in a variety of exciting venues including Mixon Hall at the Cleveland Institute of Music, the “Wine Spot” in Cleveland Heights, the charming barn at The Dunham Tavern and the Harkness Chapel at Case Western Reserve University. ChamberFEST’s first season is packed with delightful extras, including interactive presentations, post-concert jam sessions from Cleveland’s hottest Brazilian and gypsy bands and opportunities to mingle with ChamberFEST artists. Visit www.chamberfestcleveland.com for tickets, complete schedule and information about the inaugural season.

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First, if your organization does not normally oversee or provide transportation related to the festival (or any other charity events or organization-sponsored teams), try to keep it that way and avoid getting involved on an even one-time or occasional basis. This includes asking for or assigning volunteers as well as providing any direction that would subject the volunteer to your organization’s control.

Second, if you must oversee or provide direction to volunteer drivers, be sure that you are comfortable with the chosen volunteers and institute any necessary safety measures and warnings. Depending on the circumstances, you may have a duty to other drivers to ensure that your volunteer driver was the proper person for the task.

Third, avoid young and/or newly-licensed drivers: their age and inexperience will make them more likely to be subject to your organization’s control and direction.

Fourth, review your liability policy and determine whether you have, or need, non-owned automobile insurance coverage to cover circumstances like those presented in the cases above.

For more information, please contact [Diana Hawkins](mailto:dhawkins@beneschlaw.com) at dhawkins@beneschlaw.com or 614.223.9341.

Events

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Wednesday, September 5 Columbus
Thursday, September 27 Columbus
Tuesday, October 2 Findlay

Tuesday, October 23 Independence
Thursday, November 1 Columbus
Wednesday, November 14 Columbus

Ohio Attorney General’s Office Offers “Bingo School”

Bingo School is a training program offered each year by the Ohio Attorney General’s Office that reviews legal and recordkeeping requirements for organizations that hold or are considering applying for a bingo license. The laws surrounding the operation of traditional bingo and instant bingo tickets require organizations to keep close track of proceeds in order to protect funds that are used to support charitable activities.

Bingo School is an ideal way for groups considering bingo to get an idea of the various responsibilities involved. The training is also a handy refresher for new officers and members of organizations that hold a bingo license. Because the recordkeeping requirement differ for 501 (c)(3) groups and non-501(c)(3) organizations, separate recordkeeping sessions are presented.

Registration: Participants can register [here](#). Be certain to register for the proper training times based on whether your organization is a 501 (c)(3) or a veteran/fraternal/sporting organization.



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