



Our staff experts conduct “special investigations” into your questions.

*Dear Special Investigator:*

*Our finances are looking good, and we have hired one of our board members to be our first Executive Director. Can she also stay on the board?*

*Wanda Whynot*

Dear Wanda,

It's great that your organization finally has a paid staff member. Now the board can get on with governing and wean itself of some of the day to day operations.

To answer your question directly: yes, she can stay on the board. Executive Directors often are members of the board by virtue of their office (that is what "ex officio" means) and are fully involved in discussions and sharing information, but they rarely serve as voting members. There are some 501(c)(3)s in the U.S. that grant the ED a vote, but this practice can lead to governance problems and confusion over roles. Both groups need to establish appropriate independence from each other: your new leader needs room to exercise her leadership role and the board needs to get on with its fiduciary responsibilities.

So why this need for independence? In simple terms, the board is the boss of the chief executive, so you can see the conflict if the ED is a voting member of the board. The IRS is monitoring this sort of arrangement – a red flag is waved if they suspect that the organization is controlled by a single individual.

By the way, board members can also be hired to serve on the staff, but they should then resign from the board. As you can imagine, there are too many conflicts of interest, not counting morale issues with the rest of the staff. (However, for some 501(c)(3)s, like private family foundations, it could be appropriate for a paid staff member to also be on the board.)

**Clarification:** Our June 501(c)SI column spawned some interesting conversation about what role Executive Directors should play with their organizations' Board of Directors. While Maryland law does not prohibit an Executive Director from sitting on a Board, best practices from the field suggest that it is not a good idea to have the ED playing such a role within the organization, whether the position is a voting or non-voting position. Keep in mind the following precautions if the organization decides to place its Executive Director on the Board:

1) While it is not uncommon for Executive Directors to serve as non-voting members of their organizations' boards, this can lead to a tricky legal situation. Board members are bound by legal and fiduciary obligations. A non-voting Board member is still held to these standards but does not have all the legal protections afforded to a full Board member with voting privileges.

2) If an organization appoints an employee of its organization to serve as a voting member of their Board of Directors, appropriate policies must be in place to avoid conflicts of interest and to make sure that the employee does not exert undue influence. Such policies are addressed in The Maryland Nonprofits' *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector*®.

Typically, an Executive Director attends and participates in Board meetings as an advisor. However, it may not be appropriate for the Executive Director to even so much as participate in the meeting when issues arise that directly affect him or her, such as personnel matters. For example, it might not be appropriate for the ED to participate in some benefits discussions because he or she may benefit from the outcome of the decision. Executive Directors have an important role to play in advising the Board, but their level of participation should be carefully evaluated.