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IDAHO AQUARIUM, INC., D/B/A AQUARIUM OF BOISE

FACTUAL FINDINGS, LEGAL CONCLUSIONS, AND RECOMMENDED CHANGES

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INTRODUCTION

In September 2013, the Attorney General's Office ("Attorney General") received a referral from Dr. Jeff Rosenthal, Executive Director for the Idaho Humane Society ("the Society"), concerning the activities of the Idaho Aquarium, Inc. ("Idaho Aquarium"), an I.R.C. § 501(c)(3) nonprofit corporation in Boise, Idaho. Dr. Rosenthal reported to the Attorney General that, during the Society's investigation of animal welfare complaints, he spoke to Idaho Aquarium employees who expressed concerns with how the Idaho Aquarium's Board of Directors ("the Board") was governing the nonprofit corporation and managing its charitable assets.

Telephone calls and emails to the Attorney General from concerned Board members coincided with Dr. Rosenthal's referral. Board members reported to the Attorney General that the members had splintered into two factions, which prevented the Board from governing the Idaho Aquarium's affairs. The dominant faction was ruled by the Idaho Aquarium's President and Interim Executive Director who allegedly refused to provide the weaker faction with the Idaho Aquarium's complete financial records.

Board members also alleged that, with the Board's knowledge and approval, the Idaho Aquarium's founders and former Board members—Ammon Covino ("Covino") and Christopher Conk ("Conk")—had misappropriated the Idaho Aquarium's charitable assets. For example, Board members reported to the Attorney General that Covino continued to receive a salary despite him leaving the Idaho Aquarium in early 2013. Conk also reportedly received over \$10,000 from the Idaho Aquarium to reimburse him for the loss of his personal vehicle.

Most significantly, however, was the fact that the Idaho Aquarium, Covino, and Conk were facing criminal charges in Florida for violating federal law. Specifically, the United States alleged that the parties violated the Lacey Act, 16 U.S.C. § 3373(a)(2)(A), which prohibits a person from acquiring in interstate commerce any fish that is taken or sold in violation of state law.

Based on the seriousness of the allegations against the Idaho Aquarium and its management, the credibility of the witnesses, the veracity of the evidence presented, and the amount of charitable assets at issue, the Attorney General, pursuant to his authority under Idaho Code §§ 67-1401(5), 48-1204, and 48-611, initiated an investigation into the Idaho Aquarium's business practices. The purpose of the Attorney General's investigation was to evaluate the Idaho Aquarium's alleged noncompliance with Idaho's laws related to the management of charitable assets and the solicitation of charitable contributions.

The Attorney General's investigation of the Idaho Aquarium concluded in September 2014. At that point, the Attorney General presented to the Idaho Aquarium's attorneys his factual findings, legal conclusions, and recommendations. In November 2014, the Attorney General learned that the Idaho Aquarium transferred most of its assets, including the aquarium and its

operations,¹ to the Aquarium of Boise, Inc. (“Aquarium of Boise”), a separate and independent I.R.C. § 501(c)(3) nonprofit corporation.²

In the Attorney General’s opinion, because of the Idaho Aquarium’s nonoperational status, it no longer made sense to pursue performance standards for that organization. The Aquarium of Boise, however, remains an interested party in this matter. The Attorney General, therefore, requested that the Aquarium of Boise, the current owner of the aquarium, agree to meet the ten performance standards that the Attorney General originally presented to the Idaho Aquarium. While the Aquarium of Boise declined to execute a formal agreement with the Attorney General, the Aquarium of Boise adopted or agreed to implement a number of the recommended standards. A discussion of those standards is included in this report.

ATTORNEY GENERAL’S AUTHORITY

The Attorney General has a statutory and common law duty to protect charitable assets³ from waste or misappropriation. This section provides a cursory explanation of the Attorney General’s authorities and identifies the Idaho statutes and rules relevant to the Attorney General’s charitable enforcement responsibilities.

Pursuant to Idaho Code § 67-1401(5),⁴ the Attorney General supervises persons, for-profit corporations, nonprofit corporations, and other organizations that hold property subject to a

¹ The Idaho Aquarium continues to exist as a legal nonprofit corporation for the sole purpose of fulfilling its federal probationary requirements in United States v. Idaho Aquarium, Inc., 12-10020-CR (S.D. Fl. Apr. 14, 2014).

² The Aquarium of Boise was known previously as the Tropical Marine Conservation Institute, Inc., a nonprofit corporation that was organized in Idaho in September 2005.

³ Idaho law does not define the term “charitable asset.” The best definition of the term is found in the Model Protection of Charitable Assets Act (2011), which defines “charitable assets” as “property given, received, or held for a charitable purpose. The term [excludes] property acquired or held for a for profit purpose.” The organization’s “charitable purpose” is defined in its governing documents.

⁴ The history of the Attorney General’s oversight of charitable trusts dates back to 15th Century England when the king’s chancellor began enforcing, on behalf of the beneficiaries, the duties of trustees. Idaho statutorily adopted the common law of England in 1863. But in 1938 the Attorney General’s supervisory authority over charitable trusts was called into question. In Hedin v. Westdala Lutheran Church, 59 Idaho 241, 81 P.2d 741 (1938), the Idaho Supreme Court invalidated a provision in a will that left the residue of the testator’s estate to his trustee for him, at his discretion, to distribute for charitable and religious purposes. The Idaho Supreme Court expressed concern that if the provision was upheld no one would have standing to ensure the trustee properly distributed the funds. Id. at 250, 81 P.2d at 750. Despite years of common law precedent giving the Attorney General supervisory authority over charitable trust assets, as well as an 1863 statute adopting the common law of England, the Idaho Supreme Court denounced the attorney general’s authority to protect public charities, writing, “[a]pparently, in some states, the attorney general has power to commence and maintain suits to protect public charities where property intended for their use is not being properly applied. In [Idaho], such is not one of the duties of that official.” Id. at 250-51, 81 P.2d at 750-51. It was not until 1963 that the Idaho Legislature restored the Attorney General’s common law authority over charitable trust assets. By enacting Idaho Code § 67-1401(5), the Idaho Legislature gave the Attorney General authority over charitable trust assets “*in conformity with the common law.*” Idaho Session Laws, Chapter 161, § 1 (p. 475) (emphasis added). See also In re Eggan’s Estate, 86 Idaho 328, 386 P.2d 563 (1963) (providing that the 1963 amendment to Idaho Code § 67-1401 expanded the attorney general’s duties to include enforcing charitable trusts). For a detailed discussion of the evolution of the attorney general’s common law authorities concerning charitable trust assets, along with a

public⁵ or charitable trust. Unlike private trusts, charitable trusts benefit the public, a community, or a special population, such as animals, children, or seniors. The Attorney General, as the state's attorney, is best-positioned to act on behalf of the public when a person or an entity entrusted with charitable assets diverts them from their or the organization's charitable purpose.

The Attorney General also enforces the Idaho Charitable Solicitation Act, title 48, chapter 12, Idaho Code.⁶ The Act prohibits a person from engaging in unfair, false, misleading, deceptive, or unconscionable acts or practices while planning or conducting charitable solicitations. In Idaho, charitable solicitations include oral or written requests for money, property, credit, or other things of value that will be used for a charitable purpose or to benefit a charitable organization.

The Attorney General's investigative and enforcement authority under the Idaho Charitable Solicitation Act mirrors his authority under the Idaho Consumer Protection Act. Idaho Code § 48-611 allows the Attorney General to depose witnesses and to issue investigative demands to persons who are believed to have information or records relevant to the alleged violation. The Attorney General also may issue subpoenas and conduct hearings to aid in his investigation.⁷

A violation of the Idaho Charitable Solicitation Act constitutes a violation of the Idaho Consumer Protection Act.⁸ When the Attorney General has reason to believe that a charitable organization or its for-profit fundraiser has planned or conducted unfair, false, misleading, or deceptive charitable solicitations, the Attorney General may file a civil action against the organization or its fundraiser and demand injunctive relief, civil penalties, consumer restitution, and attorney's fees and costs.⁹

A person who violates the Idaho Charitable Solicitation Act is subject to the remedies authorized under the Idaho Consumer Protection Act. In addition to imposing injunctive relief, a district court may require the violator to pay civil penalties of up to \$5,000 for each violation of the Idaho Charitable Solicitation Act, as well as consumer restitution and the Attorney General's fees and costs.¹⁰

An effective and efficient state regulatory scheme is necessary to protect Idaho's charitable assets, prevent fraud, and assist charitable organizations. Unlike many other states, however, Idaho lacks comprehensive charity registration, oversight, and enforcement legislation, such

history of charities since the First Century A.D., see MARION R. FREMONT-SMITH, *GOVERNING NONPROFIT ORGANIZATIONS* (Harvard University Press 2008).

⁵ Title 58, chapter 12, Idaho Code outlines Idaho's Public Trust Doctrine, which is based on English common law.

⁶ The Idaho Charitable Solicitation Act, title 48, chapter 12, Idaho Code, is enforced through the Idaho Consumer Protection Act, title 48, chapter 6, Idaho Code.

⁷ IDAHO CODE § 48-612.

⁸ IDAHO CODE §§ 48-1203(1); 48-1204(1); 48-1205.

⁹ IDAHO CODE §§ 48-1204; 48-606.

¹⁰ IDAHO CODE §§ 48-1204; 48-606; 48-607.

as the Uniform Law Commission's Model Protection of Charitable Assets Act.¹¹ Consequently, it is difficult for the Attorney General to identify and solve charitable asset problems before they become crises.

Furthermore, the Attorney General has no enforcement authority under the Idaho Nonprofit Corporations Act.¹² This deficiency makes it impossible for the Attorney General to act on behalf of a nonprofit's damaged members¹³ or to hold grossly negligent directors or officers accountable for their actions. The Attorney General *cannot* pursue court actions against board members if they violate their fiduciary duties of care, loyalty, or obedience and the Attorney General *cannot* petition the court for the removal of grossly negligent board members.¹⁴

As in this case and in most other instances, the Attorney General learns about a "problem charity" after the damage is done. Unfortunately, allegations concerning a fundraising scam, an asset diversion, or the managerial breakdown within a charity typically filters through the media before making its way to the Attorney General. That is why the Attorney General depends on consumers, donors, trustees, attorneys, the media, the public, and the officers, members and employees of charitable organizations to report to his Consumer Protection Division any suspicious activities involving a charity or a person holding charitable assets.

SCOPE OF REVIEW

The Idaho Aquarium is an I.R.C. § 501(c)(3) nonprofit corporation that, between 2008 and 2014, solicited and relied, in part, on charitable contributions from the public to support its charitable mission. During its operations, the Idaho Aquarium held significant charitable assets that were subject to the Attorney General's oversight under Idaho Code § 67-1401(5).

The Attorney General conducted an extensive investigation into allegations that the Idaho Aquarium mismanaged or misused its charitable assets. Unfortunately, however, this investigation was hampered by the Idaho Aquarium's poor record-keeping practices. In many instances, the necessary documentation was missing or never created. Other records, including financial and Board records, were disorganized, unreliable, or inaccurate. Before 2011 the only documents the Idaho Aquarium's leadership maintained were basic corporate records. Documents from 2011, including financial and Board records, were minimal. This record-keeping chaos existed despite the Idaho Aquarium paying hundreds of thousands of dollars to its executive directors, bookkeepers, accountants, finance manager, lawyers, and office staff.

¹¹ The Uniform Law Commission approved the Model Protection of Charitable Assets Act on July 12, 2011. The Act includes a registration requirement for certain charitable organization and fundraisers.

¹² Title 30, chapter 15, Idaho Code.

¹³ The Attorney General's Consumer Protection Division regularly receives requests for assistance from members of nonprofit corporations that refuse to comply with the Nonprofit Corporations Act. Because a court action is cost prohibitive to the member, the violation goes unaddressed.

¹⁴ If an officer or director has misappropriated charitable assets, the corporation may pursue a criminal action and file a civil action against the culpable board member.

The lack of reliable records made it impossible to determine the total amount of charitable assets the Idaho Aquarium held through the years, or if the Idaho Aquarium properly used its charitable assets according to its charitable purpose. Likewise, the Attorney General has no way of confirming the amount of money the Idaho Aquarium received in charitable contributions, or the amount of money the Idaho Aquarium dedicated to furthering its charitable purpose.

Because the Attorney General is unable to document a reliable history of events occurring before 2012, the scope of this investigation was limited primarily to the Idaho Aquarium's activities between January 1, 2012, and October 30, 2013. To better understand the Idaho Aquarium's financial and managerial activities during this period and to better appreciate the responsibilities that public aquariums have to their animals, their supporters, and their communities, the Attorney General's investigation included a number of tasks.

First, the Attorney General issued an Investigative Demand ("Demand") to the Idaho Aquarium and requested information and documents related to its charitable and business operations. While the Demand was pending a response, the Attorney General met with the Idaho Aquarium's legal counsel to discuss the scope of the Demand.

The Attorney General gathered and reviewed publically-available documents, including the Idaho Aquarium's IRS 990 filings and corporate records, and continued a dialog with the Idaho Aquarium's attorney. In rolling productions, the Idaho Aquarium produced its financial records, bank statements, board meeting minutes, additional corporate records, and lease agreements. Later in the investigation, the Attorney General received loan agreements, invoices, and a copy of the Idaho Aquarium's Form 990 filing for 2013.

In early 2014, the Attorney General conducted interviews of several former Board members and current employees of the Idaho Aquarium. The interviews were pivotal to developing a working history of the Idaho Aquarium and identifying the scope of the organization's problems.

Former employees and Board members produced documents to the Attorney General that included internal emails, animal health records, and animal permitting records. The Attorney General also deposed the former President and Interim Executive Director and interviewed Conk to obtain a better understanding of the Board's decisions and actions through the years.

When concerns arose about the Idaho Aquarium possibly purchasing animals for for-profit companies, the Attorney General subpoenaed invoices and payment records from the Idaho Aquarium's animal vendors. The Attorney General also met with Executive Director Nancy Vannorsdel and the Idaho Aquarium's Chief Operating Officer, head biologist, and attorney to discuss unidentified line-item charges and the organization's missing inventory.

The Attorney General reviewed a forensic compilation of documents, emails, photos, videos, web links, and search strings contained on the Idaho Aquarium's computer hard drives. The records gleaned from the computers provided the Attorney General with information about the Idaho Aquarium's unlawful animal acquisitions, its association with for-profit aquariums, its failed fundraising campaigns, and the organization's overall operations.

Throughout the investigation, the Attorney General monitored the criminal cases of Covino, Conk, and the Idaho Aquarium. In addition, the Attorney General reviewed publically available records related to criminal and civil cases involving the Idaho Aquarium's former Board members and its employees.

The Attorney General also researched state and federal laws and rules applicable to obtaining and maintaining public aquarium animals and how public aquariums qualify for accreditation with the Association of Zoos and Aquariums (AZA). Finally, the Attorney General researched charitable public aquariums in the United States concerning the following issues:

- overall organization & reputation (geography, size, number of exhibits and variation of animal and plant species, visitors per year, board size, number of employees, and certification status); and
- financial status (revenue and expenses, including fundraising and executive compensation).

FACTUAL FINDINGS

Records concerning the activities and finances of the Idaho Aquarium between its inception and approximately January 2012 are sparse or simply nonexistent. It is difficult, therefore, to construct an accurate history of the organization's management, the Board's organizational decisions, or to what extent the members' actions or omissions damaged the Idaho Aquarium. The Attorney General obtained its history of the Idaho Aquarium before 2012 primarily from interviews of those previously associated with the Idaho Aquarium, the records of the Idaho Secretary of State's Office ("Secretary of State"), the Internal Revenue Service (IRS), media reports, and the United States Attorney's Office.

According to Conk, it was his idea to bring a nonprofit aquarium to Idaho. At the time, he was working with Covino at the Idaho Saltwater Emporium in Boise. Eager to obtain federal and private funding for a public aquarium, Conk prepared the necessary documents and filed the required application for tax exempt status with the IRS. The two men began searching for appropriate locations and attempted, unsuccessfully, to secure funding for construction.

Covino invested over \$36,000 of his own money in the aquarium, and a family member of Covino's co-signed on the lease for the space at 64 North Cole Road in Boise. With construction moving forward, Covino and Conk were able to raise money by selling season passes to the public.

On August 7, 2007, Conk and Covino filed Articles of Incorporation for the Boise Aquarium Inc. ("Boise Aquarium"), with the Secretary of State. The Articles state that the Boise Aquarium's primary charitable purpose is to "educate and inspire the community to conserve oceanic life."

On March 22, 2008, the Internal Revenue Service (IRS) provided the Boise Aquarium with an advance ruling granting it tax exempt status as of August 7, 2007.¹⁵

The Boise Aquarium's October 15, 2007, Bylaws, which remained effective through 2013, outlined the Boise Aquarium's organizational structure. Vested with overall management authority, the Aquarium's Board, which had to have at least three members, included its directors, officers, chief executive director, and executive director(s). The Bylaws described the general duties of four required officers: (1) a Chairman; (2) a Vice Chairman; (3) a Secretary; and (4) a Treasurer.¹⁶

Under the Bylaws, directors and officers could not receive compensation "for reason of [their] office," but could receive a salary for "duties other than as a director or officer." The Boise Aquarium indemnified the directors and officers for civil and criminal actions, unless the person (1) acted intentionally or with reason to know his action was unlawful, (2) breached his duty of loyalty, or (3) derived a personal benefit.

The Board was responsible for hiring "executive directors." The Chief Executive Director had day-to-day responsibilities for the organization, including carrying out the organization's goals and policies. The Chief Executive Director attended all Board meetings but was not a voting member. Termination of an executive director required a unanimous vote by the Board. To amend or repeal the Bylaws required 50% of the Board and signatures from "the Founders"—Covino and Conk.

The 2007 Bylaws established five types of "members" who received a variety of benefits from the Boise Aquarium in exchange for payment of "membership dues." In a separate "Article," however, the Bylaws read, "[t]he organization shall have no membership dues." While the Bylaws appear contradictory, the Boise Aquarium's financial records indicate it did in fact collect membership dues. But contrary to this fact, Board members reported to the Attorney General that they were unaware of any membership program.

The Board developed a written Conflict of Interest Policy in 2007 based on an IRS sample policy. It does not appear that Board members were required to sign the Policy, and no record exists of new Board members receiving and signing the Policy. According to Board members who spoke to the Attorney General, they were presented with the Policy, but they never signed it.

In September 2008, the Boise Aquarium filed its first Annual Report with the Secretary of State. The Report indicates Conk served as the Boise Aquarium's President, and Covino served

¹⁵ In 2008, the IRS and the U.S. Department of Treasury eliminated the advance ruling process for newly created section 501(c)(3) organizations. Now an organization is classified as a publicly supported charity, not a private foundation, if the organization shows that, when it applies for tax-exempt status, it reasonably can be expected to be publicly supported. The IRS monitors organizations' public charity status after the first five years based on the public support information the organization reports in its Form 990, Schedule A. See <http://www.irs.gov/Charities-&Non-Profits/Charitable-Organizations>.

¹⁶ According to Board members, they did not officially use the titles "Chairman" or "Vice-Chairman" and instead adopted the standard "President" and "Vice-President" titles.

as a director. At a fundraising committee meeting in February 2008, the committee discussed ways to raise money for the Boise Aquarium, including private giving and public auctions.

The Secretary of State administratively dissolved the Boise Aquarium in November 2009 because it failed to file an annual report. However, upon filing its Reinstatement Annual Report Form in early February 2010, the Secretary of State reinstated the Boise Aquarium as an Idaho nonprofit corporation.¹⁷ The Annual Report identified Covino as the Boise Aquarium's President and Conk as its Vice President. Until the summer of 2013, the two men operated the Boise Aquarium as its co-Executive Officers.

The Boise Aquarium became the Idaho Aquarium, Inc. ("Idaho Aquarium"), in August 2010, and, on December 16, 2011, it opened to the public. When the Boise Aquarium filed Articles of Amendment in October 2010 to change its name, it also noted a change in officers. Covino was named Chairman of the Board, and Conk was named CEO. The Idaho Aquarium's management decreased to only three in number in July 2011 with Covino as President, Conk as Secretary, and the Idaho Aquarium's contractor as Treasurer. In June 2012, several directors were added to the Board, but Covino and Conk's positions remained the same.

Covino and Conk established and had exclusive access to the Idaho Aquarium's financial accounts. The business checking account listed Covino's home address for the Idaho Aquarium, and both men had debit cards to access the account. They also opened an expense account, which Covino and Conk often overdrew.

From the Attorney General's review, it appears the Idaho Aquarium's Board members served primarily as figureheads, in that they primarily lent their names and reputations to the fledgling corporation. They attended the monthly board meetings, but provided limited oversight of the men's activities.

Board meeting minutes dated before 2012 are, for the most part, nonexistent. As the Idaho Aquarium's Secretary, Conk recorded some of the early Board meetings on his cell phone or on a digital recorder, but the recordings were never transcribed. Consequently, the Board did not receive, review, or approve prior meeting minutes and past decisions were not documented. Furthermore, while the Board met once each month, because so many decisions had to be made quickly, Conk and Covino often made telephone calls to individual Board members to obtain approval for certain actions. No written records of these phone conversations exist.

¹⁷ The Secretary of State may administratively dissolve a nonprofit corporation under Idaho Code § 30-3-115B for any of the reasons set forth in Idaho Code § 30-3-115A, including a corporation's failure to file an annual report. An administratively dissolved corporation continues its corporate existence, but it may not carry on any business except that which is necessary to wind up its affairs. The corporation may apply to the Secretary of State for reinstatement within 10 years after the dissolution date. When the Secretary of State reinstates the corporation, the effective date relates back to and takes effect as of the date on which the Secretary of State dissolved the corporation. The nonprofit corporation continues its business as if the dissolution never occurred. See IDAHO CODE § 30-3-115C.

The first set of substantive written Board meeting minutes after 2012 is dated January 11, 2012, and consists of two pages of handwritten notes. At the meeting, Covino told the Board he deserved “[\$]1k a month more to [\$]5k a month according to sales.” Covino provided the Board with other “aquarium salary comparisons,” including those of the Living Planet Aquarium in Draper, Utah,¹⁸ the Long Beach Aquarium of the Pacific,¹⁹ and Zoo Boise.²⁰

The Board’s minutes do not detail how the Board compared the organizations with the Idaho Aquarium or how the vote on Covino’s salary request was conducted. Ultimately, however, the Board approved Covino’s salary request for \$5,000 per month. Also at Covino’s request and because Conk lacked transportation to work, the Board approved the Aquarium’s purchase of two vehicles and granted Covino and Conk \$500 in monthly gas allowances.²¹

The Idaho Aquarium purchased a 2005 Pontiac Vibe for \$6,100 and a 2000 Lincoln LS for \$4,941. The vehicles were available at the Idaho Aquarium for employee errands and to use for other business purposes. The Lincoln LS was replaced with a 2002 Audi A4 after the Lincoln was totaled, but the Audi A4 soon suffered the same fate as the Lincoln.

The Idaho Aquarium grew at a rapid rate in early 2012 and consistently earned monthly admission revenue over \$100,000. The public contributed cash to the Idaho Aquarium via donation jugs that were located throughout the facility and visitors could donate money to the Aquarium for animal adoptions and exhibit expansions. All revenue and contributions were deposited into the Idaho Aquarium’s business account.

According to its March 2012 meeting minutes, the Board reviewed the Idaho Aquarium salary comparison policy and Covino’s “data analysis for museums/aquariums compared to gross annual [numbers].” Based on the stability of the Idaho Aquarium, the salary comparison policy, and the number of hours Covino and Conk worked at the Idaho Aquarium each week, the Board approved salaries of \$96,000 for Covino and Conk. A month later they both received \$5,000 spring break bonuses.

¹⁸ The Living Planet Aquarium is a 136,000 square foot facility in Draper, Utah. It currently houses 451 species and 2,484 animals, including penguins, river otters, caiman alligators, and anacondas. In 2011 the Living Planet Aquarium reported gross annual receipts of \$6,283,644, and it paid its CEO \$103,563.

¹⁹ The Long Beach Aquarium of the Pacific, an AZA-accredited facility located in Long Beach, California, is the fourth most visited aquarium in the country, attracting 1.5 million visitors each year. It houses 11,000 ocean animals, and in 2011, it reported gross receipts of \$30,542,313. The Aquarium of the Pacific includes a 211,000 square foot seal and sea lion habitat, a shorebird sanctuary, and an ocean science center. In 2011, the CEO’s salary was \$375,393.

²⁰ Zoo Boise is home to over 200 animals, including penguins, giraffes, and tigers. The City of Boise funds Zoo Boise’s executive director position. In 2014 the executive director’s reported salary was \$110,011. The Idaho Zoological Society (a/k/a Friends of Zoo Boise), an I.R.C. § 501(c)(3) membership organization, supports Zoo Boise’s animal acquisition, education, conservation, and capital improvement projects. In 2011 the Society reported total revenue of \$1,112,009. Zoo Boise is an AZA-accredited facility.

²¹ In conjunction with approving Covino’s salary and vehicle requests, the Board agreed at the January 2012 meeting to adopt a salary comparison policy. The Board members who spoke to the Attorney General, however, reported that no such policy was drafted, much less adopted.

Sometime in the spring of 2012, the Idaho Aquarium decided to add a shark and ray exhibit. Covino contacted a dealer in the Florida Keys to purchase two spotted eagle rays for \$1,250 each. The dealer informed Covino that it was not possible to obtain a permit for the rays, but Covino proceeded with the purchase, paying the dealer \$3,750 to ship three rays from Miami to Boise. On May 9, 2012, Covino picked up the animals at the Boise Airport and transported them to the Idaho Aquarium. He later paid \$1,250 to the dealer for an additional ray.

In June 2012, Covino arranged with another dealer to buy two lemon sharks for the Idaho Aquarium. During a telephone conversation with Conk, the dealer told Conk that the dealer did not have permits for the sharks, and the transaction would have to be conducted “on the down low.” Three months later, the dealer shipped two lemon sharks from Florida to Boise. Using Conk’s pickup, Covino transported the animals from the Boise Airport to the Idaho Aquarium. The Idaho Aquarium paid the dealer \$1,300 for the sharks on October 18, 2012.

The federal Lacey Act prohibits a person from acquiring in interstate commerce any fish that is taken or sold in violation of state law.²² In Florida, it is unlawful to harvest or sell lemon sharks or spotted eagle rays.²³ Consequently, on November 8, 2012, a Florida federal grand jury issued a four-count indictment²⁴ against Covino, Conk, and the Idaho Aquarium for violations of the Lacey Act.

The Idaho Aquarium’s Board failed to maintain any written minutes for its July 2012 through November 2012 meetings. As such, the Board’s discussions and decisions concerning the Idaho Aquarium’s acquisition of the sharks and rays and its other significant activities during this period are undocumented.

For example, it is unknown what transactions the Board approved between the Idaho Aquarium and the Portland Aquarium, a for-profit aquarium.²⁵ Throughout 2012, Covino assisted with constructing and opening the Portland Aquarium, which, according to the company’s operating agreement, Covino owned a 40% interest. The operating agreement indicates Covino was responsible for supervising the construction of the animal tanks, overseeing the facility’s animal acquisitions, managing animal viability, care, maintenance, and feeding, and handling all protocol related to day-to-day maintenance.

In late 2012, Covino asked Conk to approve a \$70,000 loan from the Idaho Aquarium to the Portland Aquarium. Conk allegedly was unaware at that time that Covino was a part owner of the Portland Aquarium. According to Conk, he initially disapproved the loan, but Covino

²² The applicable provision of the Lacey Act provides: (a) it is unlawful for any person (2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce—
(A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law; 16 U.S.C. § 3372(a)(2)(A).

²³ The Florida rule provides that it is unlawful “to harvest, possess, land, purchase, sell, or exchange” lemon sharks or spotted eagle rays. FL. ADMIN. CODE § 68B-44.008.

²⁴ See Indictment, United States v. Covino, et al., 12-10020 (Dist. Ct. S.D. Fl. Nov. 8, 2012). Because Covino transported the illegally harvested lemon sharks in Conk’s 2005 Ford F-250 Super Duty Crew Pickup, the United States included in the Indictment a criminal forfeiture count.

²⁵ The Portland Aquarium is an Oregon limited liability company, f/k/a the Oregon Aquarium LLC, formed on June 29, 2012.

convinced Conk that the loan was a good investment.²⁶ Conk instructed Covino to call the other Board members to obtain their approval, but it is unknown whether Covino actually obtained approval from the full Board. By early January 2013, the Portland Aquarium had repaid the loaned money, along with \$3,000 in interest. Conk later learned that Covino was a 40% owner of the Portland Aquarium.

Other than the bookkeeping record evidencing the loan and its repayment, the Idaho Aquarium could not provide any documents (1) describing the repayment terms of this transaction; (2) confirming the full Board's approval; or (3) disclosing the loan to the IRS.

On one occasion, the Idaho Aquarium also may have purchased animals for the Portland Aquarium. A vendor's invoice, along with the Idaho Aquarium's payment records, reveal that, in September 2012, the Idaho Aquarium paid \$615 to the vendor for animals that were delivered to the Portland Aquarium on August 30, 2012.

It is possible that the Portland Aquarium reimbursed the Idaho Aquarium for the animals' cost or, in the alternative, that the Idaho Aquarium received animals or supplies of equal value in trade from the Portland Aquarium. At this point, however, the Idaho Aquarium is unable to provide records documenting that the Idaho Aquarium recovered its \$615 from the Portland Aquarium.

At the December 2012 Board meeting, the Board approved paying "back pay" to Covino and Conk for the time they worked with no pay. The calculations on which the awards are based, as well as how much the Board approved, are not provided in the minutes. Ultimately, however, the two men received \$98,000 in back pay.²⁷

Two of the six Board members were absent from the December 5th meeting, and the remaining four members, who included Covino and Conk, attended by telephone. It does not appear from the minutes that the Board members addressed Covino and Conk's obvious conflict of interest or that the Board excluded the two men from the discussion or the vote (assuming one occurred).

The Idaho Aquarium's 2012 payroll records show that Covino received payments totaling \$140,500, and Conk received \$156,500. These amounts include the men's salaries, bonuses and commissions, and back pay awards. They also received employment benefits worth thousands of dollars, including payments for their cell phones, gas, insurance, food, and other personal expenses.²⁸

²⁶ According to bookkeeping records, the \$70,000 loan was made in two parts. The Portland Aquarium received \$50,000 in October 2012 and it received \$20,000 in December 2012.

²⁷ Financial records from 2012 indicate that Covino received \$41,000 in back pay and Conk received \$57,000.

²⁸ In January 2012, the Board approved a fuel allowance of \$500 per month for Covino and Conk, and in August 2013, it approved a cell phone allowance of \$100 per month for Conk. From the beginning, however, Covino and Conk billed their fuel, cell phone, and food bills to the Idaho Aquarium. It didn't matter how much the men spent or what they purchased.

It is unclear which benefits the Board affirmatively approved because the documentation is vague or nonexistent. However, the Board and the Idaho Aquarium's multiple financial advisors certainly were aware of how Covino and Conk were spending the Aquarium's funds.

In 2012 the Idaho Aquarium engaged in a number of fundraising activities, including one formal event that resulted in a loss to the Idaho Aquarium of approximately \$7,000. The public also contributed cash to donation jugs scattered throughout the Idaho Aquarium. When the jugs were full, the management counted the cash and deposited it into the Idaho Aquarium's general business account.

The Idaho Aquarium's profitability in 2012 is evident from its IRS Form 990. It reported total revenue of almost \$1.4 million, including \$78,315 in contributions and grants and \$1,153,748 in program service revenue.

Idaho Aquarium 2012 IRS Form 990 Snapshot		
Revenue Type	Revenue Amount	% of Total Revenue
Contributions/Grants	\$ 78,315	6%
Program Service Revenue	\$1,153,748	83%
Investment Revenue	\$ 3,000	<1%
Other Revenue	\$ 159,855	11%
Total Revenue	\$1,394,918	100%
Expense Type	Expense Amount	% of Total Expense
Salaries & Benefits	\$576,131	55%
<i>Officers, Directors, Key Ees</i>	<i>\$296,500</i>	<i>28%</i>
Other Expenses	\$473,076	45%
Total Expenses	\$1,049,207	100%
\$1,394,918 (Revenue) -	\$1,049,207 (Expenses)	= \$345,711

In February 2013, Covino and Conk were arrested on the federal charges outlined in the November 2012 Indictment. Despite the men's arrests, the Board did not remove them from their leadership positions. Instead the Board elected Amanda Davison ("Davison"), an Idaho Aquarium employee, as its "acting" President. According to Davison, she had complete authority over the Idaho Aquarium's finances and accounts.²⁹ Her responsibilities included counting and verifying daily cash, credit card, and check purchases, depositing funds, paying the Idaho Aquarium's vendors, maintaining the books, setting up new vendor accounts, and handling payroll.³⁰

²⁹ In addition to the Idaho Aquarium's checking and expense account, Davison established a savings account with \$10,000 to pay court fees and fines.

³⁰ According to Davison, her duties with the Idaho Aquarium expanded throughout 2013 as she assumed the roles of human resources and office manager and chief executive director and president. Davison reportedly managed "the entire [Aquarium]," overseeing animal acquisitions, the Idaho Aquarium's employees, and

Covino was arrested a second time in late February 2013 for violating the conditions of his pretrial release. Federal prosecutors filed a motion to revoke his \$100,000 bond because Covino allegedly directed his nephew to facilitate the destruction of evidence related to Covino's attempt to unlawfully purchase undersized nurse sharks.

The Board voted in March 2013 to cover all of the expenses related to defending Covino, Conk, and the Idaho Aquarium in Florida. Davison, on behalf of the Idaho Aquarium, and Conk, on his own behalf, traveled to Florida together in April 2013 for court appearances. Davison and Conk each received \$1,719.87 from the Idaho Aquarium for their travel costs. It does not appear the Idaho Aquarium paid for Covino's travel to Florida or that it paid Covino or Conk's legal expenses.³¹

In April 2013, the U.S. Fish & Wildlife Service seized the Idaho Aquarium's puffins³² because the Idaho Aquarium lacked the requisite experience and environment to exhibit the birds. The Idaho Aquarium also failed to obtain a migratory bird permit before it acquired them.³³

Covino moved to Texas on June 12, 2013, and took with him the 2007 Toyota FJ Cruiser that he purchased, in part, using the Idaho Aquarium's money.³⁴ Despite leaving Idaho, however, Covino remained on the Board until August 28, 2013. Also, it was not until after October 2013 that the Board removed Covino's name from the Idaho Aquarium's checking and expense accounts. According to payroll records, between January and June 2013, the Idaho Aquarium paid Covino \$30,307. It is unknown how much he received in benefits.

Conk remained with the Idaho Aquarium after Covino's departure and asked the Board to approve a salary increase. To support his request, Conk presented to the Board a few pages from the American Alliance of Museums' 2012 Natoria Comparative Museum Salary Study

ensuring the building was maintained according to state code. Davison also directed the Board meetings and helped "to make the [Aquarium] grow and prosper."

³¹ Nonprofit corporations in Idaho have authority to indemnify certain persons who become subject to an actual or threatened civil or criminal investigation or action. The person must have acted in good faith and in a manner which he reasonably believed to be in or not opposed to the corporation's best interests. If the person committed a crime, he must have had a reasonable cause to believe his conduct was lawful. Typically the corporation purchases directors and officers insurance to cover indemnification expenses. See IDAHO CODE § 30-3-88.

³² In October 2012, the two-year-old horned puffin (Pisces) began showing signs of lethargy and weakness, holding her right wing slightly slack. She was diagnosed with aspergillosis, an upper respiratory infection that requires treatment with antifungals, antibiotics, and supportive nutrition. Pisces ultimately succumbed to her illness.

³³ After the U.S. Fish and Wildlife Service took the puffins, the Idaho Aquarium applied for a migratory bird permit. The application was denied for various reasons, including the fact that Conk had three prior felony convictions related to wildlife trafficking. Federal law prohibits a person who is convicted of or who pleads guilty to a federal wildlife felony from obtaining certain animal permits. 50 C.F.R. § 13.21(c)(1).

³⁴ To purchase the Toyota, Covino used the insurance proceeds from the Idaho Aquarium's wrecked Audi, along with \$7,500 of the Idaho Aquarium's money. Through a private settlement agreement, the Idaho Aquarium was able to resolve this dispute, along with issues involving possession of the gift shop inside the aquarium's Cole Road facility.

(“AAM Salary Study”).³⁵ The AAM Salary Study reports that museums with a budget size of \$1 to \$3 million paid their CEOs³⁶ a median salary of \$100,000.

On August 14, 2013, the Board voted to increase Conk’s salary to \$116,000 (effective August 12) and to pay him an \$11,680 bonus, which he received on August 17, 2013. Conk also had a \$100 per month cell phone allowance and continued use of the Idaho Aquarium’s vehicle. The minutes do not explain the Board’s basis for awarding Conk a salary that exceeded the \$100,000 median salary identified in the AAM Salary Study.

Less than two weeks later, Conk resigned from the Board, and agreed instead to work as an independent contractor for \$22.50 per hour. It is unclear, however, what duties he fulfilled for the Idaho Aquarium.

Davison became Interim Chief Executive Director³⁷ of the Idaho Aquarium on or about August 28, 2013, and the Board approved an annual salary of \$35,000. During Davison’s management term, she received advice from Conk about how to handle the pending felony charges against the corporation and how to resolve ongoing employee disputes.

In September 2013, Davison flew to Florida to enter a guilty plea in the federal case on behalf of the Idaho Aquarium. Assuming two days of flight time and one day for the hearing, the trip should have taken no more than three days. The Board, however, paid \$3,698 to fund a week-long vacation for Davison in Florida and also gave her \$500 in extra spending cash.

During the fall of 2013, the Idaho Aquarium’s management and operations became a public spectacle. Board members’ personal and petty conflicts fueled the Board’s inability to work as a cohesive group, and the members’ lack of managerial experience and knowledge exacerbated the organization’s financial and administrative problems.

Covino and Conk each pled guilty to one count of conspiracy to violate the Lacey Act, and, in December 2013, they were sentenced to federal prison.³⁸ Both men completed their prison terms and were released.³⁹

³⁵ The 2012 AAM Salary Study is based on museum compensation data from four regional museum associations: the Association of Midwest Museums (AAM), the Mountain Plains Museum Association (MPMA), the New England Museum Association (NEMA), and the Southeastern Museums Conference (SEMC). The exact publication date of the 2012 Salary Study is unknown.

³⁶ According to the study’s data, a CEO—the museum’s leader who has an advanced academic degree and who directs the museum’s activities, policies, personnel, and finances—had a median age of 55 and five years of experience in the position.

³⁷ In a subsequent filing with the Secretary of State, Davison also reported her position as President.

³⁸ Covino was sentenced to imprisonment for 12 months and one day plus two years of supervised probation. While on probation, he may not engage in exhibiting, selling, acquiring, or purchasing fish or wildlife. Judgment, *United States v. Covino*, 12-10020-CR (S.D. Fl. Dec. 4, 2013). Conk was sentenced to imprisonment for three months plus 180 days of home detention. Judgment, *United States v. Conk*, 12-10020-CR (S.D. Fl. Dec. 4, 2013).

³⁹ After serving three months at the Miami Federal Detention Center, Conk returned to Idaho on a warrant for probation violations in his 2011 federal case. At his probation revocation hearing on July 9, 2014, the court found that Conk violated his probation and revoked his probation. The court sentenced Conk to time served and supervised released for two years to be served concurrently with his probation in his 2012 case. Probation

In its 2013 IRS Form 990, the Idaho Aquarium reported total revenue of \$1,049,193, total expenses of \$1,086,623, and net assets of \$329,095. It received \$46,447 in contributions and grants and earned \$974,512 in program service revenue.

In 2013, the Idaho Aquarium experienced a significant loss in revenue. Despite only a modest increase in its expenses that year, the Idaho Aquarium entered a precarious financial state that year.

Idaho Aquarium

2013 IRS Form 990 Snapshot

Revenue Type	Revenue Amount	% of Total Revenue
Contributions/Grants	\$ 46,447	4%
Program Service Revenue	\$974,512	93%
Other Revenue	\$ 28,234	3%
Total Revenue	\$1,049,193	100%

Expense Type	Expense Amount	% of Total Expense
Salaries & Benefits	\$519,261	48%
<i>Officers, Directors, Key Ees</i>	<i>\$110,503</i>	<i>10%</i>
Other Expenses	\$567,362	52%
Total Expenses	\$1,086,623	100%

\$1,049,193 (Revenue) -	\$1,086,623 (Expenses)	= (\$37,430)
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2012-2013 Comparison

Revenue / Expenses / Assets

Description	2012	2013	% Change
Total Revenue	\$1,394,918	\$1,049,193	- 25%
Total Expenses	\$1,049,207	\$1,086,623	4%
(Revenue) - (Expenses)	\$ 345,711	-\$ 37,430	- 111%
Net Assets	\$ 366,525	\$ 329,095	- 10%

The Idaho Aquarium was sentenced in April 2014 for conspiracy to violate the Lacey Act. The court imposed three years of corporate probation and required the Idaho Aquarium to pay a \$10,000 criminal fine, as well as \$50,000 to the National Fish and Wildlife Foundation. The Idaho Aquarium paid \$30,000 following its sentencing and will pay the remaining \$30,000 in 2015.⁴⁰

Because the felony conviction greatly restricts the Idaho Aquarium's ability to obtain animals, the Board resolved to transfer the Idaho Aquarium's assets to the Aquarium of Boise, f/k/a

Revocation, United States v. Conk, 11-CR-279-BLW (D. Idaho July 9, 2014). Covino was released from federal prison on August 22, 2014.

⁴⁰ Judgment and Sentence, United States v. Idaho Aquarium, Inc., 12-10020-CR (S.D. Fl. Apr. 14, 2014).

Tropical-Marine Conservation Institute, Inc. As long as the Idaho Aquarium remains on corporate probation, it continues to exist. However, its assets are limited and the Idaho Aquarium does not operate the public aquarium or handle any of its associated assets.

DISCUSSION OF LEGAL CONCLUSIONS AND ENFORCEMENT DECISIONS

1. While representing to donors that their charitable contributions supported the Idaho Aquarium's programs and charitable purposes, the Idaho Aquarium wasted its charitable assets on expenses that were unrelated to or that failed to further the Idaho Aquarium's mission

The primary goal of *for-profit* corporations is to make money for shareholders. A charitable corporation's primary goal, on the other hand, is to use its earnings to further the organization's charitable mission.

A violation of the Idaho Charitable Solicitation Act occurs when the charitable corporation represents that its charitable assets support its programs when, in fact, the charity wastes its assets on excessive salaries and benefit packages, exorbitant travel expenses, inflated fundraising costs, and other large expenses. Significant examples of the Idaho Aquarium's bad acts include, but are not limited to, its:

- ***poor record keeping practices.*** Despite the multitude of compensated individuals responsible for maintaining the integrity of the Idaho Aquarium's records, because of their ineffectiveness, the Attorney General has little confidence in the completeness or accuracy of the Idaho Aquarium's financial, tax, inventory, or Board records. The Idaho Aquarium's poor record-keeping practices make it impossible to determine to what extent the organization's charitable assets were misappropriated.
- ***deceptive solicitations for charitable contributions to support its mission and to fund specific projects, including a river otter exhibit.*** Rather than segregating the contributions or identifying their purpose, the Idaho Aquarium deposited all contributions it received into its general operations account without any use restrictions. It is unknown whether the Idaho Aquarium actually received all of the cash contributions that employees collected from the donation jugs.
- ***payment of excessive compensation and benefits to Covino during 2012.*** Covino dedicated a substantial amount of his time that year to developing his for-profit company—the Portland Aquarium—in Milwaukee, Oregon. He was either absent from the Idaho Aquarium or using the Idaho Aquarium's resources to promote the Portland Aquarium. Furthermore, Covino used the Idaho Aquarium's money to purchase non-business related items while he was in Oregon. Also, with no objection from the Board, Covino and Conk used the Idaho Aquarium's money to purchase personal items.

- ***alleged purchase of animals for a for-profit aquarium.*** The Idaho Aquarium may have purchased animals that were shipped to the Portland Aquarium, a for-profit company. It is unknown whether the Idaho Aquarium was reimbursed for the purchase.
- ***failure to prevent or stop employees from taking cash from the Idaho Aquarium's accounts.*** Records show that employees took funds from petty cash reserves, but the accuracy of the "records" (i.e., sticky notes) make it impossible to calculate how much was taken or whether the money was returned.
- ***failure to prevent Covino from using the Idaho Aquarium's money to purchase a car and subsequently taking that car with him to Austin.*** Covino's transaction for the car appears in the Idaho Aquarium's financial records. It also was not a secret that Covino drove the car to Texas when he moved there. Yet, when questions arose about the "whereabouts" of the car and how Covino obtained it, the Board claimed it was unaware of what occurred.
- ***payment of over \$11,000 to Conk to reimburse him for the loss of his pickup truck to federal authorities.*** Although the payment to Conk was labeled as a "bonus," several Board members confirmed that they paid Conk the \$11,000 because they felt bad that he lost his truck in the federal forfeiture action.
- ***financing of a vacation for Davison in Florida.*** When Davison traveled to Florida to attend a brief court appearance on behalf of the Idaho Aquarium, the Board paid for her to stay for a week and gave her \$500 in spending money.

To address the Idaho Aquarium's alleged violations of the Idaho Charitable Solicitation Act, the Attorney General originally requested that the corporation enter into a court-approved assurance of voluntary compliance ("assurance"). The assurance would have required the Idaho Aquarium to implement policies and procedures to better protect its charitable assets. However, an assurance became unnecessary when the Idaho Aquarium ceased operations and transferred its assets to the Aquarium of Boise.

2. The Board Failed to Understand or Appreciate Their Fiduciary Duties under the Idaho Nonprofit Corporation Act

The Attorney General does not have authority to enforce the Idaho Nonprofit Corporation Act, title 30, chapter 3, Idaho Code,⁴¹ which covers the formation, governance, and dissolution of entities organized as nonprofit corporations in Idaho. However, because the Act outlines the standards of conduct for a charitable corporation's directors and officers, the Act and its application to the Board's actions warrant discussion.

⁴¹ The Idaho Nonprofit Corporation Act is based on the Revised Model Nonprofit Corporation Act (RMNCA), promulgated by the American Bar Association in 1987. However, the Idaho Nonprofit Corporation Act differs significantly from the RMNCA. For example, the Idaho Nonprofit Corporation Act excludes the RMNCA's provisions that give enforcement authority to the attorney general. Consequently, enforcement of the Idaho Nonprofit Corporation Act is left to a corporation's members and directors. IDAHO CODE § 30-3-44.

The Idaho Nonprofit Corporation Act outlines standards of conduct for directors and officers that—for the most part—mirror the standards of for-profit board members.⁴² Like for-profit boards, nonprofit boards have fiduciary responsibilities to the organizations they serve.

The Idaho Nonprofit Corporation Act imposes three fiduciary duties on directors and officers (collectively “board members”⁴³) of nonprofit corporations: (1) the duty of care; (2) the duty of loyalty; and (3) the duty of obedience.⁴⁴ In the following subsections, the Attorney General discusses the standards for each fiduciary duty and identifies any failures of the Idaho Aquarium’s Board members to fulfill that duty.

a. Duty of Care

The Idaho Nonprofit Corporation Act is based on the Revised Model Nonprofit Corporation Act of 1987, which adopted the corporate standard of care for board members. Under the corporate standard, board members must act (i) in good faith, (ii) with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and (iii) in a manner the members reasonably believe to be in the best interests of the corporation.⁴⁵

“Good faith” requires honesty and fair dealing and encompasses the duty of loyalty. A court examines the board member’s state of mind to determine if his or her actions demonstrated intent to take advantage of the corporation. When evaluating this component, a court asks whether the board member *subjectively* believed that he or she was acting in the best interests of the corporation and, if so, whether his or her belief was *objectively* reasonable.⁴⁶

An “ordinarily prudent person” is someone who makes decisions by balancing the potential risks against the rewards. Board members must use common sense and make informed judgments. They may not skip meetings, ignore corporate affairs, or ignore the information they receive. When a board member is aware of a problem, he or she has a duty to inquire into the issue.⁴⁷

To give courts maximum flexibility in applying the second component, courts must also consider two sub-elements: the “like position” element and the “similar circumstances”

⁴² See REV. MODEL NONPROFIT CORP. ACT § 8.30 cmt. 1 & § 8.42 cmt. (1987). See also Stern v. Lucy Webb Hayes Nat’l Training School for Deaconess and Missionaries, 381 F. Supp. 1003 (D.D.C. 1974).

⁴³ The Attorney General recognizes that, in the typical corporation, the management functions of directors and officers are separate and distinct. Generally, officers are responsible for the corporation’s day-to-day operations, while the directors remotely monitor the corporation’s affairs and the officers’ activities. However, directors and officers are both fiduciaries of the corporation and typically serve together as board members.

⁴⁴ See Thomas Lee Hazen & Lisa Love Hazen, Punctilios and Nonprofit Corporate Governance—A Comprehensive Look at Nonprofit Directors’ Fiduciary Duties, 14 U. PA. J. BUS. L. 347 (2012).

⁴⁵ IDAHO CODE §§ 30-3-80(1)(a)-(c) (directors) & 30-3-85(1)(a)-(c) (officers).

⁴⁶ See REV. MODEL NONPROFIT CORP. ACT § 8.30 cmt. 5 & § 8.42 cmt. (1987).

⁴⁷ The qualifying phrase “similar circumstances” allows courts to consider a board member’s background, skills, and experience when evaluating the person’s conduct. Most courts reject the theory, however, that unpaid members should be held to a lower standard of care. See REV. MODEL NONPROFIT CORP. ACT § 8.30 cmt. 2 & § 8.42 cmt. (1987).

element.⁴⁸ A court judges the board member's actions based on the goals and resources of that organization, not a hypothetical one. Additionally, the court may consider the board member's particular skills, background, or experience. For example, a board may want to elect an individual because the person has particularized experience in one area, such as fundraising. While that person would serve well as a director/fundraising committee's leader, he or she lacks the requisite knowledge and experience to serve as an officer.

The third component of the corporate duty of care is whether the board member acted in a manner that he or she reasonably believed was in the best interests of the corporation. As with the good faith requirement, a court likely will examine the board member's state of mind to determine if the decision was reasonable and if the board member believed the decision was in the corporation's best interests.⁴⁹

Generally, a nonprofit board is expected to perform the same *minimum* duties that a for-profit board performs. The American Law Institute's Principles of Corporate Governance describe those duties broadly:

- Determine and regularly evaluate the compensation of senior executives, replacing them when necessary;
- Oversee the conduct of the corporation's business to determine if it is being managed properly;
- Review and approve the corporation's financial objectives and major actions;
- Review and approve major changes to, and answer major questions concerning the auditing and accounting practices the corporation uses;
- Perform such other functions as are prescribed by law or assigned to the board under a standard of the corporation.⁵⁰

In the performance of their duties, board members may rely on information, opinions, reports, and financial data received from (i) officers and employees whom board members reasonably believe are reliable and competent in such matters; (ii) attorneys, accountants, and other professionals as to matters within the person's professional or expert competence; or (iii) a committee of which the board member is not a member if the committee merits confidence.⁵¹

⁴⁸ These additional elements also remind courts that the differences between nonprofit and for-profit corporations are important considerations when evaluating a board member's conduct. A nonprofit corporation serves the public while the for-profit corporation serves its shareholders.

⁴⁹ See REV. MODEL NONPROFIT CORP. ACT § 8.30 cmt. 6 & § 8.42 cmt. (1987).

⁵⁰ PRINCIPLES OF CORPORATE GOVERNANCE §3.02 (Am. Law Inst.).

⁵¹ IDAHO CODE §§ 30-3-80(2)(a)-(c) (directors) & 30-3-85(2)(a)-(c) (officers). The reliance factor assumes that the board member read the report or statement, was present at the meeting where the report or statement was presented, or otherwise evaluated the report or statement. The board member may not claim reliance on the information provided in a treasurer's report if he or she never received and reviewed it. See REV. MODEL NONPROFIT CORP. ACT § 8.30 cmt. 7 & § 8.42 cmt. (1987).

A board member violates his or her duty of care if he or she “has knowledge concerning the matter in question that makes reliance [on the provided information, opinions, reports, or financial data] unwarranted.”⁵²

The business judgment rule—a tenet of for-profit corporations—affords protection to board members as long as the member’s business decision is reasonably informed, free of conflicting interests, and has a plausible basis of rationality. Examples of decisions that fall within the business judgment rule include the decision to (a) fund a certain project, (b) produce a particular play, or (c) build a specific exhibit.

In 2012 and 2013, the Idaho Aquarium’s leadership changed frequently and oftentimes without explanation, correct procedure, or proper documentation. Generally, however, until late August 2013,⁵³ Covino and Conk controlled the organization.

Viewed independently of the Board as a whole, Covino and Conk’s actions demonstrate departures from the requisite duty of care demanded of nonprofit board members. For example:

- ***Unlawful purchase of animals.*** Covino and Conk used the Idaho Aquarium’s funds to unlawfully purchase lemon sharks and spotted eagle rays. The men knew or should have known that their activities were unlawful and would injure the Idaho Aquarium. Ultimately, their actions resulted in a felony conviction for the Idaho Aquarium, which has had severe economic and reputational consequences on the organization.
- ***Improper acquisition of Alaskan puffins.*** In June 2012, Covino and Conk facilitated the Idaho Aquarium’s acquisition of four Alaskan puffins. Four people traveled to Alaska, spending \$8,400 of the Idaho Aquarium’s money, to pick up the puffins and to accompany them to the Idaho Aquarium. Covino and Conk knew or should have known that the Idaho Aquarium lacked proper legal authority and the requisite experience to care for the puffins. Their actions, in part, caused the death of one puffin, an enormous loss for the Idaho Aquarium. Less than one year later, the U.S. Fish & Wildlife Service confiscated the remaining three puffins because the Idaho Aquarium lacked a migratory bird permit and could not properly care for the birds. Losing the four animals further damaged the organization’s finances and public image.
- ***Excessive executive compensation.*** Covino accepted \$140,500 from the Idaho Aquarium in compensation, bonuses and commissions, and back pay in 2012, yet he spent a substantial amount of his time that year constructing the for-profit Portland Aquarium. Furthermore, while Covino was in Oregon he used the Idaho Aquarium’s debit card to make non-business related purchases and to withdraw cash from the Idaho Aquarium’s bank account.

⁵² IDAHO CODE § 30-3-80(3).

⁵³ Covino and Conk were removed from the Board, but continued to have access to the Idaho Aquarium’s financial accounts after they left.

Covino knew or should have known at the time that his salary was excessive because of his affiliation with the Portland Aquarium. Also, Covino knew or should have known that using the Idaho Aquarium's assets to his for-profit company harmed the charitable organization.

- ***Failure to reimburse the Idaho Aquarium.*** Covino took \$7,500 from the Idaho Aquarium in February 2013 to use as a down payment on a 2007 FJ Cruiser. He took the FJ Cruiser with him to Texas in June 2013 when he moved there without first reimbursing the Idaho Aquarium or notifying the Board. It was not until much later that the Idaho Aquarium was able to recover its loss through an agreement with Covino.
- ***Failure to resign their Board positions.*** Rather than resigning their positions with the Idaho Aquarium, Covino and Conk continued to serve on the Board after being indicted on federal felony charges. Covino even violated his pre-trial release and was arrested a second time on a new charge, but still did not resign from the Board or fully disassociate himself from the Idaho Aquarium. Also, only a few months before his sentencing, Conk accepted a salary increase from the Idaho Aquarium along with an \$11,680 "bonus." Covino and Conk's continued association with the Idaho Aquarium after their indictments made a bad situation worse, further damaging the organization's fragile reputation and financial state.

The Idaho Aquarium's other Board members did little to oversee Covino and Conk's activities. For the most part, the Board members made decisions when Covino and Conk called upon them, but otherwise the members kept their distance.

The Board members who spoke to the Attorney General admitted they knew little about nonprofit corporations and said they believed—at the time—that Covino and Conk, as the Idaho Aquarium's "founders," owned the Idaho Aquarium. Some viewed Covino as the "boss," while others believed Conk was in charge. The Board members explained that they had little input or control over Covino and Conk's salaries. According to the Board members, they believed that, as the "founders" (or "owners") of the Idaho Aquarium, Covino and Conk were entitled to whatever they wanted.

While boards may delegate duties to others and may reasonably rely on the advice of the organization's attorneys, accountants, and other qualified professionals, boards may not divorce themselves from their supervisory responsibilities. To fulfill their required duty of care, the Idaho Aquarium's Board members were obligated to evaluate the information they received from Covino and Conk (as officers) and to make decisions using their own independent judgment. Instead, it appears that Covino and Conk made all the decisions and provided little to no information to the other Board members.

The Board's negligent decisions and actions include:

- ***failing to protect the Idaho Aquarium's charitable assets.*** The Board did not question Covino about the "numbers" he presented at Board meetings and did not require written financial reports from the Treasurer. The Board did not review the Idaho Aquarium's accounting records or bank statements or require independent audits of the Idaho Aquarium's finances or tax filings.
- ***failing to question the amount of Covino and Conk's salary requests in 2012.*** The Board failed to use comparable compensation packages to determine Covino and Conk's salaries. Instead they referenced compensation packages from markedly larger and more established aquariums. The Board did not review Covino and Conk's work quality or confirm they were even working at the Idaho Aquarium as agreed. The Board did not execute employment contracts with the men and never completed any performance evaluations.
- ***rewarding Covino and Conk with bonuses and other benefits that they did not earn or deserve.*** The Board gave Covino and Conk additional money after they and the Idaho Aquarium were indicted on federal charges. Not even Covino's arrest in February 26, 2013, for violating the conditions of his pretrial release was enough for the Board to terminate Covino's association with the Idaho Aquarium.
- ***failing to demand that Board members perform their duties, including preparing minutes and financial reports.*** The Board did nothing to police itself internally, and it wasn't until the Board became utterly dysfunctional that the officers reported the organization to the Attorney General.

The Board's actions and inactions: (i) placed the Idaho Aquarium's charitable assets at risk, (ii) jeopardized the Idaho Aquarium's exempt status, (iii) damaged the Idaho Aquarium's reputation, and (iv) endangered the Idaho Aquarium's ability to fulfill its charitable purpose.

b. Duty of Loyalty

Board members also have a duty of loyalty to the nonprofit corporation. Their actions may not harm the corporation, and their personal interests may not come before those of the corporation.⁵⁴

⁵⁴ Idaho Code §§ 30-3-80 through 30-3-82, 30-3-85, and 30-3-109 set forth the duty of loyalty for nonprofit board members. These sections are intended to reject the strict duty of loyalty standard that courts apply to trustees. Courts should review a board member's duty of loyalty based on whether the board member acted in good faith in a manner he or she reasonably believed to be in the best interests of the corporation. See REV. MODEL CORP. ACT § 8.30 cmt. 4.

The primary goal of for-profit corporations is to make money for shareholders. For their board members, the duty of loyalty requires them to act in the best interests of their shareholders. Because the primary goal of a nonprofit board is to further the organization's mission, the board's duty of loyalty requires it to act in best interests of organization.

"Interested transactions" often test a board member's duty of loyalty. In the nonprofit sector, the financial limitations of small charities often require interested transactions. Loans, goods, and services may be available only from a board member who is willing to commit his or her resources to the charity's mission. But, to comply with the board member's duty of loyalty, the interested transaction must be legal and ethical.

If a board member has a personal interest in a transaction (i.e., a conflict of interest) he or she must disclose that interest to the full board and refrain from participating in any decisions concerning the transaction. When evaluating conflicts of interest, it is necessary to examine the procedure and the substance of the transaction. In other words, how did the board review and approve the transaction, and were the transaction terms fair to the corporation? To help organizations handle conflicts of interest, it is essential for them to have a well-tailored conflict of interest policy that board members review and sign annually.

Furthermore, combining a director's responsibilities with an executive director's day-to-day management duties creates a conflict in the fiduciary and management roles of the positions. It simply is bad practice for a charity's president to occupy the position of board chair, and, while presidents and executive directors may serve on boards ex-officio, they should not be allowed to vote.

The Idaho Aquarium's oversight structure is a perfect example of what happens when maximum control is placed in too few hands. Granting the same person both managerial and oversight authority of an organization invites a stagnancy of the charitable mission, conflicts of interest, and fraud. From 2007 until 2013, at one time or another and in contradiction to the Bylaws, Covino and Conk controlled the Idaho Aquarium as "founders," executive directors, officers, and chairmen.

The Idaho Aquarium's Board meeting minutes indicate that in late August 2013, a copy of the October 2007 Conflict of Interest Policy ("COI Policy") was distributed to each of the then-present Board members. Although the COI Policy requires all Board members to sign a separate statement each year acknowledging receipt of and pledging compliance to the COI Policy, it does not appear the Board followed that requirement, and it is unknown whether anyone other than Covino or Conk was aware of the COI Policy before August 2013. From the Attorney General's review of the available Board minutes, as well as his interviews of Board members, it does not appear that the Board complied with the Idaho Aquarium's COI Policy when conflicts arose.

The COI Policy requires an interested person to disclose the existence of a financial interest in a transaction and to leave the meeting while the Board discusses and votes on the potential conflict of interest. The meeting minutes must contain the names of the members with the conflict, a description of the conflict and any action the Board takes to investigate the conflict, the Board's decision, and the names of the decision-makers. All directors and officers must review and sign the COI Policy each year.

Covino and Conk did not have written compensation agreements, making it difficult to evaluate the exact terms and conditions associated with the salaries, bonuses, and benefits they received. From the existing documentation, it appears the Board, at its January 2012 meeting, approved Covino's request for \$5,000 per month based on his opinion that he deserved what the Living Planet, the Aquarium of the Pacific, and Zoo Boise paid their executives. He also requested and received company cars for himself and Conk, and the Board approved monthly gas allowances for both men.

Three months later Covino's salary increased from \$5,000 per month to \$8,000 per month, and Conk's salary increased from nothing to \$96,000 per year. The Board gave Covino and Conk a \$5,000 bonus and awarded them with back pay after Covino and Conk were indicted on multiple federal felonies. Additional perks included payments for travel expenses, meals, and cell phones.

The Board meeting minutes are devoid of substantive discussion concerning Covino and Conk's compensation, and the only comparability data the Board may have considered in making its decisions was a few pages from a salary study for museum CEOs.

Former Board members acknowledged to the Attorney General that little discussion occurred at their meetings concerning Covino and Conk's salary and bonus requests. Generally, whatever the men requested, they received, making any comparability data—appropriate or not—irrelevant. And the Board's failure to adequately document⁵⁵ why Covino and Conk deserved the awarded salaries, bonuses, and perks contradicts the rebuttable presumption of reasonableness.

Between 2010 and February 2013, Covino and Conk had unfettered and exclusive access to the Idaho Aquarium's checking and expense accounts. Their exclusive access did not change until Davison was added to the accounts in February 2013. After that, Covino, Conk, Davison, and various Idaho Aquarium employees, via debit cards, had access to the accounts. At no time during this period did the Idaho Aquarium's Treasurer have access to the bank accounts, and it is unknown when the Board actually removed Covino, Conk, and Davison's names from the accounts.

Idaho Code § 30-3-82 prohibits nonprofit corporations from loaning money to directors or officers. In late 2012, however, the Idaho Aquarium loaned \$70,000 to the Portland Aquarium—a for-profit company that Covino owned in part. The loan transactions appear in the Idaho Aquarium's accounting records, yet the loans are not discussed in any Board minutes, and they are not disclosed in the Aquarium's 2012 IRS Form 990.

Due to the lack of documentation, the Attorney General also has concerns that the Idaho Aquarium may have permanently lost charitable assets to the Portland Aquarium. The Board never reviewed an inventory of the Idaho Aquarium's animals, and it does not appear that the Aquarium maintained accurate records of the animals it purchased, lost, transferred elsewhere, or received. Without adequate records, the extent of the Idaho Aquarium's losses remains unknown.

⁵⁵ The organization must document (a) the date and the terms of the approved transaction; (b) the members who participated in the discussion and who voted to approve the transaction; (c) the comparability data the members referenced and how they obtained it; and (d) any actions taken by members who had conflicts of interest.

c. Duty of Obedience

The duty of obedience requires board members to fulfill the charitable corporation's mission in a legal and ethical manner. As legal commentators have observed, the duty of obedience is, in effect, the application of the ultra vires doctrine.⁵⁶ Board members must comply with state and federal law and follow the directives of the corporation's articles, bylaws, and other governing documents.

Similar to a trustee's duty to adhere to the directions of a testator or donor, the duty of obedience prevents "mission drift" and helps avoid expansion beyond the organization's expertise. Before making decisions that substantively affect the organization, each board member should ask: "how does [doing this or that] further the charitable purpose of our organization?"

The lack of adherence to legal standards and ethical norms can jeopardize a charity's exempt status. Public charities are under increased media scrutiny, and operational transparency is vital to a healthy charitable industry. Today, a successful charity surpasses minimal accountability standards and finds innovative, cost-efficient, and effective ways to further its charitable mission.⁵⁷

As stated in its Articles of Incorporation, the Idaho Aquarium's charitable purpose is to educate and inspire the community to conserve oceanic life. The Board failed to fulfill that mission and acted in direct contradiction to it when the Board allowed Covino and Conk to act as the Idaho Aquarium's public faces after they were indicted on felony wildlife offenses in Florida.

The Bylaws give care and custody of the Idaho Aquarium's money to the Treasurer who must account for all funds and, along with another officer, sign all checks. In 2012 and 2013, the Idaho Aquarium's Treasurers' failed to perform these required duties. Covino and Conk had complete control of the bank accounts, and the organization's bookkeeper was the only person reviewing the Aquarium's day-to-day finances. The Board then gave control of the Idaho Aquarium's assets to Davison who admittedly lacked sufficient education or experience to manage a nonprofit corporation's finances.⁵⁸

Board members did not question the decisions that Covino or Conk made because they did not know that they could. Board members did not take the time to read or understand the Idaho Aquarium's governing documents or applicable state and federal laws and did not double-

⁵⁶ IDAHO CODE § 30-3-26.

⁵⁷ For a detailed discussion about the duty of obedience and how a board member's failure to meet the standard negatively impacts the organization's charitable mission, see Jeremy Benjamin, Reinvigorating Nonprofit Directors' Duty of Obedience, 30 CARDOZO L. REV. 1677 (2009).

⁵⁸ Davison testified at her deposition that when the Board elected her as President in 2013 she didn't have experience with running an aquarium. However, she learned quickly through trial and error. According to Davison, Covino and Conk were equally bad at managing the Idaho Aquarium's finances. Because they often forgot to deposit money into the expense account, it was Davison's job to make sure the account had money before she shopped for supplies. Amanda Maye Davison Deposition Transcript, pp. 31-32, ls. 5-24 (Apr. 16, 2014).

check the Idaho Aquarium's financial reports. Furthermore, board members admitted that they never reviewed or approved the Idaho Aquarium's tax filings.

At no time did the Idaho Aquarium's officers and directors understand their fiduciary duties or their legal responsibilities as outlined in the Idaho Aquarium's Bylaws and the Idaho Nonprofit Corporation Act. When interviewed, the individual Board members commented that they had no idea how to operate a nonprofit corporation and never truly understood who was in charge of the Aquarium. Some Board members did not know what positions they held, what positions other members held, or what their responsibilities or authorities were. Board meetings turned "ugly" as people orchestrated votes and took sides against one another. As one Board member lamented, eventually the organization devolved into a "chaotic mess."

As mentioned at the beginning of this section and discussed briefly in the section titled "Attorney General's Authority," the Attorney General is not authorized to enforce the Idaho Nonprofit Corporation Act. Consequently, the Attorney General cannot take action against an officer or a director for gross negligence or fraud based on the officer or director failing to fulfill his or her fiduciary duties.

A nonprofit corporation, however, may pursue an officer or director to recover any losses the corporation incurred because of the officer's or the director's failures. Also, depending on the severity of the board member's conduct, the nonprofit corporation may contact local law enforcement about potential criminal charges.

3. Covino, Conk, and Davison may have received excess benefits from the Idaho Aquarium, which may subject them and the individuals who approved the transactions to excise taxes under I.R.C. § 4958

I.R.C. § 4958⁵⁹ governs excess benefit⁶⁰ transactions between disqualified persons⁶¹ and I.R.C. § 501(c)(3) public charities. When a disqualified person receives an excess benefit from the charity, rather than revoking the charity's exempt status, the Internal Revenue Service has authority to impose an excise tax on the disqualified person and on any manager who approved the transaction.

A public charity can rely on a rebuttable presumption that the transaction was not an excess benefit transaction if: (a) the board or board committee comprised of independent members

⁵⁹ 26 U.S.C. § 4958.

⁶⁰ An "excess benefit" is an economic benefit provided directly or indirectly to a person that exceeds the value of goods or services the disqualified person provides to the organization.

⁶¹ A "disqualified person" is someone who exercised substantial control over an organization during the five years preceding the transaction. The definition also includes family members of the person who exercised substantial control and corporations, trusts, and other entities over which the persons exercise more than 35% control. Family members include spouses, children, grand-children, and siblings and their spouses. An individual who is "highly compensated" is likely a substantial contributor to the organization. Other factors that establish that a person exercises "substantial control" over an organization are: (a) the person is a founder; (b) the person controls a significant portion of the organization's capital expenditures and operating budget; (c) the person has managerial authority or serves as a key advisor; (d) the person owns a controlling interest in a corporation, partnership, or trust that is a disqualified person.

approved its terms; “(b) disinterested board members relied upon appropriate data; and (c) the board adequately documented the basis for its determination.”⁶²

A common example of an excess benefit transaction is when a charity pays excessive compensation to its executive officer. While the executive is entitled to receive fair compensation for the job he or she performs, the executive may not receive an *unreasonable* compensation package.⁶³ What constitutes a “reasonable” compensation package is fact-specific to the organization and is judged on:

- the charity’s need for the executive’s services;
- the executive’s education and experience;
- whether the parties negotiated the package at arm’s length;
- the financial condition of the charity;
- the executive’s salary history;
- the complexity and hours of the executive’s required duties; and
- the executive’s compensation compared to other employees.

Payments made pursuant to an executive compensation agreement are presumed reasonable if the organization’s authorized body,⁶⁴ comprised only of disinterested members (a) approves the terms of the agreement in advance; (b) obtains and considers appropriate comparability data;⁶⁵ and (c) documents the basis for its decision concurrently with making its decision.

In 2012 and 2013, Covino and Conk, in their positions as the Idaho Aquarium’s founders/officers/directors/co-executive directors, constituted “disqualified persons.” What they told the Board to do, the Board did—without argument, much consideration, or even documentation. Later, Davison assumed the role of officer/director. The following is a list of *possible* excess benefit transactions that *may* fail the Internal Revenue Services’ rebuttable presumption challenge:

- ***Excessive Compensation Package.*** Covino and Conk received excessive compensation in relation to the economic benefit they provided to the Idaho Aquarium. This includes their 2012-2013 salaries, 2012 spring break bonuses, 2012 back-pay awards (paid in December 2012), and 2012-2013 benefits:

⁶² Joshua Nix, *The Things People Do When No One Is Looking: An Argument for the Expansion of Standing in the Charitable Sector*, 140 MIAMI BUS. L. REV. 147, 157 (2005).

⁶³ A salary package includes both monetary (e.g., commissions, bonuses, deferred compensation, benefit plans, etc.) and non-monetary benefits (e.g., company car, housing, chauffeur, etc.).

⁶⁴ An authorized body includes an organization’s governing board. Treas. Reg. § 53.4958-6(c)(1)(i).

⁶⁵ Appropriate comparability data for an organization with less than \$1 million in annual gross receipts is compensation data from comparable organizations in the same area (or a similar community) for executives who performed similar services.

- The Board minutes fail to document that *independent* board members, relying on *comparable* data, voted and approved these financial awards.
- Covino and Conk told the Board how much they wanted for a salary and the Board approved it.
- The comparable salary data the Board allegedly reviewed came from large, well-established aquariums and a zoo, two of which are AZA-accredited, which the Idaho Aquarium is not.
- The back pay awards that Covino and Conk received were calculated by Covino's brother, Vince Covino. Vince was not a Board member with the Idaho Aquarium, but he and Covino were members of the Portland Aquarium, a for-profit company.
- Covino and Conk received more in benefits than the Board approved, including use of Idaho Aquarium-owned vehicles for personal reasons.
- Covino and Conk received "spring break bonuses" that were not justified by the Board.
- Despite receiving a salary from the Idaho Aquarium, Covino spent much of his time in 2012 and 2013 working on his for-profit ventures.
- ***Unauthorized Payment of Personal Expenses.*** Covino and Conk charged personal expenses (primarily meals and fuel) to the Idaho Aquarium.
 - The Board minutes fail to document that *independent* board members, relying on *comparable* data, voted and approved these payments.

Generally, the IRS evaluates issues involving an I.R.C. § 501(c)(3) paying excessive compensation to its officers. However, because paying *excessive* compensation wastes charitable assets that an organization should use to further its charitable purpose, excessive compensation issues also fall within the Attorney General's enforcement purview.

For the most part, the Idaho Aquarium's Board approved the salaries and benefits paid to Covino, Conk, and Davison. However, the Board's decisions were not substantiated or documented in the Board minutes. Furthermore, the minimal salary and benefit information the Attorney General was able to piece together came from dozens of reports generated from an inaccurate and incomplete accounting database. It is unknown, therefore, exactly how much Covino, Conk, or Davison received in salaries and benefits, which included cash, gas, meals, insurance, travel, healthcare, cell phone and Internet services, electronics, and personal services.

Despite the lack of documentation, the Attorney General is confident in his opinion that the Idaho Aquarium paid excessive compensation and benefits to Covino, Conk, and Davison. The compensation packages were unreasonable given, among other things: (a) the Idaho Aquarium's status (a new, small charity with limited assets), (b) the executives' education and experience, and (c) the salaries that *comparable* organizations paid, at that time, to their executives.

Pursuant to Idaho Code § 67-1501(5), the Attorney General considered filing an enforcement action against the Idaho Aquarium because of its excessive payments to Covino, Conk, and Davison. Before pursuing a lawsuit, however, the Attorney General sought to resolve the matter through an assurance, which was not finalized because of the Idaho Aquarium's transfer of its assets.

RECOMMENDATIONS

As previously explained in this report, the Idaho Aquarium no longer operates Boise's public aquarium and what assets it retained are set aside to fulfill its federal probation requirements. It is unnecessary and a waste of resources to impose expensive compliance standards on a now nonoperational and unfunded organization.

The Aquarium of Boise's Board includes a Chairman, a Vice Chairman, a Secretary/Treasurer, and seven directors. The Board members represent a broad spectrum of the Treasure Valley and bring decades of practical experience from financial, educational, nonprofit, political, and hard science industries. Executive Director Nancy Vannorsdel is credited with preventing the Idaho Aquarium's collapse, which would have caused animal deaths and job losses.

The following pages outline ten recommended standards that the Attorney General presented to Aquarium of Boise for its consideration. The Aquarium of Boise was under no legal obligation to adopt the standards, but its Board acknowledged "the wisdom of the recommendations."⁶⁶

Throughout the Aquarium of Boise's development, the Board, its managerial staff, and its counsel collaborated to develop the corporation's Bylaws, policies and procedures, and strategic plan. At its January 15, 2015, meeting, the Board approved and adopted the Aquarium of Boise's Bylaws, which include many of the Attorney General's recommended standards. Other recommended standards, as discussed in this section, were adopted voluntarily through resolutions or integrated within corporate policies and plans.

After the complete description of each recommended standard is a summary of how the Aquarium of Boise implemented or will implement the standard, along with the Attorney General's additional comments when appropriate.

⁶⁶ Vaughn Fisher, Letter to Attorney General's Office Re: Attorney General Investigation-Idaho Aquarium, Inc. (Jan. 9, 2015).

STANDARD NO. 1. (BOARD OF DIRECTOR'S INDEPENDENCE AND INTEGRITY).

The Board should include members who have the requisite independence and integrity to help further the Aquarium of Boise's charitable mission. To achieve Standard No. 1, the Attorney General recommends the Board include the following provisions in the Aquarium of Boise's Bylaws:

- a. Establish a reasonable minimum number and a reasonable maximum number of directors for the Board. Too few directors allow the stronger members to manipulate the weaker ones, and too many members causes diffusion of responsibility.
- b. Prohibit a person from serving as a Board member if the person has a business or family relationship with a current Board member.
- c. Establish term limits for directors and officers. A board that never changes becomes complacent and lacks innovation.
- d. Prohibit a person from serving as a Board member if the person has a state or federal felony conviction or a state or federal misdemeanor conviction for a theft-, fraud-, or animal-related crime.

Aquarium of Boise's Adoption of Standard No. 1.

The Aquarium of Boise's Bylaws address the recommendations contained in Recommended Standard No. 1. The Board established a minimum number and a reasonable maximum number of Board directors and defined qualifications for candidates that includes prohibitions against the election of any person who has had a business or family relationship with a current Board member. The Bylaws also prohibit a person from serving as a Board member if they have a felony conviction or a misdemeanor involving fraud, theft, or animals. Finally, the Board established term limits for directors and officers.

STANDARD NO. 2 (BOARD OF DIRECTOR'S COMPETENCY).

The Board must increase its level of competency regarding fiscal administration, executive oversight, effective organizational planning, donor accountability, and regulatory compliance. To achieve Standard No. 2, the Attorney General recommends that:

- a. Board members educate themselves about their responsibilities and duties and obtain training concerning the management of an exempt organization. Training should include mandatory attendance at live presentations, review of training manuals and other written materials, and completion of IRS Stay Exempt Webinars.
- b. Board members increase their knowledge concerning fiscal administration matters through comprehensive training. Training should include mandatory attendance at live presentations, review of training manuals and other written materials, and completion of IRS Stay Exempt Webinars.

- c. the Board include members who have the necessary expertise in financial management and who are interested in the process of setting fiscal policy.
- d. the Board establish a standing Education Committee to foster Board members' ongoing development and training.
- e. the Board adopt a transparency policy to ensure that information about the Aquarium of Boise's mission, activities, finances, and governance is readily available to the public on the Aquarium of Boise's website. At a minimum, the Aquarium of Boise should post the following documents on its website:
 - Articles of Incorporation
 - Bylaws
 - Names of all Board members (directors & officers)
 - Conflict of Interest and Ethics Policies
 - Board-approved board meeting minutes
 - Board approved financial reports
 - IRS 990 filings and worksheets

Aquarium of Boise's Partial Adoption of Standard No. 2.

The Aquarium of Boise established a Finance Committee to (a) oversee the preparation and monitoring of an annual budget; (b) obtain and approve an annual audit of the books; (c) communicate with investment managers; (d) review the performance of investment managers; (e) oversee the preparation of a balance sheet, income statement, cash flow statement, and other financial documents; (f) review the corporation's investment guidelines; (g) track all fundraising and oversee an ad hoc fundraising committee; (h) maintain compliance with state and federal regulations; (i) ensure the Executive Director has the necessary financial tools to lead the corporation; (j) coordinate with the development committee chair and oversee director education; (k) manage assets; (l) conduct due diligence for the purpose of accepting or declining gifts; and (m) make recommendations to the Board. The Board took steps to elect persons with finance and bookkeeping backgrounds and passed a resolution addressing Board training.

ATTORNEY GENERAL'S ADDITIONAL COMMENTS REGARDING STANDARD NO. 2.

Standard 2a & 2d (Board Training and Experience):

The changes the Aquarium of Boise outlines in response to Standard No. 2 address the competency of the Finance Committee, but fail to address the larger problem that charitable nonprofit boards face—individual board members' lack of training and experience concerning exempt organizations. The Idaho Aquarium failed because its directors and officers had little to no understanding of nonprofit law or what their obligations were under it.

Standard 2e (Transparency Policy):

Also, the Attorney General notes the Aquarium of Boise's response excludes any reference to a transparency policy, and the Bylaws do not include provisions requiring the publication of the documents and information listed in Standard No. 2. As a reminder, a substantial amount of the Idaho Aquarium's ruin occurred behind closed doors because of a few persons' unsupervised activities. Board members complained to the media about the lack of communication and cooperation among the members, and employees complained to the public about being shut out of the organization's decisions. Eventually, an ugly social media war erupted among members of the public, former employees, and former Board members.

In today's electronic world, the public obtains its information from the Internet, which means an organization's presence or its lack of a presence on the Internet is crucial to survival. An unprofessional website with little or no information about the organization's mission, its leaders and governance model, its policies, or its finances, detracts from its credibility.

Board members should ask themselves, "Am I more likely to trust a charity that is committed to complete transparency and that publishes all of its significant information on its website, or one that hides this information and simply asks for my credit card number?" The donating public is entitled to know what is going on behind the scenes of the charities they support.

STANDARD NO. 3 (PROTECTION OF CHARITABLE ASSETS).

The Board must implement standards, policies, and procedures to guard the Aquarium's charitable assets and to ensure that the Aquarium of Boise uses solicited contributions according to its charitable mission. To achieve Standard No. 3, the Attorney General recommends that:

- a. the Board maintain separate financial accounts for the Aquarium of Boise's restricted, unrestricted, and temporarily restricted charitable assets.
- b. the Board review its charitable trust instruments, if any, and consult with its attorney if it has reason to believe that the Aquarium of Boise's actions or inactions have violated the terms or conditions of any charitable trusts.
- c. the Executive Director facilitate an inventory of the Aquarium of Boise's animal and exhibit assets. The inventory should be kept current and, for each identified asset, it should include (if applicable):
 - a description
 - the acquisition date
 - the location
 - the purchase price
 - the current value
 - the loss date
 - the reason for loss

- d. the Executive Director facilitate an annual inventory of the Aquarium of Boise's property (excluding animal and exhibit assets) valued over \$100. For each item of property identified, the inventory should include (if applicable):
- a description
 - the acquisition date/date in service
 - the location
 - the purchase price
 - the current value
- e. the Board discontinue any practice that allows Board members, Aquarium of Boise employees, family members, or the public to freely access the Aquarium of Boise's cash assets or bank accounts. To ensure the Aquarium of Boise's assets and accounts are secure, the Aquarium of Boise should implement the following practices:
- Bank Accounts.
 - 1) Accounts should be held in the name of the Aquarium of Boise, not in the name of a board member, the executive director, or an employee.
 - 2) No debit or credit cards associated with the Aquarium of Boise's bank accounts should be issued in the names of individuals.
 - 3) Only one debit or credit card associated with a bank account should be issued to the Aquarium of Boise, and when it is not needed, it should be secured in a locked, fire-proof safe.
 - 4) Only the president, treasurer, secretary, and executive director should be signatories on the bank accounts.
 - 5) Whenever an officer or the executive director resigns, his or her name should be removed as a signatory before COB on the next business day.
 - 6) The execution of all contracts and transactions should comply with the signature requirements of Idaho Code § 30-3-87.
 - 7) No expenditure should be allowed without an invoice or bill that documents a proper debt incurred by the Aquarium of Boise.
 - 8) All payments should be documented and reconciled.
 - Credit Accounts.
 - 1) Accounts should be held in the name of the Aquarium of Boise, not in the name of a board member, the executive director, or an employee.
 - 2) No cards should be issued in the name of individuals.
 - 3) Only one card should be issued to the Aquarium of Boise and when it is not needed it should be secured in a locked, fire-proof safe.
 - 4) Only the president, treasurer, secretary, and executive director should be signatories on credit card accounts.
 - 5) Whenever an officer or the executive director resigns, his or her name should be removed as a signatory before COB on the next business day.

- 6) A credit card should not be released to anyone who is not a signatory on the account, including employees.
 - 7) No charge should be allowed without an invoice, bill, or other document that identifies a proper debt incurred by the Aquarium of Boise.
 - 8) All original credit card receipts should be submitted with the person's signature verifying the charge is true, correct, and properly charged to the Aquarium of Boise. If a receipt is unavailable, the person should complete a substitute form that documents the charge.
- Petty Cash. All cash should be counted and secured in a locked, fire-proof safe at the close of each business day.
 - Unauthorized Withdrawals or Charges.
 - 1) The Board should adopt a policy that requires individuals to repay, with interest, all unauthorized withdrawals from the Aquarium of Boise's accounts, charges to its credit cards, and expenditures of its petty cash.
 - 2) Any individual who accesses the Aquarium of Boise's accounts without permission or who makes unauthorized withdrawals or charges should be dismissed from the Aquarium of Boise.
 - 3) All suspected thefts of the Aquarium of Boise's assets should be reported to local law enforcement.
 - 4) All excess benefit transactions should be reported to the IRS.
 - 5) All significant diversions of assets should be reported to the IRS.
 - f. the Board establish a standing Fundraising Committee to develop policies and procedures related to the Aquarium of Boise's fundraising practices and to oversee all fundraising activities.
 - g. the Fundraising Committee ensure that all material terms and conditions concerning a fundraising campaign are clearly and conspicuously disclosed to potential donors.
 - h. the Fundraising Committee ensure the Aquarium of Boise complies with IRS substantiation and disclosure rules applicable to charitable contributions.

Aquarium of Boise's Partial Adoption of Standard No. 3.

The Aquarium of Boise's Board passed a resolution at its October 9, 2014, meeting to create an Employee Handbook and a Policies and Procedures Manual, which address these recommendations. Also, the Bylaws require the Executive Director to facilitate monthly inventories of the Aquarium of Boise's animal and exhibit assets as well as yearly inventory of the Aquarium's other property. The Bylaws limit access to the Aquarium's cash assets and bank accounts and allow for the designation of a Fundraising Committee.

ATTORNEY GENERAL'S ADDITIONAL COMMENTS REGARDING STANDARD NO. 3.

▪ *Standard 3a-b (Policies and Procedures to Protect Charitable Assets).*

A charitable organization fails if it lacks a defined mission and sufficient donor support to achieve that mission. An organization loses the trust of the public—its financial supporters—when it misappropriates or wastes charitable contributions and assets. Without policies and procedures and the enforcement of those policies and procedures, individuals have nothing to guide their actions. The Attorney General has not reviewed the Aquarium of Boise's Employee Handbook or its Policies and Procedures Manual, so the Attorney General cannot determine to what extent, if at all, the Aquarium of Boise has adopted Standard No. 3.

▪ *Standard No. 3e (Limiting Access to Charitable Assets).*

The Board has a responsibility to keep unauthorized persons from pilfering the Aquarium of Boise's accounts. Under the laws previously outlined in this report, the Attorney General has supervisory authority over the Aquarium of Boise's charitable assets, and he will continue to monitor the organization to ensure its assets do not suffer a fate similar to those of the Idaho Aquarium.

STANDARD NO. 4 (OBJECTIVES TO FURTHER THE ORGANIZATION'S CHARITABLE PURPOSE).

The Board must appoint and effectively supervise an executive director who has the necessary education and experience to stabilize and effectively manage a charitable nonprofit that has suffered criminal, financial, and reputational damages. To achieve Standard No. 4, the Attorney General recommends that:

- a. the Board establish a standing Personnel Committee to develop a job description, performance standards, performance review process, and all other employment terms and conditions related to employment, evaluation, and supervision of the Executive Director.
- b. the Board perform a national search for a qualified Executive Director.
- c. before setting the Executive Director's compensation and benefits, the Board obtain comparable compensation information and studies, document its analysis, and vote on the Executive Director's compensation and benefits package.
- d. the Board enter into an employment contract with the Executive Director. The contract should include a trial period, a job description, performance standards, performance review process, and all terms and conditions related to compensation and benefits.

Aquarium of Boise's Adoption of Standard No. 4.

The Aquarium of Boise's Bylaws establish an Executive Committee with the responsibility of appointing and supervising an Executive Director who has the necessary education and experience to stabilize and effectively manage the corporation. The Executive Committee conducts executive searches, develops a job description, performance standards, and a performance review process, and reviews the salary and benefits of the Executive Director.

STANDARD NO. 5 (OBJECTIVES TO FURTHER THE ORGANIZATION’S CHARITABLE PURPOSE).

The Board must create a five-year strategic plan for the Aquarium of Boise that includes measurable goals and objectives that further its charitable purpose. To accomplish Standard No. 5, the Attorney General recommends that:

- a. the Board and Executive Director review the Aquarium of Boise’s charitable purpose and create a detailed written mission statement.
- b. the Board and Executive Director consult with the staff, community, nonprofit consultants, and other zoological nonprofit boards for help in developing strategies for fulfilling the Aquarium of Boise’s charitable mission.
- c. the Executive Director and management outline the process for the Aquarium to obtain AZA accreditation and what specific changes, including a timeline for making those changes, the Aquarium must make to obtain AZA accreditation: (for example, the Aquarium of Boise must retain knowledgeable and qualified staff, implement conservation and research programs, create education programs, draft safety policies and procedures, and evaluate necessary changes to guest services and physical facilities).

Aquarium of Boise’s Adoption of Standard No. 5.

The Aquarium of Boise’s Board passed a resolution to create a five-year strategic plan. The Strategic Planning Committee will participate in several retreats and meetings as part of the process to complete the plan.

STANDARD NO. 6 (DEVELOPMENT OF EFFECTIVE GOVERNING DOCUMENTS).

The Board must retain legal counsel to assist it in drafting effective and reasonable governing documents and policies that comply with applicable Idaho laws and rules. To meet Standard No 6, the Attorney General recommends that:

- a. the Board adopt bylaws, a conflict of interest and ethics policy, and a whistleblower policy.
- b. the Board adopt written policies and procedures for the directors, officers, employees, and other relevant individuals governing the following:
 - charitable solicitations and fundraising events
 - company vehicle use & mileage reimbursement
 - overnight travel
 - company cell phone use
 - credit and debit card access and use
 - technology access and use
 - document retention and destruction
- c. the Board review with its attorney its current insurance coverage and evaluate what additional coverage, including D&O insurance, the Aquarium of Boise needs to best protect itself.

Aquarium of Boise' Adoption of Standard No. 6.

The Aquarium of Boise has employed attorneys with the law firm of Fisher Rainey Hudson to help it draft effective and reasonable governing documents and policies that comply with applicable Idaho laws and rules. Also, the Board passed a resolution adopting all recommendations outlined in Standard No. 6 and is working to complete written policies before the end of March 2015.

STANDARD NO. 7 (ORGANIZATION AND MANAGEMENT OF FINANCIAL RECORDS).

The Board must retain a certified public accountant to organize the Aquarium of Boise's financial records, maintain the Aquarium of Boise's financial accounts, prepare monthly financial reports for the Board's review and approval, and prepare its annual IRS filings. To achieve Standard No. 7, the Attorney General recommends that:

- a. the Treasurer meet regularly with the accountant and report to the Board that the Aquarium of Boise's accounting procedures and internal controls are being followed.
- b. the Treasurer review on a monthly, quarterly, or yearly basis (as applicable) all financial statements required by the United States GAAP, including, but not limited to, the Aquarium of Boise's:
 - Statement of Financial Position
 - Statement of Activities
 - Statement of Functional Expenses
 - Statement of Cash Flows
 - Notes to Financial Statements
- c. the Board receive a written financial report from the Treasurer at each Board meeting. The Board should dedicate sufficient time to discussing how the Aquarium of Boise's budget is being met and what additional resources are necessary to meet the needs of the organization.

Aquarium of Boise' Partial Adoption of Standard No. 7.

The Aquarium of Boise's Treasurer, in conjunction with the Finance Committee, oversees (a) the custody of the corporation's funds; (b) all receipts and disbursements; (c) the preparation of monthly written financial reports for presentment to the Board; and (d) the preparation of balance sheets, income statements, cash flow statements, annual budgets, and other financial information the Board requests.

ATTORNEY GENERAL'S ADDITIONAL COMMENTS REGARDING STANDARD NO. 7.

Standard 7a-c (Accuracy and Integrity of Financial Records).

The Attorney General outlines in this report and has discussed with counsel the Attorney General's concerns about the accuracy and integrity of the Idaho Aquarium's financial records. Rather than helping the Idaho Aquarium maintain accurate records and notifying the Board (or authorities) about the organization's obvious and potentially unlawful

financial/accounting issues, the individuals with access to the records (e.g., bookkeepers, accountants, Board members, etc.) ignored (or contributed to) the financial pandemonium that inevitably enveloped the Idaho Aquarium.

Unless an exempt organization maintains a documented and reliable financial history, it is impossible for the organization to prepare accurate budgets, treasurer reports, or IRS Form 990s each year. The Attorney General identified a number of “mistakes” in the organization’s IRS Form 990s for 2012 and 2013, and, given the state of the Idaho Aquarium’s records, it may be impossible to generate accurate 990s for any year the organization operated.

The Attorney General strongly recommends that the Idaho Aquarium retain an independent and experienced accountant to audit and, if necessary, prepare amended IRS Form 990s for the organization. If the Idaho Aquarium chooses not to obtain the advice of a professional, it still has an obligation to file amended and accurate returns. Finally, at the end of the next fiscal year, the Aquarium of Boise should retain an independent certified forensic auditor to audit its records for accuracy.

STANDARD NO. 8 (BOARD MEETINGS).

The quorum of the Board must assemble, at a minimum, once each month to (a) review minutes, reports, and other documents; (b) discuss and address any new or continuing issues; (c) assess the Aquarium of Boise’s progress; (d) vote on any required business; and (e) complete any other tasks before the Board. To comply with Standard No. 8, the Attorney General recommends that:

- a. the Board establish a standard day of the week and a standard time to hold its monthly meetings.
- b. the Board hold its meetings in a quiet, private, professional environment that allows Board members to comfortably discuss confidential matters.
- c. the Secretary (or his/her appointed substitute) record each Board meeting and subsequently summarize in writing the Board’s discussions, activities, and votes.
- d. the Secretary, at least one week before the Board meeting, distribute via email to the Board members a meeting agenda and solicit additions or changes to the agenda.
- e. the Secretary, at least one week before the Board meeting, distribute via email to the Board members the prior meeting minutes and solicit additions or changes to the minutes.
- f. the Board, at the meeting, review the prior meeting minutes—including any additions or changes—and vote to approve or disprove them.
- g. the Board review the Treasurer’s financial report.

Aquarium of Boise's Adoption of Standard No. 8.

The Aquarium of Boise adopted Bylaws with provisions to govern all aspects of its Board meetings and the duties of the Secretary. Notice of Board meetings is sent to all Board members at least 10 days before the scheduled Board meeting. The Secretary takes minutes of all meetings and distributes minutes and the Board meeting agenda to the Board at least one week before the scheduled meeting. At each Board meeting, the members shall (a) review minutes, reports, budgets, and other documents; (b) discuss and address any new or continuing issues; (c) assess the corporation's progress; (d) vote on any required business; and (e) complete any other tasks before the Board.

STANDARD NO. 9 (COMMUNICATION ABOUT ANIMAL WELFARE ISSUES).

The Executive Director must communicate regularly with the Aquarium of Boise's management staff to ensure that legal and health problems concerning the Aquarium of Boise's animals are addressed promptly. To achieve Standard No. 9, the Attorney General recommends that:

- a. the Board and the Executive Director create a comfortable and professional atmosphere that encourages the management staff to express their concerns about the welfare of the Aquarium of Boise's animals.
- b. the management staff promptly inform the Executive Director of any issues the staff reasonably believes affects the health or welfare of the Aquarium of Boise's animals.
- c. the Executive Director implement a process that allows the Aquarium of Boise's staff and the public to submit an anonymous written comment if a person has concerns about an animal's health, welfare, or safety.
- d. the Board require a monthly report that identifies each lost animal, the reason for the animal's loss, and the value of the lost animal. The report should summarize any health concerns involving other animals, including any ongoing veterinary care the animal is receiving.

Aquarium of Boise's Adoption of Standard No. 9.

The Aquarium of Boise's Bylaws addresses animal health and safety. The Executive Director must (a) communicate regularly with the Aquarium's management staff to ensure that legal and health problems concerning the Aquarium's animals are addressed promptly; (b) implement a process that allows the Aquarium's staff and the public to submit an anonymous written comment if a person has concerns about an animal's health, welfare, or safety; and (c) facilitate a monthly report that identifies each lost animal, the reason for the animal's loss, and the value of the lost animal.

STANDARD NO. 10 (ONGOING COOPERATION WITH THE ATTORNEY GENERAL).

For a period of three years, the Board, Executive Director, and their attorneys, accountants, and other agents must cooperate with the Attorney General and, without a subpoena, voluntarily produce to the Attorney General any documents the Attorney General requests from the Aquarium of Boise. To assist the Aquarium of Boise in meeting the requirements outlined in Standard No. 10, the Attorney General provides the following:

- a. Within 30 days of receiving a written request for information or documents, the Aquarium of Boise must respond in writing to the Attorney General's request.
- b. If the Aquarium of Boise requires more than 30 days to respond fully to the Attorney General's request for information or documents, the Aquarium of Boise must contact the deputy attorney general who issued the request and obtain an extension.

Aquarium of Boise's Response to Standard No. 10.

The Aquarium of Boise declines to adopt Standard No. 10 because it was not the original subject of the Attorney General's investigation. The Idaho Aquarium no longer operates the aquarium and lacks the assets or resources to comply with an assurance of voluntary compliance.

CLOSING REMARKS

The Attorney General is satisfied that the Board for the Aquarium of Boise, in consultation with its counsel, has considered the ten accountability standards summarized in the preceding section. While not required to implement any of the standards, the Aquarium of Boise—for the most part—voluntarily adopted nine of the ten standards the Attorney General recommended. Furthermore, the Board has expressed its openness to cooperating with the Attorney General to address future concerns that may arise.

Under the leadership of Executive Director Nancy Vannorsdel, the Aquarium of Boise has worked hard to repair the aquarium's reputation and to transition into a legitimate and financially stable organization. The facility has expanded its exhibits, and the staff has developed a number of educational initiatives with local and foreign school districts. Anyone with an Internet connection can operate a live underwater camera in the aquarium's shark tank via the aquarium's website. The Aquarium of Boise also maintains an active presence in social media through its Facebook, Instagram, and Twitter accounts.

The Attorney General appreciates the cooperation he has received throughout his investigation from all individuals associated with the Idaho Aquarium and the Aquarium of Boise, including their prior and current board members, employees, and legal counsel. The Attorney General's Office is available to meet with the Aquarium of Boise or its representatives to further discuss this report, the investigation, or how the Board can best implement the standards it has adopted.

Other charitable organizations in Idaho that are facing circumstances similar to those discussed in this report are encouraged to immediately: (a) consult with their legal counsel (b) report criminal conduct to local law enforcement; (c) report tax exempt status abuse to the IRS at www.irs.gov; or (d) submit a complaint form or written statement to the Attorney General's Consumer Protection Division. Complaint forms are available at www.ag.idaho.gov.

Also on his website, the Attorney General publishes information for charitable organizations and the public about Idaho's applicable laws and rules. Before donating to an organization, donors should research an organization's charitable status, along with its mission, financial status, and its use of charitable contributions. The Attorney General's website includes links to several charity watchdogs that provide documents, data, and rankings for hundreds of thousands of organizations.