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SINS OF COMMISSION: HOW MUCH IS TOO MUCH FOR A FUNDRAISER TO KEEP?

Adapted from the writings of Dayan Yitzhak Grossman

R' Yaakov Bender, Rosh Hayeshiva of Yeshiva Darchei Torah in Far Rockaway, New York, writes:

Every Purim, many children of all stripes and ages come to our home. The boys are often collecting for some cause or another, and I am more than happy to give them \$5 or \$10 each, aside from some of the major campaigns. In years past, I have always encouraged the *talmidim* of our yeshiva to feel the pain of others, urging them to find a way to alleviate the burdens of Yidden. One of those ways is to raise money for the indigent and poor. I felt honored to be part of a yeshiva where hundreds of *talmidim* are out there every Purim helping others. Not only that, but the children themselves felt good to help others.

Lo and behold, this year, more boys visited than ever, despite the short day. As always, I asked them for whom they were collecting. Many of the children answered with the names of an organization with which I was not familiar. I asked the children what the organization does; not a single child knew. I let it go on Purim day, but on Shabbos, when one of our children came

for the *seudah*, they showed me glitzy booklets delivered with the weekly Jewish magazines. I was stunned. Basically, children were promised prizes worth nearly 45% of the amount collected, or even more!

Please understand: For many decades, Klal Yisroel has incentivized children to collect, but the prizes were minimal—to thank them for their work. I remember, as a little child, being asked to collect for Chinuch Atzmai. Sure, we ultimately got a prize—but Chinuch Atzmai representatives went around to all the classes explaining what the organization did. We felt part of a sacred mission: to help Klal Yisroel build Torah in Eretz Yisroel.

(In our yeshiva, every spring, as part of our highly successful Bike-a-Thon campaign, we include incentive prizes that cost a small fraction of the amount collected.)

This Purim, it seemed that these children were in essence collecting for themselves—e.g., if a child collected \$650, he would receive a beautiful and

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PARSHAS PEKUDEI MINIMUM AGE

Excerpted and adapted from a *shiur*
by Rav Moshe Ze'ev Granek

A beka for every head, a half-shekel in the shekel of the Sanctuary, for everyone who passed the counters, from twenty years of age and up, for the six hundred three thousand, five hundred fifty.

Shmos 38:26

Rashi (Shmos 30:16) notes that the number of people recorded in this counting coincides precisely with the total recorded in Sefer Bemidbar (1:46). But since many people would have turned twenty or sixty between these counts, how could the number be unchanged? Rashi suggests that everyone's halachic age advances on Rosh Hashanah, and since there was no Rosh Hashanah between the counts (the first was in Tishrei and the second in Iyar), the number did not change. The Ramban argues with Rashi and maintains that one's date of birth is his halachic birthday, and that was used here, as it is elsewhere in the Torah (see Arachin 18b).

It is possible that Rashi and the Ramban disagree fundamentally whether age is counted from the date of birth or from Rosh Hashanah (just as *orlah* is counted from Rosh Hashanah; see Rosh Hashanah 9b). But R' Yaakov

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Q&A from the
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Out of Stock

Q I own stock in a non-Jewish bread manufacturer. As part of my estate planning, I placed my shares into a trust. On Pesach, am I forbidden under *bal yeira'eh* to own the stock in this way? If so, can I avoid the transgression by selling the shares to a non-Jew before Pesach through my *rav*?

A Some *poskim* maintain that ownership of a small amount of common stock is not considered partial ownership of the underlying business, so owning shares in a chametz company doesn't violate *bal yeira'eh*. Others hold a stricter view and require that the shares be sold through a *rav* along with one's other chametz. But if one's holdings amount to a significant fraction of the company's shares, such that his opinions carry weight in company decision-making, there is consensus that this represents bona fide company ownership and is indeed subject to *bal yeira'eh*. For this reason, many versions of the *shetar*

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expensive electric scooter...I want to emphasize that this is not an "anti-kids-collecting" message. On the contrary, how great it is to instill the proper *chinuch* in children, to walk outside their own *daled amos*, raising funds to help others! The Satmar *Rav zt"l*, who I was *zocheh* to observe in the Williamsburg of my youth, trained an entire generation of chassidim to look out for and actively take care of each other...Our job as parents and *mechanchim* is to imbue *midos tovos*; not to teach our children to be greedy and busy with themselves. I understand that this started with an organization many years ago, but the prizes then were very limited.

We must not allow this to happen in the coming years.¹

Like Rav Bender, as well as—anecdotally—many others, this author, too, finds the mercenary nature of children fundraising for organizations about which they know little, motivated wholly or primarily by the promise of expensive prizes that may be worth a substantial fraction of the money raised, to be very distasteful—but it is surprisingly difficult to precisely articulate what, exactly, is the problem with the practice:

- Is the problem that these arrangements violate the prohibition against charging for the performance of a mitzvah? That is certainly a serious issue, but while a proper discussion of the parameters of that prohibition is beyond the scope of this article,² it must be acknowledged that the prohibition is generally not observed in most contexts in which it would seem to apply, such as that of shul rabanim, Torah teachers, *dayanim*, *mesadre* gittin, mohalim, and physicians. *Poskim* have addressed the question and offered justifications for our practice that these professionals charge for their services, but those justifications do not apply to compensating children for fundraising. But if the prohibition does apply in this context, why would it not apply even to the modest "incentive prizes" of which Rav Bender approves?
- Is the problem one of *chinuch*? ("Our job...is to imbue *midos tovos*; not to teach our children to be greedy and busy with themselves.") But why is appealing to a child's self-interest to motivate him to perform the mitzvah of collecting tzedakah any different from appealing to his self-interest to motivate him to perform the *chesed* of helping busy parents care for their children—i.e., babysitting? If paying children to babysit does not constitute teaching them to be greedy and busy with themselves, why is offering them prizes for fundraising different?
- Is the problem the excessive overhead of paying out expensive prizes? ("Children were promised

prizes worth nearly 45% of the amount collected, or even more.") Where is the line between "minimal," "very limited" prizes "that cost a small fraction of the amount collected," and a "beautiful and expensive" prize for collecting \$650? What is an acceptable level of overhead for a tzedakah organization? Are six-figure salaries for fundraisers only acceptable if their salaries constitute a "small fraction" of the amount they raise?

- We certainly do not mean to imply that these questions are unanswerable; we are merely noting that precisely articulating just what is wrong with these campaigns is trickier than it may seem. In this article and a follow-up, we consider the question of how much of the funds he raises may a tzedakah fundraiser take as his compensation.

THE 49% RULE

Various *gedolei* Torah are reported to have permitted a fundraiser to keep up to 49% of the money he raises as compensation for his services. R' Avrohom Chaim Feuer (a son-in-law and *talmid* of R' Mordechai Gifter) reports:

R' Moshe Heinemann relates that his *rosh yeshiva*, R' Aharon Kotler, said a professional fundraiser is allowed to take up to 49% of what he raises as his commission. As long as the majority of the money goes to the institution, it is considered that he was raising funds for the institution and not for himself.³

Similarly, R' Mendel Shafran reports:

There is a rumor—some attribute it to our master the Chazon Ish⁴—that it is permitted to take up to 49%.⁵

The author of the work *Mishpat Utzedakah* records having heard in the name of *gedolim* that a fundraiser should take less than half of the funds raised as his compensation, "but I have not authenticated the truth of this rumor."⁶ Some anonymous online commenters attribute such a rule to R' Yaakov Kamenetsky.⁷ R' Moshe Sternbuch permits a fundraiser to take "a portion" of the funds raised as his compensation, but not most of it, because that would constitute theft from the donors, at least in the case of "large donations." (He suggests that in the case of small donations, the donors may not care if the fundraiser keeps most of the money).⁷

R' Menashe Klein maintains that fundraisers may not take for themselves excessively large percentages of the funds raised, because were the donors aware of this, they would never make their donations. But while he repeatedly asserts that percentages like 50, 75, 80, and 90 are unacceptable, he never clearly states the maximum percentage that is acceptable; perhaps he would permit anything below 50 percent,

¹R' Avrohom Chaim Feuer, *The Tzedakah Treasury* p. 335.

²See *Ma'asei Hatzedakah* p. 43 n. 4, cited in *Hilchos Tzedakah* siman 19 se'if 1 p. 60 n. 2.

³*Kovetz Hayashar Vehatov* #12 p. 24.

⁴*Mishpat Utzedakah* perek 7 n. 4, cited in *Hilchos Tzedakah* ibid. n. 5.

⁵*Shu"t Teshuvos Vehanagchos* cheilek 2 siman 475.

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mechiras chametz include the sale of stocks.

In the case of a trust, these dynamics may differ. A trust is a legal entity distinct from the grantor who created it, managed by one or more trustees empowered to execute transactions on the trust's behalf. The assets of the trust are to be distributed to designated beneficiaries at a designated time.

Revocable trusts can be amended or canceled by the grantor at any time by notifying the trustee in writing. Irrevocable trusts, however—commonly used for tax or Medicaid benefits—are beyond the grantor's control.

The notion that a financial entity, e.g., a trust or corporation, is independent of its members is subject to considerable debate among contemporary *poskim*, but this article will focus on practical guidance.

In the case of a revocable trust, the grantor is likely considered the owner with regard to *bal yeira'eh*, as he can regain ownership of the assets without anyone else's consent, so the *chametz* shares must be sold. For the transaction to be legally binding, the trustee is the one that must sign the *shtar mechirah*. (Usually, in a revocable trust, the grantor makes himself the trustee for the duration of his life to maintain control.) It should be specified in the *shtar mechirah* that *chametz* assets held in trust are included in the sale.

With an irrevocable trust, one could argue that no one transgresses *bal yeira'eh*:

- The grantor is not subject to the prohibition because he has relinquished ownership of the assets and cannot retrieve them.
- The beneficiaries are not subject to the prohibition because they do not own the assets until they are distributed.
- The trustee is not subject to the prohibition because he acts only as an independent manager (unless he is a beneficiary as well and can make distributions to himself).

Because the halacha here is unsettled, however, it is the responsibility of both the grantor and the trustee to ensure that the *chametz* shares are sold. In this case, too, it is sufficient for the trustee to sign the document alone.

Thanks to trusts and estates attorney Meir Fleischmann for reviewing the legal aspects of this article.

but that is not explicit in his *teshuvah*.⁸

Rav Shafran himself, however, is very skeptical of the 49% rule. In the following article, we shall *y"H* discuss his position as well as a number of other statements on the subject attributed to various *gedolei* Torah.



RAV ARYEH
FINKEL

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Kamenetsky suggests (Emess LeYaakov, Ki Sisa) that Rashi agrees with the Ramban with respect to individuals. But for *machatzis hashekel*, which counted all of Klal Yisrael, it would be impractical to

check every person's birthday, so a uniform standard was imposed that age would be counted from Rosh Hashanah.

A third approach is alluded to by the Maharam Schick (O.C. 189): For some halachos, birthdate is used (see Arachin 18b concerning

eved ivri, *sdei achuzah*, etc.), but for other halachos (e.g., *orlah*) we use Rosh Hashanah, and Rashi and the Ramban only disagree which group *machatzis* hashekel is in.

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