

Transcript of the Deputy Atty. Gen. of California addressing the Pacifica national board in December 2017

[00:00:05] **Speaker A:** [00:00:05] Right now, Ms Mossler from the Attorney General's office is on the line and we're going to stop everything and we're going to, uh, uh, she has, um, 15 to 15 minutes on the agenda to make a report. Uh, thank you, Ms Mossler for joining us.

[00:00:20] **Ms Mossler:** You're welcome. And good evening everyone. As was said, my name is Julianne Mossler. I'm a Deputy Attorney General in the charitable trust section of the California Attorney General's office. The charitable trust section enforces the statutes and regulations that govern charities and nonprofits operating in California.

I've been asked to speak to you tonight regarding your duties as directors on Pacifica's national board and the potential consequences for failure to adhere to those duties. The information I'm going to give you is broadly applicable to every aspect of your role as directors, but is critically important in the context of the current crisis.

[00:01:01] That said, I'm not your attorney and I'm not going to provide you with legal advice. Pacifica has competent legal counsel who's being paid to advise and guide Pacifica in its legal matters. Any questions you have about what I'm telling you tonight should be directed to him. Specific to foundations, articles and corporations state that the purposes for which the corporation was formed include: as an outlet to artists, to supply educational opportunities, to share information and to foster a peace and understanding between individuals and nations.

[00:01:40] As directors on the national board, each of you owe a duty of loyalty to Pacifica to help it achieve these standard purposes. It means that your personal interests and or the interests of your local stage radio station must take a back seat to the Pacifica's interests when you're acting in your capacity on the national board.

[00:02:00] When your personal interests, or those of your local station, diverge from Pacifica's interest, Pacifica's interests must always take precedence. As a director on Pacifica's national board each of you must act in a manner you sincerely believed to be in Pacifica's interest. That means every decision you make must be made for the purpose of advancing Pacifica's interests, even if that means that the interests of your local station or even your personal interests are adversely affected. To do otherwise, constitutes an impermissible conflict of interest that can result in your removal from the board, litigation or even Pacifica's collapse and closure.

As directors on national boards each of you also owes a duty of care and inquiry towards Pacifica. The duty of caring inquiry requires that each of you be reasonably informed and take whatever steps are necessary to make sure you have relevant information about whatever issue is being addressed at the national level. All of the decisions you make about Pacifica must be made in good faith.

[00:03:08] Good faith generally means honesty in light of all the facts available to you, including information, opinions, reports, or statements, and financial statements and other data in each case prepared or presented by one or more of the officers of the corporation, counsel, independent accountants or other persons as to whom the matters the director believes to be within such person's professional experience or competence or committee upon which the director does not serve that is composed entirely or exclusively of any of the combination of directors or persons described in paragraph one, which are officers or employees of the corporation.

[00:03:57] And as to matters within the committee's designated authority, you're also required to participate in decision making, again, with Pacific's best interests driving your decision. And you must exercise independent judgment in making those decisions. Obstructing the decision-making process can constitute a violation of your duties of loyalty and good faith.

[00:04:21] Paralyzing the national board by bringing it to deadlock in order to serve interests of a local station is a blatant conflict of interest and a violation of your duties as a director. If you fail in your duties as a director, or if you actively sabotage Pacific's efforts to operate its business, you can be subject to legal repercussions, including, but not limited to removal from the board, an order prohibiting you from serving on any board of any nonprofit in California, or civil judgements against you personally. If your response to the idea of a personal civil judgment is, I don't have any assets, so I don't care. Then you need to ask yourself whether you're acting in Pacifica's best interest and demand an honest answer.

[00:05:06] Whether do you recognize it or not, Pacifica is at the ultimate crossroads. Judgment against WBAI for back rent was filed two days ago. When a judgment holder undertakes to collect it's called execution. Given Pacifica's current situation, that term could not be more apt. As we understand it, there are three serious options for avoiding execution.

[00:05:32] The first being a signal swap of WBAI's signal from the Empire State Building to a signal lower on the dial. The second option is filing bankruptcy. And the third option is to obtain financing by leveraging the buildings in Berkeley and Los Angeles, either through a sale or a collateralized loan.

[00:05:55] I won't tell you what to do. Your attorney, your CFO, and your officers have thoroughly examined all the options available to Pacifica. They will answer your questions and provide you with all the information you need to make a decision. But you must make a decision, because refusing to do so is an advocacy of the responsibilities you accepted when you took a seat on the national board and creates a very real risk that Pacifica and its mission will burn to ashes around you.

[00:06:23] I asked you to let the 2016 presidential campaign be a cautionary tale. Actions on the left where I'm willing to coalesce when it really mattered. You don't need me to recite all the consequences of that failure. And if the memory of the 2016 campaign doesn't scare you straight, nothing will. Right now you have a chance to refocus and make a difference before the midterm elections, but you have to take it.

[00:06:50] Don't abandon your responsibilities as directors on the national board in favor of personal or local interests. Everybody's in the same boat. You need to row together. Don't let your differences distract from the important work ahead of you. I hope this has helped to clarify your duties as board members and sharpen the consequences of the failure to fulfill those obligations. Thank you for your time.

[00:07:13] **Speaker A:** [00:07:13] Thank you very much, Ms Mossler.

Ms Mossler: You're welcome.

[00:07:21] **Speaker A:** I take it you're not going to accept any questions?

[00:07:24] **Ms Mossler:** [00:07:24] No, I'm not willing to accept any questions that they should be directed to Mr. Green.

[00:07:31] **Speaker A:** Okay.