

HALOCHOSCOPE

This week's question:

Someone is the administrator of a communal institution. One company sent him a personal New-Year's gift, as an obvious ploy to create a favorable relationship and encourage his business. Does the administrator have the right to keep the gift? Should he avoid accepting it, since it could influence his decisions about where to make orders?

The issues:

- A) *Halachic* status of an administrator of communal fund or institution
- B) What constitutes a bribe? Fair competition and promotionals
- C) What constitutes personal benefit?

A) *Communal administrator*

One in charge of a communal fund or institution could fall into one or more of various categories. A *gabai tzedakah* is responsible for collecting and distributing *tzedakah* funds. This would make him into a combination of a *shomer*, guardian, and a type of judge. He could be considered a representative of each member of an institution. In this capacity, he would be considered a paid or an unpaid agent. He could be representing the individuals as a group or partnership. This changes, slightly, the way he makes decisions on their behalf. He could be considered the representative of an entity called the *tzibur*. He is not answerable to individuals or to partners, but to the community as a whole. A partner can withdraw from the partnership, with the consent of his partners, and remove the assets he contributed. A member of a *tzibur* has no individual ownership of the communal funds. Once they are donated or contributed, they transfer to the domain of the public, and stay there, regardless of who joins or leaves later.

The status of a *gabai tzedakah* involves many details, pertaining to his appointment and his authority to levy charges and collect the funds. In regard to his position with regard to using the funds, he is first and foremost an agent of the recipients of the funds. This could be a specific or an unknown poor person. For example, money might be collected for a specific purpose and person. Or money might be collected to provide for the needs of the needy, if and when they need it. There is no specific person in mind.

If the *gabai* is appointed by an individual to manage his *tzedaka* donations, he also represents the individual as the distributor. When a person sets aside money for *tzedakah*, he has dedicated it to the 'poor'. However, he usually has discretion to determine to whom it should be given. The *gabai* may not violate the wishes of the donor. This could also apply when a donor to a fund specifies how he wishes his donation spent.

If a *gabai* represents a communal fund, once the money is given, individual donors have no discretion over it. The *gabai* must follow certain regulations on how it is distributed. The poor own it collectively, but there can be limitations on how they may claim it as theirs. It might all be given to one recipient, depending on when he claims it,

who else is eligible, the extent of his needs and such considerations. Thus, it is not a simple case of dividing up a partnership.

If he is paid, a *gabai's* status is that of a paid guardian. His liability is to the 'fund' or 'institution', rather than to the individual donors, the community, or the collective poor. If he volunteers, he should logically be considered an unpaid guardian. However, some maintain that he receives certain benefits. These are not actual payments, but indirect advantages. One preoccupied in one *mitzvah* is exempt from others, including those that consume time and assets. The difference between the guardians is in their liability for loss or theft. It does not apply to negligence (in which case everyone is held liable) or accident beyond the control of the guardian.

The *gabai* has authority to use the funds for administrative expenses. The donor is considered having fulfilled the *mitzvah* of *tzedakah* with this as well. However, the expenses should be normal. Unusual expenses must be considered carefully. The *gabai* is really allowed to deduct some money for his own efforts as well, if it is clear that without this the effort would not be made. Some say that he is entitled to a commission, based on the general *minhag*, prevailing practice, or an agreement of the institutional governing bodies. The *gabai* may spend some money on his appearance and presentability. A common question is whether to provide incentives to those collecting or otherwise helping the campaign. The consensus is to allow the *gabai* to make these decisions, provided he knows that the *tzedakah* will gain. If a specially talented person demands more than the market rate for his product of services, this may not be taken from *tzedakah* money. However, some communal institutions are not considered pure *tzedakah* money. The representatives have authority to transfer funds to mundane uses. In such institutions, some suggest that they may hire a high-priced expert.

The representative of a group would need to consider himself an employee or agent, or a voluntary guardian and agent with certain responsibilities. All his decisions must be made in accordance with the employers, in this case, the contributors. This kind of institution is generally not a *tzedakah* fund, but a partnership. While they might sometimes solicit help from the outside, it is really a cooperative for mutual convenience and benefit. *Mitzvah* institutions can be considered privately owned, just as a person must own his own *lulav*. [Questions arise in the case of private ownership within a communal institution, such as one who purchases lifetime ownership of a particular seat in *shul*. Does it transfer automatically to his heirs? What happens when the *shul* needs to renovate?]

A representative of the *tzibur* could be elected or appointed. He could be given overall responsibilities, or have a specific job. He could even be in a position to make the major decisions across the community. In the simplest sense, it is impractical to require each member to have input on decisions all the time. In addition, there could always be disagreements. Someone needs to decide. The trustee is handed the responsibility to make the decisions himself. If a *halachic* opinion is needed, there might be a stipulation to follow a selected *rav*, or the trustee might have to follow a *rav* of his choosing or his *rav*.

The poskim debate whether those in position of authority are automatically considered *dayanim*. This would require them to be *halachically* qualified. Alternatively, the 'litigants', i.e., the citizens, could accept them anyhow.

The ultimate *tzibur* representatives are the *tuvei ha'ir*, literally, the good ones of

town. Their *halachic* status is that of an *apotropus*, manager with decision-making responsibilities. This means that they can even make a decision, under some circumstances, to lower sanctity. Typically, this refers to selling a *shul*. Some decisions must be made by the entire *tzibur* with the *tuvai ha'ir* all present. Sometimes not all need be present. Sometimes a unanimous agreement is needed, and sometimes a consensus or simple majority. Once a decision is made it is binding on all members.

The poskim discuss how a person becomes a *tuv hair*. Some say that it is determined by election. The only qualification is that they be G-d-fearing and level-headed in judgment. They need not be scholars or rich philanthropists (unlike *gabai tzedaka*, who must also be learned. Most agree that he must be shrewd enough to detect wrongdoing.) Some say that the concept of election only works in a small community where everyone can be considered a participant. In large communities one becomes a *tuv hair* by default. Those who always end up doing the *tzorchei tzibur*, the needs of the community, including *tzedakos*, are automatically considered *tuvai hair*. The authority of *tuvai hair* is based on the assumption that the *tzibur* relies on them when they donate. As a basic principle, the discretion of any public servant or employee is rooted in the consent of the public when he was put into this position, and their implied continued consent as they contribute.

A trustee, administrator, or governor for a *tzibur* must separate his personal interests from the institution. However, he may be a member of the *tzibur*. Nonetheless, there are certain decisions that he, or any member, may not make. These involve ruling in a situation that usually requires testimony or convening a Rabbinical tribunal. They are considered partial due to their interests. [See Megilah 26a-27b Baba Basra 8a-b etc. 43a Erchin 6a-b, Poskim. Tur, Sh Ar OC 154:5 7 9 12-18 YD 256 257 259 CM 7:12 37:18-22 163 231:27-28, commentaries. Tzedakah Umishpat 7 8 9:712-16 10:3-4 14:16, notes.]

B) Bribes, competition, promos

We have mentioned that public servants can be considered judges. The prohibition against taking a bribe applies where a judge will lose his objectivity. An incentive or offer when the recipient is not called on to judge between two parties is permissible. An administrator might be called on to decide between two parties. For example, a *shul gabai* might have to settle a dispute over an aliyah. Assuming that there are good reasons on each side, he has to make a fair judgment. By accepting a gift from one party, his judgment is likely to be more favorable to that party. A witness may not receive a bribe from one party. Judges and witnesses are included in the Scriptural *mitzvah* forbidding bribes. Bribes need not be material. Extra words can be considered a bribe. Thus, a standard thank-you would be acceptable, but something unexpected could be a bribe.

Another risk of bribery is when an *apotropos* has to choose with whom to deal. The choice should be based on the best interests of those he represents. Accepting a gift will cause him to favor the donor, even when it is not in the best interests of the donor. In our case, the administrator might be influenced by the gift. However, this does not fit the exact guidelines of bribery. It is rather a question of his general objectivity. He must be able to look past personal preferences, even if there was no gift, and certainly if he received a gift. Even indirect financial considerations, such as deserved benefits for relatives or employees, should not sway a decision. Great people should not base their decisions on any financial considerations of their own.

The Talmud provides for healthy competition. However, one may not take a customer away from another merchant who has already entered into negotiations. As long as there is no standing order, any new prospective seller may solicit business. The Talmud debates promotional offers to the children of prospective buyers. In one opinion, this is unfair competition. It encourages the children to drag their parents to this store instead of allowing them to choose objectively. We follow the view that it is permissible. If the competition wishes to, let them distribute their own promos. The recipient need not feel any qualms about accepting them. [See Shabbos 56a Kesubos 105a Baba Metzia 60a, Poskim. Tur Sh Ar CM 9 34:18 228:18, commentaries.]

C) Personal benefit

Personal benefit from money donated to *tzedakah* is like stealing from the intended poor recipients. One may not even use the money for a *mitzvah*, if it is a obligation, including a prior voluntary undertaking. Making a provision that it may be used for a future voluntary undertaking is debated. A *gabai* is further required to avoid doing anything that will arouse suspicion. A *gabai* may use the *tzedakah* money to aid in further fund-raising, such as to purchase clothing or a vehicle. However, he may not use these for personal gain. His enjoyment while using them is a permissible side-benefit. He need not pay for them himself because he has this pleasure. We have mentioned that one may take fair payment for his effort. One may also give away and accept incentives. The understanding is that donors have these expenses in mind when they donate the money.

If the institution is not a *tzedakah*, but nevertheless is a public trust, the trustee may not reap personal benefits from the money. He may use any money needed to perform his function. In our case, the gift was not sent to the institution. It was sent to him personally. The benefit is indirect. It could be viewed as an incentive to continue his work. Just as a thank-you is not considered a bribe, we may suggest that a new-year gift is not an unacceptable incentive. [See refs to section A. Sh Ar YD 249 259 etc.]

In conclusion, the administrator may keep the gift, if it does not blind his judgment. ***On the Parsha ... Hashem spoke .. I am Hashem .. [6:2] .. I did not send you for nothing .. [Rashi]*** Moshe had complained “Why did You send me?” How is this an answer? Moshe knew all this. His complaint was that his being sent had only made things worse. If Hashem was going to fulfill His promise to save the Jews, He could have done it without sending Moshe to exacerbate things! Furthermore, this *pasuk* is a new conversation! [See *meforshim*] Anyone performing a mission in public service is at risk of feeling that his work is 'for nothing'. Hashem is showing us that when asking someone to do a public service, one must reassure him that his work will be worthwhile.

Sponsored by the Bass-Rottenstein family in Memory of Noah's mother Goldie bas

Shmuel a”h, whose yahrzeit is on the 25th of Teves. 

Sponsored by Frank Lieberman and Beverly Barkon on the engagement of their son

Eli to Marissa Wolf.

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