Highest and Best Use of Charitable Gifts

Joseph M. Zanetta, J.D.

September, 2009

ON THE CUSP PUBLISHING

P.O. Box 510257
Milwaukee, WI 53203
(800) 805-7086
www.OnTheCuspPublishing.com

Highest and Best Use of Charitable Gifts

Joeseph M. Zanetta, J.D.
President of Providence Little Company of Mary Foundation in Torrance, California

When I attended law school, I learned in property class the theory referred to as the "highest and best use" of land. It states that the value of a property is directly related to the use of the property; the highest and best use is that which provides the highest property value. Applying that theory to the world of philanthropy, the question of "highest and best use" of charitable gifts arises.

Prior to the economic meltdown of 2008, national media had written articles about wealthy institutions that seem to be in a constant race for increasing their giving. In a notable article written in the *New York Times* (October 21, 2006), reporter Joe Nocera asked probing questions about wealthy universities: "All of which made me wonder, does Stanford—and Yale, and Brown, and N.Y.U.—really need to raise ever more billions to add to the billions it already has? Or is this an example of fund-raising run amok, a case of the rich getting even richer—just because they can?"

I would add Cornell to the list of wealthy institutions that are seeking to increase their wealth. I attended Cornell on a scholarship, and have always been grateful to the university. Having earned both an undergraduate and law degree from Cornell, I worked on the development staff and learned the "art" of being a successful fundraiser.

Recently, I attended the kick-off event for the university's $4 billion campaign and thought of the highest and best use of my own philanthropic gifts. (By the way, I have been a donor to Cornell nearly every year since my graduation.) As I analyzed my own charitable giving, I was struck by how insignificant my own gift would be to a university seeking to raise $4 billion. Yet other charities that I support have only modest resources, and my gifts may provide greater value and impact. This challenge of highest and best use is one we all face in our charitable giving.

As Baby Boomers age, we have matured, we have learned to balance our needs with the needs of our community, and we have embraced philanthropy. However, in my view, folks of my generation have learned to question a perceived need for private support. I recall a talk given by Robert Zemsky, Ph.D., who is the founding director of the University of Pennsylvania's Institute for Research and Higher Education. Dr. Zemsky has developed a phrase that refers to wealthy, highly competitive colleges and universities as *medallion schools*. Harvard and Stanford, Williams and Amherst—these are among the most highly regarded institutions of higher education in the world. But the question that the *New York Times* poses is certainly appropriate. With an endowment approaching $30 billion (after adjusting for the market crash of 2008), can one make the case that Harvard needs to increase its endowment through private giving? Stanford, Williams, and Amherst have similarly achieved great wealth through generations of alumni support.

The highest and best use of giving theory applies in the twenty-first century, and suggests that a donor analyze the impact of his or her gift on the charitable organization. Let us suppose that an individual has $100,000 to give away and is interested in creating an endowment to provide access to promising students. This hypothetical donor attended an Ivy League university and has lived in a metropolitan area for 25 years. His alma mater has an endowment approaching $4 billion, while the local state university has an endowment of $800 million. And in this case, size is not a factor, since the Ivy League university has 15,000 students, while the local state university has 30,000 students.

Setting quality arguments aside for a moment, and presupposing that the stock market will eventually correct itself and that a $100,000 endowment will provide income of $6,000 annually, what is the highest and best use of those charitable dollars? The Ivy League university's annual expense is $50,000, while the state university's annual expense is approximately $17,500.

Now let us address the quality issue. The Ivy League school is my own alma mater of which I am incredibly proud to be a graduate. Cornell has always been true to its mission as stated by Ezra Cornell: "To found an institution where any person can find instruction in any study." The local state university is UCLA, which has achieved remarked academic success since its founding as the Southern Branch of the University of California.

Donors will increasingly look at the balance sheet of a nonprofit organization and assess the potential impact of a gift.

So which institution is more deserving of that $100,000 endowment gift? More importantly, where would it have the greatest impact on education?

Of course, emotions often motivate donors to make significant gifts. But based on the concept of highest and best use, I predict that donors will increasingly look at the balance sheet of a nonprofit organization and assess the potential impact of a gift.

Since 9/11, we have seen donors focus on issues that really matter to them. And, of course, that is rather subjective. But after such a national catastrophe, children's causes and health care organizations have witnessed an increase in giving. I would argue that after the economic catastrophe of 2008, we will similarly witness a movement of charitable dollars away from wealthy medallion institutions to smaller, less prestigious ones.

Back to the comparison between Cornell and UCLA, and the question as to which institution might be more deserving of the endowed scholarship fund. The highest and best use theory of giving would create a series of questions to be asked: What percentage of students who attend the university are the sons and daughters of working-class families with annual incomes under $75,000? What percentage of students are people of color? What percentage of students are children of the wealthy? How is such a scholarship fund administered? How much does the institution manage endowed scholarship funds?

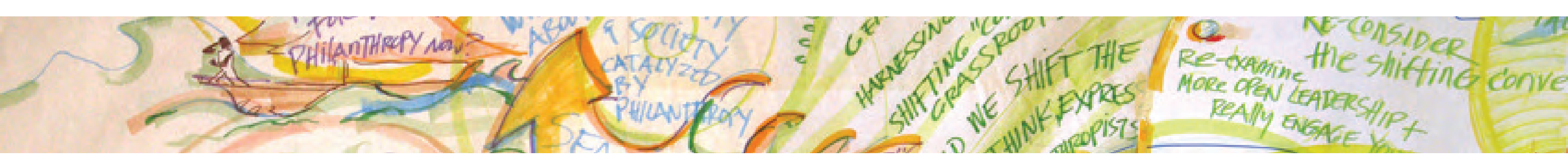
Demonstrating impact is going to be increasingly important to donors of the twenty-first century. A Stanford Law School graduate, Martin Kimel, wrote an op-ed piece in the *Los Angeles Times* (November 26, 2006), in which he states, "Your already rich alma mater doesn't need the money." He embraces the highest and best use theory and applies it to philanthropy. Based on his analysis, his alma mater does not deserve its new $500 million campus. He further states that wealthy institutions do not need the money from private donors, since they already have billions of dollars in the bank and that wealthy institutions often "suck scarce philanthropic resources from underfunded charities."

But philanthropy has become competitive, and the nonprofits need to be able to demonstrate impact and the ways in which society will be improved by the act of giving.

Clearly, donors have the right to make their own decisions about which charities should be the recipients of their philanthropy. Many feel a desire to honor the memory of a loved one, the wish to express gratitude for a scholarship or a fine education, or the need to give back. These are all worthy endeavors. But philanthropy has become competitive, and the nonprofits need to be able to demonstrate impact and the ways in which society will be improved by the act of giving.

The highest and best use argument should be analyzed by leaders of nonprofit organizations, by grant-making foundations, and by the public at large. In the end, our society has been greatly enhanced by philanthropy, and that will certainly continue. We just want to make sure that our donors understand they have an obligation to support institutions that will truly be good stewards of their giving, have a demonstrated need for additional resources, and are not seeking private support merely to increase the balance sheets of already wealthy institutions.

My son's independent high school boasts of its commitment to serve students from the inner city and manages the financial program with a $1 million endowment. My own hospital foundation has an endowment of $50 million, and we provide the poor and vulnerable with access to primary care. My alma mater has an endowment of $4 billion. The highest and best use theory, which ironically I learned about in the ivy-covered walls of Cornell, now causes me to reevaluate my own private giving and designate those gifts to needier institutions.



About this extract

In Spring 2009, Gary Hubbell Consulting convened a think tank of North American nonprofit organization and development leaders. Four topics were selected for discussion, each of which became the focus of an insightful essay by each of the hand-picked attendees. The four topics are: New Perspectives on Leadership, Reimagining the Future of Philanthropy, Development in a Systems Context, and Demonstrating and Communicating Philanthropy's Impact. The resulting e-book, *In Search of New Meaning: Philanthropy, Community and Society,* is available for free download at www.OnTheCuspPublishing.com. This essay is an extract from that publication.

Also Available from On The Cusp Publishing

Books

Forces of Change: The Coming Challenges in Hospital Philanthropy

Lessons from Benchmarking: Fast-Forwarding the Maturity of the Fundraising Operation

Staff-Led Feasibility: How to Design and Conduct Your Own Fundraising Feasibility Study

e-books and articles

Building Alliances to Enhance Philanthropy

Demographics, Generational Change, and Their Impact on Philanthropy

Donor Relations 2.0: Building Lasting Bonds

Fostering Relationships, Trust, Communication, and Competition within a System

Highest and Best Use of Charitable Gifts

In Search of New Meaning: Philanthropy, Community and Society

Keystone Questions

Paradoxical Leadership: A Contrary Take on Executive Clout

Releasing the Leader Within

Shape-Shifting in Philanthropy: 2009-2015

The Paradox of Letting Go and Other Lessons

The Prophecy of Millennial Philanthropy

They Don't Need Us Anymore

What is a Relationship After All?

When the Party's Over: Why, How and When to Conduct a Post-Campaign Assessment

ON THE CUSP PUBLISHING

P.O. Box 510257
Milwaukee, WI 53203
(800) 805-7086
www.OnTheCuspPublishing.com