

HALOCHOSCOPE

This week's question:

Is it acceptable to refuse to give *tzedakah* to an organization that has no transparency?

The issues:

A) *Tzedakah*

B) *Gabai tzedakah*, administrator of a fund; types of collecting/distributing agencies

C) Accountability and transparency

A) *Tzedakah*

Tzedaka is a Scriptural obligation, positive when giving, and negative when refusing, despite its appearance as a voluntary act of kindness and generosity. It is forbidden to refuse a plea for alms by the poor, and communal authorities may force individuals to donate. They can assess an amount, graduated by means, and seize goods or property as collateral. There are basically four types of *tzedaka*: (i) When a poor person asks for alms one must provide him with basic needs; (ii) Communal compulsory collections for the community poor, *kupah vetamchuy*; (iii) *Nidrei tzedaka*, a self-imposed vow, undertaking, to gain merit for the sick, the souls of the deceased, in repentance or thanksgiving; and (iv) *Maaser kesafim*. *Maaser* means a tenth or tithe. The Torah obliges the farmer inside *Eretz Yisroel* to tithe crops and the new season's livestock. *Teruma*, a small percentage, is given to the *Kohain*. *Maaser*, a tenth or tithe, is given to the *Levi*, and a second tithe is separated from the remainder. *Maaser Kesafim*, tithing one's money, is modeled on crop tithes, but linked to the *mitzvah* of *tzedaka*, charity. Hence the term *maaser*.

Money already designated for *tzedakah* does not usually belong to the donor. He has *tovas hana'ah*, discretion, and should educate himself on the rules of merit and distribution. Scripturally, one must provide *dai machsoro*, what the poor person needs according to his own standards. It includes food, shelter, clothing, medical and *mitzvah* needs, tuition for children and costs of marrying. The poskim debate whether this obligation falls upon the individual or on the community. There is a hierarchy of recipients of personal *tzedakah*, including relatives, neighbors and scholars. There is also a hierarchy of needs, including immediate food and shelter, or less urgent clothing or money. [See Vayaitzai 28:22 Re'ay 15:7-11. Kesubos 50a, Sh. Mk. 67b Taanis 9a, Tos. Pe'ah 1:1, Shnos Eliyahu. Bava Basra 8a-b, Poskim. Sefer Hamitzvos A:195 L.S.:232. SeMaG A:162 LS:289. Tur BY Sh Ar YD 247 248:1-2 249:esp.1 250:1-4 251:1-11 253 256 257 258:1 13 259:1 305:3 5 331, commentaries. Noda Biyehuda I:YD:73. Tshuvos Chasam Sofer YD 229. Igeress Hagra. Ahavas Chesed 2:19, etc. *Tzedakah Umishpat* 3.]

(B) *Communal administrator*

In some communities, there still exists a communal *kupah*. This compulsory fund to provide for the community poor is assessed according to means and needs. For a position

of authority with the power to demand or administer money, two appointees are required, Scripturally. When they convene to make a judgment, three are required, like a *Bais Din*.

Other communal institutions do not have the power to compel. The fund might be compulsory nonetheless. This need not involve *tzedakah*, but can include other communal institutions, such as a *mikveh*. The administrators would still be appointed to positions of authority. They represent those who appointed them. A private fund managed by an administrator would not require all the qualifications or rules of a communal *gabai*. Much would depend on the terms of their appointment. An individual collector is not appointed, and might not be the actual recipient. He represents the poor man. In all of these cases, there is no requirement of two *gabaim* working together.

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. 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. 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.

If the *gabai* is appointed by an individual to manage his *tzedaka* donations, he also represents the individual as the distributor. The *gabai* may not violate the *tovas hana'ah* wishes of the donor. This can 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. Thus, it is not a simple case of dividing up a partnership.

The status of a paid *gabai* 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, he might receive certain benefits or 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 normal administrative expenses. The donor is considered having fulfilled the *mitzvah* of *tzedakah* with this as well. The *gabai* is 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. A common question is whether to provide incentives to those helping the campaign. The consensus is to allow the *gabai* discretion, provided he knows that the *tzedakah* will gain. If a specially talented person demands more than the market rate for his services, this may not be taken from *tzedakah* money. Some communal institutions are not considered pure *tzedakah* money. The representatives have more authority to transfer funds to mundane uses.

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?]

It is impractical to give each community member 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.]

C) Accountability and transparency

The *tzibur* or its leadership may not demand an accounting from *gabaim*. The Torah does require the *gabaim* to remain above suspicion. Thus, they must be prepared to account of their own accord. If the appointment was made with the stipulation that they provide an account at regular intervals, they must do so.

In accounting for the distribution of the funds, there might be a need for anonymity to protect the identities of the recipients, or to protect the nature of their needs. In modern times, donors identities and donations can also be traced. Their privacy is also at stake. In fact, disclosing their identities can reduce their *mitzvah*. Full transparency can lead to a breakdown of the entire system. The *tzibur* can appoint an independent person to represent them to 'audit' the *gabaim*. He need not report to each individual member of the community, but to the leaders, elected or otherwise. It then becomes their responsibility to determine whether the *gabai* acted appropriately. The individual can ask them questions to decide whether he should continue giving them.

If the person was not appointed with full consent of the *tzibur*, in many cases, he is required to give an accounting, especially when there are grounds to question his actions. A self-appointed *gabai* may be asked to account for his funds. However, in both of these cases, the request should come from a communal representative. An individual with concerns may confide in the leadership, within the guidelines of *lashon hara leto'eless*, permissible negative reporting. Before donating the money, one may certainly stipulate that the collector account for where his money goes. In this case, the *gabai* is restricted from violating the wishes of the donor. If a donor has credible grounds to suspect that the *gabai* or the organization did not follow through on their stated mission, he may ask them to explain. [See Pekudai 38:21 Matos 32:22 Pesachim 13a Shekalim 3:2 5:4 (Yerushalmi) Yuma 38a Baba Basra 9a 10a, Poskim. Tur Sh Ar YD 149:7 157:2, commentaries. Tzedakah Umishpat 7:7-11, notes.]

In conclusion, depending on the type of organization, one may sometimes request an accounting of the funds, even after donating them. This must be done in the proper manner. Furthermore, in regard to certain types of organization, one may stipulate before donating that he wishes to be given a full account of how his money was used.

On the parsha .. Yosaif brought their evil reports to their father. [36:2] He saw them eat from a live limb etc. [Rashi] G-d forbid, the brothers never actually violated these mitzvos. Rather, they did things that could be seen this way by onlookers. Yosaif held them to a higher standard. [Gur Aryeh] If so, why is it called evil? The brothers were in violation of the requirement to act above suspicion!

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