

Political Advocacy – Watch for the Mines

By Dennis Walsh CPA

You may have no intention of venturing into the minefield of political advocacy.

However, it is still important to educate your board, staff and volunteers on the types of activities that might inadvertently result in a prohibited act, the result of which may be the imposition of excise taxes and the loss of tax exempt status.

Let's say Smith, the executive director of a Greensboro nonprofit, takes candidate Jones, a personal friend, to lunch at organization expense. Smith asks Jones what she can do to help him in the upcoming election. Even though Smith intends to help Jones in her personal capacity as a friend, impermissible intervention has occurred as a result of the cost of the meal. Further, if Smith sends her assistant Brown to pick up campaign pamphlets during paid time using the organization vehicle, prohibited expenditures have occurred in the form of Brown's wages and related employment costs allocable to the errand, a portion of the vehicle operating costs, and the cost of printing the pamphlets if paid by the organization. The amounts may be minor but the consequences can be major.

Federal law prohibits political campaign activity on the part of charities by defining a 501(c)(3) entity, in part, as an organization as "one which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." This statement was required as part of your articles of incorporation for recognition of tax exemption by the IRS. Stated differently, you cannot make any oral or written statement or take any action that indicates support, opposition, bias, or preference for any particular candidate for public office.

In contrast to campaign intervention, legislative advocacy, in the form of either direct lobbying of legislators or the public (grassroots) lobbying, is permissible for tax-exempt public charities within certain limits. Unlike campaign intervention, your nonprofit can engage in a limited amount of lobbying and advocate for or against issues that are in the political arena.

Additionally, nonprofit personnel are perfectly free to immerse themselves in campaign activity in their individual capacity. The line separating personal versus organizational involvement, however, isn't always a bright one as illustrated earlier. The resource described below should help you get a better feel for situations that are close to the line.

In 2007 the IRS issued revised guidance on permitted activities and how charities can stay within the law. Revenue Ruling 2007-41 discusses 21 situations that illustrate permissible and impermissible activities. By nature, application of law

involving campaign activity is fact intensive. Consequently, as observable from a reading of the examples in the Revenue Ruling, it is quite possible for an act to be permissible in one set of circumstances but not another. It is vital to discern how the facts differ among the scenarios discussed.

Key takeaways from the Revenue Ruling include:

- Voter education, get out the vote drives and similar activities are permissible as long as they are carried out in a non-partisan manner.
- Nonprofit leaders may not make partisan comments in official publications or functions of the organization.

- Candidates for office may attend or speak at your events in their individual capacity or as a candidate. If attending as a candidate, however, you must give all candidates for a particular office equal access and treatment.

- You may take positions on public policy issues that divide candidates for office, but you must be careful to avoid crossing the line from issue advocacy to campaign intervention. Criteria for evaluating whether your statements constitute intervention include whether you distinguish candidates or express approval/disapproval on a particular candidate's position or past action on the issue and whether the communication represents ongoing advocacy or can be associated with a particular election.

- Principles of fairness and equal access also apply to business activities that your organization may be involved in such as rental of mailing lists or the leasing of office space to candidates for office. Activities involving the sale of goods and services by your organization that are ongoing and equally available to all candidates and the public on the same terms are less likely to be considered impermissible campaign intervention.

- Your organization's website is a form of communication indistinguishable from other written materials or oral communication for purposes of the campaign intervention rules. Materials on websites linked to yours may be considered statements by your organization depending on the purpose and context of the link, even though you do not control the content of the other site. Accordingly, you should monitor the content of websites linked to your organization, a prudent management practice in any case.

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