



Navigating the Rules of Advocacy: A Non-Profit's Guidebook

 **LeadingAge™ PA**
an association of not-for-profit senior services

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One of LeadingAge PA's major focuses continues to be advocacy—both at the association level as we educate policy makers on the impact that initiatives will have on our membership, and at the grassroots level. While a number of LeadingAge PA's member organizations have embraced the issue of advocacy as vital to their continued operations, many are still hesitant. One reason non-profits are timid about engaging in advocacy efforts is because many people confuse advocacy (which is permissible) and political activity (which is not). Political activities and legislative activities are two different things and are subject to two different sets of rules. The rules are not necessarily complex, but they are very fact specific. It does not take much for a permissible public policy forum to turn into a campaign event—usually due to no fault of the host facility. It is our hope that this booklet will demystify some of the misconceptions that exist and embolden you to engage in advocacy efforts.

* PERMISSIBLE ADVOCACY ACTIVITIES

In order to understand what charitable organizations cannot do in the political sphere, it is necessary to understand what is permissible. As part of an overall advocacy initiative, 501(c)(3) organizations are permitted to engage in lobbying activity. Lobbying relates directly to legislative initiatives. Legislation includes any action by Congress, state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure. The Internal Revenue Service defines the two types of lobbying:

1. **DIRECT LOBBYING** refers to attempts to influence a legislative body through communication with a member or employee of a legislative body, or with a government official who participates in formulating legislation. Contacting your legislator or other government official and offering your organization's position on a piece of **legislation** is permissible. You may also share your organization's position with your staff and residents. You, your staff, and residents may participate by visiting elected officials, contacting elected officials, and inviting elected officials to your communities.
2. **GRASSROOTS LOBBYING** refers to attempts to influence legislation by attempting to affect the opinion of the public with respect to the legislation and encouraging the audience to take action with respect to the legislation. In either case, the communications must refer to and reflect a view on the legislation. Telling the general public and your residents your organization's positions on **legislation** is permissible. If they wish to, they may communicate this position with their legislators or government officials (e.g. letter writing campaigns and call-in days).

While lobbying is permitted by the IRS, there are limits on the amount of lobbying these entities can do. In general, no organization may qualify for section 501(c)(3) status if it devotes a "substantial part" of its activities to attempting to influence legislation (commonly known as lobbying). If a 501(c)(3) is found to have failed the "substantial part" test, their tax-exempt status could be revoked.

Organizations other than churches and private foundations may elect the expenditure test under section 501(h) as an alternative method for measuring lobbying activity. Under the expenditure test, the extent of an organization's lobbying activity will not jeopardize its tax-exempt status, provided its expenditures related to such activity do not normally exceed an amount specified in section 4911. This limit is generally based upon the size of the organization and may not exceed \$1,000,000, as indicated in the table below.

If the amount of exempt purpose expenditures is:	Lobbying nontaxable amount is:
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
>\$1,500,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000

Organizations electing to use the expenditure test must file Form 5768, *Election/Revocation of Election by an Eligible IRC Section 501(c)(3) Organization to Make Expenditures to Influence Legislation*, at any time during the tax year for which it is to be effective. The election remains in effect for succeeding years unless it is revoked by the organization. Revocation of the election is effective beginning with the year following the year in which the revocation is filed. (Source: www.irs.gov)

✦ ADVOCACY BEYOND LOBBYING

Organizations can influence public policy in many ways that are not defined as lobbying by the IRS. For example, contacting government officials or legislators to try to change regulations (as opposed to legislation) is NOT lobbying. Organizations can even hold education sessions on both regulations and legislation provided those sessions are conducted in a non-partisan manner.

✦ PROHIBITED POLITICAL ACTIVITIES

The Internal Revenue Code prohibits all **501(c)(3) organizations from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office**. Contributions to political campaign funds are strictly forbidden. Organizations can neither endorse political candidates nor align with political parties. Charitable organizations are also forbidden from mobilizing supporters to do the same. A facility risks revocation of its tax-exempt status as well as incurring additional fines and taxes if it violates these rules.

While charitable organizations need to be mindful of the nature of their activities during a political season, these entities should not feel paralyzed during an election cycle. As outlined below, there are a number of ways that organizations can be active, even in the midst of an election.

✦ PERMISSIBLE ACTIVITIES BY ORGANIZATIONS

Even during election cycles, charitable organizations are allowed to engage in certain activities— if done the correct way. For example, charitable organizations may educate voters on issues, publish voter guides, hold public forums, and even register voters. Just be aware that any evidence of bias that would favor one candidate over another, oppose a candidate in some manner, or have the effect of favoring a candidate or group of candidates will constitute prohibited participation or intervention.

◆ *Speaking as a Non-Candidate*

This is the category that most LeadingAge PA related advocacy activities, such as Legislative Breakfasts, fall under.

An organization may invite political candidates to speak in a non-candidate capacity. For instance, a political candidate may be a public figure because he or she currently holds, or formerly held, public office, is considered an expert in a non-political field, or is a celebrity or has led a distinguished military, legal, or public service career. When a candidate is invited to speak at an event in a non-candidate capacity, it is not necessary for the organization to provide equal access to all political candidates.

However, the organization must ensure the following:

- ◆ The individual speaks only in a non-candidate capacity.
- ◆ Neither the individual nor any representative of the organization makes any mention of his or her candidacy or the election.
- ◆ No campaign activity occurs in connection with the candidate's attendance.
- ◆ The organization must not choose individuals to speak solely on their candidacy for public office.
- ◆ The organization maintains a non-partisan atmosphere.

- ◆ The organization must clearly indicate the capacity in which the candidate is appearing and must not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

◆ *Inviting a Candidate to Speak*

The prohibition against political campaigning has led to the myth that during an election cycle all candidates are off limits. Depending on the facts and circumstances, **an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status**. Political candidates may be invited either in their capacity as candidates, or simply as an individual. Obviously, however, there are rules.

◆ *Speaking as a Candidate*

The following rules apply when *a person running for office who is there solely due to the fact he/she is running for office*. The organization must take steps to ensure the following:

- ◆ You provide an equal opportunity to **all** the political candidates seeking the same office.
- ◆ You do not indicate any support of or opposition to the candidate (This should be stated explicitly when the candidate is introduced and in communications concerning the candidate's attendance.)
- ◆ No political fundraising may occur.

◆ *Equal Opportunity to Participate*

In determining whether candidates are given an equal opportunity to participate, an organization should consider the nature of the event to which each candidate is invited, as well as the manner of presentation. For example, an organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely be found to have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

◆ *Public Forum*

Sometimes an organization invites several candidates to appear together at a public forum. A public forum involving several candidates for public office qualifies as an exempt educational activity. However, the facility must take steps to ensure that no organizational bias or partisanship shows through in the presentation.

An organization inviting several candidates to speak at a forum should consider the following factors:

- ◆ Questions for the candidates must be prepared and presented by an independent nonpartisan panel.
- ◆ Topics discussed by the candidates must cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public.
- ◆ Each candidate must be given an equal opportunity to present his or her views on the issues discussed.
- ◆ The candidates must not be asked to agree or disagree with positions, agendas, platforms or statements of the organization.
- ◆ Moderator comments must not imply approval or disapproval of the candidates.

* INDIVIDUAL POLITICAL ACTIVITY BY ORGANIZATION LEADERS

The rules against political activity relate only to charitable organizations, NOT individuals. Leaders of charitable organizations neither lose their constitutional right to engage in the political theatre nor are prohibited from speaking about important issues of public policy. However, for their organizations to remain tax-exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official functions. To avoid any potential confusion, organization leaders who want to be engaged in politics should clearly indicate that their comments are personal and not intended to represent the views of the organization. Below are a number of scenarios that are included in an IRS article from February 2006 (See Revenue Ruling 207-41, refer to IRS website, www.irs.gov) on the issue of political activity by individuals associated with tax-exempt organizations:

Example 1: President A is the Chief Executive Officer of Hospital J, a section 501(c)(3) organization, and is well known in the community. With the permission of five prominent healthcare industry leaders, including President A, who have personally endorsed Candidate T, Candidate T publishes a full page ad in the local newspaper listing the names of the five leaders. President A is identified in the ad as the CEO of Hospital J. The ad states, “Titles and affiliations of each individual are provided for identification purposes only.” The ad is paid for by Candidate T’s campaign committee. Because the ad was not paid for by Hospital J, the ad is not otherwise in an official publication of Hospital J, and the endorsement is made by President A in a personal capacity, the ad does not constitute campaign intervention by Hospital J.

Example 2: President B is the president of University K, a section 501(c)(3) organization. University K publishes a monthly alumni newsletter that is distributed to all alumni of the university. In each issue, President B has a column titled “My Views.” The month before the election, President B states in the “My Views” column, “It is my personal opinion that Candidate U should be re-elected.” For that one issue, President B pays from his personal funds the portion of the cost of the newsletter attributable to the “My Views” column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the university. Because the endorsement appeared in an official publication of University K, it constitutes campaign intervention by University K.

Example 3: Minister C is the minister of Church L, a section 501(c)(3) organization, and Minister C is well known in the community. Three weeks before the election, he attends a press conference at Candidate V’s campaign headquarters and states that Candidate V should be re-elected. Minister C does not say he is speaking on behalf of Church L. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church L. Because Minister C did not make the endorsement at an official church function, in an official church publication or otherwise use the church’s assets, and did not state that he was speaking as a representative of Church L, his actions do not constitute campaign intervention by Church L.

Example 4: Chairman D is the chairman of the Board of Directors of M, a section 501(c)(3) organization that educates the public on conservation issues. During a regular meeting of M shortly before the election, Chairman D spoke on a number of issues, including the importance of voting in the upcoming election, and concluded by stating, “It is important that you all do your duty in the election and vote for Candidate W.” Because Chairman D’s remarks indicating support for Candidate W were made during an official organization meeting, they constitute political campaign intervention by M.

CONCLUSION

The importance of LeadingAge PA's members engaging in advocacy on behalf of their respective organizations and residents cannot be understated. Inaction is no longer an option.

If we don't tell our stories, no one will. It is with this in mind that LeadingAge PA was compelled to publish this booklet. The purpose of this publication is to help members understand the issues around engaging in advocacy as not-for-profit providers, including the legal parameters within which advocacy can take place. Obviously, this document cannot begin to answer all questions attendant to the intersection of a tax-exempt organization's participation in public discourse and the law. The legality of an entity's actions is often heavily dependent on the facts at hand.

All too often, not-for-profits make the decision to avoid advocacy due to the perceived consequences of overstepping the boundaries of allowable advocacy activities. LeadingAge PA is publishing this document to empower member leadership to embrace the critical role in advocacy that their organization can and should play, and providing a blueprint upon which to build that effort.



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