

Advocacy and Lobbying for Nonprofits

"I'm passionate about people. I've spent my life in advocacy. People matter - whether or not we agree on the issue, people matter."

~ Ann Marie Buerkle

Advocacy is one of the most effective ways for nonprofits to serve their communities and meet their missions. Nonprofits often work with populations or on issues that need to have a voice in the legislative process – children, people living in poverty, the environment, arts, the elderly, etc.

However, there are some prohibitions on 501(c)(3) public charities when it comes to actions taken to influence legislation. These rules often create confusion. It is critical for nonprofits to understand the nuances of advocacy, lobbying and political campaigning to enable them to maximize their impact without risking sanction on their tax-exempt status.

Advocacy

Advocacy is a political process by an individual or group which aims to influence public-policy and resource allocation decisions within political, economic, and social systems and institutions. Advocacy can include many activities including media campaigns, education on current issues, and testimony before legislative bodies.

What are some examples of advocacy related activities?

- Educating voters and candidates about policy issues
- Building a coalition of concerned individuals
- Providing education to and sharing data with policy makers about issues of concern.
- Discussing broad, social, or economic issues, without taking a position on specific legislation
- Ensuring that underrepresented communities have a voice in the policy process

Who Can Advocate?

- Staff person or entire department
- Board members
- Retained professional to represent a single organization or a group of organizations

- Anyone connected to a particular organization
- Individuals receiving services

Lobbying

Lobbying is a form of advocacy that involves making a direct approach in an attempt to influence specific legislation.

There are two types of lobbying, direct and grass roots lobbying.

What Is Direct Lobbying?

A direct lobbying communication is one which is made to:

- a legislator
- an employee of a legislative body or
- any other government employee who may participate in the formulation of the legislation (but only if the principal purpose of the communication is to influence legislation)

AND

- refers to a specific piece of legislation and
- expresses a view on that legislation

It is also considered direct lobbying when an organization asks its members to contact legislators in support of or in opposition to legislation. In addition, attempts to influence the public on referenda and ballot initiatives are also considered direct lobbying.

What Is Grass Roots Lobbying?

A grass roots lobbying communication is an attempt to influence specific legislation by encouraging the public (versus just the organization's members) to contact legislators about that legislation. In order to constitute grass roots lobbying, a communication must:

- refer to specific legislation
- reflect a view on that specific legislation and
- encourage the recipient of the communication to take lobbying action with respect to the specific legislation

Limits On Lobbying

The IRS stipulates that 501(c)(3) nonprofits can lobby, but only up to a certain amount, and could lose their tax-exempt status if they do more than that “certain amount” of lobbying. How much lobbying the organization can do depends upon which of the two tests the organization uses to measure its lobbying:

- the “501(h) expenditure” test
- or the “insubstantial part” test

The Insubstantial Part Test

The default test for 501(c)(3) nonprofits is the insubstantial part test and for some organizations it is the best option. It tends to be most useful for churches, which cannot make the 501(h) election, and for very large organizations with budgets over \$17 million. However, its criteria are considered more nebulous and exceeding the limitations carries more risk.

The 501(H) Expenditure Test

501(c)(3) nonprofits may elect to use the 501(h) expenditure test by filing a simple form with the IRS. The form only needs to be filed once. Advantages of the 501(h) election include:

- more generous lobbying limits than the insubstantial part test
- a clear dollar limit on the amount of money which can be spent on lobbying which varies depending upon the size of the organization’s budget
- cost-free activities, such as volunteer time, do not count against the organization’s lobbying limits
- clearer definitions of lobbying, including specific exceptions to what counts as lobbying