

Using Advocacy to Support Your Mission: What Your Foundation Can and Can't Do, Can and Can't Fund

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THE PROHIBITION

The IRS Prohibition

An organization may be recognized as exempt from taxation under §501(c)(3) of the Internal Revenue Code if "no substantial part" of its activities consists of "carrying on propaganda or otherwise attempting to influence legislation."

IRS definition of “legislation”

- Actions by Congress, state legislative bodies, local legislative authorities; public votes on referenda, ballot initiatives, constitutional amendments.
- Senate confirmation of a federal judge.
- Proposals for the enactment or amendment of international law.

Not: administrative action, executive action not subject to legislative approval, local actions by special bodies e.g. zoning or school boards.

IRS definition of “lobbying”

- Direct lobbying: attempt to influence legislation by communication with the legislator or legislative body regarding specific legislation or proposed legislation.
- Grassroots lobbying: attempt to influence legislation by encouraging others to take action with regard to that legislation.

Lobbying by Private Foundations

- Any amount paid or incurred by a private foundation to lobby is considered a taxable expenditure
- Includes both communications with government officials and attempts to affect the opinion of the general public with regard to specific pending or proposed legislation.
- But much is still permitted ...

Exceptions

- Communications with government officials regarding a program jointly funded by the government and the private foundation.
- Nonpartisan analysis, study or research that is made generally available to the public or to government officials.
- Technical assistance or advice provided to a governmental body or committee, in response to a written request from a representative of that body or committee.

Exceptions (continued)

- Communications with legislative bodies with regard to issues that may affect the private foundation's existence, its powers and duties, its tax exempt status, or the deductibility of donations to the private foundation.
- Examinations and discussions of “broad social, economic and similar issues,” are not lobbying, so long as the discussions do not take a view of particular legislation and do not directly encourage the recipients to advocate for or against the legislation



Funding Advocacy

Grantmaking considerations

- “Earmarking” is taxable
- General support grant to an organization that lobbies is not presumed to be for lobbying – even if it is in fact used for lobbying
- Treatment of private foundation grant for a special project with a lobbying component – it’s all about the project budget

Watch the Grant Letter Language!

- Your grant letter is a contract that legally binds your grantees
- Language that requires that “no part of this grant shall be used for lobbying” is not required by law and unnecessarily restricts your grantees – and your grant’s effectiveness
- Instead, state that “no part of this grant is earmarked for lobbying”

Foundations as Advocates



Activity that is not “lobbying”

- Specific Internal Revenue Code exceptions
- Educational activity

Communication with non-elected officials

- Executive branch officials
- Administrative agencies

Lobbying registration & disclosure laws

- Do not bar or limit lobbying; merely require disclosure
- Federal Lobbying Disclosure Act
- New York State Lobbying Law
- New York City Lobbying Law

Special Situations

- Public presentations
 - Is it lobbying? Consider subject matter & audience
 - Foundation role or personal capacity
- Social media
 - Medium or message?
 - Private or foundations technology/accounts
- Ballot initiatives: treated like legislative activity

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