

Election Year Risks



By

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Avoid these Campaign Pitfalls

Most nonprofit managers are aware that a charity may not directly campaign for, or against, a candidate for public office. The penalty is severe — loss of tax-exempt status. However, there is often confusion about related activity, and whether it is improper — or permissible — under IRS regulations. For instance,

- If a candidate is opposing government funding for one of the nonprofit's most important programs, can the nonprofit speak up?
- Can a nonprofit's Web site include a link to a candidate's Web site?
- If the staff leader of a nonprofit is asked to speak at a campaign rally about an issue that the candidate feels strongly about, is that considered to be an *endorsement* or *support* for the candidate?
- If a nonprofit employee regularly writes a column in a local paper and includes criticisms of a candidate in her weekly column, will that be considered opposition to that candidate *by the nonprofit*?

The Rule

The answers to these questions are based on the IRS position that no nonprofit recognized as tax-exempt under 501(c)(3) of the Internal Revenue Code may intervene in elections of candidates for public office. [Although 501(c)(4) organizations are permitted to intervene in campaigns for political office as an incidental part of their overall activities, any amount spent on these activities is subject to an excise tax imposed by Internal Revenue Code Section 527.] The IRS will consider all the facts and circumstances" surrounding the conduct of the nonprofit to determine whether improper "intervention" has occurred.

When It's OK to Speak out as an Organization

Nonprofits are, however, permitted to voice opinions on issues and inform the public about the positions of candidates on policy questions as long as it is done in an impartial manner. Forums such as debates or panel discussions that are organized by nonprofits for the purpose of educating and informing voters are not improper intervention, as long as the information is presented in an unbiased, nonpartisan way that does not advance one candidate over another. A "candidate" is defined as anyone who is offering him- or herself or "is proposed by others" as a contestant for an elected public office, whether the office is of national, state or local scope. Therefore it could be someone running for national president or the local school board. "Intervention" is broadly defined also: the conduct is not confined to oral or written statements — but could be indirect intervention, such as creating a link from a nonprofit's Web site to a candidate's home page.

When It's OK to Speak out as an Individual

The IRS regulations do not restrict leaders of nonprofit organizations in their own expression of free speech or personal political views — only the nonprofit itself is restricted. However, when representatives of the nonprofit voice their opinions about a candidate at an official function of the nonprofit, that statement is interpreted as an act of the nonprofit. The key is for the nonprofit to remain nonpartisan at all times. For example, preparation and distribution of voter education materials, such as descriptions of various candidates' positions on policy issues that impact a nonprofit's activities or mission, is permitted (because it falls under the definition of "voter education") as long as it is conducted in a nonpartisan manner e.g., *all* candidates' positions are covered. Any bias reflected in the materials would be an indication of improper intervention under the IRS "facts and circumstances" test. Official publications of a nonprofit must remain nonpartisan.

Put Your Knowledge to the Test

Test how much you and your staff know about the IRS rules that prohibit charities from supporting or opposing a candidate by answering the following questions.

1. During a board meeting a board member jokingly makes comments about a particular candidate and passes out homemade bumper stickers that contain campaign slogans. Will the board member's conduct be imputed to the nonprofit? *Yes or No?* If the board member clearly encouraged his colleagues to vote for a particular candidate, this would constitute improper political campaign intervention, since the comments were made at an official meeting of the nonprofit.
2. During a heated local election, someone suggests that inviting a local candidate to the nonprofit's annual meeting is sure to increase attendance. *Good idea? Bad idea?* This is a fine idea — as long as *all the other candidates are also invited*. If candidates ask to speak, the message needs to be controlled so that their speeches are about the nonprofit and its issues, not campaign rhetoric. It is hard to control what politicians say on the campaign trail, so many organizations shy away from permitting candidates to make speeches unless they are in a controlled forum in which all candidates have equal voice. Note: No campaign fundraising should ever occur at an official nonprofit function.
3. A local politician offers to pull the winning raffle ticket at your next fundraiser. *Good idea? Bad idea?* Since the politician is already in office, the person is not necessarily a "candidate" unless the person has publicly announced she or he is running for re-election. To play it safe, the nonprofit should consider how it can remain nonpartisan under the circumstances — such as inviting competing politicians to play a role at the fundraiser as well.
4. Your nonprofit leader is well known in the community. She attends a political event for Candidate X and stands up in front of the microphone and tells the audience that she personally believes that Candidate X should be re-elected. Has she jeopardized the nonprofit? *Yes or No?* No. The charity leader is an established personality in the community. Her remarks were not made at an official nonprofit function and she did not state that her remarks were made in her role as nonprofit leader. Additionally, she used no assets of the nonprofit to make her remarks.

More Guidance

The IRS recently issued a helpful revenue ruling containing scenarios that describe what is permissible and what is impermissible. IRS Rev. Ruling 2207-41 can be found at <http://www.irs.gov/pub/irs-drop/rr-07-41.pdf>.