

Prohibition against Political Activities by Tax-Exempt Organizations



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Politically, 2012 promises to be a very interesting year. The stakes are high for all political parties. Further, with the economy, jobless rate, uncertain tax future, looming healthcare and Medicare issues, mounting federal deficit, etc., many citizens and groups, including tax-exempt organizations, are most eager to engage in the political process to promote their various interests. In this melee, a very important tax issue is often overlooked (or not understood) – charitable and educational tax-exempt organizations are prohibited from engaging in any partisan political activity—period.

The penalty for violating the political activity rule is simple but deadly—loss of exempt status. Also, the organization and its managers may be subject to excise taxes on the political expenditures.

Prohibited Political Activities in a Nutshell

Charitable and educational tax-exempt organizations are prohibited from participating in any political campaign on behalf of or in opposition to any candidate for public office. What's a public office? It's any elective office on the local, state, or national level. Thus, participating in a city council member's election is as bad as participating in a presidential election.

How does an organization participate in a campaign? It publishes an oral or written statement for or against a candidate. It endorses a candidate. It contributes to a candidate's campaign. It sponsors a candidate to speak at a meeting, without providing equal time to opponents. It distributes statements made by others for or against a candidate. In short, it takes any partisan action during an election.

Even the IRS concedes, however, that some political activities are okay so long as they're totally nonpartisan. Also, organization leaders can voice their own opinions, but only when speaking on their own as individuals, not on behalf of the organization. This gets tricky. Let's look at some activities.

Voter Registration, Education, and Get-out-to-vote Drives

Voter registration activities, including public forums and voter registration guides are allowable activities,

so long as they are carried out in a nonpartisan manner. If any bias is introduced into the process, the activity becomes a prohibited activity. Similarly, voter education is permitted. However, if a voter guide (a pamphlet or other document designed to help voters compare candidates' positions on issues) is issued, it must be unbiased.

Individual Political Activity by the Organization's Leaders

The political activity prohibition neither restricts free expression on political matters by leaders of organizations speaking for themselves, as individuals, nor prohibits leaders from speaking about important issues of public policy. However, the leader should not use the organizations financial assets, facilities, or personnel in any way and should clearly indicate that his or her actions or statements are entirely his or her own and not the organizations. In addition, the leaders individual views cannot be expressed in official organization publications or at official organization functions.

Political Candidate Appearances

An exempt organization can invite a candidate for public office to speak to its members. However, the organization must provide an equal opportunity to other political candidates seeking the same office. It must not indicate any support or opposition to the candidate—and this lack of support or opposition must be explicitly states in the candidate's introduction and in any communication about the candidate's appearance.

If an exempt organization sponsors a candidates' forum, the event must be scrupulously nonpartisan. This means neutrality in questions presented, issues covered, and equal opportunity to present views. Additionally, the moderator or moderators cannot imply approval or disapproval of the candidate and cannot ask whether a candidate agrees or disagrees with one or more of the organizations positions.

Political Candidates Not Acting As Such

None of this prevents any candidate from appearing at an exempt organization event as a noncandidate. For

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example, a candidate who is a public figure may be asked to speak in his or her role as that public figure, as an incumbent elected official, or for any similar reason. In that event, no reference to the speaker's candidacy can be made, and the exempt organization must maintain a strict nonpartisan position during the speech. Of course, a candidate can always attend a public event sponsored by an organization, without any worry that the organization's exempt status is threatened. However, the organization cannot acknowledge his or her candidacy or ask for any comments without providing equal opportunity to other candidates.

Political Activity in the Organization's Newsletter

A charitable organization can publish a newsletter of incumbents' voting records on selected issues when (1) all incumbents' records are reported, (2) candidates for reelection are not identified, (3) no endorsement or rejection of any candidate is made, (4) it is distributed to normal readership and not targeted to specific areas where an election may be pending, and (5) it doesn't compare incumbents with other candidates.

Political Activity on the Organization's Website

An organization that posts material on its website favoring or opposing a candidate for public office will be treated the same as if distributed printed material, oral statements, or broadcasts that favored or opposed such candidate. An organization will not be guilty of political intervention simply because its website contains links to political organizations as long as the links are provided for educating voters and are presented in an unbiased manner that included all the candidates for a particular office.

Conclusion

The loss of exempt status is a steep price to pay for political activity. We hope this letter provides useful information to help your organization stay on track. Please give us a call if you have any questions or would like our assistance.

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