



ASK the experts

Are Lobbying and Electioneering O.K.?

What exactly are lobbying and electioneering? How can you be sure you're following the laws and that you don't lose your tax-exempt status?

Q:

I work for a 501(c)(3) nonprofit organization and was interested to read about charity lobbying in your magazine recently. I'm still confused about a few things and hope you can clear them up for me. What activities are considered lobbying, and what aren't? Exactly how much lobbying is permitted? How can our nonprofit be sure it isn't violating any lobby laws? Is it really O.K. for nonprofit organizations to lobby?

A:

Taking your last question first, the answer is a strong yes. Congress and the IRS have made it clear that they support lobby-

ing by charities. Congress sent that message when it enacted the liberal provisions of the 1976 lobby law. The same message came from the IRS in regulations issued in 1990, which support both the spirit and intent of the 1976 legislation. Here are key points about the 1976 lobby law:

1. The most important feature of the law is that it provides ample leeway for your organization to lobby, and it protects you from the uncertainties you would face if you didn't "elect" to come under the 1976 law. Those that haven't elected remain subject to the ambiguous "insubstantial" test, which leaves unclear

which activities are considered lobbying and how much lobbying is permitted.

2. If your organization elects the 1976 law, you may spend 20% of the first \$500,000 of your annual expenditures on lobbying (\$100,000), 15% of the next \$500,000, and so on, up to \$1 million dollars a year.

3. The law makes clear that there are two types of permissible lobbying: *Direct lobbying* occurs when you state your position on specific laws to govern-

ment employees who participate in devising those laws—or when you urge your members to do so. *Grassroots lobbying* occurs when you state your position on legislation to the public and ask the public to contact lawmakers.

4. There are eight critical legislation-related activities that the IRS does *not* consider lobbying. Thus, you can perform all these activities without limit:

- It isn't lobbying if you contact executive-branch employees or legislators in support of or opposition to proposed regulations. So if your charity is trying to get a regulation changed, you may contact members of the executive branch as well as legislators to urge support for your position, and this action isn't considered lobbying.

- Lobbying by volunteers is considered a lobbying expenditure only to the extent that your organization incurs expenses associated with it. For example, volunteers working for your organization can organize a rally of volunteers at the state capitol to lobby on an issue, and only the expenses your organization pays to support the rally will count as a lobbying expenditure.

- Communication with your members—even if you take a position on legislation—isn't lobbying so long as you don't directly encourage your members to lobby. For example, you can send out a public affairs bulletin to your members,

The law provides ample leeway for charities to lobby.



There's a big difference between lobbying and electioneering.

taking a position on legislation, and it won't count as lobbying if you don't ask your members to take action on the measure.

- Your response to written requests from a legislative body (not just a single legislator) for technical advice on pending legislation isn't considered lobbying. So, if requested in writing, you could give testimony about legislation and, even if you take a position on that legislation, it wouldn't be considered lobbying.

- So-called self-defense activity—that is, lobbying legislators (but not the general public) on matters that may affect your organization's own existence, powers, tax-exempt status, and similar matters—isn't considered lobbying. For example, lobbying in opposition to proposals in Congress to curtail charity lobbying, or lobbying in support of a charitable tax deduction, isn't a lobbying expenditure. It becomes lobbying only if you ask for support from the public. (Lobbying for programs in your organization's field—the environment, health, education, etc.—isn't self-defense lobbying. For example, an organization fighting to cure cancer couldn't consider working for increased appropriations for cancer research to be self-defense lobbying.)

- Providing results of “nonpartisan analysis, study, or research” on a legislative issue isn't lobbying. Such analysis needn't be “neutral” or “objective” to fall within this “nonpartisan” definition. You may take direct positions on the merits of legislation, as long as you present the facts fully and fairly, make the material

generally available, and don't include a direct call to the reader to contact legislators.

- Discussing broad social, economic, and similar policy issues whose resolution requires legislation—even if specific legislation on the matter is pending—isn't lobbying unless you take a stand on specific legislation. For example, it's O.K. to hold a session at your organization's annual meeting on the importance of enacting child welfare legislation as long as you don't address the merits of specific child welfare laws pending in the legislature. Representatives of your organization can even talk to legislators directly on the broad issue of child welfare as long as there's no reference to specific laws.

- If your organization urges the public, through the media or other means, to vote for or against a ballot initiative or referendum, it is considered direct lobbying rather than grassroots lobbying—an advantage because charities are permitted to spend more on direct lobbying than on grassroots lobbying.

5. The IRS encourages groups to elect to come under the 1976 law. The IRS has found organizations that have elected are more often in compliance with the law than those that have not.

6. It's easy to elect to come under the 1976 lobby law. Just have your governing body vote to come under the law's provisions, and file the one-page IRS Form 5768 with the IRS. For a copy of the form, contact Charity Lobbying in the

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Public Interest at charity.lobbying@indepsec.org or 202-387-5048, or download the form from the Web site at www.indepsec.org/clpi.

7. Electioneering is a different matter. While lobbying is entirely lawful for nonprofits, “electioneering” or “engaging in political activity”—influencing the outcome of an election—is not. As a 501(c)(3) organization, you risk losing your tax-exempt status if you urge people to vote for or against candidates. You can, however, work to support or oppose a ballot measure. (For more on this distinction, see “Politics or Lobbying? It Makes a Big Difference,” *Nonprofit World*, Vol. 14, No. 6).

8. We recommend that every nonprofit organization elect to come under the 1976 lobby law. You have much to gain and nothing to lose by doing so. For more detailed information, see *Law & Taxation, Leadership Series, Volumes I and II* (see page 24). ■

As a member of the Society for Nonprofit Organizations, you are invited to send in, every month, one question which you or your organization would like answered. You will receive a written response from one of our panel of experts—professionals located throughout the country. Selected questions and answers will be published in each issue of *Nonprofit World*. If you prefer that your question appear anonymously, please let us know. Send questions to: Ask the Experts, *Nonprofit World*, 6314 Odana Rd., Suite 1, Madison, WI. 53719. Include your name, address, phone number, and Society membership number.