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Lobbying and Advocacy by Associations

Free speech is balanced against the privilege of maintaining a tax-exempt organization.

A. Parameters for 501(c)(6) TEO

1. 501(c)(6) organizations may engage in an unlimited amount of lobbying so long as the lobbying is related to the organization's tax-exempt purpose.
2. 501(c)(6) organization can also now fund independent expenditures to support or oppose federal candidates—but cannot be coordinated with campaign.
3. Individual members of an 501(c)(6) association may only deduct that portion of dues they have paid that are not attributable to any political or lobbying expenditure by the association.
4. Associations must notify members of the non-deductible portion at the time of dues assessment.¹
5. Can endorse candidates.

B. Limitations for 501(c)(3) TEO

1. Section 501(c)(3) organizations are prohibited from engaging in political activities. However, in practice, many 501(c)(3) organizations engage in some form of "political" activity, e.g., "grass roots lobbying", but

¹ Alternatively, the association may pay a proxy tax, which may also be imposed if the association underestimates the total expenditures for political and lobbying activities.

cannot permit such expenditures to form a “substantial” portion of their budgets, i.e., no more than 5%.

2. A 501 (c)(3) can alternatively make a 501 (h) election that offers precise dollar limits on lobbying.
3. Issue advocacy is permissible if a specific election or candidate not mentioned.
4. Hosting a candidates’ forum is permissible, but no one acting on behalf of the association should express or imply approval or disapproval of any candidate’s views or qualifications for office. *This is an important difference from a 501 (c) (6), which can endorse candidates and make independent expenditures.*
5. Individual association leader can certainly express personal partisan opinions — but must make it expressly clear it is a personal opinion rather than the association’s.
6. Take care that funds or resources of a 501(c)(3) are not transferred to a related 501(c)(6) in a way that constitutes support of partisan campaign activities.

C. 2007 Lobbying and Ethics Law-

Honest Leadership and Open Government Act — HLOGA

1. Lobbying Disclosure Act (LDA) reports now due quarterly. LDA applies if an association employs one or more individuals who make multiple contacts with covered legislative and executive branch officials and spend at least 20 percent of their time on lobbying activities during a calendar quarter.

2. Gifts ban now applies to any dollar amount, and now applies to all employees of a registered association. UNLESS — one of 20 other exceptions apply: e.g. gifts of nominal value, attendance at widely attended events, charity events, personal friendship, etc.
3. HLOGA requires an association to disclose the names of corporate donors or members that contribute more than \$5,000 in any quarter and “actively participate” in developing the association’s lobbying strategy.
4. *A lawsuit challenging the constitutionality of this provision, brought by the National Association of Manufacturers, was dismissed by the U.S. Court of Appeals for the D.C. Circuit in Sept. 2009.*

D. Political Action Committees (PACS)

1. While trade associations may legally engage in lobbying and other political education activities, federal law prohibits all corporations, including incorporated associations, from making campaign contributions to candidates for federal office.
2. But, association funds may be used to establish and administer Political Action Committees (PACs) that solicit political campaign contributions from members and direct the funds to candidates. The Association can cover costs of organizing, operating and soliciting contributions to PACs.
3. Individual association members and employees can give \$5,000 in any one calendar year to an association’s PAC.

4. PAC contributions by association members and staff are always voluntary and never tax deductible. It can be a voluntary check-off on a dues invoice.
5. PACs are regulated by the Federal Election Commission (www.fec.gov).
6. Must stay abreast of guidelines for soliciting corporate employees for support of a PAC, and PAC giving limits for each election cycle.

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