



State Office Newsletter

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Political Activity for Nonprofits

During a presidential election year, it's especially important that PTAs closely adhere to regulations on lobbying and political activities. These regulations, found in Section 501(c)(3) of the Internal Revenue Code, define a tax-exempt, nonprofit charitable organization and lay out the rules for lobbying and political activities. These limitations give ample room for organizations to lobby and to engage in voter education, but restrict political activities. Read on to learn about the differences among these activities.

Political Activities and Voter Education

According to the Internal Revenue Service (IRS), an organization may maintain its federal tax-exempt 501(c)(3) status if it "does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office." Violating these prohibitions against political activity will result in an organization's federal tax-exempt status getting revoked either temporarily or permanently. In addition to revocation of 501(c)(3) status, the IRS can impose a 10 percent tax on expenditures for the political activities, and require the organization to recover the expenditures.

A 100 percent tax on the expenditures can be imposed if the funds are not recovered. A 501(c)(3) that has had its exemption revoked because of political activity is prohibited by law from applying for 501(c)(4) status (a 501(c)(4) organization can engage in an unlimited amount of lobbying, but contributions to this organization are no longer tax-deductible).

Questions and Answers About Political Activity and 501(c)(3) Status

Who is a "candidate" according to 501(c)(3) regulations?

A candidate is anyone who volunteers or is suggested by others as a contestant for an elected public office. Organizations under 501(c)(3) cannot urge an individual to declare himself or herself a candidate, organize third-party movements, or do work to explore an individual's possible candidacy for elected office.

What is "public office"?

A public office means any position filled by a vote of the people, and includes not only the federal elections for president and Congress, but also state and local elections, such as school board, city council, and party nominations.

What about candidates for nonpartisan office?

It does not matter. The Federal Election Campaign Act (FECA), as well as the regulations and rulings of the Federal Election Commission, prohibit nonprofit organizations from engaging in political activity that supports a candidate for any public office, including a nonpartisan office.

Policies for Specific Political Activities

Endorsement of candidates

PTA, its staff, or members of its board may not support, oppose, or endorse a candidate for public office. Organizations also should avoid using terms like “liberal” or “conservative” or “pro-” or “anti-,” especially while a political campaign is under way.

Contributions

A 501(c)(3) organization is strictly prohibited from giving candidates a cash or in-kind contribution, which includes loans. Work on behalf of a candidate is considered an in-kind contribution. Any fundraising sponsorship or solicitation is prohibited. Further, the organization cannot encourage others, including its members, to make contributions.

Appearance of a candidate at an event

The primary consideration for the IRS is whether the candidate was invited as a candidate or in some other capacity. The IRS looks at other circumstances as well, such as whether political fundraising occurred at the event and whether the other candidates for office were afforded an equal opportunity to participate in the event or a comparable event. The event

must not serve as a campaign appearance. The appearance of a candidate, if invited in such capacity, can be seen as an endorsement.

Candidate questionnaires

A questionnaire focusing on issues of primary concern to PTAs is permissible. However, the way in which the questions are posed must not show any bias or reflect the PTA’s own agenda. A questionnaire, for example, cannot ask candidates whether they endorse the organization’s mission or legislative agenda. Nor can a candidate be asked to sign a pledge. How the responses are disseminated is equally important; candidates’ responses must be printed in full exactly as given.

Candidate debates

A 501(c)(3) may sponsor a public debate between candidates if

- All candidates are invited to participate;
- An independent panel prepares the questions to be asked;
- The topics cover a broad set of issues;
- Each candidate has an equal opportunity to express his or her views; and
- The moderator is neutral and makes a statement both at the beginning and end of the program that the views expressed do not represent those of the sponsoring organization.

Issue briefings

When PTAs provide an issue briefing, informing candidates on various issues in person or in writing, the briefing must be extended to all candidates running for a particular elected office.

Candidate statement

A PTA may not distribute candidates' statements to the media, the general public, or to its members until after the election.

Voter guides and vote scorecards

An organization can report how legislators vote on issues of concern to the organization, but it must do so regularly, not close to an election or after candidates have declared their intention to run for office.

Voter registration and Get Out the Vote (GOTV) drives

A nonprofit organization's work on voter registration and GOTV drives must be nonpartisan. The organization can operate a voter registration table or run a phone bank to encourage the public to go to the polls to vote, but it cannot suggest for whom the public should vote. The organization also must be able to demonstrate that its voter education and registration activities do not help or harm any particular candidate.

What You Can Do as a Private Citizen

Employers, officers, and directors of nonprofits, including organizations that receive federal funds, may engage in political campaign activities as private citizens, on their own time, and using their own facilities and resources. The political activities should be in the employee's own name and should not be identified with the PTA. If there is a chance that the activities of a director, officer, or employee—particularly a highly visible employee—will be identified with the organization, disclaimers or other statements may be necessary.

To Learn More

Additional information about nonprofit organizations and political activity can be found on websites such as

- www.allianceforjustice.org
- www.clpi.org
- www.muridae.com/nporegulation/lobbying.html
- www.irs.gov.

The information in this newsletter is presented with the understanding that National PTA does not render legal advice.