Arizona Grantmakers Forum
How to Talk to Your Board
About Advocacy
October 28, 2014

Kendis Key Muscheid
Fennemore Craig, P.C.
kmuscheid@fclaw.com
602-916-5354
Advocacy

- Advocacy promotes a cause, idea or policy.
- Advocacy is educating and creating awareness of an issue, a need or a cause.
- Advocacy is distinct from lobbying.
- All lobbying is advocacy, but not all advocacy is lobbying!
Lobbying

• Lobbying is activity designed to influence legislation.

• A 501(c)(3) is attempting to influence legislation if it contacts, or urges the public to contact, a member or employee of a legislative body to propose, support, or oppose legislation, or if the 501(c)(3) advocates or opposes legislation.
Lobbying – Public Charities

• If lobbying activities are **substantial**, a PC may fail operational test and risks losing tax-exempt status.

• Can make **501(h) Election** – elect to have lobbying expenditures treated under specific rules and defined tests.
  – IRS Form 5768
  – Provides clear and helpful definitions of what activities related to legislation constitute lobbying.
  – Option not available to churches, governmental entities or private foundations.
Substantial Part Test

The substantial part test looks at all pertinent facts and circumstances. It considers a variety of factors, including time that both compensated and volunteer workers devote to lobbying and the expenditures PC devotes to lobbying.
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<td><strong>Legislator or any governmental official or employee who may participate in formulation of legislation</strong> (State Legislature, County Board of Supervisors, includes public for ballot measures)</td>
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Lobbying- Private Foundations

• Prohibited.

• Refrain from lobbying to avoid excise taxes.
  – A 20% tax is levied on the "taxable expenditures" of PFs on amounts paid to carry on propaganda or otherwise attempt to influence legislation.

• Grants to PC’s that lobby should be general support grants, or grants to projects, less the amount for line items for “lobbying”.
What Is Not Lobbying?
Voter Education, Registration, and GOTV Drives

Activities intended to encourage people to participate in the electoral process, such as publishing voter education guides and conducting voter registration and get-out-the-vote drives are allowed if they are conducted in a strictly unbiased and nonpartisan way.
Nonpartisan analysis, study or research

May advocate particular position or viewpoint, if:

(a) There is a sufficiently **full and fair exposition of the pertinent facts** (not just unsupported opinions) to enable the public or an individual to form an independent opinion or conclusion;

(b) **Distribution of the results** is not limited to, or directed toward, persons who are interested solely in one side of particular issue; and

(c) **Subsequent use** does not cause it to be treated as grass roots lobbying communication (e.g., direct encouragement for recipients to take action within 6 months after report).
Examinations and discussions of broad social, economic, and similar problems…

Provided that:

(a) they do not address themselves to the merits of a specific legislative proposal, and

(b) they do not directly encourage recipients to take action with respect to legislation.
Technical Advice or Assistance

A 501(c)(3) may provide technical advice or assistance provided to a governmental body or committee in response to a written request from such body or committee.

This protection applies even though the respondent offers opinions or recommendations on proposed legislation, provided those opinions or recommendations are requested by the committee.

Note: Cannot be a single legislator or an information request.
Communications Pertaining to Self Defense by the Organization

• Self-defense communications to legislative body or its members, and with respect to possible action by such body that might **affect the existence of the organization** (or an affiliate), its powers and duties, its tax-exempt status, or deductibility of contributions to organization.

• Under this exception, a charity may similarly make expenditures in order to initiate legislation if such legislation concerns the matters listed above.

• Example: Congressional proposal to curtail all charitable deductions.
Administrative Actions

• “Legislation” does not include executive action, judicial processes, or work of administrative agencies such as school boards, housing authorities, and zoning boards.

• Attempts to influence actions of regulatory agencies are protected, even if agency is concerned with promulgating regulations to effectuate legislative mandates.

• Non-lobbying includes:
  – A petition to the President, a governor, or a mayor regarding an executive decision.
  – A communication whose purpose is to influence legislators on non-legislative matters (e.g., conducting hearing, intervening with agency).
Questions?