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Can Your Organization Endorse Political Candidates?

During each election season, your not-for-profit organization should take a hard look at the IRS restrictions on political activities to ensure you don't do anything to jeopardize your tax-exempt status.

The fundamentals are simple: If you are a *Section 501(c)(3)* organization, there is an absolute ban on direct political activity, including endorsing candidates. These groups focus on religious, charitable, scientific, testing for the public safety, literary or educational purposes. No part of net earnings can be used to benefit any private individual.

If you fall under *Section 501(c)(4)*, your organization may be involved in some political campaigning as long as it's not your primary activity. Section 501(c)(4) groups are social welfare organizations whose purpose is to benefit the community or society, not just the group's members, their families or other select individuals.

Either type of organization may be taxed if they spend money on certain political activities.

The political campaign prohibition doesn't mean your group is paralyzed during campaign season. You simply need to be clear on what the IRS regulations really say.

The guidelines specifically state you may not *"participate or intervene, directly or indirectly, on behalf of or in opposition to any candidate for public office."*

Let's take a look at the language:

Candidate means only individuals running for elective office, not nominees for appointed office. But, even individuals who haven't officially thrown their hats into the ring may still be considered candidates. For example, Mario Cuomo, who said he wasn't running for president, was viewed as a candidate in 1992 because the "Draft Cuomo Committee" proposed him as one.



History of the Prohibition

Prior to 1954, there was no statutory provision absolutely prohibiting 501(c)(3) organizations from engaging in political campaign activities.

During Senate consideration of what became the *Revenue Act of 1954*, Lyndon Johnson, then Senate Minority Leader, added a floor amendment to provide that IRC 501(c)(3) organizations may not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Public office refers to an elective or appointed position in any of the three major branches of government at the federal and state level. The crux of the definition is whether a major part of the job involves independent policy-making functions.

Participate or intervene indicates any action for or against a candidate, including:

- Publishing or distributing statements or campaign literature.
- Making oral statements.
- Rating candidates.
- Providing or soliciting financial or other support.
- Setting up a political action committee (PAC).

Why Johnson proposed the political campaign prohibition in the first place has been the subject of considerable debate. The scenario most often proposed: *Johnson wanted to punish a charitable organization that was assisting his opponent in the 1954 Texas Senatorial Primary.*

- IRS report, *Election Year Issues*

Important distinction: Your organization can participate in educational endeavors that involve political activities. The IRS reviews educational actions to determine whether they are based on conclusions drawn from objective evaluation or on unsupported opinion and distorted facts. But you can generally engage in the following activities:

Penalty Box

If you violate the prohibitions, the IRS can impose excise taxes on your organization and managers responsible for "political expenditures." These include expenses made on behalf of a candidate for:

- Amounts paid or incurred for speeches or other services.
- Travel expenses.
- Costs of polls and surveys.
- Advertising, publicity, and fundraising expenses.
- Other expenses made primarily to promote the candidate.

The IRS can also seek an injunction to prevent further violations and rescind tax-exempt status.

All material announcing the event should not mention the candidacy.

The IRS examines the motivations of an organization and can decide it acted politically if the primary purpose of the event is to provide public exposure for the candidate.

The regulations involving political campaign prohibitions are complex. Your best option is to consult with your tax adviser for guidance.

Write articles in your newsletter or other periodicals that are factual and not slanted -- as long as the periodical doesn't limit coverage to specific candidates.

Sponsor debates or forums that don't show a preference for a candidate.

Invite individuals to speak as candidates at an event. However, ensure that you:

Don't indicate any opinion about the candidate.

Don't allow political fund-raising at the event.

Provide equal opportunity to all qualified candidates to participate.

Ask a candidate to speak in another capacity -- say, on a topic of expertise -- if the person is already a public figure. In this case, equal access isn't required, but:

The person can't speak as a candidate or mention the candidacy.

No campaign activity may occur at the event.

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