

Corporate Political Activity: PACs, Independent Expenditures and Other Permissible Activities

Columbus Rotary Club

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General Rule

Political Activity by Corporations is Strictly Prohibited

State Law: A corporation is prohibited, under Ohio's campaign finance laws, from using its money or property for partisan political purposes. ORC 3599.03.

Federal Law: The Federal Election Campaign Act (FECA) generally prohibits corporations and labor organizations from using their general treasury funds from making contributions or expenditures in connection with federal elections. 2 U.S.C. 441b(a).

General Rule

Partisan Political Purposes: Activities which aide or oppose a political party, candidate for election or nomination to public office, a PAC, legislative campaign fund, or organization that supports or opposes any such candidate for any partisan political purpose.

In-Kind Contributions: Includes direct monetary contributions as well as in-direct (“in-kind”) support.

Partnerships: Not included in the ban, but are treated separately and more as individuals.

The Exceptions

1. Independent Expenditures
Citizens United and Super PACs
2. Corporate-Sponsored PACs
Establishing and Running a Corporate PAC
3. Ballot Issue Activity
State and Local Ballot Issues
4. Non-Partisan Party Support
Levin Funds, Building Funds and Educational Efforts
5. Conventions and Transitions

#1 Independent Expenditures

Citizens United (2010): Corporations, trade associations and labor associations may use general treasury funds to make independent communications that expressly advocate the election or defeat of a political candidate or to fund independent electioneering communications.

OEC Advisory Opinion 2010ELC-02: Allows corporation to participate in independent partisan political activities without being subjected to a finding of a violation.

Corporations are still prohibited from making direct contributions to candidates.

#1 Independent Expenditures

- MUST BE TRULY INDEPENDENT (Not made with the cooperation or with the prior consent of or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.)
- Complex rules under state and federal law for assuring independence.
- No contribution or spending limitations.
- Disclosure is required.

#1 Independent Activity: Super PACs

- Two months after Citizens United, federal appellate court holds that contributions to groups making only independent expenditures were unlimited.
SpeechNow.org v. FEC.
- Super PACs were created as a way for corporation and others to pool contributions to make independent expenditures.
- Same rules apply to Super PACs:
 - expenditures cannot be coordinated
 - reporting is generally required

#1 Independent Activity: Super PACs

- As of August 26, 2012, over 800 Super PACs registered with FEC
- reported total reported receipts of \$349,763,463 for 2012 cycle
- total independent expenditures of \$214,759,909 in the 2012 cycle.

#1 Independent Activity: 5 Largest Super PACs in 2012

- Restore Our Future
 - \$82 million in expendituresSupports Romney
- Priorities USA Action
 - \$22 million in expendituresSupports Obama
- Winning Our Future
 - \$17 million in expendituresSupports Gingrich
- American Crossroads
 - \$12 million in expendituresConservative candidates
- Club For Growth
 - \$11 million in expendituresConservative candidates

#1 Independent Activity: Super PACs

- Largely supported by wealthy individuals who cannot contribute more directly to the candidate
 - Used to fund so-called “527s”
 - Now, the Super PAC
- Very little corporate participation in Super PACs
 - corporate concerns over shareholder reactions
 - uncertainty in status of law
 - risk of investigation into coordination

#1 Independent Activity: Super PACs

- Use of 501(c)(4) organizations or other entities to make contributions instead
 - disclosure still required, but to IRS
 - less uncertainty in status of law
 - risk of investigation by IRS

#2 Corporate Sponsored PAC

- Corporations may use corporate funds to operate a connected PAC
 - Administrative expenses only
 - NO corporate funds directly to candidates, PACs or Parties
- Reporting requirement
- Contribution limits

#2 Corporate Sponsored PAC

Ohio Law:

- Designation of Treasurer (Form 30-D)
- Name
- Address
- Bank Account (separate)
- Members, Contribution Limits, Registration Number, Reporting (Federal-State-Local PAC?)

#2 Corporate Sponsored PAC

Federal Law:

- Statement of Organization (FEC Form 1)
- Separate Segregated Fund
- Designation of Treasurer
- Name – w/ Connected Organization
- Separate Account
- Members, Contribution Limits (multi-candidate PAC?), Reporting, Registration Number

#2 Corporate PACs

- IRS Considerations: Nonprofit Tax Exempt Corporations
 - Section 501(c)(3) – Charitable Organizations
 - Absolute ban on partisan political activity
 - Section 501(c)(4) – Social Welfare Organizations
 - Exempt Purpose
 - Section 501(c)(6) – Business League Organizations
 - Exempt Purpose

#3 Ballot Issue Activity

- Ballot Issue Support
 - Corporations may use money or property to support proposed or certified ballot issues. ORC 3599.03.
 - State wide issues or local levies
 - No limits and corporate dollars permitted

#3 Ballot Issue PACs

- Definition: A PAC that is organization to support or oppose a proposed or certified ballot issue or question. (“Ballot Issue PAC” or “Levy Committee”)
- Registration: When & Where
 - Prior to receiving any contributions or making any expenditures, the ballot issue PAC must file a Designation of Treasurer Form.
 - SOS or county BOE. “Designation of Treasurer Form” (30-D) with the Secretary of State

#3 Ballot Issue PACs

- PAC must report:
 - Reports are based on the nature and timing of the activity in which the PAC engages in relation to any election.
 - Pre-general; post-general; semiannual; or annual.
- Corporate Donors must also report:
 - Corporate Contribution Reports
 - 30-B-1 (direct contributions); 30-B-2 (in kind support)

#4 Party Support

Building Fund

- Corporate gifts permissible.
- Gifts used only for a specific purpose – help defray the cost of construction, renovation or purchase of an office building, so long as the office is not used solely for the purpose of directly influencing the election of any individual candidate.
- Contribution may not exceed 10 percent of the cost of the construction, renovation or purchase.
- Must be reported by Party.

#4 Party Support

Levin Account

- Corporate gifts permissible – up to \$10,000 in any year in which federal candidates are on the ballot.
- Gifts used only for a specific purpose – generic campaign activity, voter registration and get-out-the-vote efforts that do not constitute a contribution to a political candidate.
- Must be disclosed by Party

#4 Party Support

Restricted Fund

- Corporate gifts permissible – up to \$10,000 per year.
- Gifts used only for a specific purpose – defraying operating and maintenance costs associated with political party headquarters, including rental or leasing costs, staff salaries, office equipment and supplies, postage, and the purchase, lease or maintenance of computer hardware and software.
- Must be disclosed by the Party.

#5 Conventions and Transition Funds

National Party Convention Activities

- RNC: Tampa, FL (August 27 – 30, 2012)
- DNC: Charlotte, NC (Sept. 4 – 6, 2012)
 - Generally – corporate funds prohibited in conjunction with federal elections, including national conventions, and, specifically with respect to delegate activities.
 - “Party Building” activities, “unofficial” convention parties & activities, etc.

#5 Conventions and Transition Funds

Transition Fund

- Corporations may make donations to a fund established by a public official (or officeholder-elect) for transition activities or inaugural celebrations.
- Limits apply.
- Disclosed.

General Do's and Don'ts

Permissible Activity

- Personal participation in ballot issue or candidate campaigns on their own time.
- Display yard signs at home or have a bumper sticker on personal cars.
- Vacation or other leave time to volunteer for a political campaign by distributing literature, soliciting donations, talking about the campaign, or any other volunteer activity.
- Use of personal funds to contribute to a political cause or candidate up to any applicable contribution limits.

General Do's and Don'ts

Permissible Activity

- Draft and send a letter supporting or opposing an issue or candidate or soliciting contributions, so long as the letter is on personal stationary, with mailing and printing costs paid for by the individual.
- A personal letter to the editor or other communication may state the reasons why the employee supports or opposes an issue or candidate.
- Host or organize a candidate fundraiser, using personal resources to do so.
- Sale or rental, at fair market value, of corporate facilities or resources to an employee or candidate for a political activity.

General Do's and Don'ts

Prohibited Activity

- Providing work time or corporate resources for partisan activity.
- Requiring employee participation in partisan activity.
- Denying vacation or other leave because of the nature of the political activity involved.
- Forgetting about the state or federal pay-to-play laws.

General Do's and Don'ts

Prohibited Activity

- No employer should coerce, entice, or threaten in any manner to make a donation or vote a certain way.
- Printing on pay envelopes any statements intended or calculated to influence the political activity of employees.
- Use of any corporate resources for partisan activity without getting payment of the fair market value of the resources used, preferably paying for the resources in advance.
- Making exceptions to any internal policies for political reasons.

Questions & Answers

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