

May 2010

Board Talking Points: Lobbying

In an era when the need for services is growing, nonprofit organizations across New York City are facing uncertainty with respect to funding from New York City and New York State agencies. Both the State and the City are facing the very real possibility of making drastic cuts to projected funding for nonprofit organizations, and these cuts are likely to have a severe impact on the ability of these organizations to provide vital services.

In response to the proposed budget cuts, many nonprofit organizations are taking action. From busing senior citizens from senior centers to Albany to protesting at City Hall, these organizations are informing legislators about the harsh consequences these cuts will have on their ability to provide services, and seeking to prevent the interruption of fundamental services. Whether your organization is already actively engaged in the budget making arena or considering joining in due to the looming threat of budget cuts, below is a summary of the regulatory regime that may have an impact on your advocacy efforts.

Questions:

- 1. Are 501(C)(3) organizations allowed to lobby?**
- 2. Is fighting for budget restoration considered lobbying?**
- 3. Beyond the IRS, are there other lobbying regulations that New York nonprofits must comply with?**
- 4. What counts as lobbying?**
- 5. What is grassroots lobbying?**
- 6. How can I maximize my volunteers?**

Answers:¹

1. Are 501(C)(3) organizations allowed to lobby?

A 501(c)(3) organization is permitted under the Internal Revenue Code to engage in limited lobbying activity, but cannot engage in “substantial part” lobbying. While what constitutes a “substantial part” is a facts and circumstances test and is not well defined, most 501(c)(3) organizations can make an election under 501(h) of the Internal Revenue Code that allows them to understand exactly how much money they are permitted to spend on lobbying. The amount varies depending on the size of the organization, but is in no case greater than 20% of the annual operating expenses for the organization, and no more than \$1,000,000. Within this permissible lobbying limit, a smaller cap is set on grassroots lobbying (see below). This total cap on the

¹ The information below is directed toward nonprofit organizations with tax-exempt status under 501(c)(3) of the Internal Revenue Code. If your organization is not exempt under 501(c)(3), please contact Lawyers Alliance for information applicable to your organization.

amount spent on lobbying would include any budget-related lobbying your organization does as well as any other kind of legislative advocacy.

2. Is fighting for budget restoration considered lobbying?

Because the budget is a piece of legislation that is enacted by the legislative body, advocating for changes, additions or restorations falls under the definition of lobbying. This is true for both the New York City and the New York State budgets.

3. Beyond the IRS, are there other lobbying regulations that New York nonprofits must comply with?

In addition to the IRS limit on how much lobbying a 501(c)(3) organization can do, both New York City and New York State regulate lobbying activity that takes place within their respective jurisdictions. Unlike the IRS, neither NYC nor NYS limit how much you can spend on lobbying. Instead, these entities require that you *report* lobbying activity if your organization exceeds specified thresholds. For NYS, the threshold amount is \$5,000 in expenditures for lobbying activity at the state or municipal level. For NYC, the threshold is \$2,000, and covers only New York City lobbying activity. The financial cost for most organizations consists primarily of paid staff time, but may include other expenditures on lobbying activity.

If your organization does not spend enough money on lobbying to exceed either of these thresholds, you may continue to lobby but need not report your lobbying activity. If you think your organization is close to meeting or exceeds the thresholds, please contact Lawyers Alliance for more information about the reporting requirements.

4. What counts as lobbying?

As mentioned above, asking legislators to restore budget cuts or make changes to the budget prior to passage of the budget into law will count as lobbying. Under both the NYC and NYS lobbying regulations, lobbying is defined as attempting to influence legislation. This can be done directly, by staff members speaking with city or state legislators, or indirectly, by asking members or volunteers to contact legislators (called grassroots lobbying).

The definition of “legislation” is relatively broad. In addition to measures passed by City Council or the Mayor (or the state legislature or Governor), any “rule or regulation having the force and effect of law” by state or city agencies is considered legislation.

Activities that are considered “attempting to influence” legislation include contacting legislators or administrators directly, organization advocacy days, testifying at public hearings (unless you have been invited in writing by the legislative body to testify), and all activities in preparation for lobbying.

5. What is grassroots lobbying?

Grassroots lobbying, or indirect lobbying, is encouraging others to lobby. For example, you may ask members or recipients of your newsletter to call or write to legislators, or ask them to join in on an advocacy day at City Hall. For an activity to count as grassroots lobbying, there must be a

“call to action,” or an implicit or explicit request that people contact legislators. The compensated time used to prepare a grassroots communication will count towards the lobbying thresholds, and the amount you spend on grassroots communications is subject to limits if your organization takes the 501(h) election.

6. How can I maximize my volunteers?

Time spent by volunteers to advocate or lobbying on behalf of an exempt organization is not counted towards the organization’s thresholds for reporting of lobbying activity, and (unless the volunteer is a board member) is not reportable even if you exceed the thresholds and are required to report your lobbying activity.

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