

What, Why and How of Advocacy

What is Public Policy Advocacy:

Public policy engagement is a broad term that generally refers to any nonprofit or foundation activity intended to affect government actions, beyond state and federal legislation, on policies which affect the general public.

Advocacy is a wide range of activities conducted to influence decision makers at various levels. Advocacy activities include not only "traditional" advocacy work like litigation, lobbying and public education, but also capacity building, network formation, relationship building, communication and leadership development. As a specific advocacy activity lobbying refers to activities, generally categorized as direct or grassroots, which are intended to influence a specific piece of legislation. Through advocacy and lobbying efforts, nonprofits and foundations play a vital role in the development and implementation of public policy.

One way to differentiate between advocacy and lobbying is to understand that lobbying always involves advocacy but advocacy does not necessarily involve lobbying. Organizations can do as much advocacy as they please but when participating in lobbying they must adhere to legal guidelines.

Why Should I Advocate

Foster Discussion

Engaging in advocacy and lobbying efforts initiates conversations between stakeholders about relevant issues. Oftentimes nonprofit lobbying and advocacy efforts results in greater collaboration and discussion between policymakers, citizens, nonprofit organizations and others who are impacted by the issue at hand.

Create Systemic Change and Advance Missions

Nonprofits and foundations can advance their missions by participating in advocacy and lobbying efforts to create systemic changes. Oftentimes direct service programs provide only short-term benefits to their program participants. However, to help advance their issue and reach the root of social problems, organizations need to address their problem on a systemic level which will shape policies for the benefit of their constituents.

Protect Current Funding

Nonprofits and foundations do not have the financial or human resources to completely eradicate a deep-rooted social problem. When participating in advocacy and lobbying initiatives, organizations are maximizing their dollars to create governmental and community support which is necessary for long-term change.

Establish Your Expertise to Policy Makers

Nonprofit and foundation staff are experts in the social problems they work to resolve everyday. Organizations can utilize advocacy and lobbying initiatives to educate, inform and guide policy makers as they make decisions on policy which affects those in the nonprofit and philanthropic sector.

How Can Foundations and Nonprofits Participate in Advocacy and Lobbying

Nonprofits and Foundations play a vital role in the development and implementation of public policy to promote an informed, healthy and strong democratic society. Both foundations and nonprofit organizations may engage in advocacy and lobbying but must be aware of the limitations of each activity. Depending on the type of organization, they can engage in unlimited amounts of advocacy but can only lobby within certain constraints.

Examples of Activities that Are Permissible for 501(c)(3) Organizations

- Create a public policy agenda with your board to identify long-term changes to legislation that would benefit your issue and organization.
- Speak with your attorney and/or accountant about specific legal advocacy and lobbying activities.
- Work for a campaign only as a private citizen not a spokesperson for the organization.
- Nonpartisan voter education, voter registration and get out the vote activities.
- Send surveys/questionnaires to each candidate with a list of important questions, be careful of how questions are phrased and include complete responses.
- Prepare a voter scorecard that displays how each member has voted on key issues and distribute it to your constituents. Be certain to include all members.
- Work for the issue/legislation but not a particular candidate
- Educating all candidates and political parties about your organization's issues.
- Inviting candidates to meetings or to public forums sponsored by the nonprofits. The invitation must be extended to "all serious candidates."
- Preparing a voter scorecard that displays how each member has voted on key issues and distributing it to your constituents. Be certain to include all members.

Examples of Activities that Are Not Permissible for 501(c)(3) Organizations

- Endorsing or opposing a candidate.
- Making any campaign contribution.
- Coordinating activities with a candidate.

Some important tips:

- Working for the election of a particular candidate, whether at the federal, state or local level, is strictly prohibited for 501(c)(3) organizations and is cause for the organization to lose its tax-exempt status.
- Employees, members or officers of 501(c)(3) organizations can participate in a political campaign provided that they say or do everything as a private citizen and not as spokespersons for the organization or while using the organization's resources.

Community Foundation Advocacy and Lobbying

Legal Parameters: Community Foundations can lobby, with the same restrictions that apply to other public charities. Community foundations are governed under the same federal tax rules for lobbying as public charities, under section 501(c)(3). Unlike private foundations that are generally restricted from lobbying, community foundations may lobby with the same latitude permitted to other public charities. Community foundations are subject to the vague "no substantial part" rule or the expenditure test, if elected.

Community Foundations can Support Lobbying via Grantmaking: Community foundations may make general support grants to public charities that lobby. They also may make grants earmarked for lobbying to public charities, to other community foundations, and to organizations that are not charities. If a community foundation makes a grant for lobbying the grant counts against the foundation's lobby expenditure limits if it has already elected under the 501(h) rules. If the community foundation has not elected, and therefore is under the substantial part rule, a grant to a public charity earmarked for lobbying still counts as a lobbying expenditure by the foundation.

Why would a community foundation make a grant for lobbying by another organization: Community foundations that want to influence legislation may not have the internal capacity to lead a legislative campaign themselves so they may want to provide funding for one or more 501(c)(3) organizations, or a coalition, to take the leadership of a lobbying effort.

What is the role of donors' advisors in community foundation public policy activities: Community foundation staff may educate donors about organizations that engage in public policy and lobbying for causes they care about. Educating donors about opportunities to support organizations engaged in public policy can also be a way of expanding the pipeline of usually scarce dollars for advocacy and lobbying activities. Philanthropy for public policy can be an exciting way for a donor to feel apart of social change efforts. It should be noted that a donor may not receive a tax-deduction for a contribution to a 501(c)(3) that is specifically earmarked for lobbying as defined under section 501(c)(3) of the Internal Revenue Code. Community foundation staff may advise donors that funding broader public policy work does not necessarily mean that a nonprofit will engage in lobbying, but lobbying could be one of many types of policy activity conducted by the organizations ultimately receiving their contributions. Therefore, donors may be encouraged to recommend general support grants from advised funds to organizations that engage in lobbying.

Private Foundation Advocacy and Lobbying

Legal Parameters: Private foundations may not lobby directly, but may fund lobbying efforts. However, tax rules recognize two exceptions for private foundation lobbying.

Legal Lobbying for Private Foundations:

- *Self-defense lobbying*: this exception protects communications with legislators, their staff and executive branch officials involved in the legislative process concerning legislation that might affect a private foundation's existence, powers and duties, tax-exempt status, or right to receive tax-deductible contributions.
- *Technical assistance or lobbying by invitation*: another exception excludes response to written requests for technical assistance from a legislative committee or subcommittee or other governmental body. The written request should be signed by an authorized official of the governmental body, such as a committee chairperson, but not an individual legislator who is not considered a governmental body. Such requests can provide organizations with a broad scope for presenting legislators, but not the general public, with facts, analysis and recommendations on legislative issues.

Legal Advocacy Activities for Private Foundations:

- *Nonpartisan analysis*- Making results of nonpartisan analysis on a legislative issue available is not treated as lobbying even if the research report includes specific legislative recommendations. Read the IRS guidelines on communication that qualifies as nonpartisan analysis before funding the activity. (Link to info below)
 - o Presents a sufficiently full and fair exposition of the pertinent facts as to permit the public to form an independent opinion or conclusion. The "full and fair exposition" standard requires the analysis to present a rational, fact-based argument in support of the report's conclusions, but it does not require that the report devote equal space to the discussion of alternative points of view.
 - o Does not include a direct "call to action". This would explicitly encourage recipients to contact legislators or accomplish the same objective by providing such information or materials as legislators' addresses or phone numbers or preprinted postcards to send to legislators.
 - o Is not only distributed to persons who are interested solely in one side of the issue.
 - o The tax rules also make clear that grants to support the preparation and distribution of nonpartisan analysis will not be treated as lobbying expenditures even if the grantee, or others, subsequently use the analysis as part of a lobbying communication unless the primary purpose in funding the analysis was to support the grantee's lobbying or the foundation knew, or had reason to know, that the grantee's primary purpose in performing the research project was for lobbying use.
- *Discussions of broad social issues*- Foundations can present discussions of broad social, economic and similar problems, even if the issues discussed are the subject to legislation already pending before a legislative body. This exception affords foundations to fund communications on general policy issues, provided they do not address specific legislation.

Private Foundation Grants to Public Charity Lobbying:

Private foundations are permitted to make both general support and project grants to public charities engaged in lobbying activities.

- General support grants are permitted as long as the funds are not earmarked for lobbying. The public charity must not agree to use the funds for that purpose.
- Project grants are permitted--even if the project includes some lobbying--provided that the funds are not earmarked for lobbying and the amount of the grant does not exceed the grantee's budget for the non-lobbying components of the project. For example if the project costs \$1000 and the non-lobbying portion costs \$800 and the lobbying portion costs \$200 then the grant amount can be no greater than \$800.

Foundations have broad flexibility to fund activities that can have direct and significant impact on the public policy process. Through careful attention to the applicable tax rules, foundations can thus play an active role in the formation of public policy without risk of adverse tax consequences.