NONPROFITS: LOBBYING

A 501(c)(3)'s Effective Local Lobbying

01.27.23 | Linda J. Rosenthal, JD

"There are a million and one reasons why charities — 501(c)(3) organizations specifically — don't lobby," according to an article yesterday in *The NonProfit Times*. See *Local Lobbying Is Permitted And Financially Effective* (January 26, 2023). But this is an unnecessarily missed opportunity to achieve these nonprofits' charitable purposes in a legally permissible way.

To illustrate how valuable lobbying at the local level can be, the *NPT* writers describe the recent success of San Diego-based Serving Seniors in getting help right now for low-income seniors on the brink of losing a place to live. Through the organization's advocacy – and (yes!) lobbying – efforts, the County Board of Supervisors last September unanimously approved a "game-changing pilot program…." to start early in 2023. It "will provide seniors who are at-risk of becoming homeless with a $500 rental subsidy." Even this relatively small amount will be the cushion that prevents eviction and homelessness for many of the area's neediest residents.

Shallow Rental Subsidy Pilot

"[O]nly 2.5% of charities report being actively engaged in lobbying activities, according to Internal Revenue Service data …. However, lobbying is one of the most important ways nonprofits can empower the communities and people they serve. It is arguably, one of the single most effective ways that nonprofits can advance their mission."

The *NonProfit Times* selected this San Diego County Pilot Shallow Rental Subsidy Program as a "simple and powerful example" of how a local nonprofit can facilitate implementation of meaningful and timely government aid for a critical problem.

The mission of 501(c)(3) Serving Seniors is "helping seniors in poverty live healthy and fulfilling lives." Established in 1970 "under the umbrella of Catholic Charities as a nutrition site providing lunches to disadvantaged seniors," is has expanded to now provide "… an array of services including

nutritious meals, housing, health care, and social services to low-income seniors."

The organization's published report of an eye-opening survey revealed that an alarming number of the area's older adults spend more than 50% of their income on housing. See *Senior Homelessness: A Needs Assessment* (September 2021). Serving Seniors then transitioned from this public-education and advocacy phase to legislative outreach for urgent government help. See County Board of Supervisors Agenda Item, "Addressing Homelessness Among Older Adults," February 8, 2022, and *The county Board of Supervisors approved a pilot program for senior rental subsidies in a trio of homelessness actions* (February 8, 2022) Deborah Sullivan Brennan, *San Diego Union-Tribune* .

In late September, the 5-member County Board of Supervisors unanimously approved an 18-month pilot program to begin after the first of the year: a subsidy pegged at the $500 per month level with specified criteria for applicant eligibility. See *Board Votes to Create Rental Subsidy Program for Older Low-Income San Diegans* (September 27, 2022), Katie Cadiao, County of San Diego Communications Office; see also *Supervisors Unanimously Approve Region's First Program to Prevent Senior Homelessness* (September 28, 2022) East County News Service, *eastcountymagazine.org.*

Fear of Lobbying

The "… million and one reasons why charities … don't lobby … mostly have to do with nonprofit leaders being ignorant of the law, wrongly thinking that it's expensive, and not knowing where to start."

The problem of "nonprofit leaders being ignorant of the law" stems largely from the incorrect (but quite reasonable) conflation of three separate and distinct issues:

- Advocacy (allowable, and often necessary to accomplish mission)
- Lobbying (allowable within limits)
- Political campaign activities (prohibited)

There's a mountain of information publicly available explaining these points; we've covered them in many earlier posts. Of course, the sheer volume of it is partly responsible for the confusion and unhelpful conflation.

For those already somewhat familiar with these concepts, two simple reminders may help. First, "advocacy" is not synonymous with "lobbying"; it is allowable and to be encouraged. Second, the tiny amount of lobbying (direct or grassroots) that a program- or service-oriented nonprofit may engage in to get a single program or project adopted legislatively will not create trouble or legal jeopardy for it.

Advocacy vs. Lobbying

For others less well-versed in this law, a good place to start is the National Council of Nonprofits' *Advocacy vs. Lobbying*. "Advocacy," NCN's explainer page begins, "is what you are already doing; lobbying is a narrowly defined activity with a few easy-to-follow limits."

Also helpful is the Stand for Your Mission website, a collaborative effort of the nonprofit community including the National Council of Nonprofits. "The Stand Up for Your Mission campaign is a challenge

to all nonprofit decision-makers to stand up for the organizations they believe in by actively representing their organization's mission and values, and creating public will for positive social change."

The website explains in detail why "advocacy" is so important: "Public policy impacts the work of nonprofits. The most effective boards recognize this and leverage advocacy as a way to stand up for the mission and people they serve."

Another invaluable resource is Alliance for Justice's Bolder Advocacy project: "We provide resources and expertise to help your nonprofit advocate. Bolder Advocacy promotes active engagement in democratic processes and institutions by giving nonprofits and foundations the confidence to advocate effectively and by protecting their right to do so."

The website's "What Is Advocacy?" section explains – plainly and directly – that "[a]dvocacy can take many forms. In simple terms, it means making the case for your cause or mission …. Advocacy could be any one of a number of things from research and public education to lobbying elected officials and voter engagement…." Simply put: "While all lobbying is advocacy, not all advocacy is lobbying."

Lobbying Definition

For more assurances that an insubstantial amount of (true) lobbying won't put an organization in legal peril, let's go straight to the horse's mouth.

The Internal Revenue Service has lots of published information and other educational resources on this point. For example, the "Lobbying" explainer page on the IRS website begins: "In general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status."

The explanation continues by emphasizing that "[o]rganizations may, however, involve themselves in issues of public policy without the activity being considered as lobbying. For example, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status."

To help determine how much lobbying is too much, the reader is referred to two additional explainer pages on the alternate ways that an organization can evaluate its activities:

- Measuring lobbying activity: substantial part test
- Measuring lobbying activity: expenditure test

The second option is the one that's easier to apply; it's a numbers game. If an organization spends a certain percentage on lobbying, then there may be trouble. If not, then it's safe to proceed.

Conclusion

An established and highly respected service organization – San Diego's Serving Seniors – brought its vast institutional knowledge and expertise in the area of senior poverty to the attention of already sympathetic County supervisors coping with the crisis of escalating homelessness.

It presented a common-sense and effective legislative proposal involving much less money than the cost of opening more homeless shelters or offering other expensive services to newly unhoused seniors. As a pilot program, it was available quickly and without long-term strings attached if unsuccessful.

Compared with this 501(c)(3)'s total program and services, this relatively minimal lobbying effort would represent no more than an insubstantial amount of time, effort, and expenditure.

In the words of the *NonProfit Times*, this was a perfect example of how local lobbying is "permitted and financially effective."

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