

What about Private Foundations: Are They Allowed to Lobby?

08.08.14 | Linda J. Rosenthal, JD



The rules about permitted lobbying activities for 501(c)(3)s don't apply across the board to all 501(c)(3)s. They are meant for public charities: organizations that generally receive much of their money from donations from the general public or from grants. Private foundations are 501(c)(3)s, but their lobbying activities are much more restricted.

Subject to just a few exceptions, private foundations are generally not allowed to contact legislators about specific legislation or issue a "call to action" to the general public about a proposed law.

What happens if they do? They will be slapped with an excise tax on any amounts paid or incurred to influence legislation. "(T)his tax is so significant," the IRS explains, "that it generally acts as a lobbying prohibition."

501(c)(3) organizations that are private foundations are subject to excise tax on any amounts paid or incurred (i) in an attempt to influence legislation, or (ii) in an attempt to influence the outcome of any public election or to carry on certain voter registration drives. The definition of lobbying, and the exceptions thereto, are similar to the definitions and exceptions described above.

What Can a Private Foundation Do?

The primary carve-out from the general lobbying prohibition is known as the "self-defense" exception. Like its name suggests, it applies to matters that could affect the foundation itself: its existence, its tax-exemption, its powers and duties, or contributions deductions.

Private foundations may generally establish and nurture relationships with elected officials, and can let them know about the organization's activities and grants. Not all communications with legislators are prohibited or restricted lobbying. For instance, if you tell a member of Congress about a big societal problem like illiteracy among adults, and how that limitation stymies their job opportunities,

you are not lobbying. Even if the social or economic issue is the type of problem that you might expect or hope that government would eventually want to address, that's ok. But if you meet with the specific purpose of discussing a specific legislative proposal to eradicate illiteracy or urging that member to support that legislation, then that's lobbying.

If a government body, including a legislative committee, sends a written request to a private foundation to give testimony or other technical assistance, that's allowed, so long as it's provided to the committee, rather than to individual legislators, and if the technical advice is available to every member of that government body or committee. This applies even to opinions on specific legislation – if these rules are followed.

And if a private foundation – or one of its grantees – studies a pending policy matter, and issues a report, the organization may give that report to legislative bodies or lawmakers. This is allowed even if the study takes a particular position on proposed legislation, but only if the document includes a balanced and complete discussion of the matter that would allow readers to come to their own conclusions. Another requirement is that this “nonpartisan analysis, study or research” has to be made available generally and can't only be given to people or groups on one side of an issue.

Another Big Restriction: Earmarking Grants

So, is a private foundation allowed to get around these limitations by funneling lobbying money through a public charity? The answer is no. But they *are* permitted to give general-support grants to public charities that lobby. They can also make grants for particular projects with a lobbying element, but only if the grant amount – along with all other grants by the same foundation for that project for that year – isn't more than the projected non-lobbying expenses for the earmarked project. The private foundation making the grant is permitted to rely on the good faith estimate in the grantee's budget for that project.