

American Association of Museums

ADVOCACY FOR MUSEUMS - SECRETS OF POLITICAL INFLUENCE MARCH 2006

Nonprofits and Government: What You Can and Can't Do

By Jason Hall, Director, Government & Media Relations

As we move into election season, here's a reminder about what 501(c)3 organizations can and can't do with respect to government officials. (The rules are different for 501(c)4 and 501(c)6 organizations.)

The basic rule:

- **Advocacy is fine.** *You can* talk to your elected local, state and federal officials, and to career civil servants, as much as you want about anything related to your museum. (There are some theoretical limits on what you can spend to do so, but you won't cross them. See below.)
- **Election involvement is not.** *You can't*, in your official capacity as an employee of a 501(c)3, take a position for or against a candidate for political office, whether at the local, state or federal level. In addition, your museum may not take such a stand. The principle to bear in mind here is **evenhandedness**.

Why the rule.

This has nothing to do with whether your museum receives any local, state or federal funds. It has to do with your museum's tax status as a 501(c)3 organization under federal tax law, so it's between you and the IRS. 501(c)3 organizations are charitable scientific, educational or religious organizations and get the most generous tax advantages available to 501(c) organizations under federal tax law. Because those tax breaks are subsidized by *all* American taxpayers of every political persuasion, there is a logic to not having the tax money of those taxpayers supporting political candidates to which some of them are opposed.

In addition, because the principal purpose of (c)3's, by definition, is charitable activity, only an "insubstantial" part of their funding can go to lobbying. (You would have to do a great deal of lobbying to move out of the insubstantial category, but if you think you might be doing a great deal, there is a "safe harbor" you can elect that will give you more security. See below.)

Details about advocacy:

- You can have visits with, write letters to, make calls to, and otherwise contact your legislators and executive branch officials at the local, state and federal levels. In fact, Congress and the IRS encourage nonprofit employees, like other constituents, to make their views known about issues that affect them.
- Your only limitation here is that a (c)3's advocacy must be "insubstantial." The bad news is that the IRS has never defined "insubstantial." Case law suggests that any expenditure under 5% of the (c)3's budget will probably be fine, but that is an uncertain limit. The good news is that unless you do a very great deal of lobbying, you are not going to bump up against that limit.



AMERICAN ASSOCIATION OF MUSEUMS

1575 Eye Street NW, Suite 400 Washington, DC 20005 202/289-1818

www.aam-us.org

American Association of Museums

ADVOCACY FOR MUSEUMS - SECRETS OF POLITICAL INFLUENCE MARCH 2006

The additional good news is that for those that will be doing a very great deal of lobbying, there is what the tax experts call a “safe harbor,” i.e., a choice you can make that will allow you to calculate precisely how much money your (c)3 can expend on lobbying in a given year, given the size of your budget. This is called a “501(h) election,” and all you have to do to make it is to fill out a very short, one-page form from the IRS and send it to them. The American Association of Museums (AAM) has done this, since we have 4 registered lobbyists who spend most of our time lobbying (and the rest on press work.) By the way, 501(h) spending limits, since they were designed with very large (c)3’s in mind, like the Red Cross, provide far more room than you’ll ever need. AAM, with 4 lobbyists, doesn’t even come close to them.

For more information on the 501(h) election, which we recommend if you will be doing a great deal of lobbying, see *The Non-Profit Lobbying Guide* by Bob Smucker. It’s available from AAM’s bookstore (online: www.aam-us.org; phone: 202-289-1818) or directly from Independent Sector.

For more information on how to lobby effectively for your museum, see *How to Be Your Museum’s Best Advocate*, an AAM publication also available from AAM’s bookstore. It moves from the simpler things (how to make an effective call or write an effective letter) to somewhat more difficult things (how to have an effective face-to-face visit with an elected official, how to write and deliver testimony before a legislative body) to yet more difficult things (how to get other people to carry your message, how to organize and run political coalitions). I think you’ll find it helpful—but then I’m biased, since I wrote it.

And to practice your lobbying skills in a non-threatening environment, join AAM’s grassroots advocacy network, the Museum Advocacy Team. That’s 2,500 people around the country who call or write their federal legislators in support of museum issues. We send them an alert when a key issue comes to the House or Senate. In that message, we describe the issue, tell you what we would like you to do, and then tell you who to contact. We often follow up with how things came out. The advantages to you are:

- It’s free. (AAM absorbs the costs)
- You don’t have to be an AAM member to join.
- You get breaking news of real-time Congressional action.
- You get advocacy experience.
- You get satisfaction, because MAT has a good success record
- And it’s easy to join. Just contact us by e-mail us at MAT@aam-us.org, or call us at 202/289-9125.

Details about elections:

- Don’t take a stand in your official capacity. As noted above, neither you nor any other museum employee, *in your official capacities*, nor your museum as an institution, may take a stand for or against a candidate for political office at the local, state or federal level.
- Facilities rentals: You may indeed rent your facilities, in whole or part, to a political campaign for election activities. This is not a problem if done properly, and many museums routinely get and accept requests from campaigns for such rentals, because museums provide nice backdrops that are symbolic of local communities. The principles here are *hands off* and *evenhandedness*.

AMERICAN  ASSOCIATION OF MUSEUMS

1575 Eye Street NW, Suite 400

Washington, DC 20005

202/289-1818

www.aam-us.org

American Association of Museums

ADVOCACY FOR MUSEUMS - SECRETS OF POLITICAL INFLUENCE MARCH 2006

- *Hands-off.* When the event occurs, nobody formally connected to the museum (employee or trustee) should introduce the candidate or otherwise be part of the event.
- *Evenhandedness.* You should rent the facility on exactly the same terms that you would, or have, rented the facility to others in the past. And if the opposing candidate(s) requests to use your facilities, you should rent it again on exactly the same terms.
- “So I’ve lost my citizenship rights by working for a (c)3?” Nope. In fact, you, *in your capacity as a private citizen*, can of course take a stand on political candidates, provide them with campaign contributions and even work actively for their election. But you have to follow three easy-to-remember rules:
 - *On your own time.* Do not engage in any campaign activities—PAC work, other fundraising, putting up signs, etc.—during working hours. Your lunch hour, of course, is your own time, as are your evening and weekend hours. Go to fundraisers on your own time. People who want to be active in a campaign in a significant way should look at taking vacation time to do so.
 - *On your own dime.* Do not use any of the funds or facilities of your museum—phone, fax, copier, office space, etc.—for any campaign activity.
 - *And without affiliation of your organization.* Never allow any use of your museum’s name or your official title at your museum to be used for any campaign purpose, such as in a listing of your name and title on campaign fundraising letters. And if you are a director of a museum, and your name in your community is well known in connection with your position with the museum, you are well-advised to avoid this gray area by not allowing even your name itself on any campaign materials.

Summary. Please be a strong advocate for your museum on public policy issues that affect it. We need your voice, Congress and your local and state officials want to hear from you, and IRS has no problems with you doing a very great deal of lobbying. And feel free to be active in political campaigns if so inclined but simply be careful to follow the rules above, so that your museum stays well clear of your election activity.