



MUSEUM ADVOCACY AND THE LAW

By Walter G. Lehmann
Lehmann Strobel PLC

Many museum boards and staff mistakenly believe that they cannot engage in public policy debates and advocacy activities without jeopardizing their tax-exempt status or otherwise running afoul of the law. In fact, the legal restrictions on nonprofit political advocacy are now fairly straightforward. Under federal law, only nonprofits which are engaged in certain narrowly defined “lobbying” activities must track and disclose those activities. Under the new Pennsylvania Lobbying Disclosure Act, nonprofits which expend more than \$2,500 per quarter on any broadly defined advocacy activities must register and file reports on those activities. Armed with a clear understanding of the rules, museums can (and should) become effective advocates for government funding and policies that affect their constituents as well as their own ability to carry out their charitable missions.

On the federal level, the legal restrictions on political advocacy depend first and foremost on the origin of the nonprofit organization’s tax-exempt status. Nonprofit organizations which are exempt under Section 501(c)(3) of the Internal Revenue Code – including most private museums and museum associate groups – are prohibited from taking part in political campaigns and from devoting a “substantial part” of their activities on “lobbying” activities. Nonprofits which violate these rules risk losing their tax-exempt status.

Federal tax law relies on a distinction between “advocacy” and “lobbying” activities. Advocacy encompasses a broad range of activities intended to influence public policy. Lobbying on the other hand is narrowly defined by the IRS Code as “attempts to influence legislation.” (See 26 CFR 4911). Lobbying includes direct communications with legislators or government officials (“direct” lobbying) as well as indirect attempts to influence legislation by affecting the opinions of the general public (“indirect” or “grassroots” lobbying). In either case, the activities must involve specific legislation and reflect an opinion on that legislation. In the case of grassroots lobbying, there must also be a “call to action” – that is, the communication must direct the recipient to contact a legislator or identify one or more legislators who will vote on the legislation.

There are in fact a great many activities that nonprofit organization can engage in that are neither considered campaigning nor lobbying under federal tax law. Communicating with members about legislation is not lobbying so long as the organization does not encourage its members or others to lobby. For example, a museum could send out a public affairs bulletin to its members, take a position on the legislation, and it would not count as lobbying so long as it did not include a “call to action.” Presenting non-partisan research and analysis on a legislative issue, and responding to requests from a legislative body for technical advice on specific legislation, is not considered lobbying. Perhaps most importantly, self-defense activity – that is, lobbying legislators (but not the general public) on matters that may affect the organization’s own existence, powers, tax-exempt status, and similar matters – does not constitute lobbying under federal tax law.

When a nonprofit organization does engage in activities which may constitute “lobbying” under the IRS rules, it must track its expenditures on these activities to ensure that it does not run afoul of IRS spending restrictions. The spending restrictions have traditionally been defined through a vague “no substantial part test” which requires the organization to demonstrate that “no substantial part of the activities of the organization” constitute lobbying. However, nonprofits may now elect to track their lobbying activities using a predefined “expenditure test” under the Section 501(h) lobbying rules. For nonprofits, the rules provide a sliding scale of permissible lobbying expenditure limits depending on the size of the organization’s annual budget.

Nonprofits that engage in advocacy and lobbying activities may also be required to register under federal and state lobbying disclosure laws and file periodic reports on those activities under certain circumstances. Under the federal Lobbying Disclosure Act, a nonprofit organization is required to register and report on its lobbying activities if it employs at least one “lobbyist” and spends more than \$20,000 in a semi-annual period on lobbying activities. An employee who engages in certain lobbying activities – such as meeting with federal executive or legislative officials – which constitute more than 20 percent of that employee’s total work time, is considered a “lobbyist” under the federal law. Nonprofits which make the Section 501(h) election may use the more broad tax law definitions and submit Form



990 to satisfy the reporting requirements of the federal disclosure law.

Under Pennsylvania's Lobbying Disclosure Act, which became effective on January 1, 2007, any nonprofit organization which spends more than \$2,500 per quarter on advocacy activities must register with the Pennsylvania Department of State and comply with specific reporting requirements. Importantly, the Pennsylvania law eliminates the traditional distinctions between lobbying and advocacy. Any direct or indirect communication intended to influence legislative or administrative action (other than regularly published member newsletters) is regulated under the Act. For example, advocating for grant funding or on state budget issues is considered lobbying under the Pennsylvania law. More information on the new Pennsylvania law can be obtained from the Pennsylvania Association of Nonprofit Organizations (www.pano.org).

Federally funded nonprofits that engage in lobbying activities need to take care to organize their legislative work so that no federal funds are used for this purpose. If a museum is actively engaged in public policy and advocacy activities, it should consider adopting a written policy that clarifies the scope of the work and the time and resources that will be allocated to those activities. A sample policy can be found at www.pano.org.

These rules apply only to the nonprofit organization itself and not to individuals acting in their own capacity and not as a representative of the organization. Staff or board members can advocate individually or join volunteer advocacy groups as long as the group has no connection to the nonprofit with which the individual is associated. In doing so, it is important to avoid using the name or letterhead of the nonprofit. Where an individual is closely associated in the public's mind with a particular nonprofit, it may be advisable to treat the activity as part of the organization's advocacy activities.

Many nonprofit organizations prepare an Advocacy Handbook to assist their members with effectively pursuing the organization's advocacy goals. The handbook sets out the organization's policy initiatives and provides suggestions on how to contact government officials and conduct advocacy activities. A sample Nonprofit Advocacy Handbook is attached.

[ABC NONPROFIT Advocacy Handbook \(pdf file\)](#)