
2008 GAB 06
LOBBYING & LOBBYISTS

The Government Accountability Board advises:

- 1) A PAC may purchase public opinion research from a vendor if the research is for a political purpose, a vendor sells research at a price calculated, at a minimum, to recoup the vendor's costs, and the price at which the vendor sells research to each purchaser is comparable for a comparable product. Such sale would not result in an in-kind contribution to the PAC from the vendor under these circumstances
- 2) Absent collusion among purchasers, we do not consider other purchasers of the research to be subsidizing an individual PAC's purchase even though it may fairly be said that, without other purchasers, the price of the product may be greater.
- 3) Public opinion research that a PAC uses in determining who to support, how much support to give a candidate, the message the PAC wants to convey about a candidate, and the like is a political purpose.

Facts

¶1 You are a lobbyist. Your lobbying firm is a corporation. Your firm plans to conduct surveys, research, and interviews to gain insight into public opinion on public officials, public policies, and elections. The firm plans to offer the results of the research to its clients. Clients will include business corporations, not-for-profit organizations, and political action committees ("PACs"). Clients will not include candidates or candidate committees. Every client will be acting independently from any candidate or political party. Each client will pay to your firm one of two fixed prices – based on the client's level of participation. The price at each level, and the benefits received, are fixed for each client regardless of the number of clients that participate in the purchase of the research.

Questions

¶2 You ask the following questions:

1. May a PAC participate, along with other organizations, in purchasing public opinion research at a fixed price for pre-determined package?
2. Is a purchase of public opinion research an expenditure for a permissible political purpose?
3. Does the purchase of research in the circumstances presented result in any in-kind contribution to the PAC from the firm or from other participants?

4. Are there other issues of which the firm or a PAC should be aware?

Discussion

Question 1. May a PAC participate, along with other organizations, in purchasing public opinion research at a fixed price for a pre-determined package?

¶3 As a general matter, Chapter 11, *Wisconsin Statutes*, permits a PAC to purchase public opinion research from a vendor if the research is for a political purpose. An in-kind contribution and reporting issue arises if the purchase is subsidized by another. A source restriction issue arises under §11.38, *Wisconsin Statutes*, if the purchase is subsidized by a corporation.¹

¶4 Absent collusion among purchasers, we do not consider other purchasers of the research to be subsidizing an individual PAC's purchase even though it may fairly be said that, without other purchasers, the price of the product may be greater. The price of almost any product in a commercial transaction is predicated on the assumption that there will be other purchasers of the same product. A different case might arise if, for example, several PACs banded together to purchase research that none could individually afford and the intent was to subsidize each PAC's activities.² That is not the case here.³

¶5 If a vendor sells research at a price calculated, at a minimum, to recoup the vendor's costs and the price at which the vendor sells research to each purchaser is comparable for a comparable product, then we do not believe that a vendor can be viewed as providing a subsidy to a purchaser.⁴ Section 11.06 (12) (f), *Wisconsin Statutes*, which sets out the method for valuating an opinion poll or voter survey that is contributed to a committee is consistent with this view.

Question 2. Is a purchase of public opinion research an expenditure for a permissible political purpose?

¹ Section 11.38 (1) (a) 1.w.s provides:

11.38 (1) (a) 1. No foreign or domestic corporation, or association organized under ch. 185 or 193, may make any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum.

² See, e.g., 2005 Wis Eth Bd 7 (a lobbyist's sharing an apartment with an official is furnishing part of the rent to enable an official to lease an apartment or house and would be furnishing the official something of pecuniary value, just as would a lobbyist providing part of the capital in a partnership to enable an official to purchase a residence or an interest in a business venture).

³ We do not address in this opinion the sale of research by a lobbying firm to a candidate for state office or candidate committee. Nor do we address the issue of a candidate purchasing research in conjunction with a lobbyist or lobbying principal or from a PAC or a corporation.

⁴ This will also normally be true if a commercial vendor sells research in an arm's length transaction to an unrelated purchaser, regardless of the price.

¶16 A PAC may expend moneys solicited for a political purpose only for a political purpose.⁵ An act is for “political purposes” when it is done for the purpose of influencing the election or nomination for election of any individual to state or local office, and can include administrative and overhead expenses.⁶ Whether the purchase of research is for a political purpose will depend on the nature of the research and its intended purposes. You have indicated that the proposed research is to gain insight “into public opinion on public officials, public policies and elections.” Public opinion research that a PAC uses in determining who to support, how much support to give a candidate, the message the PAC wants to convey about a candidate, and the like is a political purpose.

Question 3 Does the purchase of research in the circumstances presented result in any in-kind contribution to the PAC from the firm or from other participants?

¶17 The purchase of research would not result in an in-kind contribution to a PAC purchasing the research unless there is a subsidy involved as discussed in response to your first question.

Question 4. Are there other issues of which the firm or a PAC should be aware?

¶18 We are unaware of any other issues that would prevent the implementation of your proposal.

Advice

¶19 The Government Accountability Board advises:

1) A PAC may purchase public opinion research from a vendor if the research is for a political purpose, a vendor sells research at a price calculated, at a minimum, to recoup the vendor’s costs, and the price at which the vendor sells

⁵ Section 11.25 (2) (a), *Wisconsin Statutes*, provides:

11.25 (2) (a) No person, committee or group may make or authorize a disbursement or the incurrence of an obligation from moneys solicited for political purposes for a purpose which is other than political, except as specifically authorized by law.

⁶ Section 11.01 (16), *Wisconsin Statutes*, provides:

An act is for “political purposes” when it is done for the purpose of influencing the election or nomination for election of any individual to state or local office, for the purpose of influencing the recall from or retention in office of an individual holding a state or local office, for the purpose of payment of expenses incurred as a result of a recount at an election, or for the purpose of influencing a particular vote at a referendum. In the case of a candidate, or a committee or group which is organized primarily for the purpose of influencing the election or nomination for election of any individual to state or local office, for the purpose of influencing the recall from or retention in office of an individual holding a state or local office, or for the purpose of influencing a particular vote at a referendum, all administrative and overhead expenses for the maintenance of an office or staff which are used principally for any such purpose are deemed to be for a political purpose.

research to each purchaser is comparable for a comparable product. Such sale would not result in an in-kind contribution to the PAC from the vendor under these circumstances

2) Absent collusion among purchasers, we do not consider other purchasers of the research to be subsidizing an individual PAC's purchase even though it may fairly be said that, without other purchasers, the price of the product may be greater.

3) Public opinion research that a PAC uses in determining who to support, how much support to give a candidate, the message the PAC wants to convey about a candidate, and the like is a political purpose.

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