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CAMPAIGN FINANCE; LOBBYING LAW

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Facts

You are an elected state representative. You posed questions regarding forming and participating in an organization whose purpose would be to recruit, train, and mentor conservative women candidates to the Legislature. You indicated that the organization would be established as a 501(c)(4) corporation. You also stated that the organization would seek individual sponsors for the training and mentoring of candidates, and that candidates would apply to participate in the organization's program. You state that the organization would not be involved with a lobbying organization and you would not use your state office to participate in the organization.

Questions

You ask the following questions:

1. May a 501(c)(4) organization be affiliated with a political party?
2. Would your participation in such an organization violate any provisions of the Ethics Code for State Public Officials or the state elections laws?
3. May a lobbyist donate to such an organization?
4. Must a candidate pay to "join" such an organization or benefit from its services?
5. May the organization provide scholarships to individuals selected for training and mentoring?

Discussion

*Question 1. May a 501(c)(4) organization be affiliated with a political party?*

Your specific question is governed, in part, by Internal Revenue Service regulations. While we can provide general information, you should rely on guidance from the IRS or a tax advisor for specific answers related to the organization's activities and any tax implications.<sup>1</sup>

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<sup>1</sup> The IRS publishes a [Compliance Guide for Tax-Exempt Organizations](http://www.irs.gov/charities/article/0,,id=159929,00.html), Publication 4221-NC which can be found at <http://www.irs.gov/charities/article/0,,id=159929,00.html>.

As the Compliance Guide states:

Section 501(c)(4), (c)(5) and (c)(6) organizations may engage in limited political campaign activities on behalf of or in opposition to candidates for public office. Political campaign activities are those that influence or attempt to influence the selection, nomination, election, or appointment of

More broadly, this question implicates some of the basic principles and statutes underlying the Government Accountability Board's oversight and enforcement of political activity, specifically that of corporations. While the Board cannot make a definitive judgment on all the organization's activities without more specific information about its planned endeavors, several general guidelines can be offered. Some activities would be clearly prohibited and some would be permitted, depending upon 1) whether the organization charges for its materials and services, and 2) whether an individual benefiting from those services is a candidate for office at the time the organization's materials and services are provided.

To provide useful guidance, it is necessary to outline some of the statutes governing political activity in Wisconsin.

You indicate that the organization is intended to operate as a 501(c)(4) corporation. Such organizations are subject to the campaign finance regulations contained in Chapter 11 of the Wisconsin Statutes. Under Wisconsin law, corporations are prohibited from making any contributions or disbursements for a political purpose, except to promote or defeat a referendum.<sup>2</sup> The definitions of contributions and disbursements include money as well as in-kind donations which may include campaign materials, supplies and advertising, or an item or service of merchantable value.<sup>3</sup> However, services for a political purpose on behalf of a candidate which are rendered by an individual who is not compensated for those services do not fall under the definition of political contributions.<sup>4</sup>

Contributions and expenditures of an organization are made for a "political purpose" when they are done for the purpose of influencing the election or nomination for election of any individual to state or local office.<sup>5</sup> A candidate is defined as a person for whom it is contemplated or desired that votes be cast at any election, whether or not the person is elected or nominated, and who either tacitly or expressly consents to be considered as a candidate.<sup>6</sup>

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an individual to a federal, state, or local public office. In order to retain tax-exempt status, the organization must ensure that its political campaign activities do not constitute the organization's primary activity.<sup>1</sup>

Violations of this restriction may affect the organization's tax-exempt status, and are enforced by action of the IRS, not the Government Accountability Board. Therefore, the Board is not in a position to make a determination as to whether any particular activity or communication of the organization would constitute prohibited campaign activity under the IRS Code.

<sup>2</sup> Section 11.38, Wis. Stats.

<sup>3</sup> Sections 11.05(6)(a), 11.05(7), Wis. Stats.

<sup>4</sup> Section 11.05(6)(b)1., Wis. Stats.

<sup>5</sup> Section 11.01(16), Wis. Stats.

<sup>6</sup> Section 11.01(1), Wis. Stats.

Thus:

(1) The organization you describe, although it is a corporation, would not be considered to be making a political contribution to, or disbursement on behalf of, a candidate if it charges a fair market value for its materials or services. Assuming that IRS regulations do not prohibit it, the organization could provide materials or training to individuals, whether or not they are official candidates, if it charges the fair market value for the materials or services. By charging fees the organization would avoid providing a monetary or in-kind contribution to a candidate in violation of §11.38, Wis. Stats.

(2) The organization could arrange mentoring and networking opportunities, which have no merchantable value, to candidates without charge, except to the extent those activities involve disbursements such as mailing or event costs. The campaign finance statutes do not prevent a candidate from associating informally with mentors or advisors. However, if employees of the organization are compensated by the organization for political services provided to a candidate, such services would be considered an in-kind contribution from the corporation and would be prohibited under §11.38, Wis. Stats.

(3) The organization may provide materials and services free of charge to individuals who are not candidates for state or local office. While the definition of candidate is somewhat subjective when the individual has not yet taken any concrete steps to campaign for an office, an individual certainly becomes a candidate upon filing nomination papers for an office or upon raising and spending funds for a campaign. If an individual has not formed the intent to be considered for a specific office or received contributions or made disbursements as part of a campaign for the office, the individual is not a candidate and the organization could provide any materials or services free of charge without violating the statutory ban on corporate contributions.

This outline of Wisconsin's campaign finance regulations helps to determine the responses to your remaining questions.

*Question 2. Would your participation in such an organization violate any provisions of the Ethics Code for State Public Officials or the state elections laws?*

In general, the elections statutes do not prohibit your participation in such an organization, whether as a board member, employee or volunteer, although there are some potential issues to keep in mind. As explained above, if you were to work as a paid employee of the organization and provide services which have a merchantable value to political candidates or other political committees, the corporation would be making an illegal in-kind contribution if it provides those services free of charge. In addition, if you as a candidate receive political materials or services from the organization, your own campaign committee would need to pay for those items.

Similarly, the Ethics Code for State Public Officials does not prohibit your involvement with such an organization. As with any private organization with which a public official is involved, specific issues or questions may arise under the Ethics Code and you may address

any specific questions to the Board as those issues arise. However, you should not use the status or prestige of your office to raise funds for the organization.<sup>7</sup>

*Question 3. May a lobbyist donate to such an organization?*

Wisconsin Statutes do not prohibit a lobbyist or lobbying principal from donating to the type of organization you describe. However, as an elective state official, you may not solicit such organizations for donations and you should not accept remuneration from the organization unless you can clearly demonstrate that no monies received from a lobbying organization are used in that remuneration.<sup>8</sup>

*Question 4. Must a candidate pay to “join” such an organization or benefit from its services?*

As indicated in the analysis provided in the response to Question 1 above, because the organization would exist as a corporation, an individual who is a candidate must pay for materials or services that have a merchantable value which are provided by the organization. Otherwise, the corporation would be making an illegal contribution or expenditure for political purposes.<sup>9</sup> An individual who is not yet a candidate could receive benefits from the organization provided that the materials or services are not done for the specific purpose of supporting the individual’s campaign.

*Question 5. May the organization provide scholarships to individuals selected for training and mentoring?*

Providing scholarships to individuals who participate in the organization’s training and mentoring would have the effect of providing those services at no or reduced charge. Therefore, the answer to this question depends upon whether or not the individual is a candidate for office at the time of receiving materials or services from the organization. If not, then the organization can provide a scholarship to the individual. If the individual is a candidate, the organization cannot provide materials or services that assist the individual’s candidacy at a less-than-fair-market rate without violating the ban on corporate contributions. As noted above, however, networking and mentoring alone which do not involve expenditures would not normally constitute political services that are subject to the ban on corporate contributions.

### Advice

The Government Accountability Board advises:

1) A 501(c)(4) corporation such as you describe should rely on IRS regulations or a tax adviser to determine whether its activities constitute political activity which would affect its tax-exempt status or tax liability.

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<sup>7</sup> Section 19.45(2), Wis. Stats.

<sup>8</sup> Section 13.625(3), Wis. Stats.

<sup>9</sup> Sections 11.38, 11.01(16), Wis. Stats.

- 2) Under state election statutes, such an organization can produce and provide materials to recruit and train individuals to become candidates for public office only if a) the individual pays for materials and services that have a merchantable value, or b) the individual is not yet a candidate for office.
- 3) The organization could not provide materials or services with a merchantable value to individuals who have tacitly or expressly consented to act as a candidate without charging for such items. However, informal networking and mentoring are not activities that have a merchantable value unless they involve costs to organize and conduct them.
- 4) There is no general prohibition in the election laws or Ethics Code for state public officials which would prevent your involvement with the organization you describe. Your personal campaign committee would be required to pay for any materials or services the organization provides you to assist with your own candidacy.
- 5) Lobbyists and lobbying principals may contribute to the type of 501(c)(4) organization you describe.
- 6) You may not use the status or prestige of your office to solicit donations to the organization and you may not solicit lobbyists or lobbying organizations for donations.
- 7) A candidate must pay for any materials and services provided by such an organization which have a merchantable value, but an individual who is not yet a candidate is not required to pay to join such an organization or benefit from its services provided that the organization is not specifically attempting to influence that individual's election or nomination to office.
- 8) A 501(c)(4) organization can provide scholarships to individuals selected for training and mentoring, unless the individual is already a candidate for office.
- 9) The organization is not required to charge a fee to provide informal networking and mentoring opportunities, even to individuals who are candidates, unless those activities involve organizing or event costs. In that case a candidate must pay for such services but an individual who is not a candidate may participate at a reduced charge or no charge.