



Political Law Alert

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2020 Election Year Issues: Campaign Fundraising and Events During COVID-19

With the 2020 election campaign in full swing despite the COVID-19 pandemic, companies are facing both typical and unique challenges regarding political law compliance. This is the second in a series of mailings discussing political law issues that take on greater importance during a presidential election year.

As primary season continues and we approach the November general election, and particularly in light of recent social and public health events, companies and their employees are being asked to become increasingly involved in fundraising and other campaign events. As in-person events are less likely to be held as a result of the pandemic, there has been a significant increase in virtual events through the use of software such as Skype and Zoom. Whether held in-person or virtually, these events raise issues under various campaign finance and pay-to-play laws. For example, some virtual events may feature food and beverages sent to the homes of participants, the costs of which need to be accounted for, just as they would be for a catered, in-person event.

Below, we address key legal questions that arise when a company hosts either an in-person or virtual campaign event, as well as when officers and employees seek to host an event in their personal capacity.

Fundraisers and Campaign Events for Federal Candidates and Committees

Fundraisers and Campaign Events That Use Corporate Resources

Federal law prohibits corporations, federally chartered entities and federal contractors from making contributions to federal candidates, including “in-kind” contributions such as the use of corporate funds, facilities or personnel to host a campaign event or fundraiser. For example, using company personnel to organize a Zoom fundraiser or using the company’s paid Zoom account could result in an in-kind contribution. However, there are certain exemptions under the Federal Election Campaign Act of 1971 (FECA) pursuant to which a corporation may host and pay for federal campaign events:

- Restricted Class Events

Under FECA’s “internal communication” exemption, a corporation may use its resources for a fundraiser or other campaign event that is limited solely to its “restricted class” (e.g., its executive and administrative personnel who may be solicited for the company PAC). This exemption is not available to partnerships or LLCs that are treated as partnerships.

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- Events With Advance Payment

In order to avoid an impermissible in-kind contribution, a company may obtain advance payment from a campaign or committee for the fair market value of the use of its resources. However, the company's name should not be listed as a host or otherwise used in connection with the event.

- Equal Opportunity Events

The "equal opportunity event" exemption under FECA allows a corporation to invite a federal candidate to appear on its premises or in the context of a virtual event and invite its rank-and-file employees, if certain requirements are met. Most notably, while the corporation need not invite other candidates, it must give other candidates who are running in the same election an equal opportunity (similar timing and location) to address or meet its employees if requested. This exemption is not available to partnerships or LLCs that are treated as partnerships.

Fundraisers and Campaign Events Personally Hosted by Employees

If an employee seeks to host a fundraiser or other campaign event in their personal capacity, generally they may do so without legal implications for the company. However, the company should ensure that:

- the employee organizes and hosts the event on their personal time;
- no corporate resources or personnel are utilized to organize or hold the event (*e.g.*, work email lists, office space, employee lists or assistants) unless the company is paid in advance for their use, as described above; and
- the event does not implicate any pay-to-play laws, as discussed in more detail below.

Please note that there may be special factors to consider to ensure that certain employees — particularly those in government relations — are demonstrably acting in their personal capacity and on their personal time when planning and hosting campaign events. Finally, the individual hosting the event should be aware that certain of their out-of-pocket costs may be reported as an in-kind contribution and count toward their individual contribution limit to the candidate or committee.

State and Local Fundraisers and Campaign Events

Many states prohibit corporate political contributions altogether, while other states permit contributions subject to limits and a small number of states permit corporations to make such contributions without limits. Similarly, states maintain differing limits on personal contributions. Moreover, state campaign finance laws typically do not include the same exemptions as those described above under federal law, although — generally — payment of fair market value by a campaign or committee for the use of any resources for an event will avoid an in-kind contribution. Accordingly, it is necessary to evaluate any proposed event in light of applicable campaign finance laws.

Pay-to-Play Considerations

Most financial institutions are subject to federal pay-to-play rules that cover not only state and local candidates, but also state and local officials running for federal office. In addition, there are a number of state and local pay-to-play rules that cover companies that enter into a wide variety of contracts with state and local government entities. These rules cover monetary and in-kind contributions, as well as mere solicitations of contributions, made by the company, its PAC, certain employees and, in some cases, their family members, among others.

As a result, any fundraiser or other campaign event, whether held by the company or another covered donor, must be carefully vetted to ensure it does not result in a covered contribution or solicitation. It is important to remember that, given these pay-to-play rules are separate from the various campaign finance laws, whatever exemptions there may be under campaign finance laws do not necessarily apply in the pay-to-play context.

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