



Please contact any of the attorneys in our [Political Law Practice Group](#) if you have questions regarding this alert.

Authors

Ronald M. Jacobs

rmjacobs@Venable.com

202.344.8215

Lawrence H. Norton

lnorton@Venable.com

202.344.4541

Jeffrey J. Hunter

jhunter@Venable.com

202.344.4467

HOSTING A FEDERAL CAMPAIGN FUNDRAISER ON ASSOCIATION PROPERTY

Federal campaign finance law restricts incorporated associations' expenditure of association funds or resources to host a federal campaign-related event such as a fundraiser. This White Paper discusses four permissible means of hosting a fundraiser on association property.

PERMISSIBLE CAMPAIGN-RELATED EVENTS

1. Association-Paid "Restricted Class" Event

Federal campaign finance law permits an incorporated association to host a candidate (or campaign or political party representative) "appearance" at its event, subject to the following restrictions:

- *Permissible Attendees*
 - The association may invite its "restricted class."¹
 - A small number of other employees may also attend if their participation is necessary to administer the event (e.g., non-restricted class catering staff or meeting planners) but they should not be solicited.
 - Other guests of the corporation who are

¹ This includes an incorporated association's decision-making employees, certain individual members (e.g., those who pay dues on an annual basis) and their families. "Decision-making" employees are salaried, with "policymaking, managerial, professional or supervisory responsibilities." This specifically includes the "individuals who run the corporation's business such as officers, other executives, and plant, division, and section managers;" members of the association's board of directors if they receive regular compensation; and "individuals following the recognized professions, such as lawyers and engineers." The restricted class does not include non-employee consultants, vendors, "[p]rofessional [employees] who are represented by a labor organization" and "[s]alaried foremen and other salaried lower level supervisors having direct supervision over hourly employees."

speaking or being honored at the event and representatives of the news media² also may attend.

- *Candidate Selection*
 - The association may invite any federal candidate or representative of a federal campaign or political party.
 - It may refuse campaign or parties' requests and need not invite opposing candidates or parties to the same or a later event.
- *Solicitations and Handling Contributions*
 - Campaigns and parties may solicit and receive contributions before, during, or after the event.
 - Association representatives may suggest contributing but may not in any way accept or handle contributions before, during, or after the event.

Federal Election Commission ("FEC") rules also permit candidate appearances at association events that involve employees who are not within the restricted class. Such events involve additional restrictions. For example, the association may not suggest that attendees make contributions, the candidate may not collect contributions at the event (although leaving behind contribution materials is permitted) and the association must honor requests by opposing candidates for similar appearances at association-paid events.

2. Campaign-Paid Event

Some campaigns prefer to pay fundraiser costs directly as operating expenses. Asking the campaign's preference should be one of the first questions when planning the event.

- Some campaigns will not accept direct or in-kind contributions from PACs or individuals/entities registered under the Lobbying Disclosure Act ("LDA").
- As a rule of thumb, most campaigns are comfortable paying five percent of the amount they expect to raise at the event.

If the campaign agrees to pay the event's costs, the association should invoice the campaign and receive

² Certain equal-access requirements apply if the association invites a news media representative, but campaign fundraisers seldom are open to the media.

advance payment in full for (a) employees' compensation, benefits and overhead if the association asks subordinates to assist with planning, organizing, or carrying out of the fundraiser; (b) use of the association's lists of customers, clients, or vendors in connection with sending invitations or soliciting contributions; and (c) catering or food services. If a campaign or individual other than an employee of the association uses the association's office space and equipment in connection with a federal campaign, the association must be reimbursed within a commercially reasonable time.

3. PAC- or Individual Contributor-Paid Event

Any payment by a PAC or individual³ to organize a fundraiser is an in-kind contribution that counts toward the applicable per-election contribution limit for that candidate.

- The association must invoice the PAC or individual contributor *before* the event for reimbursement of any cost the association incurs (meeting space, employee compensation, etc.).
- Only the PAC or individual volunteers, not the association, should be identified as the event hosts.
- Invitations must not use the association's letterhead; PAC letterhead is permissible.
- Invitations may list the individual hosts' employers and job titles for identification purposes but should not indicate any involvement by the employer in the event.
- Employees who organize and attend fundraisers should do so as campaign volunteers. Employees' time spent volunteering incurs no compensation cost to the association and therefore requires no reimbursement or disclosure.
 - Only decision-making employees who have the flexibility to control their own work schedules or unpaid board members may volunteer. The FEC presumes that hourly or support staff who are involved in campaign-related events act as employees, not bona fide volunteers.
 - A decision-making employee may perform campaign-related activity at the office, using the association's office equipment, as a campaign volunteer if: (a) this time is limited

³ To make a contribution, an individual must be a U.S. citizen or green card holder and may not be a federal government contractor. PACs and campaigns may not solicit foreign nationals or accept contributions from them.

to one hour per week or four hours per month; (b) it does not prevent his/her completion of normal association duties; (c) the activity does not increase the association's overhead or operating costs (such as local or toll-free telephone calls); and (d) the association does not condition Internet or computer availability on political activity or support for, or opposition to, any particular candidate or political party.

- A related exemption permits any employee to perform voluntary Internet campaign-related activity (email, blogging, maintaining a website, etc.) for an unlimited amount of time at the office, using the association's computer equipment, if this activity: (a) does not prevent the completion of work the association expects him or her to perform, (b) does not increase the association's overhead or operating costs and (c) is not performed under coercion.
- If support staff services are required—such as catering or welcoming guests—the corporation must invoice the campaign or an eligible donor and receive full payment of the services' fair market value *before* the event.
- Campaigns' fundraising staff or consultants often will arrange catering, manage RSVPs and follow-up with donors. This is preferable to assigning such tasks to association employees who are ineligible to serve as volunteers.

CALCULATING CAMPAIGN-RELATED EVENT COSTS

When calculating event costs, the test is what the goods or services usually cost in the market from which they ordinarily would have been purchased at the time of the event. Organizing a 10-25 attendee fundraiser generally costs between \$300 and \$700 for meeting space, catering and support staff time. The following guidelines apply to these costs regardless of who pays:

- *Employee Compensation* – Charge the individual's hourly rate plus 75 percent to cover benefits and overhead. For example, a fundraiser with 10-25 attendees may involve three support staff employees (reception, clean-up and tear-down) at \$20 per hour for one hour each, which totals \$105 with the 75 percent gross-up included. The association should not allocate any cost to employees' volunteer efforts (see the "PAC- or Individual Contributor-Paid Event" section above).
- *Office Space* – If the association routinely offers use of a meeting room to community or other

outside groups, no value is associated with using it for the fundraiser. If the association regularly charges members or others a fixed fee for use of the space, this fee is the market rate for the fundraiser's use. An association that does not provide meeting space to other entities consistently for free or at a usual and normal rate may value the space by determining the ordinary cost of a similarly-sized meeting room in a nearby hotel or conference facility. Prices in downtown Washington, DC for a 90-minute fundraiser generally range from \$100 for a 5-10 seat conference room to \$250 for a 30-seat board room.

- *Office Equipment, Supplies and Other Association Assets* – When calculating the value of association assets used in a campaign-related event, the best method is to use the cost the association charges to any other entity, such as a member. The association may not discount this cost when providing assets for use in a campaign-related event. If, however, the association does not ordinarily charge for photocopies, list rentals, etc., it should apply the ordinary prices charged by sellers of equivalent goods or services in the local market. For example, if FedEx Office charges \$0.10 per copy or a direct mail vendor charges \$2 per name and address, the association should apply the same cost. Certain individual employees' use of office computers and local or toll-free telephone calls involves no reportable cost to the association (see the "PAC- or Individual Contributor-Paid Event" section above).
- *Catering* – We recommend arranging to have the campaign pay the caterer directly when possible. This eliminates the association's need to calculate and disclose the value. If a PAC or individual pays, the catering contract and receipt will constitute sufficient evidence of market value.

DISCLOSURE

1. Federal Election Commission

- An association has nothing to disclose to the FEC when the campaign, a PAC, or an individual contributor pays for the event directly or reimburses the association's costs in advance.
 - If the PAC pays the fundraiser's costs, it must report them as in-kind contributions, which are subject to its \$5,000 per-election contribution

limit,⁴ to the candidate in FEC Form 3X reports.

- Individuals need not report their in-kind contributions to the FEC but should provide documentation (e.g., catering contracts, invoices and check copies) to the campaign on a timely basis to help the campaign comply with its disclosure obligations.
- Campaigns, leadership PACs and political party committees must disclose contributions raised by registered federal lobbyists (and their employers) or their PACs under certain conditions. We recommend involving Venable Political Law counsel when structuring a fundraiser to avoid unnecessary disclosure and compliance problems.

2. Lobbying Disclosure Act

- *Semiannual LD-203 Contribution Reports* – An association registered under the LDA must disclose in its organizational LD-203 report payments made by its PAC for candidate fundraisers if such payments exceed \$200 in the reporting period and are not reimbursed by the campaign or an individual contributor.
 - Such payments are considered in-kind contributions and count towards the PAC's contribution limits.
 - Employee time is not reportable for LDA purposes if the employees serve in a volunteer capacity.
 - Individual federal lobbyists must make this disclosure on their personal LD-203 reports if they pay the event's costs from personal funds.
 - When completing the LD-203 form to disclose an in-kind "FECA" contribution, we recommend identifying the campaign as the "payee" instead of the association, caterer, or other recipient of the donor's funds and the candidate as the "honoree."
 - The costs of association-paid restricted class events (meeting space, catering, employee time to facilitate the event, etc.) should not be disclosed on Form LD-203 contribution reports because the FEC excludes permissible

⁴ The contribution limit for a multicandidate PAC to a federal candidate is \$5,000 per election. Less established PACs, like individual donors, are limited to \$2,500 per election.

corporate/association campaign event activity from the definition of “contribution.”

- *Quarterly LD-2 Lobbying Reports* – Fundraisers are not “lobby-free zones.” The cost of employees’ time spent engaging in LDA-defined “lobbying activities” at the fundraiser on behalf of the association must be included in the association’s expenditure estimate on Line 13. Individual lobbyists’ lobbying issues and contacts likewise are reportable on Lines 16 and 17.

For more information, please contact the authors of this White Paper.

.....

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE www.Venable.com

© 2012 Venable LLP. This alert is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. ATTORNEY ADVERTISING