

Election-Related Activities on Campus Can Present Legal Problems

The tempo of this election season is rapidly increasing, and educational institutions need to be aware of the legal problems that can arise when election-related activities occur on campuses or are conducted by members of the administration or faculty. This is particularly true for institutions organized under Internal Revenue Code Section 501(c)(3), which requires that the institution “not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.” Violations of this prohibition are investigated by the Internal Revenue Service and can result in the assessment of penalties upon both the institution and its management or even the revocation of the institution’s 501(c)(3) status.

Although this prohibition against electioneering does not directly apply to public institutions of education, which are organized under state or local law, it would apply to their associated 501(c)(3) foundations. Moreover, the rules pertaining to 501(c)(3) institutions have become the standard of practice across the entire spectrum of educational institutions.

Some election activities, such as contributions by the institution or foundation to a campaign or endorsement of a candidate, are obvious violations of the prohibition. Some activities that may not be so obvious but still are violations include rating candidates or seeking pledges from candidates.

Education officials, in the exercise of their first amendment rights, can participate in political campaigns but must do so in their individual, not official, capacities. Among other things, that means doing so on their own time and avoiding the use of institutional resources, such as letterhead, copiers and the institution’s email system.

As a general principle, nonpartisan activities are acceptable and many of them are consistent with an institution's educational mission. These could include voter registration and get-out-the vote drives; conducting polls; debates; and coverage in student-run newspapers, radio or television. Course credit for participation in a political campaign also is permissible. However, depending on the facts and circumstances in each case, any of these activities can cross the line and constitute a prohibited act, so caution and thoughtful preparation are appropriate.

Many campus facilities are attractive venues for political events. In this regard, institutional facilities-use policies should be applied consistently, with all candidates or parties having equal opportunities for access to these facilities.

Some activities can also inadvertently result in violations of state or federal election laws and campaign finance laws. An example would be the purchase of a ticket for a senior administrator to attend an event that turns out to be a fundraiser for a local politician. This can become a contribution reported by the candidate pursuant to state law. The IRS reviews such state campaign reports and in 2006 found 269 such contributions by 501(c)(3) organizations.

What This Means to You

In sum, the election season can present many opportunities to educate students or even the local community on the political process and the issues of the day. However, it can also present many opportunities for legal entanglements. Caution and counsel can help you avoid those entanglements, and we at Husch Blackwell are available to answer your inquiries so that the educational purpose can be accomplished and the legal entanglements avoided.

Contact Info

If you have questions, please contact your Husch Blackwell attorney, Joe Cornelison at 816.983.8280 or Hayley Hanson at 816.983.8377.

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