



# Compliance Connections

*Helping You Avoid Ethics, Lobbying & Campaign Finance Pitfalls*

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## Political Activity Do's and Don'ts for 501(c)(3) Tax-Exempt Organizations

### IN THIS ISSUE

- **Political Activity Do's and Don'ts for 501(c)(3) Tax-Exempt Organizations**
- **What Went Wrong? Pay-to-Play Laws Can Have Serious Consequences**
- **Rules for Inviting a Public Official to Charitable Events**

By **Maria J. Armstrong** and **Jerry O. Allen**

There are specific rules governing which political activities 501(c)(3) organizations can and can't take part in. Learning the do's and don'ts is critical because if you make a misstep, you could end up like the Patrick Henry Center for Individual Liberty. The organization's tax-exempt status was revoked, effective July 1, 2014, after the Internal Revenue Service (IRS) concluded its [investigation](#) into whether the organization engaged in prohibited political intervention, as reported by [USA Today](#).

To ensure your organization complies with all rules and regulations, here are some key do's and don'ts:

- Do conduct general advocacy as an educational activity on behalf of your organization.
- Don't make contributions to political campaigns or make public statements for or against a candidate (verbal or written).

- Do lobby on behalf of your organization, but make sure it is not a substantial activity on behalf of your organization.
- Don't, under any circumstances, engage in political campaign activity on behalf of your organization. This includes publishing or distributing information for or against candidates.
- Do advocate for or against ballot initiatives, but not above the level of insubstantial activity.
- Do encourage people to vote in the election, but be sure to do so in a nonbiased, neutral manner. In other words, your organization can engage in voter registration and get-out-the-vote drives, but should refrain from voter education or registration activities.

For more information, here is a [presentation](#) from a seminar we hosted on the topic.

## What Went Wrong? Pay-to-Play Laws Can Have Serious Consequences

By **Maria J. Armstrong**

We often get questions about boilerplate provisions from clients who wonder whether they need to worry about the long litany of statutes, rules and administrative directives they must agree to when accepting a government grant or contract. The answer, almost always, is "yes."

One such provision involves both federal and state "pay-to-play" laws that impose sanctions on contractors that make certain political contributions. Under state law, the sanctions include ineligibility for future contracts. Various pay-to-play provisions

in federal law can contain serious financial penalties in addition to ineligibility for future business.

The U.S. Securities and Exchange Commission recently announced its first case brought under the new pay-to-play rules applicable to investment advisers. A private equity firm in Pennsylvania was charged with violating the pay-to-play rules because it continued to receive advisory fees from city and state pension funds after a senior employee made relatively modest campaign contributions.

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The contributions, which totaled \$4,500, were made to the mayor of Philadelphia and to the governor of Pennsylvania, each of whom made appointments to their respective pension boards. The firm was fined almost \$300,000, which included forfeited profits and a penalty.

This case highlights the importance of understanding — and making sure that your employees understand — all of the regulations that could affect your company's bottom line.

## Rules for Inviting a Public Official to Charitable Events

By **Katie Reardon**

Your civic-minded company often purchases tickets to charitable or community events to support worthy causes. In addition to the community benefit, those events are an opportunity to spend quality time with key customers, clients and other guests. But what if your customer is a public official who is governed by Ohio's ethics or lobbying laws?

You can offer a complimentary ticket for a charitable event to a public official or employee, and they can accept the ticket. But, unless the fundraiser is a low-dollar event, public officials or employees who do business with your company should pay the fair market value of the ticket. If you employ a lobbyist, you'll also need to consider potential reporting requirements. Until recently, there was some ambiguity about how to calculate the fair market value of a ticket in this situation.

For example, a \$100 ticket to a charitable event may constitute a \$25 meal and a \$75 charitable deduction for your company. Is the fair market value the \$100 face value of the ticket or the \$25 value of the meal only? The answer, until recently, depended on which public agency governed the ethical behavior of your guest under the circumstances.

Ohio has two state agencies that administer different ethics laws for public officials and employees: the Ohio Ethics Commission (OEC) administers ethics laws for state and local officials and employees; and the Joint Legislative Ethics Committee (JLEC) administers ethics and lobbying laws for the General Assembly and staff. The two agencies operate under separate laws, and have equally compelling authority to interpret the laws that apply to their constituencies.

Both OEC and JLEC now advise that the fair market value of a ticket to a charitable event is the dollar amount that is NOT tax deductible. In other words, the value of the meal (and not the portion of the ticket that constitutes a charitable deduction for your company) is the amount that must be paid or reported by all public employees governed by these laws.

For more information, see [OEC Advisory Opinion 2009-003](#) and [JLEC Advisory Opinion 2014-003](#), or contact Maria Armstrong or Katie Reardon with any questions regarding your compliance requirements.