

## Guidance for Hospital Officials and Trustees in Connection with Election Activities

This brief is intended to provide Children's Hospital Association<sup>1</sup> (CHA) member hospital officials and trustees with an overview of permissible and impermissible election-related activities under certain laws enforced by the Internal Revenue Service (IRS) and the Federal Election Commission (FEC).

Note that this brief is intended as a reference guide and does not constitute legal advice or address all applicable authority and guidance on election-year activities. You should consult the relevant laws, rules, and standards of conduct—or engage legal counsel and/or compliance personnel—should you have any questions about activities in connection with a specific situation.

The IRS prohibits hospitals organized as 501(c)(3) organizations from participating in any political campaign on behalf of or in opposition to any candidate for public office. Violation of this prohibition may result in revocation of a hospital's tax-exempt status and the imposition of excise tax on both the hospital and the hospital's managers.

In addition, federal campaign finance laws place restrictions on a hospital's use of corporate resources in connection with elections. Notwithstanding these prohibitions, both the IRS and the FEC generally recognize that individuals associated with or employed by a hospital may participate in campaign activities in their personal capacities, subject to certain conditions.

To comply with tax and campaign finance laws, a hospital whose officials or trustees are politically active must guard against inadvertently engaging in political activity, unlawfully making a contribution in connection with an election, or using hospital resources to benefit political activities. Non-profit children's hospitals may not encourage employees or trustees to make political contributions.

### Prohibited Political Activity by Non-Profit Hospitals

Generally, political activity is participation or intervention in any election campaign in support of or in opposition to a candidate for local, state, or national public office. Often, it is difficult to determine whether a proposed activity will constitute "political activity," and it will require a full examination of the facts and circumstances of a particular situation to make such a determination; however, examples of certain hospital activities that would be prohibited include:

- formal or informal endorsements of a candidate for public office
- direct financial contributions or other support to a candidate, political party, or political action committee (PAC)

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<sup>1</sup> The Children's Hospital Association's legal name is the National Association of Children's Hospitals.

- in-kind contributions to a candidate, political party, or PAC, including:
  - providing mailing, membership, or donor lists or other resources for fundraising
  - provision of facilities or office space
  - staff time
  - organizing volunteers for a campaign
  - opposition research
- Publication or distribution by a hospital of statements in support of or in opposition to a candidate
- Rating candidates for their qualification for a particular office

Note that this list is by no means exhaustive.

### **Personal Political Contributions**

Generally, a hospital official or trustee otherwise eligible under federal campaign finance laws to make a personal political contribution may make such a contribution—directly or in-kind—to a candidate, subject to applicable contribution limits. In addition, a hospital official or trustee—acting in his or her personal capacity—generally may volunteer to participate in a campaign in support of or in opposition to a candidate, publicly endorse or oppose a candidate, or host a fundraiser or other campaign gathering. In doing so, however, a hospital official or trustee should avoid using his or her title and/or hospital affiliation, and when making a personal political contribution, he or she should not represent that the contribution is made on behalf of or with the support of his or her employer.

It is important to note that hospital officials and trustees may not make contributions to a candidate in expectation of or in exchange for the receipt of any favors or benefits. CHA unequivocally prohibits the practice of any “quid pro quo” and federal law provides for criminal penalties for such behavior.

### **Volunteer Time and Use of Hospital Resources**

Generally, a hospital official or trustee may volunteer his or her personal time to a candidate’s campaign or to a party committee and may conduct such volunteer activities without having to treat the associated value as a contribution. In addition, a hospital official or trustee generally may volunteer for a candidate’s campaign or for a party committee without causing his or her employing hospital to run afoul of the prohibition against participating or intervening in elections, so long as the official or trustee is working on his or her own personal time and not using the hospital’s resources.

Note, however, that an individual generally will not be considered a volunteer if he or she has been asked to perform services for a candidate or party committee at the request of a supervisor or as part of his or her expectations of employment at a hospital—such as by planning, staffing, or attending a fundraising event.

Additionally, while FEC rules do permit hospital officials or trustees to make “incidental” use of hospital resources to conduct political activities, the IRS has not formally adopted these rules and the best practice is for officials or trustees to conduct all political activities while not on hospital time.

### **Use of Corporate “Good Will”**

A hospital official or trustee should avoid the appearance that his or her volunteer activities or political contributions are sponsored by or conducted on behalf of the hospital. A hospital official or trustee should not represent or otherwise imply that he or she is acting as an agent for his or her employing hospital or in the name of the employing hospital, or that the hospital supports or encourages his or her activities.

Political activities may not be discussed during official staff meetings, board meetings, or at other hospital functions. In addition, a hospital official should not permit any campaign materials to include the hospital's name, even if the name of the hospital is used only for biographical purposes, e.g., "John Doe, CEO, XYZ Hospital."

### **In-Home Hospitality**

Generally, a hospital official or trustee may hold an event for a candidate or party committee in his or her personal residence and pay for the event with personal funds, subject to applicable contribution limits. No hospital resources—including hospital employees—may be used to plan, prepare or host the event.

The costs for invitations or food and beverages served at an in-home event may not be considered contributions under certain circumstances, including if they remain under certain monetary limits, e.g., \$1,000 per federal candidate, per election, and \$2,000 per year for PACs and party committees. Note that this exemption only applies to a person holding an event in his or her personal residence, and that expenses paid by co-hosts of events in another person's home are in-kind contributions and must be reported.