Self-Dealing Snares

Do's and Don'ts of Contact Between Companies, Their Foundation Employees and Legislators

*By Jane C. Nober**

The below was excerpted and edited from Company Foundations and the Self-Dealing Rules.

Companies and their private foundations must carefully navigate the do's and don'ts of contact between foundation employees and legislators.

How should the company foundation's grants and activities fit into the sponsoring company's efforts to develop strong relationships with government officials? Is it self-dealing for company lobbyists to mention the good works of the foundation? May foundation employees lobby legislators? Should foundation grantees play a role in promoting the interests of the sponsoring corporation?

As a general rule, foundations are quite restricted in their ability to make contacts with legislators and to communicate positions on pending legislation. There is no limit, however, on a sponsoring company's ability to cite the activities of its foundation in its contacts with legislators. Company lobbyists are free to highlight the company's good corporate citizenship by mentioning grants and other activities that may have benefited various constituencies. Similarly, sending a foundation's annual report or a listing of grants to a legislator's office is a way of generating public recognition and does not cross the self-dealing line.

Company foundations should be careful, however, when their grants target the specific constituencies or pet projects of legislators or regulators with influence over the company's business with the understanding, expressed or implied, that the legislator or regulator will do something in exchange for the grant. It would likely be an act of self-dealing for a company foundation to make a grant as a *quid pro quo* for a legislator's favorable vote on a bill that would affect the sponsoring company's financial prospects.

On the other hand, there is no legal reason that a foundation with a mission of promoting children's health should avoid making a grant to a pediatric clinic in the congressional district that is represented by a powerful committee chair, so long as there is no *quid pro quo*. This grant should be permissible, even if the foundation makes it knowing the grant will reflect favorably on both the foundation and the company.

Similarly, a company foundation committed to medical research may legally make a contribution to a charity that seeks a cure for a particular disease, even if a key government official is associated with the group. To avoid legal and public relations problems, foundation managers should ensure that all grants:

- fall squarely within the charitable mission and guidelines of the foundation
- are subjected to the same objective criteria throughout the selection process, and
- involve identical performance and reporting requirements.

Lobbying Restrictions

Company foundation employees are restricted in their ability to lobby legislators about most topics and certainly should not be communicating with legislators about the company's positions on pending bills. Any foundation expenditures on lobbying that benefits the company's financial interests—including staff salaries paid by the foundation for time spent on lobbying—could be subject to penalty taxes for both lobbying and self-dealing.

Individuals who perform more than one function for the company—managing the company foundation and doing corporate community relations, for example—may find that they are called on to communicate with federal, state and local elected officials about pending legislation of interest to the company. In general, employees may make these contacts in their non-foundation capacity. They should be careful not to use company foundation stationery or other resources in these communications; and they should track their time very carefully to make sure it is charged to the company and not the foundation.

Company foundation managers should not try to enlist foundation grantees in lobbying efforts related to the company's interests. Such a campaign could subject the foundation to penalty taxes for violations of both the self-dealing and lobbying rules. In addition, pressuring grantees to contact legislators about bills that affect the company's interests can create a public relations nightmare if a grantee balks and calls the media.

PAC Facts

Many corporations have political action committees (PACs) that promote the interests of the corporation by contributing to political campaigns. These corporations often encourage their employees to contribute to the corporate PAC. In advisory opinions issued in the 1980s, the Federal Election Commission approved arrangements under which companies recognized employees' PAC contributions by donating an equal amount to a charitable organization of the employees' choice. In 1992 the IRS weighed in on these "PAC-match" programs and held that the corporation's matching gift to the charity was not eligible for a charitable income tax deduction. An employee's contribution to a PAC provides a benefit to the corporation, the IRS noted, and the corporation's subsequent gift to the charity is a *quid pro quo* for the employee's act.

Although the IRS has not taken a position on whether a matching gift might come from the corporate foundation, the answer is almost certainly not. Because the matching gift is a *quid pro quo* for the gift to the PAC, it can be viewed as an expenditure intended to influence the outcome of a public election—forbidden under §4945(d)(2) of the Tax Code.

Additional Resources

- Foundations for Civic Impact: Advocacy and Civic Engagement Toolkit for Private Foundations
- What the Law Allows
- IRS: Lobbying Issues
- IRS: Funding Nonprofits That Lobby
- Election Year Politics
- IRS: Election Year Issues
- Sample Ways Foundations May Engage in Advocacy

*Jane C. Nober is former special counsel at the Council on Foundations.

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