



# Nonprofit Revenue Enhancement

## Seminar on Lobbying

If there was ever an opportunity for nonprofits to get a better understanding of lobbying then the Mercadien Group's Nonprofit Revenue Enhancement Seminar on Lobbying on May 2 offered just that opportunity. The session was designed to educate nonprofits about the lobbying process, the differences between political activities and lobbying activities, what's allowed and what's not allowed when lobbying, and an understanding of tax reporting compliance issues.

Revelations were many throughout the two-hour session, and one of the most important lessons is that lobbying is an activity nonprofits can actively engage in as long as they follow the rules.

"Many of the nonprofits I work with think lobbying is not allowed when in fact a lot of organizations that are c3 public charity organizations have been formed for advocacy purposes," explained Sherise Ritter, managing director of The Mercadien Group. "We want to dispel notions that lobbying is taboo."

Considering that lobbying has become commonplace in the political arena one would think a definition wasn't necessary. Nonetheless, Ritter explained that it is "the act of attempting to influence decisions made by officials in the government, most often legislators or members of regulatory agencies."

She added that it's important to understand what an 'act' is within the context of lobbying. In this instance an 'act' is an attempt to influence legislation at the Federal, State or local official by verbal, written or other type of communication. "That's considered an act of lobbying," explained Ritter.

That 'act' can even be research related to that legislation, preplanning, and coordination. "I like to think any activity that results in a call to action as a lobbying activity," said Ritter. "Then you have to track your related activities to that act of lobbying."



Richard Mroz



Sherise Ritter

Attendees learned the difference between lobbying and a political activity, which is any function that attempts to influence the selection or nomination for a public office. "It doesn't matter whether they're elected or not," said Ritter. "Political activity versus lobbying activity, it's very important to understand that definition."

Big Brother is watching as nonprofit political activities are closely monitored by the State and Federal government. That doesn't mean certain tax exempt organizations can't make political contributions or incur expenses for political activities, they just can't deduct those expenses for tax purposes.

However, some tax exempt organizations can make political contributions without jeopardizing their exempt status, but amounts must be tracked and reported. That's not the case for 501 (c) (3) organizations (public charities) who aren't allowed to make political contributions or engage in political activities at the risk of losing their exempt status.

"If an organization is getting behind a particular candidate that is working for them they need to be very mindful of the rules," stated Ritter.

Certain tax exempt organizations, such as a PAC, formed under a specific code section may, however, make political contributions but have to report the amount they paid and that does not jeopardize their tax exempt status.

Ritter and co-presenter, Richard Mroz, an attorney with Archer & Greiner and a lobbyist and public affairs consultant emphasized throughout the two-hour session that nonprofits must be mindful of IRS rules about lobbying expenses.

"Not only does the IRS care about what's going on, the local governments care, and of course the Federal government cares," said Ritter. "The IRS does not allow any taxpayer to take a deduction for lobbying costs. If you pay for lobbying or if your corporation incurs lobbying expenses, you cannot take a deduction for those lobbying expenses."

While lobbying is permitted by nonprofits, the IRS has limits on the amount of lobbying that can be done depending on the type of organization. And all this activity must be documented.

"You need to understand what your reporting requirements are and the limitations you're impacted by," states Ritter.

For example, a (c) 3 is allowed to lobby as long as it's not a substantial part of what they do. Plus they have to complete an annual 990 and a Schedule C. Then there's a trade or professional association that may do nothing but lobby. Those organizations derive revenue from membership dues and some of those dues may be spent on lobbying expenses.

"If you're exempt from tax under code section 501 (c) (6), you're allowed to lobby but you have to tell your members how much of their dues is attributable to lobbying expenses," says Ritter. "That information also gets reported on your 990 and Schedule C."



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Attendees also learned that it's critical to track all costs associated with lobbying activities.

"If you spend five minutes in front of a legislator, that's your time and the time you're being paid for is a piece of your salary," explained Ritter. "The cost associated with lobbying expenses is what drives the reporting to the IRS."

Ritter offered further words of caution about the IRS. "Every year the IRS puts out an audit focus and beginning in 2011 they're starting to look at trade and professional organizations so be on the lookout," she cautioned. "With a 990 they're going to look at issues regarding political activity and in compliance with requirements of those organizations who have identified themselves as such."

While Ritter provided an overview on lobbying, Mroz shared his experiences as a lobbyist and underscored Ritter's comments with real-world examples. His experience is unique in that he's played both sides during his career, first meeting with lobbyists when he served as special counsel to Governor Whitman and today as a lobbyist.

His explanation of what he does for his clients and why he does it provided the nonprofit representatives in the seminar with a better understanding of the lobbying process from the inside out.

"I have a good sense when you tell me what your issues are who will make the decisions on your issues and also how to craft your message," said Mroz.

Crafting the message is critical because it needs to reflect what's important to the decision makers. "I have clients who are all over the place about what they think is important," revealed Mroz. "I tell them, 'It doesn't matter what you think is important, here's what's important to them.'"

He added that an organization engaging in lobbying activities needs to anticipate the issues from the opposition perspective, particularly if they want to advance their position.

"Generally speaking I'm an advocate in the best sense of the word of taking my client's concerns or interests from a strategic level to help craft their position so that it is consis-



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tent with the policy issues important to the policy makers in the State government," said Mroz. "The second piece is the tactics, what do we do to get to these decision makers? Those are two things any good lobbyist should do."

Mroz has several clients in the nonprofit sector, including hospital systems and human services providers. A typical day may involve talking to

policy staff in the Governor's office or meeting with senior staff in the Department of Human Services.

Based on his experience Mroz noted that compliance issues on rules and lobbying are different in different venues, from the Federal government, to different State governments, and even locally here in New Jersey.

"The emerging trend, especially over the last decade has been more

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compliance and reporting, sometimes just reporting more than anything else," he acknowledged.

While all the talk of rules, regulations, and reporting requirements was enough to give some attendees pause when considering whether or not lobbying was worth the effort, Mroz did his best to alleviate any of those concerns. The Federal government has long had a lobbying law, and according to Mroz, it's not all that onerous. "It's a fairly straightforward filing and reporting process; the reporting of any Federal lobbying goes to the Congress and you simply have to declare on an annualized basis how much money was expended."

Even at the state level, where many states require some form of reporting or have restrictions on lobbying, such as New Jersey where the only requirement is to report the fees of lobbying in the state legislature.

"As long as everybody understands the rules and you declare what you do you should be fine," said Mroz.

He delved deeper into New Jersey lobbying law, adding to Ritter's earlier comments, noting, "Lobbying occurs in New Jersey when there's an attempt to influence legislation, promulgation of regulation or the interpretation of regulation or any other governmental process by communicating with or a benefit for a high level state official."

Understanding the role of a government affairs agent was also part of the discussion. That's someone who is compensated to influence legislation, regulation, or government process by communicating with a high level State official for more than 20 hours in a calendar year or providing a benefit to the high level State official.

"This is a kind of a 'gotcha' provision if you provide meals, gifts, travel to State officials even if you're not paid for your advocacy," emphasized Mroz. "It's the money around the influencing of the process."

Mroz further explained that the

forementioned 20 hours encompasses any combination of lobbying or advocacy activities. If it goes over, the individual has to register as a government affairs agent.

With that in mind, Ritter added that public charities can lobby, but only if it's less than 20 percent of their overall activities. "If you're going to bump up against that threshold there's an election form you can file," she said. "And if you're spending money lobbying, schedule C needs to be completed."

However, it is not considered a lobbying activity if an individual who works for a nonprofit is asked to participate on an advisory committee and is not compensated for their services.

By the end of the seminar attendees walked away with a better understanding of the lobbying process and what they need to do to comply with the rules, regulations, and reporting associated with lobbying activities. ■

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