

WHAT'S KIND ABOUT IN-KIND EXPENDITURES: *A CAMPAIGN FINANCE UPDATE*

JON WACLAWSKI

NAR POLITICAL COMPLIANCE COUNSEL

JWACLAWSKI@REALTORS.ORG

202-383-1248



DILEMMA

Your association is excited to support a REALTOR® candidate running for State Senate. The association wants to help the candidate by making the association's facilities and staff available to the candidate for an upcoming campaign fundraising event.

The candidate is ecstatic with the event—the candidate raises significant funds and the event generates positive press.

A complaint is filed with the State Campaign Finance Commission. WHY?!?!

CONTRIBUTIONS

Broadly Defined: Anything of value given or loaned to influence an election

Direct Contributions

- Cash, check, credit card charge, wire, loan

CONTRIBUTIONS CONT.

In-Kind Contributions

- Goods, services or property (other than money)
 - Made with or upon the authorization of a candidate, or political committee
 - Provided for free or less than the usual and normal charge
- Payments made on behalf of, but not directly to, candidates and political committees

Why Be Mindful of In-Kinds?

Administrative and Legal Consequences:

- Must be reported—by in-kind contributor and recipient
 - Potential liability to BOTH parties
- Count against applicable contribution limit
- Only permissible sources may make contributions
- May impact registration and reporting obligations

EXAMPLE

Your association conducted a research poll amongst the general public on the issue of transfer taxes. It just so happens, an outside group petitioned to have a transfer tax increase referendum appear before voters on the general election ballot. Your association wants to make the poll results available to a coalition of interested groups fighting the initiative.

- Is the poll considered an in-kind contribution?
- What do you need to do to make the poll results available?

WHAT DOES *NOT* CONSTITUTE AN IN-KIND CONTRIBUTION?

- Association communications regarding candidates or elections to association members
 - Verify state law
- Certain “volunteer” activity by association members in their individual capacity
- Goods and/or services provided to candidates, for which candidates pay usual and normal fee

POTENTIAL LIABILITY

- Civil Penalty
- Administrative Fine
- Knowing and Willful violations may be subject to increased penalties and even criminal liability
- Tax Liability – IRC 527(f)

SUA SPONTE – SELF REPORTING

- Often leads to more favorable result
 - Recent Association of REALTORS® Example
 - Avoided “reason to believe” finding and lengthy, costly administrative process
 - Created goodwill with FEC
 - Likely resulted in lower penalty

GENERAL UPDATE

- Federal
 - Movement at the FEC
 - DISCLOSE ACT – likely not going anywhere
- States
 - California
 - Michigan
 - New Mexico
 - Missouri

THANK YOU!

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