

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

GREGORY A. HARTMAN
MICHAEL J. MORRIS
HENRY J. KAPLAN§
NELSON R. HALL
THOMAS K. DOYLE♦
ARUNA A. MASIH♦
HEIDI K. BROWN
SHARON MAYNARD

ATTORNEYS AT LAW
SUITE 500
210 S.W. MORRISON STREET
PORTLAND, OREGON 97204-3149
(503) 227-4600
FAX (503) 248-6800
www.bennethartman.com

ROBERT A. BENNETT (RETIRED)
LINDA J. LARKIN*
MARGARET S. OLNEY*♦
* OF COUNSEL
♦ ALSO MEMBER
WASHINGTON BAR

OVERVIEW OF OREGON BALLOT MEASURE, CAMPAIGN FINANCE AND LOBBYING RULES FOR NON-PROFITS

Margaret Olney

Nonprofit Organizations Law Section UnCLE¹

April 12, 2013

1. Campaign Finance -- We do things differently in Oregon
 - a. No caps on contributions and expenditures
 - i. For candidates
 - ii. For signature drives
 - iii. For ballot measure campaigns
 - b. But, heavy reliance on disclosure
 - i. Political committees -- groups organized for the purpose of supporting or opposing a candidate or measure. Key: is the group soliciting money for that purpose?
 1. Contributions
 - a. In-kind
 - b. Pass-through/earmarked
 2. Expenditures
 - ii. Independent expenditures -- \$750 threshold
 - iii. Reporting must be done electronically in "real time."

¹ Borrowed from outline prepared for workshop, "Worry Free Advocacy," presented by NonProfit Association of Oregon with the Alliance for Justice, September 27, 2011.

2. Issues for non-profits
 - a. Membership communications – not deemed contributions
 - i. Secretary of State views “members” broadly – individuals who have shown support for organization within recent past are considered “members”
 - b. Political fundraising from members
 - i. if contributions sent to organization, they must be forwarded to recipient political committee within seven days of receipt; if not, the organization will be deemed political committee (subject to all reporting activities)
 - ii. organization can ask members to send contributions directly to political committee
 - c. General fundraising using political pitch
 - i. Political issue – such as ballot measure -- cannot dominate direct appeal. If it does, organization could be deemed a political committee
 - d. In-kind contributions, such as mailing lists, volunteers, staff
 - i. Value determined by fair market value on date campaign learns of in-kind contribution
 - ii. Burden is on political committee to report. Recommend putting value/date in writing.
 - e. No anonymous political contributions – can’t pass the hat or leave containers out for donations
 - f. Automatic calling devices can only be used if numbers on state/national do not call list are excluded. Calls made to “members” – i.e., those with whom the organization has a business relationship are acceptable.

3. Ballot Measure Issues

- a. Chief petitioners must register as committee, but not groups opposed to a proposed initiative
- b. No restrictions on expressing support or opposition to a ballot measure
- c. Reporting requirements for groups opposed to a ballot measure apply once initiative qualifies for the ballot, at which time a ballot measure committee is formed.
- d. Organizations can communicate with members about ballot measures without triggering reporting requirements. See above. 5.

4. Lobbying

- a. Definition – influencing or attempting to influence legislative action through oral and written communication with executive officials and legislative officials.
 - i. Includes: formal/casual conversations; preparation of written materials, testifying at legislative hearings, “wining and dining” legislative or elected officials. BUT NOTE: Oregon ethics laws prohibit almost all gifts.
- b. Registration
 - i. Required for any person spending 24 hours or \$100 in a calendar quarter on lobbying activities. Must be done with three business days of exceeding limit.
 - ii. Volunteers spending time prepare for and providing testimony do not have to register
 - iii. Volunteers participating in organization’s grassroots lobbying campaign are not typically lobbyists – they are appearing to express their own views and not as an agent for the organization.
 - iv. If organization hires lobbyist, that person must register. The “client/employer” need only file quarterly disclosure report

- c. Reporting:
 - i. Quarterly (January 15, April 15, July 15 and October 15)
 - ii. Required even if no expenditures in quarter
 - iii. Lobbyist Employer Expenditure Reports and Lobbyist Expenditure Reports are mailed by Government Ethics Committee.
 - iv. Expenditures of \$50 or more to or on behalf of a legislative/executive official must be reported, with the date, name of the payee, purpose and amount of the expenditure. This notice must also be sent to the public official.
 - v. NOTE: Most such expenditures are prohibited. ORS 244.010.
- d. Prohibited Lobbying Activities
 - i. Bribing
 - ii. Knowingly or willfully making a false statement of material fact to a legislative or executive official
 - iii. Paying a legislative/executive official to lobby
 - iv. Lobbying on a contingent fee basis
- e. Restrictions on Lobbying Activities
 - i. Gifts: no public official or their family members can receive “gifts” from anyone with a “legislative or administrative interest.”
 - ii. Gifts valued at less than \$50 (aggregate) are okay
 - iii. Food and Entertainment: Public officials can be fed at events where they are scheduled to speak/answer questions, entertainment is incidental, or where the public official attends in a ceremonial capacity.

- iv. Travel – cannot be paid for by an organization, with very strict exceptions for a non-profit organization that receives less than five percent of its funding from for-profit organizations.
 - v. Revolving door – limits ability of legislators or certain public officials to leave public employment to lobby.
- f. Municipal Lobbying
- i. Portland has its own regulations governing lobbying: Portland City Code Chapter 2.12. Other jurisdictions might as well.

5. Resources:

- a. Secretary of State Elections Division;
 - i. <http://www.sos.state.or.us/elections/index.html>
 - ii. Note especially the SOS “Manuals” – have force of rules

- b. Alliance for Justice
 - i. <http://bolderadvocacy.org/> -- The Alliance for Justice website re: Advocacy for Nonprofits
 - ii. <http://bolderadvocacy.org/resource/the-connection-strategies-for-creating-and-operating-501c3s-501c4s-and-political-organizations>
This links to an updated version of AFJ’s comprehensive guidebook on affiliated 501(c)(3), 501(c)(4), and political committees, *The Connection*.
 - iii. <http://www.afj.org/for-nonprofits-foundations/state-law-resources.html>
Note: the AFJ materials are in process of being updated, although there are few substantive changes. Changes to be aware of include:
 - Threshold for requiring reporting of independent expenditures increased from \$100 to \$750
 - Threshold for requiring electronic reporting through ORESTAR increased from \$2000 to \$3000.
 - Increases in potential penalties for violations (now up to \$10,000)