



Election Year Refresher

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For those of you new to the world of Community Action and 501(c)(3) tax-exempt organizations, as well as those with many years in the field, keeping track of the rules relating to election and campaign activity is never easy! But understanding them is critical. As the election season heats up, here's a quick review of some of the most significant rules:

The Community Action Agency (CAA), as an organization, may not participate in political campaign activities.

The Internal Revenue Code prohibits 501(c)(3) tax-exempt organizations, which include the majority of CAAs, from "participat[ing] or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for election to a public office."¹ This type of prohibited conduct is often referred to as "electioneering." Therefore, 501(c)(3)s may not use their funds (from any source, whether government or private), organizational name, or other assets, including staff time and facilities, to support (or endorse) or oppose political candidates. Nor may 501(c)(3)s create, support, or contribute to political action committees (PACs). In addition, 501(c)(3)s are prohibited by the Office of Management and Budget's Cost Principles (Circular A-122) from using federal funds to engage in such activities.²

But, in general, individuals associated with a CAA may participate in election campaigns as private citizens, on their own time and without using CAA resources. CAA employees and board members have the same right as other individuals to contribute to political campaigns, participate in campaign activities, serve on political party committees, and endorse candidates, for example. The key is to ensure that the CAA employee or board member clearly separates his or her personal political campaign activity from the activities or statements of the CAA, and that any such personal political activity is done on non-work time and without using CAA resources. This distinction does not mean that just because an individual is well known in the community as a CAA employee or board member, he or she may not engage in political campaign activity. It means only that in doing so, the individual should carefully distinguish his or her personal views from those of the CAA.

The Hatch Act applies to CAAs.

Although the Hatch Act restrictions on campaign activities were removed from the federal Community Services Block Grant Act in 1993, they were restored in 1998 (they were never removed from the Head Start Act).³ But the Hatch Act is not nearly as broad as many believe. The restrictions don't apply to all CAA employees; they apply only to those individuals who spend the majority of their work time working for, or earn the majority of their income from, a CAA, and work (for any portion of their time) in connection with CSBG or Head Start-funded activities ("Hatched" employees).⁴ And, even Hatched employees may engage in most political campaign activities, on their own time and using non-CAA resources of course, including:

- being a candidate in a nonpartisan election
- continuing to hold a public office obtained via partisan election held prior to becoming a CAA Hatched employee
- contributing to political campaigns
- running or participating in others' campaigns
- voting as they choose and expressing their own political opinions;
- holding political party office.

So what are the restrictions on Hatched employees? The most significant one prohibits running for office in a partisan election.⁵ Although the issue of whether an election is "partisan" is often decided by state or local law, typically an election will be considered partisan if any of the candidates represent, are supported by, or their names are identified on the ballot with, a political party.

The other two restrictions prohibit Hatched employees from: (1) using their official authority or influence to affect the result of an election or nomination for office and (2) advising, commanding, or coercing other Hatched employees, either directly or indirectly, to make political campaign contributions (cash or anything of value) or loans.⁶ The federal Office of Special Counsel, which enforces the Hatch Act, has interpreted the latter provision to prohibit covered individuals from asking for political contributions from employees whom they supervise due to the inherently coercive nature of such a request.

What about voter education, voter registration, and transportation to the polls?

If conducted in a neutral, balanced manner, 501(c)(3) CAAs may engage in these activities, but need to be careful about the funding source. The activity, regardless of the funding source, cannot exhibit any bias for or against a particular candidate or political party. The CSBG and Head Start Acts expressly prohibit the use of CSBG and Head Start funds, and CSBG-or Head Start-funded employees or services, for voter registration activities and transportation to the polls.⁷ Both the CSBG and Head Start Acts also prohibit the use of such resources for partisan or nonpartisan political activity or any political activity associated with a candidate, or contending faction or group, in an election for public or party office. The 2007 amendments to the Head Start Act, however, permit a nonpartisan organization (the League of Women Voters, for example) to use Head Start facilities during hours of operation to increase voter registration.⁸

Voter registration activities and transportation to the polls must be conducted with non-CSBG, non-Head Start funds and employees, in a neutral and balanced manner.

Let's get practical.

Here's a list of dos and don'ts to steer you through the rules:

- **DO** run for office in a nonpartisan political election, so long as any campaign activity is conducted on your own time, off CAA premises, and without using CAA resources.
- **DON'T** run for office in a partisan election if you are a CAA executive director or other CAA employee who works in connection with activities funded by CSBG or Head Start. And taking a leave of absence doesn't solve the problem; the candidate must resign from his or her CAA position.
- **DO** voter education activities, including voter registration, get-out-the-vote, and transportation to the polls, in a nonpartisan manner with appropriate funds
- **DO** use slogans like: Vote this November, it's your future! Register to vote; your vote counts! Make sure your voice is heard in Washington - vote!
- **DON'T** say: The President doesn't represent your interests - we need a change! Vote Democratic! Register to vote today: Jane Smith needs your vote!
- **DON'T** use CSBG or Head Start funds or personnel, facilities or supplies funded by those programs, for voter registration activities (except Head Start facilities may be used by nonpartisan groups during hours of operation)
- **DO** participate as a private citizen in political campaigns, including using personal funds to make campaign contributions, but do so on your own time and without using CAA resources such as computers, phones, copiers, or office supplies.
- **DON'T** speak on behalf of the CAA, or use the name of the CAA, when supporting or opposing any political candidate.
- **DO** structure your CAA's issue advocacy communications so as to avoid electioneering activity. The IRS has issued guidance, Revenue Ruling 2004-6, listing some of the more important factors it uses to decide whether it considers an issue advocacy communication to involve electioneering.
- **DO** get more information on this subject by visiting the IRS web site (www.irs.gov) and reading a short summary of the law entitled Political and Lobbying Activities, found at the Internal Revenue Service web site and a more-in-depth publication entitled Tax Guide for Churches and Religious Organization, IRS Publication 1828. Although geared toward religious organizations, it provides a practical discussion of the political campaign ban for all 501(c)(3)s.
- **DO** speak to a local attorney knowledgeable in this area of the law or call CAPLAW at (617) 357-6915 if you have further questions!!

¹ 26 U.S.C. 501(c)(3).

² OMB Circular A-122, Att. B, paragraph 25a(1).

³ 42 U.S.C. 9918(b)(1) (CSBG Act as amended in 1998); 42 U.S.C. 9851(a) (Head Start Act).

⁴ July 30, 1999 Office of Special Counsel Advisory Opinion, available from CAPLAW

⁵ 5 U.S.C. 1502(a)(3).

⁶ 5 U.S.C. 1502(a)(1) and (2).

⁷ 42 U.S.C. 9918(b)(2) (CSBG) and 42 U.S.C. 9851(b) (Head Start).

⁸ 42 U.S.C. 9851(b)(2).