

State Law Resources

Kansas: Nonprofit Lobbying and Political Activity Guide

Disclosure

These resources are current as of 8/6/20. We do our best to periodically update these resources and welcome any comments or questions regarding new developments in the law. Please email us at advocacy@afj.org.

WHAT'S IN THIS GUIDE

A discussion and analysis of federal and state law applicable to charities and other not-for-profit organizations that engage in lobbying, voter registration, or other political activities in Kansas. This guide is not intended to provide legal advice or to serve as a substitute for legal advice.

In some jurisdictions, city and/or county regulations may also apply to certain political activities. Check with the appropriate local jurisdiction before undertaking any activity.

The authors cannot emphasize enough that not-for-profit organizations described in Section 501(c)(3) of the Internal Revenue Code are absolutely prohibited from engaging in partisan political election activity that would lend support for or opposition against a candidate for elected office or a political party. This will be discussed in detail below.



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Detailed Overview

This guide is intended as a resource for nonprofits that want to shape public policy and encourage civic engagement as part of their organization's mission.

This guide will cover how nonprofits can engage in lobbying, non-lobbying advocacy, and election year activities, such as voter registration and voter guides, while maintaining tax-exempt status under the Internal Revenue Code. Within each of the three types of activities there are both state and federal laws and regulations that determine how and to what extent nonprofits can engage in these activities while maintaining tax-exempt status.

The US Tax Code grants certain nonprofit organizations tax-exempt status. Some examples of tax-exempt entities include private foundation, public charities, community foundations, social welfare organizations, labor & agricultural organizations and trade associations, but there are many others. Even the NFL is a tax-exempt, nonprofit trade association that must follow certain rules and regulations.

Section 501 of the Internal Revenue Code (i.e. Tax Code) distinguishes between different types of organizations based on the organization's purpose and funding source. As will be detailed below, as to lobbying, non-lobbying advocacy, and voter registration, it is most important to understand the difference between organizations that fall under 501(c)(3) and those that fall under other 501(c) subsections.

Examples of Kansas Nonprofits:

Kansas Action for Children; Wichita Community Foundation; Sunderland Foundation; Alliance for a Secure Kansas; Kansas Association of Realtors; Kansas Farmers Union; and the ACLU of Kansas.

Nonprofit charitable organizations that fall under 501(c)(3) of the Code are generally more limited and regulated when engaging in lobbying and voter registration activities and are completely prohibited from attempting to influence candidate elections. A 501(c)(3) organization is "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes or to foster national or international amateur sports competition or for the prevention of cruelty to animals."¹

Nonprofit organizations that are described under other 501(c) subsections are not as restricted from engaging in lobbying, advocacy, and voter registration activities. For instance, a 501(c)(4) organization is an organization "operated exclusively for the promotion of social welfare, or local associations of employees...the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."² Typically, 501(c)(4) organizations are the primary 501(c) organizations engaged in lobbying activities, which is why there will often be an emphasis on the difference between 501(c)(3) and 501(c)(4) organizations.

¹ 501 U.S.C. § 501(c)(3).

² 501 U.S.C. § 501(c)(4).

Nonprofits and Lobbying Regulations

Federal Tax Law Analysis

LOBBYING GENERALLY

Under federal tax law, lobbying is the act of attempting to influence legislation.

- Influencing legislation means:
 - Any attempt to influence legislation by affecting the opinions of the general public or any segment thereof (grassroots lobbying), and
 - Any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation (direct lobbying)³
- Influencing legislation does not include:
 - Making available the results of nonpartisan analysis, study, or research;
 - Providing technical advice or assistance to a governmental body
 - Appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its power and duties, tax-exempt status, or the deduction of contributions to the organization;
 - Communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest or the organization and such members (provided the communication does not encourage the members to contact their lawmakers or engage in grassroots lobbying; and
 - Any communication with a government official or employee except when attempting to influence legislation

GRASSROOTS VS. DIRECT LOBBYING

- Grassroots Lobbying – A communication that refers to specific legislation, reflects a view on the legislation, and encourages the recipient of the communication to take action with respect to the legislation.⁴
 - Call to action – the phrase encouraging the recipient to take action with respect to the legislation.⁵

³ 26 U.S.C. § 4911(d); 26 C.F.R. § 56.4911-2(b).

⁴ 26 C.F.R. § 56.4911-2(b)(2)(ii)

⁵ Id.

- Direct Lobbying – A communication with a legislator or government official where the communication refers to specific legislation and reflects a view on the legislation.⁶

501(c)(3) ORGANIZATIONS AND LOBBYING

Member Communications

Special IRS rules apply to “member communications.”

For those c3 nonprofits that have members who contribute dues or volunteer in more than a nominal manner, the organization may send out notices to the members that expresses a view on legislation of interest to members, and that communication and the staff time spent preparing the communication is NOT lobbying.

However, if a c3 organization communicates with their members and asks them to contact their legislators to express a view on legislation, then that communication amounts to “Direct lobbying.”

Likewise, if a c3 organization communicates with their members and asks them to urge their friends and family to contact their Members of Congress about specific legislation, then that communication is “grassroots lobbying.”

Substantial Part Rule Generally

501(c)(3) public charities are permitted to lobby (influence legislation), but they must not exceed their allotted limit. A 501(c)(3) public charity must ensure that no substantial part of the activities of the organization is carrying on propaganda or otherwise attempting to influence legislation. This is known as the “Substantial Part Test.”

Unfortunately, the Substantial Part Test is subjective and has not been applied uniformly. Some courts have found that lobbying expenditures of 5% of the charity’s overall budget were not considered substantial. Other courts have rejected using a percentage test.⁷ The IRS considers a variety of factors, including the time devoted, by both compensated and volunteer workers, and the expenditures devoted by the activity, when determining whether the lobbying activity is substantial.⁸

According to the IRS, under the Substantial Part Test, “an organization that conducts excessive lobbying in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax.⁹ In addition, section 501(c)(3) organizations that lose their tax-exempt status due to excessive lobbying, other than churches and private foundations,

⁶ Id.

⁷ *Seasongood v. Commissioner*, 227 F.2d 907 (6th Cir. 1955).

⁸ Measuring Lobbying: Substantial Part Test, Feb. 15, 2020, <https://www.irs.gov/charities-non-profits/measuring-lobbying-substantial-part-test>.

⁹ Id.

are subject to an excise tax equal to five percent of their lobbying expenditures for the year in which they cease to qualify for the exemption."¹⁰ 501(c)(3)s that operate as private foundations are subject to even stricter excise tax penalties.¹¹

Because of the inconsistent application of the Substantial Part Test and the magnitude of the potential consequences of violating the standard, 501(c)(3) organizations (excluding those making the 501(h) election) must be vigilant in tracking their lobbying activity.

Most Nonprofits CAN Lobby

501(c)(3) public charities and other non (c)(3) tax-exempt entities can lobby provided that the activities advance the organization's mission.

TIP: Organization's can amend their mission statement over time.

501(h) ELECTION

In order for 501(c)(3) organizations to avoid the vagaries and subjectivity of the "Substantial Part Test," the Internal Revenue Code provides a more objective, mathematical approach to lobbying. A 501(c)(3) organization that is a public charity can make the "501(h) Election." NOTE: This election is available only to 501(c)(3)s that are public charities, not to 501(c)(3)s that operate as private foundations.¹²

The Expenditure Test

A public charity that makes the 501(h) Election must comply with the "Expenditure Test." This calculation starts by determining exempt purpose expenditures (i.e., the amount spent on a public charity's charitable, religious, educational, scientific, literary, or any other exempt purpose as set forth in 501(c)(3) of the Code).

Next, the public charity must determine its total lobbying nontaxable amount based on its total exempt purpose expenditures. Section 501(h) distinguishes between total lobbying expenditures and grassroots expenditures. The total lobbying nontaxable amount is the amount of exempt purpose expenditure funds that can be put towards lobbying without incurring tax. A public charity may only spend 25% of such expenditures on grassroots lobbying. This distinction is illustrated in the below table, in addition to the general expenditure limits under the Expenditure Test.

- ***Lobbying Expenditures:*** Funds spent on influencing legislation. This includes direct lobbying and grassroots lobbying.
- ***Grassroots Expenditures:*** Funds spent on influencing legislation specifically through an attempt to affect the opinions of the general public or any segment thereof.

¹⁰ Id.

¹¹ Id.

¹² 46 U.S.C. § 4911

Exempt Purpose Expenditures	Total Lobbying Nontaxable Amount	Grassroots Nontaxable Amount
Up to \$500,000	20% of exempt purpose expenditure	25% of total lobbying nontaxable amount
\$500,001 - \$1,000,000	\$100,000 (20% of first \$500,000) +15% of excess over \$500,000	\$25,000 + 3.75% of excess over \$500,000
\$1,000,001 - \$1,500,000	\$175,000+10% of excess over \$1,000,000	\$43,750 + 2.5% of excess over \$1,000,000
\$1,500,001 - \$17,000,000	\$225,000 + 5% of excess over \$1,500,000	\$56,250 + 1.25% of excess over \$1,500,000
Over \$17,000,000	\$1,000,000	\$250,000

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Put into words, the total lobbying expenditure limits under the 501(h) election are:

- 20 percent of the first \$500,000 of exempt purpose expenditures, plus
- 15 percent of the next \$500,000 of exempt purpose expenditures, plus
- 10 percent of the next \$500,000 of exempt purpose expenditures, plus
- Five percent of the remaining exempt purpose expenditures up to a total cap of \$1 million.

Tracking Lobbying Expenditures

The IRS requires electing nonprofits to track and report the total amount spent on the lobbying communication, including time spent preparing to lobby as well as a proportion of the organization's overhead relative to their non-lobbying activities for the month.

Example: 1 staff member spends 1.5 hours preparing talking points for legislative testimony, 1 hour driving to and from the state house, and 1 hour testifying, for a total of 3.5 hours spent on lobbying. The staff member also spent \$30 on supplies for handouts for the testimony.

Let's say the staff member's compensation (salary plus benefits) for those 3.5 hours was \$200 + \$35 = \$235. But we can't stop there. The organization must also add in a portion of the overhead that supports the 3.5 hours of staff time. Overhead includes items such as rent, utilities, legal & accountant fees, administrative staff expenses. Let's say the overhead to support these 3.5 hours of lobbying comes to \$50.

The electing organization would need to report

$\$200 + \$35 + \$50 = \285 for that day spent on lobbying.

For more information on tracking and reporting lobbying, check out [Keeping Track](#) at BolderAdvocacy.org

¹³ Measuring Lobbying Activity: Expenditure Test, Feb. 15, 2020, <https://www.irs.gov/ko/charities-non-profits/measuring-lobbying-activity-expenditure-test>.

Consequences of Failing the Expenditure Test

As set forth below, the limits are based on a 4-year review period. The consequences for failing the Expenditure Test are much more predictable. The IRS states: “Under the expenditure test, a public charity that engages in excessive lobbying activity over a four-year period may lose its tax-exempt status, making all of its income for that period subject to tax. Should the public charity exceed its lobbying expenditure dollar limit in a particular year, it must pay an excise tax equal to 25 percent of the excess.”¹⁴ Expenditure limits can be exceeded for purposes of the Expenditure Test either by exceeding the total lobbying expenditure limit or by exceeding the grassroots expenditure limit.

Benefits of the 501(h) Election

The 501(h) Election is beneficial for several reasons:

- The Expenditure Test provides a bright-line rule;
- Volunteer efforts that do not cost money will not count toward lobbying limits;
- There is no loss of exemption for a single year’s excessive expenditures; and
- The election maximizes an organization’s lobbying activity.¹⁵

How to Make the 501(h) Election

A 501(c)(3) public charity can make the 501(h) election by filing Federal Form 5768. This form can be found on the IRS website, www.irs.gov. The 501(h) election is a one-time election; if the organization wishes to revoke the election, it can do so using the same form.

501(c)(3) public charities that make the 501(h) election must report yearly how much was spent on lobbying and how much of that total lobbying amount was spent on grassroots lobbying. This is reported on Schedule C on Form 990.¹⁶

501(c)(4) ORGANIZATIONS AND LOBBYING

There are no federal tax law limitations on lobbying for 501(c)(4) organizations as long as the lobbying is related to the organization’s exempt purpose. However, a 501(c)(4) organization does not enjoy all the same tax benefits as the 501(c)(3). Where donations to 501(c)(3) organizations are tax deductible by the donor, donors to 501(c)(4) organizations cannot deduct donations. The other primary difference between 501(c)(3) organizations and 501(c)(4) organizations is that a 501(c)(4) organization must be formed to serve a community interest, rather than a private interest, while a 501(c)(3) can be formed to serve a narrower charitable interest.

A 501(c)(4) organization may further its exempt purpose through lobbying as its primary activity without jeopardizing its exempt status.¹⁷

NOTE: An organization that has lost its 501(c)(3) status due to failing the substantial part test may not thereafter qualify as a 501(c)(4) organization.

¹⁴ Measuring Lobbying Activity: Expenditure Test, *supra*.

¹⁵ Nonprofit Lobbying and the 501(h) Election, *supra*.

¹⁶ Measuring Lobbying Activity: Expenditure Test, *supra*.

¹⁷ Social Welfare Organizations, Feb. 15, 2020, <https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations>.

A section 501(c)(4) organization engaging in lobbying may be required to either provide notice to its members regarding the percentage of dues paid that are applicable to lobbying activities or pay a proxy tax.¹⁸

If a 501(c)(4) organization's actual lobbying expenditures for a tax year exceed the estimated allocable amount of the expenditures, the organization must pay a proxy tax on the excess amount. The proxy tax rate is equal to the highest corporate tax rate in effect for the taxable year.

Although sometimes used interchangeably when discussing 501(c)(4) organizations, political electioneering activities differ from lobbying. Accordingly, 501(c)(4)s and political electioneering will be discussed in the Nonprofits and Political Activity section below.

State Tax Law Analysis

GENERALLY

Although nonprofits must stay in compliance with the federal lobbying laws to remain tax exempt, nonprofits must also stay in compliance with the laws and regulations in the specific state in which they are incorporated. Kansas, like many other states, has a body of state-specific laws and regulations that govern all lobbying activity in the state.

The Kansas Governmental Ethics Commission is charged with administering the state's lobbying laws. The Kansas lobbying laws impose registration and reporting requirements on individuals and groups who make expenditures to lobby at the state level.

The rules regulating lobbying activity are contained in Chapter 46, Article 2 of the Kansas Statutes Annotated (K.S.A. 46-216 et seq.); Articles 60-63 of Agency 19 of the Kansas Administrative Regulations (K.A.R.); and Advisory Opinions issued by the Commission.

It is important to note that the laws and regulations discussed in this section are not specific to nonprofit organizations but apply to all who participate in lobbying activities.

KANSAS LOBBYING REGISTRATION REQUIREMENTS

Nonprofits that plan to work in Kansas to influence official action in the state legislature, state executive or administrative agencies, state judicial branch, or that plan to pay more than \$40 to a state official or employee when that organization has an interest in a state contract, may have to register and file periodic reports as a state lobbyist.

The IRS defines and limits **HOW MUCH** lobbying a nonprofit can engage in.

The state of Kansas determines **WHO** has to register as a lobbyist and report on certain activities designed to influence government actors.

The definitions of "lobbying" for IRS purposes and Kansas lobbying registration purposes are different. Just because a nonprofit is required to register as a lobbyist in Kansas, does not necessarily mean that the organization has engaged in "lobbying" for IRS purposes. Sometimes this is disconcerting, and even perplexing, especially for private foundations, who are effectively prohibited from "lobbying" under IRS definitions, even though they

¹⁸ Id.

can engage in quite a bit of “lobbying” under Kansas state law that would trigger the foundation to register as a lobbyist.

It is important that someone on your staff understand the difference between the two definitions in order to assist staff members in properly tracking their lobbying activities for both IRS purposes and Kansas reporting purposes.

This next part of the guide discusses when organizations and certain employees or outside lobbyists must register with the state of Kansas and file periodic lobbying reports, different than Schedule C of the organization’s 990 report that they file with the IRS.

Who to Register

The following individuals are required to register with the Kansas Secretary of State as a lobbyist:

- ***Employed Lobbyists:*** Persons whose employment is, to a considerable degree, for the purpose of lobbying
- ***Appointed Lobbyists:*** Persons formally appointed as the primary representative of an organization or of another person to lobby in person on state property, regardless of whether that person is compensated for doing so
- ***Persons making lobbying expenditures:*** Any person who makes expenditures for lobbying in an aggregate amount of \$100 or more, exclusive of travel and personal expenses, in a calendar year.¹⁹

When to Register

Any individual required to register as a lobbyist must do so prior to engaging in any lobbying in any calendar year. Registration is valid for the remainder of the calendar year in which the lobbyist registered (through December 31). Lobbyists may register for the succeeding calendar year any time after October 1. Lobbyists must re-register for each year in which they will engage in lobbying.²⁰

How to Register

Lobbyists must file a Kansas Lobbyist Registration Form with the Kansas Secretary of State. Lobbyists can register, pay fees, order lobbyist badges, and file period expenditure reports online with the Kansas Secretary of State’s website. The website’s Kansas Lobbying Center provides all forms needed to register.

Registration Fee

Lobbyists are generally required to pay a fee for each employer, client, or organization they represent. Registration fees are as follows:

- \$50 for each employer, client, or organization for which the lobbyist anticipates spending \$1,000 or less for lobbying in a calendar year* and

¹⁹ K.A.R. § 19-62-1; K.S.A. § 46-222(a).
²⁰ K.S.A. § 46-265.

- \$350 for each employer, client, or organization for which the lobbyist anticipates spending more than \$1,000 on lobbying in a calendar year
- However, a lobbyist who is an employee of a lobbying firm or group, but not an owner or partner, simply pays a total annual fee of \$450.

* Any lobbyist who at the time of initial registration anticipated spending less than \$1,000, on behalf of any one employer, but at a later date spends in excess of such amount, must, within three days of the date when expenditures exceed such amount, file an Amended Lobbyist Registration Statement and pay an additional fee of \$300 for such year.²¹

Termination of Registration

Upon terminating all lobbying activities, any registered lobbyist may file a Lobbyist Registration Termination Statement with the Kansas Secretary of State terminating such individual's registration.²²

KANSAS LOBBYING REPORTING REQUIREMENTS

Reporting Schedule

Lobbyist employment and expenditure reports are to be filed on or before the 10th day of February, March, April, May, September, and January.²³ For any calendar year in which a lobbyist expects to make lobbyist expenditures in an aggregate amount of less than \$100 during each reporting period, the lobbyist must file an affidavit of such intent with the Secretary of State. While such lobbyists will not be required to file periodic reports during the year for which such affidavit is filed, they are required to file a year-end report on or before January 10 of all expenditures made in the previous calendar year. If a lobbyist filing such an affidavit expends more than \$100 in reportable expenses in a reporting period, the lobbyist must file an expenditure report for that period. K.S.A. 46-268(b).

Report Due	For Lobbying Expenditures
February 10	January 1 - January 31
March 10	February 1 - February 28
April 10	March 1 - March 31
May 10	April 1 - April 30
September 10	May 1 - August 31
January 10	September 1 - December 31

Expenditure Reports Are Public Records

All lobbyist employment and expenditure reports are public records open to public inspection.²⁴

²¹ K.S.A. § 46-265.

²² K.S.A. § 46-265(c).

²³ K.S.A. § 46-268(a); K.A.R. § 19-63-2(a).

²⁴ K.S.A. § 46-269.

Retention of Records

Lobbyists are required to retain records in support of every statement or record five years from the filing date.

KANSAS LOBBYING REGULATIONS AND RESTRICTED ACTIVITIES

Time Restrictions

Kansas has no time restrictions on lobbying. This means that lobbying can occur before, during and after a legislative session.

Identification of Lobbyists

Registered lobbyists are required to wear photo ID badges when lobbying in the State Capitol. Badges are to be provided by the Kansas Secretary of State upon filing a Lobbyist Badge Order Card, which can be submitted along with the Lobbyist Registration Form.²⁵

Note: The laws outlined below are only summaries of some of the more commonly encountered issues pertaining to gifts, travel and other benefits provided to public officials. Organizations and lobbyists are advised to consult with legal counsel for a complete analysis of their proposed activities before giving gifts or other benefits to officials.

Gifts

Lobbyists are prohibited from offering or giving to any state officer or employee or state office candidate any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of \$40 or more in any calendar year with a major purpose of influencing official duties.²⁶

State officers and employees and state office candidates are prohibited from soliciting, accepting or agreeing to accept any (1) economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of \$40 or more in any calendar year; or (2) hospitality in the form of recreation having an aggregate value of \$100 or more in any calendar year from any person whom they know to have a special interest and the officer or employee knows or should know that a major purpose of the interested party is to influence official duties.²⁷ Similar rules apply to certain state officials and employees in the executive branch of government.

Campaign contributions do not count as gifts and are permitted to be solicited, made and accepted, except when conditioned upon certain activity by the legislator or legislator-elect (i.e. except when made as a bribe or a quid pro quo).²⁸

State officers and employees are prohibited from accepting honoraria for any speaking engagement except that a member of the state legislature or a part-time officer or employee of the executive branch of government shall be allowed to receive reimbursement in the preparation for and the making of a presentation at a

²⁵ K.S.A. § 46-270.

²⁶ K.S.A. § 46-274.

²⁷ K.S.A. §§ 46-236, 46-237.

²⁸ K.S.A. §§ 46-271, 46-236, 46-237.

speaking engagement in an amount fixed by the commission prior to the acceptance of the speaking engagement. State officers and employees are permitted to receive reimbursement for reasonable expenses incurred in attending seminars, conferences and other speaking engagements.²⁹

Travel and Entertainment

Legislators are prohibited from soliciting contributions to any organization for the purpose of paying for travel, subsistence and other expenses incurred by such legislator or other members of the legislature in attending and participating in meetings, programs and activities of such organization or those conducted or sponsored by such organization.

Legislators are, however, permitted to accept reimbursement for actual expenses for travel, subsistence, hospitality, entertainment and other expenses incurred in attending and participating in meetings, programs and activities sponsored by any national, nonprofit, nonpartisan organization established for the purpose of serving, informing, educating and strengthening state legislatures in all states of the nation, when paid from funds of such organization.³⁰

Travel and Entertainment Example

Kan Futures, a fictitious local 501(c)(3) is hosting a meeting in Wichita and invites all legislators and legislators-elect to attend. Legislators may not solicit nor receive funds or reimbursement from Kan Futures to attend this local nonprofit event.

However if Kan Futures was a national nonprofit and hosting or sponsoring a national conference, Kan Futures could legally reimburse a legislator for their travel, food, and lodging that is necessary for their attendance, if this conference is such that the state determines the legislator's presence at the conference is beneficial to the state as a whole.

DEFINITIONS

To fully understand the Kansas laws and regulations on lobbying, it is important to understand the Kansas-specific definitions related to lobbying.

Employer

- (1) A person who employs another person to a considerable degree for the purpose of lobbying;
- (2) a person who formally appoints a person as the primary representative of an organization or of other persons to lobby in person on state-owned or leased property;
- or (3) a person on whose behalf a person otherwise registers or is required to register

²⁹ K.S.A. § 46-237(f).

³⁰ K.S.A. § 46-237(h). See also, Kansas Government Ethics Commission Opinion No. 2000-33 (modifying Opinion No. 2000-1).

as a lobbyist.

- If a lobbyist has more than one employer, the provisions of articles 60, 61, 62, and 63 of these regulations that relate to employers shall apply independently to each of the lobbyist's employers.³¹

Expenditure

- A payment or a contract to pay for any of the following:
 - (1) The provision of hospitality in the form of recreation, food, and beverage to any state officers or employees of the legislative branch, candidates for the legislature, or legislators-elect, or their spouses, except bona fide personal or business entertainment
 - (2) the provision of any entertainment, gift, honoraria, or payment to any state officers or employees of the legislative branch, candidates for the legislature, or legislators-elect, or their spouses, except bona fide personal or business gifts, entertainment, honoraria, or payments;
 - (3) the production and communication of lobbying information to any state officer or employee of the legislative branch, candidate for the legislature, or legislator-elect by any person other than an individual; or
 - (4) the production and dissemination of mass media communications, letter-writing campaigns, and similar transactions that explicitly promote or oppose a clearly identified legislative matter or regulation and that urge or request the recipient to communicate directly with state officers or employees of the legislative branch, candidates for the legislature, or legislators-elect regarding that matter.
- A person shall be considered to have made an expenditure if the person does so directly or if another person does so on the person's behalf.
- In the case of membership organizations, associations, or similar entities, the entity shall be deemed to make an expenditure associated with membership events if the entity plays an integral role initiating, planning, or operating these membership events.
- The term "expenditure" shall not mean a payment or contract that meets any of the following conditions:
 - (A) Is made for the preparation of proposals, position papers, and similar documents;
 - (B) is made to employ another to lobby on one's behalf;

Bona Fide Personal Gift Example

A bona fide personal gift would be if a person had a relationship with a state officer prior to them becoming a state officer and wanted to give them a birthday gift as part of a mutual exchange of gifts and not to influence government action.

³¹ K.A.R. § 19-60-3(a).

- o (C) is made for personal travel and subsistence of an individual engaged in lobbying;
- o (D) is reported in compliance with the campaign finance act;
- o (E) is made in association with any news story, commentary, or editorial distributed in the ordinary course of business by a broadcasting station, newspaper, or other periodical publication; or
- o (F) is made for contributions to membership organizations, associations, or similar entities in which the funds are used to make expenditures attributable to the entity or its representatives.³²

Bona Fide Personal or Business Entertainment or Gifts

- Entertainment or gifts provided to state officers or employees of the legislative branch, candidates for the legislature, or legislators-elect, or their spouses, that are based solely on a business or personal relationship totally unrelated to the duties of the state officer or employee of the legislative branch, candidate for the legislature, or legislator-elect.
- The factors that shall be taken into consideration in determining whether a specific entertainment or gift falls within this definition include the following:
 - o (1) The intent of the parties;
 - o (2) the length of time a business or personal relationship has existed;
 - o (3) the topics of discussion;
 - o (4) the setting;
 - o (5) the persons attending;
 - o (6) the reimbursement of the person providing the entertainment or gift by an organization that engages in lobbying; and
 - o (7) the deduction by the person providing the entertainment or gift, or that person's principal, of the expenditures as lobbying expenditures.³³

Gift

- The transfer of money or anything of value without receiving legal consideration of a reasonably equal or greater value in return.
- The value of a gift shall be the fair market value or a reasonable estimate of it.
- If a transfer is made for less than reasonable consideration, the amount by which the value of the transfer exceeds the value of the consideration received shall be deemed a gift.
- The term "gift" shall not include any of the following:
 - o (A) The provision of hospitality in the form of recreation with a value of

³² K.A.R. § 19-60-3(b).

³³ K.A.R. § 19-60-3(c).

less than \$100, food, or beverage;

- o (B) any bona fide personal or business gift or entertainment; or
- o (C) any contribution reported in compliance with the campaign finance act.³⁴

Hospitality in the Form of Recreation, Food, And Beverage

- The provision of recreation to or consumption of food and beverage by a state officer or employee of the legislative branch, candidate for the legislature, or legislator-elect while the state officer or employee of the legislative branch, candidate for the legislature, or legislator-elect **is in the company of the donor** or the donor's authorized agent.³⁵

Entertainment

- The provision of recreation, food, or beverage to a state officer or employee of the legislative branch, candidate for the legislature, or legislator-elect, when the state officer or employee of the legislative branch, candidate for the legislature, or legislator-elect **is not in the company of the donor** or the donor's authorized agent.³⁶

Legislative Matter

- Any bill, resolution, nomination, or other issue or proposal pending before the legislature or any committee, subcommittee, or council thereof.³⁷

Legislator

- A member or member-elect of the legislature.³⁸

Lobbying

- (1) promoting or opposing in any manner action or nonaction by the legislature on any legislative matter;
- (2) promoting or opposing in any manner an action or nonaction by any executive agency on any executive administrative matter;
- (3) promoting or opposing in any manner an action or nonaction by any judicial agency on any judicial administrative matter;
- (4) entertaining any state officer or employee or giving any gift, honorarium or payment to a state officer or employee in an aggregate value of \$40 or more within any calendar year, if at any time during such year the person supplying the entertainment, gifts, honoraria or payments has a financial interest in any contract with, or action, proceeding or other matter before the state agency in which such

³⁴ K.A.R. § 19-60-3(d).

³⁵ K.A.R. § 19-60-3(e).

³⁶ K.A.R. § 19-60-3(f).

³⁷ K.S.A. § 46-219.

³⁸ K.S.A. § 46-220.

state officer or employee serves, or if such person is the representative of a person having such a financial interest.³⁹

Lobbyist

- (1) Any person employed in considerable degree for lobbying;
- (2) any person formally appointed as the primary representative of an organization or other person to lobby in person on state-owned or leased property;
- (3) any person who makes expenditures in an aggregate amount of \$1,000 or more, exclusive of personal travel and subsistence expenses, in any calendar year for lobbying;
- (4) any person hired as an independent contractor and compensated by an executive agency, as defined in K.S.A. 46-225, and amendments thereto, for the purpose of evaluation, management, consulting or acting as a liaison for the executive agency and who engages in lobbying, except an attorney or law firm representing the executive agency in a legal matter.⁴⁰

State Officer or Employee

- (1) any individual who is an elected or appointed state officer,
- (2) any individual who is in the classified service or unclassified service of the Kansas civil service act,
- (3) all officers and employees of the legislative branch and of the governor's office, irrespective of how compensated or period of employment,
- and (4) any individual who receives monthly or semimonthly compensation for services from the state or any state agency.
- State officer or employee does not include:
 - any justice or commissioner of the supreme court or judge of the judicial branch or employee or officer of the judicial branch or any member of a board, council or commission who is appointed by the Kansas Supreme Court or who is elected or appointed to exercise duties pertaining to functions of the judicial branch, when such person is engaged in performing a function or duty for the judicial branch.
 - any appointed member of an advisory council, commission or board, who serves without compensation other than amounts for expense allowances or reimbursement of expenses as provided for in subsection (e) of K.S.A. 75-3223 and amendments thereto, when such member is engaged in performing a function or duty for such council, commission or board.⁴¹

³⁹ K.S.A. § 46-225.

⁴⁰ K.S.A. § 46-222.

⁴¹ K.S.A. § 46-221.

State and Local Contact Information

Kansas Government Ethics Commission

109 SW 9th Street
Suite 504
Topeka, KS 66612
(785) 296-4219
ethics.kansas.gov/lobbying

Kansas Secretary of State

Elections and Legislative Matters
Memorial Hall, 1st Floor
120 SW 10th Avenue
Topeka, KS 6612-1594
(785) 296-4564
sos.kansas.gov

Nonprofits and Political Activities

501(c)(3) Organizations

GENERALLY

Election years are a great opportunity for nonprofits to elevate their issues, educate voters and candidates, as well as support and encourage voting and the election process as long as they know and follow the rules for their tax-exempt status.

501(c)(3) tax-exempt organizations are absolutely prohibited from “directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.”⁴² Sometimes this “intervention” is referred to as “partisan political activity,” “electioneering,” or “supporting or opposing a candidate.”

This prohibition includes contributions to political campaign funds and public statements of position made by an organization for or against any candidate for public office. 501(c)(3) organizations that violate the complete prohibition on electioneering face losing their tax-exempt status, as well as excise tax penalties.

While 501(c)(3) organizations must remain nonpartisan, they can get political.

501(c)(3) organizations can support or oppose a public policy, such as “paid sick leave,” they can encourage people to vote, they can educate both voters and candidates on the issues they work on every day, as long as they do not evidence a bias for a candidate for elected office or signal who makes a better candidate.

The IRS looks at all the facts and circumstances surrounding the 501(c)(3) election year activities to determine if the activities are a proxy or substitute for an endorsement or criticism of a candidate for elected office.

This guide is written in conjunction with Bolder Advocacy, a program of Alliance for Justice, which serves as a resource for nonprofits engaged in advocacy. If you’d like to read more about permissible election year activities, visit [Bolder Advocacy’s Election Year Resource Page](#), where you’ll find factsheets and guides on activities including:

- Candidate Questionnaires and Voter Guides
- Board Members Running For Office
- Conducting a Voter Registration Drive
- How to Host Nonpartisan Candidate Appearances
- Commenting on Candidates and Campaigns
- Nonpartisan Candidate Education

⁴² The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations, Feb. 15, 2020, <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations>.

Candidate vs. Non-Candidate Activities

While 501(c)(3) organizations are statutorily prohibited from engaging in partisan political activity related to political candidates, such as electioneering, 501(c)(3) organizations may be able to participate in some non-partisan activity. For example, a 501(c)(3) organization cannot participate in activity supporting a candidate who supports a certain position; however, the 501(c)(3) can support a certain position on an issue.

PERMISSIBLE ACTIVITY

There are certain “quasi-political activities” that 501(c)(3) organizations may be able to participate in subject to limitations. Most notable of these are voter registration and voter education activities.

Candidate Debates and Forums

The IRS permits 501(c)(3) organizations to provide forums for candidate debates assuming the following:

- It provides an equal opportunity to participate to all political candidates seeking the same office;
- It does not indicate any support for or opposition to any candidate (including candidate introductions and in communications concerning any candidate’s attendance); and
- No political fundraising occurs.⁴³

Speaking Invitations

If a political candidate is invited to speak at an organization in his or her capacity as a political candidate, the organization must take steps to ensure the following:

- Provides an equal opportunity to all political candidates seeking the same office;
- Do not indicate any support for or opposition to any candidate; and
- No political fundraising occurs.

If a political candidate is invited to speak at an organization outside of his or her capacity as a political candidate, the organization must ensure that:

- The individual is chosen to speak solely for reasons not related to their candidacy for public office;
- The individual speaks only in a non-candidate capacity;
- Neither the candidate nor any representative of the organization makes any mention of the individual’s candidacy or the election;
- No campaign activity occurs in connection with the candidate’s attendance;
- The organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and

⁴³ Frequently Asked Questions About the Ban on Political Campaign Intervention by 501(c)(3) Organizations: Inviting a Candidate to Speak, <https://www.irs.gov/charities-non-profits/charitable-organizations/frequently-asked-questions-about-the-ban-on-political-campaign-intervention-by-501c3-organizations-inviting-a-candidate-to-speak>.

- The organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications.⁴⁴

Voter Registration and Voter Education

Certain voter education activities are permissible for 501(c)(3) nonprofit organizations. Voter education activities, such as public forums and publishing voter education are allowed if done in a non-partisan manner. Additionally, voter registration activities are permissible and are also not considered political campaign activity if conducted in a non-partisan manner.

The IRS does, however, put some limitations on voter education and registration activities to prevent impermissible partisan bias. If a voter education or registration activity has evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, it constitutes political campaign activity that is prohibited for 501(c)(3) organizations.⁴⁵

How to Legally Target Voter Engagement Activities

A 501(c)(3) can legally be strategic and efficient with their limited resources when engaging in voter registration drives, voter mobilization or similar types of activities to promote voting and still remain nonpartisan as the IRS requires.

The IRS permits a c3 to target their voter engagement activities in the following ways:

- To groups historically underrepresented at the polls
- To where the c3 has an office, staff, volunteers, or where you want to work in the future
- To the communities the c3 naturally serves
- To the c3's natural partners
- Other c3 permissible reasons

Groups that have been historically underrepresented at the polls have included: young people, low-income community members, newly naturalized citizens, people who have completed their criminal sentence and are now eligible to vote, homeless individuals, people with disabilities, etc. It is best practice for the c3 to do some research in their state/community and document the reason why they are targeting their activities. They need not have the same reason for each area of the state or each type of activity.

Nonprofit organizations, including foundations, have many opportunities to ensure that their communities are well-represented at the ballot box. Yes, there are rules for conducting and funding voter registration drives, but nonprofits don't need to avoid these activities. Rather, it is important to understand the rules so you can plan your activities this election season.

⁴⁴ Id.
⁴⁵ 11 CFR § 114.4

Registering people to vote on a nonpartisan basis is an appropriate voter education activity for 501(c)(3) public charities. The voter registration drive must be designed solely to educate the public about the importance of voting and must not show any bias for or against any candidate or party. In addition, voter registration drives funded by private foundations are more tightly restricted under section 4945(f) of the Internal Revenue Code, but are still permissible in many instances.

The following charts are designed to help get you started in understanding what’s possible.

For 501(c)(3) Public Charities Planning to Engage in Voter Registration:

DO	DON'T
<p>Do keep your voter registration activities nonpartisan, making sure your activities do not attempt to influence the outcome of a candidate election.</p>	<p>Do not plan, begin, or increase voter registration activities in order to influence which candidates or parties win an election for public office.</p>
<p>Do ensure that any coordination of voter registration activities with other 501(c)(3) organizations remains neutral about which candidate or party wins an election.</p>	<p>Do not coordinate your voter registration drive with any candidate or party. Do not collaborate with nonprofits that are trying to influence which candidate or party wins an election.</p>
<p>Do focus your voter registration activities on community members or clients with whom your organization already engages in its programs or advocacy work.</p>	<p>Do not prioritize outreach to certain demographic populations because they are more likely to vote for a particular candidate.</p>
<p>Do encourage people to vote by mentioning critical issues involved in the election, as long as you select and discuss the issues in a way that does not encourage people to vote for a particular candidate or party. For example, this statement would be relatively low risk: “We want our government to hear about the needs of the elderly. Register and vote.” It highlights an issue, but in a neutral way.</p>	<p>Do not mention critical issues involved in an election in order to encourage people to vote for candidates who agree with your views. Even if you are simply trying to motivate people to vote, could your slogan or messaging be seen as biased for or against a candidate or party? For example, consider this example: “Our government has been ignoring the needs of the elderly. Register and vote.” This statement appears to criticize a sitting policymaker or political party and may be seen as a call to change leaders — and as opposition to a particular candidate or party.</p>
<p>Do engage community members in neighborhoods or regions where your staff and volunteers live, where your organization’s offices are located, or where you plan to do more work in the future.</p>	<p>Do not conduct outreach in certain neighborhoods or regions because people in those areas are more likely to vote for a particular candidate or party.</p>

Do focus on populations that have been historically underrepresented at the polls (young people, low-income community members, people who have completed their criminal sentence and are now eligible to vote, homeless individuals, people with disabilities, etc.).

Do not reach out to specific underrepresented populations because you believe they are more likely to vote for a particular candidate or party.

Do urge voters to support or oppose a ballot measure (and count it against your organization's annual lobbying limit). Public charities can target outreach efforts in areas where voters are likely to be on your side in the ballot measure campaign, and you can use slogans that reflect your stance on the ballot measure.

Do not criticize or praise any candidate or party.

Do learn the voting rights laws in your state. See our State Law Resources for more information about voter registration in many states.

Do not assume that voter registration rules are the same from state to state.

Do, if you are carrying out voter registration as part of a campaign to support or oppose a ballot measure, learn IRS rules for 501(c)(3) public charities that engage in ballot measure advocacy. In addition, most states also regulate ballot measure activities under their campaign finance laws, so see our State Law Resources for more information.

Do not forget to check the IRS lobbying rules and your state's ballot measure campaign finance rules if you are carrying out voter registration as part of a campaign to support or oppose a ballot measure.

Do offer food, swag, or other gifts to everyone who passes by your voter registration location, whether or not they register to vote (if you choose to offer anything).

Do not offer incentives only in exchange for individuals registering to vote. Do not give out anything of value only if people register for a specific party or promise to vote for a certain candidate or party.

Do offer to provide a free ride to the polls on election day.

Do not offer free rides to the polls just to people whom you think will vote for a certain candidate or party.

For Foundations Planning to Support Voter Registration:

DO	DON'T
PRIVATE FOUNDATIONS	
<p>Do fund organizations that register voters. The best practice is to give general support grants. If you would like to earmark grants for voter registration drives, make sure you fulfill the requirements of section 4945(f) of the Internal Revenue Code. Please see our factsheet, Voter Registration Rules for Private Foundations, for more information.</p>	<p>Do not earmark grants for “voter registration drives” unless you meet the requirements of 4945(f).</p>
PUBLIC FOUNDATIONS	
<p>Do fund organizations that register voters.</p>	<p>Do not include prohibitions against voter registration activities in your grant agreements.</p>
<p>Do register voters, following the best practices above.</p>	<p>Do not avoid engaging in voter registration. Grantees often take their cues from their funders; by talking about your voter registration activities, you are modeling great opportunities for your grantees and partners.</p>

Most of the best practices in this 501(c)(3) voter registration guide also apply to 501(c)(3) get-out-the-vote (GOTV) efforts. For example, non-partisan voter registration guidelines (targeting, messaging, etc.) are also helpful guidelines for GOTV. One difference is that all 501(c)(3) organizations, including private foundations, can engage in GOTV campaigns. (See above regarding limitations for private foundations that fund voter registration drives.)

This is a critical time for nonprofits to work to ensure that the electorate reflects America’s increasingly diverse communities.

This guide is written in conjunction with Bolder Advocacy, a program of Alliance for Justice. Nonprofits can contact Bolder Advocacy at advocacy@afj.org or **866-NP-LOBBY** for more best practices for planning and funding voter registration and GOTV activities or reference the following BA guides:

- [The Rules of the Game: A Guide to Election-Related Activities for 501\(c\)\(3\) Organizations](#) for more information about 501(c)(3) public charities’ rights and responsibilities regarding voter registration.
- [Investing in Change: A Funder’s Guide to Supporting Advocacy](#) for more information about funders’ rights and responsibilities regarding how to support organizations that engage in voter registration.

Some other wonderful resource for nonprofits interested in nonpartisan voter engagement resources, suggestions and tips can be found at

Nonprofit Vote
866-Our-Vote

Nonpartisan Election Protection in multiple languages

Other Nonprofit Organizations

501(C)(4) ORGANIZATIONS

Unlike the 501(c)(3), the 501(c)(4) organization enjoys the benefit of being able to engage in some political activity, including political candidate activity, or “electioneering.” Historically, 501(c)(4) organizations were quite restricted from engaging in political activity. However, following the *Citizens United v. Federal Election Commission* Supreme Court decision in 2010, 501(c)(4) organizations were able to significantly increase expenditures and engagement in political activity.⁴⁶

Although 501(c)(4) organizations are allowed to participate in more political activity than 501(c)(3)s, there is no bright-line rule for how much political activity is permissible.⁴⁷ It is generally understood that exempt activities must constitute the 501(c)(4) organization’s primary activities, and political campaign activities are not exempt activities. Due to the lack of a clear rule on this issue, 501(c)(4) organizations typically operate under the assumption that as long as political campaign activity expenditures are less than primary expenditures, then they are furthering their social welfare purposes.

This laissez-faire position on 501(c)(4) organizations and electioneering in recent years has led not only to the creation of “super PACs,” as described in greater detail herein, but also allows 501(c)(4)s to operate with great confidentiality.

State-Specific Contribution Limits

Kansas has its own body of laws and regulations regarding nonprofits and political activity. Keep in mind that where state law conflicts with federal law, federal law will generally trump state law. For example, Kansas may permit something that is still barred under federal law. However, there may be instances where Kansas law is more strict than federal law, allowing organizations to comply with both federal and state law. It is important for organizations to consult counsel regarding how to handle a state and federal law conflict.

OVERVIEW OF KANSAS CAMPAIGN FINANCE

The Kansas Campaign Finance Act is located at [K.S.A. § 25-4142 et seq.](#) and the regulations are located at [K.A.R. § 19-20-1 through 19-30-4](#). The Kansas Governmental Ethics Commission regulates campaign finance and issues opinions concerning campaign finance.

A few judicial opinions discuss the campaign finance act: *State v. Palmer*, 248 Kan. 681 (1991) (Violations of act involving theft, conspiracy, false writing, criminal solicitation, and

⁴⁶ *Citizens United v. Federal Election Com’n*, 558 U.S. 310 (2010).

⁴⁷ See generally, 52 U.S.C. § 30118.

acts constituting concealment); *Legislative Coordinating Council v. Stanley*, 264 Kan. 698 (1998) (Payment of vouchers for contested election costs by director of accounts and reports does not violate K.S.A. 25-4169a); *Kansans for Life, Inc. v. Gaede*, 38 F.Supp.2d 928 (U.S.D.C. Kan. 1999) (First amendment rights violated, statute held unconstitutionally vague); and *Cole v. Mayans*, 276 Kan. 866 (2003) (Campaign funds from state office not transferable to city office).

CONTRIBUTION LIMITS AND SOURCE RESTRICTIONS

	Governor	State Senate	House / Local Offices	Other Statewide
Individuals / Corporations / Organizations	\$2,000	\$1,000	\$500	\$2,000
PACs	\$2,000	\$1,000	\$500	\$2,000
State Party Committee	\$2,000 (Primary) No Limit (General)	\$1,000 (Primary) No Limit (General)	\$500 (Primary) No Limit (General)	\$2,000 (Primary) No Limit (General)
Congressional or Recognized Party Committee	\$2,000 (Primary) No Limit (General)	\$1,000 (Primary) No Limit (General)	\$500 (Primary) No Limit (General)	\$2,000 (Primary) No Limit (General)

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Note:

- For contributions from a national party committee to a party committee, the limits are \$25,000 to state committees and \$10,000 to recognized, congressional and county committees.
- 501(c)(4), 501(c)(5), and 501(c)(6) nonprofit organizations are permitted to make contributions to Kansas candidates pursuant to the limits above. Contributions include direct cash contributions as well as in-kind contributions. These non c3 organizations can also make unlimited independent expenditures as well as electioneering communications as described in more detail below.
- It may even be possible for 501(c)(3) entities to engage in electioneering communications provided they remain nonpartisan when all the facts and circumstances are taken into account.

Aggregation

There are no separate aggregate limits for contributions to multiple recipients.

48 K.S.A. § 25-4153. The contribution limits displayed in this table are only for the more notable offices and groups. A complete list of the contribution limits can be found in K.S.A. § 25-4153.

Contributions During Legislative Session Prohibited

After January 1st and prior to adjournment sine die of the legislature or at any other time it is in session, no lobbyist, political committee or person (including a c4, c5, or c6 nonprofit corporation), other than an individual, shall make a contribution to a legislator, to an officer elected statewide, to a candidate for either, to their candidate committee or to a political committee for the senate or house.⁴⁹

Location of Contributions

There are no restrictions on locations where contributions may be delivered (e.g., state office buildings), although there are some restrictions on the use of public property, public employee time and municipal buildings for campaigning, violations of which are a class C misdemeanor.⁵⁰

Cash Contributions

Contributions which in the aggregate exceed \$100 for any one primary or general election cannot be made in cash.⁵¹ A check, credit card or money order must then be used.⁵²

Campaign Surplus

At the time of termination of any campaign, all of a candidate's residual funds not obligated for expenses incurred in the campaign or the holding of office must be contributed to charity, contributed to a party committee, refunded to the contributors or paid into the state general fund.⁵³

No Restrictions Based on Type of Donor

There are no special contribution restrictions for particular kinds of contributors, such as lobbyists, unions or state contractors, other than the above legislative session restrictions, which apply to all donors except individuals.

Contributions by Another/Anonymous Contributions

Contributions must be made in the name of the person providing the contribution, and contributions in excess of \$10 must be accompanied with the name and address of the contributor.⁵⁴

Teachers' Unions and Other Public Employee Unions

The legislature recently placed limits on how teachers' unions and other public employee unions can raise funds for political purposes from union members. Previously unions could allow members to vote to allocate a portion of member dues to be used for political purposes. Under this new law, unions must raise funds only through voluntary donations.⁵⁵

⁴⁹ K.S.A. § 25-4153a.

⁵⁰ K.S.A. § 25-4169a.

⁵¹ K.S.A. § 25-4153(i).

⁵² K.S.A. § 25-4153(j).

⁵³ K.S.A. § 25-4157a(d).

⁵⁴ K.S.A. § 25-4154(a) and (b).

⁵⁵ K.S.A. § 75-4333.

In-Kind Contributions

In-kind contributions such as goods or services are treated the same as monetary contributions and are valued at fair market value.

- “Contributions” regulated by the Finance Act are broadly defined as
 - (A) any advance, conveyance, deposit, distribution, gift, loan or payment of money or other thing of value given to a candidate, candidate committee, party committee or political committee
 - or (B) otherwise made. In either case, they must be given or made for the purpose of causing or expressly advocating the nomination, election or defeat of a clearly identified candidate for state or local office.⁵⁶ Kansas does not regulate contributions or expenditures for issue advocacy ads (electioneering communications), as explained below.
- In-kind contribution also means the use of any goods, services, or anything of value, or the spending of any money, for the benefit of any candidate, candidate committee, party committee, or political committee when the use or expenditure is made in cooperation with or with the consent of the candidate, committee, or representative of them.⁵⁷
- To be a regulated in-kind contribution there must again be express advocacy.⁵⁸
- Volunteer Service
 - The value of volunteer services provided without compensation does not constitute an in-kind contribution.⁵⁹

COMMUNICATIONS

Issue Advocacy vs. Express Advocacy

Express advocacy is any communication that falls under the “magic words” test as laid out in *Buckley v. Valeo*. These include communications that state “vote for the secretary of state,” “re-elect your senator,” “support the democratic nominee,” vote for or vote against Smith, etc.⁶⁰ Although the statute states that express advocacy is “not limited to” these terms, the Kansas Ethics Commission considers the magic words, or at least minor variations on them, to be the test for express advocacy.

The Kansas Legislature considered, but rejected, amendments to K.S.A. § 25-4143 which would have constitutionally broadened the scope of express advocacy to include communications “which in context have no other reasonable meaning than to support or oppose” a candidate. Thus, although K.S.A. § 25-4143(h) states that express advocacy is “not limited to” the magic words listed, the statute’s judicial and legislative history support its construction that express advocacy requires the magic words or at least minor variations of them.

⁵⁶ K.S.A. § 25-4142(e)(1)(A) and (B).

⁵⁷ K.A.R. § 19-20-2(b).

⁵⁸ *Opinion 2008-10 (in-kind contributions must involve express advocacy in order to be regulated contributions)*.

⁵⁹ K.S.A. § 25-4143(e)(2)(A).

⁶⁰ K.S.A. § 25-4143(h).

Member Communications

Expenditures for express advocacy communications made in the form of internal organizational communications of business, labor, professional, or other organizations are not regulated or reportable as in-kind contributions.⁶¹ Therefore, there is no limit on or reporting of expenditures made for these communications.

The Ethics Commission has stated that K.A.R. § 19-24-3 would apply regardless of whether the association is incorporated. It has also stated that this exception is for communications made in the ordinary course to members or shareholders and suggesting which candidates to support or oppose. If the communications are part of a concerted express advocacy campaign effort, the Commission might not view them as “merely endorsing” a candidate.

Electioneering Communications

Because it is not express advocacy, Kansas does not regulate electioneering communications, issue ads, or non-express advocacy communications. The Ethics Commission’s website provides the following information on issue ads:

“Issue ads are communications, sometimes referred to as electioneering communications, that do not expressly advocate for the election or defeat of a clearly identified candidate for state or local office. These advertisements or mailings may ask you to contact a candidate or current office holder to give them your viewpoint on a specific subject, but the literature or advertisement does not ask you to vote for or against a specific candidate. Because there is no express advocacy, individuals and/or organizations that use these types of advertisements or communications do not fall under the jurisdiction of the Campaign Finance Act. Therefore, there is no reporting of this activity.”

However, Kansas law **does** prohibit candidates for elected office from appearing in certain public service announcements or advertisements or allowing the candidate's name to be used in a public service announcements or advertisements during a period beginning 60 days before any primary election in which the candidate's name appears on the ballot and ending with the conclusion of the general election.⁶² This prohibition applies only to a message “broadcast by electronic, telephone or print media” in which time or space is either (1) donated on behalf of the media, (2) paid for with public sector funds, or (3) paid for with private sector funds from the current contractor of the sponsoring government entity. A candidate may personally appear on a scheduled radio or television program and may participate in a newspaper interview and discuss, announce or promote an issue of public importance, concern or welfare during the specified time frame. Additionally, advertisements paid for by a candidate, PAC or a third party not covered by the ban would be allowed.⁶³

Independent Expenditures

Independent expenditures are expenditures made without the cooperation or consent of

⁶¹ K.A.R. § 19-24-3.

⁶² K.S.A. § 25-4189(a).

⁶³ Kansas Ethics Commission Op. No. 2012-03.

a candidate, or agent of such candidate, intended to be benefitted and which expressly advocate the election or defeat of a clearly identified candidate.⁶⁴

Non 501(c)(3) organizations, political action committees, party committees, individuals or other persons may make independent expenditures.

No Limits on Independent Expenditures

Independent expenditures are not subject to contribution limits because the expenditure is not made with the consent or cooperation of the candidate or his or her agent.⁶⁵

Reporting Independent Expenditures

PACs and party committees are required to report all independent expenditures. The vendor to whom the payment is made must be disclosed. For independent expenditures in excess of \$300, the name and address of the candidate expressly advocated or opposed, as well as the expenditure amount and the service or product provided, must be disclosed.⁶⁶

Individuals, corporations (including 501(c)(4)/(c)(5)/or (c)(6) entities) or other persons making independent expenditures of \$100 or more must file a one page report showing the name and address of each contributor of \$50 or more, the name and address of each vendor paid \$50 or more for the expenditure and the name of the candidate expressly advocated or opposed.⁶⁷

They must also file reports for last minute independent expenditures made or accrued and contributions received in excess of \$300 beginning 11 days before a primary or general election and ending at 11:59 p.m. on the Wednesday preceding the date of the election.⁶⁸ Four daily reports are also due for the Thursday, Friday, Saturday and Sunday preceding the election, due before 5 p.m. the next day.⁶⁹

Disclaimers for Express Advocacy

Published, broadcasted, telephone, or internet communications containing express advocacy must have certain disclosures. Newspapers must contain the word “advertisement” or “adv.” And the name of the sponsor’s representative and organization or individual sponsor. Broadcast, telephoned, and brochure express advocacy must state “Paid for” or “Sponsored by” and contain similar information. Failure to make these disclosures is the offense of corrupt political advertising, punishable as a class C misdemeanor.⁷⁰

POLITICAL ACTION COMMITTEES

In-State PACs

⁶⁴ K.S.A. § 25-4148c(d)(2).

⁶⁵ K.A.R. § 19-20-2(b).

⁶⁶ K.S.A. § 25-4148c.

⁶⁷ K.S.A. § 25-4150.

⁶⁸ K.S.A. §§ 25-4148c(b)(1) and 4148d(b)(1).

⁶⁹ K.S.A. § 25-4148c(b)(2) and 4148d(b)(2).

⁷⁰ K.S.A. § 25-4156, K.A.R. § 19-20-4.

A political action committee (PAC) means any combination of two or more individuals or any person (including a nonprofit organization) other than an individual, a major purpose of which is to expressly advocate the nomination, election or defeat of a clearly identified candidate for state or local office in Kansas or to make contributions or expenditures for that purpose.⁷¹ Note that individuals or entities that make expenditures supporting or opposing constitutional amendments will not have to register as a PAC, but are subject to separate reporting requirements, discussed in the “Ballot Measures” section below.

Organization and Registration

A PAC which anticipates receiving such contributions or making such expenditures must appoint a chairperson and treasurer, and the chairperson must file a statement of organization with the Secretary of State within 10 days after establishment of the committee.⁷²

Annual registration is also required on or before July 1st of each year and an annual registration fee is required.⁷³

- The PAC bank account need not be in-state nor need the treasurer be a resident.
- Registration fees:
 - For PACs anticipating receipt of less than \$500, the registration fee is \$25;
 - For PACs anticipating receipt of more than \$500 but less than \$2,501, the registration fee is \$50;
 - For PACs anticipating receipt of \$2,501 or more in any calendar year, the registration fee is \$300;
 - If a PAC that paid a lower registration fee subsequently surpasses the monetary threshold, it must, within three days of surpassing this amount, amend its registration and submit payment to make up the difference.⁷⁴
 - Every treasurer of a PAC must file period campaign finance reports with the Secretary of State.⁷⁵ Forms may be filed electronically, or paper copies may be submitted to the Secretary of State’s office.

Regular and last-minute report periods and their due dates vary each year and may be obtained from the Kansas Governmental Ethics Commission website. Special last-minute reports of independent expenditures and contributions must also be filed for the period commencing 11 days before and ending on the Wednesday preceding an election.⁷⁶ Local candidate reports are filed in the office of the county election officer of the county in which the name of the candidate is on the ballot. Party committees file reports only with the Secretary of State’s office. In-State and Out-of-State PACs file reports with the Secretary of State’s office while local PACs file reports in the county in which the local PAC

⁷¹ K.S.A. § 25-4143(k).

⁷² K.S.A. § 25-4145 (a).

⁷³ K.S.A. § 25-4145(d).

⁷⁴ K.S.A. § 25-4145

⁷⁵ K.S.A. § 25-4148(c), (b); K.A.R. §§ 19-29-1a, 19-29-2.

⁷⁶ K.S.A. §§ 25-4148c, 25-4148d.

is domiciled.⁷⁷ Reports are posted for view on the Ethics Commission website. Donors are listed on the reports and their names are searchable.

OUT-OF-STATE AND OTHER PACS

Reporting

Any combination of three or more individuals or a person other than an individual, not domiciled in Kansas, which makes or intends to make a contribution to a candidate, candidate committee, party committee or political committee in this state must either:

- File a verified statement containing (a) the names and addresses of the responsible individuals, (b) the name and address of each person who has contributed more than \$50 to it within the past 12 months and (c) the aggregate amount of contributions to it within the past 12 months. These reports must be filed for each regular treasurer reporting period.⁷⁸ The statement shall include the names and addresses of contributors who are residents of Kansas, non-residents with jobs in Kansas, and those making contributions earmarked for use in Kansas. Other contributions may be disclosed in aggregate.⁷⁹

OR

- File a statement of organization under K.S.A. § 25-4145, establish a separate fund for the purpose of receiving contributions and making expenditures relating to any election for state office in this state and file statements and reports involving such fund in the manner provided by K.S.A. 25-4148 for political committees and party committees.⁸⁰
- Exceptions: The above reporting requirements do not apply to: (1) any political party having a national organization which reports under federal law, (2) a bona fide corporation organized under the laws of another state or (3) a union, if the contribution is made from union funds.⁸¹

PAC Termination

To terminate, a PAC's treasurer must file a termination report with the Kansas Secretary of State if it has been involved with a candidate for state office. If the PAC has been involved with a candidate for local office, a report must be filed with the county election officer. The termination report shall include full information on the disposition of residual funds. Any report of final contributions and expenditures may include a termination report.⁸²

⁷⁷ K.S.A. §§ 25-4148c, 25-4148d.

⁷⁸ K.S.A. § 25-4172(a)(1).

⁷⁹ K.A.R. § 19-21-6.

⁸⁰ K.S.A. § 25-4172(a)(2).

⁸¹ K.S.A. § 25-4172(b)

⁸² K

For Further Assistance

For assistance regarding these resources or for more information about federal law, please contact our attorney one-on-one counseling service:

Email: advocacy@afj.org
Telephone: 1-866-NPLOBBY
(675-6229)
bolderadvocacy.org

For assistance regarding state law in Kansas, please contact:

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