

From the Nonprofit Board Chair Seat

Are you a nonprofit Board Chair who has a board development or management issue, concern or challenge keeping you up at night (and who doesn't)? Let me know. I'll try to provide a response that can help you sleep better. Please send your questions to: mikeb@bwbsolutions.com. This on-going column is dedicated to questions and answers to simple and complex nonprofit governance challenges.

Question: A few of my board members have been raising questions about what they, as individuals can do about local, state and national legislation (including budgets) to improve the prospects that whatever is decided has a positive impact on our nonprofit's work. Are there any rules we should be paying attention to?

Answer: Are there rules? Of course there are rules but I pose that very little stands in the way of your board members getting out of the board room and speaking to what is in the best interest of your nonprofit's mission.

Before sharing what I know on this subject, and specific to 501(c)3 organizations, I must begin by making it clear that I am not a lawyer, a member of the State Ethics Commission or representing any other body (like the IRS) that makes the final determination about those few moments when you might 'cross the line' where a penalty of some sort might apply. That said, I believe I can provide what is accepted to be recognized as the appropriate answer. Also, should you have any doubt in my wisdom, at the end of this article I've included some resources to ensure you are clear about what your board members can indeed do to influence public policy.

One simple rule: board members are community members and as such, have the right and obligation to use their own voices to speak to their legislators, regulators and agency administrators about what matters to them most. Board members can also encourage their network of friends and acquaintances to do the same. And remember, 'local' matters, so members are most effective when they talk to the folks they directly elected.

But wait, there's more! While board members can act as any citizen would, when they wear their hat as a board member there are two very specific rules about what is often referred to as legislative advocacy or lobbying.

First, board members and staff, **cannot**, representing their nonprofit, directly support a political candidate.

Second, a nonprofit **cannot** spend a "significant" amount of its resources for lobbying. Please note: not spending a significant amount of resources means a nonprofit can still spend some of its resources to influence the results of legislative and budget processes.

Yes, there can be penalties if a nonprofit violates these rules but avoidance of these penalties can be easily determined by completing the **IRS' 501 H election form** and of course, any pertinent state or municipal forms.

In my opinion, having board members actively carry the message and use their voice to represent the best interests of the constituents, mission and the organization itself bears limited risk.

I believe nonprofit board members should be sure that their local politicians know their names and interests. When legislation is proposed that will do harm to constituents or the organization's ability to serve its constituents, board members should work individually, collectively and with other nonprofits to make sure that legislation fails. Advocacy should be considered core to a nonprofit board member's fiduciary duty of care: doing what it takes to ensure that the organization is able to fulfill its mission.

There are a number of references available that provide deeper and wider assistance on the topic of nonprofit lobbying including:

Blue Avocado Board Cafe
The Foundation Center
The National Council of Nonprofits

Again, your board members have a right and responsibility to influence the way the world around them affects their organization's mission. It's may be up to you, the chair, to start the process. Bottom line, **yes** your board can and should play an active part in the political process.



Mike Burns is a partner in BWB Solutions. He writes two blogs, and is adept at helping nonprofits develop solutions to internal challenges (especially board/CEO) and assess their readiness for mergers and revenue generating ventures.