
Practice 2E: Public Policy

- The land trust may engage in public policy at the federal, state and/or local level (such as supporting or opposing legislation, advocating for sound land use policy, and/or endorsing public funding of conservation) provided that it complies with federal and state lobbying limitations and reporting requirements. Land trusts may not engage in political campaigns or endorse candidates for public office.
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Many land trusts engage in public policy at some level, even if they are not primarily advocacy organizations. While some land trusts deliberately avoid all policy discussion, feeling it would interfere with their ability to protect land, most land trusts have some interest in policymaking at the local, federal or state level. Land trusts may wish to seek support for the enactment of a bond issue, appropriations or other funding for land acquisition at the local, state or federal level; seek sound tax policies for land conservation; forestall threats to tax deductions for charitable contributions to nonprofit organizations; and become involved in a host of positive open space initiatives. This practice clarifies that land trusts may engage in advocacy work or lobbying, but must always follow federal limitations on lobbying for tax-exempt charities. State filing and reporting requirements must also be met. Land trusts with federal tax-exempt status may not endorse political candidates. While lobbying activity is only limited by the rules governing tax-exempt organizations, prohibitions on political endorsements are absolute.

Lobbying Limitations

Land trusts can, do and should lobby. Land trusts generally are not primarily advocacy organizations, and many land trusts deliberately avoid getting embroiled in political controversies that they feel would interfere with their ability to protect land. But all land trusts *do* have an interest in some lobbying. Land trusts may wish to seek support for the enactment of bond issues, appropriations or other funding for land acquisition at the local, state or federal level; seek sound tax policies for land conservation; forestall threats to tax deductions for charitable contributions to nonprofit organizations; and become involved in a host of positive open space initiatives.

Land trusts that engage in lobbying will want to choose their issues and projects as carefully as they choose their land protection projects. See practice 8M for guidance on developing criteria for public issue project selection.

The law on lobbying

Until 1976, tax-exempt organizations had very little guidance on how much they could lobby, what constituted lobbying, etc. The law stated that lobbying could constitute “no substantial part” of a tax-exempt organization’s activities. In 1976, Congress passed more definitive legislation—commonly referred to as the 1976 lobby law and codified in

[Section 501\(h\) of the Internal Revenue Code](#). An organization can elect to operate under the 1976 lobby law by filing [IRS Form 5768, “Election/Revocation of Election by an Eligible Section 501\(c\)\(3\) Organization to Make Expenditures to Influence Legislation”](#). Otherwise, the organization is subject to the “no substantial part” limitation (discussed further below).

In addition to these stipulations in the tax code, the 1995 Lobbying Disclosure Act requires separate registration and reporting of federal lobbying. However, the act applies only to organizations that (1) have an employee devoting at least 20 percent of his or her time to federal lobbying activities and (2) spend at least \$20,000 every six months on lobbying activities. The law provides a reporting option to simplify recordkeeping for organizations that meet these criteria and that have elected to report for tax purposes under Section 501(h).

What constitutes lobbying?

Lobbying is generally defined in Section 501(h) of the Internal Revenue Code—the portion of the law that allows nonprofit organizations to make the lobbying election using Form 5768. (It seems reasonable to assume that these definitions would apply to organizations that do not choose to elect as well.) The IRS breaks lobbying into direct lobbying and grassroots lobbying, and generally defines them as follows:

- 1. Direct lobbying.** Attempting to influence legislation by contacting members of a legislative body, their staffs or other government officials who may participate in the formulation of legislation (whether at the local, state or federal level).
- 2. Grassroots lobbying.** Attempting to influence legislation by trying to affect the opinions of the general public or any segment thereof.

Many activities that deal with government policy are not lobbying—for example:

- Making available the results of nonpartisan analysis, study or research;
- Providing technical advice or assistance (where the advice would otherwise constitute the influencing of legislation) to a governmental body or committee at its written request;
- Communicating with a legislative body on matters that might affect the existence of the organization, its tax-exempt status or the deduction of contributions to the organization; or
- Communicating with non-legislative officials unless the principal purpose is to influence legislation.

Generally, a land trust’s communications with its own members about legislation of direct interest to the land trust is not considered lobbying, provided that the communication does not urge members themselves to lobby or encourage nonmembers to

lobby.

IRS regulations issued in 1990 further define these terms, particularly the difference between direct and grassroots lobbying.

How much lobbying is allowed?

- 1. The “no substantial part” restriction.** If a land trust does not make the lobbying election, it falls under the restriction that “no substantial part” of its activities may include lobbying. At various times it has been suggested that “no substantial part” means “less than 5 percent of expenditures.” But it could mean no substantial *effort* rather than substantial *expenditures*, for instance. An organization found to violate this “no substantial part” restriction would lose its tax-exempt status.
- 2. The lobbying election.** An organization that makes the lobbying election can spend up to a fixed amount of money on lobbying according to the following sliding scale: 20 percent of the first \$500,000 of its total exempt-purpose expenditures; 15 percent of the next \$500,000; 10 percent of the next \$500,000; and 5 percent of anything above that. There is an absolute ceiling of \$1 million. However, no more than 25 percent of its total lobbying expenses can be for grassroots lobbying (influencing members of the general public). Thus, an electing organization with annual exempt-purpose expenses of \$100,000 can spend up to \$20,000 on total lobbying activities, but only \$5,000 of that can be for grassroots lobbying.

An electing organization must keep records of both direct and grassroots lobbying expenditures—staff time, printing, postage costs, etc.—to be able to show that it is not exceeding the allowed limits. Of course, non-electing organizations that lobby also need to keep records to prove that their lobbying is insubstantial.

Should land trusts make the lobbying election?

There are advantages to making the lobbying election if the land trust plans to do more than a very small amount of lobbying. The “no substantial part” provision has a history of subjective and selective enforcement by the U.S. Treasury in terms of the extreme penalty of revoking tax-exempt status. An electing organization, in contrast, has clear guidelines to follow, and does not automatically lose its exemption if it exceeds its lobbying expenditure limit. It loses its exemption only if it exceeds its expenditure limit by more than 50 percent for the four years immediately preceding the current year. However, everything over its limit is subject to a 25 percent tax.

With the issuance in 1990 of very favorable IRS lobbying regulations implementing the 1976 lobby law, many are advocating that tax-exempt organizations make the lobbying election. This includes the Independent Sector, a national umbrella organization for tax-exempt organizations. The Internal Revenue Service manual for auditors explicitly declares that the fact that an organization has elected is no reason to audit it and, indeed, advises agents that lobbying problems are more likely to arise with non-electing groups. Furthermore, in 1993 the IRS began using a new lobbying reporting form (as part of IRS Form 990) that requires non-electing groups to provide much more detailed information

on their lobbying activities than those who elect.

Provided that the election is signed and postmarked before the end of the tax year to which it applies, a land trust may wait until near the end of the year to file its election.

Lobbying: [Form 990, Schedule A](#)

All charities must report on their annual Form 990 the total amount of their lobbying expenditures. Organizations that have not made the lobbying election by filing Form 5768 must complete Part IV of Form 990, Schedule A.

Electing organizations must complete Part VI, “Lobbying Expenditures by Public Charities,” of Form 990, Schedule A, which lists the amount spent on grassroots and direct lobbying. Electing organizations do not have to file a detailed description of their legislative activities.

Prohibition on Political Campaign Activity

The Internal Revenue Code specifies that Section 501(c)(3) organizations may not “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” Land trusts are prohibited from making any expenditures that are directly related to and support the process of influencing or attempting to influence selection, nomination, election, or appointment of any individual to public office or office in a political organization. The prohibition includes the following examples:

- Giving endorsements—either explicit or implicit.
- Making contributions to campaigns, including in-kind contributions of services, publicity, paid staff time, or use of facilities or assets.
- Evaluating candidate positions.
- Setting up, funding or managing a political action committee (PAC).
- Coordinating any activities with a campaign.

Land trusts may undertake certain nonpartisan activities, but the IRS may closely scrutinize even these activities for any bias. Inviting a politician to speak and paying an honorarium may be a prohibited activity if the intent may be to influence voters. Any activity in any way related to a political campaign should be undertaken only after consulting with an attorney very familiar with nonprofit law. *A land trust risks losing its tax-exempt status if it engages in political campaign activities.* The IRS may also impose financial penalties on the organization and its board members and officers.

Links to Other LTA Resources

- [Advocacy: An Ounce of Prevention](#). Fact sheet by Russell Shay, LTA's Director of Public Policy.
- [Building Advocacy Partnerships with Legislators](#). Fact sheet by Henrietta Jordan, LTA Northeast Program, 2003.
- [Can Land Trust's Lobby?](#) LTA web page on land trusts and lobbying.
- ["Land Trusts' Role in Procuring Public Funding for Conservation"](#), *Exchange*, Spring 2004 (Vol. 23 No. 2)
- ["Law Update: Can Land Trusts Lobby?"](#), *Exchange*, Spring 2004 (Vol. 23 No. 2)
- [Lobbying Limits Primer for Land Trusts](#) – Rally 2004 Workshop.
- [LTA Advocates](#) – an email alert network that lets land trusts know what the federal government is doing that may affect land conservation work and what land trusts can do.

Links to IRS Resources

- [Form 990](#) – Return of Organization Exempt from Income Tax
- [Form 5768](#) – Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation
- [IRC Section 501\(h\)](#)
- [Letter to Independent Sector Regarding Charities and Political Activities](#), 2000.

Links to Other Helpful Resources and Publications

- [Charity Lobbying in the Public Interest](#) – educating charities about the important role lobbying can play in achieving their missions.
- [Election Activities of Individuals Associated with 501\(c\)\(3\) Organizations](#) – Alliance for Justice fact sheet.
- [Lobby? You? Yes, Your Nonprofit Organization Can! It Should!](#), Charity Lobbying in the Public Interest.
- [Permissible Election Activities Checklist](#) – Alliance for Justice.
- [Worry-Free Lobbying for Nonprofits: How to Use the 501\(h\) Election to Maximize Effectiveness](#), Alliance for Justice, 2003.

Other Helpful Publications

- [*The Nonprofit Lobbying Guide*, by Bob Smucker, 1999. Published by Independent Sector. This publication demonstrates the many ways nonprofits can use lobbying to advance their causes in federal, state and local legislatures.](#)

Samples from Land Trusts

- [Tall Timbers Research Station \(Red Hills Conservation Program\) \(FL\) – Advocacy Policy](#)
- [Vermont Land Trust – Public Advocacy Guidelines](#)

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◦ This example can be used as a starting point to create a policy or other document for your own land trust, but should be altered as necessary to reflect your organization’s unique circumstances using guidance found in the *Land Trust Standards and Practices Guidebook* text and corresponding Standards and Practices Curriculum. This material is designed to provide accurate, authoritative information in regard to the subject matter covered. It is provided with the understanding that the Land Trust Alliance is not engaged in rendering legal, accounting, or other professional counsel. If legal advice or other expert assistance is required, the services of competent professionals should be sought.