

What Questions to Ask (and which ones to avoid)

Answer: It all depends on the "facts and circumstances"

Neither Congress through statutes nor the IRS through regulations can address the millions of facts situations that might develop. Therefore, to determine whether a particular action crossed the legal lines, the IRS reviews the "facts and circumstances" of each situation. When considering whether a particular question constituted prohibited political campaigning, the IRS will consider "facts and circumstances" such as the following:

Questions ... by the nonprofit on a "candidates questionnaire" for a voters guide

"The questions must cover a broad range of subjects, be framed without bias, and be given to all candidates for an office. If a nonprofit has a very narrow focus, questionnaires may pose a problem. The IRS takes the position that a nonprofit's narrowness of focus implies endorsement of a candidate whose replies are favorable to the nonprofit's position on the topic covered in the questionnaire." *Nonprofits and Election-Related Activities*, Center for Lobbying in the Public Interest.

When considering whether a nonprofit's candidates' questionnaire is partisan or nonpartisan, the IRS looks at:

- "Are the questions or any description of the issues clear and unbiased in both structure and content?"
- "Do the questions cover a broad range of issues related to the broad interests of the electorate?" If you focus just on one question (such as "Will you increase funding for this project that the PTA wants"), then the IRS might interpret this as so narrow that it favors a particular candidate that you know you want. Therefore, "if your organization, like many, is concerned with a single issue or a small number of issues, it may sometimes be easier to create these materials together with a group of organizations working on different issues."
- "Are the questions posed to candidates identical to the questions as presented in the voter guide" that reports the answers to the questions?"
- "Are the candidates given a reasonable amount of time to respond?"
- "If the questions ask the candidates to respond with 'Yes' or 'No' or 'Undecided,' are candidates given the opportunity to give short one or two sentence explanations to explain their positions in their own words and is that explanation printed in the guide?" *Nonprofits, Voting & Elections*, Nonprofit Voter Engagement Network.

Questions ... at a nonprofit-sponsored "candidates debate" or "candidates forum"

When considering whether a nonprofit's candidates' debate is partisan or nonpartisan, the IRS looks at whether:

- "The questions are fair: They should address a broad range of issues, they should not suggest the response the forum sponsor prefers, and they should not be selected to show particular candidates in a better or worse light. (This doesn't mean they can't be controversial!)"
- "All viable candidates for an office are invited. (Even if all are invited, there is a risk that the event could appear partisan if some candidates refuse to participate. If only one candidate agrees to attend, it is no longer a forum.)"
- "The rules of the forum don't favor any candidate over another. (Consider using an independent moderator, setting time for replies, etc.)" *Nonprofits, Voting & Elections*, Nonprofit Voter Engagement Network.

"Even-handedness must be maintained in promoting and holding a public forum. ... The nonprofit should not state its views or comment on those of the candidates. ... [E]ach candidate must be given an equal opportunity to answer questions, and the moderator should strive to ensure balance." *Nonprofits and Election-Related Activities*, Center for Lobbying in the Public Interest.

Questions ... by individuals who happen to be members of a nonprofit

Individuals enjoy their full First Amendment rights to ask whatever questions they want, whether they are with a nonprofit or not. However, individuals should not attempt to get cute by "taking their nonprofit hat off" at their nonprofit's sponsored event. It is not worth the risk of bad publicity, alienating audience members or candidates, or having a complaint filed with the IRS for the board chair of a PTA, for example, to stand up at a PTA sponsored candidate's debate, say "I'm the Board chair, but I'm taking my hat off to ask a personal question." Instead, the Board chair can ask the same question privately, or go to another group's debate and wear their individual's hat there.