

RPAC & the Law

What's Kind about In-Kind Contributions?

It is just weeks before Election Day and your Association decides to support REALTOR® candidate Joe Smith by hosting a campaign fundraising event. Your association rents an event room, pays for catering services and assists with event logistics. The event is successful, but you later find out someone filed a complaint with the local election commission alleging your association made impermissible in-kind contributions to candidate Joe Smith.

This relatively common occurrence can be easily avoided by understanding the campaign finance laws impacting your association's ability to make contributions to candidates for public office.

Contributions

The most obvious way an association may assist a candidate for public office is to make a direct contribution to the candidate's campaign committee. Direct contributions occur when the association or the association's political action committee gives money (check, credit card, wire, etc.) directly to the candidate's campaign committee. The candidate's campaign committee may use contributions to pay for campaign expenditures, such as advertising costs.

In-kind contributions, on the other hand, are indirect benefits an association provides to a candidate's campaign committee, typically in the form of goods or services. The introduction above portrays a series of in-kind contributions from the association to the candidate's campaign committee. Because the association incurred costs for hosting the campaign event (event space rental, catering and logistics) for the benefit of the campaign, such costs must be treated as in-kind contributions from the association to the candidate's campaign committee.

Legal Implications

Both direct and in-kind contributions are regulated by campaign finance laws. Depending on the jurisdiction covering the election, an association may be required to register as a political action committee prior to contributing to a candidate campaign committee. Furthermore, an association contributing to a candidate campaign committee may be required to file reports disclosing its contributions. On top of that, campaign finance laws may impose contribution limits restricting an association's ability to contribute or limit the total amount an association may contribute.

While "contribution" is defined broadly no matter the legal jurisdiction, there are some important exemptions to the definition. In most jurisdictions, for instance, associations may pay for communications expressly advocating for or against candidates without treating such costs as contributions to candidates so long as the communications are made only to association members and not the general public. Most laws also exempt volunteer activity by association members, so long as the activity is truly voluntary and not compensated by the association.

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Liability

Associations found to have violated campaign finance law by making an impermissible contribution, may be subject to civil penalties and/or administrative fines. If the association is found to have made a knowing and willful violation, it may be subject to increased penalties and even criminal liability.

Therefore, it is important associations understand relevant campaign finance laws. Associations are encouraged to obtain their own legal advice, but may reach out NAR political compliance counsel [Jon Waclawski](#) at 202-383-1248 with general political compliance questions.