

Expert Insight

Memo to nonprofit staff:
Avoid election-year pitfalls

By Elizabeth Kingsley

The social media explosion of recent years creates opportunities, but also challenges, for nonprofit organizations. In this presidential election year, those challenges are multiplied for section 501(c)(3) nonprofits (charities), which are not permitted to engage in any electoral activity.

The tax law says that a charity may not “intervene in ... any political campaign on behalf of or in opposition to any candidate for public office.” This prohibition extends to “the publishing or distributing of statement.”

On the other hand, the individuals who work for an organization are free, as private citizens, to be politically active, support candidates and comment on campaigns.

If a charity’s employee makes statements about candidates, the Internal Revenue Service will look at whether the person used any official organizational resources or was speaking on behalf of the organization in order to decide whether that individual’s actions can be attributed to the organization.

This means that a charity’s staffers must make it clear whether they are acting in an official or individual capacity. Even a few years ago, it was relatively easy to determine whether a website or email list was owned by an organization or an individual. But social media encourages users to blend all aspects of their lives, presenting a unified face to the world that may not make it easy to distinguish the personal from the professional.

Unfortunately, the IRS has not issued any guidance that addresses the subtleties of social media and the degree of interconnectedness it engenders. If a charity encourages or allows use of personal accounts for organizational business, it faces the risk that other actions and statements made on the account will be attributed to the organization.

The simple legal solution is for a charity to require that all communications made in

an official capacity be sent through official channels, not any personal social media accounts. If an account is used to carry out the employee’s job responsibilities, then it must be treated as an organizational account. Nothing posted there may implicitly or explicitly support or oppose any candidate for elected office. If the account is personal, it may not be used for official business.

On the other hand, charities may reasonably want to take advantage of the social media presence that employees have built up personally. There is no IRS rule that forbids them from doing so.

At a minimum, the organization should instruct its employees to be clear with respect to any given communication whether it is sent in a personal or professional capacity. Exactly how to do this will depend on the parameters of the media involved.

A 140-character tweet cannot easily contain a specific disclaimer, but when viewed in the context of the statements and conversations that precede and follow the message, it should be clear whether the tweet was sent in a personal or professional capacity. A bio or information page could be used to clarify the use of the account. If space does not suffice, links can direct readers to external content with detailed explanations.

Another alternative is to require that professional communications be sent using an official account, but allow them to be automatically re-posted (re-tweeted or shared) by a personal account. This way, the employee can present all communications in a unified format, but still clearly distinguish those made in a work capacity.

There is no one right way to approach the use of social media. Every nonprofit should give thought to an appropriate policy that will prevent readers from thinking that personal statements are coming from the organization.

Elizabeth Kingsley, an attorney at Harmon, Curran, Spielberg & Eisenberg LLP, focuses nonprofit organizations and political campaigns.

or information.” Ottinger said. “Political activity is supporting or opposing candidates for office. Both are treated differently.”

For some nonprofit leaders, social media provide the best way to differentiate themselves – and their personal political activities – from their full-time employers.

D.C. Central Kitchen President Robert Egger said Twitter and Facebook allow him to freely pursue his rights as a citizen and taxpayer.

“This is my own personal, private Twitter account,” he said. “So I can self-identify and say this is my own private identity.”

Egger helped found a political action organi-

zation named CForward, which describes itself as a nonpartisan 501(c)(4) that raises money and endorses local, state and national candidates friendly to the nonprofit community.

CForward, a separate entity from the 501(c)(3) D.C. Central Kitchen, has its own website, Twitter handle and Facebook page.

Egger, president and chairman of CForward, doesn’t mention his affiliation with D.C. Central Kitchen on its website and is reachable through a CForward email address.

The donations collected by CForward are not tax-deductible, but Egger said that’s a small price to pay to ensure nonprofits play a stronger role in the political arena nationwide.

“We can’t charity our way out of certain types of issues,” he said. “We need leadership. We must have these bigger discussions and stop thinking charity can do it all. I’m proud of the sector I work in, but I know its limits.”

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Robert Egger, president,
D.C. Central Kitchen



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