

Foundations and International Advocacy: What Foundations Need to Know

Public foundations may seek to influence legislation – in the United States and in other countries – through their own lobbying activities, and both public and private foundations may support public charities that work to influence legislation. This *Advocacy Advisory* explains how federal tax law treats efforts to influence legislation outside of the United States.

Under federal tax law, public charities and public foundations may seek to influence the legislative process. Efforts to do so are usually considered lobbying, and public charities and public foundations may engage in a limited amount of lobbying. Private foundations incur a prohibitive tax on any lobbying expenditures they make, yet can fund grantees that lobby by making general support grants or specific project grants that follow certain rules.¹

Does lobbying include attempts to influence legislation in other countries?

Yes, lobbying includes attempts to influence both foreign and domestic legislation.² Legislation incorporates actions taken by legislative bodies (such as bills, resolutions, proposed treaties, and judicial nominees) or the general public on ballot measures. Legislative bodies do not include executive, administrative, or judicial bodies.

An organization must determine whether the foreign body whose action it is trying to influence is truly legislative in nature. According to the IRS, “it may be improper to characterize various types of resolutions, edicts, etc., of a wide assortment of state bureaucracies as ‘legislation.’ This is particularly so in dealing with an authoritarian or theocratic regime where the legislative process as it is known in the United States is unknown in that country.”³ If the foreign body is not legislative, then efforts to influence it will not be considered lobbying.

Are ambassadors considered legislators?

Generally no, since ambassadors do not deal with legislation in their official capacities. Rather, ambassadors usually obey or enforce existing laws and do not introduce, amend, enact, defeat, or repeal acts, bills, or resolutions.⁴

Is the United Nations (UN) a legislative body?

Neither Congress nor the IRS has provided a definitive answer to this question. It most likely depends on the nature of the UN body or office with whom the organization is communicating. Since the UN General Assembly has the ability to make laws, it is likely to be considered a legislative body. The Security Council is probably considered a legislative body, as well. Thus, communications with members of the General Assembly or Security Council that are attempts to influence resolutions, for example, will constitute lobbying.

The UN Secretariat and the various agencies and commissions that are part of the UN’s Economic and Social Council will likely be considered administrative bodies, and thus communications with them will not be lobbying. The International Court of Justice is a judicial, not legislative, body and therefore communications with it will not be seen as lobbying.

We are a United States (US) foundation that funds a public charity that operates in a foreign country. What if their work is in conflict with that foreign country’s government?

In determining whether an activity is “charitable” to satisfy 501(c)(3) requirements, US charities operating abroad can rely on US public policy. For example, a US public charity that seeks to develop a free press in Burma is engaged in a charitable purpose, even if Burma opposes such activities. However, US organizations may be subject to taxes and other laws of the countries in which they operate.⁵ Organizations should know and understand how all foreign laws apply to them.

What if we fund a charity whose work is on an issue in which the foreign country is in a dispute with the US?

US public charities operating abroad must comply with all US laws (including rules, regulations, and treaties). Charitable organizations must adhere to restrictions on travel to and trade with certain countries and cannot seek to influence the conduct of a foreign government regarding any matter in which the country is in dispute with the US.⁶

Note: This handout provides general guidelines only. Organizations should consult with their attorney to receive guidance on special rules governing their conduct.

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¹ For more information on lobbying and the rules that apply to both private and public foundations, see *Investing in Change: A Funder’s Guide to Supporting Advocacy*, available at www.allianceforjustice.org.

² Rev. Rul. 73-440, 1973-2 C.B. 177.

³ James F. Bloom, Edward D. Luft, & John F. Reilly, *Foreign Activities of Domestic Charities and Foreign Charities*, FY 1992 EO CPE Text.

⁴ Gen. Couns. Mem. 37741 (Nov. 9, 1978).

⁵ Milton Cerny, *Taxation and Transition: Nonprofit Organizations in a Market Economy*, 19 Tax Notes Int’l 1211, 1227 (Sept. 27, 1999).

⁶ Gen. Couns. Mem. 34,823 (Mar. 29, 1972).