

Political Campaigning Off-Limits to 501(c)(3) Exempt Organizations

Southern Early Childhood Association



SOUTHERN EARLY CHILDHOOD ASSOCIATION

The Leadership Letter

Unless you've been vacationing on a remote island for the past few months, you're no doubt aware of the furious political campaigning going on as our nation approaches the November elections. But did you know that campaigning for or against any political candidate in the name of your nonprofit can get your organization into some very hot water with the IRS? Here is what the IRS website has to say about the matter:

Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.

Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner.

On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

The Internal Revenue Service provides resources to exempt organizations and the public to help them understand the prohibition. As part of its examination program, the IRS also monitors whether organizations are complying with the prohibition. Source: "The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations," Internal Revenue Service, April 2012, <<http://www.irs.gov/charities/charitable/article/0,,id=163395,00.html>>, accessed on August 28, 2012.



So, while it is admirable to encourage your members and other constituencies to get involved in the democratic process, it is important that you always do so in a non-partisan or unbiased manner.

SECA, for example, provides members with important public policy news and information through our e-newsletter *Public Policy Notes* and through emailed Public

continued on page 2

Inside this issue:

Political Campaigning Off-Limits to 501(c)(3)'s	1
Legal Responsibilities of Nonprofit Boards	2
Legal Issues Facing Owners of Child Care Centers	3
2013 Directors Seminar	3
Free Legal Resources for Educators & Caregivers	4

Leadership Commission Members

Joyce P. Jones, Chair, VA

""Cplk 'Fckgl. I C

Marti Nicholson, OK

Cindy Ramagos, LA

Katie Shaughnessy-Williams, KY

continued from page 1

Policy Alerts. In doing so, we report the facts in an un-biased manner and present both sides of any issue whenever possible. SECA strives to educate and inform its members about complicated policy issues with the hope that more people will have the information they need to become involved as confident, capable advocates and to voice their opinions—whatever those opinions may be.

If this IRS restriction on campaigning hasn't been on your radar lately, now may be a good time for your organization to take a look at its activities to ensure that it is not acting in any manner to violate the IRS prohibition against campaigning by 501(c)(3) nonprofit organizations.

The recent social media “boom” makes this even more important. One step you can take to protect your organization is to encourage board members and staff to place disclaimers on their social media profiles that state that their personal views are their own and do not reflect the views of the organization. Similarly, if your organization uses social media, including Twitter, Facebook, blogs, forums, etc., it is a good idea to prominently place a disclaimer on those pages and profiles stating that the organization does not endorse candidates or otherwise intervene in political campaigns. **Beware, however, that these disclaimers won't protect every organization in every situation.**

Social media usage can make this tricky situation even trickier, so it would be well worth your time to explore the issue further. Allen H. Mattison explores the topic in depth in his special report, “Friends, Tweets, and Links: IRS Treatment of Social Media Activities by Section 501(c)(3) Organizations,” published in the May 2011 issue of *The Exempt Organization Tax Review*, published by Tax Analysts. The article can be found online at http://tristerross.com/documents/mattison_000.pdf, and **we strongly encourage you to read it** to find out if your organization may be unknowingly violating the IRS prohibition against political campaign involvement by 501(c)(3) exempt organizations.

Legal Responsibilities of Nonprofit Boards

Nonprofit board members bear significant legal responsibilities that they must always keep in mind when conducting business in the name of the organization they serve. The Society of Corporate Secretaries & Governance Professionals (SCSGP) asserts, “It's a mistake to believe you can't be sued just because you are a volunteer director serving an organization with a great cause.” Board members have two basic legal obligations:

- Duty of Care
- Duty of Loyalty

What is Duty of Care?

Bruce R. Hopkins defines it as the duty of “care that an ordinarily prudent person would exercise in a like position and under similar circumstances.” This means that board members should:

- **Pay attention** to important matters presented to the board.
- **Attend board meetings.**
- **Ask questions** and **challenge assumptions.**
- **Follow up** on unresolved issues.
- **Consult outside experts** when necessary.
- **Read and understand**

documents and reports given to the board (SCSGP, 2008).

What is Duty of Loyalty?

The duty of loyalty requires that board members be completely faithful to the organization they serve when making decisions that will affect the organization. To meet this duty, a board member must:

- Always act in the **organization's best interests**, and not their own.
- Avoid **conflicts-of-interest** or disclose potential conflicts and obtain board approval for any transactions or situations that might involve a conflict of interest. The IRS recommends including a conflict of interest policy in the bylaws and provides a sample policy on page 25 of this document: <http://www.irs.gov/pub/irs-pdf/i1023.pdf>
- **Maintain confidentiality** and refrain from speaking about board matters to non-board members unless authorized to do so.

Although failure to live up to these duties can result in legal action

against a board member, some states have laws limiting the liability of volunteer board members, and some organizations have insurance to protect them from financial liability. That said, even when legal liability is removed, board members still have a moral obligation to serve their organizations with dedication and a commitment to success.

Sources:

Dan Sise, J.D., “Legal Issues for Nonprofit Board Members,” Nonprofit Management & Leadership Program, July 2010, <http://www.swcs.org/documents/filelibrary/pdfs/resources_for_chapter_leaders/Board_expectations_21C418368D9C7.pdf>, accessed on August 27, 2012.

“Governance for Nonprofits: From Little Leagues to Big Universities,” Society of Corporate Secretaries & Governance Professionals, August 2008, <http://www.governanceprofessionals.org/society/Governance_for_Nonprofits_-_Board_Legal_Obligation.asp?SnID=2>, accessed on August 27, 2012.

“What Are the Legal Responsibilities of Nonprofit Boards?” Q&A, BoardSource, <<http://www.boardsource.org/Knowledge.asp?ID=3.364>>, accessed on August 27, 2012.

Legal Issues Facing Owners of Child Care Centers

When you make the decision to open your own child care center you assume enormous legal responsibilities—as an employer, as a business owner, and as a person with whom families entrust the care of their precious children.

Holly Elissa Bruno, “recovering attorney,” author, and keynote speaker, outlines common legal issues that confront child care center owners, such as:

- Lawful practices & standards that must be practiced daily to prevent problems.
- Hiring practices that protect you from legal action.
- Dealing with problem employees and terminating employees.

- Complying with the Americans With Disabilities Act (ADA and ADAAA).
- Staff babysitting & release-time policies and procedures.

You can hear Holly discuss these topics in person at the Director’s Seminar at SECA 2013 (see below for more information).

To hear Holly talk about dealing with problem employees, listen to her **SECA Radio** interview by going to www.southernearlychildhood.org and clicking on the SECA Radio icon. You’ll find the interview in the Broadcast Archives.

You can also find more information on Holly’s website at www.hollyelissabruno.com.



Source: Holly Elissa Bruno, “Legal and Ethical Issues in Early Childhood and School Age Programs,” 2009, <<http://www.hollyelissabruno.com/publications.html#handouts>>, accessed on August 28, 2012.

Join us for the 2013 DIRECTORS SEMINAR at the 64th Annual Conference of the Southern Early Childhood Association

February 28, 2013 · Renaissance Mobile Riverview Plaza Hotel · Mobile, AL



Featuring Holly Elissa Bruno
Attorney and acclaimed keynote speaker Holly Elissa Bruno hosts an online radio program, *Heart to Heart Conversations on Leadership: Your Guide to Making a Difference*, on

BAMradionetwork.com. Holly Elissa served as Assistant Attorney General for the state of Maine and Assistant Dean at the University of Maine School of Law. An alumna of Harvard University's Institute for Educational Management, she teaches leadership courses for The McCormick Center for Early Childhood Leadership and Wheelock College.

Early childhood educators make decisions with legal ramifications daily, yet few are trained as attorneys and not many can afford a lawyer on retainer. Learn how to prevent and address legal issues in the workplace. Holly will address legal hotspots through an engaging, true-to-life case study approach.

Pre-registration is required for the Seminar, which includes:

- ✓ Full day of training on Thursday (with Holly in the morning and a panel in the afternoon).
- ✓ Networking Lunch.
- ✓ General Conference registration for Friday and Saturday.

For more information, go to www.southernearlychildhood.org/seca_conference.php

Do You Know About the SECA Board Resources Page?

Find board rosters, meeting minutes, conference ads, and so much more on the SECA Board Resources Page. Go to http://www.southernearlychildhood.org/seca_board_resources.php to log in. If you serve on a SECA affiliate board and do not have a password, contact your SECA Board Representative or the SECA office at 1-800-305-7322. To find your SECA Board Representative, go to <http://www.southernearlychildhood.org/leadership.php>.



Free Legal Resources for Educators & Caregivers

Educators and caregivers face the challenging task of knowing and understanding the laws that bind them as they confront difficult situations in their work. Each state has different laws that early childhood professionals must follow, and those laws can and do vary among the different types of schools and programs. Here are some free online resources to help ECE professionals learn more about the complex legal issues they face:

- www.NSBA.org/SchoolLaw—the National School Boards

Association webpage with school law information geared toward public school teachers and administrators.

- *The School Law Blog*, maintained by *Education Week's* Mark Walsh. http://blogs.edweek.org/edweek/school_law/
- *The Special Education Law Blog*, maintained by West Virginia attorney Jim Gerl. <http://Specialeducationlawblog.blogspot.com>

- *The Edjurist*, maintained by Justin Bathon, assistant professor at the University of Kentucky, Department of Educational Leadership.

<http://www.edjurist.com>

Source: Kevin Brady and Justin M. Bathon, "Free Education Law Resources in the Internet Age," *Leadership Insider*, National School Boards Association, May 2009, pp. 4-5, <<http://www.nsba.org/SchoolLaw/Issues/Legal/Insider-May-09.pdf>>, accessed on August 29, 2012.



SOUTHERN EARLY CHILDHOOD ASSOCIATION

PO Box 55930
Little Rock, AR 72215-5930

1-800-305-SECA (7322)
Fax: 501-227-5297

Email: info@southernearlychildhood.org

WWW.SOUTHERNEARLYCHILDHOOD.ORG

The Southern Early Childhood Association (SECA) is committed to improving the quality of care and education for young children and their families through advocacy and professional development.

The Southern Early Childhood Association (SECA) is a regional organization committed to promoting quality care and education for young children and their families. SECA is committed to providing leadership and support to individuals and groups by:

- *Enhancing the quality of young children's lives through early childhood care and education.*
- *Supporting families in their roles of caring for their children.*
- *Fostering the professional growth and status of individuals working with young children and their families.*