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November 2008

Nonprofit Board Members Seeking Political Office: What Should You Know?

The presidential election may have just ended, but potential candidates for local elected positions are already focusing on the 2009 elections. As community leaders, members of the boards of directors of nonprofit organizations may be considering running for public office. Your organization should consider how it would address the relationship between board members running for public office and the organization.

You should require that board members inform the organization if they intend to run for public office. When notice is given, the organization should apply a consistent approach of either permitting the board member to remain an active member or asking the board member to resign with the expectation that he or she would return to complete the unexpired term after the election if not elected (*see discussion below*). There are no statutory requirements informing the decision your organization makes, so the organization should consider what would best serve its needs, and should take into account any political or logistical factors. Your policy should make clear that due to the IRS prohibition on partisan political activity by tax-exempt organizations, the organization cannot endorse a board member (or any other candidate), and in general should not permit the board member to use the resources of the organization for campaign purposes.

If a board member is elected to public office, it is likely that he or she will no longer be permitted to serve on the organization's board. For example, in some circumstances, New York City's Conflict of Interest Rules prohibit elected officials from serving on a nonprofit's board. Additionally, any benefit your nonprofit might have received as a result of having an elected official on the board is likely to be very minimal because conflict of interests rules of the applicable government agency will in most circumstances prevent the elected official from providing special attention or funding to the organization. The NYC Conflict of Interest Board welcomes questions on this topic, and you should encourage board members who are considering running for office to contact them at (212) 442-1400.

Should you determine that it is permissible for an elected official to serve as a board member, you should be aware that you may be required to disclose the relationship to the IRS in your annual 990 filings.

If your organization does not currently have a policy addressing the relationship between the organization and candidates for public office, you should consider the choices described above, and should formalize your policies in writing. You may also need to make changes to your bylaws in order to conform your bylaws to the written policy, particularly if you determine that board members should take a leave of absence or should resign when running for or elected to public office. Lawyers Alliance is happy to take any questions you might have on this issue and can assist you with drafting such a written policy and revising bylaws. For assistance with this matter, please contact Elizabeth Perez at 212-219-1800 ext. 232 or eperez@lawyersalliance.org.