

Practical Tip: Corporate Communications Guide

May 2004

Watch Your Communications!!

The election-year frenzy is upon us, with Congressional primaries popping up all over the country and, with them, federal limits on corporate communications. Below are a few clear guidelines to assist those corporations and trade associations that want to continue their lobbying and other forms of communications featuring federal candidates and officeholders, but want to avoid the legal pitfalls of violating election laws. The dates for Congressional primary elections can be found at www.fec.gov/pages/charts_ec_dates_cong.htm.

No Express Advocacy

At no time may a corporation or trade association expressly advocate the election or defeat of a federal candidate beyond its "restricted class." This means that corporate paid ads—whether on television, radio or the Internet, or in newspapers or magazines—may never expressly ask persons to vote for or against a federal candidate. Phrases such as "Vote for the President," "Re-elect your Congressman," "Smith for Congress" and "Lamar!" are also prohibited, as are public corporate ads that solicit contributions for federal candidates.

No Reproduction of Campaign Materials

At no time may a corporation or trade association republish, distribute or disseminate the campaign materials of a federal candidate. Small quotes may be used for certain specific reasons, but reproduction, in whole or in part, is prohibited.

120 Days before an Election

During the 120 days before an election—whether a primary or a general election—a corporation and trade association may not run a

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non-Internet advertisement that clearly identifies a candidate for federal office and is coordinated with that candidate, his or her opponent, a political party committee or the candidate, opponent or agent of the party. This restriction applies to advertisements in the newspaper, on radio and television and in all other types of non-Internet advertising, including outdoor signs and direct mail of more than 500 pieces.

For a candidate to be "clearly identified" in an ad means that he or she is mentioned in the ad, his or her picture, nickname or image is used, or he or she is referred to in a clear manner, such as "the Republican candidate for the Senate from Missouri."**Coordination** means that the ad was:

- Made at **the request or suggestion** of a candidate, authorized committee, political party committee or agent of any of the foregoing.
- Made **with the material involvement** of a candidate, authorized committee, political party committee or agent of any of the foregoing.
- Made **after substantial discussions** about the communication with a candidate, authorized committee, political party committee or agent of any of the foregoing.
- Made using a **common** political, media or production vendor (under certain conditions).
- Made using a **former employee or independent contractor** of a candidate, authorized committee, political party committee or agent of any of the foregoing.

60 Days before a General Election

During the 60 days before the general election on November 2, corporations, trade associations and entities using corporate money may not air ads on broadcast, cable or satellite television or radio that clearly identify a federal candidate and can be received by 50,000 or more persons in the relevant Congressional district or state. That's it. No coordination or express advocacy is required to trigger this prohibition. Simply mentioning or featuring a federal candidate in this time period violates the rules on "electioneering communications," even if the ad refers to legislation. This prohibition, which begins September 3, 2004, runs nationwide for presidential candidates.

30 Days before a Primary Election or Convention

During the 30 days before a primary election, corporations, trade associations and entities using corporate money may not air ads on broadcast, cable or satellite television or radio that clearly identify a federal candidate and can be received by 50,000 or more persons in the relevant Congressional district or state. For the national political party nominating conventions at the end of the summer, the "electioneering communication" blackout period extends nationwide for ads identifying candidates for president from the respective party.

Ads Permissible at any Time

As long as the communications do not expressly advocate the election or defeat of a federal candidate or solicit funds for a candidate's campaign, a corporation or trade association may mention a federal candidate in a public Internet or email communication. These types of communications are not covered by the 120, 60 and 30 day prohibitions.

Also, ads that do not clearly identify a federal candidate or political party may be aired by a corporation or trade association at any time. Further, no restrictions apply to **non-coordinated** ads by corporations or trade associations that are not aired on broadcast, cable or satellite radio or television. Such **non-coordinated** ads may identify a federal candidate but may not expressly advocate his or her election or defeat.

Finally, as mentioned in the March 2004 *Election Law News*, a corporation or trade association may at any time communicate with its "restricted class" on any topic. These communications to salaried executive, administrative and professional personnel and stockholders and their families may expressly advocate the election or defeat of a federal candidate and may also solicit contributions for federal candidates. As noted in the article, "Three Cheers for Corporate Communications," reporting by the corporation or trade association may be required for such communications.