

Are You Tampa or Charlotte Bound? The National Party Conventions and FEC/Gift Rules

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With the major party presidential nominating conventions fewer than four months away, if your corporation or trade association is interested in providing assistance in connection with the conventions or is interested in sponsoring events at the conventions, the time to plan is now. And to plan properly, you need to be aware both of any limitations under federal campaign finance law on corporate assistance in conducting the conventions as well as any restrictions under applicable ethics rules on congressional attendance at convention events. Here are some of the highlights of what your organization needs to know when planning participation in the 2012 conventions.

Convention Basics

The 2012 Republican National Convention will be held in Tampa, Florida, from August 27 through August 30; the 2012 Democratic National Convention will be held in Charlotte, North Carolina, from September 3 through September 6. The national party committees conduct their conventions through "Convention Committees": The Republicans call their convention committee "The Committee on Arrangements for the 2012 Republican National Convention," and the Democrats call their Convention Committee "The 2012 Democratic National Convention Committee, Inc." Each convention host community also has established a "Host Committee" to help plan and support the convention: The City of Tampa has established the 2012 Tampa Host Committee; the Charlotte Chamber of Commerce has established the Charlotte in 2012 Host Committee.

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Assistance by Corporations and Trade Associations in Conducting the 2012 Conventions

As a general rule, corporations (including "trade associations" for purposes of this summary) may not provide monetary assistance to a Convention Committee or make direct or in-kind donations to convention delegates for purposes of attending the convention. However, under federal campaign finance law, corporations may provide certain assistance to the Convention Committees and the Host Committee.

Regarding Convention Committees, under applicable Federal Election Commission (FEC) regulations, corporate assistance to a Convention Committee may include providing:

- Goods and services at discounts or without charge, if doing so is "in the ordinary course of business" of the corporation;
- Goods and services in exchange for promotional consideration, if doing so is "in the ordinary course of business" of the corporation and the value of the goods and services does not exceed the commercial benefit reasonably expected to be derived from the promotional opportunity; and
- Items of *de minimis* value to those attending the convention.

Note, however, that despite what FEC regulations allow the 2012 Democratic National Convention Committee has said it will not accept any corporate in-kind contributions. Further, the Charlotte in 2012 Host Committee has said it will not accept corporate monetary contributions and has imposed certain other restrictions, including: no in-kind contributions from corporations that received Troubled Asset Relief Program or other bailout funds, unless the funds have been fully repaid to the government; no contributions from individuals who are federally registered lobbyists (these restrictions do not extend to corporations that employ or retain lobbyists). For specific information on these – and any other – voluntary restrictions, counsel for the 2012 Democratic National Convention Committee and Host Committee should be contacted directly.

Regarding Host Committees, notwithstanding the additional restrictions voluntarily imposed by the 2012 Democratic Host Committee, under FEC regulations a corporation may also provide the kind of in-kind contributions outlined above (in connection with assistance to the Convention Committees) to a convention Host Committee. In addition, under applicable regulations, a corporation may make certain other in-kind and monetary contributions to a Host Committee to defray expenses incurred for certain purposes, including, among others:

- Welcoming convention attendees to the city;
- Facilitating commerce (*e.g.*, providing convention attendees with shopping and entertainment guides); and
- Defraying administrative expenses of the Host Committee (*e.g.*, salaries, rent, travel and liability insurance).

Under federal campaign finance law, corporations may host social events in the convention cities during the conventions. The FEC has noted that such non-campaign events do not fall within its jurisdiction merely because of proximity in time and location to the conventions. But always remember: A corporation or entity

using corporate funds may not make a contribution in connection with a federal election or host a fundraising event on behalf of a federal political committee.

Convention Events and Congressional Ethics Rules

Even as applied to the specific area of attendance at convention events by Members and staff of the House and Senate, the congressional gift rules can seem arcane. To complicate the application of these gift rules in the convention context even further, there are some significant differences in the ways the House Ethics Committee and the Senate Ethics Committee interpret similarly worded gift rule exceptions when applied to Member and staff attendance at convention events. Therefore, these rules cannot be discussed fully here, but some important general points can be made.

- The general prohibition on gifts to Members and staff of the House and Senate from a federal lobbyist or from a private entity that retains or employs federal lobbyists applies to accepting free attendance at a convention event, unless a specific exception to the gift rules permits attendance.
- The gift rule exceptions permitting attendance by Members and staff at receptions (where, e.g., only appetizers and drinks may be served) or at "widely-attended events" (where a sit-down meal may be provided) apply at the conventions.
 - However, based on their guidance issued in connection with the 2012 conventions, the House Ethics Committee and the Senate Ethics Committee differ substantially as to what will qualify as a "widely-attended event" at the conventions. For example, the Senate permits much more latitude under this exception at the conventions for attendance at purely entertainment events. A corporation must take these differences into account in planning any event with "headliner" entertainment.
- The House and Senate gift rules both permit Members and staff who are convention delegates to attend convention events open to all convention delegates or to all delegates from their state or region.
 - The House Ethics Committee also permits Members and staff attending one of the national party conventions to accept free attendance at events open to all convention attendees or to members of the public in the convention city from a particular state or region and the Member or staffer is from that state or region.

Under both the House gift rule and the Senate gift rule, a Member may not participate in a convention event "honoring" that Member during the dates of the convention if the event is "directly paid for" by a lobbyist or by a private entity that retains or employs lobbyists. But, in interpreting and applying these similar rules, the House and Senate ethics committees differ on some key points. For example, under the Senate interpretation, an event at which a Member is a "featured speaker" is not viewed as "honoring" that Member; under the House interpretation, if a Member is a featured speaker at an event, the event "honors" that Member for purposes of this rule.

The national party conventions provide many interesting opportunities for corporate and trade association participation and sponsorship of events. The Wiley Rein Election Law & Government Ethics Practice Group can guide your organization through the rules and regulations on convention participation and sponsorship of

events-and around the potential pitfalls-so that you can plan how best to get your message out and make your presence felt at these unique national venues.