

Top
10
Ways

Private Foundations Can
Influence Public Policy

Kelly Shipp Simone

VISION

The Council's vision for the field is of

A vibrant, growing and responsible philanthropic sector that advances the common good.

We see ourselves as part of a broad philanthropic community that will contribute to this vision. We aim to be an important leader in reaching the vision.

MISSION

The Council on Foundations provides the opportunity, leadership and tools needed by philanthropic organizations to expand, enhance and sustain their ability to advance the common good.

To carry out this mission, we will be a membership organization with effective and diverse leadership that helps the field be larger, more effective, more responsible and more cooperative.

By “*common good*,” we mean the sum total of conditions that enable community members to thrive. These achievements have a shared nature that goes beyond individual benefits.

By “*philanthropic organizations*,” we mean any vehicle that brings people together to enhance the effectiveness, impact and leverage of their philanthropy. This includes private and community foundations, corporate foundations and giving programs, operating foundations and public foundations, as well as emerging giving and grantmaking mechanisms involving collective participation.

STATEMENT OF INCLUSIVENESS

The Council on Foundations was formed to promote responsible and effective philanthropy. The mission requires a commitment to inclusiveness as a fundamental operating principle and calls for an active and ongoing process that affirms human diversity in its many forms, encompassing but not limited to ethnicity, race, gender, sexual orientation, economic circumstance, disability and philosophy. We seek diversity in order to ensure that a range of perspectives, opinions and experiences are recognized and acted upon in achieving the Council's mission. The Council also asks members to make a similar commitment to inclusiveness in order to better enhance their abilities to contribute to the common good of our changing society.

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Library of Congress Cataloging-in-Publication Data

Shipp Simone, Kelly.

Top 10 ways private foundations can influence public policy / by Kelly Shipp Simone.
p. cm.

ISBN 1-932677-45-3

1. Charitable uses, trusts, and foundations—Political activity. 2. Nonprofit organizations—Political activity. I. Title. II. Title: Top ten ways private foundations can influence public policy.

HD62.6. S52 2007
320.6—dc22

2006038531



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WHY INFLUENCING POLICY IS ESSENTIAL TO YOUR WORK

During my career in elective office, one of the great questions facing the small business community was, “Can I afford to be engaged in public policy?” But soon that question became the exact reverse, “Can I afford *not* to be involved in public policy?”

We in philanthropy face the same dilemma. We’d like to believe that our focus should be on using philanthropy to do good. But as we survey the policy landscape at the state and federal levels, we recognize that engagement in public policy is an essential element of our commitment to philanthropy.

Those of us who believe in the power of philanthropy must become the voices that encourage an environment promoting its growth. Those of us who believe in the power of philanthropy must make sure we earn and maintain the public trust. Those of us who believe in the power of philanthropy recognize that in the 21st century, there will be a greater collaboration between the innovation of philanthropy and the work of our public sector. We are in every way philanthropic citizens. We define this citizenship through our engagement, our vision, our conduct, and our support for this noble cause—philanthropy.

This booklet focuses on the rules for influencing public policy. But first, let me explain how the climate in which you work and your ability to make a difference in the world are intricately tied to what happens in the public policy arena.

LEVERAGING RESOURCES

Foundations have limited resources to address some of society’s most pressing problems. Whether your mission is eliminating poverty, ensuring access to healthcare, promoting quality education, protecting civil rights, conserving environmental resources, or addressing any other issue, you cannot solve the problems alone. One way to leverage your traditional grantmaking is to engage in permissible public policy work for greater impact. Consider, for example, the effect you can have by funding grantees who press for new laws addressing societal needs, by supporting research to inform policy, or by funding litigation that will ensure enforcement of laws already in place. As you read through this booklet, consider how some of the activities discussed could enhance your foundation’s ability to fulfill its mission.

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SHAPING THE PHILANTHROPIC SECTOR

If we do not define what philanthropy stands for, government will define it for us. As Congress continues to examine the operation of foundations and the nonprofit sector, it is critical that lawmakers hear from their foundation constituents. Having served 16 years in the U.S. House of Representatives before coming to the Council on Foundations, I can state with certainty that silence is not the answer. Introducing your foundation's work to your local, state, and national policymakers shows them how philanthropy is at work in their communities. Ultimately, policymakers have the power to change the ways foundations operate. Such changes can either enhance or undermine a foundation's ability to fulfill its mission.

I recognize that some of you may be concerned about interacting with policymakers in your capacity as foundation representatives. Tightly entwined in the knowledge of what it means to be a private foundation is the message that foundations cannot "lobby." Although this statement is technically true, it is misleading. Lobbying is a small subset of a whole range of tools a private foundation can *legally* use to influence policy. Education is not lobbying. You have both the right—and I'd suggest the responsibility—to educate both our policymakers and the general public about the issues of importance to us.

Unfortunately, at the Council on Foundations we hear too many stories of lawyers or others advising private foundations that they cannot get involved in any advocacy activity. This booklet is designed as a starting point to help private foundations sort out what they can and cannot do legally in the public policy arena. We hope you will use it to exercise your role as philanthropic citizens to address issues of importance to your foundation and your grantees. Remember this: You are engaged in enhancing the common good. This is the mission of philanthropy. To do that, we must become philanthropic citizens—in every way.

Steve Gunderson
President and CEO
Council on Foundations

WHO SHOULD READ THIS BOOKLET?

This booklet is written for any private foundation that wants to

- ❖ Inform policymakers about the foundation's work
- ❖ Share the work of the philanthropic sector as a whole
- ❖ Educate the public about an issue such as poverty, the environment, or civil rights
- ❖ Support grantees that include advocacy among their strategies to address an issue
- ❖ Provide a voice to the historically underrepresented
- ❖ Promote civic participation

Those activities listed above and described in more detail in the following pages are all *legally permissible* activities for private foundations.

This booklet focuses on the federal tax laws regulating activity by private foundations. In some cases, additional reporting or registration requirements may be imposed by other federal, state, or local agencies. Your foundation's legal counsel will be the best resource in helping to identify and understand the applicable reporting and/or registration requirements.

Not all private foundations will use all ten of the ways to make a difference discussed in this booklet; some may choose not to use any. The goal of this booklet is to simply introduce private foundations to the range of possibilities and point foundations to resources for further information. *This booklet is not a replacement for knowledgeable legal advice* but can provide a starting place for conversation with your foundation's legal advisors.

ADVOCACY BY PUBLIC CHARITIES AND INDIVIDUALS

Because this booklet is designed to provide the legal framework for private foundations who want to engage in policy activity, it does not discuss the rules for public charities. Public charities have more flexibility than private foundations in the arena of advocacy activity. For example, public charities may engage in lobbying activity whereas private foundations cannot. Because of this, private foundations should note that public charity grantees are not bound by the same limits as the foundation itself.

Before getting into the heart of this booklet it is important to note that the ten ways to influence public policy discussed are activities for foundation staff and board members who are acting in their capacity as foundation representatives. *On their own time, in their personal capacities, staff and board members of foundations have greater latitude in expressing their personal opinions about legislative matters.* This book is designed to elucidate what these individuals may do within their roles with the foundation.

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WHAT IS PERMISSIBLE ADVOCACY ACTIVITY FOR PRIVATE FOUNDATIONS?

Although this booklet focuses on the permissible ways a private foundation may influence public policy, it is helpful to be specific about what a private foundation may not do under the federal Tax Code. **Private foundations may not lobby.** However, it cannot be said too many times that **lobbying is a subset of advocacy activity.** You may be surprised that the tax law definition of lobbying for private foundations is much narrower than the common understanding of the word “lobbying.” It is the tax law definition that applies to private foundations. Lobbying, as defined by the Tax Code, is discussed in detail at the end of this booklet. But, first, we will discuss ten activities that are not lobbying and therefore are permissible for private foundations.



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10 WAYS TO MAKE A DIFFERENCE

1. Educate legislators about the foundation
2. Educate legislators and the public about issues
3. Communicate with legislators about issues affecting the foundation's rights and duties
4. Influence regulatory bodies
5. Participate in litigation
6. Communicate with government officials about jointly funded projects
7. Respond to a written request for technical assistance from a legislative body
8. Produce nonpartisan analysis or research
9. Support advocacy through grantmaking
10. Encourage civic participation

1 EDUCATE LEGISLATORS ABOUT THE FOUNDATION ABOUT THE FOUNDATION



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Educating legislators and the public about the work of your private foundation is permissible and encouraged. Sharing the foundation's stories provides the community and lawmakers with a perspective on the value your foundation adds to the community in general and to those issue areas in which your foundation engages and funds.

Those in the foundation community might assume that legislators are familiar with the operations of foundations, but this is not always true. Reaching out and sharing information with legislators and their staff ensures that they have a sense of the role your foundation plays in shaping the landscape of your community. This information can be helpful to legislators as they seek to understand and legislate to improve the communities they serve.

CAN A PRIVATE FOUNDATION REPRESENTATIVE:

Send the foundation's annual report to its state and federal legislators each year?

Yes.

Send a legislator information about a new grant and invite him or her to participate in the public announcement of the grant?

Yes.

Meet with local legislators to share information about the foundation's work?

Yes.

Include legislative staff on press releases the foundation sends out about its grants and activities?

Yes.

EDUCATE LEGISLATORS AND THE PUBLIC ABOUT ISSUES

2

The Treasury regulations explicitly permit private foundation representatives to engage in discussions of broad social, economic, and other problems as long as the foundation does not address a specific legislative proposal or encourage individuals to act with respect to the legislation. For example, board members of a private foundation may speak about the broad issues that affect the work of the foundation such as poverty, education, environment, or healthcare with legislators and the public. However, the board members generally may not address specific legislative proposals in these conversations in their role as foundation board members. This is the difference, for example, between talking about the causes of poverty and the effect of poverty on the community (permissible) and talking to a legislator about a proposed legislative solution to ameliorate the effects of poverty (not permissible).

CAN A PRIVATE FOUNDATION:

Hold a public forum to discuss environmental issues facing the community and how the foundation is addressing these issues in collaboration with nonprofits in the community?

Yes.

Hold a public forum to discuss environmental issues if legislation is currently pending to reduce the levels of pollution?

Yes, as long as the foundation does not encourage action on the legislation.

Send a representative to discuss with a state legislator the complexities of mass transit issues in the community served by the foundation?

Yes, as long as the foundation is not addressing specific legislative proposals.

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COMMUNICATE WITH LEGISLATORS ABOUT ISSUES AFFECTING THE FOUNDATION'S RIGHTS AND DUTIES

Congress ensured that private foundations do not have to remain neutral on legislation that affects a private foundation's existence, tax-exempt status, powers and duties, or the deductibility of contributions to private foundations. These communications are most frequently referred to as "self-defense communications." Self-defense communications are a specific exception to the general prohibition against direct lobbying. This exception allows private foundations to communicate with legislators and legislative staff on these issues *and* to express an opinion on such legislation. Although this rule is called "self-defense," it can be used *proactively* as well.

CAN A PRIVATE FOUNDATION REPRESENTATIVE:

Send an e-mail to a U.S. representative expressing opposition to legislation that would exclude administrative expenses from the calculation of qualifying distributions?

Yes. Changes to the calculation of qualifying distributions affect private foundation duties so discussion of the subject with a legislator would be a self-defense communication.

Express to a state senator that enacting a state tax deduction for charitable contributions would encourage charitable giving to your foundation and other charities?

Yes. This is an example of a proactive use of a self-defense communication.

Run a newspaper advertisement telling the public to contact their state senators about enacting a state tax deduction for charitable contributions?

No. The rule permitting self-defense communications does not permit private foundations to encourage the public to act on legislation that would affect private foundations.

Meet with state legislative staff and explain how budget cuts proposed in pending legislation will affect charities serving your community and the foundation's grantmaking?

No. Because the legislation does not affect the private foundation's existence, tax-exempt status, powers, duties, or the deductibility of contributions to the foundation, such a communication will not be considered self-defense.

INFLUENCE REGULATORY BODIES

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Many of the issues that private foundations care about are affected by policies of regulatory agencies such as a department of social services or department of education. Communication with regulatory agencies is permissible by private foundation representatives, except for the very narrow circumstances of communicating with a government employee who participates in the formulation of legislation with the principal intention of influencing legislation. (These narrow circumstances are discussed in more detail on page 16.)

Private foundations may comment on regulations, discuss programs, and otherwise engage with these agencies without concern.

CAN A PRIVATE FOUNDATION REPRESENTATIVE:

Respond to a call for comments on changes to the administration of a state unemployment program?

Yes, as long as the call for comments is issued by an administrative body.

Discuss with the secretary of education the allocation of the education budget?

Yes. Although a private foundation may not advocate for budget measures while such measures are pending legislation, a private foundation may influence an administrative agency's use of its allocated resources.

Testify at a hearing on proposed Treasury regulations about the operation of private foundations?

Yes. This is not lobbying because it is testimony in front of a regulatory body, not a legislative body.

Talk with the top official at the Environmental Protection Agency about drafting legislation to help protect a local body of water?

No. This is an example of the narrow situation in which a communication is with someone who participates in the formulation of legislation and the intention of the private foundation is to influence legislation.



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PARTICIPATE IN LITIGATION

Litigation is another powerful tool that private foundations may use to influence issues they care about. Litigation can be used for many purposes, including ensuring enforcement of laws and challenging the validity of laws.

CAN A PRIVATE FOUNDATION:

File a lawsuit challenging state law changes that prohibit the use of private money—including that of private foundations and the grantees they support—to provide services to undocumented individuals in the state?

Yes.

Submit an amicus (friend of the court) brief providing research and arguments in a case regarding eligibility requirements for state-provided healthcare for children?

Yes.



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6 COMMUNICATE WITH GOVERNMENT OFFICIALS ABOUT JOINTLY FUNDED PROJECTS

Sometimes private foundations would like their support to be leveraged with government funds. A private foundation is allowed to condition a grant on the grantee receiving matching support from the government.

Further, the private foundation can communicate with government officials if the conversations are about the actual or potential jointly funded project and are undertaken for the purpose of exchanging information on the subject matter of the programs. The discussions cannot be for the purpose of persuading the government official or employee to take positions on other specific legislative issues.

CAN A PRIVATE FOUNDATION REPRESENTATIVE:

Condition the foundation's \$250,000 grant for the renovation of a public school on the requirement that the city government allocate at least an equal amount for the renovation?

Yes.

Speak to a legislator about the plans for a historic preservation project that would be funded both by the private foundation and the legislature?

Yes.

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RESPOND TO A WRITTEN REQUEST FOR TECHNICAL ASSISTANCE FROM A LEGISLATIVE BODY

Recognizing that private foundations develop expertise that can be helpful to others, the Treasury regulations explicitly permit representatives from private foundations to provide advice or assistance to legislative bodies, committees, or subcommittees in response to a *written* request from the relevant body or committee. This requested assistance could occur in a variety of ways, including providing oral testimony or submitting written resources or comments.

In accordance with the Treasury regulations, a private foundation representative may express opinions requested by the legislative body or opinions directly related to the advice or assistance being provided.

CAN A PRIVATE FOUNDATION:

Testify about the foundation's research on the percentage of the population that does not have health coverage and offer suggestions—including legislative solutions—for addressing the problem in response to a written invitation to speak from the legislative committee chair?

Yes.

Respond to an individual legislator's letter about the foundation's research on the percentage of the population that does not have health coverage by providing legislative solutions for addressing the problem?

No. In this scenario the request is from an individual legislator and not from a legislative body, committee, or subcommittee.

Respond to a written request for information from the local county council regarding poverty in the community with research and other written information on the subject?

Yes.

PRODUCE NONPARTISAN ANALYSIS OR RESEARCH

Private foundations have a history of producing research that informs public policy. Research studies or analyses generally fall under the category of nonpartisan analysis or research because they provide a full and fair discussion of the facts to

allow the reader or listener to form his or her own opinion about the issue. Two dimensions should be considered when putting together such a report so it stays within the parameters of the Treasury regulations: content and distribution.



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Content: As long as there is a full and fair discussion of the facts, the report or presentation may advocate a position on an issue. The piece may discuss legislative issues but may not directly call the recipient of the communication to action. A direct call to action is either (1) telling the recipient to contact a legislator or legislative employee, (2) providing contact information for a legislator or legislative employee, or (3) providing a mechanism such as a petition or tear-off postcard for the recipient to communicate with a legislator or legislative employee. (More discussion about “calls to action” can be found on page 16.)

Although such an analysis is often contained in one document or presentation, it is possible to present such material in a series of individual pieces that, when taken as a whole, provide a full and fair explanation of the issue.

Distribution: A private foundation may distribute such content in any appropriate manner. This could include a publication or presentation distributed online, in print, at conferences, or through the media. The foundation is welcome to distribute the information with or without charge. However, despite the flexibility of distribution, the private foundation may not direct the information only to people who are on one side of the issue.

CAN A PRIVATE FOUNDATION:

Produce and distribute a study examining multiple ways to spur economic development in an economically depressed region and suggest a legislative solution among other potential solutions?

Yes, as long as enough information is provided to allow a reader to form his or her own opinion and it does not include a direct call to action.

Host a public panel discussion on the issue of state provided full-day kindergarten that includes some participants who support the legislative proposal on the subject and some who oppose the proposal?

Yes, as long as the foundation does not make a direct call to action on the proposal.

Produce and distribute to the public a report on the advantages and disadvantages of government-provided healthcare for all children under 18 that discusses legislation that would provide such healthcare but does not include any call to action?

Yes.

SUPPORT ADVOCACY THROUGH GRANTMAKING

Private foundations are allowed to support the advocacy activity of most public charity grantees. (See the box below for the exception to these general rules.) The Treasury regulations provide roadmaps for providing **general support grants** and **specific project grants** to charity grantees that lobby.

While private foundations are not required to prohibit the use of grant funds for lobbying when making grants to most public charities, the Pension Protection Act of 2006 created new requirements for grants to some supporting organizations. A supporting organization is classified as a public charity because of the nature of the organization's relationship with another publicly supported charity. The Pension Protection Act requires private foundations to follow a process called "expenditure responsibility" when making grants to affected supporting organizations. The expenditure responsibility process, created before the passage of the Pension Protection Act for the purpose of regulating grants by private foundations to noncharities, requires that a private foundation prohibit the use of grant funds for lobbying as part of a written grant agreement. Although future regulations may clarify how the expenditure responsibility rules will apply to private foundation grants to affected supporting organizations, following the expenditure responsibility regulations for grants to noncharities is prudent unless otherwise advised by your foundation's counsel. For more information see cof.org or call the Council on Foundations at 202/466-6512.

General support grants: General support grants provide unrestricted support for the general use of the grantee. A private foundation may make a general support grant to a public charity grantee even if the grantee engages in some lobbying activity. The key is that the grant may not be subject to a written or oral agreement that it will be used for lobbying. The term "earmarking" is frequently used to describe such a written or oral agreement that the grant be used in a particular manner.

Example: A private foundation provides a general support grant for a public charity grantee that engages in both lobbying activities and educational activities around the issue of animal rights. As long as the private foundation did not earmark the funds for lobbying, the private foundation will not have violated the lobbying prohibition even if the grantee uses some of the grant funds for its legislative activities.

Specific project grants: Specific project grants are grants awarded to a public charity grantee that are restricted to supporting a particular project of the grantee. For example, if a domestic violence shelter provides shelter, court advocacy services to survivors, a hotline, and outreach services, funding for just one of those projects would be a specific project grant.

The Treasury regulations provide guidelines on how a private foundation may permissibly fund a specific project if the project includes some lobbying activity. Specifically, private foundations may fund up to the non-lobbying amount of the project budget as long as the grant is not earmarked for the lobbying activity. Said another way, grants from a foundation for the same project during the same year cannot exceed the amount budgeted by the grantee for non-lobbying activities.

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To determine the non-lobbying amount, private foundations may reasonably rely on a budget or other information submitted by the grantee. Again, as with general support grants, the private foundation may not earmark the grant for lobbying activities.

Example: A court advocacy program of a domestic violence shelter includes work to change state law to make it easier for a survivor to obtain a restraining order against an abuser. For this reason, some of the activities of the court advocacy program are considered lobbying. Along with the grant application, the domestic violence shelter submits a project budget to the private foundation indicating that, of the \$100,000 court advocacy program, \$10,000 will be spent on lobbying. A private foundation wishing to fund the court advocacy program may make a grant up to \$90,000 for the court advocacy program.

Whether providing a general support grant or a specific project grant to a public charity grantee, a private foundation is not required to prohibit the use of grant funds for lobbying in a written grant agreement. The rules for funding public charities recognize a distinction between earmarking funds for lobbying (i.e., an impermissible agreement that the funds will be used for lobbying) and simply leaving it to the grantee's discretion as to the specific use of the grant funds.

Unlike the great flexibility provided for grants to most public charities, grants to noncharities require the foundation to prohibit the use of grant funds for lobbying in a written grant agreement as part of the expenditure responsibility process required for grants to noncharities.



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CAN A PRIVATE FOUNDATION:

Provide a general support grant to a shelter for people who are homeless even if the shelter occasionally engages in some lobbying before the city council?

Yes.

Provide a \$25,000 project grant to a civil rights group for its project to advance the rights of lesbian, gay, bisexual, and transgendered individuals even if, based upon the budget submitted to the private foundation, \$30,000 of the \$100,000 project is for lobbying activity?

Yes.

Provide a grant to a chamber of commerce (a noncharity) for charitable economic development activity if the grant agreement from the private foundation prohibits the use of funds for lobbying and the other expenditure responsibility rules are followed?

Yes.

ENCOURAGE CIVIC PARTICIPATION

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Civic participation activity encourages individuals to get involved in the democratic process. This may include get-out-the-vote activity, candidate debates, or other activities. Private foundations may provide grants for these activities or directly carry out such activities along with other charities. The key to any of these activities is that they cannot be partisan. Stated another way, the activities must be designed and carried out in a way that does not indicate any support or opposition for specific candidates for public office or political parties. There are also strict rules if a private foundation wishes to conduct or fund a voter registration drive. Among the requirements is the mandate that the drive be carried out over more than one election cycle and in at least five states.

CAN A PRIVATE FOUNDATION:

Provide a grant to a charity that will be used to encourage all voters in a community to get to the polls regardless of how the voters are expected to vote?

Yes.

Co-sponsor an unbiased candidate debate where all viable candidates for governor participate or are invited?

Yes.

Provide funding for a voter's guide produced by a public charity that will include information about all local candidates and present the candidates' responses to questions on a broad range of issues?

Yes.

Support a local voter registration drive of a public charity grantee?

No. Because the private foundation rules require the foundation to meet certain requirements before carrying on or funding a voter registration drive, the rules do not permit a drive in just one locality.

WHAT IS LOBBYING?

Having reviewed ten specific permissible activities, it may be helpful to get a clear picture of what is not permissible: lobbying. The federal Tax Code divides lobbying into two types: **direct lobbying** and **grassroots lobbying**.

Direct lobbying: Direct lobbying is communication (e.g., letter, e-mail, phone call, personal visit) with a legislator or legislative employee that reflects a view about specific legislation. Specific legislation includes bills that are introduced as well as legislative proposals. Direct lobbying also includes communication with other government officials if

1. Those government officials participate in formulation of legislation
2. The principal purpose of the communication is to influence legislation
3. The organization expresses a view about the legislation

Direct lobbying is *not* permissible for private foundations.

Example: An organization calls its U.S. senator and encourages the senator to oppose a budget bill that cuts funding for education. The phone call would be direct lobbying and therefore *not* permissible for private foundations.

Because the public—not the legislature—is the decisionmaking body on ballot measures and referenda, direct lobbying also includes communications with the general public that reflect a view about ballot measures or referenda.

Example: An organization writes an opinion piece for the local newspaper stating that it would be beneficial to the community to pass a referendum increasing the county taxes to boost funding for education. Because the issue will be decided by the public, such an op-ed would be direct lobbying and therefore *not* permissible for private foundations.

Grassroots lobbying: Generally, grassroots lobbying, which is prohibited, is communication that encourages members of the public to contact their legislators about a piece of legislation. Specifically, it is a communication with the general public reflecting a view about specific legislation that encourages the public to act with respect to the legislation through a specific call to action. A call to action can be any one of the following:

1. Telling the recipient to contact a legislator or legislative employee or telling the recipient to contact another government official who participates in the formulation of legislation for the principal purpose of influencing legislation
2. Stating the address, telephone number, and/or e-mail address of a legislator or legislative employee

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3. Providing a mechanism such as a petition or tear-off postcard for the recipient to communicate with a legislator or legislative employee or to communicate with another government official who participates in the formulation of legislation for the principal purpose of influencing legislation
4. Identifying one or more legislators who
 - ❖ Will vote on the legislation
 - ❖ Oppose the communication's view on the legislation
 - ❖ Are undecided on the legislation
 - ❖ Are the representatives in the legislature of the recipient of the communication
 - ❖ Are members of the committee or subcommittee that will consider the legislation

Example: An organization places an advertisement in a local newspaper indicating that it would be beneficial for the state legislature to raise state taxes to support education and tells readers, "Contact your state legislators and tell them to vote yes to the increase in taxes." This communication would be grassroots lobbying and therefore *not* permissible for private foundations.

A communication with the general public reflecting a view about specific legislation is *not* lobbying if it does not contain at least one of the above calls to action.

Example: An organization places an advertisement in a local newspaper indicating that it would be beneficial for the state legislature to raise state taxes to support education. If no call to action is included, the advertisement generally will not be a lobbying communication and therefore would be *permissible* for a private foundation.

As you can see, there are a lot of communications that can occur with the public or legislators to provide education on issue areas without crossing the line into lobbying activity. The following chart is designed to help illustrate the elements that must be present for a communication to be lobbying.

IS IT LOBBYING?



The foundation makes a **COMMUNICATION**
(e.g., e-mail, meeting, letter, phone call)

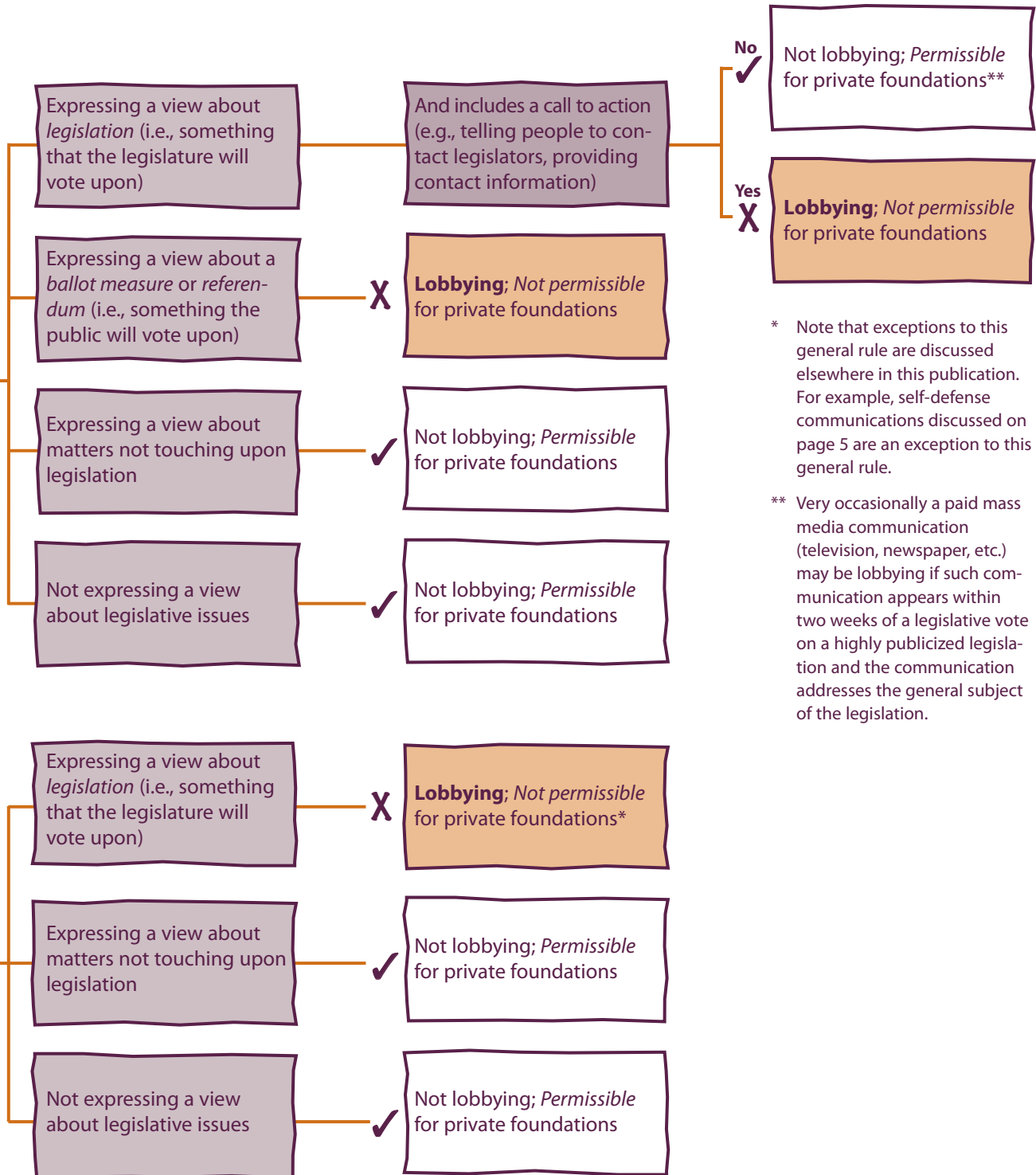


WITH THE PUBLIC
(e.g., public statement, advertisement)



WITH LEGISLATORS
or their staff (includes federal, state,
and local legislators)

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* Note that exceptions to this general rule are discussed elsewhere in this publication. For example, self-defense communications discussed on page 5 are an exception to this general rule.

** Very occasionally a paid mass media communication (television, newspaper, etc.) may be lobbying if such communication appears within two weeks of a legislative vote on a highly publicized legislation and the communication addresses the general subject of the legislation.

CONCLUSION

This booklet has only provided an overview of ten ways private foundations can influence public policy. Private foundations may enter into the policy arena to advocate for issues important to the foundation, its grantees, or its communities or to simply build relationships and connections with lawmakers in the community. Our hope is that the booklet has shown that whatever motivates a foundation to speak out—directly or through whatever activities the foundation chooses to fund—it has a range of options to do so.

This booklet has explained many ways foundations can get involved in public policy without crossing the line into lobbying. As a reminder, public charity grantees have more flexibility in the public policy

arena and can engage in the activities outlined in this booklet as well as some lobbying activity. Following the rules discussed above for funding advocacy when making grants to public charities, your grantmaking may allow your public charity grantees to have even more flexibility to consider public policy options as one strategy to fulfill their own missions.

Equipped with the basics of this publication, plus the more in-depth information available in the materials listed in the “Sources for More Information” section and the assistance of knowledgeable legal counsel who can provide information on any applicable reporting requirements imposed at the federal, local, or state level, private foundations can forge ahead to build new relationships with legislators and maximize the benefit they can provide to their communities.

SOURCES FOR MORE INFORMATION

COUNCIL ON FOUNDATIONS

The Council on Foundations responds to many questions about the rules for foundation engagement in public policy and provides opportunities for foundations to get involved in public policy.

Websites: cof.org and www.foundationsonthehill.org

Questions? 703-879-0712 or legal@cof.org

LOBBYING RULES AND SUPPORTING ADVOCACY

Kindell, Judith E., and John Francis Reilly. "Lobbying Issues." *IRS Exempt Organization Technical Instruction Program for FY 1997*. Available at <http://www.irs.gov/pub/irs-tege/eotopicp97.pdf>.

Proscio, Tony. *Advocacy Funding: The Changing of Philanthropic Minds*. Grant Craft, 2005. Available at www.grantcraft.org.

Troyer, Thomas A., and Robert A. Boisture, "What the Law Allows." *Foundation News & Commentary* 38, no. 3 (May/June 1997). Available at <http://www.foundationnews.org/CME/article.cfm?ID=2454>.

Investing in Change: A Funder's Guide to Supporting Advocacy. Alliance for Justice, 2004.

Arons, David, ed. *Power in Policy: A Funder's Guide to Advocacy and Civic Participation*. Fieldstone Alliance, 2006.

CIVIC PARTICIPATION

Kindell, Judith E., and John Francis Reilly. Election Year Issues, *IRS Exempt Organization Technical Instruction Program for FY 2002*, available at <http://www.irs.gov/pub/irs-tege/eotopic02.pdf>.

Simone, Kelly Shipp, and Jane C. Nober. "Election Year Politics." *Foundation News & Commentary*, 45, no. 4 (July/August 2004). Available at <http://www.foundationnews.org/CME/article.cfm?ID=2956>.

Troyer, Thomas A., Douglas N. Varley, and Vivian L. Cavalieri. *Voter Registration, Education, and Ballot Campaigns: A Funders' Guide to Legal Issues*. Funders' Committee for Civic Participation, 2006.

OTHER RESOURCES

Alliance for Justice (www.afj.org)

Center for Lobbying in the Public Interest (www.clpi.org)

To order any Council on Foundations publication, go to www.cof.org/publications or call toll-free 888-239-5221 between 9 a.m. and 5 p.m. Eastern Time.

Reprints of *Foundation News & Commentary* articles listed above can be obtained by calling the Council's Legal Services department at 703-879-0712 or emailing legal@cof.org.

ACKNOWLEDGMENTS

The author, Council Senior Staff Attorney Kelly Shipp Simone, would like to thank the editorial advisory group whose vision and foundation experience shaped this booklet:

Dave Beckwith
Executive Director
The Needmor Fund

Marcia Egbert
Senior Program Officer
The George Gund Foundation

Anna Kay Frueauff-Williams
Trustee and Vice President of
Communications & Programs
Charles A. Frueauff Foundation

Missy MacLeod
President
Charles D. Jacobus Family
Foundation

The author would also like to thank the Council on Foundations' staff that contributed to this publication including Christina Dokken, Lauren Kotkin, Jane Nober, and Susan Price.

Top 10 Ways Private Foundations Can Influence Public Policy

Kelly Shipp Simone

The climate in which private foundations work and their ability to make a difference are intricately tied to what happens in the public policy arena. This guide will help you sort out a variety of ways you can *legally* influence public policy through such activities as educating legislators, funding advocacy organizations, educating the public about issues, and promoting civic participation.



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Item # 1401
ISBN: 1-932677-45-3
Price \$10, COF Members \$6

