

## Q&A: Ki Hong of Skadden on company participation at political conventions

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Ki Hong, a partner in Skadden, Arps, Slate, Meagher & Flom LLP's political law group, answered questions from Westlaw Today about how companies can participate in the upcoming Republican and Democratic national party conventions and actions they should avoid.

**Westlaw Today:** How can corporations legally contribute to political conventions?

**Ki Hong:** The Democratic Party's convention will occur in Chicago from Aug. 19 through 22, while the Republican Party's convention will be in Milwaukee from July 15 through 18. There are two types of organizations that are responsible for organizing and holding a convention.

The first are the convention committees, which pay for the cost of "putting on the show," such as producing what occurs on the convention stage or the convention speakers. These committees are accounts maintained by their respective national party committees. The RNC has the Committee on Arrangements, and the DNC has the Democratic National Convention Committee. Corporate contributions to such convention committees are prohibited, while a nonforeign national individual may give up to \$123,900, and a PAC up to \$45,000, per year.

Then there are host committees, which pay for the infrastructure around the convention, such as for the stadium and the stage. These are usually nonprofit organizations that are operated separately from the national party committees. For the Democrats, there is Development Now for Chicago (also referred to as the Chicago 2024 Host Committee), a Section 501(c)(6) trade association, and for the Republicans, the MKE 2024 Host Committee, a Section 501(c)(3) charity. A corporation (or an individual or PAC) may make unlimited donations to host committees. Depending on the tax status of the host committee, a corporation may be able to deduct the donation as a business expense or a charitable donation under the Internal Revenue Code.

**WT:** What hidden dangers should corporations look out for when participating in political conventions?

**KH:** The convention is not a law-free zone. In fact, depending on the circumstances, participating in a convention can bring in practically every area of political law. For example:

- Host committees frequently ask companies (especially those that have offices or other facilities in a host city) for in-kind

donations by allowing free use of the company's offices or facilities, or by paying for goods or services. It is important to ensure, e.g., through a grant agreement, that the in-kind donation will be used for permissible infrastructure costs for which the host committee is allowed to pay, as opposed to impermissible convention committee expenses.

- If a company is sponsoring an event to which public officials are being invited, steps should be taken to ensure the event complies with applicable gift rules.
- The federal election law prohibits corporations from paying for a delegate's travel or subsistence to or during the convention. As a result, if a company plans on paying for travel to the convention, it should confirm that the individual is not a delegate. The company should also confirm what other activities in which the individual will be engaging during the trip to ensure it is not inadvertently making an impermissible contribution, e.g., if the individual is speaking at a campaign or PAC event during the convention.
- A company that is registered under the Lobbying Disclosure Act is not allowed to pay for an event that is held during a convention (from gavel to gavel) and honors a House or Senate member. As a result, even if one is complying with the congressional gift rules, one has to also ensure that the event is not organized in a way to honor such members. Like certain aspects of their gift rules, the House and Senate ethics committees have different guidance on what types of events "honor" their members.

**WT:** Can you provide examples of corporations engaging in prohibited conduct in connection with a convention?

**KH:** During the last several cycles, there has been a rise in for-profit event planners organizing events during the convention. The event planner may ask companies to sponsor a dinner or concert by paying a certain amount and in exchange receiving a certain number of tickets to attend the event. If the event planner is coordinating the event with a federal campaign, party committee or PAC, the sponsorship could result in an impermissible contribution to such campaign or committee.

There could be a similar issue under state law if the event is being coordinated with a state campaign or committee. There could also be a gift rule issue if the company is sponsoring or otherwise

subsidizing an event to which the event planner is inviting public officials.

A company pays for an employee to go to the convention. If that employee is a delegate to the convention, payment for the employee's travel or subsistence is impermissible. Paying for such travel costs is also prohibited if the employee will be speaking at, or helping with, a federal campaign or PAC event (other than the company's connected PAC) during the convention.

A company that is registered under the LDA decides to hold an event during the convention and invite various guests. The CEO of the company is friends with a singer, who was famous during the 1980s but is now relegated to touring smaller theater venues and asks that friend to sing a set during the event.

To the extent public officials are invited to the event, the company must ensure that the related food, beverages and entertainment comply with applicable gift rules. For example, if a congressional member is invited, either the event will have to qualify under the charitable fundraising exemption from the congressional gift rules, where the event is organized to raise funds for a charity, or the member will have to pay for the fair market value of attending. If the company selects the latter option and the food and beverages qualify under a different exemption, such as the stand-up reception exemption, the member could just pay for the performance.

Please note that the congressional ethics committees distinguish between A-list entertainers (who tour and sell admission for their performances) versus B-list entertainers (who generally do not sell

admission), where performances by the B-listers are not treated as a gift.

**WT:** What are corporations' public disclosure obligations regarding their convention support and/or participation?

**KH:** As discussed above, a corporation may not give to the convention committees. Moreover, a corporation does not have any disclosure requirements when it is giving unlimited amounts to the host committees. However, the host committees are required to file a report with the Federal Election Commission within 60 days following the last day of the convention (or 20 days before the general election), disclosing the contributions they have received.

One issue that arises is when a company is asked to give to a different organization that is working with, or on behalf of, a host committee. The host committee should be reporting those contributors as well. This is another reason for companies to do the necessary diligence when being asked to donate to an organization or sponsor an event in connection with a convention.

**WT:** What about reputational risks of convention activity?

**KH:** The reputational risk around convention-related activities is usually not that high. Given the variety and volume of events and activities during a convention, it is difficult to scrutinize any particular effort. However, the wild card this year is that companies did not hold in-person convention events in 2020 because of COVID-19. As a result, there may be renewed scrutiny for this year's convention activity. It is important for companies not only to comply with applicable law but also to "cross the street in a crowd."

## About the author



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