

Election Issues on the Horizon: 2024 National Party Conventions, Transition Efforts and Inaugural Activities

Contributing Partner

Charles M. Ricciardelli / Washington, D.C.

Counsel

Melissa L. Miles / Washington, D.C.

This article is from Skadden's *2024 Insights*.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

Key Points

- With the 2024 election season underway, corporations may be presented with opportunities to support the presidential nominating conventions as well as transition efforts and inaugural activities for incoming federal, state and local administrations.
- As with all interactions with political organizations and government officials, these activities are regulated by a complex set of interrelated laws, regulations and policies.
- It is critical to understand the rules of the road and properly examine specific opportunities to ensure compliance with campaign finance, pay-to-play and various government ethics requirements in order to avoid legal repercussions and appearance-of-impropriety risks.

National Party Conventions

The presidential nominating conventions are less than a year away, and expectations are high in both host cities — Milwaukee, where Republicans will gather July 15-18, 2024, and Chicago, which welcomes Democrats August 19-22, 2024 — for a return to pre-COVID levels of attendance.

Conventions are expensive to pull off, and corporations have increasingly become an important source of support, especially after the 2014 elimination of public funding.

The conventions are primarily financed by both the convention committees themselves, which are accounts of the Republican and Democratic national committees, and separate host committees, which are nonprofit organizations established to encourage commerce in the convention city and project a favorable image of the city to attendees.

Convention Committees

Federal law treats convention committees in the same manner as other accounts of the national parties in terms of prohibited sources of support. Accordingly, contributions to them by corporations, foreign nationals, federal contractors and nationally chartered organizations are forbidden.

These sources are also not allowed to pay for expenses such as travel and accommodations for convention speakers and

delegates. There are, however, certain limited interactions that corporations may have with the convention committees, including providing:

- Goods and services to the committees in exchange for promotional consideration.
- Certain items of de minimis value, such as samples, pens, tote bags or other items to be distributed to convention attendees.

Individuals and political action committees (PACs) are permitted to contribute to convention committees, within limits. However, companies subject to strict liability pay-to-play laws should be mindful that their contributions may be governed by those laws if solicited by or linked to state or local candidates or officeholders.

Host Committees

The host committees (Development Now for Chicago and MKE 2024 Host Committee), on the other hand, may accept unlimited monetary or in-kind contributions from corporations to provide logistical support for the conventions.

“Conventions are expensive to pull off, and corporations have increasingly become an important source of support, especially after the 2014 elimination of public funding.”

To the extent a corporation provides in-kind contributions to a host committee, it is important to ensure that the resources furnished will be used exclusively for purposes that are appropriate and permissible for the host committee, such as logistical support and defraying the host committee's administrative expenses. Examples of this type of support include:

- Security and construction services.
- Welcome booths for convention attendees.
- Providing accommodations for host committee members.

It is a best practice to memorialize any agreement in a memorandum of understanding with the host committee.

Private Events During the Conventions

In addition to supporting the convention and host committees, companies often look to host or support parties and other private events during the conventions. If the event — even if organized by a third party — is coordinated with, or held for the purpose of benefiting, a candidate's campaign, party committee or political committee, payments toward the event may constitute an in-kind contribution.

Such a contribution may be impermissible or subject to limits under campaign finance law and could also trigger an automatic ban on government contracts if the relevant jurisdiction maintains a strict liability pay-to-play law.

Even in the absence of this concern, given the likely attendance of public officials at these events, companies should also vet potential implications under federal, state and local gift laws.

Transition Efforts

Changes of administration at the federal, state and local levels can present opportunities for individuals and companies to contribute to and get involved in the efforts of transition teams.

Contributions to Transition Committees

Transition efforts are usually run out of separately designated nonprofit organizations that are typically allowed to accept unlimited contributions from individuals and corporations. However, some jurisdictions impose bans and limits on these contributions, such as the \$5,000 limit under federal law on contributions to a presidential transition committee.

Moreover, there are instances in which transition teams are operated from campaign committees, parties or PACs, in which case contributions would trigger all applicable campaign finance limits and prohibitions in the relevant jurisdiction.

For financial institutions subject to a federal pay-to-play rule (such as Municipal Securities Rulemaking Board Rule G-37 for broker-dealers that underwrite municipal securities and municipal advisors, and Securities and Exchange Commission Rule 206(4)-5 for investment advisers), soliciting or making contributions to transition efforts for a successful state or local candidate is covered under those rules and thus could trigger an automatic ban on business or compensation.

Certain state and local pay-to-play laws also apply to support for transition efforts. As a result, companies that do business with state or local government entities should carefully evaluate the legal implications of any such support.

Corporate Executives Serving on Transition Teams

A corporate executive serving on a transition team (such as for a governor-elect) could raise several legal considerations.

Conflict of interest. Depending on the jurisdiction, a transition team member may be treated as a public official and, as a matter of law or policy, become subject to some or all of that jurisdiction's conflict of interest laws.

Campaign finance and pay-to-play.

Use of corporate resources, volunteering during working hours or the executive personally paying for expenses related to their volunteer activity may result in an in-kind contribution to the committee with the ramifications described above.

Procurement ethics. Conflict of interest provisions in many jurisdictions prohibit a company from obtaining an unfair advantage by assisting in the preparation of the terms or specifications of a request for proposal (RFP) and then bidding on that RFP. This conflicts issue may arise if the volunteer helps or advises the transition on RFPs or the bidding process.

Lobbying. If a corporate executive's transition activities include communications with covered officials, and the communications are for the purpose of influencing covered decisions on behalf of their employer, there may be registration and/or reporting implications under applicable lobbying laws.

Inaugural Committees

Following the elections, successful candidates will also begin to prepare and fundraise for inaugural events in celebration of taking office. Support for the inaugural committees running these events can raise issues similar to those described above when contributing to transition efforts.

In particular, while inaugural committees tend to be set up as distinct nonprofit organizations that are not subject to limits, there are jurisdictions that impose dollar limits on contributions to inaugural committees. Additionally, as with some transition teams, inaugural committees are sometimes funded by a campaign committee, political party or PAC, triggering campaign finance restrictions.

Finally, regardless of how they are formed, soliciting or making contributions in support of inaugural activities for successful state or local candidates is covered under the federal, as well as some state and local, pay-to-play rules.