



## A Guide for Directors to Political Law Issues in This Election Year

*Posted by Charles M. Ricciardelli and Melissa L. Miles, Skadden, Arps, Slate, Meagher & Flom LLP, on Monday, March 11, 2024*

**Editor's note:** Charles M. Ricciardelli is a Partner, and Melissa L. Miles is Counsel at Skadden, Arps, Slate, Meagher & Flom LLP. This post is based on their Skadden memorandum.

### Key Points

- With the 2024 election season underway, corporations may want to support the presidential nominating conventions as well as transition efforts and inaugural activities for incoming federal, state and local administrations.
- These opportunities may come before boards, so it is critical for directors to understand the rules of the road — for their companies as well as for their own individual involvement and that of executives — because these activities can fall under an array of campaign finance, pay-to-play and government ethics rules.
- Violations not only risk financial penalties and reputational damage, but government contractors that are subject to pay-to-play rules can be barred from state and local government business for years as a result of providing support to certain officials and other political entities.

### National Party Conventions

The presidential nominating conventions are just months away and both host cities — Milwaukee, where Republicans will gather in July, and Chicago, which welcomes Democrats in August — are hoping for a return to pre-COVID levels of attendance. Conventions are expensive events, and corporations have increasingly become an important source of support.

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

#### Convention Committees

The convention committees are responsible for paying the costs of producing the conventions, and federal law treats them the same way it does other accounts of the national parties in terms of

prohibited sources of support: Contributions 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 they are solicited by or linked to state or local candidates or officeholders.

### **Host Committees**

The cities' host committees, on the other hand, may accept unlimited monetary or in-kind contributions from corporations but are limited to paying costs associated with a city bidding for, and subsequently, hosting the convention. The types of expenses that a host committee may pay for include those promoting the city and its commerce, as well as certain "behind the scenes" infrastructure and logistical needs for the convention.

If a corporation provides in-kind contributions to a host committee, the resources furnished must be used exclusively for purposes that are appropriate and permissible for the host committee, such as:

- Security and construction services (e.g., camera platforms, lighting and electrical equipment and press tables).
- Welcome booths for convention attendees.
- Providing accommodations for host committee members.

However, permissible host committee expenses generally do not include items appearing on the broadcast of the convention (e.g., the balloons and confetti televised dropping on the nominee) or travel and accommodations for convention speakers.

It is a best practice to memorialize any agreement in writing with the host committee to ensure that in-kind contributions will be used in a permissible fashion.

## **Private Events During the Conventions**

In addition to supporting the convention and host committees, companies sometimes consider hosting or supporting 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, financial support of 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 if that is not a concern, given the likely attendance of public officials at these events, companies should also vet potential implications under federal, state and local gift laws.

For financial institutions subject to a federal pay-to-play rule, making contributions to transition efforts for some successful state or local candidates could trigger an automatic ban on business or compensation.

## **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 (e.g., broker-dealers that underwrite municipal securities and investment advisers that manage state or local government money), 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 pose legal risks.

**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 an 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 government officials, and the communications are for the purpose of influencing 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 some of the same issues that arise from involvement in a transition of administrations.

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.