

December 2024

MEMORANDUM FOR THE NATIONAL MUSEUM AND LIBRARY SERVICES BOARD

FROM: Office of General Counsel Ethics Officials

SUBJECT: Limitations on Lobbying Activities by Board Members

This memorandum explains the circumstances under which members of the Board are permitted to lobby Congress. While we hope these guidelines and accompanying examples are useful in clarifying the scope of lobbying activities permitted under federal laws and regulations, they are not intended to cover all situations. The line separating proper and improper conduct is imprecise and the propriety of any activity may well depend on the facts of the situation. The Designated Agency Ethics Officials are available to provide counseling for specific circumstances.

A. The Law.

Title 18, Section 1913, of the United States Code, a criminal statute, provides that:

“no part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.”

Section 1913 applies when money appropriated by Congress is involved. IMLS’s annual appropriation law contains additional restrictions:

Title V General Provisions (Sec. 503):

“(a) No part of any appropriation contained in this Act...shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

(b) No part of any appropriation contained in this Act...shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive- legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.”

The following guidelines reflect how courts and the Administration have interpreted this legislation.

B. The Guidelines.

1. Lobbying While in Government Service.

When members of the Board are participating in Board meetings, they function as “special government employees,” and their airfare, hotel accommodations, per diem allotments, etc., are paid for with appropriated funds. **Federal employees, including special government employees, are prohibited from using appropriated funds to encourage the general public to contact Congress to influence pending or potential legislation, so-called “grassroots” lobbying. Applying this rule, a member of the National Museum and Library Services Board would be prohibited from engaging in grassroots lobbying during a meeting of the Board or when on Board-related travel.** “Direct lobbying,” communicating directly with members of Congress and their staffs, is permitted in limited circumstances, subject to the use of appropriate channels, as provided in Section 1913.

2. Lobbying Outside of Government Service.

While not in Government service, special government employees are accorded considerable latitude to conduct lobbying activities. A Board Member may engage in both grassroots and direct lobbying outside of Government service provided that no federal funds are expended. However, the normal federal ethics regulations would apply (such as the limitations governing the use of Government title and position).

When lobbying, Board members should make it clear that their views are their own and that they are not representing IMLS. As political appointees, however, Board Members should be sensitive to political considerations and appearances.

3. Lobbying Using Federal Grant Funds.

Federal grantees are prohibited from using any grant funds to conduct lobbying activities, either direct or grassroots. This means that IMLS funds may not be expended to influence members of Congress regarding pending legislation or the introduction of legislation, or to urge members of the public to write or call Congress. IMLS grantees, however, may conduct lobbying activities outside of IMLS grant projects, but should be mindful that separate Internal Revenue Service rules apply to the lobbying activities of non-profit organizations.

EXAMPLES

Example 1: Board Member Alpha attends the spring meeting of the National Museum and Library Services Board in Washington, D.C. Consistent with IMLS policy, Alpha's travel expenses are paid by IMLS. The spring meeting coincides with a critical period in the Institute's reauthorization process. Alpha, accompanied by IMLS Congressional Affairs Officer Beta, visits the Congressional delegation from Alpha's home state of Aricopia. In meetings with members of Congress, Alpha discusses the importance of the work of IMLS, mentions recent grants in the state of Aricopia, and asks for support for IMLS's reauthorization. Energized by his experience on Capitol Hill, Alpha returns to IMLS, where he dashes off a few letters on IMLS letterhead to museum supporters in Aricopia urging them to write their members of Congress in support of the reauthorization of IMLS.

Discussion: Example 1 illustrates the basic distinction between "grassroots lobbying" with federal funds (prohibited) and "direct lobbying" with federal funds (permitted). In general, grassroots lobbying is the encouragement of the public to contact Congress regarding pending legislation. Direct lobbying, by contrast, is any communication directly between an Executive branch agency and Congress regarding a legislative matter. Since Alpha is being paid to attend a National Museum and Library Services Board meeting, he is regarded as a "special government employee" of the Executive branch during his stay in Washington. Applying these rules, Alpha's meetings on Capitol Hill are appropriate because the purpose of the visits is to directly communicate information about IMLS programs and activities to Congress. However, Alpha's use of any IMLS resources (such as a computer, supplies, or clerical support) to write letters to members of the public probably would be regarded as impermissible grassroots lobbying.

Example 2: Board Member Delta, Dean of the Museum Program at Omega University, is a featured speaker at a one-day conference, "New Directions in Public Support for Museums," at the Grand Hotel in Washington, D.C. The conference, which is supported entirely with private funds, is sponsored by the "Coalition for Culture," an umbrella organization of arts groups. Delta's travel expenses are paid for by the University.

In her remarks, Delta identifies herself as Dean, a member of the National Museum and Library Services Board, and former director of the Lambda Art Museum. Delta forcefully lays out the principal arguments for federal support of museums, concluding with a passionate appeal: "What is at stake is not merely the survival of IMLS. What is at stake is the preservation of the America's cultural legacy. It is imperative that you call and write members of Congress to vote for the reauthorization of the agency."

Discussion: Example 2 illustrates the considerable latitude accorded to special Government employees while not in Government service. Although the facts of Example 2 strongly suggest that the "New Directions Conference" is part of a larger grassroots lobbying campaign, Delta has not run afoul of the anti-lobbying laws because there is no evidence of the expenditure of federal funds. Example 2 also raises the question of whether it was appropriate for Delta to identify herself as a member of the Board in light of her strong "call to action."

Under federal ethics regulations, a member of the Board may permit the use of her title as one of several biographical details in connection with a speech provided that it is given no more prominence than other significant biographical details. Delta has complied with this rule.

Example 3: Board Member Sigma, the newly elected President of the American Literary Association (ALA), a private association, is invited to testify before a Congressional education subcommittee on the state of literary studies in the United States. ALA pays for all of Sigma's travel expenses to Washington. Prior to going to Capitol Hill, Sigma visits IMLS to get a "legislative update" from Congressional Affairs Officer Beta. Beta paints a gloomy picture, noting in particular a new bill, S.1313. Sigma asks whether IMLS has analyzed the potential impact of S.1313 on current IMLS programs, and Beta hands Sigma a copy of the agency's position paper on S.1313. Sigma notices that if S. 1313 is enacted into law, the IMLS literary studies program would be eliminated. In his testimony before Congress, Sigma discusses the impact of declining public and private support for literary studies in the United States and urges committee members to vote against S.1313.

Discussion: Congressional Affairs Officer Beta has not undertaken any independent work in response to Sigma's questions, but rather provides him with a standard IMLS informational document. It would be inappropriate for Sigma to reproduce large quantities of the position paper for distribution to the ALA membership or otherwise use government resources to support the ALA's legislative efforts.

Example 4: While on the Hill, Sigma learns that things are even worse than Congressional Affairs Officer Beta suggested: Senator Gamma is about to introduce legislation that would abolish IMLS. Convinced that immediate action is necessary, Sigma dictates an "action plan" to the members of the ALA Executive Committee on ways to mobilize the ALA membership. First, Sigma proposes publishing a special edition of the ALA Newsletter focusing on legislation pending before Congress. (The ALA newsletter is funded entirely from membership dues). Second, Sigma calls for a strong ALA Resolution supporting the reauthorization of IMLS.

Sigma also dictates a letter to his fellow National Museum and Library Services Board members urging them to contribute letters of support to the special edition. Finally, Sigma dictates the following letter to IMLS Director Epsilon: "We hope you will be able to contribute a one-page letter to this edition voicing your strong opposition to S. 1313. A word of encouragement from you will mean a great deal to our members and will translate into more op-ed pieces, letters to the editor, and calls to Congress -- elements of support so vital to IMLS at this time." Director Epsilon writes back declining the invitation to draft the requested letter but notes that he has recently written a long letter to Senator Gamma setting forth the agency's position on S. 1313. The ALA requests a copy of the letter from Senator Gamma's office and publishes it in its entirety, along with several strong statements of support from Board members.

Discussion: Example 4 illustrates the latitude of special government employees (when not in Government service) and the strict limitations on federal employees in conducting grassroots lobbying activities. Assuming that no federal funds are being expended, there is no legal impediment to implementing the ALA action plan. Board members also may participate in the ALA's campaign provided that they follow the usual ethics rules and do not disclose non- public information. By contrast, IMLS Director Epsilon operates under stricter rules. While Director Epsilon is clearly permitted to express his views on pending legislation, he would not be permitted to expend federal funds on a grassroots lobbying campaign. Thus, the Director has responded to the request from the ALA prudently and appropriately.

Example 5: Board Member Kappa, Director of the American Heritage Museum, is planning the opening of a new gallery, “American Glory.” The exhibit, which received an IMLS grant before Kappa came onto the Board, is a reinstallation and reinterpretation of the Heritage Museum’s extensive collection of American flags. Kappa believes that the opening of the exhibit provides a great opportunity for IMLS to get its message out, “while wrapping itself in the American flag.” Kappa’s idea is for IMLS Director Epsilon to cut the ribbon and for Erma Silver, Chairman of the museum’s Board of Directors, to address the audience, encouraging them to write and call their representatives in support of the reauthorization of IMLS. Board members receive no compensation for their service on the museum’s board.

Discussion: Example 5 illustrates the strict rules that prohibit the expenditure of federal grant funds for lobbying activities, whether direct or grassroots. Even though Silver receives no federal funds for her service on the Board, the speech, as proposed, probably would be regarded as an unallowable lobbying expense since federal funds support many of the costs closely associated with the exhibit opening, including publicity and staff time. Director Epsilon could therefore only accept the invitation with some qualifications: Silver’s address could express the museum’s appreciation for IMLS funding for “American Glory” and for the agency’s support of other cultural programs throughout the state and the nation, and the museum may make informational materials about IMLS and its programs available to the public at the event, but Silver’s remarks may not include the call to contact members of Congress.