

Pitfalls Of Presidential Inauguration Festivities



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Law360, New York (January 08, 2013, 1:39 PM ET) -- At the U.S. Capitol, workers are already busy constructing the platform for President Obama's Jan. 21, 2013, inauguration. Many corporations and individuals are now being asked to participate in festivities that surround that event. While less regulated than pre-election political activities, presidential inaugurations are nonetheless subject to a number of easily overlooked rules. Below are three common situations in which individuals and corporations participating in inauguration events might run into trouble if they are not careful.

Disclosure of Contributions Made to the Official Inaugural Committee

The Presidential Inaugural Committee (PIC) plans and finances the parade, balls, galas and official inaugural events other than the swearing in ceremony. As a technical legal matter, although not deductible as business expenses, U.S. citizens, green-card holders and U.S. corporations can contribute unlimited amounts to the PIC. FEC Advisory Opinion No. 1980-144; 36 U.S.C. § 510(c) (prohibiting contributions from foreign nationals).

In connection with his first inauguration, however, President Obama instructed his PIC not to accept contributions from corporations, political action committees, federal lobbyists and registered foreign agents. In addition, individual contributions were capped at \$50,000. This time around, President Obama has opted for less restrictive self-imposed limits.

According to press accounts, the PIC has lifted the ban on corporate money and the limits on individual contributions. The PIC will, however, screen corporate contributions and may not accept such contributions if, for example, they are from corporations that still owe TARP money or are seeking large federal contracts. Contributions from political action committees and federal lobbyists will, reportedly, remain off limits.

Contributing individuals and corporations will need to remember to disclose these contributions on the semi-annual reports they are required to file by the Lobbying Disclosure Act. These reports are due Jan. 30, 2013 (covering contributions made in the last half of 2012) and July 30, 2013 (covering contributions made in the first half of 2013). 2 U.S.C. § 1604(d)(1)(F).

The inaugural committee itself also files a report, disclosing donors' names, addresses and amounts within 90 days after the inauguration. 36 U.S.C. § 510; 11 C.F.R. § 104.21(c). In addition to this legally required disclosure, the PIC will reportedly disclose donors on its website before the inauguration.

Giving Tickets to Inaugural Events To Government Officials

Corporations and individuals with tickets to inaugural balls, unofficial parties and other inauguration-related festivities should be careful about giving these tickets to federal, state or local government officials. Members of Congress and their staff, for example, are prohibited from accepting gifts in excess of \$50 per source (or \$100 per source per year in the aggregate) unless an exception applies. See House R. XXV(5)(a)(1)(B)(i); Senate R. XXXV(1)(a)(2)(A). If the gift-giver is a lobbyist or a corporation that employs lobbyists, the member or staffer cannot accept a gift of any amount unless an exception applies. See House R. XXV(5)(a)(1)(A)(ii); Senate R. XXXV(1)(a)(2)(B).

Similar restrictions apply to federal executive branch appointees, particularly those who are appointed by the president. See 5 C.F.R. § 2635.202(a) (general rules); Obama Executive Order 13490 (special rules for appointees). Employees of state and local government may also be prohibited from accepting tickets pursuant to state and local law.

There is no general exception that would allow a government official to accept any ticket to an inaugural ball, gala and other event. But there are some exceptions that might apply, depending on the nature of the gift. For example, members of Congress and their staff can accept tickets from the sponsors of certain “widely attended events” if attendance is related to their official duties, at least 25 persons are expected to attend, and attendance is open to individuals from throughout a given industry or profession or those in attendance represent a range of persons interested in a given matter. See, e.g. House Ethics Manual at 41-42.

Similarly, federal executive branch employees may accept invitations to certain “widely attended gatherings” but only if their agency designee determines that attendance is in the agency’s interest. Even otherwise permissible “widely attended gatherings” may be off-limits if the official is an executive branch appointee and the invitation comes from a registered lobbyist or lobbying organization. Of course, if no exception applies, the government official can always pay fair market value for the ticket.

Keep in mind that lobbyists and their employees will have to certify semi-annually that they have complied with the congressional gift rules.

Hosting or Attending Privately Sponsored Events

In addition to official PIC events, the days and nights surrounding inauguration day are filled with a variety of other unofficial policy-based, social and political events. Special rules apply depending on the entity that hosts the event. If a request is made for a contribution to an event hosted by a political party, joint fundraising committee, or candidate committee, the federal campaign finance laws apply. In such cases, generally speaking, only individual personal funds or PAC funds may be used to make the contribution and campaign contribution limits will apply.

Other organizations — such as 501(c)(3) charities, 501(c)(4) social welfare organizations, and 501(c)(6) trade associations — might also be involved in hosting policy conferences or fundraising benefits in conjunction with the inauguration.

Generally speaking, unlimited corporate funds may be used for these events. However, the SEC and many states and localities place restrictions on the making of political contributions by state and local government contractors. Contractors and their employees should therefore make sure that contributions to these entities will not, in turn, be used for political contributions that would be prohibited under SEC pay-to-play rule or applicable state or local pay-to-play laws and policies.

Finally, this year's inauguration is the first since the U.S. Supreme Court's decision in *Citizens United v. FEC* helped give rise to the birth of SuperPACs. While it is not yet clear how SuperPACs will be involved in the festivities, it seems quite likely that they will have a presence. If SuperPACs decide to throw high-dollar exclusive fundraisers in connection with the inauguration, the purchase of tickets could trigger disclosure requirements. Corporations and individuals would, however, be free to contribute unlimited amounts to these SuperPACs.

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