



*Conserving Land  
for People*

**THE TRUST FOR PUBLIC LAND**

**POLICY ON LOBBYING  
AND POLITICAL ACTIVITY**

**Nelson Lee, General Counsel**

**April 15, 2002**

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# THE TRUST FOR PUBLIC LAND

## POLICY ON LOBBYING AND POLITICAL ACTIVITY

April 15, 2002

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### INTRODUCTION

This document sets forth a summary of the laws and TPL's policies on **political activity** and **lobbying** by employees. This is important information for all staff, including project, legal, finance, public affairs, conservation finance and development staff. It is particularly important for employees who are working with city councils, state legislatures or Congress, or who are working on ballot measures. The following basic principles are discussed in detail below.

- ☞ **TPL cannot support or oppose candidates for public office. TPL employees cannot support or oppose candidates for public office on TPL time or using any other TPL resources.**
  
  - ☞ **TPL and its employees can lobby for passage or defeat of legislation and ballot measures, subject to annual limitations on our expenditures.**
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### TPL Prohibited from Supporting or Opposing Candidates for Office

TPL, as a nonprofit organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, is prohibited from intervening in "any political campaign on behalf of (or in opposition to) any candidate for public office." **This is an absolute prohibition**, the violation of which can result in severe fines or even the loss of our tax-exempt status.

This provision has been interpreted to bar any use whatsoever of the resources of a charitable organization for candidate electioneering. This would include any TPL employee's campaigning on his or her own behalf or on behalf of someone else. Moreover, for practical purposes, the appearance of political activity is nearly as dangerous as the actuality.

Accordingly, it is TPL policy that there shall be:

1. No use of TPL offices for candidate campaign purposes (whether the candidate is or is not a TPL employee) including, but not limited to, meetings, preparation of correspondence and position papers, or other necessary campaign affairs.
2. No use of TPL personnel to render candidate campaign services, unless (i) such services are rendered outside the TPL offices, (ii) involve no use of TPL equipment or facilities, and (iii) are rendered entirely on the supporter's own time.
3. No use of TPL telephone, fax services, electronic mail (e-mail) or internet connections for candidate campaigns--even on a reimbursement basis.
4. In the case of a campaign for public office by a TPL employee, no references by TPL or the employee/candidate of the employee's affiliations with TPL (obviously, third party sources, such as the media, can report on such affiliation).
5. In giving endorsements for candidates for public office, an employee should not allow himself/herself to be identified as an employee of The Trust for Public Land.

In short, no candidate electioneering is permissible on TPL "time," on TPL premises, or using TPL resources.

## **Administrative and Legislative Lobbying Is Permitted**

In contrast to the ban on supporting or opposing candidates for public office, TPL and its staff may engage in lobbying for the passage or defeat of legislation or ballot question measures without jeopardizing our tax-exempt status. Lobbying is attempting to influence legislation, at any level of government, including influencing voters on ballot measures. In addition, TPL may lobby to encourage administrative action without any IRS lobbying limitation. (There may be state lobbying laws that regulate lobbying of administrative agencies. TPL staff working with state agencies should check with Conservation Finance Counsel, Bill Lee.)

### ► **Expenditure Limitations**

The principal restriction on TPL's lobbying activities is that the activity must be insubstantial in relation to TPL's overall work. TPL has elected to be governed by a formula which sets a maximum ceiling for lobbying expenses. Under that formula, we can spend no more than \$1,000,000 in a fiscal year on direct lobbying, of which no more than \$250,000 can be represented by grassroots lobbying. As a matter of policy, TPL's board has set an overall lobbying ceiling of \$950,000. Lobbying expenditures include not only the time and expense in actual lobbying communications, but also the time and expense employed to prepare for lobbying and the overhead costs associated with lobbying. We are required to track all lobbying expenditures and report them to the IRS on our annual tax return. This information is readily available to the public and the media.

## TPL's Policy on Lobbying by Employees

The following are TPL's policies for lobbying activity:

1. **Lobbying is to be Minimized.** TPL's mission and goals are accomplished through the successful acquisition and preservation of lands. While TPL is not, primarily, a lobbying or an advocacy organization, we acknowledge that it is necessary, at times, to lobby in support of our charitable work. Our goal is to limit lobbying activity to the minimum necessary to accomplish our exempt organization purposes.
2. **Bulk Mail Permit.** Use of TPL's nonprofit bulk mail permit for lobbying purposes raises legal issues. Approval by Adam Eichberg and Bill Lee is required before using the nonprofit bulk mail permit for lobbying purposes. Under no circumstances can TPL allow its bulk mail permit to be used by another organization or person.
3. **No Lobbying with Government Grant Funds.** It is the law, and it is TPL's policy, that government grants, and funds raised as matching funds for government grants, cannot be used for lobbying purposes. A breach of this policy may have serious legal consequences. Our expenditure documentation for government (and required matching grants) should demonstrate that the grant funds were not used for lobbying purposes.
4. **Tracking and Reporting Expenditures.** It is TPL's policy to fully track and report qualifying lobbying expenditures, including overhead associated with lobbying efforts. The Guidelines for Tracking and Reporting Lobbying Expenditures are set forth below.
5. **Legal and Financial Controls.** All lobbying activity shall be conducted consistent with legal requirements and financial controls. It shall be the General Counsel's responsibility to ensure that staff are properly advised on legal requirements attendant to lobbying activities.

## LOBBYING DEFINED

### 1. **What Constitutes Lobbying?**

For federal tax exemption purposes, we are concerned with lobbying for or against legislation at all governmental levels and in all forms, from the U.S. Congress to local city councils to action by the public on ballot measures. Lobbying, for this purpose, does not include efforts to influence administrative action (i.e., action by an administrative agency). The costs of preparing to lobby are also reportable as lobbying, provided that a lobbying communication actually occurs.

All lobbying falls into one of two categories: direct lobbying and grassroots lobbying.

**A. Direct Lobbying**

Direct lobbying consists of attempts to influence legislation of federal, state or local legislative bodies by direct **communication** with legislators or their staff or with officials who are in a position to influence the decision makers. Direct lobbying also encompasses attempts to influence the outcome of voting on ballot measures. Direct lobbying has four required elements:

- Element #1:**        *There must be a communication . . .*
- Element #2:**        *to a legislator, legislative staff, governmental official who may participate in the formulation of legislation, or to the general public in the case of a ballot measure . . .*
- Element #3:**        *that expresses a point of view . . .*
- Element #4:**        *on a specific item of legislation.*

Legislation includes formal actions of legislative bodies. Appropriations bills and authorizing legislation for park units are two classic examples of legislation that TPL encounters. At the local level, examples of legislation would include an ordinance approving annexation of land, a zoning change or authorization of a bond. Although less obvious, legislation also includes actions taken through voter measures. If TPL is attempting to influence legislation proposed by someone else, then it is not considered a specific item of legislation until the essential terms of the legislation are written and in circulation. In addition, a legislative proposal exists -- with or without a writing -- when the essential terms of a legislative proposal are understood by reference to other or prior legislation, such as annual recurring legislation for an appropriations bill. If TPL itself is proposing legislation, then all activities directly related to preparing the legislation are lobbying, regardless of whether anything exists in writing.

**B. Grassroots Lobbying**

For our purposes, grassroots lobbying involves attempts to influence legislation under consideration by a legislative body through communications designed to encourage members of the public to influence the legislative process. There are five basic elements of grassroots lobbying:

- Element #1:**        *There must be a communication . . .*
- Element #2:**        *to the general public . . .*
- Element #3:**        *that expresses a point of view . . .*
- Element #4:**        *on a specific item of legislation . . .*

Legislation includes formal actions of legislative bodies. Appropriations bills and authorizing legislation for park units are two classic examples of legislation that TPL encounters. At the local level, legislation would include an ordinance approving annexation of land. If TPL is attempting to influence legislation proposed by someone else, then it is not considered a specific item of legislation until the essential terms of the legislation are written and in circulation. In addition, a legislative proposal exists – with or without a writing – when the essential terms of a legislative proposal are understood by reference to other or prior legislation, such as annual recurring legislation for an appropriations bill. If TPL itself is proposing legislation, then all activities directly related to preparing the legislation are lobbying, regardless of whether anything exists in writing.

**Element #5:** *where the recipient is encouraged to take action on the legislation.*

Encouraging action includes: (1) stating that the recipient should contact a legislator, or staff, or someone in government who participates in the formulation of legislation; (2) stating the phone number or address of a legislator or staff member; (3) providing a petition or tear-off post card to be sent to legislators, staff or key government officials; or (4) identifying the legislators who will vote on the legislation as opposing the communication's view on the legislation, being undecided, being the recipient's representative, or being a member of the committee or subcommittee considering the legislation.

### **C. Ballot Measures**

Ballot measures are deemed to be legislative acts by the voters. Ballot measures include:

- **Initiatives**, where proponents qualify a matter for the ballot by collecting signatures of voters.
- **Referenda**, where a legislative body passes a bill, which is "referred" to the voters for approval or rejection.

**Bond Measures** and other public finance funding vehicles are often voted upon by the public as ballot measures.

Ballot measures may also be known as **propositions** or **questions**.

Lobbying activity on ballot measures differs from lobbying a legislative body. In a ballot measure, the general public is the legislature. Once a legislative proposal is identified, and unless otherwise exempted, expenses directly related to promoting the campaign (even if it involves supporting lobbying messages by other organizations) including the costs of preparation represent lobbying expenditures.

For ballot measures that are placed on the ballot by petitions signed by voters, a matter becomes "specific legislation" when the petition is first circulated among voters for signature. That means that all expenditures--whether staff time, printing costs, contributions, overhead--

related to promoting a campaign after this point must be tracked and applied to our annual ceiling. In addition, pre-circulation expenses that prepare for post-circulation lobbying must be reported as lobbying.

For ballot measures that are referred to the ballot by approval of a legislative body (a city council, for example), the analysis is different. Once legislation is drafted and is being considered by the legislative body, our efforts in supporting passage by the legislative body would be direct or grassroots lobbying. Once the matter has been referred to the voters, our costs in preparing to lobby and actually lobbying the voters would be direct lobbying. That is because once the matter is referred to the voters, our lobbying efforts are refocused on the voters, who are now acting as the legislature.

For a more detailed discussion of ballot measure activity, see the section entitled “Special Rules for Ballot Measures and Conservation Finance Activities” below.

## **2. Exceptions to Lobbying**

### **A. Exception for Nonpartisan Analysis**

Time and expense related to legislative activity does not constitute lobbying expenditures if part of “nonpartisan analysis, study or research.” In some cases, we may even be entitled to express our view on the subject legislation and yet claim this exception. This exception will rarely be applicable to TPL work.

To qualify, the communication must contain a full and fair exposition of the relevant facts. The communication may advocate a position or view as long as there is sufficient, balanced information that enables the public or an individual to form an independent opinion or conclusion. The communication cannot, however, directly encourage the audience to take action with respect to the legislation. “Directly encouraging action” includes: (1) stating that the recipient should contact a legislator, or staff, or someone in government who participates in the formulation of legislation; (2) stating the phone number or address of a legislator or staff member; or (3) providing a petition or tear-off post card to be sent to legislators, staff or key government officials. How might we take advantage of this exception? Let's say you will be speaking for five minutes before a City council that is considering legislation to create funding for open space acquisition. You might prepare remarks that address the needs for additional park funding. If there is opposition, you should address their arguments, but you may rebut them.

You might conclude by expressing your view that the council should adopt the legislation. This may qualify as nonpartisan analysis, if it was sufficiently full and fair.

## **B. Exception for Formal Requests for Technical Assistance**

A communication is not a lobbying communication if it consists of providing technical advice or assistance to a governmental unit in response to a written request from such body. Under these circumstances, TPL may freely express a point of view and even urge action. This exception has many possible applications for TPL.

Let's say a legislature is considering legislation that will cut funding for park acquisition. If TPL has a written request from an official of the legislature to come and present information and opinions on open space programs, the time and expense in preparing for and giving the presentation do not represent lobbying expenditures. This request may not come from just any member; it must be a request made officially on behalf of the legislative body by its chairman or the body as a whole. Technical assistance in the development or evaluation of legislation may also be requested in writing by an appropriate agency official.

## **C. Compliance with Laws**

Time and expense in determining whether steps must be taken to comply with the law, and the nature of these requirements, do not represent lobbying expenditures. Legal costs and expenses that are incurred in complying with the law, in order to lobby, are lobbying expenditures. For example, time and expense in determining the compliance requirements for a ballot measure would not represent lobbying expenditures. On the other hand, legal expenses incurred in implementing an actual campaign would be reportable as lobbying.

## **D. Project Work**

Often, TPL's project work can have some effect on the outcome of legislation. For example, it may be important to secure an option on a project in order to influence legislators to appropriate funds for the project, and an appraisal may influence the amount of the appropriation. Since the costs of negotiating an option and appraising the property are routine project costs, they are not considered lobbying expenses even if related lobbying is underway.

Seeking help from a legislator on a project does not constitute lobbying if no legislation is involved. For example, a project manager may ask a legislator to influence a funding decision of an agency without reporting any lobbying expenses.

## **E. "False Starts" and Similar Circumstances**

Time and expense in preparing to lobby do not need to be counted as lobbying expenditures if:

- Legislation is never introduced or formalized. Time and expense in preparing for and lobbying on behalf of efforts that don't proceed to specific legislation need not be counted as lobbying expenditures, even though the same activities would be counted if the specific legislation came into existence.

- We decide not to lobby. Even if there is a specific legislative proposal, time and expense in preparing for a communication need not be counted as lobbying expenditures if we decide not to lobby, and permanently drop the matter.
- We are lobbying, but specific preparation is not followed by a communication. Even if there is a legislative proposal, and even if we have decided to lobby the matter, the time and expense in preparing for a specific lobbying communication do not constitute lobbying expenditures if the communication never takes place and we reasonably believe the preparation will never be used for another lobbying communication.

Any expense already recorded as lobbying in TPL's accounting system may later be reclassified as non-lobbying if a false start or similar circumstance is determined to apply.

#### **F. National and Regional Oversight**

Oversight activities by national and regional staff often include review of projects and programs involving lobbying by field staff. Such oversight activities do not represent lobbying expenditures as long as the oversight does not directly contribute to development of lobbying strategy or communications.

## **GUIDELINES FOR TRACKING AND REPORTING LOBBYING EXPENDITURES**

This section serves as a guide for determining which expenditures should be recorded as lobbying expenditures.

- A. Reporting Time and Expenses.** Employees involved in lobbying activities should report all time and expenses that are lobbying expenditures, including preparation time and other applicable indirect costs. These employees include field staff, state legislative staff, and Federal Affairs staff who are directly lobbying any legislative body, Conservation Finance Program staff who are lobbying on voter measures, administrative staff who directly support the lobbying efforts of others, and national staff who are significantly involved in the implementation of lobbying efforts.
- B. Outside Costs.** Reportable expenses also include payments to third parties, such as consultants and attorneys, whose activities represent lobbying activities. In many cases bills and invoices will contain lobbying and non-lobbying expenditures; in those cases it is necessary to allocate the appropriate portion of the bill or invoice to lobbying expenditures.

This is an area of great complexity, and in which many judgment calls are necessary. The examples at the end of this document should help demonstrate the application of these principles. Please feel free to call Ernest Cook, Bill Lee or Nelson Lee.

## How Do You Report Lobbying Expenditures?

Lobbying expenditures are gathered in TPL's accounting system from different sources: timesheets, expense reports, vendor invoices, check requests and through allocation of overhead. Timesheets and expense reports each have a separate column so that the user can identify Direct Lobbying ("L") and/or Grassroots ("G") costs by using the appropriate cross-organizational expense code. When working on a project that involves lobbying and non-lobbying time, we suggest you list that project on two lines (twice) on your timesheet; on one line you can record lobbying time, and on the other you can record non-lobbying time.

*[NOTE: Federal Affairs staff use a slightly different timesheet for purposes of tracking their lobbying of Congress and federal agencies. In addition, employees who are registered lobbyists at the state level (such as in California) may use a different timesheet format, to allow the tracking of time for both IRS and state reporting purposes.]*

Travel and other direct expenditures that jointly benefit both lobbying efforts and other TPL business should be allocated using a reasonable allocation method (for example, travel expenses might be allocated based on the number of hours worked on each task).

The identification of lobbying expenditures on invoices and check requests is especially dependent upon a thorough understanding of these guidelines, in that no "special column" exists as a physical reminder of our need to comply. Simply writing "LOBBYING" or "GRASSROOTS LOBBYING" boldly somewhere on the check request or invoice will adequately alert our financial staff of the need to add the cross-organizational expense code to the account coding.

Since the accuracy and completeness of TPL's reporting is directly related to our collective compliance with these guidelines it is important that both the individuals who incur, and those who review/approve expenditures should understand how to identify lobbying expenditures.

## STATE AND LOCAL CONSIDERATIONS

TPL lobbying activity, especially involvement in ballot measures but also including lobbying legislative bodies, may raise other legal considerations under state and local law:

1. **Local Campaign Laws.** If TPL is receiving funds from others to support our work in support of a campaign, TPL may be required to form a ballot question campaign committee or take other action under state and/or local law. Laws regulating campaign committees are highly technical, and the consequences for noncompliance can be severe. It is imperative that you obtain legal advice before embarking on a campaign.
2. **Registration as Lobbyist.** An employee's work representing TPL at the state legislature, with state agencies, County Commissions, and even in rare instances (like New York City) with local officials might require him or her to be registered

as a professional lobbyist with the state. Again, the consequences of failing to comply can be severe. Additionally, some states may require registration as a lobbyist in order to lobby administrative officials.

It should go without saying: work with your Regional Counsel, who will work with Conservation Finance Counsel Bill Lee to evaluate these issues.

## **SPECIAL REPORTING FOR FEDERAL AFFAIRS LOBBYING**

Staff who are lobbying the U.S. House of Representative, the U.S. Senate, and federal agencies are subject to a separate and additional registration and reporting requirement under the Lobbying Disclosure Act of 1995. Those requirements are discussed in a separate memo.

If you have questions, please call Nelson Lee.

## **SPECIAL RULES FOR BALLOT MEASURES AND CONSERVATION FINANCE ACTIVITIES**

Correctly classifying polling, feasibility research, and related activities as lobbying or non-lobbying for IRS purposes under the principles outlined above is particularly challenging. Set forth below are more refined guidelines for ballot measure activity.

**Advance activities must be reported as lobbying expenditures (subject only to the exceptions outlined below) if they involve polling, research or pre-campaign advice, and such polling/research/advice tests or concerns the components or language of prospective legislation or the means to enhance its likelihood of enactment.**

Time or expenses that might otherwise appear to be reportable lobbying expenditures are not reportable if they fall into one of the five exceptions described below. In some cases, expenditures for preparation that are initially classified as lobbying will need to be reclassified as non-lobbying if an exception later applies.

### **Exception #1: Exploring general attitudes**

When polling tests specific language and/or a specific legislative proposal, and the results of that poll are released to legislators or to those who ultimately design and run a campaign, it is hard to argue that the polling was not in preparation for lobbying, even if the polling takes place before a specific proposal is developed.

Polling/research (and related staff time and costs) will not be deemed to be lobbying when the poll tests general attitudes, preferences and values that have a bona fide purpose other than promoting subsequent legislation. When a poll serves multiple purposes and contains a mix of general questions and questions relating to a specific legislative proposal, only a portion of the cost of the poll (and all related costs) need be allocated to lobbying expenditures.

As an example, assume that TPL commissions a poll in Robbins County, North Dakota. The poll asks questions about the need for additional open space, maintenance of existing parks, attitudes about playgrounds, and general willingness to pay for more conservation efforts. Additionally, the poll tests a specific legislative proposal for a countywide sales tax increase to be dedicated to parks acquisition and maintenance. The poll asks: Would you vote in favor of the Robbins County Parks, Safety, Apple Pie and Drinking Water Act?

The general questions will be used by TPL and our partners in Robbins County to set strategy for upcoming years. In this case, only a portion of the cost of the poll--that portion testing a specific proposal--and all attendant staff costs, must be reported as a lobbying expenditure.

Best practice in this area is to get a Technical Assistance letter (see #2, below) from the jurisdiction with which you are working.

### **Exception #2: Responding to a request for technical assistance**

Polling/research/advice (and related staff time and costs) will not be deemed to be lobbying when TPL is acting in response to a request for technical assistance from a legislative body or governmental agency. The request for assistance must be made in advance of incurring expenses for the response, must be in writing, and must come from a legislative body, agency or administrative body (or a member of such body who has the authority to act on behalf of such body) that has authority to act in the area in which TPL's assistance is being requested. TPL must provide its assistance to the entire body (or its representative).

A good example would be a letter from the Chairman of a Board of Supervisors requesting TPL's assistance, on behalf of the Board of Supervisors, in advising the Board on whether a public finance measure is feasible in that jurisdiction. As long as TPL's work is within the scope of the Board's request, the time and expense would not be considered to be lobbying expenditures.

Subsequent use of Technical Assistance Materials. On occasion, materials, information or studies prepared by or for TPL under a technical assistance request are later used in connection with a lobbying effort. If TPL assists a lobbying campaign by providing information originally developed under a technical assistance request, the initial cost incurred in developing the materials is not a reportable lobbying expenditure, but the time and expenses in assisting the recipient represent a lobbying expenditure.

Bill Lee has sample technical assistance request letters.

### **Exception #3: Nonpartisan analysis**

Polling/research/advice (and related staff time and costs) will not be deemed to be lobbying when TPL's efforts represent nonpartisan analysis. To qualify, the analysis completed by TPL must contain a full and fair exposition of the relevant facts. The communication may advocate a position or view as long as there is sufficient, balanced information that enables the

public or an individual to form an independent opinion or conclusion. However, if the analysis is distributed to the public, the communication cannot directly encourage the audience to take action with respect to the legislation.

This exception will only apply in rare circumstances. If you think your activity may qualify as non-partisan analysis, please contact Bill Lee, Conservation Finance Counsel.

#### **Exception #4: False Start**

Polling/research/advice (and related staff time and costs) will not be deemed to be lobbying if:

- Legislation is never introduced or formalized. Time and expense in preparing for and lobbying on behalf of efforts that don't proceed to specific legislation need not be counted as lobbying expenditures, even though the same activities would be counted if the proposal or ballot question became “specific legislation.”
- We decide not to lobby. Even if there is a specific legislative proposal, time and expense in preparing for lobbying need not be counted as lobbying expenditures if we decide not to lobby, do not allow our research and conclusions to be used by others, and drop the matter for the foreseeable future.
- We are preparing to lobby, but specific preparation is not followed by a communication. Even if there is a legislative proposal, and even if we have decided to lobby the matter, the time and expense in preparing to lobby do not constitute lobbying expenditures if the preparation is not used and we reasonably believe the preparation will not be used for the foreseeable future for another lobbying communication.

#### **Exception #5: Depreciating value of polling information**

The reportable amount of polling (and related staff time and costs) decreases as the time period between the taking of the poll and the release of the poll increases.

Assuming that a polling effort (and related staff time and costs) for a particular project meets none of the exceptions discussed above--and thus represents a lobbying expenditure--the full amount of the costs may not have to be reported. We have chosen to apply the following schedule for depreciating polling data<sup>1</sup>.

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1. This “aging schedule” is adopted by analogy from the rules for reporting in-kind contributions to California campaign committees, as established by the California Fair Political Practices Commission. We believe this aging concept to be applicable to IRS reporting purposes, since the value of polling data clearly diminishes as time passes. To not discount the value of such data would be to overstate the contributions made by TPL.

1. If the polling data is used by **TPL** (as opposed to another group) in support of TPL's work on a campaign, no depreciation is allowable.
2. If the polling data is released to another person or organization between 16 and 60 days after the date the polling information is received by TPL, 50% of the cost is deemed to be lobbying expenditures.
3. If the polling data is released to another person or organization 61 to 180 days after the polling information is received by TPL, 5% of the cost is deemed to be lobbying expenditures.
4. If the polling data is released to another person or organization 180 days or more after received by TPL, the information is deemed to have no value.

## Some Common Questions

1. ***Does a meeting with a member of a state legislator's staff to discuss appropriations for a TPL project constitute a lobbying communication that must be accounted for?***

Yes, if the appropriation is in the form of specific legislation (which seems almost certain to be the case), if the TPL representative expresses an opinion on the appropriation (as opposed to simply stating factual matters), and neither the nonpartisan analysis nor the technical assistance exception applies.

2. ***What if we are asking a government agency to use funds for a TPL project if their monies have already been appropriated (meaning no further legislation is required)?***

This is not a lobbying communication for IRS purposes since there will be no "legislation." Moreover, administrative activity does not represent lobbying for IRS purposes (although such activity may be subject to state laws on political activity).

3. ***Is a communication to voters in favor of a bond measure that is on the ballot considered lobbying?***

Yes, unless the nonpartisan analysis exception applies (note that this exception is rarely applied in the context of TPL's work). The expenditure is considered to be "direct" lobbying, not grassroots lobbying.

4. ***What about a communication to voters that urges them to contact their legislators to support a pending bill?***

Again, this is clearly lobbying unless the nonpartisan analysis exception applies. This is a classic case of "grassroots" lobbying, which you would have to record as such on time and expense reports.

5. ***Are we lobbying when we meet with state or federal agencies to discuss their acquisition needs?***

No, unless we are asking an official to support existing or identifiable legislation and that person is in a position to affect the legislation. Generally, this would be true only of officials who customarily participate in the formulation of legislation.

6. ***Are our expenses in preparing "pretty books" (project descriptions) reportable where they "back-up" our lobbying?***

Yes, if the back-up work is clearly linked to a communication to be given to a legislator or someone who will participate in the formulation of legislation. The work may well serve other purposes, however, in which case only a portion of the cost should be

allocated to lobbying. Similarly, other "back-room" costs of preparing a communication are covered.

7. ***Is our payment to a lobbyist or attorney for lobbying purposes considered a reportable expenditure?***

Yes, if the payment is for services that constitute a lobbying "communication." Payments to a lobbyist or attorney are not reportable if they are for general services not related to actual lobbying, such as, for example, monitoring and describing legislation of interest to us.

8. ***Is time spent on tracking federal legislation covered?***

No, it isn't a communication.

9. ***We are conducting a poll evaluating voter support for alternative proposals for financing an open space program. Currently, there is no measure qualified for the ballot. Is the poll a reportable lobbying expenditure?***

Evaluating a legislative proposal is preparation for lobbying and is therefore reportable, unless the poll is conducted pursuant to a technical assistance request letter. Or, if TPL never uses the poll to make a legislative proposal or to inform a campaign, then the false start exception would apply.

10. ***Are time and expenses seeking legal advice on a particular voter measure reportable lobbying expenditures?***

Lobbying expenditures do not include time and expense in determining legal requirements in order to comply with the law. Legal advice and costs incurred in complying with the law, in order to lobby, are reportable. For example, legal costs and time related to setting up a ballot question campaign committee, which is necessary to carry out a particular campaign, are considered lobbying expenditures.

11. ***What about time spent on internal administrative matters?***

The same principle applies: Time spent on administrative matters relating to voter measures or other lobbying in general, is not reportable. Administrative costs incurred in implementing a particular ballot measure are reportable.