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Clinton Foundation's Alleged Pay To Play Or Its Private Benefits: Which Hurts Hillary More?

The Clinton Foundation has surely done good works. Yet like Steinbeck's '[The Pearl](),' it plagues Hillary Clinton. So do her unending email controversies, and the shifting explanations that seem to make any alleged cover-up worse than any alleged crime. Recently, the Foundation and the emails have become considerably more interconnected in a kind of toxic smoothie. Yet, when it comes to the Foundation, there appear to be two main points to evaluate when all the evidence is in.

If nothing else, both are worthy of some raised eyebrows. But they are quite different in scope and import. One is the alleged influence peddling that suggests that the Clinton Foundation may have been a well-worn avenue for some donors to travel to get access to the Secretary of State. The facts are still coming out, and there are many differing views on just how much of this occurred or should be allowed. But the *appearance* does seem striking. For example, it is hard to explain the [report]() that the Foundation gathered $100 million from Gulf sheikhs and billionaires, and for what promises.

The second main issue with the Foundation is pure tax issue, that of private inurement or private benefit. This one may be considerably less serious for a political candidate, but might look somehow even more unseemly. Charities are *supposed* to be operated *exclusively* for charitable purposes. In fact, the law is very clear that charitable organizations with public charity tax exemptions must benefit the *public* interest. The law requires the charity to operate *exclusively* for charitable purposes, and normally the IRS really means *exclusively*.

You can't say this too many times. From a strict tax viewpoint, there do seem to be some Clinton lapses here. They are arguably not of the tax-exemption crushing variety, but they don't look good. Take the Clinton Foundation having arranged a $2 million pledge to a firm owned by Bill's 'friend.' Some observers say that the Clinton Foundation helped Hillary and Bill's friends. And a more personal front, it is hard not to notice that the Clintons became wealthy. Peter Schweizer's book "Clinton Cash" argues that the many public and private deals the Clintons brokered put staggering sums in their pockets.

After being "dead broke" on leaving the White House, their finances exploded. Now, with well over $100 million in earnings they have a vast net worth. Some of it comes from the many speeches no one is talking about. Many charities get tripped up on these kinds of private inurement issues. Often–if not most of the time–the problem is the founders themselves who end up getting enriched. And it may not be the bulk of they money. The IRS notes that:

> ‘ any transaction between an organization and a private individual in which the individual appears to receive a disproportionate share of the benefits of the exchange relative to the charity served presents an inurement issue. Such transactions may include assignments of income, compensation arrangements, sales or exchanges of property, commissions, rental arrangements, gifts with retained interests, and contracts to provide goods or services to the organization."

Even a *small* amount of private inurement can be fatal to a tax exemption. In *Spokane Motorcycle Club v. U.S.*, refreshments, goods and services amounting to $825 (representing some 8% of gross revenues) were furnished to members. That was too much for the IRS. The IRS adds that "a common factual thread running through the cases where inurement has been found is that the individual stands in a relationship with the organization which offers him the opportunity to make use of the organization's income or assets for personal gain."

The burden of proof is on the organization to establish that it is *not* organized or operated for the benefit of private interests. Although the IRS investigation of the Clinton Foundation will almost surely not be completed until after the election.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.