

## **Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016**

### **Summary:**

**Registrants may use drawings as part of a solicitation to a fundraising event, but must report all contributions raised in connection with the solicitation and the event, including the fair market value of any donated prize that is to be awarded as part of the drawing. (Issued to Brady C. Williamson, March 21, 2001)**

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on May 5, 2008.

### **Opinion:**

On behalf of the Community Bankers of Wisconsin PAC, (CBW PAC), and pursuant to s.5.05(6), Stats., you have requested the formal opinion of the State Elections Board on the validity of, and campaign finance procedure for, conducting a drawing for a prize as part of a fundraising event sponsored by CBW PAC. The circumstances regarding which you have requested the Board's opinion are described in your December 19, 2000 request, as follows:

*To encourage contributions to the PAC and raise awareness of its existence, the PAC is interested in conducting a drawing for a prize (or prizes) at an upcoming fundraising event. While the fundraising event will be a distinct and separate event, it will be held in conjunction with the sponsoring organization's (Community Bankers of Wisconsin ("CBW")) annual meeting. Individuals who enter the contest, though, need not be present at the fundraising event in order to win, nor is there any requirement that those who enter the drawing make a contribution to the PAC.*

*The fundraising event and prize drawing will be promoted to individuals representing banks that are members of CBW, member bank employees, and other potential donors to the PAC. Any individual who contributes to the PAC will have his or her name automatically entered into the drawing. To comply with Wisconsin law on contests, however, individuals who do not contribute to the PAC or do not attend the fundraising event will also be allowed to enter their names in the drawing.<sup>1</sup> All entrants, no matter how they are entered into the drawing or how much they contribute to the PAC, will be treated the same and have the same likelihood of winning.*

*Any prize to be awarded in the drawing will be obtained by the PAC in one of two ways. First, a prize may be donated to the PAC by an individual as an in-kind contribution. The value of any prize provided to the PAC by a single contributor will not exceed \$10,000. The identity of the donor and value of the in-kind contribution will be reported, of course, and disclosed on the PAC's campaign finance reports periodically filed with the Board. In the alternative, the PAC may decide to directly purchase a prize to be awarded in the drawing. The PAC would use funds from its depository account to pay for the prize and*

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<sup>1</sup> We are particularly interested in the Board's opinion on the proposal that the PAC allow non-contributors to participate in the drawing and the resulting possibility that a prize, donated to the PAC as an in-kind contribution or purchased by the PAC, may be awarded to an individual who did not contribute to the PAC.

*report the expense, along with the PAC's other disbursements, on its campaign finance reports.*

As your request indicates that you are aware, the conduct of raffles or drawings in Wisconsin is regulated by the State of Wisconsin under ch. 563 of the Wisconsin Statutes, as follows:

### ***Chapter 563 Bingo and Raffle Control***

#### ***563.02 Purpose***

*(1) All phases of the conduct of bingo and raffles, except bingo games using free cards and donated prizes for which no payment of consideration is made by participants, should be closely controlled by appropriate laws and rules which should be strictly and uniformly enforced throughout this state.*

#### ***563.03 Definitions***

*(12m) "Raffle" means a game of chance in which tickets or calendars are sold and a drawing for prizes is held.*

The enforcement of ch. 563, Stats., and the regulation of raffles and other games of chance are administered by the Division of Gaming in the Wisconsin Department of Administration. Nothing in this opinion is intended as an interpretation of ch. 563, Stats., or an expression of the opinion of the Wisconsin Department of Administration, Division of Gaming.

Historically, raffles, drawings and other games of chance have been recognized (under both state and federal campaign finance law) as a permissible means of raising funds for political committees. The Elections Board has consistently referred all questions concerning the legitimacy and licensing of such fundraising devices to the Bingo Control Board, now the Division of Gaming. For campaign finance purposes, however, the Elections Board has never found anything in ch. 11 of the Wisconsin Statutes to prohibit the use of raffles or drawings to raise funds for political purposes. The Board is not aware of any change in the law that would dictate a change in its past practice or policy.

For campaign finance purposes the purchase of a raffle or drawing ticket from a registrant is considered a political contribution to the registrant, by the purchaser, in the amount of the price of the ticket. Consequently, the purchase of raffle or drawing tickets from registrants is subject to ch. 11's contribution limits and prohibitions. (A corporation, for instance, may not purchase a raffle or drawing ticket from a registrant.) And the identity of the ticket purchaser, (as well as other information required by § 11.06, Stats.), must be reported by the registrant on its campaign finance reports. (§§ 11.10 and 11.20, Stats.)

If the prize being awarded has been donated to the registrant, the donation is a reportable in-kind contribution to the registrant in the amount of the fair market value of the donated item. Consequently, the contribution of donated items is subject to ch. 11's contribution limits and prohibitions. (Again a corporation may not donate a raffle or drawing prize to a registrant and, as you have pointed out, the donated item may not exceed \$10,000 in value unless it is donated by multiple contributors.)

For campaign finance reporting purposes, the contribution of a donated prize is not only shown as a contribution by the contributor, but as a disbursement by the registrant, (in the amount of the fair market value of the item), as though the registrant had purchased the item on the open market. Of course, the identity of the contributor of a donated item, (as well as other information required by §11.06, Stats.), just like the identity of the ticket purchaser, must be reported by the registrant on its campaign finance reports.

In the circumstances you have described, drawing participants will not be required to either purchase a ticket or make a contribution to the sponsoring PAC to enable them to participate. Nor will participants be limited to members of the PAC or its sponsoring association. Because, in theory, persons who are either or both non-members of, or non-contributors to, the PAC could win the prize, you have asked whether the drawing would be prohibited or restricted by campaign finance law. The Board believes the answer to your question is no. The identity of the drawing winner, or relationship of the drawing winner to the PAC, is not relevant to the campaign finance regulation of the drawing.

In short, ch. 11 of the Wisconsin Statutes contains no provision regulating drawings as fundraising vehicles for political committees or other registrants. Neither do the provisions of the Wisconsin Administrative Code relating to the rules of the Elections Board contain any provision regulating drawings as fundraising vehicles for political committees or other registrants. Consequently, the Board cannot point to any statutory or administrative provision prohibiting or restricting the persons who may enter or win prizes at a registrant's drawings based on the winner's membership in, or contribution to, the registrant or the registrant's sponsor.

The Board is aware of the argument that the absence of either a contribution to the registrant, or a membership relationship to the registrant, as a prerequisite for participation in the drawing, could deprive the drawing of a political purpose. In other words, because registrants are not in the gaming business, the awarding of a prize to a non-member, non-contributor does not advance the registrant's reason, (i.e., political purpose), for holding the drawing -- to raise money for the registrant. Absence of a political purpose would render the activity prohibited to a registrant by §11.25(2)(a), Stats.

The Board recognizes, however, that the drawing is being held solely as a promotional incentive to solicit persons to contribute to the PAC. Only members and prospective contributors will be solicited. Non-contributors will have to "go out of their way" to enter the drawing. The Board believes that persons will be solicited and encouraged to contribute to the PAC for a chance to win not because of a guarantee of winning. Consequently, the overall effect of the drawing is as a promotional tool to encourage persons to contribute to the PAC, and thereby does advance the political purpose. The chance that a non-contributor will win a prize is an incidental and, apparently, (under gaming law), unavoidable cost of doing business. Actually, having to award a prize to anyone is a cost of business that, other than its promotional effect, does not strictly advance the political purpose. Ideally, persons would attend the event and contribute to the PAC solely for the good of the PAC, not to win a prize. But because PAC's don't live in an ideal world they have drawings.