

2017 ETH 03

CAMPAIGN FINANCE – SEGREGATED FUNDS

You are an attorney that advises organizations on campaign finance matters. You have asked for an advisory opinion regarding treatment under Chapter 11 of the segregated fund of a Wisconsin political party committee or legislative campaign committee.

Summary:

It is the opinion of the Commission that:

1. Individuals, which include sole proprietorships, partnerships, and certain LLCs, may make unlimited monetary and in-kind contributions to segregated funds. However, corporations, labor organizations, cooperatives, federally-recognized Indian tribes, political action committees and other persons may only make monetary and in-kind contributions to a segregated fund of up to \$12,000 in a calendar year.
2. A political party or legislative campaign committee may not make monetary or in-kind contributions to candidate committees or make disbursements for express advocacy using segregated funds.
 - a. A political party or legislative campaign committee may provide goods and services to a candidate which was paid for with segregated funds as long as it charges fair market value. It may not however design or produce express advocacy communications for use by a candidate regardless of whether the candidate is charged fair market value.
 - b. A political party or legislative campaign committee may make disbursements from a segregated fund to support any other political party or legislative campaign committee activities that are unrelated to direct candidate support or express advocacy.
3. A political party or legislative campaign committee must make disbursements directly from a segregated fund to pay permitted expenses. A political party or legislative campaign committee may not make general purpose or unrestricted transfers from a segregated fund to another account in order to finance express advocacy or contribute to candidates.
4. A political party or legislative campaign committee must report all contributions to a segregated fund as well as all disbursements made from the segregated fund. All contributions must be itemized as well as all disbursements in excess of \$20.

Analysis:

Segregated funds are separate accounts established and administered by either a party or legislative campaign committee that can accept contributions from otherwise prohibited sources like corporations, cooperatives, unincorporated associations, labor unions, and tribes; but those funds cannot be used for contributions to candidates or for express advocacy. WIS. STAT. §§ [11.1104\(6\)](#), [11.1112](#).

1. Contribution Limits on Segregated Funds

Contributions include both monetary and in-kind contributions. [WIS. STAT. § 11.0101\(8\)\(a\)1.-3](#). In-kind contributions of either goods or services are valued using their fair market value at

the time the contribution is made. [WIS. STAT. § 11.1105](#). Contribution limits do not distinguish between monetary and in-kind contributions and both types count towards the contributor's limit. WIS. STAT. §§ [11.1101](#), [11.1104](#).

Contributions to a segregated fund from individuals are not limited. [WIS. STAT. § 11.1104\(6\)](#). Contributions to a segregated fund from sole proprietorships, partnerships, and LLCs treated as sole proprietorships or partnerships by the Internal Revenue Service, are treated as contributions from the individuals involved, not the business, and are similarly not limited. WIS. STAT. §§ [11.1104\(6\)](#), [11.1113](#). Contributions to a segregated fund from any other person is limited to \$12,000 per year. WIS. STAT. §§ [11.1104\(6\)](#), [11.1112](#).

2. Prohibited Uses of Segregated Funds

Wisconsin law does not go into great detail regarding segregated funds. The only substantive description of segregated funds is with regard to segregated funds established and administered by a political party or legislative campaign committee for purposes other than making contributions to a candidate committee or making disbursements for express advocacy. [WIS. STAT. § 11.1104\(6\)](#). The underlying premise appears to be that segregated funds as described in statute cannot be used for these purposes. This reading is strengthened by the fact that [WIS. STAT. § 11.1112](#) prohibits corporations, associations, unions, and tribes from making contributions to committees other than an independent expenditure committee, a referendum committee, or a segregated fund of a political party or legislative campaign committee.

Contributions to a political party or legislative campaign committee for express advocacy or contributions to candidates are subject to the source restrictions and contribution limits of WIS. STAT. §§ [11.1104](#) and [11.1112](#). [WIS. STAT. § 11.1104](#) limits a PAC or other person to a contribution of no more than \$12,000 per calendar year to the general fund of a political party or legislative campaign committee. Additionally, [WIS. STAT. § 11.1112](#) limits a PAC or other person to a contribution of no more than \$12,000 per calendar year to the segregated fund of a political party or legislative campaign committee.¹ These contribution limits are treated separately.²

a. Express Advocacy

Express advocacy is defined as a communication that contains certain terms with reference to a clearly identified candidate and that unambiguously relate to the election or defeat of that candidate. [WIS. STAT. § 11.0101\(11\)](#). Disbursements for the purpose of express advocacy would include paying the costs of design, production, or dissemination of such a communication. While express advocacy can be independent or coordinated, the distinction is irrelevant for this analysis as either type of express advocacy would be outside the purpose of a segregated fund established under [WIS. STAT. § 11.1104\(6\)](#) and prohibited from such funds.

¹ These contribution limits apply unless otherwise pre-empted by federal law. See [FEC AO 2001-12](#).

² This opinion was revised by the Commission on June 16, 2020. The previous opinion advised that the contribution limits were treated globally. Contributions were limited to a maximum of \$12,000 per calendar year between the two funds.

b. Contributions

A contribution occurs when a person makes a transfer of funds to a committee, or with the committee's consent transfers goods or services to a committee. [WIS. STAT. § 11.0101\(8\)](#). If goods or services are transferred in exchange for fair market value, no contribution has occurred, only a disbursement by the committee. Similar to the express advocacy prohibition above, a political party or legislative campaign committee cannot use segregated funds to make a contribution to a candidate committee. [WIS. STAT. § 11.1104\(6\)](#).

3. Transfers from Segregated Funds

As described above, a segregated fund is merely a separate account (either an internal operating account or external bank account), not a separate legal entity. As the name implies, the funds in that separate account are segregated from other funds and subject to different rules than funds in the general political party or legislative campaign committee account. To respect the different character of the funds, the political party or legislative campaign committee cannot make general purpose or unrestricted transfers between the segregated fund and other accounts. While unlikely, the political party committee or legislative campaign committee may transfer funds into the segregated fund like any other donor. However, disbursements for permissible activity should come directly from the segregated fund.

4. Reporting of Segregated Funds

The G.A.B. previously determined in January 2016 that reporting of segregated funds is required under WIS. STAT. §§ [11.0304\(1\)](#) and [11.0404\(1\)](#), which require political parties and legislative campaign committees to report all contributions, disbursements, and obligations received, made, or incurred. The information required of segregated funds is the same as the reporting required of all other committees on their campaign finance reports:

- Date of the contribution or disbursement
- Name and address of each person or committee making a contribution
- Amount of the contribution
- Occupation, if any, for contributions in excess of \$200
- Itemized statement of each contribution made anonymously
- Itemized statement of each loan received in excess of \$20
- Itemized statement of every disbursement and obligation exceeding \$20 together with its purpose and the name and address of the person to which it was made
- Cumulative totals of contributions received, disbursements made, obligations incurred, and cash balance

As segregated funds will never be involved in disbursements for express advocacy or contributions to candidates, by definition a segregated fund need not file election-related reports (pre-primary, pre-election, etc.)