
2019 ETH 02

ETHICS – LEGISLATIVE PLEDGES AND CANDIDATE SCREENING PROCESSES

You are a candidate for state public office. You have asked for an advisory opinion regarding whether signing a legislative pledge in exchange for financial support would violate [WIS. STAT. § 19.45\(13\)](#). You also ask if your answer during a candidate screening interview regarding your support for a certain issue would violate [WIS. STAT. § 19.45\(13\)](#).

Summary:

It is the opinion of the Commission that neither the pledge of support described nor the answer to the candidate screening interview question described would violate [WIS. STAT. § 19.45\(13\)](#).

Analysis:

Voters commonly ask candidates to do (or not do) certain things, and either offer their support or threaten to withhold it, depending on the candidate's actions. The question is when do these exchanges constitute *quid pro quo* in violation of the ethics code?

The code of ethics for state public officials has only a single provision that examines the conduct of a candidate for state public office: [WIS. STAT. § 19.45\(13\)](#). It provides:

“No state public official or candidate for state public office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, any committee registered under ch. 11, or any person making a communication that contains a reference to a clearly identified state public official holding an elective office or to a candidate for state public office.”

Breaking this prohibition into its relevant elements:

1. No candidate for state public office may:
 - a. Give, offer or promise to give, withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter;
 - b. In consideration of or upon the condition that any person:
 - i. Make or refrain from making a contribution;
 - ii. Provide a service; or,
 - iii. Provide a thing of value;
 - c. To or for the benefit of the candidate.

By signing the pledge described, you would be promising or pledging your potential future vote, influence, or official action in consideration of a contribution to your campaign, but it does not

appear that the promise or pledge is “with respect to any proposed or pending matter.” The language used in the pledge that you have provided is not specific as to any proposed or pending matter. The most specific the pledge gets are the elements to “support redistricting processes and structures that minimize the efficiency gap between voters, so that every vote has the same weight” and “oppose districts being drawn for partisan advantage or disadvantage.” To our knowledge, 2019 Assembly Bill 303 and Senate Bill 288 are the only bills that currently address redistricting as described in the pledge, but these two bills are unlikely to still be a matter on which you could vote if you were successful in seeking election in 2020. Presumably you could have some influence if a future bill was to be drafted or introduced in the 2021-2022 session and you are successful in seeking election, but such an effort appears remote and speculative at this time.

The Ethics Board has long held that a conflict of interest does not arise where the action’s effect on the official’s interests is remote and speculative. *See e.g.*, [2007 Wis Eth Bd 10](#), [2002 Wis Eth Bd 2](#), [1992 Wis Eth Bd 10](#). This Commission adopted a similar conclusion where the impacts of a local governmental official’s actions were too remote and speculative to require recusal. 2019 RA 1. Both the Ethics Commission and its predecessor agencies have had the opportunity to apply [WIS. STAT. § 19.45\(13\)](#) in the context of complaints and this law has never been applied to actions that are remote or speculative. In this case, a pledge to take action to support or oppose some matter at some unspecified time in the future if the candidate is elected is too remote and speculative to apply this *quid pro quo* prohibition of the ethics code.

As to whether your answer to a candidate screening question could be considered a violation of [WIS. STAT. § 19.45\(13\)](#), that will depend on the facts. To be clear, a candidate’s participation in a screening interview is a common request by organizations seeking to determine whether to support a candidate and by itself does not raise any issues under the ethics code. Specifically, the hypothetical question you described, “would you support teacher pay raises as a legislature [sic]?” does not appear to be regarding a proposed or pending matter before the Legislature and the answer does not appear to be a promise. However, even if there was a proposed or pending matter before the Legislature regarding teacher pay raises and the answer was phrased as a promise of official action on the specific proposed or pending matter, the promise must still be upon the condition that any other person make a contribution, provide a service or other thing of value, to the benefit of a candidate, a political party, any committee registered under ch. 11, or any person making a communication that contains a reference to a clearly identified state public official holding an elective office or to a candidate for state public office. [WIS. STAT. § 19.45\(13\)](#). An answer to a question regarding a candidate’s views without the condition of a contribution is not prohibited. Quite the contrary, for the public to have a healthy discussion as to the merits of political candidates, candidates must be able to share their views.

Buerger, David - ETHICS

From: [REDACTED] <[REDACTED]>
Sent: Friday, May 10, 2019 3:35 AM
To: WI Campaign Finance
Subject: Formal opinion request
Attachments: Screenshot_2019-05-01-13-31-42.png; Screenshot_2019-05-01-13-32-28.png; Screenshot_2019-05-01-13-31-58.png; Screenshot_2019-05-01-13-31-50.png; Screenshot_2019-05-01-13-32-20.png; Screenshot_2019-05-01-13-32-04.png; Screenshot_2019-05-01-13-32-11.png

Dear Wisconsin Ethics Commission,

I would like to ask your formal opinion on 2 matters.

1st, is there anything in the candidate donation process of the PAC [REDACTED] that violates ethics rules? Especially whether making legislative pledges for financial support would violate statute 19.45(13).

[https://www.\[REDACTED\]/candidate-criteria](https://www.[REDACTED]/candidate-criteria)

2nd, the [REDACTED] has a candidate screening process. If the candidate is currently elected, they base their support on the candidate's legislative scorecard. But if it is a new candidate, like me, they set up a meeting with a candidate screening committee. The committee would ask me questions, and depending on my answers they would decide to endorse me.

My question is if the committee asks me about whether I would support certain legislation, would my answer violate statute 19.45(13)? For instance, let us say the committee asks "would you support teacher pay raises as a legislature?", and I could reasonably guess that the answer is "yes" if I want their money. So that may be a promise.

Best regards,

[REDACTED]

On Thu, May 2, 2019, 10:54 AM WI Campaign Finance <CampaignFinance@wisconsin.gov> wrote:

[REDACTED],

I'll address your questions in the order that they are presented:

1. If I include additional information that ends up having precedent, would that mess up the process?

[I'm not sure that I understand this question. What do you mean by "mess up the process?"](#)

2. For example, does a candidate filling out a policy questionnaire that is required to receive funds count as a pledge or violation?

[Because we do not have any precedent on point yet, I cannot answer this question. For now, I can only refer you to the statutory language.](#)

3. If a PAC bases its financial support on their own publicly known scorecard of a candidate's legislative voting record, and the candidate has the opportunity to change that legislative scorecard before the PAC makes its final decision, does that count as a pledge or violation?

In the last two questions, you ask whether it counts as a “pledge or violation.” I am not sure that I understand what that means to you. If you are interested in getting the Commission to answer these questions concerning your future conduct, we’ll be happy to include these questions in your formal opinion request. I would advise that, if you wish to proceed with your formal opinion request, that you consider what facts might be pertinent and provide more specifics. The factual representations are very important to the decision-making process. As presented, these questions might be too general for the Commission to answer.

I would like to take a moment and clarify about the purpose of the advisory opinion process. The advisory opinion process is designed to give individuals advice concerning their future conduct. It is not to be used for the purposes of determining whether prior conduct, especially prior conduct of others, would constitute a violation. It would be improper for the Commission or its staff to essentially be put in the position of “prejudging” a complaint. So, we do not give advice concerning past conduct and we do not advise a potential complainant in advance of filing a complaint whether there is a violation by others. The decision of whether one wants to file a complaint is completely up to them. It is the responsibility of the complainant to determine whether they think the conduct warrants a complaint and weigh whether they are concerned that they may be sanctioned for filing a frivolous complaint under [WIS. STAT. § 19.49\(2\)\(b\)1M](#).

Additionally, it is important to know that the only way to get a “legal shield” is through an informal opinion provided by the Commission Administrator or a formal opinion issued by the Commission. Responses of staff via telephone or email do not provide any legal protection in the event that a complaint is filed.

As I mentioned in my prior email, the Commission’s next scheduled meeting is June 18, 2019. The Commission members get their materials two weeks in advance of a meeting. So, if you would like to proceed with a formal opinion, we would need the request and any additional information that you would like to provide by May 15, 2019. That will allow us plenty of time to prepare any needed materials and ensure that we can have the matter taken up at the June 18, 2019, meeting.

Sincerely,

Daniel A. Carlton, Jr.

Administrator

Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics

<https://ethics.wi.gov> | (608) 266-8123 | Twitter: [@EthicsWi](#)

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From: [REDACTED] <[REDACTED]>
Sent: Wednesday, May 1, 2019 11:52 PM
To: WI Campaign Finance <CampaignFinance@wisconsin.gov>
Subject: Re: Question about pledges

Dear Mr. Carlton,

Thank you for your detailed reply. I understand the reasons for the delay. I am interested in filing for a formal opinion, but I have a few questions first.

- 1) If I include additional information that ends up having precedent, would that mess up the process?
- 2) For example, does a candidate filling out a policy questionnaire that is required to receive funds count as a pledge or violation?
- 3) If a PAC bases its financial support on their own publicly known scorecard of a candidate's legislative voting record, and the candidate has the opportunity to change that legislative scorecard before the PAC makes its final decision, does that count as a pledge or violation?

Best regards,

[REDACTED]

On Wed, May 1, 2019, 11:44 AM WI Campaign Finance <CampaignFinance@wisconsin.gov> wrote:

Dear [REDACTED],

I apologize for the delay in responding to you. I needed to do some research to determine whether we could answer your questions at the staff level. Unfortunately, we do not have sufficient precedent to provide the requested guidance at the staff level.

Since we don't have sufficient precedent to answer your question at the staff level, the way to get guidance is through a request for a formal opinion from the Commission. The Commission's next scheduled meeting is June 18, 2019. The Commission members get their materials two weeks in advance of a meeting. So, if you would like to proceed with a formal opinion, we would need the request and any additional information that you would like to provide by May 15, 2019. That will allow us plenty of time to prepare any needed materials and ensure that we can have the matter taken up at the June 18, 2019, meeting.

If you would like to request a formal opinion of the Ethics Commission, please let me know.

Sincerely,

Daniel A. Carlton, Jr.

Administrator

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From: [REDACTED] <[REDACTED]>
Sent: Monday, April 29, 2019 1:12 PM
To: WI Campaign Finance <CampaignFinance@wisconsin.gov>
Subject: Re: Question about pledges

Dear Wisconsin Ethics Commission,

I'm just following up to make sure my previous email made it through. If you are still looking into it, please take your time. I don't want to rush you.

Best regards,

[REDACTED]
On Thu, Apr 25, 2019, 4:11 AM [REDACTED] <[REDACTED]> wrote:

Dear Wisconsin Ethics Commission,

I would like to accept a donation from the organization [REDACTED]. However, they require me to sign a pledge to get their money. I believe this would be a violation of statute 19.45(13) (<https://docs.legis.wisconsin.gov/statutes/statutes/19/III/45/13>). Could you please verify if my interpretation is correct? Here is the text of the pledge:

"Upon my election to public office, I will work to uphold the following principles throughout my career as an elected official, in the office I currently seek or any future office:

- 1) I will work for free and fair elections.*
- 2) I will work to expand voter participation, and to expand access to the vote for everyone in my community and my state.*
- 3) I will support redistricting processes and structures that minimize the efficiency gap between voters, so that every vote has the same weight.*
- 4) I will oppose districts being drawn for partisan advantage or disadvantage.*
- 5) I will work to ensure that redistricting processes are done in as transparent a manner as possible, with meaningful opportunities for public participation.*
- 6) I will continually work to root out ways in which voting rules and redistricting cause or exacerbate inequalities in political power and representation.*

In accepting a campaign contribution from [REDACTED] and taking this pledge, I agree that voting rights cannot be taken for granted, and that as an elected official I will affirmatively act to protect everyone's right to an equal voice in how we are governed, and an equal say in who represents us in our state and Federal governments."

Source: [https://www.\[REDACTED\]/candidate-criteria](https://www.[REDACTED]/candidate-criteria)

Best regards,

[REDACTED]

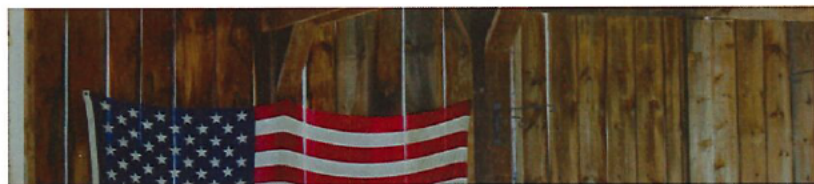
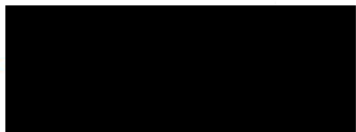


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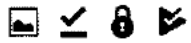


Candidate Criteria

OK, so you're a candidate in one of our target states, you made it to our website, you understand what we're trying to do. But it's call time, and you either need us to give you some money, or you have to get back to dialing for dollars. We get it. Here's how you ask us for money.

In order to become an





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In order to become an [REDACTED]
Candidate - and get a check for no less than
\$5000, and hopefully more - we'll take you
through three levels:

Level 1: **Your district.** Our goal is to
contribute to those districts that fall just
below those that are traditionally provided
resources by larger PACs and other national
donors. So long as your district checks the
box on our initial two questions, its on to
level two: One, is this the kind of district
where Democrats might have a tough time
competing in typical years, but where we can
be part of a wave in Trump years? We'll check
this based on previous electoral results. Two,
is our donation likely to make a significant
impact? We'll check this through tracing
funding history.



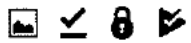
Level 2: **Your dedication.** This level has a few requirements. First, fill out our online candidate questionnaire by clicking on the Get Started button below. Second, prove to us that you are running a viable campaign by fulfilling any one of the following criteria:

1. You already have raised funds from 100 separate donors
2. You have raised over \$50,000 (netting out any self-funds in excess of \$10,000)
3. You have more than 50% cash on hand of your opponent's most recently posted quarterly filing total

Level 3: **Your fit.** Jump on the phone with someone from our leadership team for a 30 minute open-ended conversation.

The last thing we'll ask you to do is to sign the [REDACTED] Pledge:





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Our mission is to endorse candidates early to ensure our donations have as big of an impact as possible. As such, we have closed the application process for 2018 as we finalize our candidate list. If you are running, we are still behind you and we will continue working alongside you throughout this cycle.

We will re-open our application process on
January 1, 2019.





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We will re-open our application process on
January 1, 2019.

Thank you and keep working to
#UnGerrymanderAmerica!

YOUR NAME GOES HERE!

We're looking forward to showcasing you.
Run for office; we'll help.

BACK TO TOP

