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**2020 ETH 04**  
LOBBYING – CONTRIBUTIONS TO PARTISAN ELECTIVE STATE OFFICIALS

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You are an attorney who represents several licensed lobbyists. You have presented several scenarios of lobbyist contributions to partisan elective state officials and candidates for partisan elective state office and inquire as to whether they are permissible under the applicable statutes.

Summary:

It is the opinion of the Commission that a lobbyist may contribute to partisan elective state officials and candidates for partisan elective state office during the period of time in which the “contribution window” is open, regardless of whether the individual is on the ballot for that election. Therefore, all of the following lobbyist contributions to partisan elective state officials and candidates for partisan elective state office are permissible under the applicable statutes<sup>1</sup>:

1. To the lieutenant governor, secretary of state, state treasurer, or attorney general or to the candidate committee of a candidate for one of these offices during the contribution window that opens prior to a general election, regardless of whether he or she is on the ballot.
2. To any partisan state elective official or to the candidate committee of any candidate for partisan elective state office during the contribution window that opens when a special election is called, regardless of whether the partisan elective state official or candidate is on the ballot.
3. To the federal campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the federal election or partisan official is on the ballot.
4. To the local campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the local election or the partisan official is on the ballot.

Analysis

The crux of the questions you presented is whether a licensed lobbyist may contribute to all partisan elective state officials and candidates for partisan elective state office during the contribution window, not only those partisan elective state officials and candidates for partisan elective state office circulating nomination papers to have their names placed on the ballot in that year’s election.

You specifically inquired into the following scenarios:

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<sup>1</sup> Please note that for scenarios 2, 3, and 4, a contribution from a lobbyist to a current legislator or candidate for legislative office may not be made unless the legislature has concluded its final floorperiod, and is not in special or extraordinary session.

1. To the lieutenant governor, secretary of state, state treasurer, or attorney general or to the candidate committee of a candidate for one of these offices during the contribution window that opens prior to a general election, regardless of whether he or she is on the ballot.
2. To any partisan state elective official or to the candidate committee of any candidate for partisan elective state office during the contribution window that opens when a special election is called, regardless of whether the partisan elective state official or candidate is on the ballot.
3. To the federal campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the federal election or partisan official is on the ballot.
4. To the local campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the local election or the partisan official is on the ballot.

Your inquiry concerns matters related to the lobbying law, the provisions of Subchapter III, Chapter 13 of the Wisconsin Statutes, as well as, campaign finance law, Chapter 11 of the Wisconsin Statutes.

The relevant statute sections implicated for this request for advice are as follows:

[WIS. STAT. § 11.0101 \(1\)\(c\)](#) provides in relevant part:

- (1) "Candidate" means an individual about whom any of the following applies:
  - (c) The individual holds a state or local office.

[WIS. STAT. § 13.625\(1\)](#) provides in relevant part:

- (1) No lobbyist may:
  - (b) Give to ... to any elective state official or candidate for an elective state office, or to the candidate committee of the official, employee, or candidate:
    3. ..., money or any other thing of pecuniary value, except that a lobbyist may deliver a contribution or make a personal contribution to a partisan elective state official or candidate for national, state or local office or to the candidate committee of the official or candidate; but a lobbyist may make a personal contribution to which sub. [\(1m\)](#) applies only as authorized in sub. [\(1m\)](#).

[WIS. STAT. § 13.625\(1m\)](#) provides in relevant part:

- (1m)
  - (a) Except as provided in par. [\(b\)](#), a lobbyist may not do any of the following:
    1. Make a personal contribution to a partisan elective state official for the purpose of promoting the official's election to any national, state, or local office.
    2. Make a personal contribution to a candidate for a partisan elective state office to be filled at the general election or a special election.
    3. Make a personal contribution to the candidate committee of a partisan elective state official or candidate for partisan state elective office.

(b) A lobbyist may make a personal contribution to a partisan elective state official or candidate for partisan elective state office or to the candidate committee of the official or candidate between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:

1. A contribution to a candidate for legislative office may be made during that period only if the legislature has concluded its final floorperiod, and is not in special or extraordinary session.
2. A contribution by a lobbyist to the lobbyist's candidate committee for partisan elective state office may be made at any time.

[WIS. STAT. § 13.625\(1\)](#) generally prohibits lobbyists from providing anything of value to a partisan elective state official. [WIS. STAT. § 13.625\(1m\)\(a\)](#), specifically prohibits a lobbyist from making personal contributions to partisan elective state officials or candidates for partisan elective state office. However, Chapter 13 also contains an exception to these general prohibitions, that a lobbyist may make personal contributions, to partisan elective state officials who are candidates for state office during a specific time period, which is generally referred to by the Commission and the regulated community as the “contribution window”. [WIS. STAT. § 13.625\(1m\)\(b\)](#).

The first part of the sentence in subsection [\(1m\)\(b\)](#) states “A lobbyist may make a personal contribution to a partisan elective state official or candidate for partisan elective state office or to the candidate committee of the official or candidate....” The purpose of this portion of the sentence identifies who is covered by the provision. This clause allows a lobbyist to make a personal contribution to the individuals enumerated in the statute. It is important to note that the statutory definition of candidate in [WIS. STAT. § 11.0101 \(1\)\(c\)](#) provides that a state or local office holder is a candidate. The remainder of the sentence provides: “between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election.” This portion contains the window of time during which the lobbyist may make a personal contribution.

Additionally, the final part of subsection [\(1m\)\(b\)](#), lays out a more specific time period for partisan elective state officials who are current legislators or candidates for a legislative office. For these partisan elective state officials, the contribution window does not open until the legislature concludes its final floorperiod and is not in a special or extraordinary session. Therefore, if the legislature is still in session on the date on which nomination papers may begin being circulated, the contribution window opens on a later date, once the legislature concludes the final floorperiod. Furthermore, if the legislature convenes in special or extraordinary session after the contribution window has opened for legislative candidate, the window closes until such session is adjourned.

### Legislative History

In your request for advice you provide an analysis of the legislative history of the relevant statutory provisions. The statutory provisions were amended most recently in 2013 and 2015, by [2013 Wisconsin Act 153](#) (“2013 Act”) and [2015 Wisconsin Act 117](#) (“2015 Act”).

There are three relevant amendments from the 2013 Act for this matter<sup>2</sup>:

1. Clarified that lobbyists may not make *personal* contributions, except during the contribution window,
2. Changed the start date for the contribution window from June 1 to “the first day authorized by law for the circulation of nomination papers as a candidate at a general or special election,” and
3. Added special elections to the end date for the contribution window, meaning that there would be a defined contribution window for special elections due to this amendment.

The relevant amendment in the 2015 Act for this matter is that the phrase “in the year of a candidate’s election” was struck from the language.<sup>3</sup>

As you discuss in your request for advice, the major amendment in 2013 was changing the time period of the contribution window from a specific date, June 1, to “the first day authorized by law for the circulation of nomination papers....” In your request for advice you contend that this specific reference to nomination papers, restricts the window to open only for candidates seeking ballot access in that election. Further, you stated that if the Legislature had intended to broaden the application of the contribution window to all candidates for partisan state elective office, the 2015 Act would have replaced the reference to first date it is authorized by law to circulate nomination papers (for the general election this is always April 15) with a specific date, such as how it had previously been written before the 2013 Act amendment, when June 1 was used as the date of the opening of the contribution window. A specific date would not be appropriate however, given that the language added in 2013 says “the first day authorized by law for the circulation of nomination papers as a candidate at a general election or *special* election.” While there may always be a specific date assigned for the start of circulating nomination papers for a general election, this is not possible with a special election, as they can be called at any time.

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<sup>2</sup> 2013 Wisconsin Act 153 provided the following:

*13.625 (1) (c) (intro.) of the statutes is amended to read:*

*13.625 (1) (c) Except as permitted in this subsection, personally make a campaign contribution, as defined in s. 11.01 (6), to a partisan elective state official for the purpose of promoting the official's election to any national, state, or local office, or to a candidate for a partisan elective state office to be filled at the general election or a special election, or to the official's or candidate's personal campaign committee. A lobbyist may personally make a campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her to the personal campaign committee may be made of the official or candidate in the year of a candidate's election between June 1 the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:*

<sup>3</sup> 2015 Wisconsin Act 117 provided the following:

*13.625 (1) (c) (intro.) of the statutes is renumbered 13.625 (1m) (a) (intro.) and amended to read:*

*(b) A lobbyist may ~~personally~~ make a ~~campaign~~ personal contribution to a partisan elective state official or candidate for partisan elective state office or to the ~~personal campaign~~ candidate committee of the official or candidate ~~in the year of a candidate's election~~ between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:*

One amendment that was not mentioned in your request for advice is the 2015 Act's removal of the phrase "in the year of a candidate's election," which had in the previous version of the statute preceded the description of the time period of the contribution window "between the first day authorized by law for the circulation of nomination papers...." Prior to the 2015 Act, based on the plain language of the statute it was clear that the contribution window's application was limited to those partisan state elective officials who were on the ballot that year, because of the phrase "in the year of the candidate's election." As a result of the explicit removal of this phrase, the contribution window now opens not only to those candidates in the year of their election, but also to those candidates that are not on the ballot for that year's election. [WIS. STAT. § 13.625 \(1m\)\(b\)](#) does not place limits on which candidates may receive the lobbyist contributions, but rather only places a limit on the time period in which the lobbyists may contribute to partisan elective state officials and candidates for partisan elective state office.

## **Conclusion**

It is the opinion of the Commission that a lobbyist may contribution to partisan elective state officials and candidates for partisan elective state office during the period of time in which the "contribution window" is open, regardless of whether the individual is on the ballot for that election. This means that a lobbyist can make a personal contribution to anybody partisan elective state official, candidate for partisan elective state office, or their committees, any time the window is open for a general election or a special election.

It is important to note, that the contribution window may not necessarily open "on the first day authorized by law for the circulation of nomination papers" for partisan state elective officials who are legislators or candidates for state legislative office, as the Legislature may still be in session at this time. For example, generally the first day to circulate nomination papers to be on the ballot for the general election is April 15, and typically the Legislature will still be in session at this time. Therefore, the contribution window will not be open for partisan elective state officials who are legislators and candidates for state legislative office until the conclusion of the final floorperiod.

The following lobbyist contributions that you specifically identified in your request for advice are all permissible under Chapter 13<sup>4</sup>:

1. To the lieutenant governor, secretary of state, state treasurer, or attorney general or to the candidate committee of a candidate for one of these offices during the contribution window that opens prior to a general election, regardless of whether he or she is on the ballot.
2. To any partisan state elective official or to the candidate committee of any candidate for partisan elective state office during the contribution window that opens when a special election is called, regardless of whether the partisan elective state official or candidate is on the ballot.

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<sup>4</sup> Please note that for scenarios 2, 3, and 4, a contribution from a lobbyist to a current legislator or candidate for legislative office may not be made unless the legislature has concluded its final floorperiod, and is not in special or extraordinary session.

3. To the federal campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the federal election or partisan official is on the ballot.
4. To the local campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the local election or the partisan official is on the ballot.